



**CHIEF JUDGE ORDER 2020-16
STATE OF COLORADO
FIRST JUDICIAL DISTRICT**

**COVID-19 ORDER REGARDING THE RESUMPTION
OF JURY TRIALS IN THE FIRST JUDICIAL DISTRICT**

The purpose of this order is to explain the process by which the First Judicial District will resume jury trials during the COVID-19 pandemic.

OVERVIEW

1. The District is the fourth largest judicial district in Colorado. It serves nearly 600,000 citizens in Jefferson and Gilpin Counties through two courthouses located in Golden (Jefferson County Courthouse, JCC) and Black Hawk (Gilpin County Courthouse, GCC).

2. Since the beginning of the COVID-19 pandemic, the District has been working diligently to balance its obligation to provide access to justice with the need to ensure public health and safety. In mid-March, the District reduced its operations to essential matters in compliance with orders issued by federal, state, and local authorities. Of particular relevance, Chief Justice Nathan B. Coats of the Colorado Supreme Court has suspended jury trials through August 3. See Chief Justice Orders (March 16, 2020, March 25, 2020, May 5, 2020, and June 15, 2020). The Chief Judge of this District has followed this directive as well. See CJO 2020-02 (March 16, 2020), CJO 2020-07 (March 25, 2020), CJO 2020-10 (April 27, 2020), CJO 2020-12 (May 11, 2020), and CJO 2020-14 (June 22, 2020).

3. Given its reduced operations, the District invested in and used technology to conduct proceedings remotely to minimize in-person proceedings. By mid-May, the District began to slowly and incrementally expand its operations to both remote and in-person proceedings. The frequency and number of hearings, conferences, and dockets have consistently increased. The District has welcomed the public back to the courthouses in a thoughtful and safe manner, albeit in numbers far less than pre-COVID-19.

4. The District also has been planning toward the resumption of jury trials when deemed safe to do so. By following this plan, the District believes that it can safely resume a limited number of jury trials beginning August 3, 2020. However, the continued need for social distancing and the limited size and layout of the JCC and GCC prohibit the resumption of jury trials at pre-COVID-19 numbers. The District continues to consider ways to increase the number of jury trials.

COVID-19 REPORTS AND OTHER INFORMATION

5. The District routinely reviews COVID-19 reports from federal, state, and local authorities. The local reports include updated information on a variety of topics, such as the number of COVID-19 cases reported, the number of COVID-19 related hospitalizations, the number of COVID-19 related deaths, and how agencies are trying to minimize exposure and the spread of COVID-19. Of particular interest is how the District has been impacted by the lifting of restrictions associated with previous stay at home orders and increased social interactions.

6. As of July 15, 2020, Jefferson County has 3,055 positive COVID-19 cases and 216 COVID-19 related deaths, and Gilpin County has eight positive COVID-19 cases and no COVID-19 related deaths.

7. Since mid-March, the District has collaborated with local public health officials and stakeholders in the District. Given that most of the continued operations primarily focused on public safety matters and the logistics of criminal dockets, the stakeholders include representatives of the District Attorney's Office, the Public Defender's Office, the private criminal defense bar, Jefferson and Gilpin County Sheriff's Offices, the Probation Department, the Pre-Trial Services Department, and Community Corrections. Some representatives have walked-through the JCC and GCC to better understand and seek guidance about how to safely increase in-person operations and resume jury trials. The District has considered and incorporated certain suggestions into this plan.

8. Jefferson County transitioned to the Safer at Home Executive Order issued by the Governor on May 8, 2020. New confirmed cases and hospitalizations in Jefferson County have moderated until recent increases. The State and Jefferson County have issued mandatory mask

orders in response to these increases. The District has and continues to monitor COVID-19 numbers and orders.

9. Given the data and health and safety protocols in this plan, the District believes that it can resume limited jury trials. We understand that the data may change, for better or worse, and the District is prepared to take immediate action.

SOCIAL DISTANCING, MASKS, AND SIGNAGE

10. The District understands that social distancing is perhaps the critical factor to reduce the exposure to and mitigate the spread of COVID-19. According to recent health and safety protocols, people must wear masks and maintain six feet social distancing when conducting in-person proceedings or jury trials. The same protocols indicate that the presence of masks does not negate the need to exercise six feet social distancing. Therefore, the District will require persons to wear masks and to maintain six feet of social distancing throughout the courthouse whenever possible.

11. To better inform the public, the JCC and GCC have posted signs about COVID-19, including not to enter the courthouse if ill, safety precautions to take such as washing your hands and not touching your face and mouth, protocols inside the courtrooms for in-person proceedings, where to stand to maintain six feet social distancing, directions to public stairwells to encourage people to avoid the elevators if physically able, limiting the number of people in the elevators at any time, and how to access courtrooms virtually. In addition, floors, elevators, and stairs are visibly marked for social distancing.

12. The District believes that these and other measures are necessary to maintain the confidence of our citizens and to protect the health and safety of everyone involved in jury trials. Other more specific measures are included herein.

PRIORITIZATION AND NUMBERS OF CASES TO BE TRIED

13. Each year, the District tries hundreds of jury trials. In 2019, judges of the District presided over 392 jury trials. For Jefferson County, about 374 jury trials were held:

- DCT criminal jury trials – 126.
- DCT civil jury trials – 23.
- DCT D&N and juvenile jury trials – 2.
- CCT criminal jury trials – 219.
- CCT civil jury trials – 4.

For Gilpin County, 18 jury trials were held:

- DCT criminal jury trials – 6.
- DCT civil jury trials – 0.
- DCT D&N and juvenile jury trials – 0.
- CCT criminal jury trials – 12.
- CCT civil jury trials – 0.

These figures, of course, do not include bench trials, hearings, conferences, and other appearances.

14. As of July 15, 2020, the District has approximately 884 jury trials scheduled for the final five months of 2020. Jefferson County has about 840 jury trials scheduled during this period:

- DCT criminal jury trials – 206.
- DCT civil jury trials – 140.
- DCT D&N and juvenile jury trials – 14.
- CCT criminal jury trials – 479.
- CCT civil jury trials – 1.

Gilpin County has 44 jury trials scheduled during this period:

- DCT criminal jury trials – 9.
- DCT civil jury trials – 0.
- DCT D&N and juvenile jury trials – 0.
- CCT criminal jury trials – 0.
- CCT civil jury trials – 35.

These figures, of course, do not include bench trials, hearings, conferences, and other appearances.

15. Because of the backlog of scheduled jury trials, the District will try cases each day of the week and will prioritize the cases to be tried. It will do so by publishing separate lists of trials scheduled for a week, a DCT and CCT list (Lists). The Lists will order the cases in the sequence for which they will be tried. For example, if there are four DCT cases set on August 3, the DCT List will list the cases in the order in which they will be prioritized that day. Initially, only one DCT case will be tried on that day. Other trials may be resolved, dismissed, mistried, or continued. The same general process applies to CCT.

16. The Lists will be determined by the Chief Judge or designee.

17. In DCT, the following procedure will be used:

- A pretrial readiness conference (PTRD) will be set for all cases scheduled for a particular week. It will be set in a single courtroom, usually not the courtroom in which the case would be tried. Although the specific date and times have not been determined, the PTRD likely will be the Thursday that is 18 days before the start of a particular trial week. For example, for trials scheduled to begin during the week of August 10, 2020, the PTRD for all cases set during that week will be Thursday, July 23, 2020. The individual dates likely will be set for staggered times, such as 1 PM for Monday trials, 2 PM for Tuesday trials, 3 PM for Wednesday, Thursday, and Friday trials.
- The District Court will file and serve a notice of the PTRD in each case, or may simply notify all attorneys via email.
- At least four business days before the PTRD, the District Attorney shall file a pleading that sets forth its prioritization of cases scheduled to be tried each day. For example, if there are four cases set for Monday, the District Attorney shall list the case that it believes should be tried first as #1, the case that should be tried second as #2, etc. The District Attorney's list is for each day during the week. It should not move cases to different days. The District Attorney is free to give reasons for its prioritization in the list, including victim input.
- At least two business days before the PTRD, a defendant may file a pleading setting forth his/her position as to trial prioritization. This pleading shall include a statement as to defendant's intention to proceed to trial as scheduled (e.g., proceed to trial as scheduled, request a continuance, or take a plea).
- The Chief Judge or his designee (PTRD Judge) will preside over the PTRD. Although most of the cases heard at the PTRD will not be those of the PTRD Judge, he/she will determine the DCT List (subject to final approval by the Chief Judge). In creating the Lists, the judges will consider a variety of factors, including but not limited to:
 - Constitutional and statutory considerations;
 - The preferences of the parties;
 - The duration of the trial;
 - Speedy trial considerations;
 - The age of the case;
 - The custody status of defendant;
 - The severity of the charges; and
 - Concerns of the parties, victims, and witnesses.
- At the PTRD, the cases will be called and argument heard about the prioritization of cases. If a continuance or other relief is requested, the PTRD Judge will rule (if possible) on the requested relief.
- In some instances, the PTRD Judge may adjust the start date or time of the trial as necessary. For example, the start date may be moved to the Thursday or Friday

before the start of a trial in order to select a jury. Of course, the court welcomes input about such adjustments.

- The Lists will be filed in the cases shortly after the PTRD.
- This process may be modified for Gilpin County DCT jury trials because of the smaller numbers.

18. In Jefferson CCT, the following procedure will be used:

- Each County Court Division will have a PTRD on the Monday prior to a particular week. All cases set for trial that next week will be called; all parties must be present in person or by WebEx.
- At the PTRD, the cases will be called and argument heard about the prioritization of cases in that Division. Any requested re-setting or continuances of the trial, including waivers of speedy trial, will happen at this time.
- On the Friday before the PTRD, the District Attorney shall file a pleading that sets forth its prioritization of cases scheduled to be tried each day. For example, if there are four cases set for Monday, the District Attorney shall list the case that it believes should be tried first as #1, the case that should be tried second as #2, etc. The District Attorney's list is for each day during the week. It should not move cases to different days. The District Attorney is free to give reasons for its prioritization in the list, including victim input.
- A defendant may file a pleading setting forth his/her position as to trial prioritization. This pleading shall include a statement as to defendant's intention to proceed to trial as scheduled (e.g., proceed to trial as scheduled, request a continuance, or take a plea).
- The Judge in the assigned Division will preside over the PTRD on Tuesday and will determine the List for that Division.
- ~~The County Judges shall discuss the Lists for each Division and will announce on or~~ before Wednesday the priority List for all CCT jury trials for each day the following week. This final List will prioritize all Jefferson CCT jury trials scheduled each day.
- If the number one and number two priority cases are from the same Division, both cases will be tried. The District Attorney and Public Defender must make necessary arrangements for trial coverage.
- In creating the Lists, the judges will consider a variety of factors, including but not limited to:
 - Constitutional and statutory considerations;
 - The preferences of the parties;
 - The duration of the trial;
 - Speedy trial considerations;
 - The age of the case;
 - The custody status of defendant;

- The severity of the charges; and
 - Concerns of the parties, victims, and witnesses.
- Subject to modification based on its dockets, Gilpin CCT will use the same general procedures.

19. Regardless of whether the case is a DCT or CCT case, the court will not grant a continuance or accept a late-plea after the PTRD, unless required by law. Attorneys must be prepared to proceed to trial in every scheduled case, regardless of its priority on the final Lists.

20. At this time, it is difficult to determine the number of jury trials that can be safely tried each day. However, the District believes that for the first five weeks (through Labor Day), the number of jury trials will be as follows:

- Weeks of August 3 and 10 –
 - DCT – one jury trial/day.
 - CCT – two jury trials/day.
 - Gilpin DCT or CCT – up to four jury trials/month (depending on schedules).
- Weeks of August 17, 24, and 31 –
 - DCT – up to two jury trials/day.
 - CCT – up to three jury trials/day.
 - Gilpin DCT or CCT – up to four jury trials/month (depending on schedules).

These numbers may be adjusted based on the number of courtrooms that have been modified for trials during the pandemic and the course of the pandemic. Further, the District is considering how to try at least one civil jury trial each week beginning on September 6, 2020.

21. DCT may use Thursdays and Fridays to select jurors for trials beginning the following week.

JUROR SUMMONSES

22. Typically, Jefferson County juror summonses are sent six weeks in advance. However, the lead-time has been reduced for mailing juror summonses to four weeks and the District is working to determine the number of actual summonses to be sent to ensure there are enough prospective jurors available for limited jury trials to proceed. Gilpin County summonses will continue to be sent out four weeks in advance.

23. To comply with health and safety standards and given the limitations of the facilities, the number of juror summonses sent will be significantly reduced from the pre-COVID-19 numbers. In general, the District will assign jurors as follows:

- Routine DCT jury trials – 40 jurors.

- More serious DCT jury trials (murders, sex assaults, etc.) – 40+ jurors.
- DCT civil jury trials – 25 jurors.
- DCT D&N and juvenile jury trials – 30 jurors.
- CCT jury trials – 18-25 jurors (depending on location).

24. The summonses will direct jurors to the District's website, which includes instructions to guide a juror who receives a summons for jury duty. Jurors also will be directed to watch a short, animated video, which was created by the State Court Administrator's Office. The video can be viewed at the District's website. This video explains to jurors that the District cares about their health and safety and that jury pools have been limited in size and reporting times staggered. The video then outlines what to expect when coming to the courthouse, what to expect during the check-in process, how jurors will be moved to a courtroom, how the courtrooms will look, what happens if selected for service, and what to anticipate when jury deliberations commence. Similar information will be available on a recorded telephone message and on the District's webpage as alternative means for prospective jurors to receive information and instructions.

25. Jurors will be instructed that they must wear masks in the courthouse and that they may bring their own writing utensils, hand-sanitizer, wipes, tissues, water bottles, and lunch/snacks to the courthouses. The District will provide masks for jurors who do not have one. The District also will provide pens and three-ring binders to jurors who are selected to serve to keep with them during the trial.

26. As always, jurors will be able to communicate with our Jury Commissioner and staff before the reporting date by telephone, email, or U.S. mail.

27. If a juror identifies him/herself as a "vulnerable individual" (as defined in health orders) or lives with a vulnerable individual, the Jury Commissioner and staff are authorized to immediately excuse or reschedule that juror, in accordance with the statute.

JURORS ARRIVAL AT THE COURTHOUSES

28. Because of social distancing, the District must change the way it assembles and selects jurors. Before COVID-19, the District would assemble over 300 jurors at the same time in the JCC Jury Assembly Room (capacity of 398). Once assembled, the jurors watched a brief video about jury service and were welcomed by a judge or staff. Then, they dispersed in groups (often 20-50 persons) to the elevators and went to the courtrooms. GCC also assembles large numbers of jurors in its facilities. The District can no longer follow this procedure.

29. Rather than letting jurors find their way to the Jury Assembly Room at JCC or the clerk's office at GCC, the District will have staff posted at the entrance to welcome and direct jurors as they arrive at the courthouse. Visible signage also will direct jurors. Among other directions, the staff at these locations will:

- Ask the juror if he/she has a fever of 100.4 or above, is experiencing any COVID-19 symptoms, or has been in contact with anyone testing positive for COVID-19 in the previous two weeks. If the juror affirmatively answers or is unable to answer such questions, the juror will be dismissed and rescheduled to a later date. A thermometer will be available, if needed or requested.
- Ensure that each juror has and wears a mask while in the courthouse. Masks are required to enter the building. If a potential juror does not have a mask, one will be provided.
- Instruct each juror to wear a mask and practice social distancing in the courthouse.
- Identify jurors who are vulnerable individuals or live with or care for vulnerable individuals. Although the District will not automatically excuse a vulnerable individual, it will allow such persons to reschedule jury service.

30. The District will use additional rooms in the building, stagger the times to assemble jurors, and vary the locations in which jurors are selected. There must be different procedures for DCT and CCT because facility limitations make it more difficult to select a jury for a DCT trial. For example, DCT requires a larger jury pool (40-100 prospective jurors versus 20 prospective jurors), DCT requires more empaneled jurors (12+ jurors versus 6+ jurors), and DCT typically has longer trials (usually two days to ten days versus one day). While more persons are required, the size of most courtrooms are roughly the same.

31. General procedures applicable to jury selection include:

- Regardless of the room used, all persons must wear masks (and face shields at times) and practice social distancing.
- The judge will not be required to wear a mask during jury selection. At the judge's discretion, attorneys and jurors may remove their masks when speaking.
- Attorneys must address the court and question the panel from the table. Attorneys shall not move from the table without court permission.
- There may be limited space for members of the public to attend jury selection, and the judge may use WebEx to provide greater accessibility.

32. To select a jury for a DCT jury trial at JCC, the following procedures will be followed:

- Jury trials may be held Monday through Friday. Most likely, Thursdays and Fridays may be used to select juries for the following week, especially for larger trials.
- Jurors may be summoned to appear at staggered times, e.g., 8AM and 1PM.

- Jurors (approximately 40 jurors) may assemble in four large rooms, including the Jury Assembly Room, Lookout Mountain Room, Commissioner's Hearing Room One, and/or Courtroom 1A. Jury selection for in-custody defendants will be in the most secure room available.
- Regardless of the room used, jurors will be required to take seats (whether in chairs, auditorium seating, or benches) in a manner consistent with social distancing. In some cases, plexiglass may be in areas where proper social distancing is not possible. Whenever possible, seating areas will be appropriately designated.
- If more than 40 jurors are required, the jury will be selected in multiple panels.
- At the front of the room, the District will place tables and seating for the parties and staff involved in the trial.
- Jury selection will be completed in one of these rooms, rather than in the courtroom in which the case will be tried.
- Once the jury is sworn in, the jury will be escorted to a courtroom on the first, fourth, or fifth floors. The jurors will be given an assigned seat in the courtroom. The trial will continue in that courtroom.

33. To select a jury for a CCT jury trial at JCC, the following procedures will be followed:

- Jury trials may be held Monday through Friday.
- Jurors may be summoned to appear at staggered times.
- Jurors will either assemble in a large room on the first floor or be instructed to directly go to a specific CCT courtroom.
- Once a panel of approximately 20 jurors appears in the room, the jurors will be escorted to a courtroom (on the first or third floors). This will not be done if the jurors are instructed to directly go to a specific CCT courtroom.
- Jurors will be assigned seats or lined up in the hallway.
- The jurors will enter the courtroom and be seated in a manner consistent with social distancing. In some cases, plexiglass may be in areas where proper social distancing is not possible. Whenever possible, seating areas will be appropriately designated.
- The entire trial, including jury selection, will take place in this courtroom.

34. To select a jury for DCT or CCT at GCC, the following procedures will be followed:

- Jury trials may be held two days a month.
- Jurors will either assemble in the courtroom(s) and/or the Community Room and will be seated in a manner consistent with social distancing.
- Jury selection will take place from these locations.
- The trial will continue in the courtroom.

TRIALS

35. The jury will be spaced throughout the jury box, well area, and gallery in a manner consistent with social distancing. In some cases, plexiglass may be in areas where proper social distancing is not possible. Whenever possible, seating areas will be appropriately designated.

36. If there is seating for the public in the gallery, those persons must follow social distancing and wear masks. The judge may choose to use WebEx to provide expanded accessibility.

37. Attorneys, parties, law enforcement, and staff must wear masks and maintain social distancing. The judge is not required to wear a mask while presiding over the trial.

38. To allow identification of the defendant, the defendant must remove the mask or wear a face shield, unless the defendant stipulates to identification.

39. The witness stand will be positioned at least six feet away from others and may be equipped with a plexiglass shield. While on the witness stand, the witness shall not wear a mask, unless the parties agree otherwise. However, the witness shall wear a mask at all other times, i.e., when entering and exiting the courtroom. The witness will be required to wipe down the area after the testimony.

40. Attorneys shall not move from the tables without court permission. Further, all speaking and questioning by attorneys shall take place at the tables. The podiums will be removed. However, opening and closing statements may be made from the witness stand. While on the witness stand for opening and closing statements, the attorney speaking may remove his/her mask with the court's permission. The attorney will be required to wipe down the area after the statement.

41. Each party shall make necessary arrangements to be able to communicate with each other in compliance with social distancing.

42. Any item of evidence, whether it is formally admitted or not, shall be handled only by a person wearing rubber gloves. Paper exhibits or photos should be uploaded and prepared for electronic display.

43. Bench conferences are discouraged, and will be allowed in very limited circumstances. If a bench conference is necessary, it should not be done at the bench. Rather, it must be done through other means at the judge's discretion to maintain social distancing, e.g. email, jury deliberation room, chambers, or other areas outside the presence of the jury.

44. Jury questions are discouraged. If a question is raised, it will be written down, handed to the court staff wearing rubber gloves, and then delivered to the judge. The judge has the discretion of how to share the question and consider the parties' positions.

45. This paragraph applies only to DCT criminal jury trials. During recesses, the jurors will be allowed to exit the courtroom. They shall maintain social distancing while in the hallway. They shall reconvene outside the courtroom at a time designated by the court and shall not enter the courtroom until directed by staff.

46. This paragraph applies only to jury trials other than DCT criminal jury trials. During recesses, the jurors will be allowed to use the hallways and jury rooms. They shall maintain social distancing. They shall reconvene outside the courtroom at a time designated by the court and shall not enter the courtroom until directed by staff.

47. If a sequestration order is entered by the court, the parties have the obligation to affirmatively instruct witnesses who may be called about the order. The court is under no obligation to do so.

48. The courtroom will be cleaned during each lunchbreak and evening recess.

49. If any computer is used during any stage of a trial, it shall be equipped with privacy screens at the user's expense so that others cannot see the contents of the computer screen.

50. Attorneys and clients must determine how they will communicate with each other during trial, including the use of communication devices.

JURY DELIBERATIONS

51. Once closing arguments and the reading of jury instructions are completed, the jury will remain and deliberate in the courtroom. Everyone else will leave the courtroom and the jury will be secured and monitored by the bailiff. Signs indicating ongoing jury deliberations will be placed on the courtroom doors. The courtroom entrances will be marked and any windows blocked to ensure no public or staff interruptions of the proceedings. Once deliberations have begun, the Sheriff's Office will be ordered to turn off all audio and visual surveillance recordings within the courtroom until such time a verdict is reached.

52. If the defendant is in custody, the jury will first be excused into the public hallway. Once the judge, parties, attorneys, and staff have exited the courtroom through the secured area, the court staff will ask the jury to reenter the courtroom or a different courtroom to begin deliberations. The courtroom entrances will be marked and any windows blocked to ensure no public or staff interruptions of the proceedings.

53. Before deliberations begin, the court will admonish jurors that they must maintain social distancing during deliberations, that they must wear their masks when not speaking, and that evidence can only be handled by persons wearing rubber gloves (which will be provided by the District).

54. Any food and drink provided to the jury for deliberations shall be individually packaged for each juror.

55. If a question is raised, the court will address the question outside the presence of the jury in a different courtroom.

56. Once the bailiff is notified that a verdict has been reached, the process will depend on whether the defendant is in or out of custody. If the defendant is out of custody, the jury will be asked to retake their designated seats and the parties, attorneys, public, staff, and judge will reenter the courtroom for the verdict. If the defendant is in custody, the jury will be excused into the public hallway. Once the judge, parties, attorneys, and staff reenter the courtroom through the secured area, the court staff will ask the jury to re-enter the courtroom for the verdict.

57. Once the trial is completed, the jurors will be excused directly from the courtroom. The court will then conclude the trial.

CASES THAT CANNOT BE TRIED AS SCHEDULED

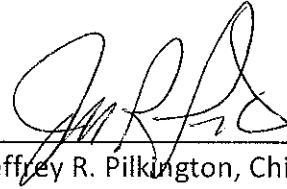
58. If the case set for trial cannot be tried as scheduled, the judge in front of whom the case is pending shall be prepared to rule on motions, make necessary findings, and determine the future or status of the case.

59. The court simply cannot try any more cases than the pandemic allows. Because of the facts found in this and other orders of the District and Chief Justice, and the orders of federal, state, and local agencies, a fair jury pool beyond the limitations of this order cannot be safely assembled due to the continued public health crisis.

MODIFICATIONS

60. The District anticipates that it will modify this plan as necessary to safely resume jury trials, ensure constitutional and statutory rights are protected, and comply with health guidelines.

July 21, 2020

A handwritten signature in black ink, appearing to read 'JRP', written over a horizontal line.

Jeffrey R. Pilkington, Chief Judge
First Judicial District