



Clayton Judicial Circuit



Report from The Committee on Resuming Jury Trials

**Initially Compiled on December 17, 2020
and updated June 9, 2021**

**Adopted by Order of the Chief Judges of
Superior, State, and Probate Courts on
June 11, 2021**

CLAYTON COUNTY JUDICIAL CIRCUIT
LOCAL COMMITTEE ON RESUMING JURY TRIALS

Member Representatives from:

Superior Court

State Court

Superior & State Court Administration

Clayton County Health District

Clayton County Board of Commissioners/Legal Department

Office of the District Attorney

Solicitor-General's Office

Clayton County Sheriff's Office

Clerk of Superior & Magistrate Courts

Clerk of State Court

Circuit Public Defender's Office

Lister, Holt & Dennis, LLC

Clayton County Bar Association

Defense Bar

Clayton County Citizens

**Local Committee on Resuming Jury Trials,
Subcommittee Members**

Subgroup A

Co-Leads: Chief State Court Judge Linda Cowen & Clerk Wills

Members: Dr. Olatanwa Adewale, DA Tasha Mosely, Clerk Tiki Brown, Attorney Brandon Lewis, Attorney Kim Gross

Tasks: Identification of facilities for jury assembly, voir dire, and jury trials, including the identification of rooms within the courthouse that are suitable for these functions and alternative locations where necessary.

Subgroup B

Co-Leads: Dr. Will Simmons & Dr. Olatanwa Adewale

Members: Major Terry Evans, Chief Court Orderly Officer Stuart Benton, Attorney Daniel Nagel, Attorney Timika Dennis, Attorney Charles Reed, Court IT Coordinator Ben Cauble, Judge Aaron Mason

Tasks: Development of written public health and safety guidelines consistent with public health guidance, including sanitization procedures, face-covering requirements, social distancing protocols, notification procedure for alerting stakeholders when courthouse personnel or visitors to the courthouse have tested positive for COVID-19, etc.

Subgroup C

Co-Leads: Judge Aaron Mason & Judge Shalonda Jones-Parker

Members: DA Tasha Mosely; SG Charles Brooks; CPD Adeline Alexander, Attorney Brandon Lewis, Attorney William Matos, and Attorney Daniel Nagel

Tasks: Protection of constitutional and statutory rights for litigants, witnesses, victims, and observers.

Subgroup D

Co-Leads: Major Terry Evans, Chief Court Orderly Officer Stuart Benton & Court IT Coordinator Ben Cauble

Members: Clerk Wills; SG Charles Brooks, CPD Adeline Alexander, Attorney William Matos, Judge Shalonda Jones-Parker

Tasks: Notification to potential jurors, the public, and parties of public health precautions being taken by the court, including information on sanitization procedures, face-covering requirements, social distancing protocols, etc. and identification of the most effective means to ensure that information is provided.



Subgroup A

Update to Report of Subgroup A June, 2021

Co-Leads: Chief State Court Judge Linda Cowen & Clerk Wills

Members: Dr. Olatanwa Adewale, DA Tasha Mosely, Clerk Tiki Brown, Attorney Brandon Lewis, Attorney Kim Gross, Attorney Charles Reed

Tasks: Identification of facilities for jury assembly, voir dire, and jury trials, including the identification of rooms within the courthouse that are suitable for these functions and alternative locations where necessary.

Subgroup A met by email to review our previous plan, given an updated walk through with Public Health and the plan for resuming grand jury. The following are our updated recommendations:

Jury assembly shall be in the jury holding room on the first floor. Jurors should report to this room upon arrival. The Jury Holding Room can hold 60 people at socially distanced spacing. Superior Court jurors will be summoned for Mondays, and State Court jurors shall be summoned for Tuesdays.

Voir dire (questioning by the parties of potential jurors for a case) may be in Courtroom 401 for 12 person juries, which holds 25 people in the gallery and jury box at socially distanced seats. Voir dire for 12 person juries may, in the alternative, be held in each judge's regular courtroom, but in groups of 15 panel members at one time, as the typical courtrooms hold 15 people in the gallery and the jury box (panel numbers may be less, depending on the courtroom, as we have determined that configuration is slightly different in some courtrooms). Voir dire for 6 person juries shall be held in each judge's regular courtroom, with no more than 15 panel members (or the number that a particular courtroom can accommodate with social distance seating), brought to the courtroom at one time. Note that the capacity and required seating placement as approved by our local public health officials have been marked off in each courtroom.

Jury trials shall be in Courtroom 401 for 12 person juries, with the jurors seated in the gallery and jury box. Jury trials for six person juries may be held in each judge's regular courtroom, with the jurors seated in the gallery area and jury box of the courtroom. The courtroom will be re-arranged so that attorneys and litigants can face both the jury and the witness box as needed, if possible, given space and social distancing requirements. Members of the public may be seated in social distancing spaces in the rear of the courtroom, or in a public viewing space.

Deliberations (the trial jurors' private discussion about the case to reach a verdict) shall be in the courtroom, with all other persons excluded, and cameras and sound projected outside of the courtroom turned off.

Alternate locations: The Committee discussed and considered alternate locations, should this become necessary. O.C.G.A. Sec. 15-6-18 provides how and when alternate locations may be designated for court. Courtrooms and/or large rooms, such as the conference room, in the Juvenile Court Annex or Probate Court Annex may be appropriate, if needed. The ceremonial courtroom in the "old courthouse" at 121 S. McDonough St., Jonesboro, may be appropriate, if needed. Also, alternate locations such as conference facilities may be necessary and will be explored if needed.

If all alternate physical spaces are unavailable, the Committee recommends exploring virtual jury trials. However, that process and potential expense is a last resort option.

Number of jury trials scheduled: Initially, no more than one Judge in Superior Court and one Judge in State Court each week shall conduct jury trials. With the advice and approval of DPH, no earlier than October, 2021, jury trials *may* expand to one additional courtroom in Superior Court each week and one additional courtroom in State Court each week. A schedule has been created for the implementation of this plan. *Jury trials shall not be scheduled by any Judge for more than one courtroom (or two courtrooms) in each level of court contrary to this Plan for Resuming Jury Trials.* Probate Court has a need to schedule at least one 12 person jury trial, and will work with the Chief Judge of the Superior Court to schedule same.

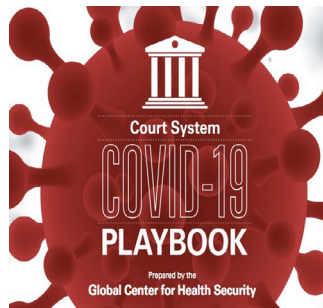


Subgroup B

Tasks: Development of written public health and safety guidelines consistent with public health guidance, including sanitization procedures, face-covering requirements, social distancing protocols, notification procedure for alerting stakeholders when courthouse personnel or visitors to the courthouse have tested positive for COVID-19, etc.

“In a pandemic setting, the health of each defendant, litigant, juror, and observers is critical to the health of the community and to maintaining faith and trust in the judiciary. Moreover, the health of judges, attorneys and court personnel is crucial to the continued operation of that system. Preventing the spread of the outbreak means addressing the health needs of these personnel. To be sure, this should not be left for the legal community to shoulder alone, but rather it should be a combined effort involving national and local public health working alongside the courts. These efforts should be made an urgent public health priority because infection among individuals in legal proceedings could also lead to community infection, eventually affecting further spread in the entire populations health”.

Source: Global Center for Health Security; Court System COVID-19 Playbook (2020).



Public Health and Safety Guidelines for the Harold R. Banke Justice Center

Temperature Screening (Public and Employee Entrances)

- Masks are required to enter the Harold R. Banke Justice Center (JC). Masks will be provided to citizens that do not have a mask on their person. Masks or other face coverings must be worn in the JC at all times except when directed by the court for case-specific reasons or by security personnel.
- All persons entering the Justice Center (JC) will be screened for temperature reading. Consistent with the Center for Disease Control (CDC) and the Clayton County Department of Public Health, persons with temperatures above 100.4 will not be permitted to enter/remain in the JC. A bailiff will immediately direct those persons to the nearest exit.
- A Denial of Entry Form is required to be completed by individuals with temperature readings above 100.4 and collected. Gloves are provided to bailiffs to administer the form and will be discarded after each use. Additionally, the writing utensil used by the individual will be required to be wiped down after each use with a disinfectant wipe or spray.
- Alerts of high temperatures are sent via email to the JC's designee(s) with the date time, entrance and photo of the individual for tracking and contact tracing purposes.

Social Distancing at the Public and Employee Entrances

- Floor markers displaying “6 Feet Apart/Social Distance must remain at the public and employee entrances leading up to the doors and up to the temperature scanning point. Tape will be used as markers for social distancing where necessary on the outside of the building leading up to the entryway.



Social Distancing on JC Elevators

- The Clayton County Court Administration and the Department of Public Health (DPH) took proactive measures to ensure social distancing protocols in public areas of JC. The first assessment took place May 27, 2020 and a second assessment was conducted October 7, 2020.
- The occupancy limit for the public elevators is 3 (three) persons. The occupancy limit will be posted next to the elevator doors. Social distancing signs shall be placed on the floors of the elevators to encourage social distancing.

Public Restrooms & Water Fountains

- Per the DPH’s assessment of the JC, the public restrooms will not be restricted to users given the minimal number of stalls.
- All public water fountains will remain non-functional (no water source) through the pandemic and will not be operational until the science, CDC and the DPH advises otherwise.

Hand Sanitizer Dispensers

- Hand sanitizer will be made available at the public, employee, and private entrances at the JC. Court Administration will frequent these areas to ensure the sanitizer is filled at all times.
- Hand sanitizer will be available to the public in a visible location upon exiting the security screening area.
- Hand sanitizer dispensers will be strategically placed throughout the JC. Per the DPH, the following areas are of high importance for placement:
 1. Next to every vending machine.
 2. Next to the ATM machine.
 3. In the vestibule of each courtroom.
 4. Near every public restroom.
 5. In the jury assembly room (2-3).

Courtrooms

- All courtrooms will remain “marked” for social distancing. Occupants will only be permitted to sit where the designated signs are placed. The social distancing signage was placed on the recommendation of the DPH.
- Plexiglass will remain in the courtrooms. Additional plexiglass will be installed for the courtroom personnel at the workstation.
- All courtrooms will be provided an adequate supply of disinfecting products for surfaces frequently touched and used. Courtrooms will be thoroughly sanitized throughout the day proportionately with the resuming of jury trials. All microphones used will be wiped or sprayed with a disinfectant after each use.
- Jurors will be provided face shields at the request of the judge to be reused by the individual it is assigned to throughout a jury trial.
- The sheriff and his/her designee shall ensure that no inmate is brought to any courtroom who: (1) is positive for COVID-19; (2) has a fever above 100.4; (3) should be in isolation or quarantine based on the guidelines as established by the CDC or local public health officials; or (4) is otherwise suffering from any contagious illness.

Positive COVID-19 Test Protocol

“Symptoms of COVID-19 Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness ranging from mild to severe and, in some cases, can be fatal. Symptoms typically include fever, cough, and shortness of breath. Some people

infected with the virus have reported experiencing other non-respiratory symptoms. Other people, referred to as asymptomatic cases, have experienced no symptoms at all. According to the CDC, symptoms of COVID-19 may appear as few as 2 days or as long as 14 days after exposure”.

Source: Occupational Safety and Health Administration; Guidance on Preparing Workplaces for COVID-19.

- All employees are required to complete the *Employee Return to Work Tool Form* prior to returning to work. See the attached form from the Clayton County Office of Emergency

Management (EMA). Additional, per Chief Judge Carter, all court employees must also complete the *Mandatory Clayton Judicial Circuit Employee Onboarding Form*. See attached.

- Employees with a positive COVID-19 test shall contact his/her direct supervisor immediately and must isolate per the CDC and the DPH. The employee will be required to share with his/her supervisor their last presence in the JC, where they went in the JC and any employees they came into close contact with. Employees shall not return to the JC until after the mandatory isolation and a negative COVID-19 test.
- The supervisor is required to communicate the employee's positive COVID-19 test to Chief Landry Merkison, Clayton County EMA and Dr. Olatanwa Adewale, Epidemiologist, Clayton County Department of Public Health.

COVID-19 Vaccine for Jurors & Inmates

- The jury clerk and the district attorney or her/his designees shall ensure that jurors know they can submit their name, telephone number and email address to the jury clerk or district attorney if they want the vaccine. The information will be forwarded to the local Public Health Department (PHD) for them to schedule an appointment. This is completely voluntary but we wanted to assist any citizen that has been unable to secure a vaccination appointment.
- The sheriff or his/her designee or anyone functioning in the capacity as sheriff shall ensure that an inmate who desires to be vaccinated is afforded the opportunity to do so. The sheriff or his/her designee or anyone functioning in the capacity as sheriff shall arrange such vaccinations with county emergency management or the local PHD.



Subgroup C

Tasks: Protection of constitutional and statutory rights for litigants, witnesses, victims, and observers

- I. **Introduction** – Resuming jury trials in the Clayton Judicial Circuit amidst the COVID-19 pandemic presents a challenging set of circumstances. Although we must adhere to certain medical guidelines, we also must protect the constitutional and statutory rights of our litigants, victims, witnesses, and observers. The foregoing will provide suggestions of how to ensure these protections while conducting jury trials in a post-COVID-19 society. In compiling this report, we have heavily relied upon and adopted the Guidance for Resuming Jury Trials by the Criminal and Civil Law Subcommittees of the Judicial COVID-19 Task Force.

- II. **Litigants**

- A. Litigants are people who are involved in legal disputes. They include criminal defendants, prosecutors, and civil plaintiffs and defendants. We have concluded that ensuring the rights of criminal defendants are protected will safeguard the rights of civil litigants as well.

- B. **Constitutional/Statutory Rights**

Criminal defendants have the following rights that we must ensure are protected:

1. Right to Confront Witnesses (Sixth Amendment by U.S. Constitution and Ga. Constitution)
2. Right to Public Trial (Sixth Amendment)
3. Right to Jury Trial (Sixth Amendment)
4. Right to Speedy Trial (Sixth Amendment by U.S. Constitution and Ga. Constitution) (Georgia has statutory right to speedy trial as well).
5. Right to be Represented by Counsel (Sixth Amendment)
6. Right to Adequate Representation (Sixth Amendment)
7. Right to Due Process (5th amendment/ 14th amendment U.S. Const.; Ga. Const. Section 1, Para. 1)
8. Right to be present at all critical phases of the prosecution (Sixth Amendment)
9. Georgia's statutory rule of sequestration at OCGA 24-6-615
10. Georgia's statutory rule of individual questioning of juries in panels of no more than twelve jurors (O.C.G.A. § 15-12-131)
11. Right to see each juror called during voir dire (O.C.G.A. § 15-12-163(a)).

- C. **Areas of Jury Trial Process Involving Litigants & How to Protect Rights of Litigants**

1. **Civil Litigants** – Generally, civil parties to litigation have a due process right to be present at all stages of the trial. Although not absolute, we recommend providing the same protections that we provide to criminal litigants for purposes of judicial economy, consistency, and to avoid confusion.

2. In-Person Trials for Criminal Litigants - We suggest that to protect the constitutional and statutory rights of criminal litigants, jury trials should be held in-person in the Clayton Judicial Circuit with all litigants, attorneys, jurors, and the judge present in the same courtroom while practicing social distancing. We have concerns regarding the protection and safety of trial participants with livestreaming jury trials over the internet as the method to comply with the open courtroom requirement, especially in high profile cases. We feel that we can protect the rights of litigants and protect the dignity of jury trials by live streaming to another courtroom where matters may be viewed by the public.

3. Public Courtroom for Viewing - Upon identifying large appropriate areas within or surrounding the Harold R. Banke Justice Center to accommodate litigants, attorneys, jurors and the judge, we suggest using closed circuit monitors to broadcast jury trials to another courtroom where trial proceedings are made open to the public.

4. Pre-Trial Motions – For motions prior to jury trials, we suggest having these hearings with social distancing and use of face masks in compliance with CDC/GA Dept. of Health recommendations livestreamed to the public viewing courtroom.

However, in State Court, all proceedings other than trials may be conducted in chambers and in the absence of the clerk or other court officials. Therefore, pre-trial motions may be heard in open court or in chambers. Although we do not suggest using a judge's chambers during a pandemic, we recognize that pre-trial motions and similar hearings may be conducted virtually without broadcast for public viewing in State Court. To protect a criminal defendant's due process rights, an express waiver of rights should be obtained from that party before proceeding with a virtual criminal motion hearing not being made public.

5. Jurors Who Refuse to Appear – We should expect more jurors who fail to show up for jury service during the pandemic. Any jurors who refuse to appear and request deferral may be subject to being held in contempt by the Chief Judge of the circuit.

6. Attorney Communications with Client During Trial - We recommend in criminal trials that attorneys are provided confidential and safe access to any detained client to discuss trial proceedings starting at least 30 days before trial to ensure that trials will remain on schedule. During criminal and civil cases, we must ensure the opportunity for the attorney and client to communicate confidentially at all times during the trial proceedings. If technology permits, courts should provide headphones and microphones for attorneys and clients to communicate with each other quietly and confidentially. Handwritten notes may be shared between the attorney and client, which can then be destroyed by the attorney when the attorney leaves the courtroom. Another option to ensure litigants' ability to communicate with counsel is to allow the use of electronic devices, such as tablets or computers, for sending messages to one another. We should also allow access to clean conference rooms for litigants and

attorneys to meet at a safe distance. Finally, we suggest the use of white noise machines to mask communications between attorneys and litigants while inside of the courtroom. If an interpreter is utilized, he or she would need to be included in these confidential communications.

If the litigant's trial team consists of multiple attorneys, the presiding judge, chief judge, security officer and court I.T. coordinator should collaborate and devise a plan on how to safely accommodate the litigant and his/her attorneys no later than 14 days prior to the start of the trial.

7. In-Person Voir Dire - Impaneling jurors can be accomplished by mandating all jurors remain 6ft apart and wear face masks. Wearing face shields, in addition to the clear masks, is encouraged, if possible. The faces of jurors must be distinctly seen by the criminal defendant so we suggest the use of clear face masks. Judges and litigants should consider excusal of jurors who express discomfort with wearing face shields without masks if no clear masks are provided.

Attorneys should use separate podiums, if possible, or clean podiums and microphones after each use. Jurors should have use of a long boom microphone that will be placed near their position while answering questions. Unless waived by the litigant, individual questioning of the jurors should be handled in panels of 12 – allowing groups of 12 jurors to leave the courtroom and report back at specific times for their panel to be questioned. Challenges for cause should be handled after each group is questioned and those jurors being excused for cause should be promptly excused from the courtroom. Jurors should have point of contact in the event of possible exposure or experience of COVID-19 symptoms during voir dire and throughout the trial. Although our **Citizens Review Panel suggested use of full transparent masks for use by jurors**, Court administration has already secured clear masks with padding for the nose and chin that will allow the jurors' faces to be seen.

8. Remote Voir Dire - We would NOT recommend remote voir dire in criminal cases without express consent signed by the defendant and reviewed on the record by the Court with the defendant. In civil cases, remote voir dire may be conducted by the court since civil litigants do not have a right to in-person jury selection.

9. Seating the Jury and Conducting the Trial – We suggest placing the jury in the courtroom gallery with 6 feet marked spaces for social distancing. Jurors should wear clear face masks. Use a vacant courtroom as a jury room where juror's personal items may be stored and secured. We suggest having ample supply of writing instruments and notepads that may be kept separately from other jurors' items (i.e. clear storage totes for each juror that can be cleaned and sanitized after each use). The writing instruments and notepads may be disposed after the trial. Allow jurors to keep small personal items/food/beverages in the storage totes, if needed. Ensure any rooms used by the jury do not contain live security cameras, recording devices, or microphones.

10. Presentation of Evidence - We recommend that parties and the Court use pretrial conferences to organize and discuss anticipated admissibility of physical exhibits. Documents should be displayed on the ELMO system equipped in each courtroom and displayed on the large monitor. Since the jurors will likely be positioned in the gallery of the courtroom, we suggest bringing in more monitors that can be brought closer to the jury's position or for each juror to be provided a tablet device on which to view the evidence even closer. If a juror needs to touch physical evidence, then he or she should use plastic gloves to be immediately discarded and/or use hand sanitizer after handling the evidence. In civil cases, witnesses may testify via videoconferencing with live viewing for the jury in the courtroom. Any witness testimony that is not in-person during criminal trials should be expressly consented to by the defendant in writing and reviewed on the record by the court. During deliberations, if feasible, jurors should be given their own individual copies of documentary evidence and use gloves and hand sanitizer for handling physical evidence that must be touched.

11. Sidebars - Sidebars at the judge's bench are not safe unless the parties remain socially distant. Criminal defendants must be able to hear and see the sidebars as well. Therefore, we suggest removing the jurors from the courtroom for the purpose of sidebars unless the criminal defendant waives his/her right to participate in the sidebar or unless the parties agree to another method to accomplish a sidebar with the Court's approval.

12. Use of Masks – We suggest that all persons must wear a mask and exercise social distancing in the trial courtrooms and the public viewing courtrooms. Litigants, victims, and witnesses must wear clear masks and face shields are encouraged to accompany use of clear masks. Attorneys must wear a mask, clear or opaque, without any designs, statements, or messages. All other courtroom personnel must wear masks but they do not need to be clear. Masks must not contain any designs, statements, or messages. Face shields will be provided to courtroom personnel and they will be encouraged to wear them as well.

III. Victims

- A. **As defined by the Georgia Constitution**, *“a victim shall be considered an individual against whom a crime has allegedly been perpetrated, including crimes alleged as delinquent acts. Such victims shall be accorded the utmost dignity and respect and shall be treated fairly by the criminal justice system of this state and all agencies and departments that serve such system. When the crime is one against or involving the person of the victim or is a felony property crime, such victim shall be afforded the following specific rights:*
1. The right upon request to reasonable, accurate, and timely notice of any scheduled court proceedings involving the alleged act or charges to the scheduling of such proceedings;

2. The right upon request to reasonable, accurate, and timely notice of the arrest, release, or escape of the accused;
3. The right not to be excluded from any scheduled court proceedings involving the alleged act;
4. The right upon request to be heard at any scheduled court proceedings involving the release, plea or sentencing of the accused; and
5. The right to be informed of his or her rights.” **Ga. Const. Art. I, Sec. I, Para. XXX (a)(1-5).**

B. Statutory Rights of Victims

1. Georgia law also provides for the right to be informed of all rights included within the Georgia Crime Victims Bill of Rights set out at O.C.G.A. § 17-17-1, *et. seq.*
2. Georgia law also provides that victims have the right to be present in the courtroom as set out at O.C.G.A. § 24-6-616.

C. Areas of Jury Trial Involving Victims and How to Protect Victims’ Rights

1. Prior to Testimony – Victims must adhere to all other COVID-19 requirements prior to testifying and would be subject to those requirements prior to entering the courthouse. Prosecutors must ensure that victims are not exhibiting COVID-19 symptoms and have not had exposure to anyone with COVID-19. Prosecutors should be responsible for providing victims with a space to await testimony in a socially distant manner. If technology permits, any livestreaming should be made available in an area in the prosecutor’s office for the victim to observe all parts of the trial in compliance with victims’ constitutional and statutory rights.

2. During Testimony – We have concerns regarding the protection and safety of victims while providing testimony. We suggest that victims, as other witnesses and defendants, must wear a clear mask (a face shield is also encouraged) while testifying to preserve the rights of criminal defendants. Victims should be mandated to testify behind plexi-glass at the witness stand that would be at least 6 feet from any other person. During the trial, the criminal defendant should be required to wear a clear face mask to make identification possible.

*Since our recommendation did not involve the use of livestreaming via the internet, other considerations regarding victim’s privacy were not discussed. If any judge within our circuit chose to livestream a jury trial over the internet, then special considerations under Rule 22 and O.C.G.A. 15-1-10.1 need to be taken to protect the victim’s identity, to protect the identity of any minor witnesses, and/or to address possible objections from other trial participants. **However, we strongly recommend against livestreaming trials over the internet as it may endanger trial participants and would not adequately protect the rights of those participants.***

3. After Testimony – Unless requested otherwise by the state or unless subject to sequestration, all victims should be permitted in the courtroom where the trial is taking place. If a victim waives his or her right to be in the courtroom where the trial is occurring, then the victim should have a reserved space in the public viewing courtroom. If technology permits, prosecutors may continue to make available locations within their purview where the trial may be livestreamed for victims to watch. This idea may also be preferred in cases where the criminal defendant's supporters are heavily present in the public viewing courtroom.

IV. Witnesses

A. Witnesses will consist of those individuals subpoenaed to testify and/or to provide evidence at a trial. They will include lay people (adults and/or children), law enforcement officers, or expert witnesses. Generally, witnesses are subject to the court's subpoena power and must be compensated for their time. See O.C.G.A. § 24-13-21, *et seq.* Employers also may not take negative action against any employee who has been properly subpoenaed as a witness. See O.C.G.A. § 34-1-3. Witnesses have the right to be free from unlawful influence that alters, delays or prevents testimony. See O.C.G.A. § 16-10-93.

B. Areas of Jury Trial Involving Witnesses and How to Protect Witnesses' Rights

1. Before Testimony – We acknowledge that in some cases it will be more difficult with the threat of COVID-19 to obtain cooperation of witnesses. Upon witnesses attending trial, they should be required to adhere to all other COVID-19 requirements prior to testifying and would be subject to those requirements prior to entering the courthouse. The party who subpoenaed the witness must ensure that witnesses are not exhibiting COVID-19 symptoms and have not had exposure to anyone with COVID-19.

2. During Testimony – Witnesses must wear masks while in the courthouse including the courtroom. We suggest that witnesses, as victims and defendants, must wear a clear mask (a face shield is also encouraged) while testifying to preserve the rights of criminal defendants. Witnesses should be mandated to testify behind plexi-glass at the witness stand that would be at least 6 feet from any other person. During the trial, the criminal defendant should be required to wear a clear face mask to make identification possible.

Another reason we encourage live streaming to another courtroom instead of broadcasting over the internet is that we are concerned with compliance of the rule of sequestration, especially in situations where trials may be broadcast over the internet. It would be much easier to prevent violations of the rule of sequestration if proceedings were not broadcast over the internet.

3. After Testimony – We are not concerned with the protection of rights for witnesses following a jury trial with regard to COVID-19.

V. Observers

“Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia’s courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. This must be done, however, while protecting the legal rights of the participants in the proceedings and ensuring appropriate security and decorum.” Ga. Unif. Super. Ct. R. 22(A). Observers include members of the general public, members of the press, or family members/friends of parties.

A. Constitutional/Statutory Rights

1. All defendants are entitled to public trial by jury. U.S. Constitution, Am. VI and Ga. Const. Art.I, § I, Para. XI
2. In establishing these guidelines, we must be careful not to curtail or restrain the freedom of the press. U.S. Constitution, Amend. 1; Ga. Const. Art. I, § I, Para.V
3. In *Richmond Newspapers* and its progeny, the Supreme Court used a two-part test to determine when the right of access should be granted for a particular proceeding. If a proceeding qualifies under these tests, a First Amendment right of public access attaches. That right is not, however, absolute. It is only a presumption of access. The presumption may be overcome by a showing that closing the proceeding preserves a higher interest and that the closure is narrowly tailored to serve that interest.
4. OCGA 15-7-42(b) – [In misdemeanor cases], All trials on the merits shall be conducted in open court and, so far as convenient, in a regular courtroom
5. OCGA 15-7-42(c) – All other proceedings, hearings and acts may be done or conducted in chambers and in absence of the clerk or other court officials; judge may hear motions and enter interlocutory orders, in all cases pending in the court over which he or she presides, in open court or in chambers
6. Ga Unif Super Ct. R. 22(A) – Describes overview of open courtrooms; may prevent confiscation of public’s phones in Georgia courtrooms
7. OCGA 15-1-10.1 – Sets out factors to consider for request of televising, videotaping, filming judicial proceedings

B. Areas of Jury Trial Process Involving Observers & How to Protect Rights of Observers

1. **Public Viewing** - We believe that public viewing courtroom seating should be prioritized in the following order: 1) victims and their immediate family members, 2) family members of parties, and 3) members of the general public and media. Therefore, if we utilize a public viewing courtroom, with social distancing in mind, there would be limited space for victims, families of victims and parties, the general public and the media.
2. **Livestreaming** - We believe that as long as no equipment actually records footage and preserves it, Rule 22’s requirement for the court to weigh factors contained therein, including objections from parties, witnesses or victims, is not applicable. Nevertheless, we recommend implementing Rule 22’s policy of placing equipment in a way that preserves dignity of the courtroom. Another reason for livestreaming to

another courtroom instead of broadcasting over the internet is to maintain control. We will retain more control over courtroom footage live-streamed internally and more control to prevent any unauthorized recording of footage.

3. **Electronic Devices** – We suggest having all persons entering the public viewing courtroom be ordered to turn off their electronic devices, including any possible recording devices, unless they have sought permission under Rule 22. More courtroom deputies and bailiffs should be posted within the public viewing courtroom to assist with the prevention of unauthorized use of electronic devices, including smartphones, smartwatches, and all devices capable of being used for recording.

Citizens Review Panel assisted in reminding us that smartwatches are capable of recording and should be included in the device list as well.

4. **Safety Measures** – We suggest the same social distancing measurement tools in the public viewing courtroom as utilized in the courtrooms where jury trials are being held. Plexi-glass barriers and social distancing signs should be used in the gallery of the public viewing courtroom as well.
5. **Closing the Courtroom** - Depending upon the circumstances, proceedings might be closed to protect a defendant's right to a fair trial by an impartial jury or to protect privacy interests of witnesses, jurors, or victims. Before closing a proceeding, a trial court must exhaust all reasonable alternatives to the closure and make specific findings detailing the need for it.



Subgroup D

Tasks: Notification to potential jurors, the public, and parties of public health precautions being taken by the court, including information on sanitization procedures, face-covering requirements, social distancing protocols, etc. and identification of the most effective means to ensure that information is provided.

To summarize: our subcommittee determined that potential jurors, the public and parties should have as much information as reasonably possible to feel safe and comfortable while in the Courthouse. In order to resume jury trials in a safe and orderly fashion during the pandemic, the jurors, the public and the parties must be advised of:

- 1) Courthouse's procedure and guidelines,
- 2) CDC guidelines, and
- 3) General health concerns.

We have determined that the appropriate methods to disseminate this information are:

- 1) Designated COVID-19 Court webpage/social media/ news media;
- 2) Brochures prepared by the Clerk of Superior Court; and
- 3) Signage/markings throughout the courthouse.



WHO NEEDS NOTIFICATION?

- I. Potential Jurors – all persons for jury duty to appear for service provided they are 18 years of age or older, a citizen of the United States, and a resident of Clayton County.
- II. Parties – civil plaintiffs, civil defendants, criminal defendants, the State of Georgia, and attorneys who provide legal representation; bar associations
- III. Public – Members of the community, members of the media, trial participants, such as victims and witnesses.



WHAT INFORMATION SHOULD WE PROVIDE?

- I. TO POTENTIAL JURORS
 - a. COVID-19 LETTER with Jury Summons - signed by all judges expressing appreciation for their service during a pandemic
 - b. Summary of Court's COVID-19 Guidelines – [Clerk's brochure containing webpage address and contact number]
 - c. COVID-19 Questionnaire to Answer Online
 - d. Information on Jury Selection/Impaneling Process
 - e. Hand sanitizer stations/Restroom/Water Fountain Use
- II. TO EVERYONE
 - a. Court's COVID-19 Guidelines
 - b. Face Mask/Social Distancing Guidelines
 - c. HVAC Modification information
 - d. Sanitation/Cleaning Routines
 - e. CDC Policy/Guidelines/Temperature Scanning Policy
 - f. COVID-19 Judicial Orders/Personnel Policies

HOW SHOULD WE PROVIDE THIS INFORMATION?

A. Website Information

1. Welcome

- Greeting to jurors to acknowledge their importance to the justice system and inform them of the precautions being taken to ensure their safety and the safety of all persons entering the courthouse during the COVID-19 pandemic

2. Before Arrival to the Courthouse

- Explain about the summons being mailed with information to complete online regarding COVID-19 questions; possible deferment due to high risk; provide contact information for questions/assistance; bring food/beverage/personal items/writing instruments; Clerk should review and provide summary of the process when juror receives the summons

3. What to Expect When They Arrive to the Courthouse

- Explain that jurors should proceed to the front entrance for security; wear face mask or face covering; be prepared to sanitize their hands and be placed in a line, remaining 6 feet apart and prepare to have their temperature scanned upon entering the building. They should expect to see signage outside on the ground, if possible; and a bailiff/deputy enforcing social distancing.

4. What to Expect After Leaving Security

- That jurors will be directed to check-in at jury assembly room where they continue to remain 6 feet apart and wear their face coverings; what they will need to check-in

5. What to Expect In Jury Assembly Room

- Explain that room will be marked off for social distancing and to sit only where permissible; explain they will be greeted, sworn-in, and provided further instructions; explain that area will be cleaned and sanitized

6. What to Expect When You Reach a Courtroom

- Explain how many people will be able to use elevator at once; how they will be required and reminded to remain 6 feet apart and continue to safely wear face covering; inside the courtroom they will be seated 6 feet apart as in the jury assembly room; explain whether they may be required to remove face covering for answering questions or required to wear clear face shields and/or clear face masks for answering questions; explain about courtroom sanitization and cleaning routines; explain type of masks /PPE that will be issued to jurors

7. What to Expect If Selected As A Juror

- Explain that they will not be asked to sit close to another juror; explain what safety protocols will be in effect during jury service (information from Group C) about social distancing from each other and all other trial participants and about how the presentation of evidence will be made; explain that while outside of the courtroom, they will be given a place to safely secure their items for the next day of service (perhaps storage totes in a cube organizer); explain that they will be required to complete online COVID-19 assessment each day before returning to the courthouse; explain that courtroom and jury room shall be cleaned and sanitized each day

8. What to Expect If Not Selected As A Juror

- More than likely, the jurors not selected will be excused for the week but we should avoid self-sabotaging jurors by indicating that Court will determine whether you will be needed for further Service

9. What to Expect If You Ignore Jury Summons

- Explain that the jurors will face contempt if they ignore their Jury Summons.

10. Useful Links

- **Local Resources**

- Clayton County's Coronavirus Education Page
- Clayton County Superior Court Chief Judge Geronda V. Carter's Original Declaration of Judicial Emergency, March 16 – April 13, 2020 and all subsequent orders
- Clayton County's Mask Resolution
- Clayton County Board of Health

- **State Resources**

- Supreme Court of Georgia Chief Justice Harold D. Melton's Orders
- Statewide Judicial Taskforce Recommendations

- **Federal Resources**

- Main CDC Page for COVID-19
- Use of Masks, CDC
- COVID-19 Testing

B. Brochure With Jury Summons from the Superior Court Clerk's Office

C. Signage/Markings Throughout the Courthouse

- a. Mask signs
- b. Social distancing markers
- c. Elevator capacity signs



Subgroup E Citizens Review Panel

SUBGROUP E: Citizens' Review Panel

Tasks: Review the final committee reports and provide comments thereto for consideration by the Chief Judges of each court that conducts jury trials prior to the determination whether to fully adopt or amend any portion of the committee's recommended plan; Upon request of any other Group Lead(s), members of this Group may attend virtual meetings scheduled by the Group making the request.

Those who agreed to participate on the Citizens Review Panel were Joel I. Johnson, Veronica Chang, Rosalyn Gaston Elder, Monique Gee and Brandy Austin. Members of the committee met November 23rd, November 30th and December 3rd, 2020. After a detailed review of the Subgroups A, B, C, and D tailored plans to resume jury trials to "ensure the health, safety and constitutional protections of all participants in the judicial system, including jurors and potential jurors, litigants, witnesses, lawyers, judges, court personnel, and the public, after considering and inspecting the local court facilities and infrastructure." The following recommendations "highlighted in red" have been prepared by the Citizens' Review Panel for your consideration:

Subgroup A:

Regarding Jury assembly in the (holding room on the first floor) **there should be an established number of occupants based on the six feet distancing criterion. This information will be pertinent in assisting the Clerks or Bailiffs prior to ensure consistency in process and formality of positioning people to the overflow holding room in Courtroom 205.**

Subgroup B:

Regarding temperature screening in cases of denial due to persons with temperatures above 100.4 – **there should be a sanitation process when completing the form. Plastic gloves should be provided when completing paperwork and be discarded afterwards. Also, a court issued device should be designated for photographing individuals for tracking and contact tracing purposes.**

Courtrooms – there should be a more comprehensive and detailed process regarding the usage and sanitation for microphones. Also, a fogging sanitation machine should be utilized throughout the facility daily.

Subgroup C:

To ensure the constitutional/statutory rights for **all litigants, fully transparent masks should be provided to all jurors.**



Presentation of Evidence – Utilization of Elmo Document Cameras to transmit video to another room (closed-circuit) for greater visibility.

Areas of Jury Trail Process Involving Observers & How to Protect Rights of Observers- We suggest having all persons entering the public viewing courtroom be ordered to turn off their mobile devices, including **smart watches** and any possible recording devices, unless they have sought permission under Rule 22.

Subgroup D:

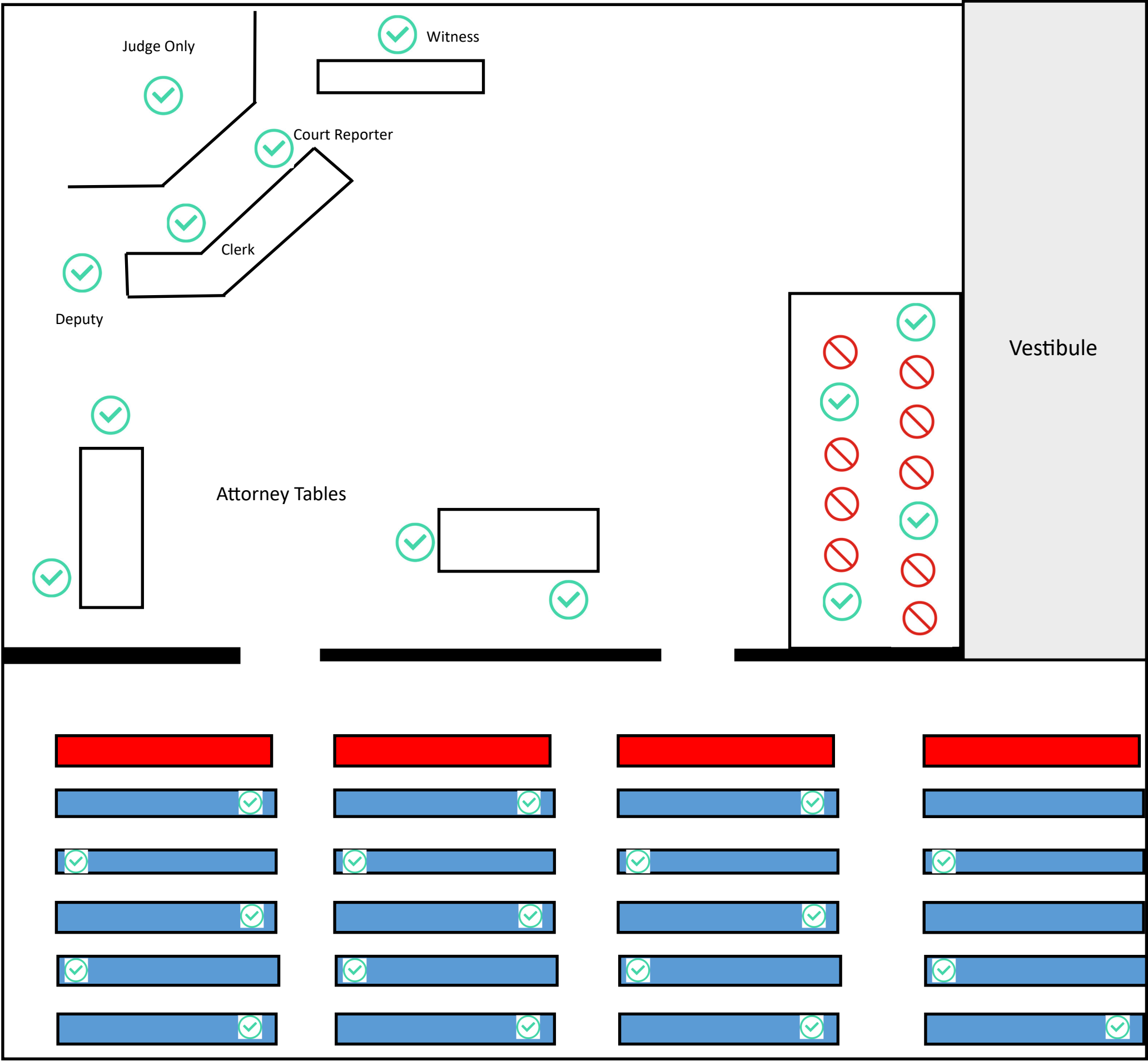
What to Expect When They Arrive to the Courthouse- Explain that jurors should proceed to the front entrance for security; wearing a face mask or face covering; **be prepared to sanitize their hands**, and placed in a line, remaining 6 feet apart.

Implementation of the Plan:

In addition, the committee was asked to respond to whether now is a good time to implement the plan to resume jury trials and if not, when should it be executed. The committee agreed that for the health and safety of our beloved community now is not the best time to resume jury trials because there is still an increase in people being affected by COVID-19. The coronavirus is quickly becoming one of the leading causes of death in the United States. At the time of the drafting of this report, December 3, 2020 was the deadliest day of the pandemic in the U.S., with 2,897 deaths, [according to Johns Hopkins data](#).

In regards to when jury trials should resume, it is recommended that after the vaccinations are available to the public and there is evidence-based data that demonstrate a downward trend for the spreading of the virus, then jury trials can begin. The timeline could be as soon as March 2021.

We also recommend in the interim that the Clayton Judicial Circuit prepare all staff of the (JC) by conducting Mock trial(s).



Courtroom 205

Images not to scale

