

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

Initial Guidelines for the Reinstitution of
Jury Trials

PREAMBLE

These guidelines have been prepared to assist Presiding Judges in the reinstatement of jury trials. This is a fluid process, and the guidelines are certainly subject to revision as additional information becomes available and as current conditions change. These guidelines will assist the Presiding Judge in following the four major restrictions put into place due to the COVID-19 pandemic during a jury trial. The restrictions are as follows:

1. The wearing of masks by all persons in the courthouse;
2. Maintaining a proper social distance of six feet from other individuals;
3. Reducing the number of touch points for any individual and cleaning and disinfecting touch points; and
4. Current limits of no more than 25 people in a room.

Recognizing that this is a changing process, the Jury Committee welcomes input from all Presiding Judges and other Judges who may have information or experiences that will contribute to improving the process.

TABLE OF CONTENTS

1. Scheduling Jury Trials.....	1
2. Juror Summons and Drawing of Jury Pools	1
3. Voir Dire	3
a. Preparation for Voir Dire.....	3
b. Processing Jurors	4
c. Conducting Voir Dire	5
d. Concluding Voir Dire	7
4. Trial	8
a. Preparation for Trial.....	8
b. Processing Jurors and Other Individuals	9
c. Conducting Trial	10
d. Deliberations	12
e. Concluding Trial.....	13

1. Scheduling Jury Trials

- Criminal jury trials will initially be scheduled in Courtrooms 12A and 12B of the Byrne Courthouse after September 14, 2020. During the initial test period, only one trial will take place at a time due to staffing concerns. If the Court remains in Phase II of the Reopening Guidelines, we will remain in the test period for jury trials.
- After the initial test period for jury trials, when the Court moves to Phase III of the Reopening Guidelines, trials will also be scheduled in Courtrooms 3A and 3B (or Courtrooms 10A and 10B). Due to staffing concerns, until the Court has moved to Phase IV of the Reopening Guidelines, trials will not expand beyond two floors of the Byrne Courthouse.
- The Court will prioritize criminal jury trials to decrease the current backlog before moving to civil jury trials.
- Jury trials will be scheduled to commence with voir dire on Mondays and Wednesdays.
- The Chair of the Jury Committee will maintain and make available to all judges of the Court a list of all scheduled jury trials and their anticipated length.
- The Chief Judge reserves the right to halt the jury trial process if the current situation would warrant it.

Note: These requirements will limit the number of jurors in the courthouse at any single time and ensure that sufficient space is available for voir dire and trial proceedings with appropriate distancing in place.

2. Juror Summons and Drawing of Jury Pools

- We are hoping to assemble a pool of at least 52 qualified jurors for each jury trial.

Note: As the failure to appear (FTA) percentage due to the COVID crisis is unknown, the jury staff will initially be increasing the panel size by 25%.

- The clerk will include with the materials sent to each drawn juror:
 - A daily health assessment, to be performed by all jurors each day before reporting to court, which will ask the following:
 - Have you been diagnosed with, or had close contact with anyone

who has been diagnosed with, COVID-19 within the last 14 days?

- Have you experienced any listed symptoms associated with COVID-19 in the last 7 days, or is a member of your household experiencing symptoms?
 - Are you or a member of your household awaiting COVID-19 test results, or have you been told to self-isolate?
 - Have you traveled to any state currently on Pennsylvania's quarantine list in the last 14 days?
 - The daily health assessment will also direct that jurors who answer "yes" to any of these questions must **not** report to court and must contact Jury Administration at 267-299-7299.
- A letter from the Court, which will:
- Explain the procedures and protocols adopted by the Court to protect against transmission of COVID-19 (including the requirement that masks must always be worn except as directed by the Presiding Judge).
 - Explain that jurors will be required to wear a mask or face covering that covers the wearer's nose and mouth when entering the building and when in common or public areas of the courthouse; that jurors are expected to supply their own mask or face covering but will be provided a mask if they do not have one; and that jurors should still maintain safe distancing from others; and
 - Instruct jurors to review the daily health assessment the day before they report for jury service and before reporting to court each day of their jury service.
- Once a pool is drawn, the clerk will (1) exclude from the pool any juror who reports symptoms consistent with COVID-19 or recent exposure to an individual diagnosed with COVID-19, (2) notify the juror by letter that he or she is excluded and must not report for service, and (3) notify the Chief Judge and Presiding Judge of the juror's exclusion.

Note: An additional number of qualified jurors will likely need to be drawn to account for those dismissed for COVID-related reasons. The goal is to ensure that the pool available for selection, after dismissal of those individuals,

is approximately 52 jurors.

Drawing 52 qualified jurors will hopefully leave us with at least 32 after the other challenges. It seems likely that around 20% of those drawn will be either excluded or dismissed, either because they are essential to COVID treatment or recovery efforts or because they report symptoms or exposure. It has been reported that around 30% of the population says that they are “very” worried about COVID, and – applying that figure to the pool – it might be assumed that some number, perhaps another 20%, will request and secure dismissal based on severe anxiety over the virus. The result would be a pool of about 32 jurors.

The COVID safety information should be communicated to prospective jurors as early as possible, and at every opportunity, including in communications from the Court and on the Court’s website.

3. Voir Dire

a. Preparation for Voir Dire

- In advance of the date on which voir dire is scheduled to commence:
 - Sanitizer stations will be placed in appropriate locations throughout the courthouse, including entrances to the building and individual courtrooms, and personal protective equipment – including facial masks and gloves – will be available for jurors during voir dire and trial.
 - A total of four electronic courtrooms and the jury assembly room will be utilized for jury voir dire. Initially, Courtroom 12A will be designated as the trial courtroom, and Courtroom 12B will be the jury room. Jurors will be directed to report to the jury assembly room, Courtroom 17A, and Courtroom 17B.
 - Markers will be affixed to the gallery in the courtrooms, indicating places where jurors should sit and allowing for at least six feet of separation. Markers will be affixed to three seats in each row of the jury box for witnesses.
 - Microphones will be placed or installed in the jury box and in the gallery at points equidistant from the seating markers. Additionally, a microphone will be set up in the well to be

utilized for voir dire.

- Counsel tables should be realigned against the wall and facing the jury box and offset to allow, to the extent possible, counsel for the parties to have an unobstructed view of the judicial bench, the jury box, and the gallery.
 - Video conferencing systems in the electronic courtrooms or a mobile system will be set up in “Courtroom 12A–Trial Courtroom” and “Courtroom 9A or 16A–Public Courtroom” and made available for broadcast or replay of the proceedings.
 - In Courtroom 17A, Courtroom 17B, and the jury assembly room, video conferencing will be utilized for the general voir dire.
 - A video screen visible to the gallery and jury box will be installed or placed in the courtrooms.
 - The rooms will be fully cleaned and disinfected.
- On the date voir dire is scheduled to commence, courthouse staff will be assigned to each courtroom and the jury assembly room, to assist and direct jurors.

Note: Designation of the courtrooms and seating will allow the jurors to be grouped and seated more quickly and easily, while ensuring that safe distancing is maintained. The video conferencing system will allow the proceedings to be transmitted simultaneously to another room, so that the proceedings may be viewed by those who cannot be physically present.

The seating markers will ensure that jurors are assigned specific seats that are a safe distance from one another. The seating capacity of each of the voir dire courtrooms will be limited to 25 people or the current capacity approved by the City of Philadelphia and the Commonwealth of Pennsylvania for indoor gatherings. While the Court is not bound by those limits, many jurors may be aware of those limits.

b. Processing Jurors

- The Clerk’s Office will utilize the Ajis Jury System to direct each summoned juror to report to the jury assembly room or one of the designated voir dire courtrooms.

- Courthouse staff will (i) ensure that jurors maintain safe distancing from others after entry into the courthouse from the 6th Street entrance, (ii) provide each juror upon arrival in either the jury assembly room or Courtrooms 17A or 17B with a clear protective facial mask and gloves, and (iii) instruct each juror upon arrival to wear a mask at all times within the courthouse except as directed by the Presiding Judge.
- Courthouse staff will ask jurors upon arrival if they performed the daily health assessment that day and also to state whether they are experiencing any symptoms of illness. If any jurors report that they are experiencing any type of medical symptoms of the virus, those jurors will be isolated until a determination is made by the Presiding Judge whether they will be instructed to leave. If any juror is instructed to leave, courthouse staff will advise the jury staff of the name and number of that juror.
- Courthouse staff on the appropriate floor will direct each juror to sit in one of the marked seats in the juror's designated courtroom.
- Courthouse staff on the appropriate floor will advise each juror that a mask must be worn at all times and that the juror should request permission to leave the courtroom if necessary (for instance, to use the restroom) prior to leaving his or her seat.

Note: This process is intended to get the jurors in the courthouse and to their seats as quickly as possible, without compromising safety unnecessarily. Courthouse staff may also consider directing jurors to arrive at the courthouse at staggered times to avoid (so far as possible) large congregations outside the courthouse.

c. Conducting Voir Dire

- Voir dire may proceed once all jurors in both voir dire courtrooms and the jury assembly room have been seated.
- Before questioning commences, any juror(s) not assigned a seat in one of the voir dire courtrooms or the jury assembly room will be dismissed and instructed to leave the courthouse at the discretion of the Presiding Judge.
- Questioning will commence via video conferencing. After initial questioning via video conferencing where prospective jurors may answer questions by raising their juror numbers, the Presiding Judge may have individual jurors escorted in small groups to

Courtroom 12A for individual voir dire.

- Questioning of jurors will be conducted by the Presiding Judge and, at the discretion of the Presiding Judge, by attorneys.
- Judges or counsel will start with general questions to the panel beginning with Courtroom 17A. Jurors who respond affirmatively will be asked to provide their juror number and then respond to follow up questions. Upon completion of voir dire with jurors from Courtroom 17A, the same process will be conducted with jurors from Courtroom 17B, and then with jurors from the jury assembly room.
- The judge, court reporter, courtroom deputy, counsel, and the defendant will remain in the trial courtroom, Courtroom 12A. Individual jurors may be brought in groups from Courtroom 17A, Courtroom 17B, and the jury assembly room to the public hallway outside of Courtroom 12A safely distanced apart, and then brought into Courtroom 12A one at a time for individual voir dire. Once in Courtroom 12A, jurors will stand at a microphone by the jury box where they will undergo individual voir dire. Those jurors who are selected will be escorted to Courtroom 12B where they will be provided instructions for further reporting and those not selected will be dismissed from service in Courtroom 12A.

Note: The selection of jurors in this manner will decrease the number of touch points for jurors. It will also maintain social distancing requirements. It will, however, result in what is a “de facto” individual voir dire in almost every case. One benefit of this procedure is that jurors who are not involved in the individual voir dire questioning process can be given a break.

- Attorneys and their staff, courtroom personnel, jurors, and parties must wear masks while entering and exiting the courtrooms, and in the courtroom except as directed by the Presiding Judge; no other persons may be admitted into the courtroom during the proceeding, except as permitted by the Presiding Judge.

Note: Members of the public will not be allowed into the courtrooms, although the proceedings will be shown in another courtroom. There may be some seating available in the trial courtroom for members of the public identified by the government or the defense, and such determinations will be made at the discretion of the Presiding Judge.

- Generalized concerns over exposure to or transmission of COVID-19 should not, without more, generally warrant dismissal of a juror for cause.
- If any juror responds to any question regarding ability to serve by reference to his or her experience with or concern over COVID-19, the judge should (i) remind jurors of the procedures and protocols adopted by the Court to protect against transmission of COVID-19, (ii) advise jurors that fear over transmission – while legitimate – may not be a ground for dismissal, and (iii) ask the juror(s) who responded to explain whether and how the experience or concerns constitute a physical or mental condition that would impact ability to serve, giving the juror(s) an opportunity to speak to the judge individually if necessary.

Note: The “standard” questions concerning physical and mental conditions and ability to serve should invite any responses regarding concerns over COVID, and asking specifically about such concerns might encourage jurors to raise those fears as a basis for dismissal when they might not otherwise do so. Even then, it seems likely that a number of jurors will object to service on grounds of a generalized fear of transmission, a fear anyone could credibly claim to have. Having the judge address this subject in response to such a fear, and then ask any jurors who identify a concern of this type to explain why it rises to the level of a condition affecting ability to serve, will allow the Presiding Judge to evaluate whether a particular juror’s fear of contracting COVID would impede the juror’s ability to serve. This may provide some assurance that the jurors will not be unnecessarily dismissed. The Presiding Judge retains discretion to do otherwise, including allowing the attorneys to ask questions about COVID-19.

d. Concluding Voir Dire

- Once all jurors in both 17th floor courtrooms and the jury assembly room have responded to the general voir dire, selection of jurors will be conducted in the manner prescribed by the Presiding Judge.
- Selection will continue until a total of 14 jurors have been selected, representing 12 principal jurors and 2 alternate jurors for the initial test period. Following the initial test period, the total number of jurors will be at the discretion of the Presiding Judge.

- The remaining jurors will be dismissed and directed out of the courtrooms *individually* by courthouse staff, to ensure safe social distancing from others.
- The selected jurors will be escorted to Courtroom 12B where they will be advised of their responsibilities by the Presiding Judge, and then directed out of the courtrooms *individually* by courthouse staff.

4. Trial

a. Preparation for Trial

- In advance of the date on which trial is scheduled to commence:
 - In the two courtrooms selected for trial proceedings, each courtroom will be designated – with appropriate signage – as either “Trial Courtroom” or “Jurors’ Courtroom.” Initially, Courtroom 12A will be designated the trial courtroom and Courtroom 12B the jurors’ courtroom.
 - Markers will be affixed to seats in the “Trial Courtroom,” indicating places where jurors and others should sit, as follows:
 - In the gallery, to points allowing for at least six feet of separation for the jurors.
 - In the jury box, to points in the upper and lower level allowing for at least six feet of separation for the witnesses.

Note: The trial courtroom will be set up so that the 12 principal jurors and two alternates sit in the gallery. Witnesses will testify initially from the back row of the jury box and the witness box. The witness should be visible to all jurors, as well as the Presiding Judge and court reporter, and the testimony will be picked up by the microphone.

The video conferencing connection should remain installed from voir dire and will remain connected to a screen in another courtroom. This will allow members of the public to view the proceedings without being present in the trial courtroom.

- Projection equipment, connected to the video screen in the courtroom, will be installed.
- The courtrooms will be fully cleaned and disinfected.

- It is anticipated that by moving the location of witnesses around the courtroom any cleaning by GSA will only have to take place during the lunch hour.

Note: By utilizing the upper and lower row of the jury box and rotating between the available seats in each row, the need for cleaning down time will be reduced. At the discretion of the Presiding Judge, witnesses may also be called to testify at a podium or stand-up microphone if it is anticipated that they will only be called for short durations.

- In advance of the date on which trial is scheduled to commence, the defendant(s) will be tested by appropriate staff of the U.S. Marshals Service (or an appropriate designee) for symptoms of or exposure to COVID-19, and the results will be reported to the Presiding Judge.
- On the date trial is scheduled to commence, courthouse staff will be assigned to each courtroom, to assist and direct jurors.
- After court is adjourned at the end of the day's proceedings, the trial courtroom will be fully cleaned and disinfected.

b. Processing Jurors and Other Individuals

- Courthouse staff will ask any person seeking to attend the trial whether the person is a juror or otherwise.
- If the person is a juror, and the person's status is confirmed, courthouse staff will:
 - Provide each juror upon arrival with a clear protective facial mask and gloves and instruct each juror upon arrival to wear a mask at all times within the courthouse except as directed by the Presiding Judge.
 - Ask each juror upon arrival, on every day of trial, whether the juror performed the daily health assessment that day and whether he or she is experiencing any symptoms of illness. If any jurors report that they are experiencing any type of medical symptoms of the virus, those jurors will be isolated until a determination is made by the Presiding Judge whether they will be instructed to leave. If any juror is instructed to leave, courthouse staff will advise the clerk of the name of the juror.
 - Direct each principal juror and alternate to a marked seat in the gallery in the trial courtroom.

- If the person is a witness or other participant in the trial, and the person’s status is confirmed (including by an attorney for a party), courthouse staff will:
 - Provide the witness with a clear protective facial mask and gloves and instruct the person to wear a mask at all times within the courthouse except as directed by the Presiding Judge.
 - Direct the person to the trial courtroom where he or she will remain in either the witness room or attorney conference room and instruct the person to maintain safe distancing from others until directed to enter the courtroom.
 - Once in the courtroom, witnesses are to be seated in accordance with the directions of the Presiding Judge.
- If the person is neither a juror, a witness, nor another participant in the trial, courthouse staff will:
 - Instruct the person to wear a mask at all times within the courthouse.
 - Direct the person to the “Public Courtroom,” either Courtroom 16A or 9A, advise the person that the proceedings may be viewed as broadcast, and instruct the person to maintain safe distancing from others.

Note: This process is intended to direct trial participants to the trial courtroom, while members of the public – if they wish to view the proceedings – may do so from a separate courtroom, in which the proceedings will be shown.

c. Conducting Trial

- Trial may proceed once all jurors have been seated, at the discretion of the Presiding Judge.
- The Presiding Judge will instruct all persons in the courtroom to notify the clerk (or other designated judicial officer or courthouse employee) immediately if the person experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19, with assurance that the person’s identity will be kept confidential.
- Attorneys and their staff, courtroom personnel, jurors, parties, witnesses, and other trial participants must wear masks except as

directed by the Presiding Judge.

- Attorneys and their staff will remain at or near their assigned counsel table throughout trial, except as directed by the Presiding Judge.
- When a witness is called to testify:
 - The witness will approach the jury box, while wearing a clear mask, and sit in the marked seat, after which the witness may remove the mask at the direction of the Presiding Judge.
 - The witness will testify by speaking into the microphone installed in front of the seat.
 - Attorneys will make every effort to present exhibits to the witness through the use of projection equipment; otherwise, if the Presiding Judge permits the exhibit to be passed to the witness, both the witness and the attorney must wear a mask and gloves while handling the exhibit.
 - Upon conclusion of witness testimony, the disposable cover of the microphone will be replaced by courthouse staff, and the area disinfected.
- When a “sidebar” is called by the Presiding Judge:
 1. (Option 1) The Presiding Judge may direct that the sidebar be conducted in the courtroom through the use of technology which will permit the parties to communicate privately with the Court with white noise to mask the side bar. This technology allows for those individuals to communicate privately while “white noise” is projected throughout the courtroom.
 2. (Option 2) The Presiding Judge may also direct that the sidebar be conducted in the trial courtroom and excuse the jury to Courtroom 12B.
 3. (Option 3) The Presiding Judge and counsel may use the Jury Room or Jury Deliberation Room.
- When a recess is called:
 - Courthouse staff will direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the jurors’ courtroom, the doors of which will remain open.
 - Courthouse staff will instruct jurors to stay in the jurors’

courtroom – Courtroom 12B – until recalled, to maintain safe distancing from others, and to signal courthouse staff if a need arises.

- Once the recess is concluded, and jurors are recalled by the Presiding Judge, courthouse staff will direct jurors to return to their seats in the trial courtroom, the first juror in line being the one seated farthest from the courtroom door.
- If at any time during trial a juror, other participant, staff member, or attendee has begun to experience symptoms consistent with COVID-19 or has been exposed to an individual diagnosed with COVID-19:
 - The Presiding Judge may decide, after consultation with counsel, whether the trial may be resumed safely, whether there will be a delay due to a quarantine period, or whether a mistrial may be declared. The Presiding Judge should immediately report any incident to the Clerk’s Office. If any such incident happens, the procedure is as follows: 1. Report the incident; 2. Investigate the incident; 3. Consult with the attorneys involved and court personnel; and 4. Decide how to proceed from there.
 - The clerk will contact each juror individually and instruct each juror to notify the clerk immediately if he or she experiences symptoms consistent with COVID-19 or is exposed to an individual diagnosed with COVID-19 during the quarantine period.
 - The Presiding Judge will decide, after consultation with counsel, whether trial may be resumed after the quarantine period or whether a mistrial should be declared.

d. Deliberations

- Once the parties have concluded their presentations, the jurors will be instructed to commence deliberations in the manner prescribed by the Presiding Judge.
- Courthouse staff will direct jurors to leave their seats, beginning with those closest to the courtroom door, and to enter the jurors’ courtroom, the doors of which will thereafter be closed.
- Courthouse staff will instruct jurors to stay in the jurors’ courtroom until recalled, to maintain safe distancing from others, and to signal courthouse staff if a need arises (including if the jury has a

question or reaches a verdict).

- Whenever jurors are recalled by the Presiding Judge, including for the purpose of returning a verdict, courthouse staff will direct jurors to return to their seats in the trial courtroom, beginning with those seated farthest from the courtroom door.

Note: It seems unnecessary to determine or designate where the jurors should sit in the deliberating courtroom, although the courtroom should be inspected beforehand so any sensitive materials or equipment are removed or sealed.

e. Concluding Trial

- Once trial has concluded, the jurors will be dismissed and directed out of the courtrooms individually by courthouse staff, ensuring to maintain safe distancing from others.