

WARREN COUNTY CIRCUIT COURT: JURY RESTART PLAN

MODIFIED 06/29/21

This plan has been developed through the combined efforts of a committee consisting of the Presiding Judge of this Court, the Commonwealth's Attorney, the Public Defender's Office, representatives of the Warren County Bar Association engaged in civil and criminal litigation, and the Clerk of the Court, and in consultation with the County government, the Courthouse facilities manager, the Sheriff's Department, the court reporter, local health authorities and other interested persons.

This plan is subject to modification by the presiding judge if conditions change, as permitted by the Supreme Court of Virginia. The presiding judge will decide if and when the protocols are in place to allow jury trials to proceed, and may hereafter suspend jury trials after they resume, if this plan cannot be implemented or if this plan is not providing proper protection of the health and safety of all participants in jury trials.

I. PERSONAL PROTECTIVE EQUIPMENT

A. **Masks or face shields:** All persons entering the Courthouse who are not fully vaccinated against the COVID-19 virus are required to wear a mask. "Fully vaccinated" means you have received the full dosage of an approved vaccine, and at least two weeks have elapsed since your last dose. For persons required to be in the Courthouse and required to wear a mask, including prospective jurors and trial participants, if you arrive without a mask, one will be provided at the security entry point. We have obtained, and will continue to obtain, a supply of masks and face shields from Warren County. Anyone not required to be in court must leave and return with a mask or face shield to be allowed entry. Persons who are unable to wear a mask, such as for medical reasons, will be required to wear a face shield, which will also be available at the security entry point.

B. **For persons required to wear a mask or face covering in the Courthouse:** Once in the Courthouse, all persons required to wear a mask should continue to wear a mask or face shield, with the following exceptions applicable to the conduct of a jury trial:

1. Jurors will wear face coverings at all times, but the Court expects to permit individual jurors to lower the cover briefly if requested by counsel during *voir dire*, while ensuring proper social distancing of at least 10-feet from all other persons.

2. Witnesses will be required to wear a mask except when they are on the stand, testifying. The witness stands are shielded from others in the courtroom by glass partitions. If a lawyer or bailiff needs to approach a witness to hand him something, the Court will instruct the witness to recover his face covering before allowing the approach. If face coverings impair the ability of a lawyer to communicate with the witness or with the Court, the Court may grant the attorney permission to remove his or her face covering as necessary, ensuring that the attorney remains physically distant from other persons in the courtroom. At all other times, they must be masked in the Courthouse.

3. When before the Court, the lawyers will wear their face covering, unless they cannot be clearly heard behind face covering, in which case the Court may direct them to remove it when speaking, ensuring that the attorney remains physically distant (at least 10 feet) from other persons in the courtroom. If face coverings impair the ability of a lawyer and his or her client to

communicate at counsel table (and alternative methods of communication such as note-writing, texting between devices, etc., are unavailable or insufficient), the Court will permit counsel whatever recesses are necessary for the purpose of facilitating private communication. The Court expects counsel to maintain social distancing with co-counsel and his or her client at all times.

4. Other participants in the trial, including the bailiffs and the court reporter, will be masked unless it is necessary for them to remove the mask to perform their duties, or to be clearly understood. If unmasked, they will be required to maintain the appropriate distancing from others.

C. Gloves: Gloves will be furnished to jurors, bailiffs, clerks, the judge or the lawyers when it is necessary for any of them to handle exhibits. A supply of disposable nitrile gloves will be obtained from Warren County. Use of gloves will be governed by the applicable standards for use and disposal from the Virginia Department of Health.

D. Hand sanitizer: Sanitizer will be placed throughout the courtroom(s) to be available for jurors and trial participants throughout the trial and will also be placed in any other spaces used by the jurors or other trial participants, including rest rooms. Jurors may also bring their own, as well.

II. FACILITIES

A. Cleaning and Disinfection: The facilities team at the Warren County Courthouse has been conducting regular and thorough cleaning of the Courthouse facility on a regular basis throughout each day for several months now. During a jury trial, the Court will recess at least every two hours to allow a cleaning of those areas of the courtroom and adjoining areas that the trial participants are contacting. The full Courthouse is cleaned daily before opening with electrostatic cleaning. Courthouse staff will be moving throughout the Courthouse all day to wipe down publicly contacted areas, including benches, hand-rails, counters, door handles, etc. with disinfectant cleaners. All disinfection will utilize a CDC approved List N disinfectant.

B. Signage: The Courthouse already has posted signs at the entrance to the Courthouse, and throughout the building, advising who should not enter the Courthouse, of the requirements for masks and social distancing, of the importance of hand washing, and of distancing requirements particular to certain areas of the Courthouse. Bench seating in the lobbies and the courtrooms and the floor of open lobbies is also marked for positions six feet apart.

C. Courthouse Entry: The Warren County Courthouse is a two-story building. There is a single public entrance, with security entry point, on the first floor and Circuit Courtrooms are on the second floor. All persons entering the courthouse must enter through a security check point, where, in addition to security checks, they will be temperature checked, and screened for healthy entry with the CDC recommended questions for symptom or exposure exclusion from the Courthouse, as set out in Section III.B. Any person with a fever of 100.4° or above or answering YES to any screening question will not be allowed to enter the Courthouse. That person will be given information as to who to contact in the Courthouse about their business. Prospective jurors will be given a person and number to contact in the Clerk's Office. If any excluded person is a necessary party or witness, arrangements will be made, if possible, for their participation by video, through Webex or Polycom, or by phone; if such participation cannot be arranged or is not adequate, the case may need to be continued. Any person leaving the Courthouse during the trial, then returning, including jurors, will be subject to screening upon each

entry. When persons are leaving the Courthouse, there is a separate exit door at the main entry and a physical barrier between the entry line and the exit line. They will exit through the exit door.

Once through security, anyone going to the second floor may take the elevator or stairs which are just past the security entry point. Only two persons at a time may use the elevator, and people must enter the stairs at six-foot intervals. There will be signs posted regarding this at the entry to the elevator and the stairs, and they are in view of the security staff.

D. Courtrooms: The Warren County Courthouse has two Circuit Courtrooms, A and B. A is significantly larger than B in width, depth and seating, however, its acoustics are poor – the further you get from the bench, the harder it is to hear what is being said. The venue for a criminal felony jury trial will be Circuit Courtroom B. Though smaller than Courtroom A, there is adequate space to seat a full felony jury with alternates in the jury box and the gallery of the courtroom. Seating jurors in the gallery of A is not a good idea because the acoustics are much poorer, and some jurors may not be able to hear witnesses very well. Using B also allows prisoners to be brought directly into the courtroom from the holding area, without having to take them through public areas of the courthouse. Courtroom A will be used for jury selection, though, as it can seat more people at one time. Courtroom A will be used for court matters to be conducted outside the presence of the jury, when a trial is conducted in B. When a jury trial is scheduled, no other hearings will be scheduled for the other Circuit Courtroom. Courtroom A will be the venue for the trial of civil cases and misdemeanor jury trials, though the judge may direct the use of Courtroom B if the conduct of the trial will require the presence of a prisoner or prisoners. For civil or misdemeanor trials in A, the impaneled jurors will be spaced at least six feet apart within the jury box and in chairs set up on the floor of the courtroom next to the jury box.

In Courtroom A, there will be two counsel tables both positioned to the left of the bench, as you face the bench. The witness box is between the jury box and the bench and is separated from both by a plexiglass barrier. A lectern will be positioned ten feet back from the jurors, the witness box and other participants. Counsel will, again, speak from a lectern or their table. (See sketch A attached)

In Courtroom B, the counsel tables will be set up to face the bench at the farthest point from the bench in the well of the courtroom. The witness box is at least six feet from the closest counsel table and the court reporter but is also separated from those positions by a plexiglass barrier. A lectern will be positioned between the counsel tables at least ten feet back from the witness chair. The audience area and the jury box will be marked to separate those sitting there by six feet (as will all seating areas in Courtroom A, for those viewing the trial from there and for *voir dire*). (See sketch B attached)

At the counsel tables in each courtroom, there is space for two people to sit six feet apart. Depending on the number of persons who will be present at trial, it may not be possible to conduct a trial of a case involving more than two parties in either A or B, unless in a civil trial a party or parties and their attorney are willing to sit in the audience benches of A.

Plexiglass partitions have been constructed around the witness boxes in both courtrooms to protect the witness, as well as those jurors, the judge and the court reporter who would be seated closest to the witness (and vice versa).

The judge, the clerk and the court reporter each have positions in the courtroom at least six feet away from each other and the jurors. Court security officials will post at several locations in the

courtroom which are six-feet clear of anyone else (security needs to be able to assume multiple positions to properly observe courtroom activity).

E. Jury rooms: For civil and misdemeanor cases, in most instances (depending on the number of alternates), there will be room for the jury to gather in the jury rooms of either Courtroom for deliberations or recesses, with chairs set up six feet apart along the outer walls of the room. If the jury is too large to gather in a jury room with proper social distancing, the circuit courtroom in which the trial is being conducted will be used for deliberations. In the courtroom, the jurors will be able to maintain the same distancing they had while the trial was occurring.

F. Air exchange and filtration in the Courthouse: The Courthouse HVAC system is a multi-zone system with multiple roof top units that utilize outside fresh air to Code requirements of at least 20% minimum outside air. Each roof top unit has pre-filter filters with an efficiency level that is dependent on each unit; these are changed regularly no less than once every 90 days. These units cannot be retrofitted with HEPA filters because the heavier density of these filters would restrict outside air flow below minimum requirements. Warren County has installed air purifiers in each of the courtrooms of sufficient capacity to provide appropriate purification for the square footage of each courtroom.

III. SUMMONING JURORS

A. JURY POOL: Decisions will be made on a case-by case basis as to how many jurors to summons for a particular trial, but the initial pool of jurors will generally be double what the Court would have ordinarily (pre-COVID) summonsed for the same case.

B. NOTICE TO JURORS: The jury summons will be accompanied by a letter from the Court explaining to jurors the precautions being taken at the Courthouse for their protection, any requirements for presence at the Courthouse (e.g. masks), how the process of jury orientation and selection and the trial will be conducted, and COVID-specific exemptions from service. The jurors will be advised of high-risk categories that can exempt someone from jury service. Pursuant to CDC guidelines, these include: individuals over the age of 65, individuals with cancer, chronic kidney disease, chronic obstructive pulmonary disease, heart conditions such as heart failure, coronary artery disease, or cardiomyopathies, immunocompromised state from solid organ transplant, severe obesity, pregnancy, sickle cell disease, smoking, and type 2 diabetes mellitus. Additionally, potential jurors will be asked if they care for someone who is high-risk, if high-risk individuals live in their household, if they are a sole caretaker, if childcare is available, if they interact with high risk people for work, and if they work in a long term care facility or other healthcare environment. Jurors will also be sent a questionnaire asking if they have symptoms of or exposure to COVID-19. As listed by the CDC, these symptoms include:

- a new fever of 100.4° or higher or a sense of having a fever
- a new cough you cannot attribute to another health condition
- a new shortness of breath or difficulty breathing that you cannot attribute to another health condition
- new chills that you cannot attribute to another health condition
- a new sore throat that you cannot attribute to another health condition

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

- or a new loss of taste or smell.¹

Additionally, potential jurors will be asked if they have been in close proximity to anyone who was experiencing these symptoms in the last 14 days, if they have been directed to quarantine, isolate or self-monitor in the last 14 days, if they have been diagnosed with or had contact with anyone diagnosed with COVID-19 or resided with someone in the aforementioned categories, and if they have tested positive for COVID-19 within the past 10 days or been tested for COVID-19 and are awaiting test results. Anyone who answers yes to experiencing any of these symptoms or meeting any of these criteria will be excused from service.

C. **ORIENTATION:** Jurors will receive orientation by video. The letter received with their initial summons will explain how they can view the video on-line. Any juror who is unable to view the video online, will view it on their first appearance as a juror, as explained below under JURY SELECTION.

IV. JURY SELECTION:

A. For each trial scheduled after July 31,² no later than 30 days before a scheduled trial, the prospective jurors will be mailed a juror questionnaire, which will have three parts:

1. The first part will ask the jurors if any of the conditions or symptoms which would bar them from entry into the Courthouse apply to them, as listed above, since if they do, they cannot come to the Courthouse; **these questions will also be asked again each time jurors enter the Courthouse;** any juror responding in the affirmative to any of the conditions will be excused (even though the 14-day scope of the conditions may not extend to trial, out of an abundance of caution);

2. The second part will ask if they fit any identified high-risk categories, as listed above, since if they do, we will give them the option of asking to be exempted, if they wish; any juror identifying as being high-risk and asking to be excused, will be excused; and

3. The third and final part will ask jurors if they have viewed the juror orientation video, which is available to them online (as previously notified). For those jurors who have not viewed the video online, they will be given the earliest reporting time (or times if more than 24 jurors need to view), and an extra half hour will be added between group reporting times to allow time to show them the video.

B. Those jurors not exempted or excused by the Court based on the questionnaire will be directed to report to the Courthouse beginning at 8:00 a.m. on the day of trial in groups of 24 at a time, spaced one hour apart.³ Strikes for cause will be argued and ruled upon after *voir dire* of each panel. Jurors not struck for cause will be released to leave the Courthouse and instructed as to a return time with a strict admonition not to discuss the case with anyone. Once a sufficient number of individuals

¹ This language has been modified to conform to the Supreme Court's Fifteenth Order Extending Judicial Emergency.

² For trials scheduled to be tried before July 31, the procedures in the original Jury Restart Plan remain in place.

³ This time frame is subject to adjustment on a case-by-case basis to meet the needs of a given case. It will also be 90 minutes apart if jurors in that group also need to undergo orientation.

free from strikes for cause have been identified to accommodate the requisite number of jurors for a trial plus alternates, the remaining panels shall be released. The number of alternates will be established with the parties before *voir dire* begins, but there will be at least two.

C. Beginning with jury selection but continuing throughout their service, jurors will enter the Courthouse through the main entrance (the only available entry point to the Courthouse) and will be directed to go straight to the courtroom in which they will be working. It should not be necessary for the jurors to do anything but pass directly through the public hallways and lobbies. The lobby outside both courtrooms is large enough to allow them pass through it with proper social distancing. The Circuit Courtrooms are on the second floor, and the elevator and stairs to the second floor are immediately past the security entry point, so their use can be monitored. No more than two at a time can take the elevator, and people will progress up the stairs at six-foot intervals.

V. CONDUCT OF THE TRIAL

A. Courtroom B Trials: Once jury selection is completed in Courtroom A, the trial will begin in Courtroom B (after a cleaning recess). The jury will sit in the gallery of the courtroom as well as the jury box, the parties and the witness will be arrayed within the bar in front of the bench as described above under FACILITIES. There is no room in B for the public to sit to observe the trial. Both courtrooms now have a Polycom video system; during jury selection in Courtroom A, the video system will be used to stream the proceedings in A over the system into B for spectators. Once jury selection is completed and a felony trial moves to B, the spectators will be allowed to sit in A, and trial will be streamed into that courtroom. Public seating in each courtroom will be limited to only so many as those who can sit socially distanced. If there is not enough space, priority will be given to the press (at least one seat), the victim (in a criminal case), and immediate family of the parties, or, in criminal cases, the victim and the defendant. If necessary, press may have to be represented by a pool designee.

Courtroom A Trials: For cases heard in A, the array will be as described above in FACILITIES. Limited public seating will be available on the opposite side of the courtroom from where the jury is seated and must be in rows behind the rows where the jurors are seated.

All seating by jurors and others will be set up and marked to maintain six-foot social distancing.

B. Counsel must remain behind the lectern, facing the witness or the bench, or be at their counsel table, when addressing the court or questioning a witness. For argument, the lectern will be turned around to face the jurors, and counsel speaking to the jury must be behind the lectern and close enough to touch the lectern. This is to ensure appropriate social distancing during the trial – the lectern will be at least 10 feet from the witness and jurors, as well as other trial participants.

C. Documentary exhibits, including photographs, and jury instructions will be presented to the jury with a unique set of copies for each juror. Audio-visual display of exhibits will be required in instances where such projection can adequately display the exhibit to the jury. Counsel will be required to check with the Court in advance of any scheduled trial to determine the manner in which they will be able to project exhibits. Exhibits which cannot be duplicated, such as physical objects, will only be handled by persons wearing disposable gloves. During deliberations, admitted exhibits will be laid out on a table to allow jurors to view them without having to touch them.

D. Witnesses: Parties will schedule witnesses at reasonable intervals; witnesses should not come to the courthouse until their scheduled time. While waiting to testify, witnesses will be required to socially distance like all others in the courthouse. There is a large lobby upstairs, with marked distancing spaces, as well as available witness waiting rooms. The Court also has the capability for remote video appearances by Webex and Polycom Realpresence, and will liberally grant permission for such appearances by witnesses.

E. A jury of more than 8 people will deliberate in the courtroom. Jurors will have access to the restrooms in the jury room, each of which only accommodate one person at a time. The restrooms will be regularly cleaned throughout the day (at least after every recess) and will be stocked with disinfecting wipes.

F. Social distancing: All trial participants will maintain appropriate social distancing, staying six feet apart at all times, except that persons who are both vaccinated may be within three feet of each other. Courtroom benches and benches in the lobby are marked for seating at six-foot intervals. Court security officers will regularly patrol the common areas of the Courthouse and will enforce distancing and face-covering requirements, including the authority to eject any person who will not comply from the Courthouse. Members of the same household or family may sit or stand together without distancing from each other.

G. Prior to beginning Court each day, the bailiff will check the temperature of all trial participants, including jurors and the judge, and inform the judge of any person having a temperature of 100.4 F or more. That person will have to depart from the Courthouse.

H. When the courtroom is also the jury room, matters that need to be discussed outside the presence of the jury, the parties, counsel, the judge and the court reporter will move to another room (one where the proceedings can be recorded, if the trial is being recorded). For trials in Courtroom B, brief sidebars will be conducted in the jury room adjacent to B, as long as the number of people present will not exceed 8. For significant motions or any conference requiring the presence of more than 8 people, the Court will hear those in Courtroom A. For trials in Courtroom A, brief sidebars will be conducted in the judicial conference room adjacent to A, as long as the number of people present will not exceed 6. For significant motions or any conference requiring the presence of more than 6 people, the Court will hear those in Courtroom B. During conferences in the B jury room or the A judicial conference room, all participants will wear face covering and stay six feet apart. Distancing in the courtrooms will be the same as for trial in those rooms. *Very brief sidebars involving only counsel and parties may be conducted in the courtroom using white noise to obscure the discussion, if the sidebar can be conducted with safe distancing.*

H. The trial will recess at least every two hours to allow surface cleaning in both Courtrooms and hand washing by jurors and trial participants.

I. Meals will not be served to the jurors in the Courthouse as we are unable to conceive a safe way to manage that at this time. There will be a lunch recess of sufficient time to allow jurors to get their own lunches. Jurors will be cautioned to maintain safe practices while they are away – especially masks and social distancing – and they will undergo symptom and temperature screening upon re-entering the Courthouse. Court will adjourn in time for jurors to leave for dinner. Any snacks or drinks provided to the jurors will be individually packaged.

J. **Potential COVID exposure:** Jurors and all trial participants will be instructed daily to report any change in their health status immediately. If anyone in the Courthouse, regardless of their involvement with the trial, tests positive for COVID-19, is found to have a temperature in excess of 100.4° or exhibits symptoms of COVID-19, that person will be immediately removed from the Courthouse and be advised to self-quarantine. Anyone who came into close contact with that person in the Courthouse will likewise be advised of the situation, directed to leave the Courthouse, and be advised to self-quarantine. Others who had possible exposure to the possibly infected person should also be advised of the exposure and advised to consult a healthcare professional. If the possibly infected person is a trial participant, juror or otherwise, who had close contact with a juror or jurors, the judge, any attorney or party to the case, or any other person essential to the trial, the trial will have to be either recessed and continued until it can be resumed safely or be declared a mistrial. This would be a judicial decision made with input from the parties.

Jurors will be given a name and number of a person to notify if they become ill or exposed to someone ill during their jury service. During the trial, trial participants will also be given this information. Upon a report of suspected or confirmed COVID illness, or exposure, by a trial participant, any areas that person was in will be immediately disinfected, per the standards of the Department of Health and the Department of Labor Industry. The trial will not resume until these protocols are met, and significant delay may mean a continuance or mistrial will have to be considered.