

OPERATING PLAN, PROCEDURES AND PRACTICES FOR THE RESUMPTION OF IN-PERSON PROCEEDINGS AND JURY TRIALS IN OUTAGAMIE COUNTY CIRCUIT COURT

Effective Date: July 6, 2020 (In-Person Hearings) and July 10, 2020 (Jury Trials)

Operational Plan Committee Members:

Joseph Guidote, Outagamie County Corporation Counsel
Mary Dorn, Outagamie County Public Health
Carrie LaPlant, State Public Defender
Melinda Tempelis, Outagamie County District Attorney
Paul Farrell, Facilities Director
Barb Bocik, Clerk of Court
Attorney Kevin Lonergan, Public Member
Attorney Kate Seifert, Outagamie County GAL
Lt. Terry Hammen, Sheriff's Department
Lt. Doug Verheyen, Sheriff's Department
Hon. Carrie Schneider, Presiding Judge

The above noted stakeholders comprise the Outagamie County Covid-19 Operational Plan Committee, a committee organized to discuss the best practices for the Outagamie County Circuit Courts to resume in-person hearings and jury trials in light of the Covid-19 pandemic.

The Committee has met weekly since May 26, 2020 after the Chief Justice's Wisconsin Courts Covid-19 Task Force Report was issued. Evaluations of the Outagamie County courtrooms for jury trials began in April 2020 which included members of the Operational Plan Committee. Those evaluations have continued since the final report was issued.

The Committee reviewed, considered and discussed the recommendations of the Wisconsin Statewide Courts COVID-19 Task Force, which included input and recommendations from Dr. Dennis Maki, Professor Emeritus of UW School of Medicine and Public Health, and Dr. Robert Golden, Dean of the UW School of Medicine and Public Health. It should be noted that Corporation Counsel Joseph Guidote was a member of this Task Force. All members of the Outagamie County judiciary, Judges and Commissioners, have reviewed the Task Force Report to ensure compliance.

The goal of the Committee is to develop reasonable practices to ensure the rights of all parties and the public who come before the Court, while recognizing the extraordinary public health concerns regarding a contagious virus commonly referred to as COVID-19. The Court must accommodate practices designed to attempt to avoid exposure and infection of litigants, attorneys, witnesses and court staff during any court hearing and interactions, including jury trials. These procedures and practices are developed with the intent to be proactive, recognizing that the Courts must provide all constitutional and statutory protections to the litigants and interested parties as well as the public's right to access. In so doing, we understand it is not possible to ensure absolute safety, but we can be expected to take reasonable and necessary steps to protect the health of all participants within the

physical limitations of our building and resource allocation available to the Court and County. One significant goal of the plan is to instill public confidence in the Outagamie County Court system and that the Circuit Courts and Outagamie County are providing for the safety of the public and those utilizing the court system. Furthermore, if necessary, these policies will be strictly enforced by the Circuit Court to the full extent of its authority to reduce risk and promote the safety of all those who access the court system.

The Committee will continue to meet regularly to review new information provided by local public health officials and the County Office of Risk Management. The Committee will conduct reviews after jury trials to make appropriate adjustments as needed. The Committee will also review the procedures for in-person hearings on an on-going basis. The Committee has developed this operational plan utilizing the most accurate information available at the time, however, recognizes that given circumstances, future adjustments and revisions may be necessary.

The Committee has reviewed the Task Force Report recommendations and discussed on-going best practices to limit the spread of Covid-19 for Outagamie County litigants, attorneys, staff and the general public. Outagamie County has taken numerous measures to ensure the safety of these parties which includes a present plan to have all but essential departments and employees working remotely until after Labor Day. In an effort to limit the spread of Covid-19 and after evaluation of current data trends, this operational plan will allow for resumption of in-person court hearings for the following hearings: Plea Hearings, Plea and Sentencing Hearings, Sentencing Hearings, Sentencing After Revocation Hearings, and contested Evidentiary Hearings starting July 6, 2020. This Committee recommends this limitation on the types of in-person hearings continue until August 14, 2020. This date and hearing types will continue to be subject to review and revision by the Committee. Each individual Outagamie County Branch can decide to continue to hold the aforementioned hearing types remotely via Pexip. The Committee also approves resumption of jury trials starting July 10, 2020. Further details for both in-person hearings and jury trials are provided below.

Face Coverings

Consistent with the requirements of the Wisconsin Supreme Court Order dated May 22, 2020, everyone is to wear a face covering in the courtroom when in-person hearings are being held. The Committee has agreed that it is appropriate to require those attending court hearings wear a face covering after clearing the security check point at the entrance to the Outagamie County Government Center. Appropriate signage will be posted at the entrance to the building to ensure notice and compliance. If a party indicates they can not wear a face covering for court hearings/attendance, the party will be provided contact information for the appropriate court. Noncompliance will be enforced by a Judge. SCR 62.02(1)(f) provides direction for those appearing in court related to appropriate attire and appearance in the courtroom, similar rules shall apply to any face coverings worn by a party in the courtroom.

Face coverings will be required for all participants, including Judges and Court Commissioners. Counsel for litigants should make their clients, witnesses, spectators and others who may attend court aware of the requirement that they should bring a face covering to appear in court. For individuals required to appear in court, orders to appear and court hearing notices will include notice of the face

covering requirement. In the event a Judge or Commissioner determines it is necessary for a witness to remove a face covering to testify to assist with a credibility determination, the witness shall either testify behind a Plexiglas barricade, and at minimum, while wearing a face shield.

During jury trials, face coverings will be provided for all jurors, court staff, litigants and witnesses. As discussed by the Committee there are a wide variety of face coverings available with different levels of protection. Surgical face coverings will be provided for the parties during jury trials.

In-Person Hearings – Scheduling

It should be a primary goal of each Judge and Commissioner to continue to use all reasonable efforts to conduct proceedings remotely. In order to limit the number of persons in the courtrooms and the courthouse, it is the recommendation of the Committee that every Judge and Commissioner use best efforts to continue to conduct all appropriate hearings remotely. By continuing to utilize remote access to hearings, the number of in-person appearances, and therefore the number of people in the courtrooms and in the courthouse, will be significantly reduced.

Outagamie County Judges and Commissioners have aggressively adopted video conference and audio appearances for hearings in the last several months utilizing the Pexip system. The use and incorporation of this technology has allowed the court to continue functioning at a high level of efficiency while providing access and equal justice under the law. It will be the policy under this operational plan to continue to use Pexip, phone and other means to allow people to gain access to the courts if personal appearances are not otherwise necessary, requested or needed. The Courts will, whenever possible, ask the parties and attorneys what their preferences are for personal or remote appearance. The Courts should obtain a waiver of personal appearance for parties for hearings held remotely.

It is recommended that in-person proceedings, as approved under this plan, only be scheduled as determined necessary by the Judge or Commissioner; taking into consideration constitutional and statutory requirements, the nature of the proceedings, requests of the attorneys and litigants, and the limits of the Government Center. Mass calendaring of in-person hearings at the same time before Judges and Commissioners should not occur until public health officials provide further direction that these types of hearings can safely be held. They should not occur until after Labor Day at the earliest. A modified Fast Track Hearing date will be developed. It is recommended that Courts use staggered scheduling of in-person proceedings and other appropriate methods to reduce the number of individuals in the courtroom and courthouse at one time. It is the recommendation under this plan that courts should schedule Pexip hearings, before and after, in-person hearings to limit the number of people in the courtroom at a particular time and to allow sufficient time for cleaning and disinfecting areas. No back to back in-person hearings should occur without a 15 minute break between hearings to allow for appropriate sanitation and cleaning. A direct request from the Outagamie County Sheriff under this plan is that hearings for inmates of the Outagamie County Jail be conducted remotely, if possible, to avoid cross-contamination. It is also a request from Sheriff Kriewaldt and a recommendation of this Committee that all hearings for inmates of other jails or prisons be scheduled remotely. There is significant impact to transport of parties on writs from other

institutions that includes possible cross contamination, an imposed quarantine period for the party and potential impact to the party's programming.

The needed equipment and supplies designated below have been procured. This Committee has been working diligently to secure the necessary equipment and supplies and will continue to use best efforts to secure the items necessary to satisfy the recommendations herein. To assist Public Health with any possible contact tracing requirements, all persons who appear in person for court hearings will be logged onto a form maintained by the Court.

Social Distancing within the Government Center

The Courts will make all reasonable efforts to comply with Federal, State and local recommendations and Orders regarding social distancing in group functions. All persons not from the same household who are permitted in the Courthouse will be required to maintain adequate physical/social distancing of at least six feet. Signage noting these requirements will be posted in appropriate locations to ensure notice and compliance. Seating in public areas and within the courtrooms will be marked and adjusted to achieve the appropriate social distancing. Signage will also be placed at the Government Center entrance to facilitate the best flow of parties from the entrance to the appropriate courtroom.

Courtroom tables and seating for counsel and litigants has been adjusted to comply with social distancing. However, Courtroom activities do not lend themselves to strict adherence to such principles when considering the need for attorney-client confidential discussions, adequate view and sight lines for conducting witness examination, rights of due process, victim rights and the publics' right to access. If additional parties wish to witness proceedings, they will be provided with instructions for the proceedings remotely utilizing the Pexip system. In addition to limiting seating to accommodate physical distancing and reducing the number of individuals in the courtroom and courthouse at a particular time, the Committee has recommended the limited scheduling policy as noted.

Courtroom Cleaning and Disinfection

Both automated hand sanitizer stations and other hand sanitizer supplies will be used throughout the courtrooms and offices, so as to provide for good hand hygiene of all who enter the Government Center. Signage about the use of these products will also be installed.

The Committee further recommends the courtrooms and public areas of the Clerk of Courts and Court Commissioners Office, be cleaned after use by the public, to include cleaning surfaces between hearings and after public use, surface cleaning of tables, chairs, benches, microphones and other equipment with disinfecting wipes or other disinfecting cleaners. The Committee recommends that those doing the cleaning be provided with gloves. It is also recommended the gallery area of each courtroom be sprayed with a disinfectant spray between morning and afternoon proceedings. Extra court bailiff staff will rotate between the courtrooms and commissioners' courtrooms to clean courtrooms after in-person hearings.

Outagamie County has evaluated the air handling and fresh air exchange system in the courthouse. Steps were taken to evaluate the capacity to improve fresh air capacity within the building. Air purification systems will be utilized in the courtrooms during jury selection, jury trials and jury deliberations.

County cleaning staff, trained on proper cleaning techniques and provided with appropriate personal protective equipment and cleaning supplies shown to be effective against coronavirus, will clean the common areas of the building and each courtroom at least every 24 hours.

Public Access

If restrictions and recommendations to avoid gatherings in excess of ten (10) people are in effect, it is a foregone conclusion that many Court proceedings will require more than ten (10) people in the courtroom at one time. The public still has a right to view open public court proceedings that are not otherwise closed or confidential according to law. All courtrooms have space limitations and the public does not have the right to enter the courtroom if the number of people in the courtroom exceeds safety limits, fire codes or other legal restrictions. Similar safety concerns regarding the number of people who can safely enter a courtroom during a contagious disease public health emergency also apply and it may be necessary to limit the number of people who can enter the courtroom to view proceedings. However, the Court will take steps necessary to allow the public to view courtroom proceedings via live video stream to another courtroom/large room or by Pexip video through an internet connection or by YouTube. Any public access by livestream shall be controlled by the Court and reasonable public access to hear and see will be allowed during all on-the-record proceedings. The public will have no right to participate verbally, as all audio access will be muted so as to avoid unintended interruptions.

Health Screening

Signage posted at the public entrance to the building will notify those entering the building that they are not to enter if they have any of the following, per the most current CDC guidelines:

- Fevers or chills
- Cough
- Shortness of breath or difficulty breathing
- Fatigue
- Muscle or body aches
- Headache
- New loss of taste or smell
- Sore throat
- Congestion or runny nose
- Nausea or vomiting
- Diarrhea

If an individual is not permitted access to the building due the symptoms noted above, the Judge will grant a reasonable accommodation/adjournment upon being notified and after consideration of the circumstances. The individual and County staff member will be provided with a phone number to contact the Judge to ask for guidance and instruction on how to handle the situation. Due to the length of jury trials and the number of parties present during jury trials, consistent with CDC and OSHA recommendations, it is the recommendation of the Committee for jury trials all individuals (litigants, attorneys, victims, witnesses, jurors, spectators) be subject to a noninvasive temperature check with an infrared thermometer. Those with a temperature reading of 100.4 degrees F or higher will not be permitted to enter. Noncompliance will be enforced by a Judge. This Committee will continue to evaluate staffing and modify this plan to include a provision that all parties entering the Government Center to attend court be subject to a noninvasive temperature check with an infrared thermometer. Staff conducting the screening of those for jury trials will be provided with personal protective equipment, including a face covering, gloves, hand sanitizer and other items deemed necessary, and will be adequately trained to properly administer the health screen.

It is also important to continue to monitor the health of court staff, court commissioners, judges and others who work in the Government Center. Those employees and any contract employees will continue to have any symptoms noted and monitored using the County Daily Wellness Log form. If any employees have any of the symptoms noted, appropriate steps will be taken under the circumstances as applicable.

Jury Trials

As noted previously, jury trials will not resume under this plan until July 10, 2020. This will allow for all appropriate safety protocols to be in place. Jury summons notices will include specific information about the steps the courts are undertaking related to jury trials. Jury summons will include some pre-screening questions including notice that all parties will be required to wear surgical masks during trials and questions as recommended by current CDC guidelines for symptoms of Covid-19. These notices will also provide information regarding precautions being taken to reduce the risk of exposure to Covid-19 and what PPE will be provided for jurors.

It is anticipated that juror deferral requests will include specific Covid-19 related issues. It will be the policy of the Outagamie County courts to grant reasonable deferments or excusals if a summoned juror provides information that reasonably relates to the juror's underlying medical condition with susceptibility to Covid-19 infection. The Court will also give special consideration to any of the following groups: healthcare workers, elderly/vulnerable populations, individuals providing care for the elderly/vulnerable populations or certain essential working groups. Summoned jurors in these groups will be granted deferrals or excusals if requested prior to appearing for a trial.

After complete review of the Outagamie County courtrooms, it has been determined that two courtrooms provide sufficient room to allow for appropriate social distancing for the jurors and litigants for 12 person jury trials. An additional courtroom can provide sufficient space for six person jury trials. Therefore, under this plan a priority trial calendar will be created for jury trials. This coordination will occur by the Presiding Judge in consultation with the Circuit Court Judges. Priority scheduling will be given to criminal matters, those cases with speedy trial demands, incarcerated defendants, felony matters, ME/JV/JC/TPR jury trials with statutory time limits while also taking into consideration victims' rights and length of cases. This priority calendaring shall occur for trials to be held in July, August and September, 2020. Given the uncertainty of the spread of Covid-19 in

Outagamie County and most current data, this evaluation will be on-going. It is anticipated that no civil trials other than ME/JV/JC/TPR will be held prior to September 8, 2020. This date may have to be adjusted given the number of cases that will be on the priority trial calendar.

Juror selection shall occur in Conference Rooms 2A-D in the Government Center. Juror Health Screening will occur at the commencement of jury selection and each subsequent day of trial for jurors. Health Screening shall also occur for litigants, witnesses, attorneys, court staff and security participating in the jury trial. The health screening will include both questions and noninvasive body temperatures checks using infrared thermometers. Persons screened as a potential risk of having Covid-19, based on symptoms or known exposure, will not be allowed into the courtroom, jury selection room, or any other court related facility. If a summoned juror is deemed to be symptomatic or otherwise thought to be a medical risk to others, they will be excused from jury service. Litigants, witnesses and attorneys deemed medically at risk will be subject to further determination by the Court as to how to provide reasonable access to the courtroom. The Court will expect attorneys, as officers of the court to use sound judgment and be forthcoming if they know of any person entering the courtroom who appears to be symptomatic. It is the recommendation of this Operational Plan that alternate jurors be considered and utilized to lower the likelihood of mistrial due to issues that may arise related to a juror's ability to serve during trial.

As noted, all parties present during jury trials will be required to wear surgical masks which will be provided by the Courts for jury trials. Plexiglas barriers will be installed in each courtroom with sufficient area for jury trials around the area of the witness. During testimony, the Courts should still require witnesses to utilize a face shield to minimize the potential spread of Covid-19. Courts may make exceptions to this only under limited exceptions. It is also suggested that counsel present opening and closing arguments behind the area of Plexiglas. If opening or closing arguments are not presented behind the area of Plexiglas, counsel must wear a face covering. Use of air filtration systems will occur in the jury courtroom, jury selection room and jury deliberation room. Cleaning of all impacted areas will occur after each witness' testimony. Additional room cleaning will occur during breaks and lunch breaks. Additional nightly cleaning will occur for the courtroom and jury deliberation room.

Jury deliberations will be held in an adjoining courtroom or conference rooms in the case of 12 person juries. For six person juries held in Branch 7, juror deliberations can occur in the Br. 7 jury room. Limited seating and assigned seating will occur in all deliberations rooms to assist with social distancing. Assigned seating will also occur in the courtrooms for jurors. Lunches will be brought in for all jurors during trials to minimize travel in and out of the courthouse, eliminating additional juror interaction with others outside of the courthouse during the course of trial.

Public access to jury trials will be a challenge due to the size of the courtrooms in Outagamie County. The public has the right to view open public court proceedings that are not otherwise closed or confidential. All courtrooms have space limitations, and the public does not have the right to enter the courtroom if the number of people in the courtroom exceeds safety limits, fire codes or other legal restrictions. Similar safety concerns regarding the number of people who can safely enter a courtroom during a contagious disease public health emergency also apply, and it may be necessary to limit the number of people who can enter the courtroom to view a jury trial. The court may take steps to allow the public to view the trial via Pexip or a live video stream, which shall be controlled by the court.

Vulnerable Populations

Individuals who are over age 65, and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and compromised immune systems, are considered to be vulnerable populations. Information will be included on orders for appearances, notices of hearings and other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations. Courts will use best efforts to accommodate vulnerable individuals who are scheduled for court hearings by offering remote access, adjournments, deferral of jury service, etc.

Public Notification

It is important that the public be made aware of these measures. The Committee recommends that this information will be shared with the public through press releases, county websites, social media, state and local bar associations, and any other appropriate public sources of information.

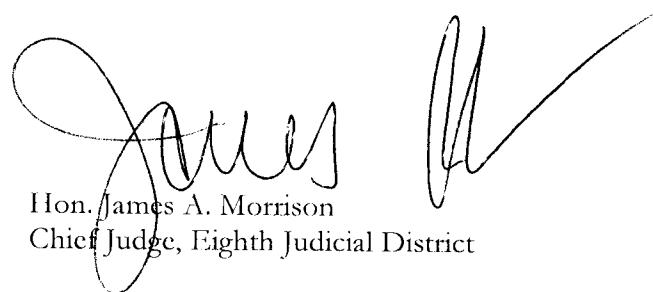
This plan will be modified by the Operational Plan Committee should the circumstances of the Covid-19 public health emergency require modifications to address changing conditions and safety issues.

Submitted this 30th day of June, 2020.



Hon. Carrie A. Schneider
Outagamie County, Presiding Judge

Approved this 30th day of June, 2020.


Hon. James A. Morrison
Chief Judge, Eighth Judicial District