



# RESUMPTION OF JURY TRIALS

MONTGOMERY COUNTY CIRCUIT COURT

APRIL 26, 2021

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## I. OVERVIEW

Due to the outbreak of the novel coronavirus, COVID-19, and consistent with the guidance issued by the Centers for Disease Control (CDC), Chief Judge Mary Ellen Barbera of the Court of Appeals ordered all courts in the Maryland Judiciary to adhere to restricted emergency operations and close to the public, with limited exceptions, beginning March 17, 2020. On June 6, 2020, an Amended Administrative Order on the Progressive Resumption of Full Function of Judiciary operations was issued, outlining a phased return to full operations by the Maryland Judiciary, pursuant to which courts resumed jury trials on October 5, 2020.

By subsequent order, jury trials were suspended on November 16, 2020. By virtue of Judge Barbera's *Seventh Amended Administrative Order Clarifying the Statewide Suspension of Jury Trials and Maintaining Grand Juries*, dated February 16, 2021, jury trials are now scheduled to resume on April 26, 2021.

The Montgomery County Circuit Court is committed to balancing public health orders and prospective jurors' concerns with the need to conduct trials and ensure individual due process rights are upheld. Since jury trials present additional challenges due to the high level of interaction and greater dependence upon members of the public, the Court has designed systems that consider the health and safety of all participants and ensure that the jury pool represents a fair cross-section of the community. By following CDC's social distancing recommendations, the Court will limit the number of attendees required at in-person proceedings; liberally grant deferrals for medically vulnerable potential jurors; and implement rigorous and frequent cleaning of facilities to support safe practices.

It is noted that during the COVID-19 pandemic, the landscape continues to evolve and change. Future developments and circumstances may impact these guidelines. The Court will remain vigilant in ensuring that all who come before us do so in a safe environment. Continual assessment and communication will be essential to implement the safe resumption of jury trials.

## GENERAL INFORMATION

The Circuit Court will resume petit jury trials on April 26, 2021. Because of the COVID-19 pandemic, and the need to comply with social distancing guidelines, it will be necessary to limit the number of persons summoned for jury duty on a daily basis. Initially, the number of juries that can be selected on a given day will likely not exceed two. Multi-defendant criminal cases will likely not be accommodated for at least the first month.

Jury selection will occur Monday through Friday, with the possibility of morning and afternoon sessions. Pretrial conferences and judicial involvement will be critical to ensure trials go forward as scheduled. Parties can expect to hear from a judge at least ten days before the scheduled trial, regarding possibilities for resolution of their particular case. All pending motions (other than routine motions *in limine*) must be resolved at least one week before the trial date and will not be heard on the day of trial (no exceptions). It is counsel's responsibility to ensure that motions are filed and heard in advance of trial. Settlements or plea agreements should be placed on the record at least seven days prior to a trial date to allow for other trials to move forward. If the plea is not successful, the parties must be prepared to try the matter on the scheduled trial date and should not assume the matter will be postponed.

Proposed *voir dire* and jury instructions must also be filed at least one week before trial, and any paper exhibits to be offered by a party must be photocopied and a copy provided for the court, opposing counsel and each juror on the first day of the trial, unless otherwise directed by the trial judge. The jury selection judge, who may not be the same as the trial judge, will conference the case with counsel prior to the trial date to ensure all required documents have been filed, and to review *voir dire* and jury instructions.

In criminal cases, if a plea memo is not filed at least seven days before the scheduled trial date, the court will assume the case is in trial posture. Any guilty plea sought to be entered thereafter will take place before the assigned trial judge (no exceptions). Where more than one case is set for jury trial on the same day, the court will prioritize the cases, considering among other things whether the case is criminal or civil; the age of the case; whether the defendant is incarcerated; any potential *Hicks* issues; whether there are expert witnesses; whether the witnesses are mainly police officers or involve civilians; and the number of jurors that may be required.

## OPERATIONAL PROCEDURES

### Facilities Preparation

The Jury Assembly Room (second floor, North Tower) will be used for juror orientation and selection for all civil and criminal cases with non-incarcerated defendants. Courtroom 3E (third floor, North Tower) will be used for juror orientation and selection for all criminal cases with incarcerated defendants. Jurors will report to the jury lounge for check-in and will be directed to the location for jury selection. Once selected, jurors will be sent to a courtroom for the trial to begin.

## Jury Assembly Room Reconfiguration

- Juror seating will be marked and assigned with at least six feet of distance among all potential jurors.
- Counsel tables will be divided with plexiglass to seat three persons at one table and two persons at a second table.
- The Judge will be positioned behind the large podium.
- The Courtroom Clerk will be positioned at least six feet away from the judge, as will the judge's law clerk.
- Any interpreter, if needed, will participate from the assembly room.
- Bench discussions and questions between the judge and a prospective juror will occur in the private seating area, located behind the judge. Counsel will be present, socially distant from the judge and juror. The defendant will be able to observe proceedings and will be equipped with headphones to hear the bench discussion.
- Touchless hand sanitizer stations will be placed throughout the Jury Assembly Room.
- CourtSmart microphones will be placed at the judge's podium, counsel tables, and the bench discussion room.

## Courtroom 3E Reconfiguration

- Juror seating will be marked and assigned with at least six feet of distance among jurors.
- Counsel will sit in the well, facing the gallery. Two tables will be divided with plexiglass to seat two individuals at each.
- The Judge will be on the bench.
- The Courtroom Clerk will be at his/her regular station.
- The judge's law clerk will be in the witness box.
- Any interpreter, if needed, will participate from the jury box.
- Bench discussions and questions between the judge and a prospective juror will occur in the jury deliberation room for Courtroom 3E. The law clerk will bring the juror to that room, where the judge and counsel will be seated, at least six feet apart. This space also can accommodate the defendant, if his/her presence is not waived, and two deputy sheriffs. CourtSmart will record discussions in this room.
- Touchless hand sanitizer stations will be placed throughout the courtroom.

## Cleaning

The Jury Assembly Room and Courtroom 3E will be equipped with hand sanitizers, disinfecting sprays and wipes, disposable face masks and gloves. The County and contract cleaning staff will

disinfect and clean all seats, work areas, and high touch areas each during lunch and in the afternoon. Non-touch trash cans will be installed in both jury selection locations. Jurors should be encouraged to bring their own water bottles, as the courtrooms will not be providing water pitchers or cups for their use. All magazines and related materials will be removed from the Jury Assembly Room.

### Traffic Flow

Directional signs and barriers will support at least six feet of physical distancing in the Jury Assembly Room, courtrooms, and throughout the courthouse. Queuing floor signs will be installed to ensure jurors remain at least six feet apart in lines or when moving throughout the courthouse.

### Additional Venues

The court is presently retrofitting Courtroom 4F in the South Tower for use as a civil jury trial selection site. Furthermore, the Training Room on the third floor of the North Tower will continue to be used as an overflow jury selection site in medium and large strike criminal cases, linked by Zoom to Courtroom 3E, as it was during the October 5 - November 16 time period.

## II. Juror Summoning and Qualification

### Juror Summonses

Jury staff will be available to answer summoned jurors' questions, grant deferrals and process excusal requests. Initial summoning rates will be:

- Civil cases will call 24-30 jurors
- Multi-week civil cases will call up to 75 jurors
- Criminal cases 4/4 strikes will call 35-45 jurors
- Criminal cases 5/10 strikes will call 50-65 jurors
- Criminal cases 10/20 strikes will call 75 jurors

The Jury Commissioner can extend the orientation/jury selection process over morning and afternoon sessions or multiple days by way of juror call-in instructions.

### Two-step confirmation process

To ensure the exact number of required jurors arrive at the courthouse, jurors who have completed the on-line Juror Qualification Form will be contacted by Jury Office staff. Jury Office staff

will confirm attendance, offer information regarding COVID-19 safety precautions, and answer any questions. Contact information will be confirmed to ensure the Jury Office can communicate with each confirmed juror in the case of emergency or last-minute trial schedule change. The Jury Office will use the Visitor's Form to notify the Sheriff's Office as to who will be arriving each day. If unconfirmed jurors arrive at the courthouse, a call to the Jury Commissioner will determine if the unconfirmed juror is needed or should be turned away.

### Deferrals and Excusals

The Jury Commissioner will issue guidelines to identify new categories of deferrals and excusal reasons based on CDC guidelines.<sup>1</sup> Jury Office staff will consistently follow these new guidelines throughout the COVID-19 pandemic. Doctor's notes will not be required and failure to appear classifications will not be used.

provisions for persons who may be medically excused:

- People 65 years and older
- People living in a nursing home or long-term care facility
- People of all ages with underlying medical conditions, particularly if not well- controlled, including
  - Cancer
  - Chronic kidney disease
  - COPD (chronic obstructive pulmonary disease)
  - Down Syndrome
  - 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/m<sup>2</sup> or higher but < 40 kg/m<sup>2</sup>)

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<sup>1</sup> [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html) (visited March 5, 2021)

- Severe Obesity (BMI  $\geq$  40 kg/m<sup>2</sup>)
- Pregnancy
- Sickle cell disease
- Smoking
- Type 2 diabetes mellitus

Additional people that might be at an increased risk:

- Asthma (moderate-to-severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Overweight (BMI  $>$  25 kg/m<sup>2</sup>, but  $<$  30 kg/m<sup>2</sup>)
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

### Data Gathering and Statistical Analysis

The Jury Office will track the number of summoned/confirmed jurors, number of confirmed jurors who fail to appear, summoning response rates, excusal and deferral rates, juror utilization and yield statistics. This information will be used by the Jury Commissioner to inform decisions relative to the number of jurors called to serve.

### Parking

Jurors will be directed to use the jury parking lot at the corner of Fleet Street and Monroe Street. This open lot will accommodate all summoned jurors with no need for overflow parking in the County Council Office Building parking garage.



## Masks

Masks are required to be worn at all times when in the courthouse. Masks may not be inscribed with offensive or other politically-charged language. The Jury Commissioner, *voir dire* judge or trial judge in the courtroom will use their discretion in enforcing this requirement. A stock of disposable masks will be available in the Jury Assembly Room and each courtroom to provide a juror, litigant, or counsel with a replacement mask if needed. Throughout courtroom proceedings, all participants shall wear masks that cover their nose and mouth; masks with valves or vents are not permitted. For good cause shown, the presiding judge may require any participant to use a disposable mask, a clear mask, or a personal barrier shield in lieu of a mask for a limited duration to ensure that the participant can be heard or observed, with due consideration given to social distancing and other public health guidelines. Disposable clear plastic face shields will be provided where appropriate.

## Security Screening

Jurors will proceed from the jury parking lot to the Maryland Avenue or Monroe Street courthouse entrances. Juror names will be provided to Sheriff's deputies by 4:00 p.m. the evening before jury duty. Only those jurors on the visitor's log or those approved by the Jury Commissioner and needed for the jury pool will be permitted access to the building. Before a juror is admitted to the courthouse, he or she will be required to answer medical screening questions related to possible COVID-19 exposure and consent to a non-contact thermometer check. If response to any question is affirmative or if a temperature registers 100.0 degrees Fahrenheit or above, that juror will be barred from entering the courthouse. The Sheriff's deputies will notify the Jury Office of the denial of entry.

Jurors will proceed through the security screening station. Bins will be sanitized after each use. Floor markings designate queuing distance for screening.

## Check In

Jury Office staff will manually check all jurors into the Jury Management System, Jury+, to provide a touchless experience with juror attendance. Upon arrival to the Jury Assembly Room, each juror will be given an envelope with their juror number, juror badge, juror attendance certificate, juror cash stipend or Generous Juror donation certificate and emergency call-back instructions for contact tracing or in case they fall ill during the next 14 days. Each juror will be given a seat number and will proceed directly to that seat. If the case for which the juror was summoned involves an incarcerated defendant, the juror will be directed to Courtroom 3E.

## Multiple Selection Check in

Jury Office staff will assist jurors at the Jury Assembly room entrance to confirm attendance. Each juror will be given a numbered card, juror badge, assigned seat number and emergency call-back instructions for contact tracing or in case they fall ill during the next 14 days. The juror will then proceed to the Kiosk where a Jury staff member will complete the check in and distribute the juror attendance certificate. Jurors who elect to receive their cash stipend will proceed to the service counter where they will be handed their cash stipend in an envelope. The juror will then be directed to the courtroom they have been assigned and instructed to sit in their assigned seat.

### III. Juror Orientation and Selection (Voir Dire)

#### Juror Orientation

A short video has been posted on the court's website for prospective jurors, detailing the precautions the court has taken to comply with CDC guidelines, which can be viewed by potential jurors even before reporting to court.

The Jury Commissioner will offer a short orientation as soon as jurors are seated. Orientation will cover the contents of the check-in envelope, managing personal belongings, food and breaks, as well as a brief description of the jury selection process and the release of unselected jurors throughout the morning. Jurors will be asked to remain seated throughout the morning and raise their hand if assistance is needed.

The Jury Commissioner will explain the process for handling presumptive and positive COVID-19 cases and request that jurors notify the Jury Office immediately if, over the next 14 days, they become ill, are asked to self-quarantine or have been in close, prolonged contact with someone with fever, cough, shortness of breath, nausea, vomiting, diarrhea, flu-like symptoms, or a diagnosis of COVID-19.

#### Voir Dire

*Voir dire* will take place in the Jury Assembly Room for civil and criminal cases with non-incarcerated defendants and in Courtroom 3E for criminal cases with incarcerated defendants. *Voir dire* will be conducted Monday through Friday starting at 9:00 a.m. for the morning session and 1:30 p.m., if there is an afternoon session. Stricken or excused jurors will be released and will not be required to remain in the Jury Assembly Room or Courtroom 3E.

Prior to beginning the selection process, the presiding judge should read the following information to the prospective jurors: **“Because of the COVID-19 emergency, extra precautions have been taken by the**

**court for the safety of trial participants and the jury. During the selection process and the trial, all persons are required to wear masks and maintain social distancing whenever possible. You may also see the use of plexiglass or shields to prevent potential exposure to the COVID-19 virus. All persons who enter the court, including judges, court staff, attorneys, litigants, and jurors are subject to the same screening protocol, including the provision of information about their health and a temperature check. If during the course of these proceedings you become ill, please notify the court immediately.”**

For criminal trials, it is recommended that the trial judge employ the jury selection method which requires the least contact with individual jurors. Accordingly, as each *voir dire* question is read to the jury, all prospective jurors who have a response raise their hand and provide their number to the court. No further questioning occurs at that time. At the conclusion of *voir dire*, the judge will summons to the appropriate area any prospective juror who had a positive answer to any question, in order to hear that response in greater detail. Those who did not respond to any question are automatically qualified at the preliminary stage and may be called to the box when appropriate. Once the requisite number of jurors has been qualified, the remaining jurors can be discharged.

In the Jury Assembly Room, individual juror questioning will take place in the seating area behind the glass partitions. The judge will step away from the podium, and relocate to the glassed-in seating area. Prospective jurors will be directed to stand on a physical distance marker in the seated area, more than six feet away from the judge. Counsel will be seated on either side of the room, socially distant from the prospective juror and judge. A microphone will be installed in the glass seating area to ensure questions and responses are captured for CourtSmart.

Once selection is completed, jurors will be instructed to immediately proceed to the appropriate courtroom. Non-selected jurors will be immediately released, unless required for service on another trial.

#### IV. Jury Trial Procedures

Upon conclusion of jury selection, empaneled jurors will be immediately directed to the courtroom for the start of the trial. Because of the need for at least 12 jurors in criminal cases, social distancing requirements necessitate conducting those trials in the South Tower. Judges may therefore be required to temporarily switch courtrooms in order to accommodate a criminal jury trial. Civil trials,

requiring only six jurors, can safely be accommodated in the North Tower and need not be switched. Law clerks will be responsible for completing the Visitor's Form in the event a trial continues into the next day. The form will reflect the jurors' first and last names but will not identify the location or name of the case.

In the courtroom, jurors will be assigned seats both in the jury box, and/or in the gallery, depending on the courtroom being used. Each juror will use that seat only, throughout the trial and during deliberations. Parties to the case will be required to remain in assigned seating, as well. Where there is a rule on witnesses, those witnesses should remain on another floor of the courthouse until their testimony is needed.

For multi-day trials, jurors will report directly to the courtroom and will not be instructed to check in at the Jury Assembly Room. Envelopes with attendance certificates and juror stipends will be provided to the law clerk for distribution to jurors each morning.

Additional considerations:

- Prior to the commencement of trial and before the jury has gone to the courtroom, the trial judge will confer with counsel to make sure that all participants are familiar with trial processes, and that any audio and visual technology is working properly.
- To maintain physical distance, jurors may be asked to leave the courtroom if a lengthy sidebar must take place out of hearing range of the jurors. The law clerk will facilitate juror movement from the courtroom to the hallway, where the jurors will remain socially distanced until asked to return to the courtroom.
- Interpreters may be seated in the regular jury box to ensure access to limited English-speaking parties. Spoken language interpreters should use the wireless equipment that has been provided. Any equipment that is touched or exchanged between people should be sanitized after use.
- It is the responsibility of counsel to supply copies of paper exhibits for all jurors, alternate jurors, parties, and the court in order to eliminate the transfer of exhibits from one person to another. Counsel, whenever possible, should provide photographs of non-paper exhibits, rather than the original object. Prior to trial, counsel should be encouraged to stipulate to the authenticity of any exhibit that will be offered. In appropriate cases, the trial judge may modify this rule.
- Bench conferences among the judge and counsel will take place through headsets, so that counsel will not be required to approach the bench.

- Individual notebooks and pencils will be supplied to each juror to use for the duration of the trial. These will be placed in individual plastic bags when not in use, during lunch/recesses, or at the end of each day. Additional supplies will be provided whenever needed.
- Jurors may be excused for lunch breaks with the admonition to wear masks and maintain social distancing.
- Each courtroom should keep a stock of disposable masks in the event they are needed to provide a trial participant with a replacement during the proceeding.

## v. Jury Deliberations

- Jury deliberations will be conducted in the trial courtroom or an adjacent courtroom if one is available. **Prior to the commencement of deliberations, CourtSmart will be disabled with confirmation by Technical Services.** Attorneys will remove all items from the courtroom and computers will be shut down and made unavailable. Telephone receivers should also be removed. Because there may be papers or books not pertaining to the case and belonging to the judge or court personnel that would be difficult to remove from the courtroom, jurors should be admonished not to approach the area of the bench during deliberations.
- The law clerk should remain outside of the courtroom, with the front door of the courtroom locked. Any doors with glass will be covered with opaque plastic sheeting.
- Access to the regular jury deliberation room bathrooms will be provided.
- Any notes from the jury intended for the judge should be placed in a sealed envelope, which will be provided by the court. The law clerk will deliver the envelope to the judge.
- Deliberations should be concluded by 4:30 p.m, absent unusual circumstances. If meals are provided, they should be individually wrapped or boxed; no communal meals (e.g. pizza from a box) should be served.

## VI. Communication

Communication outreach to summoned jurors is critical to ensure effective response rates during the COVID-19 pandemic. The Court will modify its website to provide information on facilities disinfecting and cleaning, safety and social distancing protocols, requirements to wear masks, and other COVID-19 related procedures.

The Court will engage the Montgomery County Government Public Information Office to assist with public outreach announcing the resumption and importance of jury service. It will also create an emergency alert system in case trials are postponed or cancelled or if a presumptive or positive case occurs.

### Handling Positive Cases:

If the court is notified of a positive COVID-19 test result of an empaneled juror, summoned juror, or a juror who has been in close, prolonged contact with someone with a positive COVID-19 test result, the Jury Commissioner will:

1. Contact the individual to determine who may have been within six feet of contact. If possible, complete the COVID-19 Contact Inquiry/Investigation Questionnaire.
2. Notify the Administrative Judge, the *voir dire* judge and the trial judge, the Clerk of the Court and Court Administrator.
3. In coordination with the Administrative Head, contact by telephone all employees and jurors who may have had contact with the individual as soon as possible.
4. Advise jurors and employees who had close, prolonged contact that they should self-quarantine for up to 14 days and follow any directive from their healthcare provider, Occupational Medical Services (OMS), or Maryland Department of Health.
5. Coordinate with Court Administration regarding the sanitizing and cleaning of the courthouse, with specific attention to all areas visited by the COVID-19 positive individual.

### Handling Presumptive Cases:

If the court is notified of possible exposure to COVID-19 by an empaneled juror or summoned juror, the Jury Commissioner will determine:

1. What areas of the workplace the individual visited during the previous 24 hours.
2. How long the individual was in contact with the other persons in the courthouse (close, prolonged exposure), and whether the individual coughed or sneezed within six feet of others.
3. Whether there were any other circumstances (riding in same vehicle, shared food, etc.) that could result in community exposure

The Jury Commissioner will create a list of appropriate individuals to notify if the case turns from presumptive to confirmed.

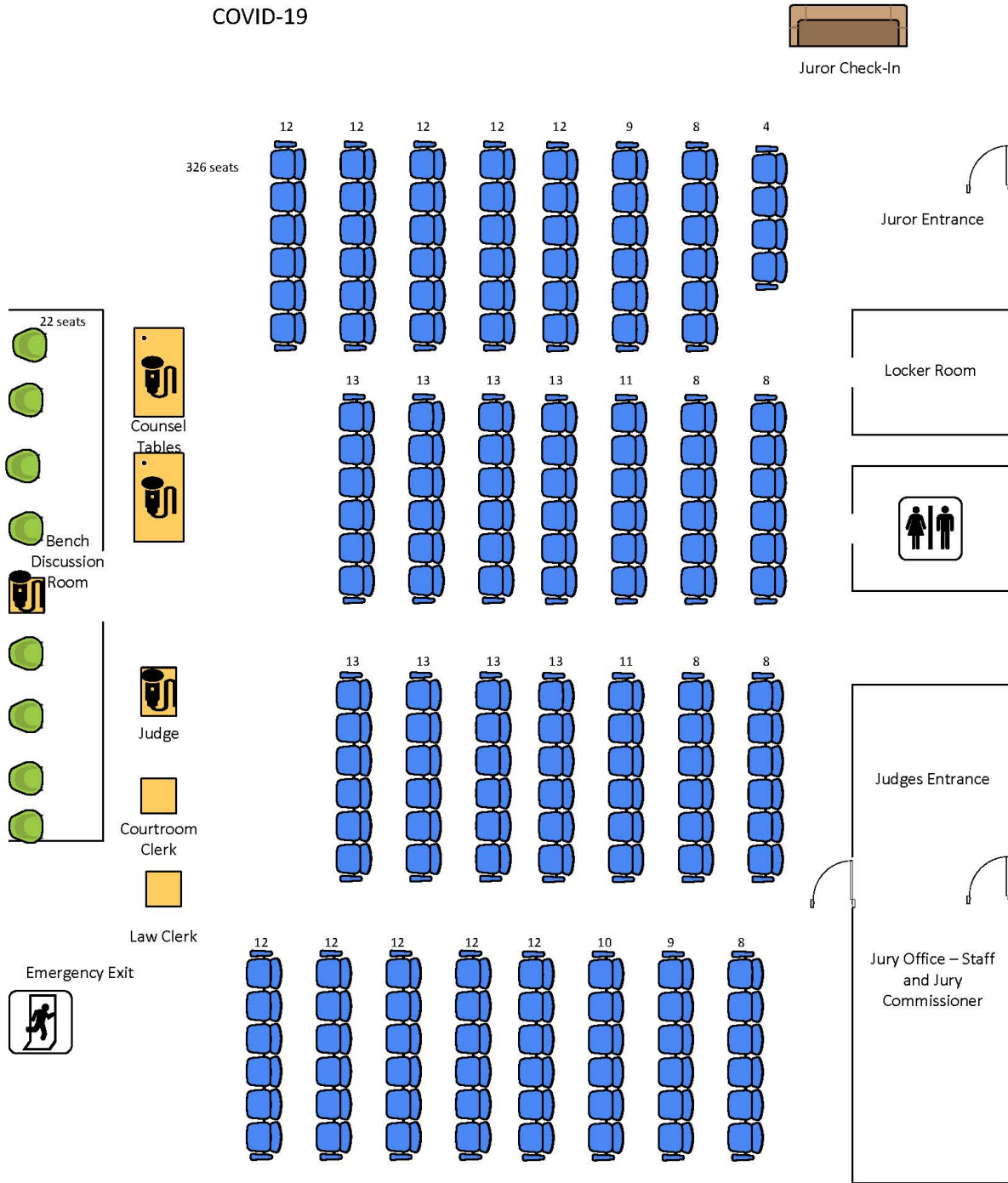
If the case turns from presumptive to confirmed:

1. The Jury Commissioner will contact by telephone all employees, jurors and outside personnel who may have had contact with the infected juror as soon as possible.

2. Advise all individuals who had contact with the COVID-positive juror that they should self-quarantine for up to 14 days, contact their healthcare provider, and monitor themselves for COVID-19 symptoms.
3. Coordinate with Court Administration regarding the sanitizing and cleaning of the courthouse with specific attention to all areas visited by the infected juror.

# Attachment A – Jury Assembly Redesign

## Jury Office Redesign – Jury Selection during COVID-19





## Attachment B

### Judicial Assignment – Criminal and Civil Jury Trial Locations

| <b>Judge</b> | <b>Rotation</b>  | <b>Courtroom</b> |
|--------------|------------------|------------------|
| FOGLEMAN     | CIVIL            | 8B NT            |
| HESSLER      | CIVIL            | 9B NT            |
| MALONEY      | CIVIL            | 9A NT            |
| SALANT       | CIVIL            | 3G ST            |
| STORM        | CIVIL            | 8A NT            |
| BOYNTON      | CRIMINAL/GENERAL | 5G ST            |
| BURRELL      | CRIMINAL/GENERAL | 3F ST            |
| CHO          | CRIMINAL/GENERAL | 4F or 4G ST      |
| DWYER        | CRIMINAL/GENERAL | 4F or 4G ST      |
| LEASE        | CRIMINAL/GENERAL | 4F or 4G ST      |
| SCHWEITZER   | CRIMINAL/GENERAL | 4F or 4G ST      |