

MARYLAND



JUDICIARY

**Conference of Circuit Judges
Work Group on the
Resumption of Jury
Operations in Circuit Courts
August 3, 2020**

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Conference of Circuit Court Judges Work Group on the Resumption of Jury Operations in Circuit Courts

The Work Group was formulated by the Conference of Circuit Judges to make recommendations to Chief Judge Mary Ellen Barbera on the Resumption of Jury Trials in Circuit Courts in Maryland, in the midst of a worldwide pandemic. Pursuant to Judge Barbera's Administrative Order of May 22, 2020, jury trials in Maryland will resume on October 5, 2020, in phase 5 of the Courts' reopening plan. The following members make up the Conference Work Group on the Resumption of Jury Operations in Circuit Courts.

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The Work Group met on May 19, 26, 2020, June 9, 16, 30, 2020 and July 7, 14 and 21, 2020, via conference call to discuss the issues regarding resuming jury trials in the Maryland Circuit Courts. The Work Group was comprised of a cross section of Judges, Clerks, Jury Commissioners, and Court Administrators from across the State to address the issues that all Circuit Courts might encounter, notwithstanding the size or location of the court, in resuming jury trials in this State during the COVID-19 pandemic.

The Work Group attempted to address every conceivable aspect of a jury trial in Maryland in order to provide Courts tools and ideas to address different scenarios that may arise in order to maximize protection of jurors, litigants, and staff while resuming jury trials. The safety of all was paramount in all aspects of the Jury Trial Resumption Work Group discussions and it is reflected throughout these recommendations.

As part of the fact-finding and research of the Work Group, the Work Group received input from or considered the following:

1. Ksenia Boitsova, Court Interpreters Program Administrator
2. Pamela Ortiz, Program Director, Access to Justice
3. Jamie L. Walter, Program Director, Research and Analysis
4. A Subcommittee of the Work Group on Virtual Voir Dire Civil Jury Trials
 - a. Melissa Biggs (Deputy Jury Commissioner, Prince George's County)
 - b. Sophia Harris (JIS)
 - c. Olya Jerschowsky (JIS)
 - d. Gloria Lewis (Chief Deputy Clerk, Frederick County)
 - e. Karen Lista (JIS)
 - f. Marci Mustachio (Jury Commissioner, Anne Arundel County)
 - g. Carolyn Schneck (Internal Audit Department)
 - h. Vincent Weaver (Jury Commissioner, Montgomery County)
 - i. Lisette Dupree (IT Prince George's County)
5. The Honorable Alan Wilner, Rules Committee
6. United States Court COVID-19 Judicial Task Force Report of the Jury Subgroup

7. Guidance for Conducting Civil Jury Trials During The COVID-19 – American Board of Trial Advocates
8. Virtual Voir Dire Pilots - Texas Court
9. Jury Commissioner for Circuit Court in San Francisco, California
10. The Ohio Mock Jury Assembly - YouTube
11. The Ohio Virtual YouTube Video
12. Civil Pattern Jury Instruction Committee
13. Criminal Pattern Jury Instruction Committee
14. Maryland Association for Justice, Letter
15. The Honorable Vedica Puri, San Francisco Superior Court Judge, Department 10
16. The Honorable Loretta M. Giorgi, San Francisco Superior Court Supervising Judge, Criminal Division

Resumption of Jury Trials in Circuit Courts-October 5, 2020

The resumption of jury trials in the Circuit Courts in Maryland on October 5, 2020, depends largely on the status of pandemic in the State of Maryland and in the respective jurisdictions. As of the writing of this report, there are 84,876 confirmed cases of COVID-19 in Maryland and 3,447 deaths, with a large concentration of cases in Prince George's and Montgomery Counties. The impact of the virus is not uniform across the State; some jurisdictions have felt a significant impact and others only minimal. So, the response of each jurisdiction across the State to this pandemic will vary.

The Work Group recommends that each Court work with and coordinate with their local government and Health Officer to make sure the Court has incorporated all the available resources and current information into the Court operations to coordinate a safe environment for the jurors. Each jurisdiction will be different and the input from local leaders will be very important to this process.

The Work Group acknowledges that there will be many prospective jurors that will be reluctant to come to the Courthouse to serve on jury duty due to the fear of the spread of the COVID-19. It will be incumbent upon the Courts to use all available resources to communicate the safety steps that the Court has implemented to guard against the spread of COVID-19.

A. The Work Group Recommends that Courts Incorporate the Following Safety Steps to Protect Jurors:

1. Require all persons entering the Courthouse to wear masks.
2. Mandate that all jurors wear masks - no exceptions.
3. Impose temperature checks on all visitors to the Courthouse.
4. Reduce touch points in jury assembly rooms:
 - i. Remove magazines,
 - ii. Remove pens and clip boards,
 - iii. Use only disposable items (example, no reusable jury cards),
 - iv. Remove water pitchers - use bottled water, and

- v. Remove vending machines/or make sure vending machines are regularly sanitized.
5. Require jurors to wear gloves/encourage regular hand washing.
6. Provide hand sanitizer and wipes in the jury assembly room.
7. Have adequate trash cans in the jury assembly room to allow for the proper disposal of protective gear.
8. Wipe kiosk off after each use.
9. Convert to a cashless operation for the payment of jury service fees.
10. Remove personal fans from all spaces/offices in the jury assembly room and the Courthouse.
11. Disable hand dryers in the restrooms.
12. Sanitize lactation rooms after each use.
13. Sanitize locker rooms and require the use of gloves when accessing a locker.
14. Know the types of chemicals used to sanitize jury areas in the event of sensitivity or allergic reactions to the chemicals by jurors or staff members.
15. Sanitize or remove all cell phone chargers in the jury assembly room. Alternatively, provide wipes and gloves so that they can be wiped down after each use.
16. Reduce the transfer of paper between jurors.
17. Have a plan for social distancing:
 - i. In the jury assembly room,
 - ii. Moving to the Courtroom,
 - iii. During Voir Dire,
 - iv. Returning to the jury assembly room from the Courtrooms,
 - v. In the jury box,
 - vi. During the trial,
 - vii. During lunch recess,
 - viii. During deliberation, and
 - ix. Dismissing the jury.

B. Accommodating Jurors with Special Needs or Vulnerable Immune Systems

There will be many potential jurors that have compromised immune systems that will just be terrified of coming to Court. Even though the Court has taken great steps to facilitate a social distancing environment for jurors, even the best plans may not be enough for someone with a compromised immune system. Therefore, the Work Group recommends the following:

1. Reschedule jurors if a safe accommodation cannot be made.
2. Excuse jurors if a safe accommodation cannot be made.

C. Childcare Issues due to School Closures, Distant Learning, and Childcare Center Closures

All jury offices are going to be faced with this issue as many childcare centers are not reopening and some school systems are operating virtual classrooms. Many jurors will not have legitimate options for childcare during this pandemic. Additionally, the CARES Act provides that citizens can get paid leave for up to 12 weeks equal to 2/3 of their salary to stay home with children during this period to address childcare needs. [1]

More jurors may request to be excused due to this issue. The Work Group recommends that jurors be rescheduled liberally through December 31, 2020.

D. Communicate Safety Steps to the Public before the Resumption of Jury Trials in Maryland

1. Paramount is the need for statewide communication from the Administrative Office of the Courts (AOC) or the Chief Judge that addresses the security steps that Courts will take to address the safety of jurors, litigants, and staff.
2. Each Circuit Court should post safety information on its website.
3. Additional notice of the safety requirements should be added to the jury summons and be placed on recordings by Jury Commissioners.

E. How to Bring the Jurors back into the Courthouse Safely

The Work Group recognizes that each Circuit Courthouse in this State is different - from the infrastructure of the facility to the community it serves. There is no one size fits all scenario for resuming jury trials that will work for the entire State. It is the goal of the Work Group to provide recommendations that Courts can choose from to meet the needs of its jurisdiction.

During the Work Group sessions, members were asked to go look at Courtrooms in their own jurisdiction in order to visualize how social distancing jurors might be accomplished. The Work Group recommends the following tools to assist in the safe return of jurors:

1. Practice – do a Mock jury assembly in your space to see how it would work. Review the Ohio Mock Trial YouTube video [2] as a guide to assist with the preparation process. It will give Courts ideas to plan for social distancing of jurors in their own spaces.
2. Courts that have more than one trial scheduled per day can stagger panels to reduce the number of citizens that come into the Courthouse and are required to gather in jury assembly rooms at one time. This will enable Jury Commissioners to establish social distancing within the jury assembly room.
3. Some Courts can elect to gradually build to larger panels to allow staff to get comfortable with working with large groups of people in a socially distant arena. Therefore, some Courts could opt to start with smaller panels first (4 and 4) in order to safely bring jurors back to the Courthouse.
4. Courts that do not have space to adequately socially distance jurors might consider other accommodations, in close proximity to the Courthouse, that can be used to assemble jurors before bringing them into a Courtroom. However, if an alternative location is considered, the Court should consider all the security concerns that must be addressed. Make sure that you coordinate with your local Sheriff's Office.
5. Consider virtual Voir Dire for civil cases. This can be accomplished on the Zoom platform. View the Texas YouTube as a Guide to Virtual Voir Dire [3].

F. Summoning Jurors

Jury summons should include the safety precautions that Courts have put in place so that citizens are aware of what to expect when appearing for jury duty.

1. Some jurors can be summonsed to appear for criminal trials and others can be summoned to appear virtually for civil matters if a jurisdiction elects to use virtual Voir Dire for civil cases.
2. Jurors can be summonsed to “appear” on the same day, some virtually and some in-person, but the summons requests must be entered on separate days.
3. The files for the first set (in-person, for instance) would go to the vendor (Peregrine) for processing on one night and the second set (for virtual, for instance) would be sent to the vendor for processing the following night.
4. If the Zoom information is known when the task is scheduled to summons the jurors (which would be ideal), the information would be entered in the location session instructions. If the Zoom information is not known at the time the task is scheduled, other instructions can be entered such as “You will appear remotely. Please call _____ for information on how to participate remotely on _____.”

G. Voir Dire – Criminal and Civil

1. The Work Group recommends that jurisdictions conduct Voir Dire in criminal cases in person. Voir Dire may have to be conducted over several days to accommodate social distancing if a large enough space cannot be identified to conduct the Voir Dire.
2. Courts could consider streaming the Voir Dire questioning to jurors in an overflow Courtroom so that all jurors hear the questions at the same time then shift the jurors to the primary Courtroom during the process as needed.
3. Courts could use questionnaires as a way to screen potential jurors in order to reduce the number that have to appear.
4. Other Courts that have large jury assembly rooms might consider utilizing them to conduct Voir Dire. Alternatively, a large venue outside the Courthouse such as a school auditorium could be an option for Voir Dire provided the security concerns could be addressed.

5. The Work Group recommends virtual Voir Dire in civil cases with the consent of both parties. The new 800 Rules on Technology would support this virtual process [4]. However, if additional tweaking is required, the Work Group recommends that the Rules Committee consider Rules to support virtual Voir Dire.

H. Seating the Jurors

1. Each Court would need to assess its Courtrooms to see how a jury of twelve (plus alternates) could safely fit.
2. The Work Group recommends utilizing parts of the gallery to socially distance jurors if needed during trials and installing plexiglass partitions to separate the jurors from the public.
3. Courts could consider socially distancing jurors in one Courtroom and using an overflow Courtroom to stream the trial to the public and others.
4. Courts could consider giving jurors assigned seats to minimize touch points for jurors during the trial.
5. Jurors could be separated in the jury box by plexiglass partitions.
6. The Work Group further recommends considering an adjacent Courtroom, large conference rooms, or an offsite venue for a jury assembly room to allow additional space for the jury to deliberate. However, the Work Group cautions Courts to be mindful of recording devices that could be in these venues that could violate the secrecy of the jury deliberation process. If this is an option for your Court, make sure all surveillance equipment in these areas is disengaged before the space is used by the jury. Note, others may have remote access to these venues. These issues must be addressed before a jury uses an alternative space.
7. If an alternative space is used as a jury deliberation room, you must coordinate secured restroom facilities for the jurors.

I. Masks in the Courtrooms

1. It is recommended that masks be worn by all in the Courtrooms during the trial, except for the following:

- i. Witnesses shall remove their masks while testifying provided they are given a face shield and they are seated behind a plexiglass personal shield. Alternatively, witnesses could be provided clear masks like those worn by interpreters [5];
 - ii. Counsel may remove their masks when arguing to the jury provided Courts are able to create a protective barrier for the attorneys to stand behind so that the droplets are contained;
 - iii. For arguments, Courts might consider placing the jury in the gallery to allow more distance between counsel and the jury; and,
 - iv. The Judge should also wear a mask during the trial and Voir Dire but can remove it to speak as long as he or she remains behind a protective shield. Otherwise, a mask should be worn at all times.
2. Defendants and litigants should be required to wear clear masks.
 3. All other persons entering the Courtroom for any reason must also wear a mask.
 4. Jurors, litigants, or counsel shall not be allowed to wear masks inscribed with offensive or other politically charged language in the Courtroom. The trial Judge in the Courtroom or the Jury Judge in the jury assembly room shall use their discretion in enforcing this requirement.
 5. Jury offices and Courtrooms should keep a stock of disposable masks in the event they need to provide a juror, litigant, or counsel with a replacement mask during the proceeding.

J. Interpreters

1. The Work Group recommends that all interpreters wear clear masks. A sample is referenced in end note [6]. This will allow the mouths of both spoken language and ASL interpreters to be seen by the client as needed to maximize communication.
2. The Work Group recommends that the AOC purchase the clear masks for interpreters utilized by the Court.
3. Spoken language interpreters must use the wireless equipment that has been provided. However, equipment that is touched and exchanged between clients must be sanitized. Each interpreter must follow the protocols for sanitizing the wireless equipment.

4. For tactile interpretation, which is used for individuals who are deaf and blind, the Work Group recommends that the interpreters and the individuals wear mask and gloves. However, if the gloves impact the sense of touch then both will have to wash and/or sanitize their hands regularly.

K. Jury Notes

1. During the trial, jurors should be told to communicate with the Court through notes. Jurors should wear gloves or be allowed to recess periodically to wash their hands.
2. During deliberations, if the jury is in a location that is not adjacent to the Courtroom, jurors should be told to place notes to the Judge in sealed envelopes. Bailiffs or other designated court personnel should deliver the notes to the Judge.

L. Jury Instructions

Due to the modifications that have been made to most Courtrooms and the concerns that most jurors will have serving during a pandemic, the Work Group recommends the following Preliminary Jury Instructions for civil and criminal cases:

1. Because of the COVID-19 emergency, extra precautions have been taken by the Court for the safety of trial participants and the jury. During the trial, all persons are required to wear masks and maintain social distancing whenever possible. Attorneys and witnesses will occasionally be permitted to remove masks when it becomes necessary to speak with clarity or ensure proper recording of proceedings.
2. You may also see the use of plexiglass or shields to prevent potential exposure to the COVID-19 virus. The fact that the Court is taking safety precautions during the trial should not be held against any party, nor should you draw any inference regarding the health of any individual involved in the trial. All persons who enter the Court, including judges, court staff, attorneys, litigants, and jurors, are subject to the same screening protocol,

including the provision of information about their health, and a temperature check.

3. It is possible during the course of the trial that a witness may appear by video or on a remote platform such as Zoom. You should treat the testimony of a witness who appears by remote means in the same manner as you would if the witness had testified in this Courtroom. You should not draw any inference for or against any party based on the fact that a witness testifies by remote means.
4. If, during the course of the trial, you become ill or experience fever of at least 100 degrees Fahrenheit, you should notify the Court immediately. If you experience symptoms while at home or are exposed to another person who has tested positive for COVID-19 (even though you may be asymptomatic), please contact the Judge's chambers and await further instructions before you return to the Courthouse.

M. Exhibits During the Trial for the Jury's Consideration

The Work Group discussed various options for Courts to consider in the handling and presentation of exhibits to the jury. As each Court is different, it is assumed that not all recommendations will work for all Courts, hence the Work Group provides the following options and guidance to Courts:

1. Place exhibits in plastic sleeves that can be easily sanitized.
2. Use UV lights to sanitize exhibits in advance.
3. Have the parties submit the exhibits in advance so that they can be printed in individual packets for each juror.
4. Use electronic display equipment to present the exhibits in the Courtroom and in the jury rooms.
5. Sanitize all non-paper exhibits and use gloves to handle.
6. Use photographs of non-paper exhibits.
7. Hold a pre-trial conference with counsel to seek agreement on what exhibits will be admitted.

N. Feeding the Jury

1. It is the trial Judge's decision whether or not a jury can leave the Courthouse for lunch or if they are sequestered through dinner. However, the Work Group recommends the following:
 - i. Conclude deliberations by 4:30 p.m., and
 - ii. Minimize meal opportunities.
2. If meals are provided to jurors, the Work Group recommends the following:
 - i. Provide lunch only in high profile/high security cases unless the trial Judge determines otherwise,
 - ii. If meals are provided, they should be individually wrapped or boxed, and
 - iii. No communal meals should be served.

O. Confidential Social Distancing Communication Between Counsel and Defendant

The Work Group will ask JIS and other local IT offices to collaborate on the best remote procedures for counsel and defendants to communicate during Voir Dire and trial. The Work Group has the following recommendations:

1. Text messaging,
2. iPads for text messaging, and
3. Headphones and microphones similar to the equipment utilized by the Court Reporters; however, the equipment must be properly sanitized after each use.

P. Request for Views

The consensus of the Work Group was that consideration should be given to alternative means for the jury to view the site, such as a videotape or pictures of the site. The Work Group agreed that there are times when visiting the site is valuable. As such, the discussion focused on when a view is deemed necessary and/or appropriate.

If a view is ordered, an advance team should be appointed to include the Court Administrator, the prosecutor (if a criminal case), the defense team, and a representative from the Sheriff's Office to address the following issues:

1. Logistics:

- i. Designate the viewing area. Determine where jurors will stand and how the jurors will move among stations, if needed;
- ii. Determine how to ensure the safety and security of jurors while at the site. Ensure the security of the site prior to the visit and ensure sanitation of the environment where the jurors will stand; and,
- iii. Set up the site, including placing markers where the jurors will stand.

If it is necessary to put anything on the record, it should be done prior to leaving the Courtroom to include what everyone has agreed will happen at the site. In addition, the Judge should admonish counsel not to have conversations with the jurors.

The jurors should be instructed that there will be social distancing at the site and that they should not wander from the designated areas. Other necessary instructions should be provided prior to leaving the Courthouse.

2. Transporting the jury to the site:

- i. The number of jurors will vary based on case type. As such, the number of vehicles needed to transport the jury to ensure social distancing will have to be determined;
- ii. The vehicles used must be ADA-compliant. Administrative Judges should discuss the availability of County/City-owned vehicles for transporting jurors, such as mobility vans and buses. These discussions should take place now so that a plan is in place if a viewing is requested, the Court will be ready to proceed;
- iii. The vehicles must be sanitized before and after transporting the jury; and,
- iv. The jurors must be provided with gloves, masks, and hand sanitizer.

Q. Trial Type Priority for Resuming Jury Trials

The Work Group acknowledges that it is difficult to make one standard recommendation as to the resumption of jury trials because of local nuances, but the following recommendations are given for Courts to consider based on what is best for the respective jurisdiction:

1. The priority when jury trials resume should be criminal cases with pressing Hicks dates or with incarcerated defendants.
2. Another priority should be cases that require smaller panels so that Courts can try to move a larger volume of cases along and address the backlog.
3. Jurisdictions that start with smaller panels first have the benefit of testing the process to see how staff and the public adjust to the social distancing requirements.
4. Courts can stagger the times for jurors to report to reduce the number of people in the Courthouse at one time.
5. Courts should look at different ways of empaneling jurors, such as striking over multiple days.
6. Courts should consider virtual Voir Dire in civil cases with the consent of both parties. See the Texas example [7].
7. Courts can consider virtual trials in civil cases with the consent of both all parties. See the Ohio [8] and Florida YouTube examples [9].
8. Courts can consider a hybrid with the parties in the Courtroom and a remote jury – see the Utah example at end note [10].

R. Addressing COVID -19 Outbreaks or Sickness During the Trial

The Work Group recommends the following:

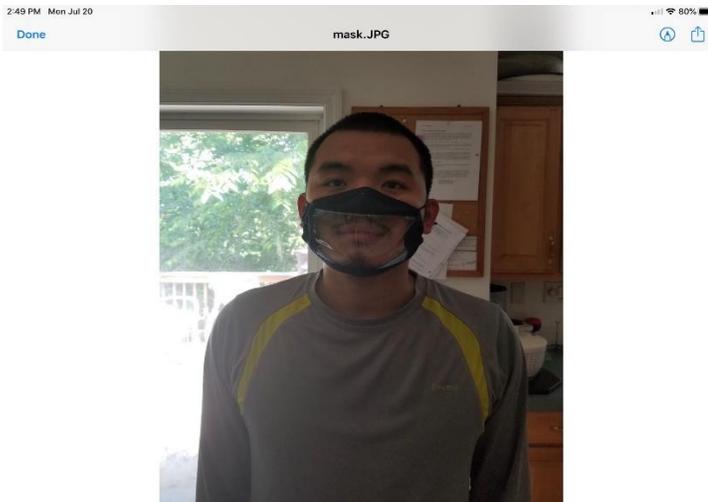
1. Discuss the possibilities with the parties ahead of time and come up with a plan to address them. This will be more feasible in civil case as oppose to criminal cases as parties can agree to accept a verdict of less than six jurors.
2. Select a few extra jurors as alternates to plan for the possibility but be mindful of the space requirements for social distancing in your Courtrooms.
3. The issues in most cases will have to be addressed on a case-by-case basis by the trial Judge.

S. Addressing a Reoccurrence/Continuation of the Pandemic Concerns in the Fall

Follow the phased opening Order issued by Chief Judge Mary Ellen Barbera which allows Courts to go back to phases, if needed.

End Notes

1. **Coronavirus Aid, Relief and Economic Security Act of 2020, Pub. L. No. 116-136, March 27, 2020**
2. **Ohio Mock Jury Selection YouTube**
<https://www.youtube.com/watch?v=yaMc4kbDBk&feature=youtu.be>
3. **Texas Virtual Voir Dire YouTube**
<https://www.youtube.com/watch?v=H1XrO1nM7B8>
4. **See Title 2, Chapter 800 of the New Maryland Rules**
5. **Clear Mask Photo**



6. **Texas Voir Dire - YouTube**
<https://www.youtube.com/watch?v=H1XrO1nM7B8>
7. **Ohio Mock Virtual Civil Trial - YouTube**
8. **Florida Virtual Civil Jury Trials -**
<https://www.law360.com/articles/1292166/miami-court-pulls-off-fla-s-first-jury-trial-in-pandemic>
9. **Utah Virtual Jury Trial - YouTube -** <https://youtu.be/Zvsqf8qeaVU>