

Alaska Court System
Conducting Criminal and Civil Jury Trials,
and Grand Jury
During the COVID-19 Pandemic
updated February 22, 2021



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INTRODUCTION

The United States Constitution and the Alaska Constitution provide the right to trial by jury, an essential part of the American justice system. While there are numerous challenges to address in conducting jury trials during the COVID-19 pandemic, it is important to remember that the institution of jury trials has survived previous pandemics, public health emergencies, and wars.

Chief Justice Joel Bolger has issued several special orders regarding jury trials and grand jury due to the COVID-19 public health crisis, including the suspension of both processes when the pandemic began.¹ Presiding judges have also issued orders for their judicial districts.² Grand jury resumed in most locations in June, but last fall when the COVID-19 cases increased throughout the state, the chief justice suspended in-person grand jury proceedings until at least February 1, 2021.³ Since that time, COVID-19 case counts have decreased throughout the state and the chief justice gave presiding judges the authority to allow in-person grand jury proceedings.⁴ On November 25, 2020, the chief justice continued the suspension of in-person jury trials until at least March 15, 2021, and civil jury trials until at least September 7 2021, except certain proceedings are authorized to occur, including presumptive death trials by videoconference and other matters based on a finding of exceptional circumstances.⁵ Recognizing the uncertainty of what will occur in the near term regarding coronavirus variants,

¹ See * **CORRECTED** * [Order No. 8235](#) dated February 8, 2021, Update Regarding Covid-19 and Criminal Jury Trials; [Order No. 8234](#) dated February 1, 2021, Update Regarding Covid-19 And Grand Jury Proceedings.; [Order No. 8213](#) dated November 25, 2020, Update regarding COVID-19 and Jury Trials; [Order No. 8210](#) dated November 13, 2020, Update regarding COVID-19 and Jury Trials; [Order No. 8202](#) dated October 29, 2020, Update Regarding COVID-19 and Jury Trials; [Order No. 8194](#) dated September 24, 2020, Update Regarding COVID-19 and Jury Trials; [Order No. 8189](#) dated September 2, 2020, Update Regarding COVID-19 and Jury Trials; [Order No. 8184](#) dated August 10, 2020, Regarding Grand Jury and Preliminary Examinations; [Order No. 8183](#) dated August 6, 2020, Update regarding COVID-19 and Jury Trials.; * **AMENDED** * [Order No. 8168](#) dated August 3, 2020, Presumptive Death Pilot Project; [Order No. 8157](#) dated June 22, 2020, Update authorizing Second Judicial District Grand Jury video conference pilot; [Order No. 8155](#) dated June 15, 2020, Update regarding COVID-19 and Jury Trials; [Order No. 8144](#) dated May 11, 2020, Regarding Grand Jury, Jury Trials and Non-Jury Proceedings; [Order No. 8148](#) dated May 20, 2020, Regarding Grand Jury Proceedings; [Order No. 8131](#) dated March 19, 2020, Suspending certain court proceedings, including grand jury proceedings and new jury trials, beginning March 23, 2020 through April 3, 2020; [Order No. 8130](#) dated March 15, 2020, All new jury trials statewide scheduled to begin the week of March 16 are postponed. Jury trials in progress will finish out as scheduled.

² See First Judicial District: <http://courts.alaska.gov/covid19/index.htm#first>; Second Judicial District: <http://courts.alaska.gov/covid19/index.htm#second>; Third Judicial District: <http://courts.alaska.gov/covid19/index.htm#third>; Fourth Judicial District: <http://courts.alaska.gov/covid19/index.htm#fourth>.

³ See [Order No. 8144](#) dated May 11, 2020, Regarding Grand Jury, Jury Trials and Non-Jury Proceedings; [Order No. 8210](#) dated November 13, 2020, Update regarding COVID-19 and Jury Trials; [Order No. 8213](#) dated November 25, 2020, Update regarding COVID-19 and Jury Trials.

⁴ See [Order No. 8234](#) dated February 1, 2021, Update Regarding Covid-19 and Grand Jury Proceedings.

⁵ See [Order No. 8213](#) dated November 25, 2020, Update regarding COVID-19 and Jury Trials; [Order No. 8210](#) dated November 13, 2020, Update regarding COVID-19 and Jury Trials.

transmission rates, and vaccination rates, the chief justice ordered that starting on March 15, 2021, a presiding judge may allow an in-person criminal jury trial upon request consistent with public health.⁶ The order provides the relevant factors the presiding judge should consider. The order also provides that otherwise, criminal jury trials generally remain suspended until at least April 19, 2021.

This document provides information for conducting criminal and civil jury trials, and grand jury proceedings during the pandemic, being particularly mindful of the need to employ all necessary safety precautions to reduce the likelihood of transmitting the coronavirus. As jurors are required to serve as part of their civic duty, placing them in confined spaces with a group of strangers, they must feel that all appropriate precautions are in place to keep them healthy and safe. The intent of this report is to assist each court location in devising protocols that will minimize the risks to all participants, including jurors, parties, lawyers, witnesses, victims, the public, the media, court staff, and judges. It is the result of thinking through various considerations and options, consultation with the chief justice, presiding judges, area court administrators, statewide jury coordinator, local courts, statewide jury committee, criminal justice agencies heads, and some civil attorneys, and reviewing plans to resume these proceedings in other state courts.

All decisions about how jury processes occur must recognize the following precautions:⁷

- requiring all trial participants to answer health screening questions and to have temperature checks each day of the trial. Visitor log books and no-touch temperature screening devices have been provided to every court location to be used when visitors enter the courthouse. Courts may also conduct screening of all participants when they enter the courtroom for a trial.
- socially distancing all participants to keep everyone at least six feet apart, with the exception of consenting participants who have an ongoing professional relationship who may sit or confer without maintaining the usual social distancing such as lawyer and client or prosecutor and case officer.
- having all participants wear face coverings, unless exempt;
- avoiding waiting areas and congregating groups;
- avoiding moving jurors unnecessarily;
- eliminating or reducing the need to physically touch items;
- requiring proceedings to be as efficient and expeditious as possible,
- providing Plexiglas barriers where people need to speak in courtrooms;
- providing personal hygiene supplies;
- providing environmental sanitation supplies for surfaces, microphones, and high touch areas;
- conducting extra janitorial services, including during and after proceedings; and
- communicating before, during, and after proceedings with jurors and other participants about the safety precautions.

⁶ * **CORRECTED** * [Order No. 8235](#) dated February 8, 2021, Update Regarding Covid-19 and Criminal Jury Trials.

⁷ See [Presiding Judges' Statewide Administrative Covid-19 Precautions Order](#) dated June 1, 2020; [Order No. 8194](#) dated September 24, 2020, Update Regarding COVID-19 and Jury Trials.

MEASURES TO ENSURE THE HEALTH AND SAFETY OF ALL PARTICIPANTS

In conducting jury processes, we must work to manage the virus' contagion by balancing public health and safety with access and openness. Jury processes must use appropriate social distancing and other measures necessary to ensure the health and safety of all participants, including jurors.

Communication regarding safeguards used to ensure the health of prospective jurors, jurors, and court staff

Courts must keep the public informed about jury service and the precautionary safety measures taken to prevent the spread of COVID-19. Public messaging is a critical part of planning for jury trials so jurors are given reasonable assurance of their safety before participating in the jury process. Jurors must be comfortable during the course of the trial so they can focus on the evidence presented and not the risk of contracting COVID-19. NCSC recommends that courts convey two messages as they resume jury trial operations:

- (1) communicating that courts take public health and safety seriously and have implemented policies to prevent the risk of infection, and
- (2) showing what the courts are doing to ensure confidence in those efforts. Walk through the various stages of being a juror - traveling to and from the courtroom, gathering together, jury selection, sitting through the trial, deliberating, taking breaks, and even traveling to the restrooms – and explain the court is addressing safety through each stage.

Information about safety precautions should be widely communicated to the public, including prospective jurors, jurors, and court staff. This includes:

- posting to the court's website using FAQs (See [Courthouse Safety Precautions](#) which is located on the COVID-19 response page and in the [jury section](#)).
- courthouse signage (See [Courthouse Visitor Alert](#) sign)
- videos about [juror safety](#) and [visitor safety](#) (located on the [COVID-19 response](#) page under Quick Links, under FAQs about [Jury Duty](#), and in the [jury service section](#) under Safety Measures),
- jury summons,
- juror call-in messages,
- social media platforms
- media advisories, press releases, LTEs from judges, public service announcements, and
- other communication technologies, including text messaging and email.

Reevaluating prospective juror reporting practices

Juror reporting practices must be re-evaluated as courts resume jury operations. The following strategies are designed to disperse the number of individuals appearing for and participating in jury service at any given time. Application of these recommendations in any individual courtroom or courthouse will depend upon specific logistical considerations unique to that facility.

Staggered reporting times

The pre-pandemic practice will not work of summoning sometimes hundreds of jurors to the same courthouse each day, congregating in the jury assembly room at the same time. To accommodate social distancing standards, courts should:

- identify jurors with hardships who should be excused before every coming to the courthouse; [Order No. 8194](#) section C discusses issuing an advance demographic questionnaire to identify qualification, hardship and some cause challenges. An online questionnaire has been created for this purpose. Contact Stacy Worby (sworby@akcourts.us) for more information. Order No. 8194 also provides that multi-judge court locations will identify a judge to rule on all online, email, or written hardship requests so that those potential jurors will not be required to come to the courtroom to make their requests. This position may rotate as determined by the presiding judge.
- use special online questionnaires to identify who should be preempted before ever coming to the courthouse;
- schedule much smaller groups to arrive at one time, and
- stagger reporting times for prospective jurors.

For example, on a day where 40 potential jurors are needed, this might involve 5 groups of 8 individuals reporting at 5 different times. Depending upon needs and logistical limitations such as community gathering capacity restrictions, courtroom seating capacity, elevator capacity, and courtroom location, reporting numbers could be even smaller and at even more specific times throughout the day.

Non-traditional jury assembly areas

Most jury assembly rooms cannot provide for adequate social distancing so jurors should convene in the courtroom.⁸ For each area, the court should determine appropriate seating arrangements when applying social distancing measures. These measures likely will result in courts losing a significant amount of the seating that would have been available under pre-COVID-19 circumstances, including for the public so plans need to be made to accommodate everyone, possibly from multiple locations connected by a video feed or using the telephone conference line.

Courts may also consider summoning potential jurors to non-courthouse facilities that can accommodate larger numbers of individuals.⁹ Examples include high school gymnasiums or performance spaces, empty retail buildings, training facilities, theaters, convention centers, etc. Offsite locations that have their own sound systems are preferred to be able to integrate court recording equipment. Other considerations are accessibility for people experiencing disabilities, space layout and ability to reconfigure to a courtroom setting, ability to conduct security screening, ensuring security for in-custody defendants, and janitorial responsibilities.

Multiple groups and smaller panels for voir dire

When more than one panel of potential jurors is required to select a jury, courts should conduct voir dire in multiple groups by having smaller panels report to courtrooms. This allows courts to

⁸ [Order No. 8194](#) section C4.

⁹ [Order No. 8194](#) section B1.

employ social distancing while conducting multiple sessions of voir dire, striking jurors for cause, joining the panels, and then completing voir dire and allowing peremptory strikes.

Solicit juror feedback

At the end of the first trial day, and possibly subsequent days, and after the trial's conclusion, provide the jurors with a questionnaire asking how they felt about the safety precautions. The statewide jury office can provide the questionnaire which can be provided electronically or by paper, or both. Juror responses should be reviewed upon receipt and adjustments made or explanations provided at the start of the next day to address juror concerns. The completed questionnaires should be provided to Stacy Worby (sworby@akcourts.us) for the court's data collection and ongoing jury improvement process. During the grand jury proceedings in Fairbanks and Anchorage, the court provided jurors with questionnaires which revealed a high degree of satisfaction with the precautions employed.

Ensuring public health and safety in jury areas

Jury areas should be deep cleaned and disinfected frequently, and items that could contribute to the spread of the virus should be removed from these areas. It is important to identify who is responsible for wiping down surfaces during the proceedings. Some courts may have sufficient number of in-person proceedings to hire a day custodian to clean surfaces, including doorknobs, elevator buttons, handrails, tables, arm rests, touch points in bathrooms, etc.¹⁰ for courts that do not have day cleaners, the administrative office can hire cleaners for a specific trial event. Sanitizing wipes could be provided to jurors, lawyers, parties, and witnesses to wipe down their own personal areas during the trial.

Sanitation practices include:

- Wiping down workspaces (countertops, tables, armchairs, doorknobs, etc.) frequently during the day and overnight using anti-viral cleaning products suggested by the CDC;
- Planning for deep cleaning all juror-occupied spaces at the end of each day. Although this may not be medically necessary in light of new findings regarding the low likelihood of virus transmission from surfaces, this precautionary measure may provide assurance to jurors that the court is taking every possible precaution.
- Placing hand sanitizer and wipes at counters and various locations of the jury gathering areas, (along with at counsel tables for attorneys and clients);
- Providing pens that can be sanitized, or a personal plastic bag for each juror that includes a pen and paper.
- Restricting access to common areas and removing courtesy amenities, previously offered to jurors (such as snacks, coffee, puzzles, magazines, etc.);
- Reserving nearby restrooms for jurors if possible, in a manner that minimizes interaction with other panels, lawyers, etc;
- Providing jurors with information ahead of time on what items are, and are

¹⁰ The Anchorage courthouses, Bethel, Fairbanks, Kenai, Juneau, and Palmer each have day cleaners. Ketchikan has a cleaner hired for grand jury proceedings.

not available, so they can come prepared;

- Providing clear signage about how to travel between courthouse floors. Limit the number of people in elevators to one or two at a time (depending upon the size of the elevator) and include social distancing signs so that people know where to stand. For the use of stairs, mark stairwells with appropriate signage to ensure safe use. Have janitorial staff frequently disinfecting elevator surfaces and handrails throughout the day.
- Leaving doors ajar when permissible throughout court hours or have a designated staff member open doors for entering jurors and participants;
- Posting handwashing signs;
- Avoiding the direct exchange of documents with jurors. If direct exchange is unavoidable, staff or jurors (or both) could immediately use sanitizer or wear gloves.
- Requiring court participants and visitors to wear face coverings unless exempted for a medical reason or disability or the judge relaxes the requirement for an individual. Courts will also ask health screening questions and conduct temperature screening for jurors. Information regarding the requirement to wear face coverings and temperature screenings should be clearly communicated to all, including prospective jurors and jurors, so that they know what to expect before entering the courthouse.
- Training for staff and others on the appropriate way to use gloves and face masks to avoid cross-contamination;
- Disabling both audio and video systems used to record court proceedings if courtrooms are used for juror breaks and deliberation. In addition, lawyers will need to remove all of their materials from the courtroom.
- Removing all unnecessary papers and paperwork from desks to facilitate cleaning.

Maintaining social distancing in the courtroom

Courts should identify in advance effective strategies for resuming jury operations in each specific facility where jury operations will occur to ensure conformance with social distancing requirements. Jurors should have a safe experience and they must perceive that they will have a safe experience. The first step is to look at each courtroom to determine the square footage and layout to identify how many people can safely fit with a 6-foot distance between each individual. The Facilities department can assist with looking at floor plans and mapping out possible space configurations, including removal of chairs and other furniture. There are many details that must be figured out in advance as outlined below as well as in the previous section about recommended sanitation practices. Once a plan is in place, consider conducting a simulation or even a mock trial with the relevant stakeholders to test the procedures and any technology before implementation at the real proceeding.

Social distancing considerations involve:

- Creating a space plan for courtrooms to allow for social distancing;

- Considering using a designated courtroom for grand jury or trials, or if there is not a large enough room, use multiple rooms with video connections between rooms;
- Providing clear signage and notices regarding social distancing requirements including seat and floor marking, making sure the postings comply with the Americans with Disabilities Act (ADA);¹¹
- Maximizing the use of remote appearances through technology, such as video and audioconferencing platforms, giving due consideration to compliance with constitutional and statutory rights, feasibility, and connection stability;
- Seating jurors in a courtroom gallery instead of, or in addition to, the jury box, and clearly marking the socially distanced seats, assigning jurors to specific seats;
- Using Plexiglas screens in locations where individuals will need to speak, including the judge's bench, in-court clerk station, witness stand, and at each counsel table between the lawyer and client;
- Minimizing the number of prospective jurors present at each stage of jury service;
- Implementing staggered reporting times;
- Having jury panels report directly to the relevant courtroom instead of to jury assembly rooms;
- Assembling smaller panels (less than 15 potential jurors) to report to the courtroom for voir dire;
- Using online questionnaires for pre-screening jurors for hardship and for cause.
- Exploring remote voir dire using video technology; and
- Considering remote options for conducting jury trials in their entirety.

ENSURING A JURY POOL THAT IS A FAIR CROSS SECTION OF THE COMMUNITY

As courts resume jury operations, societal shifts resulting from the COVID-19 pandemic will inevitably impact how people will respond to a jury summons, how many people will seek excusals or deferrals, and how many people will appear through electronic means who would have otherwise sought an excusal or deferral. The continued collection of juror yield and utilization statistics is critical to support data-driven decisions as jury management policies are adjusted in response to the new situation during the pandemic.

COVID-19 related deferrals or excusals

¹¹ Tips for creating accessible posters:

- Use fonts that are large enough to be read from 5-10 feet away.
- Use sans serif fonts.
- Select a high contrast color scheme.
- Use white space wisely. Be wary of overcrowding the poster.
- Caption or title all images and graphics.
- Provide an introduction.
- Provide a QR code or short URL that links to your poster.
- Provide alt text for any images.

See <https://ukhomeoffice.github.io/accessibility-posters/posters/accessibility-posters.pdf>.

During the pandemic, it is appropriate to defer (allowing a person to defer jury service to another time) or excuse jury service for individuals who are at increased risk for severe illness from COVID-19 based on CDC guidance, recognizing that public health guidance is subject to change. As of November 2, 2020, the CDC changed the list of underlying medical conditions for people who **are at increased risk of severe illness** from COVID-19 to include:

- [Cancer](#)
- [Chronic kidney disease](#)
- [COPD \(chronic obstructive pulmonary disease\)](#)
- [Heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies](#)
- [Immunocompromised state \(weakened immune system\) from solid organ transplant](#)
- [Obesity \(body mass index \[BMI\] of 30 kg/m² or higher but < 40 kg/m²\)](#)
- [Severe Obesity \(BMI ≥ 40 kg/m²\)](#)
- [Pregnancy](#)
- [Sickle cell disease](#)
- [Smoking](#)
- [Type 2 diabetes mellitus](#)

CDC has also identified people with conditions that **might be at an increased risk for severe illness** from COVID-19.¹² In addition, many people are caring for children when daycares and schools may not be in session due to the pandemic. These individual may be unavailable to serve on a jury and a deferral is warranted.

Alaska Administrative Rule 15 provides for juror deferrals in subsection (e) and excusals in subsection (f), including temporary excusals by judicial officers and clerks for hardship. [Administrative Bulletin 66.2](#) provides for clerks' authority to defer and excuse jurors. Administrative Bulletin 66.2 sections (II)(G)(1) (h) and (i) has been temporarily amended due to the pandemic to authorize clerks upon request to excuse a prospective juror for one year for those who are at risk for severe illness due to COVID-19. Requests for excusal by those who might be at an increased risk for severe illness may be sent to a judge for approval at the clerk's discretion. The Administrative Bulletin already allows for excusals based on child care needs.

To reduce juror foot traffic in the courthouse, it is important to address hardship requests for excusal or deferral in advance without requiring the individual to come to the courthouse.¹³ Individuals who request excusals and deferrals due to being in high-risk categories should be excused from in-person jury service for one-year by the jury clerk without needing to present documentation or a request to the judge.

Proceedings done remotely by video such as use of Zoom for grand jury would not require an automatic deferral or excusal for an individual in a high risk category.

¹² www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html

¹³ [Order No. 8194](#) section C2 provides "Multi-judge court locations will identify a judge to rule on all online, email, or written hardship requests so that those potential jurors will not be required to come to the courtroom to make their requests. This position may rotate as determined by the presiding judge."

It is particularly important that information about deferrals and excusals is captured to ensure that potential jurors represent a fair cross section of the community and to address legal challenges which may be posed after the trial. JuryView now includes a “COVID-19” excuse code to track COVID-19 related requests.

Online pre-screening of prospective jurors

Pre-screening prospective jurors should occur which avoids bringing them to the courthouse unnecessarily, only to send them home when it is obvious they will be excused based on hardship or a peremptory challenge. Courts should implement processes to ensure that jurors are called in only when the court is certain that a trial is going to proceed, and call the bare minimum number of jurors to seat a panel. The focus on utilization (the measure of how efficiently the court allocates jurors who report to the courthouse for jury service) is especially important now because it (1) impacts the personal costs potential jurors incur and their perceptions of the justice system, and (2) relates to the cost of jury operations.

To reduce the number of potential jurors and ensure social distancing, courts should use online screening through questionnaires.¹⁴ Initial online questioning can avoid situations where potential jurors are summoned to appear, only to request a hardship that would obviously be granted, or go through voir dire, and be released after physically appearing in court based on a peremptory challenge that could have been identified from online screening responses.

The initial qualifying questionnaire is already online and sent to jurors eight weeks before their service begins. (See Appendix C). At any time after filling out the online questionnaire, the potential juror could go to the court’s website and access the juror dashboard to amend their responses or request an excusal. As Administrative Bulletin 66.2 has been amended to authorize jury clerks to provide COVID-19 excusals, potential jurors can request hardship excusals through this initial questionnaire and avoid coming to the courthouse if granted.

The J146 demographic questionnaire (in some courts known as the trial questionnaire) is also now available online.¹⁵ (See Appendix D). The jurors will be notified when calling the recorded message or with the service reminder notice that they need to log into the juror dashboard to access the demographic questionnaire. We can provide the jurors with the incentive to fill it out online by telling them they will not have to appear the first day; otherwise they will have to appear in-person. The prospective juror would fill out the online questionnaire five days before jury service is scheduled to begin. The demographic information can be shared in advance with the attorneys. Those excluded based on peremptory challenges would never need to come to the courthouse. Emailed special questionnaires could provide further screening without requiring potential jurors to come in person.

¹⁴ Chief Justice Special [Order No. 8194](#) dated September 24, 2020, provides jury selection procedures that include clerks issuing advance demographic questionnaires to identify qualification, hardship, and some cause challenges.

¹⁵ The demographic questionnaire was typically given to prospective jurors at the courthouse in paper form before the trial. The attorneys would review the completed questionnaires in the courtroom while the prospective jurors waited outside, using the information to plan to exclude individuals from the jury panel, and to inform the voir dire questions during selection.

Another option is for trial judges to use a teleconference or Zoom videoconference to identify jurors who are clearly subject to challenge for cause; the parties have the right to question in-person those who are not excused. When using Zoom, it is important not to automatically exclude jurors who do not have access to technology or do not have a quiet place from which to participate. The court has tablets with data plans that jurors can borrow to allow them to join Zoom. Please contact John Fargo if your court will require tablets.

Pre-screen jurors before requiring them to come to the courthouse:

1. Identify who will review the responses to jury questionnaires.
 - The jury clerk should review for hardships that meet predefined criteria and others should go the judge.
 - Jurors complete the questionnaires online before trial and provided electronically to the attorneys of record. The attorneys should review responses to demographic questions. Develop a process to identify those individuals to be excused due to a peremptory challenge without needing to come to the courthouse.
 - Consider insufficient answers or failures to respond as a reason to proceed to follow up with that juror for further inquiry. To have a record of the responses, (1) conduct a telephonic or video hearing to ask jurors further questions, or (2) ask for a written response submitted via the jury dashboard or email.
2. Plan for a higher number of jurors requesting excusals based on health concerns and evaluate such requests based on CDC guidelines.
3. Plan for a lower yield from the jury pool during the pandemic. Even healthy jurors may hesitate to serve for a variety of reasons:
 - to avoid the risk of exposing other members of their household to the virus;
 - to care for children who no longer have school or summer activities to attend;
 - to look for work if they have recently lost their employment; or
 - to continue work at a job to which they have recently returned and cannot afford to take leave.
4. When planning the number of alternates, consider the possibility of losing jurors during trial due to illness, COVID-19 exposure, or the need to care for sick family members.
5. Keep statistics of questionnaires sent, COVID-19 related deferrals or excusal requests, the number of excusals from COVID-19 concerns, and other factors considered useful for continued jury management. Monitor closely, and maintain statistics on the impact these excusals and deferrals may have on minority representation.

Health screening of prospective jurors

Court staff should ask prospective jurors health screening questions the day before jury service and when they arrive at the courthouse to start their jury service and every morning thereafter upon arrival.¹⁶

Before arrival

¹⁶ This may result in fewer jurors failing to appear because the clerk's contact about health screening would also serve as a reminder.

Court staff should contact prospective jurors before the first day of jury service to ask them relevant medical questions or provide a link to an online tool. Questions should include:

In the last 14 days,

- Are you supposed to be in quarantine now due to travel or close contact with someone with COVID-19?
- Have you had any COVID-19 symptoms (flu-like symptoms of cough, shortness of breath, or fever) or a COVID-19 diagnosis?

Any YES answers would result in the juror being deferred until a later date. Court staff should notify prospective jurors that they will need to report daily for an in-person health and temperature screening at the start of the jury day, providing the location. Also, staff should inform the juror if they become sick, to contact the court (call or email) to notify of their condition and not come in-person.

At the courthouse

Court staff must set up a juror screening station in a location where jurors can socially distance while waiting for screening. Ideally this would be an out of the way location that affords some privacy. Upon the jurors' arrival at the courthouse, the court staff should ask the same questions identified above. A no-touch temperature screening should also occur and a temperature of 100 degrees or higher would also result in the juror being deferred until a later date.¹⁷ The screening process for each juror takes about 35 seconds to complete.

Fully utilizing jurors during their term

Courts should keep jurors "on call" during their term and ask them to report when needed during the established timeframe. During the pandemic recovery, courts should consider fully utilizing jurors who appear, even when they have been excused from one jury due to a peremptory challenge or for cause in a particular case. A juror who was determined to not be suitable to serve on a DUI case, may be able to serve on a domestic violence case. It is not necessary to use all available jurors before reusing jurors who have come in previously. It is possible to allocate jurors for more than one matter during their term instead of summoning new jurors and going through the selection process anew.

PRETRIAL PREPARATION, INCLUDING RESOLVING MOTIONS, SCHEDULING, AND PRELIMINARY JURY INSTRUCTIONS

Jury trials are most efficient when issues that can be addressed before trial are resolved pretrial. Pretrial conferences are vital to resolve as many issues as possible, to limit movement in the courtroom and to avoid delay and unnecessarily lengthening jury trials.

In criminal matters, consideration should be given as to whether the defendant needs to be present for a specific pretrial hearing or, as another alternative, whether the defendant may

¹⁷ See the intranet at <https://intranet.courts.alaska.gov/emergency/docs/covid/verbal-temp-checks-jurors.pdf> for guidance on how to conduct the temperature screening.

appear virtually. Where the defendant is in custody, courts should be cognizant of transporting an in-custody defendant, as it mixes populations, increases risk of infection, and results in the defendant's isolation within the jail due to DOC quarantine requirements after in-person court hearings.

The most effective way to optimize jury trial time is to address, and resolve, issues that can be anticipated before trial. Accordingly, the focus should be on the pretrial motions and hearings to limit the scope of matters considered during the trial, avoid delay, and provide that trials are not unnecessarily lengthened. Pretrial conferences should address a variety of issues that will make trials more efficient and shorter. Orders resolving pretrial motions and addressing other trial protocol issues are essential to make jury trials as efficient as possible and avoid delays or confusion.

Criminal pretrial conferences should include discussion about:

- length of trial and schedule;
- jury selection issues and voir dire proceedings;
- hearing and resolving pretrial motions;
- settling preliminary instructions;
- courtroom protocols
 - handling/displaying exhibits (including stipulations regarding the admission of exhibits),
 - procedure for discussing motions and objections in chambers or during breaks to avoid side bars,
 - offers of proof,
 - witness examination,
 - making objections from counsel table without unnecessary discussion,
 - juror questions (including whether jury questions will be allowed or, given COVID-19 concerns, temporarily suspended for good cause);
 - approaching witnesses,
 - other logistical issues for trial;
- victim rights issues
 - victim's right to be present,
 - whether the victim wishes to be present remotely; and
 - interpreter and ADA logistics.

See Appendix A for a pre-trial checklist. See Appendix B for the general rules of conduct that the judge may require for trial proceedings.

VOIR DIRE

“The challenge of voir dire is to elicit meaningful information about prospective jurors’ abilities to maintain fairness and impartiality, and to obtain that information with reasonable efficiency.” (Judge Gregory E. Mize and Paula Hannaford-Agor, *Building a Better Voir Dire Process* (2008).) Voir dire should be limited to traditional inquiries, including individualized case-based issues, so courts can start with a smaller group of prospective jurors who include only those likely to serve.

This approach enhances safety by not bringing individuals to court who likely will not be selected to serve as jurors.

Jury selection process

In many of Alaska's courts before the pandemic, the jury selection process has not been as efficient as possible. During the pandemic, it is particularly important to use the juror's time wisely as many feel anxious about completing their service. The court should examine its processes to determine what changes should be made to improve efficiency and utilization of the jurors called for service. Criminal Rule 24 already gives the judge wide latitude over the jury selection process. Subsection (a) provides "The court shall require the jury to be selected in a prompt manner." It permits the judge to:

- conduct the examination of prospective jurors, allowing the lawyers to ask additional questions;
- require the lawyers to question the panel as a whole rather than individually; and
- impose reasonable time limits on the examination of prospective jurors.

Alternate jurors

Courts should also examine the practical need for alternate jurors and reduce the number of jurors where feasible. Factors such as the length of the trial, type of case, issues presented, etc., should be considered when determining if and how many alternate jurors are necessary. Minimizing the number of alternate jurors where practical allows for fewer people in the courthouse and respects the time of the alternate juror who may be present for the entire trial, but then dismissed once deliberations begin. Reducing alternate jurors should be weighed against the public health realities that jurors may be more likely to have issues arise during the course of trial that may lead to excusal.

Peremptory challenges

The current entitlement for each side to exercise 10 peremptory challenges in a felony case results in an elongated jury selection process. While the Alaska Supreme Court may not want to amend Criminal Rule 24(d) to reduce the number of peremptory challenges, it may consider revising the rule to allow the parties to stipulate to a lower number of peremptory challenges. The parties may not agree to reduce the number of challenges, but the option would exist for those attorneys who see the value in a more efficient jury selection process.

Criminal Rule 24(e) provides "The court has discretion to set procedures for the exercise of challenges and for the replacement of challenged jurors except that the entire trial panel will be asked general questions concerning the for cause challenges listed in Criminal Rule 24(c)(5)-(14) before proceeding to other questioning." As such, the judge has the authority to require an efficient process to exercise peremptory challenges. An example is used in Fairbanks by Judge MacDonald who requires the lawyers to exercise the peremptory challenge after each juror instead of at the end of questioning all prospective jurors.

In-person voir dire

Courts should continue to carefully plan how many people are brought to the courthouse, when they are brought to the courthouse, and the paths by which they will need to travel in the courthouse. Factor in the transit time, as well as the health and temperature screening time.

Courts should also plan for what the jury process will look like in the courtroom to ensure the safety of all participants.

For in-person voir dire, consider the following:

- Within a courthouse, limit the number of jury trials that start on a given day to reduce the population of prospective jurors and to allow for social distancing.
- For large courthouses, schedule only one trial per floor to minimize movement.
- Assign seats to jurors, including during voir dire. Consider either individual voir dire, or a combination of group and individual voir dire. For individual voir dire, leave the jurors in the courtroom in assigned seats, and use a separate room or courtroom for the individual voir dire.
- Keep accurate seating charts with contact information for each juror if needed later for contact tracing if someone develops COVID-19 symptoms or is diagnosed.
- Seat jurors in designated spaces in the gallery section in a manner that assures appropriate social distancing, seating the earliest jurors in the front, left to right, until the seating area is full.
- At the day's conclusion, exit jurors from back to front, row by row, in an organized manner.

Chief Justice Special [Order No. 8194](#) dated September 24, 2020, provides specific information about jury selection.

Jurors will generally be summoned to the courtroom rather than another assembly area.

The trial judge shall use an efficient jury selection method to avoid undue delay and exposure consistent with the interests of justice:

- The judge may conduct the examination using the procedure described in Criminal Rule 24(a);
- The judge may require the parties to question the panel as a whole and impose a reasonable time limit;
- The judge may allow individual voir dire, setting a time limit on questioning of individual jurors;
- The judge may conduct the entire voir dire by Zoom videoconference by agreement of the parties;
- The judge may set efficient procedures for the exercise of both cause and peremptory challenges and for the replacement of challenged jurors without requiring unnecessary assembly.
- For example, if the judge allows individual voir dire, then jurors could be numbered and summoned at five to ten minute intervals with cause and peremptory challenges exercised after each juror.
- Another example: The judge could allow each side a reasonable time to examine a panel that fit in the courtroom with social distancing, then require cause and peremptory challenges for that panel at the end of the examination.

Microphones and audio recording

Make sure microphones are placed so that each prospective juror can be heard without the juror needing to hold the microphone if possible. If the jurors need to pass a handheld microphone, sanitize the handle with a sanitizing wipe after each person. The top of the microphone into which the juror speaks can be sanitized with an alcohol wipe. Sprays should not be used to avoid damaging the microphone.

Remote voir dire

Judges may consider a remote voir dire process as authorized by the chief justice's [Order No. 8194](#). The value of remote voir dire is that the empaneled jurors would only need to come to the courthouse for the presentation of the case during the trial, eliminating unnecessary foot traffic and inconvenience for those not empaneled. However, there could be variations on this process that involve some jurors reporting by video, some by video within the courthouse, and others in-person. There are also alternatives where the lawyers or defendant could also participate by video or in-person for the jury selection.

Prospective jurors reporting virtually would be screened electronically and sign into the video platform. The prospective juror would then answer voir dire questions via video on their day to "check in." The prospective juror would be sent a questionnaire and avow under oath that the answers are correct. A jury clerk or IS staffer would be present to troubleshoot and address any camera or sound issues.

There could be an alternative process for prospective jurors who do not have the technology to report by video. Those jurors would be directed to report either to (1) a specific location to fill out a questionnaire on a laptop or tablet with a webcam, and they would also participate by video but from within the courthouse, or (2) the courtroom to participate in-person, assuming social distancing requirements are met.

All completed questionnaires would be given to the trial judge. A pre-determined number of prospective jurors who check in either virtually or in-person would be assigned to a panel for a particular case. If the lawyers and defendant were present in the courtroom in-person, the lawyers would question the panel through the platform and for those in-person. The video of those participating online would be displayed on the screen in the courtroom. Alternatively, all participants could participate through the videoconferencing platform. For jurors in-person, they would need to be visible, either logged in and visible through the platform through a device with a webcam, or seen by cameras in the courtroom.

Judge Pallenberg empaneled a jury in a delinquency trial using the Zoom videoconferencing platform. He learned that the judge needs someone else to manage Zoom to let individuals into the main room from the waiting room so the judge can focus on the jury selection process.

CONDUCTING JURY TRIALS

Along with the importance of pretrial proceedings, rulings and preparation, courts must determine the logistics of getting people into the courtroom, including jurors, lawyers, witnesses, and victims. Courts should plan for alternatives to in-person public and media participation by

working with IS in advance of the trial to set up live streaming the trial online to YouTube. This is essential to limit the number of people in the courtroom to those whose physical presence is necessary for the trial.

Chief Justice Special [Order No. 8194](#) provides health and safety procedures for the trial.

Face covering and mask requirements

All court participants and visitors must wear a face-covering or mask in the courthouse, unless exempted for a medical reason or disability, or the judge in a proceeding relaxes the requirement.¹⁸ Consideration should be given to permit witnesses to remove their masks while testifying, when behind a Plexiglas screen at the witness stand, or allowing participants to wear clear masks or face shields, particularly witnesses while testifying, so that they can be accurately identified.

Courts should instruct jurors that witnesses may be wearing masks, and this should not be considered in the determination of the witness' credibility. Accordingly, if masks are worn by witnesses while they are testifying, courts should ensure that the types of masks worn are consistent among the witnesses. For example, certain witnesses should not wear see-through masks while others wear opaque cloth masks.

Courts must also consider accommodations for interpreters, including American Sign Language interpreters, and should be mindful that special clear masks may have to be used so that lip reading is possible.

Evidence presentation and exhibits

Lawyers should present evidence electronically using the courtroom's large screens so jurors can view the evidence and exhibits. Additional screens may be necessary so jurors at appropriate social distances will have equal visibility and access to documentary or other physical evidence.

If physical exhibits are required, before having jurors handle an exhibit, jurors should sanitize their hands, and then handle the exhibit. Alternatively, jurors may wear gloves to handle the exhibit. Upon returning the exhibit or passing the exhibit, jurors should remove their gloves appropriately, throw them away in a nearby trash can, and sanitize their hands again.

In a virtual jury process, the presentation of exhibits will need to be done differently. Parties should be required to have exhibits in an electronic form accessible for each juror rather than passing around a single exhibit. This requirement could be addressed during pretrial hearings, so that the parties know which exhibits the court is likely to admit.

Making the record and sidebars

Attorneys should make most objections and arguments from counsel table. Sidebars should be avoided. It is problematic to have the attorneys, clients and the judge in close proximity to each other at the bench. If the judge desires argument outside the presence of the jury, then the judge, attorneys, and defendant(s) should go to another room like the jury deliberation room or

¹⁸ [Presiding Judges' Statewide Administrative Covid-19 Precautions Order](#) dated June 1, 2020.

judge's chambers that has enough space to social distance everyone and which has the capacity to record the argument. Work with IS in advance to ensure there is a place to plug in a microphone, or a handheld or wireless microphone will work. The best solution, however, is to address as many issues as possible pre-trial, and then discuss the issue during a scheduled break.

Court interpreting

As remote interpreters were already common in the Alaska Court System, we are set up to continue with interpreter services, both by video and telephonic. Interpreter Services Coordinator, Stefanie Burich, is the point person on all interpreter issues, including scheduling and arranging video remote interpreting. (sburich@akcourts.us, x7891)

Spoken Language for Limited English Proficient

Historically, we have used the VSee program for video remote interpreting. We are also now using Zoom for consecutive interpreting which can be recorded. Depending on the situation, we may be able to use Zoom for simultaneous interpreting that can only be heard by the Limited English Person (LEP) participating. Zoom also has a breakout room feature when an attorney and client can have confidential conversations using an interpreter.

For in-person interpreting, modifications are necessary to address safety precautions, including social distancing and face covering requirements. Clear face shields are available for interpreters to use, and social distancing can be accomplished with wireless interpreting equipment that includes a sensitive microphone for the interpreter to speak to the LEP who wears a headset to hear the interpreter's feed. If courtroom participants wear face coverings that may increase an interpreter's need to ask for repetitions and clarifications; judges should plan ahead for this and discuss with the interpreter before the court proceeding how to best handle those requests. Interpreter Services Coordinator, Stefanie Burich has developed [Recommendations for In-Person Court Interpreting, A Pandemic Resource from the Alaska Court System](#).

American Sign Language

For American Sign Language interpreters, both the interpreter and the deaf or hard of hearing individual may need to be exempted from requirements to wear face coverings or masks, unless they wear clear face shields. Facial expressions and other non-verbal communications are vital components of providing effective interpretation.

When one or more participant(s) appear(s) remotely and an interpreter is involved, consider the following:

- Ensure that those appearing remotely have the necessary technology for the platform to be used.
- Ensure that the interpreter is technically competent with any equipment to be used.
- Perform a check of audio and video, as appropriate, prior to starting the event, to ensure that all participants can see and hear each other.
- Discuss with the interpreter the procedure to follow for requesting repetitions

or clarifications.

- Discuss with the lawyers the procedure for objections to interpreted testimony.
- Clearly identify all participants in the hearing or event.
- Remind participants of the interpreter's role.
- Remind participants that interpreters are required to follow the code of professional ethics for court interpreters, including to accurately interpret everything that is spoken.
- Advise all court participants to speak clearly and more slowly than they otherwise would.
- Ensure the courtroom and all other locations from which participants appear are as quiet as possible.
- Advise all speakers to identify themselves each time they speak so the interpreter can more readily identify the voices.
- Ask participants to speak directly into their microphones so the interpreter can hear them.
- Ask participants to speak in brief, but complete segments for easier interpretation.
- If needed, direct participants to pause so interpretation can be performed.
- Allow only one person to speak at a time.

ATTORNEY CONDUCT AND EVIDENCE DURING TRIAL

Many issues surrounding attorney conduct during trial and dealing with evidentiary issues should be addressed, and resolved when possible, before trial and through court orders addressing those issues and the governing protocols. This occurs in a variety of ways, including the court's enforcement of disclosure and discovery obligations, motions in limine, final pretrial statements, objections, and other measures more fully discussed above in the *Pretrial Preparation* and *Conducting Jury Trial* sections. When applied properly, these mechanisms make trials more efficient and effective, shorter, and result in a better jury experience. These mechanisms are critically important to prevent avoidable delays during trial and to help maintain social distancing.

Trial judges have substantial authority and discretion to control and direct attorney conduct during trial. Along with the court's inherent authority, "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Alaska R. Evid. 611(a).

Consider the following procedures for attorney conduct during trial:

- Require that attorneys must be healthy and symptom-free to appear in-person, and must inform the court if their status changes. The Administrative Office has developed health screening protocols. In the event an attorney is not healthy or is symptomatic, measures should be taken for the attorney to (1) participate remotely; (2) have another attorney take their place during trial; or (3) take other appropriate action.
- Attorney positioning and physical possessions
 - Establish clearly defined and limited areas where attorneys can stand when presenting opening statements and closing arguments to ensure appropriate social distancing.
 - Discuss how counsel will make motions, objections, and argument without a bench conference and how to request discussion outside the presence of the jury.
 - Direct counsel to remove all items from counsel tables at the lunch break and the end of each day to allow for deep cleaning of the area.
- Questioning witnesses
 - Prohibit attorneys from physically approaching any witness. Relevant exhibits should be provided electronically and projected onto screens visible to the witness in the courtroom. If a physical piece of evidence is required, the attorney should place it on the witness stand before the witness takes the stand. If that has not occurred and a relevant exhibit is not within reach of the witness, court staff will make that exhibit available to the witness using appropriate procedures to ensure safety.
 - Require that attorneys question witnesses while seated at counsel table, avoiding the traditional use of a common lectern (which would create the need for the lectern, microphone, and related areas to be deep cleaned between direct, cross, and re-direct examination for each witness).
 - Particularly when witnesses are excluded under Alaska Rule of Evidence 615, consider where witnesses should wait before they are called to testify and communicate with attorneys about that location to ensure that witnesses know where to go.
 - Require attorneys to provide notice, at least 24 or 48 hours in advance, of witness order and scheduling to avoid delays and to ensure social distancing.
 - Require attorneys to advise all witnesses of courtroom procedures and to make inquiries to ensure witnesses are healthy and not symptomatic.
 - Ensure that the witness stand, including the seat and microphone, is cleaned after each witness testifies.
- Prohibit speaking objections which waste time, can provide information that the jury should not receive, and are avoidable. Instead, a timely objection or motion to strike summarily stating the specific ground applicable (unless the ground is apparent from the context) properly preserves at trial a claim of error in a ruling to admit or exclude evidence. Alaska R. Evid. 103(a)(1).
- Prohibit arguing after a ruling, unless made in the form of a motion for reconsideration.

- Sidebars
 - Prohibit sidebar or bench conferences where attorneys physically approach the bench. Encourage the attorneys to raise and resolve issues prior to trial. If an attorney needs to make argument or an offer of proof outside the presence of the jury, try to schedule the argument in chambers or another location while the jury is taking a break.
 - Bench conferences should be held in chamber or another safe area that is out of the presence of the jury, allows for appropriate social distancing, is cleaned after use, and where recording can occur.
- Introducing exhibits
 - Encourage the use of technology to present exhibits on large screens that allows all involved (including the witness, judge, attorneys, parties, and jurors) to view an image of an exhibit, as opposed to requiring that the physical or paper exhibit be handed around.
 - If available technology cannot be used to manage exhibits, require attorneys to have marked original exhibits to be used at trial and sufficient copies so that (1) attorneys, the judge, and each witness have their own, and (2) for exhibits that will be offered in evidence, sufficient copies so that, if admitted in evidence in a way that will be available for deliberation, each juror would have his or her own copy and not have to handle and share the same exhibit.
 - Require that anyone handling original exhibits should do so wearing appropriate disposable gloves to be thrown away after handling, or use hand sanitizer promptly.

DEFENDANTS IN CRIMINAL CASES

There are several issues to be addressed in dealing with a defendant during a criminal jury trial. Social distancing between an attorney and client during a jury trial is a challenge. It is difficult, if not impossible, to have regular private communications during the trial without interrupting the proceeding to move to a different location where they can talk confidentially at a six-foot distance. In addition, care must be taken to avoid prejudicing the jury to see evidence that the defendant is in-custody when repositioning jurors to spread out throughout the courtroom, relocating furniture such as the counsel tables, and moving the defendant in and out of the courtroom in the presence of the jury.

Chief Justice Special Order 8194 provides:

4. The judge shall generally require six-foot social distancing between all trial participants. With the consent of the affected participants, the judge may authorize participants who have an ongoing professional relationship to sit or confer without maintaining the usual social distancing. This includes criminal defendants and their attorneys and prosecutors and their case officers. But the participants shall continue to wear their masks or face coverings unless the judge authorizes removal for purposes of witness testimony, defendant identification, making an appropriate record, or similar necessity.

Consider the following issues pertaining to defendants:

- Consider how to protect a defendant's rights to consult with his/her attorney and confront witnesses while using the protective measures necessitated by pandemic. If the attorney and defendant do not sit next to each other as authorized by Order 8184, plan how to allow for socially distanced attorney-client conferences during trial. Consider separate secure and adequate space for such conferences to be held outside the courtroom setting if necessary.
- If defendant is in-custody, make certain that the new courtroom configuration does not reveal his/her in-custody status. Figure out how to move the defendant if necessary to and from the courtroom if the goal is to not move the jurors once they are situated. Identify what precautions you will take to prevent the jury from seeing/hearing shackles, handcuffs, prison garb, etc. Simulate how this will occur before the trial.
- Plan for objections from counsel based on an inability to read jurors' expressions in response to testimony, evidence, objections, and judges' rulings, among others. Address the courtroom layout and the courtroom rules in the final pretrial conference so that the attorneys can raise objections at that time.
- When deaf/hard of hearing defendants are involved in a proceeding, consider providing with clear face shields to allow the mouth to be visible. Create a plan for cleaning after usage, as well as for the court-provided individual hearing devices used by lawyers, witnesses, or jurors.
- How to accommodate the defendant's right to have family members, friends, and other supporters present, including limiting the number, while positioning away from the jurors so as not to intermix with them. If not possible due to courtroom size limitations, consider how to allow their participation by a video feed within the courthouse.

PUBLIC SPECTATORS

Social distancing cannot occur with spectators in the courtroom because the gallery seating will be necessary to socially distance the jurors. Plan how to provide spectator viewing remotely. This likely will include a live video feed to YouTube during the proceeding, which the court system has been utilizing for the few trials that have occurred as well as high profile superior court hearings. The video is deleted from YouTube at the conclusion of the proceeding. Contact Audio and Video Specialists, Scott Rankin and Wade Cunard, to make arrangements for livestreaming court proceedings.

FINAL JURY INSTRUCTIONS, DELIBERATION, AND RETURN OF VERDICT

Final jury instructions and verdict forms must be in writing and provided to the jury.¹⁹ As with preliminary jury instructions, the discussion and settling of final jury instructions and verdict forms should be addressed to ensure social distancing without significantly delaying the trial. This may involve the court taking the jury instructions submitted by the parties, drafting final instructions and verdict forms for consideration by the parties and then circulating those drafts to

¹⁹ See Alaska R. Crim. P. 30; Alaska R. Civ. P. 49.

the parties electronically. The parties and the court can then discuss those drafts either during breaks at trial or before or after the trial day, as applicable. Then, the court can revise and finalize the final instructions and verdicts to be used, again circulating them to the parties electronically. The parties also need an opportunity to make any objections, on the record for the final jury instructions and verdict forms, either during breaks at trial or before or after the trial day. Additionally, the court needs an opportunity to rule on these objections. The court file must contain a record in of the parties' submissions as well as the final product.

Along with the court reading the final instructions and verdict forms to the jury, how each individual juror will be provided copies will depend upon available technology. If courtroom technology is available, this may involve having a screen visible to the jury that displays the final instructions and verdict forms.

If such technology is unavailable, each juror should be provided a written copy of the final instructions and verdict forms, with measures taken to ensure that the jurors wear disposable gloves or use hand sanitizer to ensure proper hand hygiene when handling the documents.

The court file must include a record of any communications between the jury and the clerk or bailiff, any communications with the parties, and any responses from the court to the jury. Informality in this process has led to reversals on appeal.

Jurors should deliberate in the courtroom and requiring all others to leave and turn off the recording equipment. Fielding jury questions during deliberations should be planned for in advance. The jury foreperson could be provided with an electronic way to communicate with the in-court clerk, who could then forward the question to the judge and parties. This can be by phone, text, or email, using a device provided by the court. When the court formulates an answer after consultation with the parties, the in-court clerk could provide the response to the foreperson in the same electronic format. If no technology is used, a paper note (treated with appropriate paper-handling care) could be used for the question and the response. Similar approaches would be used when the jury is unable to reach a verdict and is at an impasse.

In both criminal and civil trials, the verdict must be in writing and signed by the foreperson.²⁰ Criminal Rule 31(f) and Civil Rule 49(a) provide that the jury “must be in the jury box to deliver the verdict.” In a civil case, if the jurors participate virtually, this rule will need to be relaxed to allow the delivery of the verdict. Any post-verdict debriefing by the court, including to assess the precautionary safety measures taken, could be done remotely or otherwise, ensuring appropriate social distancing.

If the court requires pursuant to Civil Rule 49(b) the jury to return only a special verdict, or submits written interrogatories pursuant to subsection (c), the court must plan for the paper handling process to avoid passing around the same set of documents to each juror. Instead, the court should provide each juror with their own set of written documents.

²⁰ Civil Rule 49 clearly provides for a written verdict, but Criminal Rule 31 does not state this expressly with the exception of a written requirement for a sealed verdict reached after the usual business hours. It is apparently common practice, however, for all verdicts to be written and signed by the foreperson.

CONDUCTING CIVIL TRIALS

Special Order 8213 suspends in-person civil jury trials until at least September 7, 2021. As restarting in-person civil jury trials are lower in priority than criminal jury trials due to the constitutional requirements for criminal cases, alternatives to civil jury trials should be considered to resolve the case instead of encountering more delay.

Bench trials

As available jurors will be allocated to serve on criminal juries, civil jury trials will continue to be suspended until at least the fall. However, parties otherwise entitled to a civil jury trial can stipulate to a bench trial. Bench trials can be conducted remotely by telephone or video, or possibly in person.

Alternative civil trial approaches

For civil matters, courts may consider how trials can occur without convening the jurors in the courtroom in-person. There are different options if the jurors participate by video discussed below.

Virtual trials

In one scenario, the trial could be livestreamed and submitted to a virtual jury who would deliberate online. In this circumstance, the judge, the attorneys, the witnesses, any parties or party representatives and court staff would be in the courtroom, at an appropriate distance, while the jury then participates remotely by video. Zoom's break-out room feature could be used for the deliberation as has occurred with virtual presumptive death trials and virtual grand jury proceedings.

Recorded trials

At least one court outside Alaska is considering an approach whereby trials are recorded without a jury in the courtroom. The recording will be later shown to jurors to consider, deliberate, and render a verdict. This would allow courts to limit the persons present at the trial to attorneys, parties, testifying witnesses, and court staff. This also allows for a highly streamlined approach, with objections to testimony and evidence being edited out of the version of the video recording shown to the jury. Likewise, unexpected, objectionable, and prejudicial testimony could be edited out of the video. As such, jurors would see a finished video that would take less time to view than if they had been in the courtroom in real time.

The next section about summary jury trials outlines what the Maricopa County Court in Arizona is contemplating with a recorded trial option.

Courts opting for virtual trials should be plan for:

- using a staff person to operate the technology and facilitate the process, including deliberations. This person would be muted and would not participate in the deliberations, but would be able to respond to any requests to display evidence, etc.;
- ensuring that potential jurors represent a fair cross section of the community and not only include those with devices, high speed internet access and technological sophistication. Determine if jurors need to borrow internet enabled tablets from the court system to participate remotely;
- conducting short trainings for the jurors and attorneys before the virtual trial begins;
- considering whether a virtual trial is appropriate if any of the evidence is tactile or sensory specific as such evidence may not be able to be “displayed” in a virtual setting.

Summary jury trial

The Texas courts explored ways in which technology could be used and held a virtual civil jury trial using videoconference technology on May 18, 2020.²¹ The jury trial was a one-day summary jury trial where jurors heard a condensed version of the case and rendered a non-binding verdict. Approximately two dozen potential jurors logged in by smartphone, laptop, or tablet for jury selection, and the trial was livestreamed on YouTube to accommodate public access.

The Superior Court in Maricopa County in Arizona has proposed several approaches for conducting summary jury trials. This virtual summary jury trial would be a non-binding alternative dispute resolution process in various possible forms, including for example:

- Approximately 15 venire panel members would be used to seat 4 jurors for a one-day trial with limited time-frames and relaxed evidentiary rules. A one-day jury trial might be binding or might be followed by a one-day mediation.
- An 8-person jury would virtually appear for a trial that would be at most two days. The trial might be followed by a one-day mediation.
- A recorded trial
 - The jurors who respond using the online screening application would be provided a questionnaire to ensure the juror has reliable internet access, a private space to participate, and a computing device with a camera. Remote jurors need to have web cams so that the court and counsel can observe appearances and ensure that the jurors are present and attentive.
 - Jurors would be given a pretrial opportunity to appear and test their equipment.
 - If a juror participates remotely, the juror’s time would constitute jury service as though it were in-person jury service.
 - Remote jury selection would attempt to replicate in-person jury selection in that bench conferences would occur outside of the jury’s presence.

²¹ <https://www.reuters.com/article/us-health-coronavirus-courts-texas/texas-tries-a-pandemic-first-a-jury-trial-by-zoom-idUSKBN22U1FE> (last visited May 28, 2020).

- The jury should be together in the virtual meeting room before trial and during breaks to replicate the experience of jurors becoming a cohesive group.
- In some scenarios, jurors will appear virtually, but lawyers and some witnesses will appear in person. Virtual jurors must be able to see the livestream of the trial, lawyers must have individual laptops, or the court must have cameras focused on the lawyers, parties, and testifying witnesses.
- Juror questions may be submitted to the judge using a real-time chat feature.
- Deliberations will be in a secure password protected virtual room.
- Jurors will call the bailiff if they have a question or they have reached a verdict. Jurors will be provided a digital copy of exhibits using an online document repository or email.
- After a verdict is reached, jurors will share with the judge a copy of the form of verdict. Absent any outstanding issues with the verdict form, the parties will join the meeting room and the clerk will read the verdict.
- Jurors will be asked if the verdict accurately reflects their verdict and upon request, the jurors will be polled by the court. Jurors cannot sign the verdict form. As such, the judge will sign and file a verdict form indicating that the verdict was shown to the court by the foreperson, read in open court, and the jurors were asked to confirm the verdict on the record.
- After the verdict, jurors will be questioned to gather additional information to improve virtual jury selection and service and juror compensation will be mailed.

GRAND JURY PROCEEDINGS

Grand juries play a vital role in Alaska’s criminal justice system. Grand juries determine whether probable cause exists to show both that a crime has been committed and that one or more named individuals committed that crime. Procedural requirements for grand jury proceedings are unique and require care to ensure fairness and confidentiality of the grand jury process.

In-person grand jury proceedings

Alaska has twelve grand jury locations that meet at varying intervals.²² After Chief Justice Bolger suspended grand jury proceeding beginning March 23, most locations started back up in June. Due to high COVID-19 case counts statewide, in November the Chief Justice issued Special [Order No. 8210](#) that again suspended in-person proceedings through January 4, 2021, and issued [Order No. 8213](#) extending the suspension until at least February 1, 2021.

Upon starting in-person grand jury after the initial suspension, each location structured the grand jury based on their local considerations, including:

- physical court space size limitations,
- method to qualify jurors – pre-screening in advance by phone and at the courthouse,
- reduced panel sizes, most commonly reduced to 14 with 2 alternates
- staggered juror arrival times,

²² Alaska Criminal Rule 6 provides the following grand jury locations: Anchorage, Bethel, Dillingham, Fairbanks, Juneau, Kenai, Ketchikan, Kotzebue, Nome, Palmer, Sitka, and Utqiagvik.

- use of remote presentations by DAs and witnesses,
- shortened times / day for presentations,
- relocating to larger spaces in the community and within the courthouse,
- how to conduct health screening, including temperature checks, and sanitizing courtrooms during and after grand jury proceedings.

Requests for excusal or deferral were below average compared to before the pandemic. Feedback and survey results from grand jurors revealed that there was widespread appreciation for the safety precautions employed by the courts. Before health and temperature screening was done for all visitors at the courthouse entrance, screening was done just for the grand jurors. The daily health screening questions and temperature check for each juror took about 35 seconds to complete and grand jurors were very cooperative about this process. However, court staff reported that this is time consuming to screen each grand juror. Now that screening is done for all visitors upon courthouse entry, staff for grand jury does not need to screen separately.

Examples of processes used to start in-person grand jury after initial suspension

First District

Sitka: Judge Pate had one large group convene at a local school, and then selected panel appearing in person at the courthouse for the DA's presentation of the cases to a panel of 18.

Ketchikan: Judge Stephens conducted the selection and orientation by phone - initially individually then in groups. The next day, the judge swore in the selected jurors in-person and the DA presented the cases in-person to a panel of 18.

Juneau: Judge Schally did the selection and orientation by phone, and then the next day the DA presented cases in-person to a panel of 18.

Third District

Anchorage: Eight groups of 25 jurors appeared in-person over four days for panel qualification. Panels of 14 jurors were selected and given their qualification and grand jury oaths. They met in person starting in late June. They initially did grand jury presentation in 2 courtrooms with a video feed between them. The jurors were in one courtroom, the attorneys and witnesses in another. The jurors requested to be in one room with social distancing and masks. After convening in two separate courtrooms for the first two days, the presiding judge allowed the group to meet together in one room.

Kenai: Called and pre-screened jurors, then drew jurors by random on record (no jurors present) and notified the jurors chosen to serve. Jurors on a panel of 18 appeared in person to be sworn and hear cases.

Kodiak: Three groups of jurors appeared over two days in person for selection to a panel of 18 jurors. Jurors were excused who would typically fly in to serve.

Palmer: Jurors split into three groups, with the first group appearing in person, and the other two groups were called in if more jurors were needed. Only the first group in a panel of 14 was used for the selection in early June.

Fourth District

Bethel: Telephonically pre-screened jurors on the record, and the jurors in a panel of 18 serve in person for orientation, swearing in, and presentations.

Fairbanks: Jurors called ahead to give panel preference (one group serving the

beginning of the month, one group serving the end of the month). Pre-screening was done telephonically. Jurors on a panel of 16 appeared in-person at staggered times, and have assigned seats in a very large courtroom.

Virtual grand jury proceedings

Impaneling a grand jury that ensures social distancing presents challenges because almost no court spaces can easily accommodate the maximum number of people involved. The Alaska Supreme Court initially authorized the use of videoconferencing to conduct the grand jury process in the Second Judicial District and the Kotzebue court conducted a pilot using Zoom for grand jury.²³ After the pilot's success, the chief justice authorized the use of videoconferencing for all grand jury locations.²⁴

The Administrative Office purchased an Enterprise Zoom license that provides enough accounts across the state for videoconferencing services that can be used for grand jury proceedings. Zoom's functionality facilitates a grand jury process, including break-out rooms for deliberation, ability of the district attorney to screen-share evidence, and remote video interpreter services for witnesses.

The Administrative Office also purchased several tablets with internet plans for use by grand jurors who either do not have devices or access to the internet. They are locked down so the juror can only use Zoom and not other internet applications. The tablets have been loaned to grand jurors in Kotzebue for grand jury proceedings. The jury foreperson comes to the courthouse to be made a co-host on Zoom with the district attorney so is able to share evidence during the deliberations with the other jurors. The foreperson can also sign the indictments after deliberations. Some grand jurors do not have private spaces in their homes to participate in the grand jury proceedings so come to the courthouse to hear the cases using the tablets. The Kotzebue court and Second District Area Court Administrator Brodie Kimmel have been an incredible resource in figuring out best practices for using Zoom for grand jury.

After COVID-19 case counts increased across the state, the Kotzebue court began hearing the entire Second District's (Nome and Utqiagvik) grand jury proceedings by Zoom in December. The Juneau court started grand jury by Zoom in December and the Anchorage court started in January using a variation on the model. In Anchorage, the jurors come to the courthouse and are each located in their own room using Zoom on a court tablet to participate remotely. Other court locations are planning to use Zoom for grand jury.

Remote participation in grand jury proceedings requires the following protocols:

- Use of videoconferencing platforms must safeguard the secrecy and confidentiality of grand jury proceedings and deliberations.

²³ [Special Order of the Chief Justice - Order No. 8157](#) dated June 22, 2020, Update authorizing Second Judicial District Grand Jury video conference pilot.

²⁴ [Order No. 8204](#) dated November 2, 2020, Update Regarding Authorizing Videoconference Grand Jury Proceedings.

- Special admonitions should be given to grand jurors to remind them that videoconference proceedings should be considered the same way as if they were in the courtroom.
- Courts should also require non-disclosure agreements from the grand jurors to ensure privacy during and after the online grand jury proceedings.
- Grand jurors must be in private locations where testimony or deliberations cannot be overheard.
- Grand jurors must keep their cameras on during the proceedings and be seen on screen.
- Plan for an initial training period for grand jurors to get used to the technology.
- Use gallery view on Zoom to show all participants at the same time.
- Provide paper signs in advance to grand jurors who have been qualified that clearly say, “YES” “NO” “?” “BREAK” for the jurors to hold up when in a group which makes it easier for the DA to see when an individual responds, has a question, or needs a break.

Before starting grand jury by Zoom, the court system consulted with Mojave County, Arizona and the New Jersey Court System, both of which had been successfully doing remote grand jury by Zoom.

Security in virtual grand jury proceedings

As grand jury proceedings are confidential, it is critical to enable the appropriate security protocols.

To ensure security, the court must:

- password protect all virtual grand jury proceedings, requiring all participants to enter a unique password before joining any proceeding.
- ensure that a new password is generated for each new jury and/or each session.
- provide the host ID number to the DA or another authorized person managing the proceedings, enabling that person to “lock” the meeting access after the last participant has joined, remove users, mute users, and disable users’ video if necessary.
- provide appropriate admonishments about the need for secrecy and security in grand jury proceedings as each session begins and ends.
- require grand jurors to sign appropriate written acknowledgments about their understanding of the admonishment.
- Require grand jurors to be in private locations (in their home or the courthouse if their home does not work).

CONCLUSION

This Report suggests considerations and best practices to resume jury operations in light of the COVID-19 pandemic as of June 2020. Many of these precautions and recommendations will be implemented on a temporary basis, subject to change based on CDC guidance, user experience, and court discretion. As courts begin resuming jury trials, additional and different best practices will likely become apparent and more changes will be required.

Appendix A - Pre-Trial Checklist

- Requirement of personal protective equipment (masks, shields, gloves, sanitizer, Plexiglas shields)
- Screening of all participants for temperature, symptoms, exposure risks
- Procedure for jury orientation
- Procedure for jury screening
- Seating of the jury panel
- Voir dire* procedure and the use of jury questionnaires
- Communication of for-cause strikes
- Communication of preemptory strikes
- Seating of jury
- Seating of attorneys
- Public access - arrange with IS for YouTube streaming well in advance of trial for public and media observation
- Whether movement in the courtroom and use of the podium is allowed
- Procedure for use and disinfection of common equipment such as microphones, document presenter (Elmo), enlarged exhibits and physical exhibits or demonstratives
- Presentation of documentary exhibits (electronic or paper)
- Handling of documentary exhibits
- Jury breaks and bathroom protocol and disinfecting facilities
- Anticipation of objections
- Procedure for side bar conferences with court
- Breaks and protocol during breaks
- Number of cleanings (wipe downs) of the courtroom that will occur each day – coordinate with facilities in advance so they can make arrangements with day cleaners in courts that have them or hire contractors for the trial
- Sanitary storage of jury exhibit books, notebooks and other items at night
- Consequences of positive testing or symptoms of any participant during trial (mistrial, adjournment, testing of all participants exposed who had close contacts?)

Appendix B - General Rules of Conduct for Trial Participants

The judge may issue orders regarding conduct applicable to all trial participants, including but not limited to lawyers, clients, witnesses, jurors, and spectators:

1. Start times must be altered to allow for slower admission of persons into the courthouse.
2. All persons entering the courthouse will be screened. This screening will include a no-touch temperature check for temperature exceeding 100 and a series of questions regarding known exposure circumstances, recent illnesses and quarantine status due to travel or exposure. Any individuals who do not pass the screening questions or have a fever will be deferred from jury service and denied entrance to the courtroom.
3. All individuals in the courthouse must stay a minimum of six feet away from all others at all times. The Court may also require other measures to avoid close contact within six feet, such as leaving an exhibit on a table to be retrieved by the witness.
4. All persons in the courthouse must wear a face covering at all times unless an exemption is granted by the presiding judge or trial judge. Individuals may be permitted by the judge to speak and testify without a mask or through the use of a transparent facial shield, or Plexiglas screen.
5. Personnel in the courtroom will be limited to judge and in-court clerk to meet social distancing requirements as determined by the court.
6. Media will be required to participate by remote viewing methods to reduce the number of persons in the courtroom.
7. Witnesses must be on call or scheduled for their appearance to reduce exposure and unnecessary waiting.
8. The jury will only be brought to the courtroom for trial. Jurors should not be congregated to wait for entry.
9. Shared podiums and shared microphones are discouraged and will only be allowed by permission of the judge.
10. Lawyers and their clients must stay at their designated counsel table at all times except when authorized to move to speak. Breaks will be liberally given to allow counsel to speak to their clients without the risk of being overheard.
11. Sidebar conferences without social distancing should not be permitted. Participants may need to remove themselves from the courtroom and use a room that allows for proper social distancing, instead of moving the jurors from the courtroom.
12. When a lawyer is speaking, he or she should stay at his or her designated counsel table, or alternatively, must remain on the designated mark in the courtroom.
13. Physical handling and transfer of exhibits is discouraged. All exhibits, with the exception of physical exhibits that cannot be reproduced for the purpose of trial, should be shown electronically. All trial participants must have adequate viewing of the electronic exhibits by shared screens in the courtroom.
14. If a physical exhibit must be passed among jurors, they will be provided hand sanitizer, instructed on the proper hand hygiene and offered court-supplied, disposable gloves. Further, jurors will be instructed to avoid touching of the face, eyes and mouth. Court personnel will assist in the proper handling and disinfecting of exhibits.

15. Each juror will be given his or her own copy of exhibits unless the volume or other characteristics of the exhibit makes individual copies impracticable. In such cases, precautions will be taken to protect against transfer of contamination.

16. Jurors will remain in the courtroom during breaks and deliberations to maintain a minimum distance between one another of six feet. As previously stated, jurors must wear masks at all times.

17. Breaks generally will be longer to allow for staggered trips to the restroom.

18. Courthouse cleaning crews will be responsible for ensuring that each courtroom undergoes cleaning each day, including but not limited to wiping down all chairs, tables, door handles, etc. with disinfectant solution or wipes.

19. Bathrooms designated for jurors' use will be cleaned and disinfected after the morning and afternoon breaks, lunch and close of court business for the day.

20. Courthouse security is empowered to enforce social distancing and other orders including the removal of persons showing signs of COVID-19.

Appendix C – Qualifying Questionnaire

JURY QUESTIONNAIRE



Please answer all the questions below. Your answers will help determine if you are qualified to serve as a juror, if you are eligible to be excused from jury service, and if your jury service can be rescheduled.

After you answer all the questions, immediately return the questionnaire to the court. If you have questions about jury service, please visit: www.courts.alaska.gov/jury or contact your local court.

Do not write on the back of this questionnaire, and do not staple or tape additional documents to it. Write your Juror ID Number (shown below) on each additional document you send to the jury clerk.

TEST JUROR

Juror Summons #434085 Anchorage Petit January 3, 2021 Service # 528

Please use black ink.



Yes No Completely fill in the appropriate circle.

Juror ID Number: 77834905

(Example)

- 1. I am an Alaska resident.
- 2. I am a citizen of the United States. If no, enclose documentation that shows you are not a U.S. citizen.
- 3. I can read or speak the English language. (*'No' means you can neither speak nor read English.*)
- 4. I wish to be permanently excused because I am 70 years old or older.
- 5. I appeared for jury service within the past 24 months.
- 6. I have a mental or physical reason that prevents me from serving. Enclose a medical note from your doctor.
- 7. I am on parole or probation after being convicted of a felony. Please give case number or name of parole or probation officer: _____
- 8. I need an accommodation for a disability. Please indicate the type of accommodation you need:
 - Hearing Amplification American Sign Language Interpreter
 - Other: _____
- 9. I am employed by the local school district, the University of Alaska system, or the Alaska Railroad.
- 10. I work for the State of Alaska. Agency: _____ Note: State employees are only eligible to receive pay for jury service outside of a standard work week. If you qualify for pay, notify the jury clerk.
- 11. I live more than 30 miles (one way) from the courthouse. If yes, write in your total round trip mileage: _____
- 12. I wish to reschedule my jury service to another week within the next 10 months. Write your requested date below:
Note: Question #12 varies by court depending on the term of service for the jurors.

13. Comments: _____

Full question on the online questionnaire for "Comments":

Please tell us if you have any hardships that would prevent you from serving as a juror or if you have any additional information relevant to your service that you would like to share. If not, please leave this field blank.

14. Phone: Cell (____) _____ - _____ 15. Do you have a new address? Mailing Home Both
 Day (____) _____ - _____
 Eve (____) _____ - _____

16. Email address: _____

17. Change of Name: _____

These answers are true and correct.

Signature

_____/_____/_____
Date

