

JURY MANAGEMENT ADVISORY COMMITTEE

Report and Recommendations to the Justices of the Supreme Judicial Court on the Resumption of Jury Trials in the Context of the COVID-19 Pandemic

Submitted July 31, 2020

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I. INTRODUCTION

The Jury Management Advisory Committee (“JMAC” or “the committee”) is a standing committee of the Supreme Judicial Court (“SJC”), established by statute.¹ Pursuant to that statute, the JMAC consists of six members appointed by the justices of the SJC, drawn from among the justices of the Trial Court departments or the appellate courts. The JMAC has three primary functions: first, it provides assistance and counsel to the justices of the SJC in their supervision of the Office of Jury Commissioner (“OJC”); second, it provides direct supervision of the OJC in the performance of its statutory duties; and third, it manages any matters delegated to the committee by the justices of the SJC.

The 2020 COVID-19 pandemic has presented substantial challenges to the Massachusetts court system. Following Governor Baker’s declaration of a state of emergency on March 10, 2020, the SJC issued a series of orders pursuant to its superintendence and rulemaking authority. These orders have been designed to “protect the public health by reducing the risk of exposure to the virus and slowing the spread of the disease.”²

Pursuant to the SJC’s Third Updated Order Regarding Court Operations under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic effective July 1, 2020, all jury trials, in both criminal and civil cases, scheduled to commence in Massachusetts state courts at any time from March 14, 2020, through September 4, 2020, have been continued to a date no earlier than September 8, 2020. The justices of the SJC have requested that the

¹ G. L. c. 234A, § 6.

² *Committee for Public Counsel Services v. Chief Justice of the Trial Court*, 484 Mass. 431, 434 (2020).

JMAC provide counsel on how to recommence jury trials in Massachusetts courts. This report presents the recommendations of the JMAC in response to that mandate.

II. THE IMPORTANCE OF TRIAL BY JURY

The jury trial has long been regarded as “the principal bulwark of our liberties.”³ The right to a jury trial is expressly provided for in both the Sixth and Seventh Amendments to the Federal Constitution, as well as in the Massachusetts Declaration of Rights.⁴ Deeming the jury trial a fundamental right that is essential to a fair trial, the Supreme Court, in *Duncan v. Louisiana*, incorporated the Sixth Amendment right to a jury trial into the Fourteenth Amendment and applied it to the states.⁵

Since the first jury trial in Massachusetts in 1630, there has been a long tradition of “attaching great importance” to the concept “of relying on a body of one’s peers to determine guilt or innocence as a safeguard against arbitrary law enforcement.”⁶ The jury, “the guardian of the public trust and the voice of the community’s values,” is an integral part of the due process protections guaranteed by the Bill of Rights, and helps to sustain democratic values.⁷ It offers

³ 3 William Blackstone, Commentaries on the Laws of England § 1, ch. XXIII, p.271.

⁴ The Sixth Amendment provides, in pertinent part, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. The Seventh Amendment states, “where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.” U.S. Const. amend. VII. See Mass. Const. pt. I, art. 12 (guaranteeing the right to trial by jury in criminal cases); Mass. Const. pt. 1, art. 15. (guaranteeing the right to trial by jury in civil cases).

⁵ *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

⁶ *Williams v. Florida*, 399 U.S. 78, 87 (1970).

⁷ John Paul Ryan, *The American Trial Jury: Current Issues and Controversies*, 63 Social Education 458, at 458 (1999).

both a vehicle for the public to shape its government by jury service, and protection for the accused.

Although the vast majority of cases in Massachusetts, both civil and criminal, do not go to trial, a credible jury-trial date is key to resolution. National research shows that a court's ability to provide firm trial dates correlates with shorter times to disposition in civil and felony cases, in urban trial courts.⁸ Moreover, the availability of a timely jury trial is essential to public trust and confidence in the court system, which, in turn, are essential for the courts to “fulfill their mission” and “perform their functions.”⁹

The records of the OJC and of the Trial Court departments indicate that a substantial backlog of cases ready for trial has grown during the period when jury trials have been suspended, and the backlog will surely continue to grow until the time when our courts are able to conduct jury trials with the frequency they did before the pandemic.¹⁰ While we might attempt to quantify the backlog by reference to numbers of cases, we all recognize that the backlog reflects the lives of individuals awaiting their day in court, including defendants and juveniles held in custody or bearing the burdens of pending charges while on pre-trial release, victims of crime, civil parties seeking compensation for injury or other resolution of disputes, and communities depending on the courts for reliable and timely justice. At the same time, we acknowledge that jury service compels public participation upon pain of criminal penalty. That

⁸ Richard Van Duizend et al., *Time Standards for State Trial Courts*, National Center for State Courts (2011), https://www.ncsc.org/_data/assets/pdf_file/0032/18977/model-time-standards-for-state-trial-courts.pdf.

⁹ Judicial Conference of the United States, Administrative Office of the U.S. Courts, *Strategic Plan for the Federal Judiciary* 17 (2015). https://www.uscourts.gov/sites/default/files/federaljudiciary_2015strategicplan.pdf.

¹⁰ See Appendix 9. Data maintained by the Office of Jury Commissioner indicate that the average number of impanelments between March 13 and September 8 in the years 2017 through 2019 was 1,849.

recognition dictates that we conduct the process with due regard for the health and legitimate concerns of those compelled to participate.

In light of these principles, the JMAC has undertaken to gather information from multiple sources, and to formulate recommendations to the SJC that balance the goals of recommencing jury trials in Massachusetts as expeditiously as possible, protecting constitutional rights, maintaining public confidence, and minimizing risk to the health of all participants.

III. OUR PROCESS

The JMAC, in conjunction with the OJC, has gathered information and views from multiple sources. The recommendations set forth in this report reflect our consideration of all of this input. Our goal is to offer flexible solutions, which may be adapted to available resources and facilities and fluctuating circumstances, while enabling fair access to justice.

The JMAC and OJC devoted the month of June to gathering information. We drew on the OJC's extensive data regarding past jury trials, and also obtained data from the Trial Court Department of Research and Planning regarding pending cases with trial dates. We obtained details about courthouse facilities from the Trial Court Facilities Department, as well as from judges and clerks directly familiar with individual locations. Through the Jury Commissioner and OJC personnel, we received the benefit of consultation with the National Center for State Courts and the Federal District Court for the District of Massachusetts, webinars featuring judges and experts from other jurisdictions, and reports from jurisdictions and organizations across the country suggesting best practices and identifying innovative options under consideration. Through the Trial Court Human Resources Department, we obtained the views of Trial Court consulting infectious disease specialist Dr. Michael Ginsberg of Norwood Hospital, as well as of officials of the Massachusetts Department of Public Health. We are particularly grateful to Dr.

Joseph Gardner Allen, Associate Professor and Director of the Healthy Buildings Program at Harvard T.H. Chan School of Public Health, who provided us with the benefit of his deep and extensive expertise.¹¹

In addition, we held three video-conference meetings to solicit perspectives, concerns, and ideas from attorneys, Trial Court officials, and other stakeholders. We met on June 11 with criminal attorneys, on June 18 with civil attorneys, and on June 25 with others within and outside the Trial Court who have important roles in the process. Participants included leaders of statewide, local, and affinity bar associations; representatives of District Attorneys' Offices, the Attorney General's Office, the Committee for Public Counsel Services (CPCS), the Massachusetts Association of Criminal Defense Lawyers (MACDL), and the Massachusetts Office of Victim Assistance (MOVA); civil attorneys who represent plaintiffs and defendants in personal injury (MATA and MDLA) and business cases; certified conciliators; representatives of Sheriffs' Departments, the Department of Correction (DOC), the Trial Court Security Department, the Trial Court Facilities Department, and the Judicial Information Services Department; and Clerks of the Boston Municipal Court, District Court, Juvenile Court, and Superior Court. The input we received through these meetings made apparent that participants in our court system, across Trial Court departments, and on all sides of litigation, are committed to working with the Trial Court to identify acceptable methods for reinstating trials by jury.

Several themes emerged from these meetings, including the following:

¹¹ Dr. Allen is Associate Professor of Exposure Assessment Science in the Department of Environmental Health at Harvard University's T.H. Chan School of Public Health, and Director of the Healthy Buildings Program and Deputy Director of the Harvard Education and Research Center for Occupational Health and Safety.

- Members of the bar unanimously and strongly prefer resuming jury trials in which all participants are physically present in one place, as compared to any arrangement that would rely on remote participation by jurors or others. Criminal lawyers assert strong constitutional objections to conducting any aspect of jury trials remotely. Civil lawyers were more open to presentation of some witness testimony by video-conference or in video-recorded form, as has often occurred in the past with expert witness testimony and occasionally with other testimony, but overall they feel strongly about preserving the essential features of jury trials in person.
- Members of the bar are willing to work with the Trial Court on a regional basis and/or by Trial Court department to develop and implement approaches to prioritizing cases to schedule for jury trial.
- The technology divide continues to affect how lower-income participants, and some who live in rural areas, access court proceedings; in-person jury trials offer a return to technology-neutral court access.
- There is uniform recognition that trials with six jurors (seven or eight, with alternates) will be feasible sooner than trials with 12 (14 or 16, with alternates), and will allow an opportunity to identify and address unforeseen issues before expanding to trials with 12-person juries. On that basis, attorneys expressed willingness to begin the jury-trial process with trials before juries of six, recognizing that this approach may prioritize less serious cases over more serious ones at the outset.
- Civil lawyers on both sides who practice in the Superior Court expressed willingness to accept trials before juries of six, if reduction in jury size would achieve earlier trial dates for their cases.

- Attorneys are concerned about their own health and safety, especially if they fall into one or more of the higher risk categories because of age, health conditions, or having vulnerable members of their households.
- Criminal attorneys expressed concern about public access to trials, including access for victims and their family members, and family members of defendants. District Attorneys and MOVA expressed particular concern that the manner of providing public access not be subject to misuse by reproduction of video-recorded testimony and dissemination through social media.
- Both civil and criminal attorneys expressed concern about trying cases before jurors who may be reluctant to participate or distracted by health concerns.
- Representatives of sheriffs and DOC expressed acute concerns about maintaining the health and safety of incarcerated defendants and the inmate populations within their institutions while transporting inmates between custodial facilities and courthouses. Each transportation event creates an expanded network of potential contact with court officers, attorneys, other inmates from DOC and House of Correction facilities, and other detainees from police department holding cells.
- Several participants in our meetings, including some who are themselves employers, and some who are in high-risk demographic groups or represent individuals who are, openly question whether jury trials can recommence at an acceptable risk level prior to widespread availability of a vaccine or rapid, reliable testing.
- Technology and infrastructure requirements of retrofitting non-courthouse locations for jury trials would be significant. Similarly, installation of the Trial Court's electronic recording system (FTR) in courthouse spaces where it does not now exist (such as jury

pool rooms), and rearrangement of microphones in existing courtrooms, would generate substantial cost and delay.

- Conducting criminal trials in non-courthouses spaces would present significant challenges for the Trial Court Security Department as well as for custodial authorities.¹²

It is apparent from the input we received that reinstatement of jury trials should be performed in a manner that is careful, informed, and flexible, in continuing consultation with the most updated public health recommendations. The court system will need to review and learn from the gradual rollout of jury trial plans, which should be recognized as an on-going process. This report includes recommendations for on-going communication, evaluation, and adjustment as necessary.

Constitutional and procedural considerations weigh heavily in favor of reinstating jury trials in which all participants are physically present. Requiring people to be grouped together during the pandemic, however, necessitates protocols that reduce health risks to an acceptable level. The public must have confidence that the procedures implemented by the court system will not place them at unnecessary risk of exposure to COVID-19. Jurors and trial participants deserve an environment that enables them to focus attention on the trial, without distraction by fear for their health and safety caused by coming to court. This report will provide recommendations for such protocols, as well as for communication with the public and summoned jurors aimed at alleviating anxiety by providing information in advance about health and safety protocols.

¹² See Appendix 3.

IV. CONSIDERATIONS BASED ON EXPERT ADVICE

In formulating our recommendations, we have considered the following public health principles, which we draw primarily from our consultations with Dr. Joseph Gardner Allen.

There is no such thing as zero risk; our objective must be to reduce the risk to a level that is acceptable in light of the importance of the jury trial function. We pursue that objective by recognizing the modes of exposure to the virus that causes COVID-19, and adopting techniques to reduce the risk of exposure. Modes of exposure are (1) droplets, which are transmitted directly from one person to another through close contact, entering the respiratory tract either directly or from hands touching the face; (2) aerosols, which consist of small droplets that spread further, stay in the air for some time, and enter the respiratory tract through inhalation;¹³ and (3) surface contact, through droplets or aerosols that land and remain on a surface (fomites), which a person may touch and then transfer to the face.

The relevance of each mode of transmission is particularly dependent on context. Close contact increases the risk from both droplet and aerosol transmission. Aerosol transmission can also happen at longer range, and will depend on emissions and removal. Emissions are driven by the number of people shedding virus and how much they are shedding, which is influenced by coughing, sneezing, and how loudly they talk. Removal is influenced by the size of the room and any dilution from ventilation or air cleaning that is occurring. For fomite transmission, the risk is higher in settings where many people touch the same surfaces, such as cruise ships, than in settings such as offices, where people touch fewer of the same surfaces. Fomite transmission is generally less likely than droplets or aerosols, because the longer a contaminant sits on a surface,

¹³ Human waste can transmit aerosols, indicating that effective ventilation and disinfection of bathrooms is particularly important. Bathroom ventilation should remove air from the bathroom to the hallway and then out of the building.

the more it degrades (i.e., time is a disinfectant). Additionally, each transfer from surface to hand to face also reduces the concentration of exposure, and the chain of transmission can be broken through hand-washing or use of hand sanitizer.

Intensity, frequency, and duration of exposure all affect the risk of infection. Intensity refers to the amount of virus to which the person is exposed, frequency refers to how often the person is exposed, and duration refers to the length of exposure. For example, a direct cough from a highly infectious person on another person exposes the recipient to a high level of risk, one cough exposes the recipient to lower risk than a cough every ten seconds, and presence in an infectious environment frequently or over a long period of time exposes a person to more risk than brief or occasional presence.¹⁴

An individual's age and health conditions affect both the risk of infection if a person is exposed, and the risk of severe illness if the person is infected. Prevalence of health conditions that increase risk varies among demographic groups, with higher rates of such conditions among people of color; that difference, along with disparity in access to health care, places those groups at higher risk.

The effort to apply risk-reduction techniques should be viewed as a layered approach; all techniques should be used to the extent possible. Techniques to reduce risk within a building appear below.

- Screening before entry.
- Dedensification – that is, control over the number of people in the building and in each part of it.

¹⁴ Despite the significance of duration, Dr. Allen did not advise shortening the trial day. He expressed the view that the consistent and effective use of techniques to reduce risk (discussed below) address the factor of duration.

- Handwashing, preferably with soap and water, or the use of hand sanitizer when soap and water are unavailable.
- Distance: current CDC guidelines recommend six feet between any individuals who are not members of the same household.
- Universal wearing of facemasks covering the nose and mouth, particularly three-ply surgical masks.¹⁵ Acrylic face shields or plexiglass barriers may substitute when mask wearing is inconsistent with an individual's function, such as a witness while testifying, but these are less effective than masks in controlling the spread of aerosols.¹⁶ In such an instance, increased distance and placement of an air-purifying device with a HEPA filter near the individual may reduce spread of aerosols.
- Cleaning and disinfecting, including increased frequency for high-contact surfaces, nightly deep cleaning and disinfecting, and closing areas and/or buildings for cleaning and disinfecting upon a positive report.
- Environmental/engineering controls, to provide sufficient outdoor air, and to filter recirculated air with higher efficiency filters to remove viral contamination.
 - The target level for outdoor air should be 30 cubic feet per minute per person (cfm/p). The level of outside air per person can be increased by reducing density

¹⁵ Dr. Allen indicated that scientific consensus has established that three-ply surgical masks are more effective than the single-layer cloth masks commonly worn by the general public.

¹⁶ Dr. Allen advised that the use of both face shields and plexiglass enclosures is unnecessarily redundant, because both effectively block large droplets, but both share the same deficiency in screening aerosols. Properly-fitting facemasks are the most effective means of containing aerosols. If mask wearing inhibits the proceeding, for example mask-wearing by a witness hides important facial expressions, additional controls are warranted, including: face shield or plexiglass, increased physical distancing, portable air purifier with HEPA filter in close proximity.

or increasing outdoor air ventilation rate (e.g., higher volumetric flow of air, or opening system dampers to increase ratio of outdoor air to recirculated air)

- Mechanical ventilation systems should run throughout all hours of building occupancy and two hours before and after.
- Special attention should be paid to verifying that exhaust fans are functioning properly in all bathrooms.
- Filters on recirculated air should be MERV-13 or higher, if the existing system can handle the additional pressure drop. Filters should be checked to be sure that they are installed correctly with no bypass.
- The use of portable air purifiers with HEPA filters, appropriately sized for the space, can provide additional filtering, especially in areas that cannot meet the target outdoor air ventilation rate. In particular, portable air purifiers should be considered for small volume rooms, and directly adjacent to areas where masks cannot be worn without interfering with the proceedings (e.g., witness stand).
- Determination of adequacy of environmental controls requires expert evaluation of each building and space within.¹⁷

¹⁷ The Trial Court is in the process of entering into an agreement with an HVAC Contractor to evaluate building systems. The goal is to ensure systems are operating to standards and provide recommendations in places where they are not.

V. RECOMMENDATIONS

Based on all of the information we have obtained, including the public health principles described above, the JMAC makes the following recommendations, set forth in order of the chronology of the jury trial process. Our recommendations reflect favorable Massachusetts health data as of the date of this writing. If Massachusetts experiences a surge in COVID-19 cases, or a re-instatement of shutdown orders, corresponding adjustments to the process will be necessary.

We recommend a series of phases, as described in Part V.1, with trials in each phase to be conducted according to the practices set forth in Part V.2.

1. Phases:

- a. **Phase 0.** This will be a mock run-through of the entire process, for the purpose of identifying issues and making adjustments. We would conduct the test in one location, with volunteer staff members filling all the participant roles. We suggest that a date in mid-August would be an appropriate time to conduct such a test.¹⁸
- b. **Phase 1.** This would consist of trials to juries of six (seven or eight with alternates), conducted one at a time in each of a small number of locations, at most one location in each county or in each of the larger counties.

Locations should be selected primarily based on environmental and engineering controls as described above, and capacity for occupancy and internal circulation by the necessary number of people, with required distancing, in each

¹⁸ The SJC's Third Updated Order Regarding Court Operations Under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic provides for a second phase of increased in-person proceedings to begin August 10, 2020.

of the spaces required for each part of the process.¹⁹ Additional considerations for selection of these locations include sightlines and audibility within the space to be used as the courtroom with required distancing, transportation, parking, elevators, stairways, traffic flow within the building, bathrooms, and availability and set-up of FTR.²⁰ Selection of locations will require consultation with leaders of all affected departments within each building, and coordination across departments.²¹

The trials to be conducted during Phase 1 would be selected by court leaders in each location. The cases would be civil, or, if criminal or delinquency, would involve relatively minor charges against one person not in custody. In each case, as well as in all cases to be tried in subsequent phases, it is essential that the trial judge (or another judge if necessary) conduct an in-depth conference shortly before the trial date to address all potential pre-trial matters, identify any obstacles, gauge any potential for settlement, discuss the manner in which the trial will proceed, including the presentation of evidence, resolve legal issues pre-trial

¹⁹ See Appendix 2.

²⁰ FTR portable devices may assist with recording in some settings. The FTR system in place in the Trial Court includes a handheld device (known as Zoom) commonly used for *in camera* proceedings, views, hospital arraignments, and other proceedings outside of courtrooms. These devices must not be passed from person to person in the context of the pandemic, and are probably insufficient to substitute for FTR installation in an entire room, but might warrant consideration for use in some circumstances. We have also been advised that FTR offers a larger portable device that might suffice for some rooms; Trial Court staff will undertake further evaluation of these possibilities.

²¹ To the extent that trials are conducted in courthouses, rather than non-courthouse spaces, it appears likely that each trial will require two courtrooms: one for the trial, and one to be used for the purposes for which jury deliberation rooms are usually used, since nearly all deliberation rooms in courthouses are too small for those purposes. In taller buildings, elevator capacity may dictate use of courtrooms on lower floors, some of which may normally be used by other Trial Court departments or for other purposes.

to the extent possible, and take all steps possible to ensure that the case is actually ready for trial and will proceed to trial on the scheduled date.²²

After each trial during Phase 1, the JMAC will collect feedback and evaluate the process. Feedback from jurors will come from the standard post-service survey sent to all jurors who provide email addresses, with the survey modified to include questions specific to the experience during the pandemic.²³ Feedback from other participants would come through the trial judge, who would be asked to conduct a debriefing session, perhaps by Zoom or other remote means, with counsel and court personnel. The JMAC will review the feedback to identify any concerns or problems and recommend adjustments. Phase 1 will last approximately two months, unless health data changes.²⁴

- c. **Phase 2.** This would consist of trials in the same limited number of locations (unless any of them proved problematic in Phase 1), along with additional locations chosen on the same basis and with similar consultation. Locations would include those with space sufficient for juries of 12 (14 or 16, with alternates). Cases tried would be those that have the highest priority, including serious criminal cases with defendants in custody, youthful offender cases, and

²² The Trial Court departments use different labels for this event in civil and criminal cases: in the Superior Court, these are final pre-trial conferences in criminal cases and final trial conferences in civil cases; in the District Court they are trial readiness conferences.

²³ The post-service survey will serve several goals, including not only evaluating the jurors' experiences, but also potentially monitoring their post-service health and, if necessary, following up to advise testing and conduct contact tracing, and also determining whether the controls in place are effective, whether protections need to be scaled up, and whether progress to the next phase is acceptable.

²⁴ Dr. Allen advised that two months is an appropriate minimum length of time for each phase, because that time would include approximately twice the average cycle of COVID-19 from infection to either death or the start of recovery from severe illness. This would allow time to ascertain whether anyone becomes infected during jury service (cycle one) and then infects others (cycle two), which would indicate community spread and necessitate a rollback of plans.

civil cases of particular significance. Selection of the highest priority cases will require close consultation and coordination among Trial Court Departments; it may be advisable for each department chief to appoint a judge or committee to identify the highest priority cases in each region. Phase 2 may begin with one trial at a time in each location, expanding as experience permits. Evaluation would continue as described for Phase 1 above. Phase 2 will continue for two to four months, depending on both evaluation and progress in addressing the highest priority cases.²⁵

- d. **Phase 3.** This would consist of conducting as many trials as possible in all locations that meet the criteria discussed above. Non-courthouse spaces may be increasingly necessary to address the case backlog if the pandemic continues substantially into 2021. Phase 3 would continue until the health threat from COVID-19 ends because of either widespread vaccination or herd immunity.²⁶

2. Practices Throughout All Phases:

a. Revisions to Juror Summonses, Notices, and Response Forms:

We recommend that the OJC revise the standard summons, notices, and response forms sent to jurors pursuant to G. L. c. 234A, §§ 19, 20, as follows:²⁷

²⁵ Evaluation at each phase should include monitoring jurors' post-service health and advising testing and contact tracing if necessary.

²⁶ As this process proceeds, the JMAC would continue to obtain feedback, identify any concerns or problems, and recommend adjustments as necessary, and would also continue to review information from other jurisdictions regarding alternative techniques, including remote techniques, that might warrant further consideration if progress on the case backlog appears insufficient.

²⁷ G. L. c. 234A, §19, provides: "At least twelve weeks prior to the commencement of any term of grand or trial juror service, the office of jury commissioner shall summon by first-class mail, grand and trial jurors from the corresponding master juror list to appear for juror service within each judicial district. The summons shall state whether the anticipated service is that of a grand or trial juror, the beginning date of the term; the name, address, hour and room number, if any, of the

- prominently inform jurors of the option of those age 70 or over to elect not to serve; the option of anyone to defer service for up to one year; and the option to seek excusal prior to appearance based on vulnerability of the juror or household members due to age or health conditions, responsibility to care for household members or COVID-19 patients, or other circumstances related to COVID-19.
- instruct jurors to self-screen before reporting for service through an online survey form that would also be printed on the Reminder Notice for those without internet access.

Further, instruct jurors to defer by contacting the OJC if the juror:

- has tested positive for, or been clinically diagnosed with, or has likely been ill with, COVID-19 within the last 10 days;

courthouse or office to which the juror is directed to report on the first day of service; the fact that a trial juror has the right to one postponement of his term of juror service for not more than one year; the fact that a knowing failure to obey the summons without justifiable excuse is a crime, which, upon conviction, may be punished by fine of not more than two thousand dollars; **and such other information and instructions as are deemed appropriate by the jury commissioner.** The jury commissioner may use a postcard summons for purposes of summoning grand and trial jurors. A postcard summons shall be considered an official juror summons for purposes of this chapter” (emphasis added).

G. L. c. 234A, § 20, provides: “The office of jury commissioner shall provide a notice of qualifications for juror service to each juror summoned under the provisions of this chapter. A summary of section four of this chapter shall be included in the said notice. This notice shall contain any further information and directions that the jury commissioner deems appropriate.”

G. L. c. 234A, § 4, sets out qualifications for jury service, including citizenship, residence within the judicial district, age 18 or over, and ability to speak and understand English. Section 4 further provides that a person is disqualified if the person “is seventy years of age or older and indicates . . . an election not to perform juror service,” “is incapable, by reason of a physical or mental disability, of rendering satisfactory juror service,” or “is solely responsible for the daily care of a permanently disabled person living in the same household and the performance of juror service would cause a substantial risk of injury to the health of the disabled person.”

- is currently experiencing, or has experienced within the last ten days, symptoms of COVID-19, such as a fever, chills, sore throat, or new symptoms of a cough, shortness of breath, severe muscle pain, headache, loss of taste or smell, extreme fatigue, or nausea, diarrhea or vomiting;
 - has been advised to self-quarantine by a doctor or other health care provider or a public health agency within the last 14 days;
 - resides with someone who has tested positive for, or been clinically diagnosed with, COVID-19 within the last 14 days;
 - is awaiting COVID-19 test results after experiencing symptoms of COVID-19 or having been in close contact with someone who has COVID-19;
 - resides with someone who is awaiting such COVID-19 test results; or
 - within the past fourteen days has been outside the United States or in a state other than the those exempted in the Governor's orders.
- If an affordable, rapid, and reasonably reliable test becomes available, instruct jurors to self-administer such test, defer if positive by contacting the OJC, and bring documentation to court if negative.²⁸
 - Provide information about safety measures courts are observing, including pre-screening of all persons entering courthouses, physical distancing, the provision of facemasks and hand sanitizer, engineering controls, and regular disinfecting and deep cleaning. The information should also include a link to a video to be prepared specifically for jurors on these topics, to include their roles and responsibilities for compliance with the court's safety measures.

²⁸ At this stage, before reporting, potential jurors would have to obtain such tests themselves. Ideally this notice would identify potential sources, including sources available to jurors without cost.

- Provide information on how to contact the OJC by phone, email, or through its website any time before reporting to court to ask questions or request excusal or deferral.
- Advise potential jurors to bring their own refreshments, including lunch for potential one-day trials, to eliminate the need to leave the building or share food and beverages.
- Request the juror’s email address to facilitate further communication, including cancellation information.
- Include in the juror summons package information and questions about COVID-19 issues and about how to seek excusal.

Much of this information could be provided via the Massachusetts Juror Website (MJW), which is an online interactive website by which 60-65% of persons summoned for jury service respond to their summons. The OJC is investigating the feasibility and desirability of making response to certain COVID-19-related inquiries mandatory to complete the response, such as providing an email address or answering questions about vulnerability to COVID-19.

b. Excusal by Jury Commissioner

We recommend that the SJC, or the chiefs of the five jury departments, delegate to the Jury Commissioner authority to excuse jurors on request based on identified vulnerability of the juror or a household member, or other circumstances related to COVID-19. The law grants the court authority to excuse jurors at any time before or during their term of service.²⁹ The court may delegate that authority to the Jury Commissioner “as is appropriate for the efficient administration of [chapter 234A] in accordance with guidelines approved by the committee or the court.”³⁰ OJC Regulation 9 authorizes the Jury Commissioner to forward excuse requests

²⁹ G. L. c. 234A, § 39.

³⁰ G. L. c. 234A, § 46. Sections 39 and 46 refer to “the court,” without specifying which court.

prior to appearance to the Trial Court department chief justices for consideration.³¹ We anticipate that the number of excuse requests meeting the criteria for consideration under OJC Regulation 9 may increase significantly during the pandemic. Delegation of authority to the Jury Commissioner would permit efficient resolution of these types of requests during the pandemic.

The OJC will track characteristics of jurors who are excused on these grounds, as well as those age 70 or over who elect not to serve, and those who defer for up to one year, in order to identify promptly any effect on the racial, ethnic, or gender composition of the jury pool. Any such effect identified may require adjustment in the excusal process, changes to the notice, or other measures to maintain jury pool composition consistent with the demographics of each judicial district.

c. Summons

The number of jurors called to appear for each case must be based on the maximum permissible occupancy of the jury pool room, or other space being used for that purpose, with distancing and space for necessary court personnel. In some locations, this may require summoning jurors for morning and afternoon shifts. Depending on location and other court functions in the building, it may be necessary to direct jurors to arrive at times other than 8:00 a.m., so as to minimize overlap with others entering the building, and to avoid peak times for public transportation.

³¹ Examples of potential jurors who have made such requests in the past are persons with agoraphobia, cloistered nuns, dairy farmers, and members of confidential federal intelligence agencies who are under cover.

d. Arrival

Upon entry to a courthouse, each potential juror will be screened in the same manner as all court personnel and members of the public, pursuant to Trial Court policy. As of this writing, such screening consists of a court officer taking the individual's temperature and asking these screening questions:

- a. Have you, a family member, or someone you live with tested positive for or been diagnosed with COVID-19 in the last 14 days?
- b. Are you currently experiencing, or have experienced within the last three days, symptoms of COVID-19?
- c. Have you or a family member been advised to self-quarantine by a health care provider within the last 14 days?
- d. Are you awaiting COVID-19 test results, live with, or been in contact with someone who has?³²

As occurs at present with anyone seeking to enter a courthouse, the juror would be excluded upon a positive answer to any of these questions or a temperature reading over 100°. Any person reporting for first-day jury service who is excluded should be advised to contact the OJC, and security should notify the jury pool officer. Any impaneled juror returning for continuation of a trial who is excluded should be directed to contact the clerk in the session, and security should notify the clerk or the trial judge.

³² In light of the Governor's recent order regarding interstate travel, we expect that the Trial Court will add a question on that topic for all persons entering any courthouse.

If a rapid, affordable, and reasonably reliable test becomes available, administration of such a test at the entrance, or presentation of documentation of a negative test on the same date, could substitute for this screening process.

Court officers at entry should provide a surgical mask to any person who arrives without a facemask, as they are now doing under Trial Court policy. Hand sanitizer is available at each entrance, and signs direct those entering to use it at the time of entry.

e. Check-In

Signs at the building entrance should direct jurors to whatever location is being used as the jury pool, and should include information about stairways available as well as elevators. Stairways have been designated as up or down where feasible, with signs so indicating. Hand sanitizer, and signs directing its use, should be placed at the entrance to the room. Seats in the jury pool room should be numbered, with signs directing jurors to sit down immediately upon entry to the room. The jury pool officer should call jurors for check-in individually by number, so as to avoid a line at the check-in desk. A plexiglass enclosure around the jury pool officer's station should be constructed to protect the jury pool officer. The jury pool officer should follow a written protocol, to be developed jointly by the OJC and the Trial Court Security Department. Once all jurors are checked in, the statutorily mandated orientation will occur in the jury pool room, including presentation of the juror orientation video and a welcome by a judge. Because each trial to be impaneled should be ready as soon as the jurors are available, the jury pool officer should prepare the necessary paperwork during the orientation so that jurors can proceed directly to impanelment without unnecessary delay in the jury pool room.³³

³³ In the first two phases, only one trial would be impaneled in each location each day. In the third phase, multiple impanelments may occur in some locations, but each case should have had a thorough conference, such that it is ready to proceed as soon as jurors complete orientation.

f. Voir Dire

The voir dire process may occur in a courtroom or in the jury pool room or other location, depending on size and occupancy limits, taking account of necessary court personnel, attorneys, and parties. Use of non-courtroom spaces for this purpose will require installation of FTR, while the use of courtrooms with jurors spaced out in the gallery, rather than in the jury box, may require reconfiguration of FTR microphones.³⁴ The introduction and general questions will occur in that space. Individual voir dire and the exercise of peremptory challenges will need to occur in a separate space, also with a recording system. In most locations, the solution for this purpose would be that the judge, attorneys, parties, and any spectators move to a second courtroom, where a court officer would bring in one juror at a time, while the rest of the venire waits in the first space. In cases with a defendant in custody, this transition will present security challenges; in some cases it may be more feasible to move the venire to the secondary space while the participants remain in the original space.

In each case, during voir dire as well as in the pre-charge and final charge, the trial judge will need to address issues regarding jurors' willingness to serve, health concerns, and the importance of focusing on the evidence and the law and avoiding distraction. Department chiefs should consider promulgating model inquiries and instructions for this purpose, or designating judicial committees to do so.

All trial participants, including all jurors, must wear facemasks covering the mouth and nose at all times, with the exceptions specified as follows. Distribution of surgical masks to all

³⁴ See discussion above regarding FTR portable devices. Per diem court reporters might also be a feasible alternative to installation or reconfiguration of FTR. The Superior Court has a roster of per diem court reporters, and used their services for trials of homicides and certain other serious criminal cases in FY 2019 and 2020, but their availability has decreased, and appears likely to decrease further in the context of the pandemic.

participants, so that all wear identical masks, will avoid distraction and potential exposure to extraneous material that might arise from participants wearing masks with messages, symbols, or designs associated with causes or groups. The one general exception would be a witness while testifying, including a juror during individual voir dire. That person should either wear an acrylic face shield or testify within a plexiglass enclosure, in a location that maximizes distance from all others present. The judge in each case should be authorized to make other exceptions, such as for attorneys while speaking, upon a finding of substantial necessity. In such instances, the judge must require the use of alternative means of protection, such as distance from any other person substantially greater than six feet, and the use of an acrylic face shield or plexiglass enclosure.³⁵

The number of jurors to be impaneled, and the number of peremptory challenges afforded each party, both affect the number of potential jurors required to appear. In the context of reduced occupancy capacity arising from necessary physical distancing, those numbers affect the length of time necessary for the process, potentially extending the process over multiple days in cases that would normally impanel in far less time. Accordingly, we recommend that the SJC, by order or rule, adopt the following two modifications for the duration of the pandemic.³⁶

³⁵ Attorneys may think that their ability to assess jurors and make informed use of peremptory challenges will be impaired by jurors wearing facemasks. But the importance of using facemasks to reduce the risk of spreading COVID-19 generally outweighs this concern. In any event, as explained above, a juror responding to individual voir dire questions should be treated as a witness testifying. Criminal defendants may object to being required to wear a facemask because the appearance of a person wearing a mask may be associated with criminality in the minds of some jurors. Uniform use of masks by all participants may mitigate this concern. Judges should address this issue in voir dire, as well as in preliminary and final instructions.

³⁶ G. L. c.234A, § 8, authorizes the SJC to “make and amend rules of court not inconsistent with [chapter 234A] . . . regulating all aspects of the selection and management of grand and trial jurors.

First, we recommend that the SJC reduce to six the number of jurors in Superior Court civil cases, including petitions for annual review of sexual dangerousness commitment under G. L. c. 123A, § 9, and in Housing Court cases.

Although the Massachusetts Constitution guarantees the right to trial by jury, it makes no express reference to the number of persons serving on a petit jury. The Supreme Court has held that a 12-person jury is not an indispensable component of the Sixth Amendment right to trial by jury.³⁷ Rather, the Sixth Amendment calls only for a jury of sufficient size to promote group deliberation, to insulate members from outside intimidation, and to provide a representative cross-section of the community.³⁸ The Supreme Court has recognized that as jury size diminishes in criminal cases, the risk of conviction of an innocent person increases, as do concerns with reliability, minority representation, and a potentially chilling effect on debate.³⁹

In Massachusetts, by statute, the District Court and Boston Municipal Court conduct six-person jury trials in both civil and criminal cases, as does the Juvenile Court in delinquency cases,⁴⁰ although the Juvenile Court uses 12-person juries in youthful offender cases pursuant to statute.⁴¹ Although no statute establishes the number of jurors in Superior Court trials, there is a long-standing common law tradition of 12-person juries for both civil and criminal cases in the

³⁷ *Williams v. Florida*, 399 U.S. 78, 102-103 (1970).

³⁸ *Ballew v. Georgia*, 435 U.S. 223, 230 (1978), citing *Williams v. Florida*, 399 U.S. at 100 (quotation omitted).

³⁹ *Ballew*, 435 U.S. at 233-238.

⁴⁰ See G. L. c. 218, §§ 19B, 26A; G. L. c. 119, §§ 55A, 56.

⁴¹ G. L. c. 119, §§ 55A, 56(e).

Superior Court.⁴² The Housing Court has followed the same custom.⁴³ However, a temporary change to juries of six in civil cases seems well warranted in the context of the pandemic.⁴⁴

Second, we recommend that the SJC reduce the number of peremptory challenges available to each party to the number required by statute.⁴⁵

Neither the U.S. Constitution nor the Massachusetts Declaration of Rights provides for peremptory challenges.⁴⁶ In Massachusetts, statutes and rules of procedure govern peremptory challenges.⁴⁷ To the extent that rules of procedure govern such challenges, the SJC may exercise its inherent and statutory superintendence authority to amend such rules temporarily to reduce peremptory challenges to the minimum numbers provided by statute.⁴⁸

Once a jury has been impaneled, the court officer should obtain telephone numbers of all impaneled jurors, as has been common practice in multi-day trials. The trial judge should instruct the jurors to stay home and contact the court in case of symptoms of, or known exposure

⁴² *Opinion of the Justices*, 360 Mass. 877, 886-887 (1971) (Quirico, J., dissenting) (discussing common-law history of 12-person jury). See G. L. c. 234A, § 68.

⁴³ See G. L. c. 185C, § 3 (in matters within its jurisdiction, housing court has superior court department power); G. L. c. 185C, § 21 (governing juror selection under former G. L. c. 234).

⁴⁴ In recent weeks, Superior Court judges have conducted conferences in many civil cases, and have raised the question of whether counsel would agree to a jury of six. Anecdotal reports indicate that some have agreed and some have not, with a degree of variation by county. A uniform rule or order during the period of the pandemic would eliminate the necessity of agreement in each case, and would avoid concerns that some attorneys might have about repercussions from agreeing to a jury of six.

⁴⁵ Arizona has made a similar change. See Appendix 6.

⁴⁶ *Commonwealth v. Mello*, 420 Mass. 375, 396 (1995), citing *Commonwealth v. Wood*, 389 Mass. 552, 559 (1983).

⁴⁷ *Commonwealth v. Wood*, 389 Mass. at 559; G. L. c. 218, § 19B(c) (governing peremptory challenges in civil cases in District and Boston Municipal Courts); G. L. c. 234A, § 67B (governing peremptory challenges in Superior Court civil cases); G. L. c. 218, § 27A(e) (governing peremptory challenges in criminal cases in District and Boston Municipal Courts); Mass. R. Civ. P. 47(c) (governing peremptory challenges in civil cases in District and Boston Municipal Courts); Mass. R. Civ. P. 47(b) (governing peremptory challenges in Superior Court civil cases); Mass. R. Crim. P. 20(c)(1) (governing peremptory challenges in criminal cases).

⁴⁸ See G. L. c. 211, § 3 (governing SJC's authority to make rules of court).

to, COVID-19.⁴⁹ At this stage and repeatedly at subsequent stages, the trial judge should inquire as to whether any juror has experienced any change in health status or known exposure to COVID-19; responses to these questions may require individual inquiry outside the presence of other jurors.

g. Public Access

During voir dire, as well as at all subsequent stages of a trial (with narrow exceptions), the public, including the news media, has a right of access under the First Amendment, and in criminal cases the defendant has a right to a public trial under the Sixth Amendment, each applicable to Massachusetts courts under the Fourteenth Amendment.⁵⁰ Massachusetts has its own common-law tradition of public access to courts.⁵¹ As the case law has long recognized, however, the number of spectators who may be physically present is limited by the space available and by the need to prevent contact between spectators and jurors.⁵²

The necessity of physical distancing in the context of the pandemic reduces the occupancy limit of every courtroom and other space used for every part of the process, including voir dire, and thereby reduces the number of spectators who can be physically present. To

⁴⁹ If a juror does report infection or exposure, the court would follow the Trial Court protocol for instances when court personnel provide such information.

⁵⁰ See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576-577 (1980) (First Amendment right of access to criminal trial); *Press-Enterprise Co. v. Superior Court of Cal.*, 464 U.S. 501, 510-516 (1984) (First Amendment right of access to voir dire); *Presley v. Georgia*, 558 U.S. 209, 213 (2010) (Sixth Amendment right to public voir dire); *Globe Newspaper Co. v. Commonwealth*, 407 Mass. 879, 884 (1990) (recognizing that the right of access extends to pretrial criminal hearings); *Commonwealth v. Cohen* (No. 1), 456 Mass. 94, 117 (2010) (public voir dire).

⁵¹ *Globe Newspaper Co. v. Commonwealth*, 407 Mass. 879, 884 (1990) (courts traditionally open to public); *Doe v. Sex Offender Registry Bd.*, 459 Mass. 603, 625 (2011), quoting *Boston Herald, Inc. v. Superior Court Dep't of the Trial Court*, 421 Mass. 502, 507 n. 7 (1995) (“free access to civil trials is well established under the common law”).

⁵² See *Cohen*, 456 Mass. at 113 n. 29 (“it would be permissible to exclude some spectators if the only available seats for them were located right next to the seats occupied by prospective jurors, and the judge determines, on the record, that this close proximity creates a risk of juror contamination or taint in the particular case”).

address this challenge, we recommend that in each case the trial judge require the parties, and any media expressing interest, to identify in advance the spectators who seek to attend, by number and category (such as, two members of the defendant’s family, two members of the victim’s family, two media representatives, or the like). The judge should then make findings about the spectator space available, and the judge may authorize a specified number of persons, in specified categories, to attend physically, allocating available space among persons associated with each side,⁵³ and providing for media representation when requested. Spectators should be assigned specific seats, and be required to stay in those seats. Spectators who are members of the same household may be permitted to sit together; all others must observe physical distancing from all other persons present. Media representatives may use a video or still camera, as provided by SJC Rule 1:19, subject to the limitations provided by that rule. In high-profile cases, the court may, as has been done in such cases in the past, arrange a video feed to a monitor in a separate room, where a number of spectators, limited by available space, may observe virtually. Audio access for all other members of the public will be available through telephone bridge lines, as occurs for other court proceedings pursuant to Trial Court policy.⁵⁴

h. Openings, Evidence, Closings

Throughout the process, everyone must be required to wear a facemask, unless excused by the trial judge on the basis indicated above.

⁵³ See G. L. c. 258B, § 3(b) (Crime victims and their families have the right “to be present at all court proceedings related to the offense committed against the victim, unless the victim or family member is to testify and the court determines that the person’s testimony would be materially affected by hearing other testimony at trial and orders the person to be excluded from the courtroom during certain other testimony . . .”).

⁵⁴ In the context of the pandemic, it may be appropriate to require spectators who attend in person, including media representatives, to identify themselves and provide contact information to facilitate contact tracing in case of infection. See *Commonwealth v. Maldonado*, 446 Mass. 742, 747-754 (2014) (where judge sets forth reasons for imposition of entry conditions and conditions are no broader than necessary, presumption of openness may be overcome, and spectators required to identify themselves).

Each trial judge will need to determine the arrangement of participants in the courtroom (or other space being used as the courtroom), preserving physical distancing among all participants, and taking into account sight lines and audibility. All participants and spectators should have assigned seats and should remain in them at all times except when speaking. Jurors may need to sit in a combination of the gallery and jury box, or entirely in the gallery. A few courtrooms have more than one jury box, or space for seats in front of or near the jury box, which may avoid the need for use of the gallery in this manner. Depending on the particular space, counsel tables may be turned sideways (or counsel may sit sideways at the side of the table), so that attorneys do not have their backs either to the judge or the jurors.⁵⁵ Attorneys should be required to speak either from the podium or from counsel table, whichever provides greater distance from other persons, especially jurors.⁵⁶ This may require physical rearrangement of tables and/or podiums in some courtrooms, as well as rearrangement of FTR microphones.

In criminal cases, the trial judge will need to make an appropriate arrangement, in consultation with the attorneys and security, for communication between attorney and client while the two maintain distance.⁵⁷ Possibilities might include the use of electronic devices, with

⁵⁵ Some criminal attorneys have suggested that if jurors sit in the gallery, attorneys should sit facing them, with the attorneys' backs toward the judge. A judge of the United States District Court for the Northern District of Texas followed this approach in one trial, using a camera at the back of the room, feeding to a monitor on the judge's bench, to enable the judge to observe the attorneys. American Bar Association, Return to Jury Trials During the Pandemic, https://www.americanbar.org/groups/judicial/events_cle/program-library/return-to-jury-trials-during-the-pandemic/. Our view is that, aside from the resource drain on the Trial Court to set up such an arrangement for every trial, proceeding with attorneys' backs to the judge would undermine the decorum necessary to public confidence in the process.

⁵⁶ If counsel use a podium, disinfecting wipes should be provided for each speaker to use to clean the podium and microphone before the next speaker.

⁵⁷ See *Commonwealth v. Robichaud*, 358 Mass. 300, 303 (1970), citing *Guerin v. Commonwealth*, 339 Mass. 731, 734-35 (1959).

appropriate instructions to the jury, and recesses taken on request, when counsel and defendant can meet privately while maintaining distance in a conference room or other space as designated by security.^{58, 59}

In both civil and criminal cases, we recommend that the norm continue to be that witnesses present testimony in person, from the witness stand or another location in the courtroom.⁶⁰ As indicated above, however, in civil cases certain testimony, particularly that of expert witnesses, has often been presented by video recording or video conferencing. Judges should encourage counsel in civil cases to continue and increase that practice, and should also encourage counsel in criminal cases to consider the same practice by agreement, particularly with witnesses whose credibility may be less than vigorously disputed, so as to minimize the number of witnesses required to be physically present.⁶¹ When witnesses testify in person, court personnel should disinfect the witness stand and surrounding area after each witness, in the presence of the jury.

The necessity of physical distance precludes sidebar conferences. Any necessary consultation between the judge and counsel will have to occur before the jury convenes or during recesses. Group text or email communications between counsel and the judge might be a

⁵⁸ As indicated above, nearly all jury deliberation rooms are too small to be used by juries with necessary distancing, making them available for possible use for attorney-client conferences.

⁵⁹ Dr. Allen advised that a plexiglass shield between attorney and client would not add significant risk reduction where both are wearing masks and maintaining distance to the extent possible at counsel table.

⁶⁰ In some courtrooms, if jurors are in the gallery, the jury box may be a better location for the witness. In some courtrooms, the proximity among the witness stand, the bench, and the clerk's desk may necessitate the use of plexiglass enclosures.

⁶¹ In serious criminal cases it is common, for example, that a prosecutor presents a series of witnesses to establish that certain investigative steps were taken without material result. Often such witnesses are cross-examined briefly or not at all, and the substance of their testimony is not seriously in dispute. While the right to face-to-face confrontation applies to such witnesses as to all others, counsel might make a reasonable judgment to waive that right in favor of video presentation, in the context of the pandemic.

feasible solution, provided the clerk is always included in such communication, and that all such communications are preserved in some manner and put on the record.⁶²

All trials would proceed on a full-day basis, to minimize the number of days jurors are required to attend. Start and stop times may need to be adjusted, as determined by the trial judge, to minimize overlap with others entering and leaving the building for other purposes. These determinations, like many throughout this process, will require extensive communication and coordination among judicial leaders in each building and across Trial Court departments.

The risk of transmission by touch precludes the previously common practice of passing around exhibits. Counsel must be required to arrange in advance to present all documentary exhibits either in electronic form,⁶³ or in the form of copies in individual notebooks, fully prepared in advance, labeled for the judge and by juror number, disinfected, and distributed to jurors in a manner that maintains their sanitary status. In the case of electronic display, counsel must supply the equipment and instructions necessary for jurors to view exhibits during deliberation. Photographs and oral descriptions must suffice to depict tangible objects, which would not be put in evidence except upon specific authorization by the trial judge, based on a

⁶² In some locations, a separate space may be available where the judge, clerk, and lawyers could confer, with sufficient physical distance, recording the conference on the FTR portable Zoom device, while the jurors remain in the courtroom. In a criminal case, the defendant would have the right to attend such a conference, presenting security challenges that may be insurmountable in the presence of a jury. Spectators might also have the right to be present to the extent possible within occupancy limitations, even though spectators would not normally be able to hear such conferences when conducted at side bar. See *Commonwealth v. Cohen* (No. 1), 456 Mass. 94, 117 (2010) (individual juror voir dire conducted out of hearing of public permissible if conducted in open court where public may observe process).

⁶³ A small number of courtrooms are equipped for electronic display of exhibits. Attorneys commonly use portable electronic display systems in both civil and criminal jury trials in Massachusetts as well as in other jurisdictions. An alternative that has not been in common use in Massachusetts, but may warrant consideration, would be the distribution of tablets with exhibits pre-loaded. Such devices would need to be sanitized before distribution, preferably in the presence of the jury.

determination of particular necessity. The manner of presenting exhibits will be an important topic for the trial judge to address with counsel prior to trial.

i. Recesses and Deliberation

Our examination of courthouse spaces indicates that few if any deliberation rooms are large enough to accommodate juries even of six persons, with physical distancing and adequate air quality. Accordingly, when a trial is held in a courtroom, in most instances it will be necessary to use a second courtroom for recesses and deliberation. Courtrooms used in this manner must be closed to all others, with signs clearly so indicating. Clerks must ascertain that FTR is turned off, and court officers must ensure that no extraneous material remains in the room, and that no one other than jurors has access. Jurors should be escorted from one space to the other, maintaining physical distance during the transition. To ensure distancing and minimize risk of exposure from touch in the room, jurors should have assigned seats and should be instructed to proceed directly to and remain in their assigned seats. If budget permits, the court should provide water bottles and lunches for jurors; if not, jurors should be instructed to bring their own, so that jurors need not leave and re-enter the building. It will be essential to provide jurors with clean, proximate, and adequately ventilated bathroom facilities, with court officers stationed to prevent contact between jurors and any others as jurors travel to bathrooms. Disinfectant wipes and/or spray should be provided in bathrooms, with signs instructing their use for surfaces upon each juror's entering and leaving.

j. Charge

The trial judge's final charge should again emphasize the importance of focusing on the evidence and the law, without distraction by health concerns. The judge may also need to address topics such as the wearing of masks by all participants, including criminal defendants;

the right of criminal defendants to communicate with counsel during trial, and the manner of such communication; and other topics specific to the unusual nature of proceedings during the pandemic.

k. Return of Verdict

It is the responsibility of the trial judge to ensure that the jury's return of the verdict occurs in a manner that reflects the level of solemnity required in any jury trial. Generally, participants should be arranged in the same manner as during the presentation of evidence, and all should continue to wear facemasks. In some criminal cases, additional security may be necessary at the verdict stage; the trial judge must anticipate that need, and discuss the topic with security, in light of occupancy limits and the presence of spectators or others in the room.

l. Exit

Upon discharge, jurors should be escorted out of the building to minimize overlap with others exiting the building, including trial participants.

VI. CONCLUSION

Throughout the jury-trial process, from receipt of a summons through conclusion of the trial and exit from the courthouse, jurors will have concerns about risks to their health. Parties and the public will have corresponding concerns about the fairness of the process. We believe that the courts' careful, consistent, and visible compliance with the risk-reduction strategies recommended in this report will enable jurors to perform their function fairly, and will in turn promote trust and confidence of parties and the public in the process.

APPENDIX 1: Jury Courts by Potential Capacity

The following is a list of all courthouses that receive jurors, designed to give a rough idea of the physical capacity of each such courthouse to 1) accommodate a pool of potential jurors to be impaneled, and 2) conduct a trial with either a jury of six with one alternate or a jury of 12 with two or four alternates, both with necessary social distancing.

It is important to note that many other factors must be considered before deciding whether and when to schedule jury trials in any of these spaces, such as: what other business is conducted in the space, which departments and other occupants share the courthouse, occupancy limits at the courthouse, where the jury pool and courtrooms are located in the building, access by elevators and stairways, availability and location of restrooms, HVAC systems, sightlines and audibility, recording systems, and whether furniture and fixtures can be moved or reconfigured. This chart is not intended to constitute a recommendation for hosting jurors at any particular courthouse. Rather, it reflects the physical spaces in each of the buildings.

A much shorter and more detailed list of courthouses that the JMAC recommends for consideration for jury trials in Phase 1, subject to consideration of other factors as indicated above, appears in Appendix 2.

The chart is based primarily on floor plans prepared by the Trial Court Facilities Department to determine occupancy capacity with social distancing in each room in each courthouse, supplemented by specific analysis of jury spaces by the Trial Court Chief of Construction Services. In many cases, the information also reflects site visits or information from persons familiar with the specific courthouse. Before any decisions are made about whether to send jurors to a particular courthouse, extensive consultation should occur among those who work in the building, including judges, clerks, security, facilities, and others, to gather and consider information about the additional factors cited above.

LEGEND

COURT LOCATION: A list of the individual court buildings that house jurors. “Trial Court,” “Justice Center,” or “Multiuse” indicates that more than one court department shares the building.

The Dedham Jury Pool is unique; it is a separate space in the county-owned Registry of Deeds building, where the Probate and Family Court previously sat. As such, it has two courtrooms and other spaces with sufficient physical capacity for jury trials.

JURY POOL: If **one number** appears, it is the number of people that could fit in the designated jury pool assembly room with six foot social distancing.

If **multiple numbers** appear, that means that more than one potential jury pool space has been identified in the building. All such spaces in a building are represented in an equation, adding up to the total number of jurors that might be accommodated in separate spaces in the building.

Example: Barnstable District Court – $18+25=43$ (18 in the jury pool room, 25 in a nearby county hearing room, for a total of 43 potential jurors).

CTRM – 18 indicates that there is no adequate jury pool, but if potential jurors assembled in the courtroom the number indicated could be accommodated.

(CTRM) or **(CTRMS)** in parentheses indicates that there are courtrooms in the building that have the physical capacity to be used to assemble a jury pool. Since this is not the intended use of those rooms, the existing floor plans often do not indicate how many potential jurors could be assembled in such courtrooms; this would have to be investigated. If the number of potential jurors able to be accommodated can be ascertained from information available, that number is included in the parentheses.

4th FLR indicates the jury pool is on the fourth floor of the building, which would present access challenges to assembling jurors there.

? indicates that further on-site investigation is needed. Example: Brockton Superior Court has no viable jury assembly room; potential use of one or more courtrooms for that purpose requires further investigation.

N/A indicates a court not currently under consideration for jury trials (e.g., Brighton BMC is undergoing renovations).

JURY OF 6 OR 12: These columns indicate whether at least one courtroom in the building could accommodate a jury of six or 12 with either one, two, or four alternates, as indicated.

(YES) in parentheses, indicates that there is a courtroom that could theoretically accommodate a jury of that size, but there are other factors that make it unlikely that such a jury would be seated there: the layout would be undesirable, there would be no room for spectators, the building itself would have difficulty accommodating that number of jurors for other reasons, etc.

(FLR 2,3) indicates the floors where the potentially useable courtrooms are located. The JMAC recommends that potential jurors be asked to climb no more than two flights of stairs without a rest (e.g., in Middlesex/Woburn jurors would enter on the first floor, assemble in the third floor jury pool room for check-in and orientation, and then proceed to 4th or 5th floor courtrooms for trial). Because elevators accommodate at most double occupancy, it is not practical to attempt to transport even a moderate numbers of jurors through the building by elevator.

JURY COURTS BY POTENTIAL CAPACITY

Court Location	Jury Pool	Jury of 6 (7)	Jury of 12 (14)	Jury of 12 (16)
Attleboro District	8	NO	NO	NO
Ayer District	CTRM - 18	YES	YES	NO
Barnstable Multiuse	18+25=43	YES	NO	NO
Barnstable Superior	15+15+10+8=48	YES	YES	YES
Berkshire Juvenile	16	YES	YES	NO
Brighton - BMC	N/A	N/A	N/A	N/A
Brockton Multiuse	(20 4TH FLR)	YES	YES	NO
Brockton Superior	CTRM - 20?	YES	YES	NO
Brooke (Boston) – BMC/Multiuse	24 (CTRMS)	YES	YES	YES
Chelsea District	11 (CTRM)	YES	NO	NO
Chicopee District	CTRM - 18	YES	(YES)	NO
Concord District	14, CTRM - 18	YES	YES	YES
Dedham District	(REGofD - 80)	YES	NO	NO
Dedham Jury Pool - Reg of Deeds	80	YES	YES	YES
Dedham Superior	(REGofD - 80)	YES	YES	YES
Dorchester - BMC	15	YES	YES	YES
East Brookfield District	8 , CTRM - 18	YES	YES	YES
Eastern Hampshire District	12 , CTRM - 18	YES	YES	YES
Edgartown Multiuse	10, CTRM - 25	YES	YES	YES
Fall River Justice Center	24 (CTRMS)	YES	YES	YES
Falmouth District	8	YES	NO	NO
Fitchburg District	8 (CTRMS)	YES	YES	YES
Framingham District	9 (CTRMS)	YES	YES	YES
Franklin County Justice Center	31 (CTRMS)	YES	YES	YES
Haverhill District	6 (CTRM)	YES	YES	(YES)
Hingham District	CTRM - 18	YES	YES	(YES)
Holyoke District	12, CTRM - 18	YES	YES	YES
Lawrence Superior	38 (CTRMS)	YES	YES	YES
Lawrence Trial Court – Fenton Ctr	16 (CTRMS)	YES	YES	YES
Lowell Regional Justice Center	53 (CTRMS)	YES (FLR 2,3)	YES (FLR 2,3)	YES (FLR 2,3)
Lynn Juvenile	16	YES	NO	NO
Lynn Multiuse	14 (CTRMS)	YES	(YES)	(YES)
Malden District	N/A	N/A	N/A	N/A
Marlborough District	12 (CTRM)	YES	NO	NO
Middlesex Multiuse/Woburn	56	YES	YES	YES
Nantucket Multiuse	12+22 = 34	YES	YES	(YES)
New Bedford District	13 (CTRM)	YES	YES	(YES)

Court Location	Jury Pool	Jury of 6 (7)	Jury of 12 (14)	Jury of 12 (16)
New Bedford Superior	12+12+40=64	YES	YES	YES
Newburyport District	24	YES	(YES)	NO
Newburyport Superior	CTRM - 30	YES	YES	YES
Newton District	12	YES	NO	NO
Norfolk Juvenile	6 (CTRM)	YES	NO	NO
Northampton Multiuse	18+40=58	YES	YES	YES
Northern Berkshire District	17 (CTRM)	YES	NO	NO
Orange District	6 (CTRM)	YES	NO	NO
Orleans District	8 (CTRM)	YES	YES	(YES)
Palmer District	12 (CTRM)	YES	(YES)	NO
Peabody District	23 (CTRM)	YES	YES	YES
Pittsfield District	46 (S CT)	YES	NO	NO
Pittsfield Superior	46	YES	YES	YES
Plymouth Trial Court	59	YES	YES	YES
Quincy District	6, CTRM - 12	YES	NO	NO
Roxbury - BMC	9 (CTRM)	YES	YES	YES
Salem Trial Court	35	YES	YES	YES
Somerville District	11 (CTRM)	YES	YES	YES
Springfield/R. Ireland Justice Center	(124 4TH FLR)	YES	YES	YES
Suffolk Superior	111	YES	YES (FLR 3,4)	YES (FLR 3,4)
Taunton Superior	25 (CTRM)	YES	YES	YES
Taunton Trial Court	25	YES	YES	YES
Third District Middlesex - Medford	22	YES	(YES)	YES
Waltham District	8 (CTRM)	YES	YES	(YES)
Wareham District	9 (CTRM)	YES	YES	NO
West Roxbury - BMC	18 (CTRM)	YES	YES	YES
Westfield District	12 (CTRM)	YES	NO	NO
Woburn District	16 (CTRM)	YES	YES	YES
Worcester Trial Court	40	YES	YES	YES
Wrentham District	9 (CTRM)	YES	YES	(YES)

APPENDIX 2: Potential Phase 1 Jury Trial Courthouses

As set forth in the report, the JMAC recommends a phased approach to the resumption of jury trials. Phase 1 will consist of trials of juries of six (seven or eight with alternates), conducted one at a time in each of a small number of locations. The locations should be selected primarily on the basis of environmental and engineering controls and capacity for occupancy and internal circulation by the necessary number of people, with required distancing, in each of the spaces required for each part of the process. Other factors, such as parking, elevators, FTR setup, and input from leaders of all affected departments, should also be considered. In addition, courts will need to consider total occupancy limits in their buildings when bringing in potential jurors for impanelment.

The following courthouses are those identified by the JMAC as being the most promising options for Phase 1 based upon the information known to the JMAC as of the end of July 2020. Some judicial districts face difficult challenges at present, and are not included in the Phase 1 recommendations. These challenges may be alleviated if and when DCAMM identifies and finalizes plans for non-courthouse spaces in some of the districts. Current prospects for such locations are identified in Appendix 3.

BARNSTABLE COUNTY

Courthouse: Barnstable Superior Courthouse

Jury Pool: 48 potential jurors: 2nd floor jury pool (three adjoining rooms, 15, 8, and 10 persons) and Second Courtroom (15 persons)

Impanelment: Main Courtroom

Individual voir dire: Second Courtroom

Trial: Main Courtroom

Legal conferences during trial (in lieu of sidebar): Third Courtroom or send jury to 2nd floor deliberation space

Public/press: Gallery, Balcony and bridge line

Deliberation/Break room: Second or Third Courtroom (or Jury Pool 2nd floor space)

Accessible bathrooms: Basement

Elevator(s): Single Use

Juror parking: Free court lot

Notes: The balcony in the main courtroom would allow the public/press to be seated separately from the jury, trial participants, and victims/family. There is also potential space in the former Barnstable County jail, on the same campus as the Superior and District Courts and the Registry of Deeds.

BERKSHIRE COUNTY

Courthouse: Pittsfield Superior Courthouse

Jury Pool: 46 potential jurors: two adjoining rooms, 27 and 19 persons

Impanelment: Main Courtroom (2nd floor) or Jury Pool (Ground floor)

Individual voir dire: Deliberation room (for Main Courtroom), adjoining room (for Jury Pool)

Trial: Main Courtroom

Legal conferences during trial (in lieu of sidebar): Send jury to Deliberation room

Public/press: Gallery and bridge line

Deliberation/Break room: Deliberation room

Accessible bathrooms: Adjoining Deliberation room

Elevator(s): Single Use

Juror parking: Paid lots, some distance from courthouse

Notes: Pittsfield Superior has a large courtroom with room for 14-16 jurors plus up to 24 persons in the gallery. Some of this gallery space might be needed for parties, counsel, and witnesses. There is also a nearby deliberation room with room for 14-16 jurors. HVAC system is in the process of being upgraded. Parking has always been an issue in Pittsfield: most lots are some distance from the courthouse, and jurors complain about the cost, which may be an issue with people suffering economic hardship due to COVID-19.

BRISTOL COUNTY

Courthouse: Fall River Justice Center

Jury Pool: 24 potential jurors

Impanelment: Jury Pool (3rd floor)

Individual voir dire: District Court Courtroom (2nd floor)

Trial: District Court Courtrooms (2nd, 4th Floors)

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Single Use

Juror parking: Paid lots, some distance from courthouse

Notes: There is a lack of large spaces in Fall River. There are no spaces on the same floor as the jury pool for conducting individual voir dire during impanelment in the jury pool, and there is a question as to whether a jury of twelve with alternates can be seated in any of the courtrooms, due to fixed furniture. In addition, parking has always been an issue in Fall River: the municipal lot is some distance from the courthouse, and jurors complain about the complicated automated payment system, which often fails, and the cost, which may be an issue with people suffering economic hardship due to COVID-19.

ESSEX COUNTY

Courthouse: Salem Trial Court (Ruane Justice Center)

Jury Pool: 35 potential jurors

Impanelment: Jury Pool (3rd floor)

Individual voir dire: Courtroom (1st, 3rd, 4th, 5th floor)

Trial: Courtrooms (1st, 3rd, 4th, 5th floor)

Legal conferences during trial (in lieu of sidebar): Send jury to jury pool room or adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double occupancy

Juror parking: Paid lots, some distance from courthouse

Notes: There are a number of courtrooms in the Salem Trial Court that can accommodate juries of six and twelve. There is also a large law library that could be used for jurors if necessary, and is currently being used by the grand jury. HVAC system is in the process of being upgraded. There is an MBTA lot near the courthouse intended for commuter use only, and jurors are often unhappy to learn about this lot after parking a greater distance from the courthouse, at greater expense, which may be an issue with people suffering economic hardship due to COVID-19.

Lawrence Superior Courthouse is also an option in Essex County, with a jury pool that holds 38 people and three courtrooms that would accommodate a jury of twelve.

FRANKLIN COUNTY

Courthouse: Franklin County Justice Center

Jury Pool: 31 potential jurors

Impanelment: Jury Pool (3rd floor)

Individual voir dire: Courtroom

Trial: Courtrooms (4th and 5th floors)

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom or jury pool

Accessible bathrooms: All floors

Elevator(s): Double Use

Juror parking: Paid lot near courthouse

Notes: Franklin County Courthouse has a jury pool that can accommodate 31 jurors on the third floor, and several courtrooms that can accommodate juries of six or twelve on the fourth floor.

HAMPDEN COUNTY

Courthouse: Roderick L. Ireland Justice Center

Jury Pool: Approximately 30 potential jurors in each of two first-floor District Court courtrooms (the jury pool holds 124, but is on the fourth floor)

Impanelment: Courtroom

Individual voir dire: Adjoining courtroom

Trial: Courtrooms on first, second and third floors

Legal conferences during trial (in lieu of voir dire): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double Use

Juror parking: Free lot at casino across the street

Notes: The Ireland Courthouse presents some challenges. The jury pool is by far the largest in the state, and would accommodate 124 physically distanced jurors, but it is on the fourth floor. (Further, the stairs are traditional enclosed stairwells, which would be undesirable for moving a large number of people between floors.) However, there are two large District Court courtrooms on the first floor that could accommodate a total of 60 jurors between them, and a number of courtrooms on the second and third floors that can accommodate juries of six and twelve.

HAMPSHIRE COUNTY

Courthouse: Hampshire County Courthouse

Jury Pool: 58 potential jurors: 18 persons in the Jury Pool (Second Floor) and 40 in the Superior Courtroom (Third floor)

Impanelment: Courtroom (District Courtroom for jury of six)

Individual voir dire: Adjoining Courtroom for jury of six

Trial: Courtroom

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom or jury pool

Accessible bathrooms: Unknown

Elevator(s): Single Use

Juror parking: Unknown

Notes: The Hampshire County Courthouse has several courtrooms that can accommodate a jury of six, and also has a large Superior Court courtroom that can accommodate a jury of twelve (the “Historic Courtroom”). The Historic Courtroom is in the Old Courthouse, which is connected to the new courthouse by a series of stairs. The HVAC system is in the process of being upgraded.

MIDDLESEX COUNTY

Courthouse: Middlesex Superior/Woburn Courthouse

Jury Pool: 56 potential jurors in two adjoining rooms, 40 and 16 persons

Impanelment: Jury Pool (3rd floor)

Individual voir dire: Conference Room (3rd floor) or adjoining jury pool room (FTR would need to be installed), Courtroom

Trial: Courtrooms (4th or 5th floor)

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double occupancy

Juror parking: Free courthouse garage

Notes: The Middlesex Superior/Woburn courthouse has its jury pool on the third floor and courtrooms on the fourth through seventh floors, meaning impaneled jurors can get to courtrooms on the fourth or fifth floor. They will have to climb two flights of stairs twice on the day they report, and will have to wait for single-use elevators on successive days. They will have to descend four flights of stairs at the end of each day, or wait for double-use elevators. Alternatively, seated jurors may be directed to park on the fifth floor of the garage and enter directly on the fifth floor, but health screening arrangements would have to be made for anyone entering on the fifth floor. Evaluation of the HVAC system is ongoing. There is a large, free parking garage attached to the building.

Lowell Regional Justice Center is also an option in Middlesex County, with a jury pool that holds 53 people on the first floor and six courtrooms that would accommodate juries of six or twelve on the second and third floors.

NORFOLK COUNTY

Courthouse: Dedham Courthouse Complex (Superior, District, and Jury Pool/Registry of Deeds spaces)

Jury Pool: 80 potential jurors: six interconnected rooms, 31, 18, 16, 6, 6, and 3 persons

Impanelment: Jury Pool (former Probate and Family Court) or Superior Court Main Courtroom

Individual voir dire: Second courtroom

Trial: Courtrooms in Superior, District, and Jury Pool

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Single Use

Juror parking: Paid lot behind courthouse

Notes: The Dedham Court complex has a large number of courtrooms for holding juries of six and twelve, including the jury pool itself, which is the former Probate and Family Court and includes two courtrooms (one large enough for a jury of twelve, the other large enough for a jury of six) and a deliberation room that will hold 16. Evaluation of the HVAC system is ongoing. FTR would have to be installed in the jury pool.

PLYMOUTH COUNTY

Courthouse: Plymouth Trial Court

Jury Pool: 59 potential jurors

Impanelment: Jury Pool (2nd floor)

Individual voir dire: Courtroom directly above or below jury pool

Trial: Courtroom

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double occupancy

Juror parking: Free court lot

Notes: Plymouth Trial Court has a large jury pool where an impanelment could be conducted, if FTR is installed in the jury pool. The nearest courtrooms are directly above and below the jury pool, or on the other side of the building on the same floor. Evaluation of the HVAC system is ongoing.

SUFFOLK COUNTY

Courthouse: Brooke Courthouse

Jury Pool: 24 potential jurors: two adjoining rooms, 16 and 8 persons (3rd floor)

Impanelment: Jury Pool (3rd floor). FTR will have to be installed.

Individual voir dire: Courtroom or adjoining room to jury pool (with FTR installed)

Trial: Courtroom

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double occupancy

Juror parking: Paid lots, public transportation

Notes: The Brooke Courthouse has a number of courtrooms that can accommodate a jury of six and a few that could accommodate a jury of twelve. The jury pool is on the third floor, with courtrooms on the fourth and fifth floors, meaning impaneled jurors would have to climb two flights of stairs twice on their first day, and wait for elevators to get to the courtroom on successive days. They would have to descend four flights at the end of the day. Area parking is expensive; most jurors must take public transportation.

WORCESTER COUNTY

Courthouse: Worcester Trial Court

Jury Pool: 40 potential jurors

Impanelment: Jury Pool (3rd floor)(FTR installation required)

Individual voir dire: Adjoining courtroom

Trial: Courtrooms

Legal conferences during trial (in lieu of sidebar): Send jury to adjoining courtroom

Public/press: Gallery and bridge line

Deliberation/Break room: Deliberation room or adjoining courtroom

Accessible bathrooms: All floors

Elevator(s): Double occupancy

Juror parking: Paid lots, some distance from courthouse

Notes: Worcester Trial Court has a number of courtrooms that can accommodate a jury of six or twelve, as well as some deliberation rooms that can accommodate seven jurors. Parking has always been an issue in Worcester: most lots are expensive and/or some distance from the courthouse, and jurors complain about the cost, which may be an issue with people suffering economic hardship due to COVID-19.

APPENDIX 3: Potential Non-Court Locations

The Trial Court and the JMAC are working with the Division of Capital Asset Management and Maintenance (DCAMM) to identify and evaluate potential non-court locations that could be used for jury business during the pandemic, either as jury pool assembly locations or potentially to conduct entire jury trials, from impanelment to verdict. Identifying such sites is particularly critical in judicial districts with limited or no court facilities where jury trials, particularly juries of 12, can be conducted, such as Dukes and Nantucket Counties.

Even in judicial districts with potential court space for jury trials, additional non-court facilities can serve a valuable function by enabling the courts to begin to reduce the backlog of jury trials that has been created by the extended closure of the courts and ongoing suspension of jury trials, and that likely will continue to grow as we resume jury trials on a limited basis.

Non-court locations have the potential to play an important role in resuming jury trials and reducing backlog, but they present challenges as well, including many of the same challenges confronting the courthouses. First, any off-site location would have to meet the same standards as the courthouses for safeguarding the health and safety of occupants, such as accessibility, adequate room for social distancing, sufficient air quality, and recording systems. Preparing off-site locations for jury trials will also require time and resources, financial and otherwise, to lease or license the property and build it out to serve as a jury impanelment and/or trial location.

Initially, DCAMM began investigating state-owned properties, such as armories and community colleges, as potential off-site locations for jury trials. However, the armories declined to offer space, due in part to their need to conduct a full electrostatic disinfecting procedure after each use. As of late July, DCAMM is in ongoing discussions with representatives of state colleges and universities, which remain open to working with the courts but have also cautioned that many campuses are in the midst of determining their own needs. They also have concerns about the presence of criminal defendants on their campuses and the attendant security requirements. They have asked DCAMM to prepare a specification sheet of the court's space needs, which it is in the process of doing.

DCAMM reports that as of late July, it is reviewing additional state-owned spaces that may meet court needs. In addition to armories (rejected) and educational spaces (in discussions), and underused lease spaces (none identified as yet), DCAMM is investigating HHS space and office facilities.

Leased or licensed private spaces are also good potential options. The director of leasing, who was working on this project, has recently retired, but DCAMM assures us that a new representative is being assigned and DCAMM is moving forward with identifying leased or licensed options. Licensed space has the advantage over leased space in that a lease would require much more time from identification of space to move-in, due to RFP, bidding, and build-out timelines. As a rough estimate, DCAMM anticipates that licensed space, once selected, might be ready for use within three months, whereas leased space could take up to a year.

There are a number of potential locations that are currently under consideration by DCAMM. The court may want to consider assigning jury trials from multiple jurisdictions to be held in one central location, if space suitable for that purpose is identified. The following is the list of spaces that are being investigated by DCAMM of which we are aware.

Barnstable County: Former Barnstable County Jail, Barnstable, on the same campus as the Barnstable Superior and District Courts.

Middlesex County: Middlesex County Sheriff's Training Facility, Chelmsford (former charter school, offered by Middlesex County Sheriff's Office).

Nantucket County: Nantucket Dreamland Movie Theatre, Nantucket (offered at no charge by Dreamland owner for purpose of assembling and impaneling jurors).

Norfolk County: Bay State Correctional Center, Norfolk (offered by Department of Correction. As a former prison, this site may be less appropriate for criminal than for civil trials, although the DOC advocates for criminal trials there to avoid transports to courthouses and the risk of introducing infection.)

Site of former Lowe's, Quincy (very large space, ready to build out, accessible by public transportation and ample free parking).

Worcester County: Worcester Law Library Training Facility, Worcester (already contracted to Trial Court; two floors that could accommodate many jurors for impanelment and/or trial).

Massachusetts Probation Service Training and Operations Center, Clinton (already operated by Trial Court; two floors that could accommodate many jurors for impanelment and trial, ample free parking).

APPENDIX 4: Input from Bar Leaders and Other Stakeholders

The JMAC held a virtual meeting with leaders of the criminal bar on June 11, 2020. Attendees included District Attorney Marian Ryan and designees from other District Attorneys' Offices, a designee from the Attorney General's Office, division heads of the Committee for Public Counsel Services (CPCS), the president of MACDL, the President of the Massachusetts Chapter of the American College of Trial Lawyers, leaders of local bar advocate programs, and representatives of the MBA and of local and affinity bar associations, and the Executive Director of the Massachusetts Office of Victim Assistance.

The JMAC held a virtual meeting with leaders of the civil bar on June 18, 2020. Attendees included representatives of the Massachusetts Bar Association, the Boston Bar Association, the Attorney General's Office, the Standing Advisory Committee on the Rules of Civil Procedure, the Massachusetts Chapter of the American College of Trial Lawyers, the Massachusetts Academy of Trial Attorneys, the Massachusetts Defense Lawyers Association, and local and affinity bar associations.

On June 25, 2020, the JMAC held a virtual meeting with clerks of the Superior, District, Boston Municipal, and Juvenile Courts, and Middlesex County Sheriff Peter Koutoujian, representatives from the Department of Correction, First Deputy Commissioner of Probation Dianne Fasano, and Directors of the Trial Court Departments of Facilities, Security, and Information Services.

Attendees at all three meetings were asked to provide input and express their concerns on possible locations of jury trials, the possibility of conducting remote trial proceedings, jury impanelment, the effect of COVID-19 on jury pools, the possibility of trials before juries of reduced size, priority of cases, and public access to jury trials, among other topics.

ATTORNEY MEETINGS:

Physical distancing

Both civil and criminal attorneys expressed concern over how to communicate with clients while maintaining physical distance, particularly for attorneys over the age of 60. Many civil attorneys acknowledged that it is impossible to allow everyone into the court all at once. One civil attorney suggested that attorneys file proposed supplemental juror questionnaires as part of a final pretrial conference, and the approved questionnaire could be distributed to potential jurors to complete before being called into court for impanelment. A civil attorney suggested using the "Thanksgiving table" method of jury impanelment as a way of maintaining physical distance. An attorney suggested that staggering court reporting times for the jury pool can also help address physical distancing during the impanelment process.

Locations of jury trials

Both groups of attorneys expressed hesitation about holding jury trials in off-site locations, although some attorneys felt that jury impanelment could occur at an off-site location. The majority felt that holding trials in courthouses is preferable, and one attorney suggested using Superior Court courtrooms that tend to be more spacious. Some criminal defense attorneys suggested having jurors seated where the audience usually sits in courtrooms, with counsel seated facing the jurors, with backs to the judge.

Remote proceedings

Many criminal defense attorneys felt that, other than sidebar conferences between the judge and attorneys and hearings of motions *in limine*, no part of a criminal trial could be done remotely. Both civil and criminal attorneys dismissed the idea of conducting the impanelment process virtually due to concerns including juror access to technology. The criminal bar felt that conducting criminal trials remotely raises many legal and logistical concerns such as public access, handling evidence, procedural protections, and the inability to observe non-verbal cues. A criminal defense attorney raised concerns over how to communicate with clients during a remote trial and proposed the idea of creating an attorney-client breakout room on Zoom where the client and attorney could consult.

Some civil attorneys expressed that parts of civil trials could be done remotely such as hearing testimony from experts, the police, and non-essential witnesses, as long as there is uniformity. One civil attorney stated that one significant challenge will be how evidence is presented to jurors. One civil attorney stated that issues of class, wealth, and race can affect access to technology and expressed concerns that some people may not have stable internet or be able to afford a device that can connect to the Internet.

Size of the jury

Many of the civil attorneys supported the proposal of proceeding with a six-person jury instead of a twelve-person jury in the short term, especially if the alternative was not being able to proceed to trial within a reasonable time. Many civil attorneys believed that the plaintiff's bar would be amenable to six-person juries, noting that a smaller jury addresses the physical distancing issues and also requires a smaller jury pool for impanelment. One civil attorney expressed the view that a six-person jury would not make much difference in a trial.

Jury pool composition

Attorneys stated that it will be challenging to get people to appear for jury duty. They felt that jurors would be distracted by health and safety issues and that many in the jury pool would be excused as a result. Both groups of attorneys expressed concern about how this would affect the possibility of obtaining a fair cross section of the community and emphasized the importance of ensuring that the jury pool composition remain well balanced and representative of the community.

Attorneys felt that more people may be willing to participate if they felt assured that the court prioritized keeping people safe. Both civil and criminal attorneys emphasized that it was essential to be as transparent as possible with potential jurors to educate them from the beginning of the process about the health and safety measures that the court has taken, in order obtain a jury pool that is representative of the community. One criminal defense attorney suggested creating a video of a mock trial showing the precautions the court has taken. The two groups of attorneys stated that forcing reluctant jurors to participate may affect the ability to impanel fair jurors. Attorneys agreed that judges should be more lenient about excusing jurors, especially for those who have underlying health concerns or are over sixty years old. One criminal defense attorney suggested that the court increase the number of peremptory challenges, so as to permit attorneys to excuse jurors who appear to have concerns.

Public access

Prosecutors and MOVA expressed opposition to livestreaming jury trials because people could record testimony and post it on social media, which could jeopardize the safety of victims and witnesses and lead to witness intimidation and retaliation. Criminal attorneys supported the idea of livestreaming the trial into a separate room in the courthouse where the public could watch with court officers present to ensure that no one records testimony. A civil attorney raised the idea of using a specific link that the public could access to watch the proceedings, which is what the Federal courts are currently doing. A criminal defense attorney felt it was important for family and supporters of defendants to be able to sit in the courtroom during the trial in order to humanize the defendant.

Caseflow management

The criminal attorneys agreed that there needs to be a collaborative review of which cases should be tried first. Another criminal attorney suggested that making jurors available on Fridays in locations where they have not been previously could help with the backlog of cases. One civil attorney suggested court conciliation or mediation to help decrease the backlog of cases. Civil attorneys stated that it would be beneficial to attorneys and their clients to receive reliable updates on trial dates so they can accommodate schedules for witnesses. One civil attorney would prefer to know now if there was no possibility of the trial taking place before the end of the year.

Getting to the courthouse

A criminal defense attorney raised the issue of transportation challenges of getting to a courthouse. Limited and expensive parking forces many jurors to take public transportation, and the pandemic has affected people's willingness to take public transit. The attorney stated that communities where residents rely on public transportation could be negatively affected and inquired about the possibility of the court providing travel vouchers or parking passes for jurors.

Courtroom configuration

A member of the criminal defense bar raised the issue that physical distancing between witnesses and jurors could inhibit a juror's ability to determine the witnesses' credibility and stated that courtroom configuration should allow jurors to observe witnesses' body language. To address the concerns of the defendant's back being turned to the jury or judge, a civil attorney brought up the idea of turning counsel tables sideways in the room with one end facing the judge and the other facing the jury. Other attorneys proposed that counsel would sit facing jurors, with their backs toward the judge.

Wearing masks during the trial

While both groups of attorneys believed that wearing masks is essential to maintaining people's health, they raised concerns about witnesses and criminal defendants wearing masks because they can cover up facial expressions and other non-verbal behaviors that are important to observe. A civil attorney suggested installing clear plexiglass barriers that would allow people to take their masks off and stay healthy while maintaining their credibility.

Juvenile court concerns

One criminal defense attorney raised the issue of the ability of juveniles to fully understand and participate in a remote trial; requested that juvenile cases be given equal consideration when prioritizing which cases should proceed to trial; and expressed concern that juvenile cases would be shortchanged regarding access to jurors. The attorney raised concerns that juveniles held in custody face developmental disruption in their lives which can then affect their potential life outcomes.

COVID testing

Both criminal and civil attorneys were concerned with the possible spread of COVID-19 throughout the courthouse and proposed temperature testing or immediate result testing that should be administered to everyone.

Managing expectations

One prosecutor stated that it was important to be realistic in managing expectations on when and how jury trials will resume. The attorney suggested that people should begin discussing cases in September and attempt to resolve as many cases as possible but felt that jury trials may not be able to resume until a vaccine is developed, possibly in January or February. This view was expressed in meetings with both the criminal and civil bar, without generating any comment in opposition.

A prosecutor suggested starting first with civil trials or district court trials.

STAKEHOLDERS MEETING

Transportation issues

The Middlesex Sheriff reported that his facility has had no positive tests for a few weeks and had been successful by maintaining minimal movement within the current population. He expressed concerns about transporting defendants in custody between facilities and courthouses, placing multiple people in a van, and having numerous people in cells mixed with individuals from other facilities or courthouses. He stated that the goal would be to limit the amount of movement and interaction with other people, including courthouse staff or inmates from other facilities. He noted that contrary to popular assumption, inmates often do not wish to appear at the courthouse (as opposed to video-conferences) because they miss meals, lose their rooming assignments (because of the need to quarantine upon return), and worry about the security of their belongings. He advocated that proceedings be conducted virtually as much as possible. DOC expressed concerns about inmates being exposed and then returning to the general population.

Attorney-client communication

The Department of Correction raised the issue of managing the volume of Zoom/Polycom calls and available equipment to support the calls. The DOC explained that a room is set up for attorneys to have Zoom calls with their clients, but the DOC preferred phone meetings because a staff member has to monitor all Zoom calls to ensure that there is no Internet usage.

The Middlesex Sheriff reported that the population has decreased in that facility, which has given the facility the capability to redirect staff and resources to accommodate the Zoom and Polycom calls for attorney meetings.

Facilities

The Director of Facilities reported that adjustments have been made to HVAC systems. Facilities has ordered portable handheld disinfecting guns that will be provided to every state-owned facility so that cells can be cleaned between transfers of detainees. Facilities is working with judges and clerks to find a suitable time to disinfect when the courtrooms are not in session.

Security

The Director of Security raised the issue of bringing in defendants on a staggered basis and stated that limited occupancy space was a concern. He stated officers try to separate individuals who are coming from the sheriff's departments or DOC from new arrests and arraignments to avoid infection. Security prefers holding jury trials in existing courthouses because of security procedures and functionality that currently exist in the current courthouses.

The Director expressed concerns that jury selection will be difficult and suggested bringing in smaller groups of jurors at a time. He stated that court officers will be dedicated full time to jury pool management, and he believes they could better manage during the earlier stages of reopening since fewer courtrooms will be in session. Once the number of in-person hearings increases, court officers will have to perform duties in the courtrooms, which will make staff and scheduling concerns more difficult.

Clerks

Clerks expressed concerns regarding physical spacing to accommodate everyone in a small space, including interpreters, jurors, witnesses, parties, and attorneys. One clerk mentioned that bathrooms are a concern and that there are insufficient resources to clean them after each use. One clerk suggested designating smaller courthouses as jury sessions and moving the host court's non-jury sessions into neighboring courthouses.

One clerk questioned whether courts would be able to handle numerous Zoom sessions at once. Another clerk questioned whether courthouses could accommodate juries and where jury deliberation could take place with adequate distancing. The clerk asked how PPE would be handled and distributed. Another clerk stated that juror safety should be prioritized and that communication, cooperation, and collaboration would be important to achieve that. One clerk stated that efforts should be made to schedule the cases that are likely to go forward to trial.

Probation

The First Deputy Commissioner of Probation stated that Probation has been discussing the issue of technology access with victims' groups, and raised concerns about witnesses knowing how to use it.

Off-site locations

All participants in this meeting expressed concerns about holding jury trials in off-site locations, and believed that doing so would make issues such as security, staffing, evidence transportation, technology and FTR, more difficult.

Security expressed concern that off-site locations would require more court officers and coordination with other agencies such as police and sheriffs' departments and DOC. Security raised concerns about where detainees would be held during court recesses, and questioned whether transportation vans would be suitable for holding an inmate.

Clerks raised the issue of how clerks would transport, handle, and store evidence if trials are held off site. One clerk suggested that civil trials could potentially be held in an off-site location but emphasized concerns about transporting paperwork.

JISD expressed many technology concerns about trials being held offsite. The court network would need to be extended to provide the necessary connectivity to host proceedings, and audio/microphones would have to be installed and calibrated at off-site locations. FTR would need to be installed in offsite locations as well.

Probation raised the question of what types of supports would be given to victims and witnesses in an off-site location and whether a safe and secure waiting area would be available. Probation also raised the issue of effects on witness testimony if the trial were held in a large auditorium room.

Technology

JISD expressed numerous concerns regarding technology when resuming trials, even in existing courtrooms. The court has invested in FTR in courtrooms, including the adjustment and calibration of audio in the current courtroom layouts. Changing the layout and spacing in courtrooms would significantly affect the current microphone and audio setup. When planning a new courtroom layout, JISD indicated it would be essential to include a services component to ensure that audio equipment be calibrated to fit the proposed setup.

JISD stated that there is equipment available to support digital evidence presentation such as display screens for each courtroom, but that the technology, configuration, and installation would be expensive.

Public access

JISD stated that Zoom has an option to stream proceedings via YouTube, but there would be challenges with ensuring multiple cameras throughout the courtroom to capture different viewpoints. JISD has been testing a teleconference bridge that connects through the courtroom audio, and the public could access the proceedings through the use of a bridge number. Someone in the courtroom would have to be responsible for disconnecting the bridge.

APPENDIX 5: Models Proposed and Considered

OVERVIEW OF POTENTIAL JURY TRIAL MODELS

To formulate meaningful recommendations to the SJC, the JMAC engaged in a broad review of possible approaches to reinstating jury trials. As indicated in the body of our report, we concluded that jury trials should resume in person, primarily in courthouses, at least at the start, in a series of phases. This section presents an overview of various models we considered, some of which may warrant further consideration as we develop further experience with the conduct of jury trials in the context of the pandemic. The variety of options presented in this section is designed to reflect the range of factors under consideration, including public safety, courthouse facility limitations, available technology, and availability of COVID-19 testing. Each model is presented in a format allowing for at-a-glance assessment of the benefits and detriments. Specific aspects of each model will be discussed in more detail in the following section.

The first model presented, access to rapid testing, represents a seemingly simple solution. It is a solution anticipated by some colleges and universities, as they plan for employees and students returning to campus this summer. Testing all court participants, however, presently may be unachievable due to the shortage of COVID-19 tests in the Commonwealth, the timing of test result turnaround, and the current reservation of tests to symptomatic individuals or individuals willing and able to pay private health care costs.

Further, at present rapid testing is not considered to be sufficiently reliable, although reliable rapid testing may soon become available. Widespread availability of a rapid, affordable, and reasonably reliable test might warrant substantial change in court practices.

Model 1: ACCESS TO RAPID, AFFORDABLE, RELIABLE TESTING	
Description	The Trial Court provides COVID-19 rapid tests to Trial Court employees, trial participants and potential jurors with their permission.
Criminal or Civil Jury Trials?	Both.
Criminal defendant Present at Courthouse?	Yes.
Attorneys Present at Courthouse?	Yes.
Witnesses Present at Courthouse?	Yes.
Jurors Present at Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> • In person jury trials. • Low risk of COVID-19 exposure. • Jurors and participants feel safe and may focus on the trial. • Jury Trials may resume in fashion similar to pre-COVID. • Limited physical distancing requirements may allow for more jury trials.
Disadvantages	<ul style="list-style-type: none"> • If such testing does not become available routinely to the Trial Court, this is not a viable model. • Financial cost. • Test results turn-around time. • Reliability of rapid result tests.
Other Legal Issues	<ul style="list-style-type: none"> • If a juror, witness, party, or attorney refuses testing, what is the recourse? • What is the scientific reliability threshold for the Trial Court to use a rapid response test? • What are the legal implications for those tasked with administering the test? • HIPAA.
Other Health Issues	<ul style="list-style-type: none"> • Access to testing now and in the future. • Who would be qualified to administer tests? • On longer trials, how frequently would testing be required?
Other Comments	<ul style="list-style-type: none"> • Number of tests would be expensive, but may avoid costs of some of the other options.

The next models, Models 2 and 3, examine the designation of certain courthouses, on a regional basis, for jury trials. Adoption of such models would require the Trial Court to rethink the use of certain courthouses, across Trial Court departments and judicial districts. A significant benefit to these approaches would be the resumption of jury trials in a relatively traditional format.

Model 2: DESIGNATING MID-SIZED COURTHOUSES FOR REGIONAL JURY TRIALS ONLY	
Description	Certain courthouse buildings are designated as “jury trial only” facilities. Such designation would likely be given to certain District Court courthouses in each judicial region, which have features most conducive to resuming jury trials with social distance. Such courthouses could hear jury trials across court departments. The court work, other than jury trials, normally heard in each “jury trial only” designated courthouse would be reassigned to a different courthouse.
Criminal or Civil?	Both, certain criminal trials prioritized.
Criminal defendant Present at Courthouse?	Yes.
Attorneys Present at Courthouse?	Yes.
Witnesses Present at Courthouse?	Yes.
Jurors Present at Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> • Jury trials in a courthouse specifically chosen for social distancing considerations. • In person jury trials. • Development of court facilities equipped to work according to risk reduction techniques. • Localization of technology purchases or FTR re-arrangement, to the extent necessary, to certain courthouses. • Efficient use of jurors.
Disadvantages	<ul style="list-style-type: none"> • Caseflow and priority considerations. • District Court facilities may be less likely to accommodate 12-person juries, or jury pools of sufficient size to impanel them. • Concern that courthouse employees in designated jury trial courts could face disproportionate risk.

Model 2: DESIGNATING MID-SIZED COURTHOUSES FOR REGIONAL JURY TRIALS ONLY	
	<ul style="list-style-type: none"> • Rotation of employees from different courthouses might spread exposure. • Displacing non-jury matters. • Public access / public transportation for parties traveling from other districts. • Judges hearing cases may not be familiar with pretrial history.
Other Legal Issues	<ul style="list-style-type: none"> • Venue. • Clerk record-keeping requirements.
Other Procedural Issues	<ul style="list-style-type: none"> • Movement of paper court files between clerk's offices.

Model 3: DESIGNATING LARGE MULTI-DEPARTMENT COURTHOUSES FOR REGIONAL JURY TRIALS	
Description	More modern courthouses, which house multiple court departments, would be identified for regional jury trials. Other court business would remain, but perhaps be reduced during jury trials.
Criminal or Civil?	Both.
Criminal defendant Present at Courthouse?	Yes.
Attorneys Present at Courthouse?	Yes.
Witnesses Present at Courthouse?	Yes.
Jurors Present at Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> • Some modern court facilities may be easier to equip for social distancing • Larger courthouses may have larger jury pool, deliberation, and court rooms. • Newer courthouses may have better air flow and filtration. • Newer courthouses may have more technology useful for socially distant trials. • In person jury trials. • Development of court facilities equipped to work according to risk reduction techniques. • Efficient use of jurors. • Courthouses in large cities more likely to have variety of public transportation options.

Model 3: DESIGNATING LARGE MULTI-DEPARTMENT COURTHOUSES FOR REGIONAL JURY TRIALS	
	<ul style="list-style-type: none"> • Larger courthouses may have more available courtrooms to use for individual jury voir dire and instead of side bar conferences.
Disadvantages	<ul style="list-style-type: none"> • Employees in multiple court departments may be affected if a jury trial participant tests positive. • Caseflow management/ priority considerations. • Concern that courthouse employees in designated jury trial courts could face disproportionate risk • Rotation of employees from different courthouses might spread exposure. • Public access for parties traveling from other districts. • Judges hearing cases may not be familiar with them. • Access issues in multi-story buildings.
Other Legal Issues	<ul style="list-style-type: none"> • Venue. • Courthouse-specific Clerk record-keeping requirements.
Other Health Issues	<ul style="list-style-type: none"> • Identifying and contact tracing more people if someone tests positive in multi-use facility.

Model 4 explores the possibility of trials of each case in its designated courthouses. The largest impediment to this model may be the courthouse facilities, which in many instances may not meet physical distance and other requirements. For those facilities that could accommodate jury trials, the number of trials conducted would necessarily be fewer than in the past.

Model 4: REDUCED VOLUME OF JURY TRIALS IN EACH COURTHOUSE	
Description	Courthouses identify a limited number of cases for jury trial within a determined time frame. During jury trials, other court business would be relocated or postponed.
Criminal or Civil?	Both, certain criminal trials prioritized.
Criminal defendant Present at Courthouse?	Yes.
Attorneys Present at Courthouse?	Yes.
Witnesses Present at Courthouse?	Yes.
Jurors Present at Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> • In-person jury trials.

Model 4: REDUCED VOLUME OF JURY TRIALS IN EACH COURTHOUSE	
	<ul style="list-style-type: none"> • Jury trials remain in court with pretrial history. • Each court manages its own jury trials. • Parties and witnesses do not have to travel to another district for trial.
Disadvantages	<ul style="list-style-type: none"> • Delay for large numbers of cases. • Many courthouses may not meet requirements for jury trials • Caseflow management. • The postponement of non-jury work during jury trials.

Models 5 through 8 focus on impanelment procedure. These models examine different options for housing socially distant venires and limiting interaction between jurors and other court users. Staggered schedules for impanelment, which many courts currently use for other proceedings, may assist to address space limitations in some locations for some cases.

Model 5: BIFURCATED IMPANELMENT	
Description	Initial juror eligibility and availability is determined remotely, by mail, email, or video conference. Available jurors are brought to the courthouse or a remote location for in-person voir dire.
Criminal or Civil	Both.
Criminal defendant Present at the Courthouse?	Whether the parties and attorneys are present at the courthouse, or participate in this initial hearing remotely, could be determined upon motion of the parties.
Attorneys Present at the Courthouse?	
Witnesses Present at the Courthouse?	Yes.
Jurors Present at the Courthouse?	After initial screening hearing, yes.
Advantages	<ul style="list-style-type: none"> • Jury venires are reduced in size, leading to fewer opportunities for COVID exposure, prior to voir dire. • Voir dire happens in person. • Jurors who would be screened out for obvious reasons, including health reasons, are not compelled to come to the courthouse.
Disadvantages	<ul style="list-style-type: none"> • Larger numbers of jury summonses for each trial. • A case-specific process outside the presence of a criminal defendant may not meet constitutional requirements. • Jurors who lack adequate access to technology may be unable to participate in the initial screening stage. • Possible impact on jury pool diversity.

Model 5: BIFURCATED IMPANELMENT	
	<ul style="list-style-type: none"> • A case-specific process that takes place remotely may not meet public access requirements. • Process for pre-impanelment communication with jurors would need to be developed and implemented; limitations on resources to manage such communications.
Other Comments	This model could be used in conjunction with other models.

Model 6: REMOTE IMPANELMENT	
Description	Trial participants other than jurors are in a courtroom, with FTR. Jurors remain in a different designated location and participate via video-conference. Once the jury is impaneled, the jurors report to the courthouse for trial.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	Yes.
Attorneys Present at the Courthouse?	Yes.
Witnesses Present at the Courthouse?	Yes.
Jurors Present at the Courthouse?	Not until the jury is impaneled.
Advantages	<ul style="list-style-type: none"> • Allows for use of courthouse spaces to impanel juries for other courthouses that may lack space for impanelment. • Centralizing impanelments in one location may result in efficient use of jurors. For example, if one trial does not proceed, another courthouse may have a trial ready to utilize the jury pool. • Centralizing impanelments would limit the need for technological improvements to specified locations. • For some cases, sufficient jurors could participate to permit impanelment in one sitting.
Disadvantages	<ul style="list-style-type: none"> • Current technology limitations. • Parties' preferences for and/or constitutional rights to see jurors in person prior to selection, especially in criminal cases. • May add a day to short trials, as the trial would likely commence the day after impanelment. • Case management/ priority issues. • Courthouses with larger jury pool rooms may need to relocate other court business. • Impaneled jurors would need to report to two locations – first the off-site location and then the courthouse.

Model 7: NON-COURTHOUSE IMPANELMENT	
Description	Identify non-courthouse buildings in which social distance can be maintained during large venire impanelment, such as armories, auditoriums, etc.
Criminal or Civil?	Both.
Criminal defendant Present?	Present at off-site location.
Attorneys Present?	Present at off-site location.
Witnesses Present?	Present at off-site location.
Jurors Present?	Present at off-site location.
Advantages	<ul style="list-style-type: none"> • Spaces sufficient for large venire with physical distance. • May avoid need for multiple venires to impanel some cases.
Disadvantages	<ul style="list-style-type: none"> • Impaneled jurors would need to report to two locations – first the off-site location and then the courthouse. • Leasing costs and issues. • Cost to install required technology including FTR. • Security for defendants in custody and for participants in non-courthouse location. • Acoustics and sightlines in off-site spaces. • Challenges to clerks in record keeping, access to electronic records, and transporting paper files.
Other Legal Issues	<ul style="list-style-type: none"> • Public access. • Potential for conflicts of interest with private owners. • Leasing and/or liability issues.
Other Comments	Budget, time required for build-out, and the need for technological equipment and installment may require significant time and money.

Model 8: STAGGERED IN-PERSON IMPANELMENT	
Description	Jury impanelment is staggered by hours and / or days, with jurors each given a specific time to appear in court. Jury is impaneled for future jury trial date.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	Yes.
Attorneys Present at the Courthouse?	Yes.
Witnesses Present at the Courthouse?	Yes.
Jurors Present at the Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> • In person jury trial. • Fewer people reduces risk.

Model 8: STAGGERED IN-PERSON IMPANELMENT	
	<ul style="list-style-type: none"> • More courthouses may have sufficient space for impanelment with smaller venire.
Disadvantages	<ul style="list-style-type: none"> • Longer impanelment. • Longer displacement of other court business.

Models 9 through 12 address the possibility of holding various aspects of the jury trial over a video-conference platform. As indicated in the body of the report, we recommend the resumption of in-person proceedings, subject to specified exceptions, for the reasons stated. Nevertheless, in the context of the pandemic, we have considered certain remote processes, as follows.

Model 9: VIDEO REMOTE TRIALS	
Description	Jurors and the public observe trial on video feed from remote location, either elsewhere in the same courthouse or in a different courthouse.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	Yes, in separate space from jurors.
Attorneys Present at the Courthouse?	Yes, in separate space from jurors.
Witnesses Present at the Courthouse?	Yes, in separate space from jurors.
Jurors Present at the Courthouse?	No, or in a separate space from participants.
Advantages	<ul style="list-style-type: none"> • Provides jurors with an environment that may minimize COVID concerns and risk.
Disadvantages	<ul style="list-style-type: none"> • Requiring jurors to make credibility assessments from live filmed testimony. • How is the trial filmed for the jurors? Via stationary camera(s)? Who controls the cameras? • How are jurors able to observe witnesses, attorneys, and the defendant simultaneously? • Attorneys and judge may face limitations in “reading” the jurors via video feed. • Increased security personnel staffing to remain with both the courtroom and the jurors at all times.
Other Legal Issues	<ul style="list-style-type: none"> • Jurors would require technology allowing them to examine evidence remotely, such as document projectors and digitized evidence.

Model 9: VIDEO REMOTE TRIALS	
	<ul style="list-style-type: none"> • Constitutional adequacy of procedures described.

Model 10: SEPARATED JURORS	
Description	Jurors are spread out in different areas of a court-controlled space, either within a courthouse or in a designated off-site location.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	Yes, in separate space from jurors.
Attorneys Present at the Courthouse?	Yes, in separate space from jurors.
Witnesses Present at the Courthouse?	Yes.
Jurors Present at the Courthouse?	Potentially, in separate spaces from participants.
Advantages	<ul style="list-style-type: none"> • Jurors are physically distant from trial participants and each other. • Minimizes jurors' COVID concerns.
Disadvantages	<ul style="list-style-type: none"> • Credibility assessments when the witnesses are not physically present before jurors. • How is the trial filmed for the jurors? Via stationary camera(s)? Who controls the cameras? • How are jurors able to observe witnesses, attorneys, and the defendant simultaneously? • How do jurors meaningfully deliberate while physically distant from each other? • Jurors would require technology allowing them to examine evidence remotely, such as document projectors and digitized evidence. Use of technology for jurors to view exhibits. • Attorneys and judge may face limitations in "reading" the jurors via video feed. • Security personnel needed to remain with jurors at all times.
Other Legal Issues	Constitutional adequacy of procedures described.

Model 11: REMOTE WITNESSES	
Description	Witnesses testify remotely via Zoom. Trial in courtroom.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	Yes.
Attorneys Present at the Courthouse?	Yes.
Witnesses Present at the Courthouse?	No.

Model 11: REMOTE WITNESSES	
Jurors Present at the Courthouse?	Yes.
Advantages	<ul style="list-style-type: none"> Encourages victim and witness testimony during pandemic.
Disadvantages	<ul style="list-style-type: none"> Confrontation Clause implications. More difficult for judge to control witness testimony and make timely rulings on objections. If witnesses are remote, but everyone else is present, how much is gained in terms of COVID safety? Witnesses may have different access to and skill with technology.
Other Legal Issues	<ul style="list-style-type: none"> In-court eye-witness identification. Impact on assessment of witness credibility. Constitutional adequacy of procedures described.
Other Procedural Issues	<ul style="list-style-type: none"> Victim advocates' concerns about the ability to capture witnesses' faces via screen shot or other technology.

Model 12: ALL JURY TRIAL PARTICIPANTS REMOTE	
Description	Court personnel in courthouse, and all others remote.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	No.
Attorneys Present at the Courthouse?	No.
Witnesses Present at the Courthouse?	No.
Jurors Present at the Courthouse?	No.
Advantages	<ul style="list-style-type: none"> Minimizes risk of COVID. Participants feel safe. Each courthouse can hold jury trials. Cases remain in same court. More cases can be tried. Juror yield may be higher.
Disadvantages	<ul style="list-style-type: none"> Logistics. Courtroom control. Each jury trial will be much longer. Defendants in custody appear obviously so. Differing access to and skill with technology for defendants, witnesses, attorneys, and jurors.
Other Legal Issues	<ul style="list-style-type: none"> Exhibits, even if digitized, need to be provided to jurors.

Model 12: ALL JURY TRIAL PARTICIPANTS REMOTE	
	<ul style="list-style-type: none"> • Constitutional adequacy – defendant’s right to be present; confrontation; consult with counsel. • To what extent may defendant waive certain rights?

Constitutional, logistical, practical, and financial concerns appear to counsel against these remote models. They may warrant further consideration, however, if the pandemic continues such that courts are unable to provide in-person trials.

Model 13 is an acknowledgment of the possibility that it may be impossible to proceed with a meaningful number of jury trials within the time frame leading to the development and launch of a vaccine. This model is presented not as a recommendation for action, but rather to frame the evolving context in which we are working, and to recognize the unknowns we are facing.

Model 13: CONTINUE SUSPENSION OF JURY TRIALS UNTIL WIDESPREAD VACCINATION OR HERD IMMUNITY	
Description	The Trial Court continues to suspend jury trials for the duration of the pandemic.
Criminal or Civil?	Both.
Criminal defendant Present at the Courthouse?	No.
Attorneys Present at the Courthouse?	No.
Witnesses Present at the Courthouse?	No.
Jurors Present at the Courthouse?	No.
Advantages	<ul style="list-style-type: none"> • Minimizes risk, cost. • Pandemic may end by the time the courts could conduct large numbers of jury trials in the manner recommended.⁶⁴

⁶⁴ <https://www.bbc.com/news/health-51665497> (experts project vaccine will be widely available in the middle of 2021); <https://www.nytimes.com/interactive/2020/04/30/opinion/coronavirus-covid-vaccine.html> (some experts indicate 2022 may be optimistic for a vaccine).

Model 13: CONTINUE SUSPENSION OF JURY TRIALS UNTIL WIDESPREAD VACCINATION OR HERD IMMUNITY	
Disadvantages	<ul style="list-style-type: none">• Widespread vaccination could take longer than the current optimistic projections.• Lack of speedy trial, especially for detainees.• Lack of access to justice.• Without realistic plan for jury trials, cases less likely to resolve.

APPENDIX 6: Summary of Practices in Other Jurisdictions

Jurisdictions across the country are striving to balance the need to resume jury trials with the need to protect the health and safety of jurors, litigants, lawyers, court personnel and the public. Their challenges, concerns, and recommendations are similar.

Federal Courts

The federal judiciary's COVID-19 Judicial Task Force formed a Jury Subgroup, which issued a report “Conducting Jury Trials and Convening Grand Juries during the Pandemic” on June 4, 2020. The report contains suggestions for courts to consider before resuming jury trials. It acknowledges that when juries will resume will vary state by state, and offers guidance to assist each court as it considers resuming jury trials.

Among the considerations discussed in the report are: providing personal protective equipment, addressing jurors' safety concerns early in the process, addressing distancing and deep cleaning procedures for courthouse spaces, juror travel, and preparation of space to be used by jurors, including paths of travel, courtrooms, common areas and restrooms. The use of questionnaires to prescreen prospective jurors and the possible use of video technology to conduct voir dire remotely are discussed. The report also addresses presentation of evidence, public access and staggered scheduling.

State Courts

While most states have postponed bringing in juries until later in the summer at the earliest, some have begun to conduct jury trials. Of the states resuming jury trials, some have conducted them in person and others have held or experimented with remote jury trials. Others are considering conducting portions of trials remotely, e.g. remote prescreening of jurors and/or remote voir dire. Reports from several state court systems that established committees to study the resumption of jury trials have been issued. See e.g. Resuming Jury Trials in Washington State, Guidelines for Operations during the COVID-19 Pandemic, June 2020; Jury Management Subgroup Best Practice Recommendations During the COVID-19 Public Health Emergency, June 1, 2020, (WA); Arizona Supreme Court Administrative Office of the Courts (AZ0; MN Judicial Branch Jury Management Resource Team (JMRT) Recommendations: Re-starting Jury Trials during COVID-19, Approved by Judicial Council on May 14, 2020 (MN). PANDEMIC CONTINUITY OF OPERATIONS WORKING GROUP, Jury Management, Judicial Council of California, Version 1.0, June, 2020 (CA). These reports, as well as the many court orders that address the resumption of jury trials, contain common themes, suggestions and/or requirements for jury trials in the time of COVID-19. Among them are:

Communication. There is widespread recognition of the need to communicate with jurors early and often about the steps courts are taking to protect the health and safety of jurors. Ideally, such communication should begin with the juror summons. Electronic communications, social media, public service announcements and videos are suggestions for messages to reduce juror anxiety and emphasize the importance of jury duty. One report suggested that having jurors observe facilities staff regularly cleaning high traffic surfaces would increase confidence in the court's ability to maintain a clean environment. (CA).

Pre-Impanelment considerations. Several reports note that it may be necessary to summon more jurors than would typically be summoned, to account for greater numbers of persons who will not be able to serve. (CA). Courts should maintain juror yield and utilization statistics to support data driven decisions as jury management policies are adjusted in response to the new normal. (AZ).

To reduce the number of jurors needing to come to court, state reports recommend the use of questionnaires to prescreen jurors. In addition to the usual qualification questions, screening for COVID-19 considerations, including health and child care issues, would be included.

Some reports suggest having jurors watch the orientation video before coming to court. (MN).

Impanelment. Where impanelments will take place in person, recommendations include measures to protect the health and safety of participants. These include health screening upon entry at the courthouse or other facility, temperature taking, wearing and providing masks, hand washing, supplying hand sanitizer throughout the courthouse, and physical distancing in entryways, juror rooms and elevators. Recommendations generally involve calling in smaller groups in larger spaces at staggered times. (WA). If courts are not able to accommodate the needed numbers of jurors, non-traditional spaces are being considered (e. g. Mississippi uses school basketball court).

Some jurisdictions are conducting or exploring remote impanelments. In this instance, recommendations are that jurors should be asked about their access to technology and willingness to use that technology. There is recognition that there may be a digital divide between those who have access to technology and those who do not. Remote measures must still ensure that impaneled jurors represent a cross section of the community. (AZ).

Arizona has reduced the number of peremptory challenges in all but capital murder cases. California recommends selecting more alternate jurors to account for expected withdrawals during trial.

Trial. In all jurisdictions, some variation of the health and safety measures described above are recommended for the entire time jurors are in court facilities. Health screening each day upon entry, a recommendation or requirement to wear masks, hand sanitizing, physical distancing, rearranging courtroom space or using alternate space, installation of barriers or shielding such as plexiglass are standard recommendations.

Tips from Canada include using the judge's opening statement to highlight safety protocols and identify court personnel who are available to provide guidance, and establishing a protocol for movement in and out of the courtroom to reduce contact with others. Action Committee on Court Operations in Response to COVID-19, Canadian Centre for Occupational health and Safety.

Recommendations also address exhibits, recognizing that they should not be passed among jurors. Requiring multiple copies or electronic exhibits are mentioned as possible solutions. Sidebars are prohibited by some orders. The need for public access is addressed by considering livestreaming trials online or to an adjoining courtroom or other large room.

The Superior Court in Maricopa County is considering a model where trials are recorded without a jury in the courtroom, and the jurors are later shown the recording to consider, deliberate, and render a verdict. This limits persons in the courtroom and streamlines the trial.

California has suggested that judges may consider mentioning in their jury instructions that despite the pandemic, jurors should not rush their verdict to shorten their participation.

Deliberation. Recommendations include: using a courtroom or large space to allow sufficient distancing, including for breaks and meals (ensure that any audio recording and cameras are turned off); asking jurors to bring water, meals and snacks; providing a copy of the judge's instructions to each juror, or providing each juror with a tablet that has instructions and evidence; discouraging mingling after delivery of verdict and dismissing jurors in staggered groups to avoid crowding. (WA).

Summary of Other Jurisdictions: Information Current as of July 8, 2020

Federal Courts

- On June 4, 2020, the Jury Subgroup of the COVID-19 Judicial Task Force published a report containing preliminary suggestions and ideas for courts to consider when restarting jury trials and convening grand juries, with the goal of minimizing risks to all participants.
- The report contains suggestions regarding:
 - Initial considerations;
 - Communicating safety to the public;
 - Deciding the level of PPE to be worn;
 - First communications with prospective jurors;
 - Prospective juror COVID-19 questionnaire content;
 - Prescreening of the jury questionnaires;
 - Preparing for juror travel and presence in the courthouse;
 - Space preparation;
 - Arrival on the day of jury service;
 - Gathering jurors in a safe environment;
 - Staff interaction with jurors;
 - Preparing the courtroom for jury selection and trial;
 - Considerations for jury selection and trial;
 - Deliberations; and
 - Grand jury considerations.
- The Jury Subgroup recognizes that courts will need to adapt these suggestions based on local concerns.

Alabama

- The Alabama Supreme Court suspended jury trials until **September 14, 2020**.
- Other in-person court proceedings could resume beginning May 15, 2020, at the discretion of the local judge, and must resume no later than **August 15, 2020**.

Alaska

- On June 15, 2020, the Alaska Supreme Court suspended jury trials until **September 1, 2020**.
 - Jury trials were previously suspended until July 6, 2020.
 - The extended suspension of jury trials was due in part to the number of active cases and a lack of courtroom space.

- Face coverings and social distancing will be mandated when the courts resume jury trials.

Arizona

- Jury trials may resume during **Phase 1** of the phased resumption of onsite court operations, subject to approval of the presiding superior court judge.
 - Phase 1 may begin on **June 1, 2020**, provided in-person proceedings may be conducted safely.
 - Courts should employ proper social distancing measures, including the use of technology for the virtual selection of petit and grand jurors and conducting grand juries.
- On June 1, 2020, the Jury Management Subgroup of the COVID-19 Continuity of Court Operations During a Public Health Emergency Workgroup submitted its recommendations for the best practices courts should implement to resume jury operations
- On July 15, 2020, the Arizona Supreme Court issued another order addressing the phased resumption of in-person court proceedings.
 - Masks are required in all courthouses and screening protocols will be implemented in initial phases of re-opening.
- Maricopa County Superior Court has adopted procedures for the resumption of certain in-person proceedings:
 - Anyone entering the courthouse must wear a mask.
 - Individuals entering the courthouse must submit to a health screening.
 - Limits have been placed on the number of people entering the building.
 - The public is advised to stay home and listen to proceedings by phone.
 - Jury assembly rooms that can hold up to 800 people will only hold 30 people.
 - People will be given a jury questionnaire to fill out at home prior to coming to court.
 - Individuals who are summoned will be allowed two postponements of their jury service.

Arkansas

- Jury trials are postponed until at least **June 30, 2020**.
 - Individual judges can choose when to resume jury trials after this date.
- Jury summons can be issued for cases that begin on and after July 1, 2020.
- Civil jury trials can be conducted by videoconference but criminal trials must be conducted in person.

California

- **Jury trials have resumed.**
- The San Bernardino County Superior Court has adopted rules for those appearing in-person:
 - Facial coverings are mandatory.
 - Elevator use is restricted to one or two people at a time.
 - The Number of jurors reporting will be reduced.
 - Courtroom capacity will be reduced.
 - Routine cleaning of the courthouse will be increased.
 - Jurors will complete a questionnaire online.

Colorado

- Jury trials are postponed until **August 3, 2020**, subject to waiver by the Chief Justice of the Colorado Supreme Court.
- The Fourth Judicial District applied for and was granted a waiver. Jury trials in that district resumed on a limited basis on **July 6, 2020**.
- In Arapahoe and Douglas Counties, jury trials requiring no more than seven jurors were permitted to resume on **July 6, 2020**.

Connecticut

- On March 12, 2020, jury trials were **postponed until further notice**.
- Judicial Branch officials are considering strategies to safely resume jury trials.

Delaware

- Courts Reopening Committee created a plan with four phases. In-person jury trials may resume in **Phase 3**.
 - Courthouse will be open to the public while requiring social distancing.
 - No more than 50 people in the courtrooms.
 - Staffing will be increased to 75% capacity.
- Phase 1 began on June 8, 2020. The courts are currently in Phase 2 of their reopening plan, which will continue until at least August 6, 2020.
- There is no set date for when Phase 3 will be implemented.

Florida

- Jury trials are postponed until **July 17, 2020**.

- Statewide grand jury investigations are postponed until **July 26, 2020**.
- The Covid-19 Workgroup has identified five trial-court circuits to conduct a virtual civil jury trial pilot program, with the aim of testing remote technologies as an alternative to in-person civil jury trials.

Georgia

- Georgia Supreme Court postponed jury trials until **July 12, 2020**.
- The Judicial Covid-19 Task Force mentions that it is unlikely that any jury proceedings will start before August.

Hawaii

- Circuit court jury trials are postponed until **September 1, 2020**.
- Grand jury proceedings are postponed until **July 1, 2020**. Social distancing guidelines must be met upon resumption.

Idaho

- Criminal jury trials are postponed until **August 3, 2020**.
- Civil jury trials are postponed until **October 5, 2020**.

Illinois

- All civil jury trials scheduled before **October 5, 2020**, have been canceled and must be rescheduled.
- Starting **July 1, 2020** criminal trials may resume subject to the following guidelines:
 - The number of people in the courthouse will be limited to as few as possible.
 - The number of jury trials will be limited to two twelve-person criminal jury trials and one six-person jury trial per week.
 - Jury trials will start at 1:30 on Thursdays and be continued to Monday, Tuesday or Wednesday the following week.
 - Six-person jury trials will be held on Tuesdays.
 - Jury selection will begin on Monday, Tuesday, or Wednesday.

Indiana

- Jury trials were permitted to resume on **July 1, 2020**.
- Courts have modified courtroom layouts, adopted new procedures, and limited the number of people who may enter each courthouse.

- All counties must submit an operating plan outlining proposed safety measures to the Indiana Supreme Court for review.
- Noble County's operating plan was approved on June 11, 2020. That plan includes the following measures:
 - Masks and social distancing are required.
 - Plexiglass barriers will be installed between court users and staff.
 - Trials will be conducted in the largest available courtroom.
 - Jurors will be seated spread out in the gallery.
 - People watching the proceeding will sit in the jury box.
 - Prosecution and defense tables will be rotated 90 degrees so they are facing each other with the witness seat between them.
 - Jurors will face the witnesses.
 - During jury selection, the court will summon jurors in smaller groups at staggered times.
 - Prospective jurors will complete a COVID-19 questionnaire.
 - Jurors and potential jurors must wear facemasks.
 - Counsel, defendant, judge, and court staff are not required to wear masks.
 - Proceedings may be streamed on the Indiana Supreme Court channel.

Iowa

- Criminal jury trials are postponed until **July 13, 2020**.
- Civil jury trials are postponed until **August 3, 2020**.

Kansas

- Jury trials may only proceed where necessary to preserve someone's constitutional right to a speedy trial and if the court has presented to its departmental justice a plan that:
 - Addresses social distancing, including of the jury;
 - Designates how and where sidebar conversations will occur;
 - Specifies how exhibits will be handled;
 - Addresses jurors' ability to hear and see witnesses and exhibits; and
 - Identifies where jurors will deliberate, including how they will leave for and return from deliberation.

Kentucky

- Grand jury proceedings are postponed until **June 1, 2020**.
- Jury trials are postponed until **August 1, 2020**.

Louisiana

- Criminal and civil jury trials are postponed until **October 5, 2020**.

Maine

- COVID-19 Phased Management Plan establishes five phases for reopening the courts.
- Resumption of jury trials will occur in Phase 5, which is anticipated to start on **September 7, 2020**.

Maryland

- The Court of Appeals created a five-phased plan for the resumption of court operations, starting on June 5, 2020.
- Criminal and civil jury trials will resume in Phase 5, which is anticipated to start on **October 5th, 2020**.

Massachusetts

- The Supreme Judicial Court has postponed jury trials until at least **September 8, 2020**.
- Starting July 13, 2020, judges may schedule civil and criminal bench trials
- No new grand jury will be empaneled prior to **September 8, 2020**, absent a Supreme Judicial Court order. Existing grand juries are extended until the date of that new empanelment or the date of the October 2020 empanelment in the relevant judicial district, whichever occurs first.
 - One grand jury that lost its quorum impaneled 8 additional grand jurors on **July 8, 2020**.

Michigan

- Courts have adopted a phased approach to returning to full capacity operations.
- Courts that have progressed to **Phase 3** of reopening may resume jury trials. Courts that are not yet at Phase 3 may proceed with jury trials with approval from the State Court Administrative Office.
- A court may commence Phase 3 operations when it has determined that there is no evidence of a COVID-19 rebound within the local community and its Phase 3 plan has been approved.

Minnesota

- Criminal jury trials are postponed until **July 6, 2020**.

- Some counties are conducting a criminal jury trial pilot program in order to test and report on the feasibility of social distancing practices.
- Civil jury trials are postponed until **September 1, 2020**.

Mississippi

- The first jury trial amidst the pandemic was held on **June 1 and 2, 2020**, in Panola County.
 - It was held the trial at the Batesville Civic Center because the courthouse was too small to accommodate the jurors with the implemented social distancing measures.
 - Prospective jurors were spaced out five seats apart and every other row.

Missouri

- Jury trials may resume in **Phase 3**
- Because a court must complete at least fourteen days in an operating phase before it can proceed to the next operating phase, the earliest a court could enter Phase 3 would be **June 13, 2020**.
- Steps to be taken toward resuming jury trials include:
 - Educating the public about the importance of jury trials;
 - Suspending the issuance of warrants for jurors who fail to show up;
 - Implementing a deferral policy and include a manner to request deferral without requiring personal appearance;
 - Reducing contact jurors' contact have the general public and courthouse employees;
 - Establishing screening protocol for trial participants;
 - Providing PPE to all jurors, litigants, and court staff;
 - Requiring social distancing in the courtroom, restroom, and elevators;
 - Requiring that jurors be seated 6 feet apart;
 - Utilizing other methods for conducting bench conferences; and
 - Live streaming proceedings for public viewing where possible.

Montana

- The first jury trial amidst the pandemic was set for **June 9, 2020**.
 - It was held at a middle school gym to ensure social distancing.
 - All involved were given masks and hand sanitizer and required to submit to a temperature screening.

Nebraska

- Criminal jury trials are postponed until **August 3, 2020**.
- No date has been set for the resumption of civil jury trials.

Nevada

- **Jury trials have resumed.**
- The Nevada County Superior Court has implemented the following precautions:
 - Social distancing;
 - Requiring face coverings;
 - Restricted seating and occupancy;
 - Multi-stage juror screening process; and
 - Staggered arrival of prospective jurors.

New Hampshire

- Jury trials will resume **August 2020** with a pilot program in Cheshire County.
 - The first trial is planned for mid-August.

New Jersey

- In **May 2020**, the judiciary launched a virtual grand jury **pilot program** in Bergen and Mercer County to determine whether remote grand juries should be expanded to additional counties and state grand jury proceedings.
 - Cases will be presented to a grand jury only if the defendant gives consent to proceed in a remote format.
 - These pilot programs have been met with much backlash from lawyers who believe that remote jury trials are unconstitutional.

New Mexico

- Jury trials resumed on **June 15, 2020**.
 - The proceedings were live streamed for the public.
 - Everyone wore masks, temperatures were taken, and social distancing was enforced.
 - Plexiglass barriers were installed.

New York

- Grand jury proceedings are postponed until **August 2020**.

North Carolina

- No jury trials will be held before **October 1, 2020**.

North Dakota

- Civil and criminal jury trials are postponed until **July 1, 2020**.
- The first jury trial amidst the pandemic was completed on July 1 and 2, 2020, in the North Central Judicial District
 - There was no measurable reduction in the response to jury summonses.
 - Jury selection process and trial went “smoothly.”
 - Post-jury questionnaire revealed the jurors were pleased with the experience.

Ohio

- On May 12, 2020, the Ohio Jury Trial Advisory Group Jury noted the consensus within the Ohio legal community that jury trials must proceed when they are deemed essential; can be conducted in compliance with best medical practices; and are able to honor the fundamental rights of all parties to the judicial process.
- The Advisory Group advocated for an individualized case assessment, as “a ‘one size fits all’ approach is not appropriate.”
- Where trials proceed, the Advisory Group deems the following essential:
 - Uniform entrance procedures that avoid the use of communal trays;
 - Temperature checks for all individuals entering the courthouse;
 - PPE, including face masks, must be worn at all times;
 - Courtrooms and jury rooms must be of sufficient size to allow for social distancing; and
 - Permitting expert witness testimony over video.

Oklahoma

- Jury trials are postponed until **July 27, 2020**.

Oregon

- Oregon reinstated jury trials in **May 2020** due to statutory speedy trial deadlines.

- In Portland, potential jurors can be asked to remove their masks while they are questioned and witnesses can remove their masks while questioned and on the stand.
 - Courts are not recording the trials for public viewing because they have never done so in the past.
 - 121 of 500 potential jurors appeared (report is unclear as to how many were expected).
 - Few African-American or Latino potential jurors reported.
 - The majority of the jury was seated behind the attorney and defendant so they could not see reactions.
- In a Multnomah County trial in which the defendant wore a mask, a juror remarked that he would have liked to see the defendant's face.

Pennsylvania

- All criminal and civil jury trials are postponed until **September 8, 2020**.

Rhode Island

- Civil and criminal jury trials are postponed until **September 2020**.

South Carolina

- County grand jury trials are postponed until **June 1, 2020**.

South Dakota

- Jury trials are postponed until **July 14, 2020**.
- Courts are taking precautions, including:
 - Installing plexiglass barriers where social distancing is difficult;
 - Potential jurors will be divided into smaller groups of 10-12 instead of the usual 40-50;
 - Jurors will deliberate in courtrooms instead of smaller jury room;
 - Workers will sanitize the courthouse daily;
 - Potential jurors and the public will be screened to make sure they are healthy; and
 - PPE will be provided.

Tennessee

- Jury trials are suspended until **July 3, 2020**.
 - Civil trials can proceed with a six-person jury.

- Davidson County suspended jury trials until September 2020.

Texas

- Jury trials will resume on a wide scale on **August 1, 2020**.
- Until then, courts are conducting experimental jury trials, which are authorized by order of the Texas Supreme Court.
 - Courts are experimenting with conducting online, in-person, or hybrid jury trials.
 - The Supreme Court’s order directs that courts note what could be changed and any issues that came from experimental trials so that improvements can be made.
- For experimental in-person jury trials, some important considerations include:
 - Social distancing measures;
 - Mask requirements;
 - Acoustic measures so that the judge can be heard throughout the whole room; and
 - The size of jury deliberation rooms.
- Conducting trials over Zoom may be challenging because not everyone has access to a computer or stable internet.
 - Possible solutions include Zoom kiosks in libraries, community centers, or other public places where people can access public computers.

Utah

- Utah courts are still in the “red phase” and predict wide scale jury trials will resume in **six months**.
- Courthouses in specific counties can seek approval to move to a “yellow” phase, in which jury trials and more in-person hearings can take place with certain safety measures.

Vermont

- Criminal jury trials are suspended until **September 1, 2020**.
- Civil jury trials are suspended until **January 1, 2021**.

Virginia

- Neither criminal nor civil jury trials shall resume before **August 9, 2020**, except in courts where a chief circuit court judge has submitted a plan for resumption of jury trials and that plan is approved by a panel of three Justices in consultation with the Office of the Executive Secretary.
- Judges may exercise their discretion with regard to grand jury proceedings.

Washington

- Civil and criminal jury trials are suspended until **July 6, 2020**.
- Courts must comply with social distancing measures, allow jurors to defer jury duty due to health concerns, and provide PPE.

West Virginia

- Grand jury trials may resume on **June 15, 2020**
- Jury trials can resume on **June 29, 2020**.
- However, jury trials and grand juries may not resume in “hotspot” counties.
- Judicial personnel must take appropriate steps to protect the health of jurors and potential jurors.
 - Large-scale jury orientations or trials requiring large jury pools should not occur until further order of the Court.
 - Jurors must be permitted to wear masks.
 - Jurors should be called to the courthouse in small numbers and jurors should be seated so that adequate social distancing can be maintained.
 - Judges should excuse vulnerable individuals from jury duty.

Wisconsin

- In a May 22, 2020 order the Wisconsin Supreme Court provided that civil and criminal jury trials in each circuit court are continued until that circuit court has prepared an operational plan for the safe resumption of in-person proceedings and jury trials and the plan has been approved by the chief judge of the applicable judicial administrative district.
- Each operational plan must include the following:
 - All persons shall wear masks unless a judge specifically determines that a witness need should not wear one during testimony.
 - Practices for appropriate sanitation and hygiene.
- Jury trials are resuming on **July 7, 2020** in Waukesha County.
 - Court will schedule the start of jury trials on different days of the week.
 - Jurors will report at staggered times.
 - The court will provide hand sanitizer.
 - Plexiglas has been installed in areas where social distancing cannot be maintained.

Wyoming

- Jury trials are suspended until **August 3, 2020**.

Report of the Jury Management Advisory Committee

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APPENDIX 7: Communications

In order to resume jury trials safely, the Office of Jury Commissioner (OJC) is developing potential juror communications and procedures for processing responses to those communications. At a minimum, potential jurors receive two communications in the mail from the OJC before serving: a Postcard Summons directing them to the Massachusetts Juror Website (MJW), which is received four months before their scheduled service date, and a Reminder Notice with the Confidential Juror Questionnaire (CJQ), which is received about 10 days before their service date. About 60-65% of potential jurors respond online to the Postcard Summons. Those who do not respond receive a traditional Summons package in the mail three months before their scheduled service date (and possibly a Final Summons if they do not respond to the first two summonses).

The OJC is working with its website vendor to explore options for mandating response to pre-screening questions, as well as requiring users of the MJW to provide an email address for ease of timely, electronic communications. However, not everyone has access to the internet, nor is everyone willing to provide an email address.

A major challenge will be developing procedures to obtain, review and act on responses indicating that potential jurors would be at increased risk from COVID-19 if they appeared for service. The OJC is also developing procedures for directing potential jurors to conduct a self-screening health assessment the day before appearing at the courthouse.

Due to the long time lines involved in the summoning process (as of this writing, the OJC has already sent out summonses for persons scheduled to appear in October), many of the juror communications during the initial resumption of jury trials will have to be customized letters and emails sent to individualized groups of jurors, depending on where they are scheduled to appear, when, and what procedures they will be expected to follow at the courthouse. All of these customized processes – juror communications, procedures for managing responses, and interactions with court departments and courthouses – will be costly and resource-intensive. They also will require the flexibility to implement change on short notice, including canceling or transferring jurors in the event of court closures.

PRE-SERVICE COVID-19 QUESTION OPTIONS

POSTCARD SUMMONS

The Postcard Summons directs jurors to the MJW, where they respond to qualification questions and confirm or postpone their attendance, or request a disqualification or transfer (which may or may not be approved). Pre-COVID, approximately 60-65% of summoned persons responded via the website.

We have two options: on the MJW, we could add COVID-19 questions and make response mandatory to continue on the website, as we do with the Demographic Survey. This could be

problematic if we request health information, or people believe we are requesting health information that they do not wish to provide, such as “are you in a higher-risk category due to health issues (lung disease, moderate to severe asthma, heart condition, immunocompromised, obesity, diabetes, kidney disease, liver disease, hypertension?)”

Alternatively, we could create a separate online survey and ask people to visit it to answer the questions. We could print the URL on the Postcard Summons (and also on the regular summons, which is mailed to those who do not respond to the Postcard Summons). We could also provide a link on the MJW. The danger is that people would not bother to visit the web page and take the survey. However, since it is designed for their own protection (and might be perceived as “a way to get out of jury duty”), people might be more responsive than they would otherwise.

We could also investigate making it mandatory on the MJW to provide an email address, to enable us to send a pre-service health screening and last-minute notifications (about cancellations, reporting times, transfers, etc.).

SUMMONS

Those who do not respond to the Postcard Summons receive a standard Summons in the mail. We could add a URL to our survey on the standard Summons, but some people might choose to ignore it. Others may not have access to the internet to complete an online survey. We could print a custom written survey and include it in the summons package, which would require pre-paid postage to return. There would be costs associated with creating a printed survey, adding it to the existing summons package, paying return postage, and processing returned surveys.

PROCESSING RESPONSES

We would have to devise a process for reviewing the surveys to screen for those who are at risk, and potentially for communicating with those persons (what is your condition? What do you want to do, postpone or excuse or transfer?), making a decision (postpone/disqualify/excuse/transfer/deny-attend), and processing that decision. This could be a very resource-intensive and burdensome process. We are working with our website vendor to determine if we can easily record free-form answers or if Y/N/NA answers will be most easily recorded and processed.

POTENTIAL PRE-SERVICE COVID-19 QUESTIONS

Are you or someone in your immediate household at increased risk for COVID-19? Y/N

If Yes, why?

Over 65 Y/N

Health condition Y/N

Working with COVID-19 patients Y/N

Other (demographics, high exposure, etc.) Y/N

Do you have available childcare for young children in your household, if any? Y/N/NA

Do you have serious concerns or anxiety about reporting for service at the courthouse? Y/N

PRE-APPEARANCE HEALTH SCREENING QUESTIONS

All scheduled jurors receive a Reminder Notice in the mail approximately 10 days before they are scheduled to appear. We could create a brief online health screening survey and add the URL to the Reminder Notice, asking the juror to take the survey the day before the service date. We could also send the link by email to jurors who have provided an email address, on the day before the service date. The survey would instruct the juror to conduct a self-assessment and not to report to court if the juror answers “Yes” to any of the questions, but rather to contact the OJC for assistance (most likely, postponing and rescheduling service).

Have you or someone you live with tested positive for or been diagnosed with COVID-19 in the last 14 days? Y/N

Within the last ten days, have you had symptoms of COVID-19, including fever, dry cough, shortness of breath, trouble breathing, or sudden loss of taste or smell? Y/N

Have you or a family member been advised to self-quarantine by a health care provider within the last 14 days? Y/N

Are you or someone you live with or have been in close contact with waiting for COVID-19 test results after experiencing symptoms of COVID-19, or being exposed to COVID-19? Y/N

Within the past fourteen days have you been outside the United States or in a state other than those permitted by the Governor’s order (visit MAjury.gov or call 1-800-THE-JURY for a list of states)? Y/N

SUMMARY OF SAMPLE RELEVANT PRE-SERVICE QUESTIONS ASKED IN DIFFERENT JURISDICTIONS

Some other jurisdictions have publicized the pre-screening questions that they are sending to jurors. A sample of potentially relevant questions is provided below.

Federal District Court for the Northern District of Texas:

Have you been tested for COVID-19? When?

Have you requested a test and been denied?

Have you or close friend/family had C19? Who and when?

Have you traveled recently? Where?

Do you use public transport?

Are you willing to follow the court's social distancing rules?

Are you willing to inform the court if you have been exposed or are feeling ill?

When did you last work? If not working, what have you been doing?

Have you worn any protective materials outside home in last few months?

Do you have strong views about wearing mask/gloves? What are they?

State any and all reasons why you could not serve on a jury during week of.....

Federal Courts Pamphlet

Do you have any health concerns, fears, vulnerability, family vulnerability, exposure, or risk?

What is your availability to serve during the pandemic?

(Usual biographical info)

OHIO

Many procedures, but no pre-service questionnaire

UTAH

Are you an essential healthcare worker?

In the past 14 days, have you been diagnosed, or come into close contact with someone diagnosed with COVID-19?

In the past 3 days, have you had symptoms (fever, chills, shortness of breath, abnormal fatigue/aches, loss of taste or smell, congestion or runny nose?)

Were you laid off due to pandemic? Are you back to work or not?

Are you over 65?

Do you have underlying conditions (lung disease, moderate to severe asthma, heart condition, immunocompromised, obesity, diabetes, kidney disease, liver disease, hypertension?)

Do you live with or care for a vulnerable person?

Do you have children at home who require supervision?

Do you have any other COVID-19 concerns regarding jury service? Describe.

How comfortable are you with reporting, on a scale of 1-10?

How comfortable are you with the court requiring masks, distancing, sanitizing (hands and building), on scale of 1-10?

APPENDIX 8: Expert Consultation

In preparing this report, the JMAC considered scientific and medical information from the Centers for Disease Control (CDC); the World Health Organization (WHO); the Massachusetts Department of Public Health (DPH); and the Trial Court's contracted medical expert, Dr. Michael Ginsberg, a board-certified specialist in infectious disease; among others. Chief Justice Judith Fabricant and Jury Commissioner Pamela Wood also consulted at length with Dr. Joseph Gardner Allen, an expert on exposure and risk at the Harvard T.H. Chan School of Public Health (HSPH). Associate Court Administrator John Bello also participated in one of the virtual meetings with Dr. Allen.

Dr. Allen is an Associate Professor of Exposure Assessment Science in the Department of Environmental Health at Harvard's T.H. Chan School of Public Health. He is the founder and Director of the Healthy Buildings Program at HSPH, and is also the Deputy Director of the Harvard Education and Research Center for Occupational Health and Safety and a Certified Industrial Hygienist.

Much of Dr. Allen's information and guidance has been incorporated in the body of the JMAC's report. Dr. Allen gave his advice in recognition of the essential nature of jury trials. With respect to COVID-19, he identified the types of transmission as close contact transmission via droplets or surface contact (fomites), and distance transmission via aerosols. He noted that in hospitals, which provide an essential service in a setting where close contact with COVID-19 patients is unavoidable, health care workers have successfully reduced or even eliminated infections to healthcare workers through rigorous adherence to handwashing, mask wearing, and environmental controls.

Dr. Allen advised creating a strong code of conduct, together with clear explanation and rigorous enforcement. For example, everyone must wear masks, and everyone must use hand sanitizer every time they enter or leave a room. This type of enforcement is how hospitals have reduced or eliminated infection of health care workers.

Dr. Allen emphasized that our goal, like that of hospitals, should be reduction of risk to a level consistent with the essential nature of our function, not zero risk. He advised that courts should adopt a layered defense approach (based on a framework from the field of worker health and safety called the "hierarchy of controls"), and aspire to do all of it all the time: elimination of exposure (excuse vulnerable jurors), substitution of activities (only necessary people come in, including jurors), engineering controls (cleaning, ventilation), administrative controls (social distancing, handwashing requirements), and PPE (masks). He urged implementation of all of these controls, and added temperature-taking and self-attestation as to lack of symptoms, while continuing to track advancements in rapid testing for screening.

Maintaining vigilant controls, and strict adherence to the code of conduct, should enable to courts to resume jury trials with reduced risk for all.

Dr. Allen notes the following:

“Dr. Allen notes his consultation was provided for informational and educational purposes only. It is intended to offer guidance regarding best practices regarding the general operations of buildings in an effort to reduce the risk of disease transmission, specifically novel coronavirus SARS-CoV-2 and the disease it causes, COVID-19. Adherence to any information provided will not ensure successful treatment in every situation, and user acknowledges that there is no “zero risk” scenario. User acknowledges that each building and situation are unique and some of the guidance contained in the report will not apply to all buildings. or countries outside the United States. Furthermore, the report should not be deemed inclusive of all proper methods nor exclusive of other methods reasonably directed to obtaining the same results. The guidance is in no way intended to override or supersede guidance from government and health organizations, including, without limitation, the Centers for Disease Control and Prevention, the World Health Organization, the United States Government, and or any states. The information provided reflects the available information at the time the information was given. User recognizes that details and information are changing daily, and new information and/or the results of future studies may require revisions to the guidance to reflect new data. Dr. Allen does not warrant the accuracy or completeness of the guidance and assumes no responsibility for any injury or damage to persons or property arising out of or related to any use of the information or for any errors or omissions.”

Dr. Allen's Harvard faculty page:

<https://www.hsph.harvard.edu/joseph-allen/>

Harvard Healthy Buildings Program outlining full body of research activities:

<https://forhealth.org/>

Some of Dr. Allen's relevant publications on COVID-19 include the following:

Buildings can make you sick, or keep you well (New York Times)

<https://www.nytimes.com/2020/03/04/opinion/coronavirus-buildings.html>

What makes an office building "healthy"? (Harvard Business Review)

<https://hbr.org/2020/04/what-makes-an-office-building-healthy>

Who Guarantees Your Workplace is Safe for Return? (Harvard Business School)

<https://hbswk.hbs.edu/item/who-guarantees-your-workplace-is-safe-for-return>

The debate is over. You need to be wearing a mask (Washington Post)

<https://www.washingtonpost.com/opinions/2020/04/02/not-all-heroes-wear-capes-many-wear-masks-you-should-too/>

Schools for Health: Risk Reduction Strategies for Reopening Schools (Harvard Healthy Buildings program)

<https://schools.forhealth.org/>

Roadmap to Recovery and Resilience for Theater (joint project with Harvard's American Repertory Theater)

<https://americanrepertorytheater.org/roadmap-for-recovery-and-resilience-for-theater/>

Need some good news about Covid? Here are six reasons for optimism. (Washington Post)

<https://www.washingtonpost.com/opinions/2020/07/14/need-some-good-news-about-covid-19-here-are-six-reasons-optimism/>

The key to stopping covid-19? Addressing airborne transmission. (Washington Post)

<https://www.washingtonpost.com/opinions/2020/05/26/key-stopping-covid-19-addressing-airborne-transmission/>

A proven plan for saving lives and our economy has emerged. The only thing left to do is execute it. (USA Today)

<https://www.usatoday.com/story/opinion/2020/04/06/how-beat-coronavirus-and-return-new-normal-column/2950633001/>

14 Priority Areas to Save Lives and the Economy

<https://covidpathforward.com/>

APPENDIX 9: Jury Trial Data

Description and Source of Tables

Jury Impanelments by Court Location – OJC

A list of the number of impanelments in each court location for 2017-2019. Multiuse court locations are divided by Department.

Jury Impanelments by Case Type - OJC

A list of impanelments by different case types for BMC, District, Juvenile and Superior Courts. Includes data on the number of each case type and the number of jurors utilized for each case type. Similar tables by County (Superior) or Division (BMC & District) are available upon request.

Jury Impanelments, March 13 through September 8, 2017- 2019 - OJC

The number of jury impanelments for the time period March 13 through September 8 for each of 2017, 2018 & 2109. Coincides with the COVID-19-related suspension of jury trials in 2020.

MassCourts Data: Jury Trial Event Results, April 1 through August 31, 2018 & 2019, by Department and County – Department of Research and Planning (DRAP)

MassCourts Data: Superior Court Cases scheduled for trial, July 1, 2020 through December 31, 2021 - DRAP

MassCourts Data: Superior Court Jury Trials Scheduled and Not Held March 13, 2020, through July 10, 2020 - DRAP

(The numbers in these last two charts are probably both over-inclusive and under-inclusive, in that many cases are scheduled for trial that are not actually ready for trial, or are likely to be resolved in other ways, and many cases that would have been given trial dates in the ordinary course of proceedings have not been given those dates because of uncertainties arising from the pandemic.)

**Office of Jury Commissioner
2017-2019 IMPANELMENTS by LOCATION**

Court Location / Pool Type	2017	2018	2019	Average
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Brighton BMC	53	15	1	23.0
Dorchester BMC	156	155	114	141.7
Roxbury BMC	75	84	74	77.7
West Roxbury BMC	14	52	50	38.7

Barnstable Superior	18	26	24	22.7
Brockton Superior	70	50	57	59.0
Lawrence Superior	32	37	32	33.7
Lowell Superior	38	33	28	33.0
New Bedford Superior	19	18	26	21.0
Newburyport Superior	14	13	16	14.3
Suffolk Superior	214	251	246	237.0

Berkshire Juvenile	1	0	0	0.3
Middlesex/Lowell Juvenile	5	4	2	3.7
Norfolk Juvenile	2	6	4	4.0

Barnstable Multi-Use	43	42	63	49.3
District	43	42	62	49.0
Juvenile	0	0	1	0.3
Brockton Multi-Use	123	98	78	99.7
District	110	90	63	87.7
Juvenile	13	8	15	12.0
Housing	0	0	0	0.0
Brooke Multi-Use	138	138	123	133.0
BMC	126	124	112	120.7
Juvenile	10	11	3	8.0
Housing	2	3	8	4.3

**Office of Jury Commissioner
2017-2019 IMPANELMENTS by LOCATION**

Court Location / Pool Type	2017	2018	2019	Average
Dedham Multi-Use	139	157	141	145.7
Superior	59	57	65	60.3
District	80	100	76	85.3
Edgartown Multi-Use	20	14	8	14.0
Superior	3	0	0	1.0
District	17	14	8	13.0
Fall River Multi-Use	110	101	119	110.0
Superior	37	42	61	46.7
District	73	59	58	63.3
Greenfield Multi-Use	28	50	34	37.3
Superior	10	20	5	11.7
District	18	30	29	25.7
Juvenile	0	0	0	0.0
Lawrence Multi-Use	97	78	74	83.0
District	92	73	73	79.3
Juvenile	5	5	1	3.7
Housing	0	0	0	0.0
Lynn Multi-Use	53	78	71	67.3
District	51	76	67	64.7
Juvenile	2	2	4	2.7
Middlesex/Woburn Multi-Use	132	129	157	139.3
Superior	129	119	150	132.7
Juvenile	3	10	7	6.7
Nantucket Multi-Use	5	12	4	7.0
Superior	2	1	0	1.0
District	3	11	4	6.0
Northampton Multi-Use	41	30	24	31.7
Superior	17	11	9	12.3
District	24	19	14	19.0
Juvenile	0	0	1	0.3
Pittsfield Multi-Use	56	68	86	70.0
Superior	19	20	19	19.3
District	37	48	67	50.7

**Office of Jury Commissioner
2017-2019 IMPANELMENTS by LOCATION**

Court Location / Pool Type	2017	2018	2019	Average
Plymouth Multi-Use	96	96	108	100.0
Superior	27	36	37	33.3
District	68	58	70	65.3
Juvenile	1	2	1	1.3
Salem Multi-Use	110	88	97	98.3
Superior	48	39	40	42.3
District	59	41	48	49.3
Juvenile	1	3	2	2.0
Housing	2	5	7	4.7
Springfield Multi-Use	153	142	140	145.0
Superior	61	49	57	55.7
District	89	88	76	84.3
Juvenile	2	4	2	2.7
Housing	1	1	5	2.3
Taunton Multi-Use	51	57	49	52.3
Superior	0	1	1	0.7
District	44	48	47	46.3
Juvenile	5	3	1	3.0
Housing	2	5	0	2.3
Worcester Multi-Use	259	320	275	284.7
Superior	77	74	57	69.3
District	180	245	217	214.0
Juvenile	2	1	0	1.0
Housing	0	0	1	0.3

**Office of Jury Commissioner
2017-2019 IMPANELMENTS by LOCATION**

Court Location / Pool Type	2017	2018	2019	Average
Attleboro District	63	59	57	59.7
Ayer District	69	35	21	41.7
Chelsea District	98	77	62	79.0
Chicopee District	10	6	7	7.7
Concord District	51	62	62	58.3
East Brookfield District	61	63	50	58.0
Eastern Hampshire District	33	41	43	39.0
Falmouth District	46	53	50	49.7
Fitchburg District	90	130	105	108.3
Framingham District	61	68	64	64.3
Haverhill District	1	5	21	9.0
Hingham District	55	77	37	56.3
Holyoke District	15	16	11	14.0
Lowell District	146	115	119	126.7
Malden District	57	62	55	58.0
Marlborough District	40	40	43	41.0
New Bedford District	53	50	58	53.7
Newburyport District	50	54	38	47.3
Newton District	14	8	22	14.7
Northern Berkshire District	21	19	24	21.3
Orange District	29	29	20	26.0
Orleans District	24	25	30	26.3
Palmer District	25	15	14	18.0
Peabody District	40	34	40	38.0
Quincy District	97	81	69	82.3
Somerville District	19	20	18	19.0
Third Middlesex District	41	33	57	43.7
Waltham District	42	42	44	42.7
Wareham District	56	38	38	44.0
Westfield District	15	15	23	17.7
Woburn District	101	90	83	91.3
Wrentham District	34	54	58	48.7
Statewide Totals	3,922	3,958	3,768	3882.7

Office of Jury Commissioner

2018-2019 BMC-All Divisions Jury Impanelments

Case Type	# of cases	% of total cases	Average # of Jurors Utilized	Jurors Utilized in Impanelment (#)						Jurors Utilized in Impanelment (%)					
				<10	10-12	13-15	16-18	19-21	22+	<10	10-12	13-15	16-18	19-21	22+
All Cases	781	100.0%	13.5	116	242	211	138	43	31	14.9%	31.0%	27.0%	17.7%	5.5%	4.0%
Assaults	272	34.8%	13.3	34	94	76	46	17	5	12.5%	34.6%	27.9%	16.9%	6.3%	1.8%
OUI	174	22.3%	13.4	26	45	59	33	8	3	14.9%	25.9%	33.9%	19.0%	4.6%	1.7%
Civil Money Action	77	9.9%	12.4	19	29	15	8	3	3	24.7%	37.7%	19.5%	10.4%	3.9%	3.9%
Crimes against Property	41	5.2%	11.7	10	21	5	2	2	1	24.4%	51.2%	12.2%	4.9%	4.9%	2.4%
Indecent A & B	37	4.7%	19.2	2	4	10	9	2	10	5.4%	10.8%	27.0%	24.3%	5.4%	27.0%
Drug Cases	34	4.4%	15.3	2	4	13	11	1	3	5.9%	11.8%	38.2%	32.4%	2.9%	8.8%
Gun Cases	29	3.7%	15.1	1	9	5	9	3	2	3.4%	31.0%	17.2%	31.0%	10.3%	6.9%
Violating Prev. Order	23	2.9%	12.7	4	9	6	3	1	0	17.4%	39.1%	26.1%	13.0%	4.3%	0.0%
Non-OUI MV Offenses	19	2.4%	14.7	1	4	8	3	1	2	5.3%	21.1%	42.1%	15.8%	5.3%	10.5%
Small Claims	14	1.8%	8.9	9	4	1	0	0	0	64.3%	28.6%	7.1%	0.0%	0.0%	0.0%
Other	61	7.8%	13.6	8	19	13	14	5	2	13.1%	31.1%	21.3%	23.0%	8.2%	3.3%

Office of Jury Commissioner

2015-2019 Statewide District Court Jury Impanelments

Case Type	# of cases	% of total cases	Average # of Jurors Utilized	Jurors Utilized in Impanelment (#)						Jurors Utilized in Impanelment (%)					
				<10	10-12	13-15	16-18	19-21	22+	<10	10-12	13-15	16-18	19-21	22+
All Cases	12,547	100.0%	13.3	1844	4165	3646	1779	643	470	14.7%	33.2%	29.1%	14.2%	5.1%	3.7%
OUI	6288	50.1%	13.5	678	2042	2066	997	334	171	10.8%	32.5%	32.9%	15.9%	5.3%	2.7%
Assaults	2609	20.8%	13.2	376	905	740	355	138	95	14.4%	34.7%	28.4%	13.6%	5.3%	3.6%
Civil Money Action	1000	8.0%	11.3	308	410	185	66	23	8	30.8%	41.0%	18.5%	6.6%	2.3%	0.8%
Crimes against Property	476	3.8%	12.4	97	186	111	53	16	13	20.4%	39.1%	23.3%	11.1%	3.4%	2.7%
Violating Prev. Order	360	2.9%	12.9	54	121	118	51	10	6	15.0%	33.6%	32.8%	14.2%	2.8%	1.7%
Indecent A & B	341	2.7%	19.4	11	51	69	57	51	102	3.2%	15.0%	20.2%	16.7%	15.0%	29.9%
Drug Cases	240	1.9%	14.3	25	63	75	50	16	11	10.4%	26.3%	31.3%	20.8%	6.7%	4.6%
Non-OUI MV Offenses	220	1.8%	14.0	41	65	48	33	15	18	18.6%	29.5%	21.8%	15.0%	6.8%	8.2%
Small Claims	187	1.5%	8.8	132	41	11	3	0	0	70.6%	21.9%	5.9%	1.6%	0.0%	0.0%
Gun Cases	163	1.3%	14.9	13	42	54	30	10	14	8.0%	25.8%	33.1%	18.4%	6.1%	8.6%
Other	663	5.3%	13.1	109	239	169	84	30	32	16.4%	36.0%	25.5%	12.7%	4.5%	4.8%

Office of Jury Commissioner
2017-2019 IMPANELMENTS by CASE TYPE
JUVENILE COURT

Court Location / Pool Type	2017		2018		2019		Average	
	DLQ	YO	DLQ	YO	DLQ	YO	DLQ	YO
Barnstable Multi-Use	0	0	0	0	1	0	0.3	0.0
Berkshire Juvenile	1	0	0	0	0	0	0.3	0.0
Brockton Multi-Use	10	3	6	2	12	3	9.3	2.7
Brooke Multi-Use	5	5	9	2	2	1	5.3	2.7
Cambridge Multi-Use	2	1	10	0	6	1	6.0	0.7
Franklin/Hampshire Juvenile	0	0	0	0	0	0	0.0	0.0
Lawrence Multi-Use	3	2	2	3	0	1	1.7	2.0
Lynn Multi-Use	2	0	2	0	3	1	2.3	0.3
Middlesex/Lowell Juvenile	5	0	4	0	2	0	3.7	0.0
Norfolk Juvenile	1	1	6	0	2	2	3.0	1.0
Northampton Multi-Use	0	0	0	0	1	0	0.3	0.0
Plymouth Multi-Use	1	0	1	1	1	0	1.0	0.3
Salem Multi-Use	0	1	1	2	2	0	1.0	1.0
Springfield Multi-Use	1	1	4	0	1	1	2.0	0.7
Taunton Juvenile	5	0	3	0	0	1	2.7	0.3
Worcester Multi-Use	2	0	1	0	0	0	1.0	0.0
Year-to-Date Statewide Totals	38	14	49	10	33	11	40.0	11.7

Court Location / Case Type	# Jurors Sent	# Jurors Utilized	# Impanelments	Avg. # Sent (A/C)	Avg. # Utilized (B/C)	% of Sent Utilized (B/A)
Statewide Delinquencies	3,355	1,886	120	28.0	15.7	56.2%

<10	10-12	13-15	16-18	19-21	22+
12	30	27	20	18	13

Court Location / Case Type	# Jurors Sent	# Jurors Utilized	# Impanelments	Avg. # Sent (A/C)	Avg. # Utilized (B/C)	% of Sent Utilized (B/A)
Statewide Youthful Offender	2,030	1,622	35	58.0	46.3	79.9%

<30	30-39	40-49	50-59	60-69	70+
10	10	5	3	3	4

Office of Jury Commissioner

2015-2019 Superior Court Criminal Jury Impanelments

Case Type	# of cases	Average # of Jurors Utilized	# of Jurors Utilized in Impanelment										
			0-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	100-149	150-199	200+
Murder	271	123.2	0	2	5	12	15	25	24	32	105	29	22
Rape of Child	321	88.4	3	5	13	40	36	43	42	39	84	14	2
SDPs	173	81.9	0	3	13	17	25	31	26	26	29	2	1
Rape	253	64.3	5	23	53	47	41	25	23	13	21	2	
Armed Robbery	108	54.1	9	16	25	17	21	9	4	6	1		
Assaults	538	51.0	35	107	146	123	62	24	16	10	14	1	
OUI/Motor Vehicle	87	47.6	7	22	26	19	4	5	0	3	1		
Drug Cases	316	47.7	16	78	101	66	35	11	3	4	2		
Crimes against property	96	46.7	12	25	26	16	10	1	5	0	1		
Gun Cases	218	45.0	21	58	72	40	18	4	1	2	2		
Other	263	69.3	11	24	56	48	39	20	13	10	30	6	6

Office of Jury Commissioner

2015-2019 Superior Court Civil Jury Impanelments

Civil Time Standards Accelerated Track ("X") 12 Months		# of cases	Average # of Jurors Utilized	# of Jurors Utilized in Impanelment									
				0-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	100+	
C05	Condominium lien and charges	3	33.3	1	2								
C99	Other (specify)	26	42.8	7	7	4	3	3	1	1			
E05	All arbitration	1	19.0	1									
E99	Other (specify)	13	44.7	2	4	4	1	1	0	0	0	1	
F02	Admin. Agency appeal	2	29.0	1	0	1							
Civil Time Standards Fast Track ("F") 22 Months		# of cases	Average # of Jurors Utilized	# of Jurors Utilized in Impanelment									
				0-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	100+	
A01	Services, Labor, and Materials	101	33.3	45	32	12	8	2	1	1			
A02	Goods sold and delivered	11	27.1	6	3	2							
A03	Commercial paper	11	34.5	4	4	2	1						
A08	Sale or lease of real estate	34	34.3	15	10	5	3	0	0	1			
A99	Other (specify)	95	38.8	31	20	28	9	3	0	1	2	1	
B03	Motor Vehicle Negligence-personal injury/property damage	391	34.0	158	125	75	21	4	4	1	0	3	
B04	Other negligence-personal injury/property damage	343	37.8	110	107	64	37	12	4	3	2	4	
B20	Personal Injury -slip and fall	140	34.4	50	47	32	7	3	1				
B21	Environmental	6	47.5	1	2	0	1	1	1				
B22	Employment Discrimination	51	50.5	8	12	6	9	5	7	2	1	1	
B99	Other (specify)	58	38.8	14	21	14	4	3	1	0	0	1	
C01	Land taking (eminent domain)	11	50.3	0	2	4	3	0	1	1			
C03	Dispute concerning title	6	32.5	2	2	2							
D02	Reach and apply	2	45.0	0	1	0	1						
D06	Contribution or indemnification	1	28.0	1									
D12	Dissolution of partnership	3	22.3	3									
D99	Other (specify)	21	34.3	6	10	4	1						
E95	Forfeiture	2	40.5	0	1	0	1						
E96	Prisoner cases	2	39.5	0	1	1							

Civil Time Standards Average Track ("A") 36 Months		# of cases	Average # of Jurors Utilized	# of Jurors Utilized in Impanelment									
				0-29	30-39	40-49	50-59	60-69	70-79	80-89	90-99	100+	
A12	Construction dispute	12	43.8	1	3	4	3	0	1				
B05	Products liability	21	80.2	1	2	2	4	0	3	0	2	7	
B06	Malpractice -medical	319	63.0	17	32	65	58	42	39	25	15	26	
B07	Malpractice -other (specify)	31	44.4	7	6	9	4	2	1	1	1		
B08	Wrongful death	82	64.8	3	5	16	20	9	6	11	5	7	
B15	Defamation (libel/slander)	16	33.9	6	4	6							
B19	Asbestos	4	50.8	0	0	2	2						
D01	Specific performance of contract	7	28.6	2	5								
D07	Imposition of trust	1	32.0	0	1								
D08	Minority stockholder's suit	1	54.0	0	0	0	1						
D10	Accounting	3	39.0	0	2	1							
D13	Declaratory judgment	17	35.3	6	4	6	1						
E03	Action against Commonweath/Municipality	90	40.4	20	33	13	18	5	0	0	0	1	
E17	Civil Rights Act	3	56.0	0	1	0	0	1	1				

Civil Time Standards

Track ("B")

BA1	Internal Affairs of Entities	1	113.0	0	0	0	0	0	0	0	0	1
BA2	Employment Agreements	1	24.0	1								
BB2	Security Transactions	1	53.0	0	0	0	1					
BE1	Fraud, Business Torts, etc.	8	51.8	1	2	3	0	1	0	0	0	1
BI1	Professional Malpractice	3	75.7	0	0	0	1	0	1	0	0	1
BK1	Other Complex Commercial	11	50.0	1	3	3	1	0	2	0	1	

Office of Jury Commissioner
JURY IMPANELMENTS, March 13 thru September 8
ALL DEPARTMENTS

Court Department	2017	2018	2019	Average
BMC	202	203	174	193.0
District	1,173	1,237	1,179	1,196.3
Housing	2	9	12	7.7
Juvenile	25	27	18	23.3
Superior	412	422	452	428.7
Totals	1,814	1,898	1,835	1,849.0

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by Department and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

Department	Event result	Event Date	
		2018	2019
Grand Total		1,504	1,411
Boston Municipal Court	Total	133	108
	Held	8	13
	Held - Jury Verdict	124	101
	Held - JuryVerdict - 24D	8	2
District Court	Total	860	824
	Held - Jury Verdict	787	737
	Held - JuryVerdict - 24D	73	89
Housing Court	Total	12	15
	Held	12	15
Juvenile Court	Total	34	17
	Held	11	2
	Held - Jury Trial	30	16
Superior Court	Total	465	447
	Held as Scheduled	465	447
	Held via Video Conference		2

Figures include the following event types: Jury Trial, Jury Trial (CR), Jury Trial (CV), Jury Trial (JV) or Jury Trial in Progress.

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by Department, Case type, and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

Department	General case type	Event Date	
		2018	2019
Grand Total		1,504	1,411
Boston Municipal Court	Total	133	108
	Criminal Matters	130	105
	Non-Case	3	3
District Court	Total	860	824
	Criminal Matters	852	822
	Non-Case	8	2
Housing Court	Total	12	15
	Civil Matters	12	15
Juvenile Court	Total	34	17
	Juvenile Matters	34	17
Superior Court	Total	465	447
	Civil Matters	207	195
	Criminal Matters	258	252

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by County, Department, and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

County	Department	Event Date	
		2018	2019
Grand Total		1,504	1,411
BARNSTABLE	Total		1
	Housing Court		1
	Total	45	63
	District Court	36	50
BERKSHIRE	Superior Court	9	13
	Total	25	38
	District Court	17	27
	Superior Court	8	11
BRISTOL	Total	106	113
	District Court	70	63
	Juvenile Court	3	
	Superior Court	33	50
DUKES	Total	4	3
	District Court	4	2
	Superior Court		1
ESSEX	Total	154	152
	District Court	103	106
	Housing Court	6	7
	Juvenile Court	2	2
	Superior Court	43	37
FRANKLIN	Total	36	25
	District Court	24	21
	Superior Court	12	4
HAMPDEN	Total	72	58
	District Court	39	32
	Housing Court	1	1
	Juvenile Court	3	1
	Superior Court	29	24
HAMPSHIRE	Total	28	26
	District Court	24	22
	Superior Court	4	4
MIDDLESEX	Total	281	296
	District Court	203	210
	Juvenile Court	6	4
	Superior Court	72	82
NANTUCKET	Total	5	2
	District Court	5	2
NORFOLK	Total	95	108
	District Court	67	75
	Juvenile Court	2	2

Figures include the following event types: Jury Trial, Jury Trial (CR), Jury Trial (CV), Jury Trial (JV) or Jury Trial in Progress.

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by County, Department, and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

County	Department	Event Date	
		2018	2019
NORFOLK	Superior Court	26	31
PLYMOUTH	Total	137	116
	District Court	79	56
	Housing Court	3	2
	Juvenile Court	6	5
	Superior Court	49	53
SUFFOLK	Total	310	242
	Boston Municipal Court	133	108
	District Court	22	18
	Housing Court	2	4
	Juvenile Court	12	3
	Superior Court	141	109
WORCESTER	Total	206	168
	District Court	167	140
	Superior Court	39	28

Figures include the following event types: Jury Trial, Jury Trial (CR), Jury Trial (CV), Jury Trial (JV) or Jury Trial in Progress.

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by County, Case type, and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

County	General case type	Event Date	
		2018	2019
Grand Total		1,504	1,411
	Total		1
	Civil Matters		1
BARNSTABLE	Total	45	63
	Civil Matters	8	7
	Criminal Matters	37	56
BERKSHIRE	Total	25	38
	Civil Matters	1	4
	Criminal Matters	24	34
BRISTOL	Total	106	113
	Civil Matters	11	17
	Criminal Matters	92	96
	Juvenile Matters	3	
DUKES	Total	4	3
	Criminal Matters	4	3
ESSEX	Total	154	152
	Civil Matters	27	28
	Criminal Matters	124	121
	Juvenile Matters	2	2
	Non-Case	1	1
FRANKLIN	Total	36	25
	Civil Matters	1	1
	Criminal Matters	35	24
HAMPDEN	Total	72	58
	Civil Matters	10	8
	Criminal Matters	59	49
	Juvenile Matters	3	1
HAMPSHIRE	Total	28	26
	Civil Matters	2	2
	Criminal Matters	26	24
MIDDLESEX	Total	281	296
	Civil Matters	35	41
	Criminal Matters	239	251
	Juvenile Matters	6	4
	Non-Case	1	
NANTUCKET	Total	5	2
	Criminal Matters	5	2
NORFOLK	Total	95	108
	Civil Matters	12	19
	Criminal Matters	80	86
	Juvenile Matters	2	2
	Non-Case	1	1
PLYMOUTH	Total	137	116
	Civil Matters	30	22
	Criminal Matters	99	89
	Juvenile Matters	6	5
	Non-Case	2	
SUFFOLK	Total	310	242

Figures include the following event types: Jury Trial, Jury Trial (CR), Jury Trial (CV), Jury Trial (JV) or Jury Trial in Progress.

Jury Trials Scheduled Between April 1st and August 31st:

Cases with a Jury Trial Verdict / Held Jury Trial by County, Case type, and Event year

Showing cases with a jury trial verdict or jury trial held between April 1 and August 31 in calendar years 2018 and 2019.

County	General case type	Event Date	
		2018	2019
SUFFOLK	Civil Matters	65	49
	Criminal Matters	229	187
	Juvenile Matters	12	3
	Non-Case	4	3
WORCESTER	Total	206	168
	Civil Matters	17	11
	Criminal Matters	187	157
	Non-Case	2	

Figures include the following event types: Jury Trial, Jury Trial (CR), Jury Trial (CV), Jury Trial (JV) or Jury Trial in Progress.

Superior Court Pending Cases
Jury Trials Scheduled (and without a result) by Month of Scheduled Trial

Case Type	Division/County	2020							2021												Grand Total	
		Jul	Aug	Sep	Oct	Nov	Dec	Total	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		Total
Criminal	SC - Barnstable	5	1	7		3		16														16
	SC - Berkshire			3				3			1										1	4
	SC - Bristol			12	8	6		26	7												7	33
	SC - Essex		4	29	22	20	4	79	5	1	6	3									15	94
	SC - Franklin											1									1	1
	SC - Hampden		2	36	60	36	21	155	19	9	9	1									38	193
	SC - Hampshire			1		1		2			1										1	3
	SC - Middlesex	21	62	61	102	63	47	356	58	40	14	2	4								118	474
	SC - Norfolk	2	3	10	5	5	1	26	1												1	27
	SC - Plymouth	2	11	27	23	19	10	92	5	2			1								8	100
	SC - Suffolk	13	22	64	52	37	17	205	12	2	8		1								23	228
	SC - Worcester	4	10	16	16	10	4	60	14	11	7	3									35	95
		Total	47	115	266	288	200	104	1,020	121	65	46	10	6								248
Other	SC - Barnstable		1	12	13	8	6	40	6	5	3	1		1			2			1	19	59
	SC - Berkshire		3			1	2	6		1		1			1						3	9
	SC - Bristol	5	8	9	11	8	1	42	4	2	2		2	8	2	2	2	3	1	1	29	71
	SC - Dukes				5			5				3									3	8
	SC - Essex	1	6	27	30	26	17	107	30	27	33	23	22	10	5	2	4	2	4	2	164	271
	SC - Franklin			2	2	4		8	2	3	2	1		2			1				11	19
	SC - Hampden	1	9	5	7	9	4	35	14	12	16	12	11	6	2	3	1	3			80	115
	SC - Hampshire				1	1		2				1		1							2	4
	SC - Middlesex	9	50	57	60	43	18	237	26	22	26	24	23	13	12	5	5	5	2	3	166	403
	SC - Norfolk			13	20	6	6	45	8	7	8	2	5	2	1	1	1	2	1		38	83
	SC - Plymouth	5	15	13	15	16	2	66	9	7	6	3	7	1	1	1	1	1	2		39	105
	SC - Suffolk	2	6	37	48	37	12	142	22	19	10	10	6	5	3	1	2	5	5	1	89	231
	SC - Worcester	1	10	25	18	19	5	78	10	13	12	5	8	4	3	2	2	3	2		64	142
		Total	24	108	200	230	178	73	813	131	118	118	86	84	53	30	17	21	24	17	8	707
Grand Total		71	223	466	518	378	177	1,833	252	183	164	96	90	53	30	17	21	24	17	8	955	2,788

*Cases with a case status of "open", "re-opened", or "COVID 19".

**Event = Jury Trial.

***Includes only those events without a result.

****Cases appear only once based on first trial date.

Superior Court Pending Cases
Jury Trials Scheduled for March 13,2020 through Today but Were Not Held

Case Type	Division/County	2020					Total
		Mar	Apr	May	Jun	Jul	
Criminal	SC - Barnstable	5	3	9	4		18
	SC - Berkshire	2		8	2	1	12
	SC - Bristol	26	30	28	21	2	90
	SC - Essex	23	42	37	35	12	138
	SC - Hampden	55	90	82	58	5	264
	SC - Hampshire		1		2		3
	SC - Middlesex	46	140	127	96	12	399
	SC - Nantucket			1			1
	SC - Norfolk	18	34	20	10	1	82
	SC - Plymouth	23	30	21	28	1	84
	SC - Suffolk	77	118	130	103	4	411
	SC - Worcester	40	54	49	43		180
	Total	315	542	512	402	38	1,682
Other	SC - Barnstable	7	15	12	14	1	48
	SC - Berkshire		1		3		4
	SC - Bristol	21	38	36	46	1	137
	SC - Dukes		3				3
	SC - Essex	16	28	34	39		112
	SC - Franklin	4	1	2	3	1	11
	SC - Hampden	14	20	22	18	3	75
	SC - Middlesex	46	76	82	78	16	292
	SC - Nantucket			4			4
	SC - Norfolk	18	30	22	32	2	101
	SC - Plymouth	13	23	21	23		75
	SC - Suffolk	53	66	75	68	7	264
	SC - Suffolk	1					1
	SC - Worcester	24	33	41	46	12	151
	Total	217	334	351	370	43	1,278
Grand Total		532	876	863	772	81	2,960

*Cases with a case status of "open", "re-opened", or "COVID 19".

**Event = Jury Trial.

***Includes events without a result and those resulted as "cancelled", "rescheduled", and "not held".

****Cases appear only once based on first trial date.