

NO. \_\_\_\_ EM 2020

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IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

IN RE FIRST JUDICIAL DISTRICT LIVESTREAM POLICY

COMMONWEALTH OF PENNSYLVANIA

v.

KHYZEE BROWN

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**COMMONWEALTH'S PETITION FOR KING'S BENCH OR  
EXTRAORDINARY JURISDICTION**

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Petition for exercise of King's Bench or other Extraordinary Jurisdiction from the September 9, 2020 denial of the Commonwealth's Motion to Reconsider entered at CP-51-CR-0002781-2019.

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## **INTRODUCTION**

This petition for the exercise of King’s Bench or other extraordinary jurisdiction challenges the First Judicial District (FJD) of Pennsylvania’s announced policy permitting the streaming of criminal jury trials over YouTube, where they can be surreptitiously and illegally recorded by anonymous individuals anywhere in the world. The Commonwealth respectfully requests that this Court exercise its King’s Bench or extraordinary jurisdiction and prohibit the First Judicial District from streaming criminal jury trials in this manner. Numerous alternatives exist, which would honor the important public access rights at stake without so starkly inviting witness intimidation, the re-traumatization of victims, and the routine violation of sequestration orders.

In light of the COVID-19 pandemic, the FJD has adopted a “Public Access to Judicial Proceedings During the COVID-19 Pandemic-Livestream Policy,” (hereinafter “Pandemic-Livestream Policy” or “the policy,”) under which criminal jury trials may be streamed for general public access over the public internet via YouTube. (The policy is attached as Appendix A). The policy permits live-streaming criminal trials over YouTube, while also providing that “livestream or other remote access . . . will not be required” so long as the public, even in reasonably-reduced numbers, can attend in person. Thus, the policy leaves the decision whether to livestream to each judge’s individual discretion, on a case-by-case basis. When a



trial is live-streamed over YouTube, the policy permits streaming to be interrupted temporarily only if and to the extent that the court finds “legally sufficient, specific facts” that a particular witness would likely be intimidated or threatened if the witness’s identity or image were publicly disclosed.

The first FJD jury trial since the start of the COVID-19 pandemic commenced on September 8, 2020 (in the *Brown* case, captioned-above). Over the Commonwealth’s objection—one supported by the Pennsylvania Office of Victim Advocate and eleven local victim’s rights organizations—that trial has been streamed via a YouTube link from the FJD’s website for any and all to see (*see Commonwealth’s Motion to Reconsider Order Overruling Commonwealth Objection to Streaming of Jury Trial on YouTube*, attached as Appendix B). Three additional jury trials in highly sensitive sexual assault cases, including one involving children, are scheduled to commence on September 14, 2020. The Commonwealth has filed written objections to the streaming of these cases, on the following bases:

1. YouTube streaming will enable anyone with internet access, in a manner difficult or impossible to detect and prevent, to record, redistribute, and permanently retain the testimony and arguments introduced at trial.
2. Such recordings can be used to intimidate a witness to prevent his or her testimony or to alert a hostile audience that a particular witness has testified against a particular defendant, thus exposing that witness to retaliation.
3. The very awareness that his or her testimony will be streamed on YouTube will disincline already reluctant witnesses to testify. This problem will only be exacerbated as public awareness of the availability of testimony on YouTube increases.

4. The ability to record and distribute the details of a victim's suffering, for whatever purpose, to an infinite internet audience exposes the victim to an enhanced loss of privacy and to re-traumatization.
5. The ability to record and distribute trial testimony precludes the meaningful sequestration of witnesses, where any witness with internet access can listen to the testimony of earlier witnesses and tailor their own testimony to either contradict or corroborate that earlier testimony.

(*See, e.g., Commonwealth's Motion to Preclude Streaming Jury Trial on YouTube*, attached as Appendix C). Although the Commonwealth has raised (and will continue to raise) these objections in all of the cases scheduled for jury trial in the FJD while the policy is in place, it has no assurance that the respective trial courts will agree or, even if they do, that there currently is any other option in place to guarantee public access.

For the reasons more fully discussed below, the FJD's policy is not acceptable: in order to avert the very real danger of witness intimidation, to minimize traumatization of victims, and to ensure meaningful sequestration, criminal jury trials in Pennsylvania should **not** be streamed over YouTube or otherwise broadcast so that they can be viewed and recorded by anonymous individuals anywhere in the world. In other words, the FJD's policy should prohibit streaming via YouTube of criminal jury trials, and should not leave this highly important issue to the discretion of individual judges, on a case-by-case basis.

As also discussed below, in addition to raising significant public safety concerns, the policy is also legally unnecessary. Broadcasting criminal jury trials for viewing by anonymous individuals over the public internet is not required to honor the letter or spirit of defendants' right to a public trial, or the right of the public and press to attend court proceedings, for one very simple reason: there are acknowledged alternatives, which have been set forth in the Commonwealth's objections. The form of public access contemplated by the federal and state constitutions—in-court attendance where spectators can both observe the proceedings and be observed by witnesses and court personnel—remains available. To the extent more spectators wish to attend than the trial courtroom can accommodate given the need for social distancing, there is an appropriate alternative—a closed-circuit-type feed to an “overflow” courtroom or other appropriately staffed room in the courthouse where additional members of the public and press can be seated.

Streaming jury trials over the public internet for remote viewing by anonymous individuals poses an obvious and unacceptably high risk of witness intimidation. Public dissemination (including by means of social-media posts) of illegally-recorded streamed trial testimony for the purpose of intimidating victims and other witnesses would be virtually certain and at the same time difficult or impossible for the Commonwealth and the court to detect. It is for these very reasons

that the FJD prohibits cell phones in its criminal courtrooms. Now, ironically, by electing to stream jury trials via YouTube, the First Judicial District will essentially *perform that very function* for anyone who wants to record and redistribute a witness' testimony to an infinite number of recipients for malicious purposes.

The FJD has gone too far in attempting to meet public access requirements in the COVID-19 era. The policy of streaming criminal jury trials over YouTube violates the privacy of all parties and endangers witnesses in a jurisdiction known for intimidation and retaliation achieved through social media. There is no need to take these risks where ample alternatives exist that meet or exceed constitutional requirements. The FJD's insistence on a policy that endangers lives calls for immediate correction through this Court's supervisory and administrative powers over the courts of this Commonwealth.

## STATEMENT OF JURISDICTION

This Court has jurisdiction to consider the Commonwealth’s petition as an exercise of its King’s Bench authority, its power to take “extraordinary jurisdiction” over pending matters, and its “general supervisory and administrative authority over all the courts.”

### King’s Bench Jurisdiction

King’s Bench jurisdiction is derived from this Court’s “supreme judicial power” conferred by Article V, Section 2 of the Pennsylvania Constitution, and is acknowledged in 42 Pa.C.S. § 502: “The Supreme Court shall have and exercise the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister justice to all persons and to exercise the powers of the court, as fully and amply, to all intents and purposes, as the justices of the Court of King’s Bench, Common Pleas and Exchequer, at Westminster, or any of them, could or might do on May 22, 1722.” This Court has summarized its King’s Bench jurisdiction as “generally invoked to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law.” *Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 884 (Pa. 2020) (quoting *Commonwealth v. Williams*, 129 A.3d 1199, 1205–06 (Pa. 2015)) (internal quotation marks omitted). In short, King’s Bench jurisdiction is a “power of general superintendency over inferior

tribunals” that this Court may exercise regardless of whether it involves a matter pending before a lower court. *In re Dauphin County Fourth Investigating Grand Jury*, 943 A.2d 929, 933 n.3 (Pa. 2007).

This Court’s King’s Bench power is described “in the broadest of terms.” *In re Bruno*, 101 A.3d 635, 679 (Pa. 2014). “The power of controlling the action of inferior courts is so general and comprehensive that it has never been limited by prescribed forms of procedure or by the particular nature of the writs employed for its exercise.” *In re Franciscus*, 369 A.2d 1190, 1192–93 (Pa. 1977) (quoting *Petition of Squires and Constables Ass’n of Pa., Inc., Allegheny County Chapter*, 275 A.2d 657 (Pa. 1971)) (internal quotation marks omitted). This Court therefore “would be remiss to interpret [its] supervisory authority at King’s Bench in narrow terms, contrary to precedent and the transcendent nature and purpose of the power. The Court long ago warned against any judicial inclination to narrow that authority, lest the members of the Court abandon their duty to exercise the power they hold in trust for the people.” *In re Bruno*, 101 A.3d at 679 (citing *Chase v. Miller*, 41 Pa. 403, 411 (Pa. 1862)).

Consistent with its broad construction, King’s Bench jurisdiction may be employed wherever the “action presents an issue of immense public concern and requires immediate judicial resolution.” *DeVito*, 227 A.3d at 884. That requirement is unquestionably met here. On September 10, 2020, the FJD circulated a memo

describing the policies governing the resumption of jury trials during the COVID-19 pandemic, which dictates that “the public will be able to access judicial proceedings remotely, on dedicated court YouTube channels” (*id.*). While the policy allows for other methods of publicity, in its current form it explicitly permits FJD judges to broadcast their trials on YouTube, allowing anyone with internet access to not only anonymously watch every YouTube trial from any location on earth, but also to preserve the testimony for redistribution simply by recording their computer screen with a cell phone camera (notwithstanding the policy’s stated prohibition on doing so). There is every reason to believe that this prospect will dissuade the Commonwealth’s victims and witnesses from testifying or, if subpoenaed to testify against their will, expose them to intimidation and retribution. In addition to the unacceptable consequence of endangering this Commonwealth’s citizens merely for performing their lawful duty to tell the truth in court, recklessly broadcasting their testimony will further complicate the Commonwealth’s already difficult job of prosecuting cases in a community rife with witness intimidation.

This is therefore a case of “immense public concern” in that it affects the Commonwealth’s ability to uphold the law not only in the cases directly affected, but also moving forward where future witnesses are skeptical that their security will be adequately protected. And not only is the public concern great, but it requires immediate redress. Testimony in this case began on September 9, 2020, and is

ongoing at the time of filing this petition. This is the first of many in-person jury trials set to resume in the coming weeks. The longer the FJD's ill-conceived policy continues, and the more publicity it receives, the more witnesses will become reluctant to testify, even after court proceedings return to normal.

As a matter of public concern requiring immediate attention resulting from the procedures of an inferior court, this is precisely the type of issue for which King's Bench jurisdiction was intended. *See In re Bruno*, 101 A.3d 635 (2014) ("The Supreme Court's principal obligations are to conscientiously guard the fairness and probity of the judicial process and the dignity, integrity, and authority of the judicial system, all for the protection of the citizens of this Commonwealth.") (citations omitted).

Furthermore, as a central legal authority, this Court is ideally situated to guide the Commonwealth's government bodies regarding the legality of responses to the COVID-19 pandemic. *See Wolf v. Scarnati*, --- A.3d ---, 2020 WL 3567269 (Pa. 2020) (exercising King's Bench authority to consider the General Assembly's resolution terminating state disaster emergency based on COVID-19 outbreak); *DeVito*, 227 A.3d at 884-85 (exercising King's Bench authority to decide the statutory and constitutional challenges to executive orders made in response to the pandemic). It is particularly imperative that this Court provide guidance where the FJD appears to be the only district of the Pennsylvania Court of Common Pleas to



resume in-person criminal jury trials, and its policy will therefore inform the remainder of the state's districts currently faced with the same conundrum of satisfying the constitutional right to a public trial in the midst of a global pandemic. *See Gass v. 52nd Judicial District, Lebanon County*, --- A.3d ---, 2020 WL 3272752 (Pa. 2020) (exercising King's Bench jurisdiction over question of probationers' use of medical marijuana where "the case implicates substantial legal questions concerning matters of public importance, particularly in light of the allegation that other judicial districts have adopted, or are considering adopting, similar limitations on the use of medical marijuana"). This Court's King's Bench power is well suited to aid the lower courts of this Commonwealth in navigating the pending public health crisis while protecting the rights of defendants, victims, witnesses, and the public.

#### Extraordinary Jurisdiction

Alternatively, this Court may exercise extraordinary jurisdiction, sometimes referred to as plenary jurisdiction, in order to review the FJD's intent to publicly broadcast its proceedings. "Although in many respects an exercise of the Court's King's Bench powers is to the same effect as an exercise of extraordinary jurisdiction under 42 Pa.C.S. § 726, the two are not identical." *See In re Avellino*, 690 A.2d 1138, 1140-41 (Pa. 1997) (describing the General Assembly's distinction between pre-existing "powers" and jurisdiction "provided by law"). While King's Bench

jurisdiction does not require a matter to be pending before a lower court, extraordinary jurisdiction may only be invoked “in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance . . . .” 42 Pa.C.S. § 726. This Court may assume extraordinary jurisdiction “in order to conserve juridical resources, expedite the proceedings and provide guidance to the lower courts on a question that is likely to recur.” *Commonwealth v. Morris*, 771 A.2d 721, 731 (2001).

While extraordinary jurisdiction is technically distinct from King’s Bench Jurisdiction, its core requirement is largely the same: it is employed over matters of “immediate public importance.” 42 Pa.C.S. § 726. For all the reasons discussed above, the FJD’s policy allowing for witness testimony to be broadcast on unsecure public websites plainly clears this hurdle. *See Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 4 A.3d 104, 122 (Pa. 2010) (assuming extraordinary jurisdiction over a City reorganization ordinance which abolished the Board of Revision of Taxes because it was of broad interest “to the City, to all City property taxpayers, and the Judiciary,” and because “[s]wift resolution of this matter will also promote confidence in the authority and integrity of our state and local institutions.”). This case also meets the other considerations of this Court in *Board of Revision of Taxes* because “there is no factual dispute; the issue is one of law, resolvable on the pleadings,” and “the record demonstrates that the petitioners have

a clear right to relief” given that the FJD policy would allow sensitive witness and victim testimony to be shared by any anonymous viewer in contravention to its own previous policies, state law, and authority from the courts of this Commonwealth and the United States Supreme Court.

### General Supervisory and Administrative Authority

Article 5, Section 10 of the Pennsylvania Constitution grants this Court “general supervisory and administrative authority over all the courts,” as well as “the power to proscribe general rules governing practice, procedures and conduct of all courts . . . .” Pa. Const. Art. 5, § 10(a), (c). This provision provides this Court with jurisdiction over decisions made “pursuant to this authority and the rulemaking authority identified in Section 10(c) . . . .” *In re Avellino*, 690 A.2d at 1141.

The FJD’s policy was promulgated under the authority of an order of this Court expressly pursuant to those powers. At the outset of the COVID-19 pandemic, this Court empowered President Judges to, *inter alia*, “[l]imit in-person access and proceedings in order to safeguard the health and safety of court personnel, court users, and members of the public” as well as “[s]uspend statewide rules that restrict, directly or indirectly, the use of advanced communication technologies.” *In re General Statewide Judicial Emergency*, No. 531 and 532 JAD 2020, 2020 WL 3263266 (Pa. May 27, 2020). This order was made “pursuant to the Pennsylvania Supreme Court’s constitutionally-conferred general supervisory and administrative

authority over all courts and magisterial district judges . . . .” *Id.* (citing Pa. Const. Art. 5, § 10(a)).

In other words, the FJD’s policy to use “advanced communication technologies” came directly from this Court’s rule promulgated under its supervisory powers, and so this Court now has jurisdiction under the same powers to consider the appropriateness of the FJD’s policy. *See In re Avellino*, 690 A.2d at 1141 (“Because the authority . . . derives from this Court, review and resolution . . . must necessarily be subject to the authority of this Court.”). *See also In re Petition of Pennsylvania Prison Society*, 228 A.3d 885, 886 (Pa. 2020) (directing the President Judges of each district to address the spread of COVID-19 in correctional institutions pursuant to Rule of Judicial Administration 1925(A) and Article 5, Section 10(a)). And simply because this Court authorized President Judges to use technology where necessary does not mean that the courts were entitled use it in a manner they decided, however potentially dangerous to Pennsylvania citizens and the Commonwealth’s ability to prosecute crimes.

## ARGUMENT

**The First Judicial District’s plan to stream its in-person jury trials with no security precautions fails to consider important countervailing interests, including the defendant’s right to a fair trial and protecting victims and witnesses and is unnecessary to ensure the right to a public trial given the available alternatives.**

The FJD’s policy goes further than necessary in its attempt to provide for a public trial, and in doing so endangers the lives of witnesses, traumatizes victims, and deprives defendants of a fair proceeding. The United States Constitution guarantees that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . .” U.S. Const., Amend. VI. The Pennsylvania Constitution similarly provides that “the accused hath a right to . . . a speedy public trial . . . .” Pa. Const. Art. 1, § 9. “The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions . . . .” *Waller v. Georgia*, 467 U.S. 39, 46 (1984).

In addition to the accused’s right to a public trial, members of the public and the press have their own distinct right of access to criminal trials under the First Amendment. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 604 (1982) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (plurality opinion)). “Underlying the First Amendment right of access to criminal

trials is the common understanding that ‘a major purpose of that Amendment was to protect the free discussion of governmental affairs’” and “to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.” *Globe Newspaper*, 457 U.S. at 604 (quoting *Mills v. Alabama*, 384 U.S. 214 (1966); *Thornhill v. Alabama* 310 U.S. 88, 95 (1940); *Richmond Newspapers*, 448 U.S. at 587-88). “Thus[,] to the extent that the First Amendment embraces a right of access to criminal trials, it is to ensure that this constitutionally protected ‘discussion of governmental affairs’ is an informed one.” *Globe Newspaper*, 457 U.S. at 604.

However, while both the First and Sixth Amendments ensure the right to a public trial, this right is not limitless. To the contrary, the United States Supreme Court “has made clear that the right to an open trial may give way in certain cases to other rights or interests, such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information.” *Waller*, 467 U.S. at 45.

Even a fully open public trial is, of course, not open to any number of anonymous viewers from any location anywhere in the world, as the FJD’s YouTube policy permits. Courtrooms naturally have a limited seating capacity. Interested viewers must be motivated enough to actually physically travel to the local courthouse. In the FJD’s courthouse, attendees are required to go through security

and may be required to identify themselves. Cell phones and recording are prohibited in the courtroom, and the judge may enforce general rules of courtroom decorum. It would be absurd to argue that the right to a public trial requires every courtroom to accommodate unlimited spectators unwilling to submit to any scrutiny whatsoever.

Yet that is precisely what the FJD's policy allows here. In attempting to protect the important right to a public trial, it ignores the practical limitations usually placed on proceedings in its own courthouse. Furthermore, the FJD fails to balance the method of publicity with the countervailing interests of victim and witness safety, the defendant's right to a fair trial, and the victim's right to finality without being forced to relive his or her trauma. Its decision to do so is untenable given the other options readily available.

**A. Streaming trials over YouTube subjects defendants, victims, and witness to a potentially worldwide audience who are able to record the testimony anonymously.**

The FJD's plan to publicize its trials consists of posting a link to a YouTube stream on its website that anyone can access and watch anonymously from her own personal computer. "The link to the livestream is made public with no security measure in order to ensure public access but that also allows anyone in the world to watch the proceedings" (Report of Moshe Berman, 9/8/20, Attached as Exhibit A to Commonwealth's Motion to Reconsider Order Overruling Commonwealth Objection to Streaming of Jury Trial on YouTube). This method takes the usual

intimate setting of a courtroom, which has a limited capacity reserved for individuals willing to actually travel to the courthouse, and potentially turns it into a worldwide spectacle. In addition to being unnecessary to achieve a constitutionally public trial, this amount of exposure is unfair and dangerous to the defendant, the victim, the witnesses, the judge, and the attorneys.

The constitutional right to a public trial does not include the right to televise or broadcast the trial by video. As the Superior Court has noted, “there is no United States Supreme Court case or Pennsylvania case which suggests that [the] right to access includes a right to televise, record, or otherwise broadcast judicial proceedings.” *Commonwealth v. Davis*, 635 A.2d 1062, 1066 (Pa. Super. 1993). In *Davis*, the Superior Court rejected a news station’s argument that it was permitted to videotape a court proceeding held at the scene of the crime as “ignor[ing] the extraordinary effects of cameras on judicial proceedings.” 635 A.2d at 1065. Specifically, the court was concerned with the “many situations in which undetectable subtleties can result in an unfair trial” by affecting jurors, witnesses, judges, and defendants. *Id.* at 1067.

Relying on United States Supreme Court authority, the court noted that broadcasting a trial calls the jury’s decisions into question:

Where pretrial publicity of all kinds has created intense public feeling which is aggravated by the telecasting or picturing of the trial the televised jurors cannot help but feel the pressures of knowing that friends and neighbors have their eyes upon them . . . [and, thus, the



jurors] may well be led ‘not to hold the balance nice, clear and true between the State and the accused.’

*Id.* (quoting *Estes v. State of Texas*, 381 U.S. 532, 545 (1965)). In addition to the fact that “knowledge of public sentiment . . . may impact the juror’s decisions,” the *Davis* court was concerned that “the knowledge that the trial is being televised may diminish the jury’s attentiveness.” 635 A.2d at 1067 (quoting *Estes*, 381 U.S. at 546) (“Human nature being what it is, not only will a juror’s eyes be fixed on the camera, but also his mind will be preoccupied with the telecasting rather than with the testimony.”).

The fact that a trial is being filmed may also prejudice the defendant himself. “The inevitable close-ups of his gestures and expressions during the ordeal of his trial might well transgress his personal sensibilities, his dignity, and his ability to concentrate on the proceedings before him—sometimes the difference between life and death—dispassionately, freely and without the distraction of wide public surveillance.” *Estes*, 381 U.S. at 549. While a defendant is required to face his victims and community publicly to answer the charges against him, this does not mean his alleged transgressions deserve to be broadcast globally for anyone’s enjoyment; “A defendant on trial for a specific crime is entitled to his day in court, not in a stadium, or a city or nationwide arena.” *Estes*, 381 U.S. at 549. Furthermore, broadcasting the trial “might deprive a defendant of his or her right to effective counsel. Not only may the broadcasting serve to distract counsel, but may also tempt

lawyers, judges, jurors and witnesses to play to the public audience.” *Davis*, 635 A.2d at 1069 (citing *Estes*, 381 U.S. at 549).

Additionally, “[t]he knowledge that the proceedings are being filmed may have various consequences on the quality of testimony given at trial.” *Davis*, 635 A.2d at 1068. In addition to subjecting witnesses to intimidation and retaliation, discussed extensively *infra*, the presence of cameras may encourage them, consciously or not, to act in their perceived “role.” Or the prospect of being watched by an unknown amount of people on the internet may have the opposite effect on shy witnesses; “memories may falter, as with anyone speaking publicly, and accuracy of statement may be severely undermined. Embarrassment may impede the search for the truth, as may a natural tendency toward overdramatization.” *Estes*, 381 U.S. at 547.

Furthermore, public broadcasting of trial testimony would enable witnesses to easily violate sequestration orders without any means of detection. A merely self-conscious witness might yield to temptation to compare her public performance with that of the other witnesses. A more self-interested witness could intentionally conform her testimony based on that of other witnesses to achieve her desired outcome.

In addition, broadcasting trials forces the victim to relive her trauma in front of an unknown quantity of anonymous viewers. As the eleven representatives of

Victim's Services Agencies state in their letter attached to the Commonwealth's motion to reconsider:

The process of live streaming hearings to massive audiences is likely to result in re-traumatization for crime victims and witnesses, who are often required to disclose details of their victimization when engaging in the criminal law process. Live streaming also fails to address victims' rights regarding safety and privacy. The number of potential viewers is nearly incalculable, adding unnecessary risks for victims and witnesses.

(Letter, Eleven Victim's Rights Advocates, 9/8/20, attached as Exhibit C to Commonwealth's Motion to Reconsider Order Overruling Commonwealth Objection to Streaming of Jury Trial on YouTube). The Superior Court also recognized the potential for infringement on the victims' privacy inherent in widely broadcasting trials. *See Davis*, 635 A.2d at 1068 (citing *Cotsirilos & Jenner, Cameras in the Courtroom-An Opposing View*, Ill. Trial Law.J. at 24 (Fall-Winter 1982) (television coverage magnifies the trauma of crime victims)).

Just as "television [was] a more pervasive medium than newsprint" at the time *Davis* was decided in 1993, *id.*, streaming video online is now becoming the primary method of media consumption. While a defendant of course has the right to face his accuser in a public setting, there is simply no need to broadcast this across the globe unnecessarily. And while public access may increase accountability and public confidence, the *Davis* court and the Supreme Court rejected the notion "that a live recordation would enhance either the function of public trials or as a check on judicial abuses, or as a truth finding function. To the contrary, the Supreme Court

has held that “[t]he use of television ... cannot be said to contribute to [the truth determining process] ... [But] [r]ather its use amounts to the injection of an irrelevant factor into court proceedings.” 635 A.2d at 1069 (quoting *Estes*, 381 U.S. at 544).

Not only does broadcasting trials on YouTube potentially expose defendants, victims, and witnesses to a massive audience, but any member of this audience may record or otherwise memorialize the proceedings for future nefarious use. (If the policy’s stated prohibition on doing so prevented this, then the issue of spectators attempting to record in court, where similar prohibitions are articulated, would not exist). As the Commonwealth’s expert opined, “Any recording device like a smart phone or even an old VHS camcorder could be set to record a computer screen that is displaying the livestream. Worse still is that widely available computer programs exist to allow a layperson to record whatever video is being displayed on their computer screen and whatever audio goes with it” (Report of Moshe Berman, 9/8/20). The FJD therefore proposes to allow anyone on earth to record and distribute its trial proceedings, despite the steps it ordinarily takes to prevent this illegal act.

Recording a judicial proceeding is illegal. Under 18 Pa.C.S. § 5103.1:

A person commits an offense if the person in any manner and for any purpose uses or operates a device to capture, record, transmit or broadcast a photograph, video, motion picture or audio of a proceeding or person within a judicial facility or in an area adjacent to or immediately surrounding a judicial facility without the approval of the court or presiding judicial officer or except as provided by rules of court.

In fact, a trial judge herself does not even have discretion to allow recordings of judicial proceedings:

(A) The court or issuing authority *shall*:

- (1) Prohibit the taking of photographs, video, or motion pictures of any judicial proceedings or in the hearing room or courtroom or its environs during the judicial proceedings; and
- (2) Prohibit the transmission of communications by telephone, radio, television, or advanced communication technology from the hearing room or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session.

Pa.R.Crim.P. 112(A) (emphasis added).

The justification for these rules is obvious; they are necessary to ensure a fair trial and to protect the jury, the defendant and the victim. The Supreme Court's reasoning in this regard, relied on by the Superior Court in *Davis, supra*, aptly illustrates the risks attendant to filming witnesses:

The impact upon a witness of the knowledge that he is being viewed by a vast audience is simply incalculable. ***Some may be demoralized and frightened . . . Furthermore, inquisitive strangers and 'cranks' might approach witnesses on the street with jibes, advice or demands for explanation of testimony.*** There is little wonder that the defendant cannot 'prove' the existence of such factors. ***Yet we all know from experience that they exist.***

*Estes*, 381 U.S. at 547 (emphasis added).

The concern of reprisal against witnesses is even greater today in Philadelphia, where witness intimidation and retaliation persistently lurk in the

background of nearly every prosecution.<sup>1</sup> Far from “jibes, advice or demands” from “inquisitive strangers and ‘cranks,’” witnesses in the Philadelphia court system frequently face threats, physical harm, and death. *See, e.g., United States v. Savage*, --- F.3d ---, 2020 WL 4691500 (3d Cir. Aug. 11, 2020) (affirming federal convictions and death sentences for offenses including firebombing family home of cooperating witness in North Philadelphia); *Commonwealth v. Paddy*, 800 A.2d 294, 300 (Pa. 2002) (affirming first-degree murder conviction and death sentence for murder of witness to double-homicide in Philadelphia); *Commonwealth v. Purvis*, No. 785 EDA 2019, 2020 WL 3056499, at \*1 (Pa. Super. June 9, 2020) (key witness in Philadelphia murder trial was knifed in prison after receiving several notes calling

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<sup>1</sup> *See* Daniel Rubin, ‘*Stop snitching*’ culture runs deep in Philly, *Phila. Inquirer*, Aug. 4, 2011, at B1.

In 2013, the Philadelphia District Attorney’s Office reported that witness intimidation was at a “near epidemic” level. Kevin McCorry, *Witness Intimidation at “Near Epidemic” Level*, *newsworks.org* (Apr. 11, 2013), <http://www.nbcphiladelphia.com/news/politics/Witness-IntimidationNearEpidemic-Level-202572451.html>.

The 2000 National Youth Gang Survey reported that 83 percent of those surveyed in urban areas experienced witness intimidation in gang-related cases. Dawson, Justin C., Duren Banks, Michael J. D. Vermeer, and Shoshana R. Shelton, *Strategies to Mitigate the Impact of Electronic Communication and Electronic Devices on the Right to a Fair Trial*. Santa Monica, CA: RAND Corporation, 2018. [https://www.rand.org/pubs/research\\_reports/RR2155.html](https://www.rand.org/pubs/research_reports/RR2155.html).

Moreover, prosecutors have estimated that witnesses may be intimidated in up to 75 percent of prosecutions for violent crimes in gang-dominated neighborhoods. *Id.*

him a “rat” and finding 20 copies of his police statement placed in the law library in the prison where he was confined); *Commonwealth v. Camacho*, No. 376 EDA 2019, 2019 WL 6211354, at \*4 (Pa. Super. Nov. 21, 2019) (affirming first-degree murder conviction in case in which defendant called witness to his murder in Philadelphia from prison and threatened him, calling him a “rat”); *Commonwealth v. Lowman*, No. 603 EDA 2018, 2019 WL 3231380, at \*3 (Pa. Super. July 18, 2019) (affirming convictions for offenses including aggravated assault and witness intimidation when defendant and cohorts stripped victim of clothing and belongings outside of a bar in West Philadelphia and beat him severely while defendant berated him as a “rat” who should “stop telling on people”).

Furthermore, while the Superior Court in *Davis* and Supreme Court in *Estes* were discussing video coverage by the traditional news media, the FJD’s plan here to simply stream trials on the popular social media website YouTube is far worse. As noted by the Commonwealth’s expert, witness intimidators could simply record the YouTube video playing on the screen with their cell phone camera, or download any number of programs that can capture what is playing on screen, before sharing it on social media (Report of Moshe Berman, 9/8/20). More simply, any viewer could take a “screen shot” of the testimony playing out on their cell phone or computer and have an instant picture of the witness on the stand.

This is particularly concerning given the increased role of social media in witness intimidation. While discussing the Montgomery County case of a defendant running a Facebook page dedicated to memes depicting violent acts against “snitches,” Dawson, et. al. noted that “[t]hreats through social media have the potential for an even greater impact than more traditional modes of communication, as the threat reaches a much wider audience of individuals who might also retaliate against a witness.”<sup>2</sup> As the judge in that Montgomery County case opined: “Facebook is more powerful than television. It’s more powerful than radio. You put it out there for the whole world to see.” *Id.*

The Facebook meme page from Montgomery County is only the latest example of a social media account dedicated to intimidating witness or encouraging retaliation against them. In the section of his article entitled “Philadelphia – Ground Zero for Witness Intimidation Using Social Media?,” John Browning recalled an Instagram account named “Rats215,” which posted photographs of more than thirty Philadelphia witnesses, along with their statements and testimony, between February and November 2013.<sup>3</sup> “In one example *the account posted a photo apparently taken*

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<sup>2</sup> Dawson, et al., *supra*, at 4-5.

<sup>3</sup> John Browning, *#snitches Get Stitches: Witness Intimidation in the Age of Facebook and Twitter*, 35 Pace L. Rev. 192, 194 (2014) (also available at <https://digitalcommons.pace.edu/plr/vol35/iss1/>).



*while the witness was testifying in court.” Id.* (emphasis added). Many of those commenting on these pictures called for “hits” to be put out on the outted witnesses. *Id.* While Rats215 was successfully shut down, similar forums such as copsrcorrupt.com and “The Snitch List” on Facebook took its place.<sup>4</sup> If the FJD’s plan is permitted, the moderator of any of these internet pages could simply go to the FJD website, click on the link to any active trial, and share a witness’s testimony on their list of “snitches.” *See, e.g., Commonwealth v. Scott*, 212 A.3d 1094, 1108 (Pa. Super. 2019) (prosecution witnesses recanted statements in first degree murder trial where “someone had taken photographs of people in the courtroom and courtroom lobby during trial and posted them to [defendant’s] Facebook page”), appeal denied, 222 A.3d 383 (Pa. 2019).

The FJD is well aware of these concerns, as evidenced by the fact that electronic devices are not permitted in FJD courtrooms. Furthermore, the Benchbook published by the Administrative Office of the Pennsylvania Courts notes that “[f]orms of intimidation in and near the courtroom may include, but are not limited to . . . [p]hotographing or recording the face or voices of the witness.”<sup>5</sup> Given the

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<sup>4</sup> Dawson, et al., *supra*, at 5.

<sup>5</sup> *Free to Tell The Truth - Preventing and Combating Intimidation in Court: a Benchbook for Pennsylvania Judges*, <http://www.pacourts.us/assets/files/setting-3008/file-725.pdf?cb=890681>.

court's recognition of the danger that electronic recording poses both to the witnesses themselves and the effective administration of justice, it is all the more curious that it would choose to broadcast trials so haphazardly where doing so is not necessary to ensure the right to public trial and, as discussed *infra*, other options are available.

In addition to posing a clear and obvious danger to testifying witnesses, allowing trials to be recorded or otherwise memorialized by any member of the public has the potential to re-traumatize even non-testifying victims. As horrific as it is to be forced to relive a crime during trial, it would be even more traumatizing to be reminded of it repeatedly in the future should footage from the trial be shared on the internet. Given the often prurient and bizarre nature of internet culture, this is not a far-fetched supposition. In any case, there is simply no need to take the risk where it can easily be avoided by more secure public access.

The ability of spectators to record and share testimony is enabled by their total anonymity when "attending" the streamed trials. The trial will be a one way stream; the viewer cannot be seen and does not have to sign in or otherwise identify herself. While there may be a record of the viewer's computer accessing the stream, "[s]everal internet browsers or supplemental applications exist and are commonly used by laypersons to mask internet traffic in order to protect privacy. These tools are based on technology originally developed largely for nefarious purposes and

operate by routing a user's internet activity through a series of international networks to effectively 'launder' the identity of the user" (Report of Moshe Berman, 9/8/2020). Furthermore, even if the computer could be identified, there is no way to know who was using it at the time.

Those who watch the trial streams will therefore be completely anonymous. As multiple courts have noted while holding that identification requirements do not violate the right to public access, being compelled to identify oneself before the court reduces the risk of witness intimidation or other misconduct. In the words of the Massachusetts Supreme Court:

When spectators must first identify themselves before entering a court room, they lose their anonymity and therefore become more accountable for their conduct in the court room, because if they then attempt to intimidate a witness or disrupt the proceedings, the court officer will know who they are. This has the benefit both of discouraging those who had intended to engage in such behavior from attending the trial, and of diminishing the risk that those who do attend the trial will engage in intimidating or disruptive conduct.

*Commonwealth v. Maldonado*, 2 N.E.3d 145, 153 (Mass. 2014). Similarly, the Supreme Court of Indiana opined:

The taking of names is perhaps intimidating for some, but the practice also is likely to help control courtroom behavior. Because it alerts spectators that the court can identify them, it may discourage some who might otherwise have disrupted the proceeding in the hope of remaining anonymous.

*Williams v. State*, 690 N.E.2d 162, 168 (Ind. 1997). Likewise, in a case where the defendants had attempted to tamper with witnesses and suborn perjury, the First

Circuit held that “prophylactic procedures of [requiring identification] may be required to safeguard against attempts to intimidate jurors and witnesses in the performance of their courtroom responsibilities.” *United States v. DeLuca*, 137 F.3d 24, 34 (1st Cir. 1998). The Circuit Court continued:

[T]he challenged spectator-screening procedure was reasonably designed to respond to these concerns, as it plainly alerted would-be spectators that their courtroom conduct would be closely monitored, thereby efficiently focusing the desired deterrent effect principally upon those most likely to impede a fair and orderly trial—particularly appellants’ criminal associates. Thus, the challenged screening procedure represented a permissible response to defendants’ demonstrated capacity and motivation to undermine the administration of justice at their trial.

*Id.* at 36.

Identifying spectators is therefore a recognized and appropriate method of thwarting witness intimidation during trial. Taking the inverse, allowing anyone to anonymously access the trial streams on YouTube will only enable this type of threat without fear of reprisal. While the FJD does not require identification documents before entering the courthouse in person as a matter of course, there is at least identification in that the trial judge (as well as court staff and security personnel) can see the occupants of her courtroom and monitor them for any signs of witness intimidation or misbehavior, at which point she could ask them for more information or impose formal identification requirements. *See United States v. Brazel*, 102 F.3d 1120, 1156 (11th Cir. 1997) (“We find no violation of the Constitution. The trial

judge implemented the identification procedure based on her own observations for more than a week, confirmed by the prosecution, that individuals had been coming into the courtroom and fixing stares on the witnesses and possibly government counsel.”); *Maldonado*, 2 N.E.3d at 154 (“Gauging the tension in a court room is something that trial judges routinely do, even though an atmosphere of tension is difficult to describe, so we give deference to a trial judge’s appraisal both of the air of tension and the dangers it posed.”). The judge during an ordinary trial would also be able to ensure that no one was recording witness testimony.

Under the FJD’s Pandemic-Livestream policy, trial judges are unable to perform this essential function of monitoring their courtroom and conducting an orderly and intimidation-free proceeding. While troublesome spectators cannot intimidate witnesses *during* testimony over the one-way video stream, they may record their testimony at will with no one the wiser. In going further than necessary to provide for public proceedings, the FJD’s policy allows anyone with ill intent to surreptitiously monitor cooperating witnesses with no safeguards or record of their identity should violence be carried out against trial participants.

**B. Numerous alternative options for safe public access exist that would not pose the extraordinary risks that the FJD’s YouTube policy does.**

As discussed, streaming trial proceedings via YouTube is an unreasonable response to the constraints of the COVID-19 pandemic. Furthermore, as dangerous as the YouTube streaming policy is, it is all the more unreasonable because it is not

even necessary. Numerous alternatives exist which could adequately protect the First and Sixth Amendment rights to a public trial, one of which—holding socially distanced proceedings in court—the FJD provides for in its own policy. In the interest of victim and witness safety, defendant’s right to a fair trial, and the Commonwealth’s ability to uphold the law, this Court should enjoin the FJD from broadcasting trials via YouTube or any other public platform which allows an unrestricted number of anonymous individuals to observe the footage and use it as they wish.

In its motion to reconsider, the Commonwealth proposed three alternatives to streaming trials on YouTube. They were as follows:

- 1) Live, in court proceedings held in the largest courtrooms available with adequate space for social distancing;
- 2) Relaying the proceedings over a secure, local network to a designated public forum with adequate room for social distancing where spectators could be monitored by court staff enforcing this Court’s prohibition on recording devices; and
- 3) The same as alternative 2, but with the proceedings broadcast to the designated public forum via a service such as Zoom, which is less secure but potentially more convenient.

(Commonwealth’s Motion to Reconsider Order Overruling Commonwealth Objection to Streaming of Jury Trial on YouTube, 9/9/20, ¶¶ 12-14).

The FJD’s insistence on streaming its trials is particularly confusing given that its own policy provides for one of the very alternatives suggested by the

Commonwealth (*see* Pandemic-Livestream Policy, ¶ 2). The policy claims that “[a]s long as the public, albeit at a reasonably reduced number, is able to attend a judicial proceeding at a judicial facility, livestream or other remote access to that proceeding, as described below, will not be required even when the proceeding is conducted using advanced communication technologies” *Id.* There is no indication that the public will not be “able” to use the “judicial facility” during the first homicide trial that commenced via live-stream on YouTube on September 8, nor during any of the Commonwealth’s forthcoming trials. Nor is there any indication that attendance will be so large as to exceed the court’s limited capacity.

This policy, to the extent it provides for streaming on YouTube, is entirely out of step with the more reasonable measures taken by other courts in this Commonwealth in response to the limitations of the COVID-19 pandemic. For example, while it has yet to resume jury trials, the 32nd Judicial District ruled that members of the public may not attend in-person proceedings but can instead listen to an audio recording after the fact (Second Emergency Order Extension – Criminal Section, attached as Appendix D). Similarly, while the Allegheny Courts are open to the public, “[o]nly persons with essential court business are guaranteed admission into any court facility,” with remote proceedings conducted through Microsoft Teams; other video conferencing software requires approval of the Administrative Judge (Order of Court, 12 WM 2020, 3, attached as Appendix E). Furthermore,

“[c]ameras will not be allowed in any court facility, unless specifically authorized . . .” (*id.*).

As for the United States District Court for the Eastern District of Pennsylvania, located less than one mile from the FJD’s Stout Center, it is utilizing one of the alternatives suggested by the Commonwealth: “two courtrooms will be used for each trial, and an additional courtroom will be used to allow the public to observe the proceedings” (In re: Fifth Extension of Adjustments to Court Operations Due to the Exigent Circumstances Created by COVID-19, 3, attached as Appendix F).

The Commonwealth acknowledges the practical difficulties that exist in conducting public trials while maintaining appropriate social distancing in the courtroom. However, administrative convenience cannot be allowed to supersede the safety of victims and witnesses where there is ample evidence described above that they would be subject to intimidation and retaliation based on their publicly streamed testimony. Nor can it be allowed to force a victim to describe their trauma before a global audience to potentially be recorded and used to force her to relive it in the future.

To the extent this Court finds remote public access to be appropriate in some instances, however, it cannot permit the FJD to utilize it with such disregard for the security of trial participants. Primarily, the court staff must be aware of the identities



and number of individuals spectating the trial. There are numerous video streaming services where participants must be invited and admitted before accessing the broadcast. These streaming services include Zoom, which is purportedly “the primary advanced communication technology used by the First Judicial District to conduct its remote proceedings” (Pandemic-Livestream Policy, Appendix B). Yet for some reason, “[o]nly the participants to the proceedings will be sent a digital invite” (*id.*) (emphasis in original); it is unclear why interested members of the public could not also request and be sent a “digital invite.” Were that the case, interested spectators could be invited to join a “lobby” with their own camera, where they would give their identifying information and be informed of the penalties for recording the stream before being muted by court staff for the duration of the proceeding.

As referred to in the previous section, such identification requirements are usually not considered a “closure” of public access at all and frequently upheld by courts as consistent with the constitutional right to a public trial. *See Maldonado*, 2 N.E.3d at 153; *Williams*, 690 N.E.2d at 168. *See also Foti v. McHugh*, 247 F. App’x 899, 901 (9th Cir. 2007) (requirement to show identification to enter courthouse did not violate Constitution because “[a]ppellants do not have a constitutional right to enter the federal building anonymously”); *United States v. Cruz*, 407 F. Supp. 2d 451, 452 (W.D.N.Y. 2006) (upholding U.S. Marshal Service’s practice of requiring

all visitors to federal courthouse to show identification as condition for admission); *Freitas v. Admin. Dir. of Courts*, 116 P.3d 673, 678 (Haw. 2005) (“the Director explained that the ADLRO's identification and sign-in procedure is designed to advance the substantial government interest of heightening security for the ADLRO’s hearings and its inner-office area. We are thus ‘hesitant to displace [the ADLRO hearing officer]’s judgment call in [these] circumstances.’”).<sup>6</sup>

As Philadelphia has a well-documented history for witness intimidation and retribution via social media, and identification is unquestionably warranted to address that concern, there is no reason why the FJD should not incorporate it into any virtual public access policy. This Court should enjoin the FJD from implementing its policy insofar as it permits streaming criminal jury trials via YouTube.

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<sup>6</sup> Even where courts have held that requiring identification does infringe on the right to public access, it is deemed a “partial closure” that is justified by a “substantial reason” for the requirement. *See United States v. Smith*, 426 F.3d 567, 569 (2nd Cir. 2005) (“Sixth Amendment right to a public trial was not violated by the requirement that court visitors show photo identification because the security measures effected at most a partial closure of Smith's trial that satisfied the four-part test articulated in [*Waller, supra.*]”). Protecting witnesses from intimidation and retaliation is one such substantial reason. *See Deluca*, 137 F.3d at 35 (“the district court order ratifying these screening procedures adequately addressed and significantly minimized the demonstrated potential for harassment and intimidation of jurors and witnesses by would-be trial spectators . . . we conclude that the partial closure in this case did not contravene the Sixth Amendment.”).

## **CONCLUSION**

For the foregoing reasons, the Commonwealth respectfully requests that this Court prohibit the First Judicial District from implementing its policy that allows it to stream criminal jury trials on YouTube.

Respectfully submitted,

/s/ Matthew H. Davis

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**CERTIFICATE OF COMPLIANCE WITH Pa.R.A.P. 127**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully Submitted,

/s/ \_\_\_\_\_  
MATTHEW H. DAVIS  
Assistant District Attorney

# Appendix A

## FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

### Public Access to Judicial Proceedings During the Covid-19 Pandemic-Livestream Policy

On April 28, 2020 the Pennsylvania Supreme Court issued an order<sup>1</sup> directing that during the Covid-19 pandemic:

In proceedings as to which a right to public and press access would otherwise exist, provision must be made to ensure some reasonable means of access. For example, with respect to a proceeding conducted using audio-visual means, such public access may be effectuated during the proceeding by providing live-stream access, or by making a recording available as soon as possible after the proceeding has been concluded.

In accordance with the above direction, the First Judicial District of Pennsylvania adopts the below process to ensure that the public<sup>2</sup>, will have reasonable means of access to judicial proceedings.

#### **(1) Judicial Proceedings to Which the Right to Public Access Attaches.**

Public access will be provided as set forth below to all proceedings which before the Covid-19 pandemic were open to the public. Those proceedings that were closed to the public before the Covid-19 pandemic will remain closed to the public regardless of whether they are conducted in-person or by using advanced communication technologies<sup>3</sup>.

#### **(2) In-Person Proceedings Conducted at a Judicial Facility.**

The public will be permitted to attend certain proceedings conducted in some judicial facilities when access to the judicial facility itself is authorized by federal, state and local authorities, and safeguards designed to insure the health and safety of court personnel, court users, and members of the public in light of the risks posed by the COVID-19 virus are in place.

The number of people who may be reasonably admitted to a judicial facility or specific courtroom may be limited due to the reduced occupancy necessary to insure safe-distancing consistent with CDC and other federal, state and local health guidelines.

As long as the public, albeit at a reasonably reduced number, is able to attend a judicial proceeding at a judicial facility, livestream or other remote access to that proceeding, as described below, will not be required even when the proceeding is conducted using advanced communication technologies.

#### **(3) Access to Judicial Proceedings Conducted Using Advanced Communication Technologies or Proceedings Conducted In-Person where Health Safeguards, Necessitated by Covid-19 risks, Prevent the Public to Attend.** The public shall be provided access, as provided below, to judicial proceedings which are fully conducted utilizing advanced communication technologies, as well as in-person proceedings that are

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<sup>1</sup> See Supreme Court Order captioned *Emergency Order of Statewide Judicial Administration*, at Nos. 531 and 532 Judicial Administration Docket. Article I, Section 11 of the Pennsylvania Constitution mandates that "All courts shall be open..."

<sup>2</sup> The term "public" in connection with this protocol includes the press and the media in general.

<sup>3</sup> Generally, the public has access to all "judicial proceedings" unless certain case-types or proceedings are statutorily closed to the public such as certain proceedings involving juveniles (see 42 Pa.C.S. § 6336) and incapacity proceedings. See 20 Pa. C.S. § 5511(a). Judges may also close certain hearings or proceedings as allowed by legal authority.

conducted in a facility where COVID-19 restrictions on occupancy do not allow for attendance by the public.

**(4) Remote Access to Judicial Proceedings to the Parties and to the Public.**

Zoom is the primary advanced communication technology used by the First Judicial District to conduct its remote proceedings although other advanced communication technologies are utilized in some facilities or in connection with certain proceedings.

Only the participants to the proceedings will be sent a digital invite or will be able to participate remotely utilizing advanced communication technologies pursuant to protocols established from time to time.

At this time, the public will be able to access judicial proceedings remotely, on dedicated court YouTube channels. The judicial proceedings will be streamed live or streamed as soon as possible after each proceeding concludes. Public access may include video, audio or both. The links to the judicial proceedings will be posted by the First Judicial District at: [www.courts.phila.gov/livestreams](http://www.courts.phila.gov/livestreams) and will not be available for viewing after the streaming concludes.

**(5) Judicial Proceedings cannot be recorded, transmitted or broadcast.**

Reasonable efforts, verbally or in writing, shall be made to remind the public that judicial proceedings cannot be recorded, transmitted or broadcast and of the consequences for doing so, essentially as follows:

*It is unlawful and a criminal offense to record, transmit or broadcast video, audio or photograph of any judicial proceeding and violators may be found to be in contempt of court and may be criminally charged with a misdemeanor punishable by imprisonment of up to two years for a first offense. See Pa.R.J.A. 1910, Pa.R.Crim.P. 112 and 18 Pa.C.S. § 5103.1.*

**(6) Protective Measures.**

When legally sufficient, specific facts are presented to enable the Court to conclude that a particular witness may be subject to being intimidated or otherwise threatened should the identity or images of the witness be disclosed, the Court may take reasonable steps to safeguard the identity of the witness by limiting public access via livestream that is supported by current case law on excluding or limiting the public from an open courtroom under similar circumstances by:

- i. interrupting the video stream and temporarily permitting only audio streaming;
- ii. temporarily interrupting the livestream during the testimony of the witness; or
- iii. taking other appropriate measures designed to safeguard the identity of the witness.

**(7) Proceedings Not Subject to this Policy.** Judicial proceedings conducted utilizing the Ring Central platform will be made available to the public as specifically provided in a separate protocol or policy.

**(8) Effective Date.** Judicial proceedings scheduled on or after September 8, 2020 shall be accessible by the public as provided in this Policy. Judicial proceedings scheduled before September 8, 2020 shall be accessible to the public consistent with the protocol in effect when scheduled.

# Appendix B



**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**COMMONWEALTH** :  
 :  
 v. : **CP-51-CR-0002781-2019**  
 :  
**KYZEE BROWN** :

**MOTION TO RECONSIDER ORDER  
OVERRULING COMMONWEALTH OBJECTION  
TO STREAMING OF JURY TRIAL ON YOUTUBE**

On September 8, 2020, this Court overruled the Commonwealth’s objection to the streaming of Defendant Kyzee Brown’s jury trial on YouTube.

For the following reasons, the Commonwealth respectfully requests this Court to reconsider that decision and to provide public access to defendant’s trial in an alternative manner that does not present the dangers to victims, witnesses, and criminal defendants inherent in the First Judicial District’s current approach.

**I. The Inherent Dangers Presented by YouTube Streaming**

1. YouTube streaming will enable anyone with internet access to record, redistribute, and permanently retain witnesses’ testimony, the details of a complainant’s victimization, and the accusation against a defendant.

**A. *Danger to witnesses***

2. The First Judicial District traditionally goes to great lengths to preclude members of the trial audience from bringing cellphones into court, in order to prevent the video-recording of witnesses’ testimony.

3. Now, by electing to stream jury trials *via* YouTube, the First Judicial District will essentially *perform that very function* for anyone who wants to record and redistribute a witness' testimony to an infinite number of recipients for malicious purposes. *See* Report of Technical Expert Moshe Berman (Exhibit A).

4. The recording and redistribution of witnesses' testimony inherently lends itself to the very dangers the First Judicial District has traditionally attempted to prevent.

- a. Such recordings can be used to intimidate a witness to prevent his or her testimony.
- b. Such recordings can also be used to alert a large audience that a particular witness has testified against a particular defendant, thus exposing that witness to retaliation.
- c. The very awareness that his or her testimony will be streamed on YouTube will disincline an already reluctant witnesses to testify.

*See* Letter, Jennifer Storm, Commonwealth Victim Advocate (Exhibit B); Letter, Eleven Victim's Rights Advocates (Exhibit C).

5. The Commonwealth asks this Court to take judicial notice that witness intimidation/retaliation—including the murder of Commonwealth witnesses—remains a serious problem in the First Judicial District. *See e.g.* Witness Intimidation in the Digital Age: Intimidation in Pretrial Proceedings – The Philadelphia Experience, *The Prosecutor* (January, February, March 2015). The Commonwealth

asks this Court to reconsider its approval of a streaming service that will inevitably enhance the already serious threat to witness safety.

**B. *Re-traumatization of Victims***

6. The ability to record and distribute the details of a victim's suffering, for whatever purpose, to an infinite internet audience exposes the victim to an enhanced loss of privacy and to re-traumatization.

7. It is one thing to have to the details of a victim's traumatization discussed one time, in open court in the presence of strangers, during a traditional trial. It is quite another to make those same details permanently available, to be employed for whatever prurient or bizarre purposes someone with internet access may choose.

8. The loss of personal privacy—for instance in a cases involving physical or sexual assault—would be incalculable. *See Letter*, Jennifer Storm, Commonwealth Victim Advocate (Exhibit B); *Letter*, Eleven Victim's Rights Advocates (Exhibit C).

9. In written legal submissions, our system often requires the use of a victim's initials, instead of his or her name. *See e.g. Commonwealth v. McGhee*, 230 A.3d 1277, 1281 (Pa. Super. 2020) (“In order to protect the privacy of the Victim, we have replaced her name and that of family members who share her last name with initials”). It would be ironic, if the same system that traditionally

goes out of its way to protect a victim's privacy would now facilitate the loss of privacy by providing a permanent video record of the victim's ordeal.

**C. *Injustice to an acquitted defendant***

10. A defendant who is acquitted will potentially have the testimony against him permanently available for rebroadcast.

**II. Alternatives to YouTube Streaming**

11. This Court can fulfill its mandate to provide a public trial through alternative measures that will reduce the dangers outlined above. Report of Technical Expert Moshe Berman (Exhibit A). All of these alternatives could be combined with additional security measures, such as requiring names and identification from those in attendance. These alternatives include:

**A. *Live, in-court, public proceedings***

12. In-court hearings, with members of the public present, could be held in the largest courtrooms available. While the number of public viewers would be limited due to the need to social distance, there would still be seats available for the press, family or friends, and general public.

**B. *Proceedings Broadcast to another Courtroom over a Local Network***

13. A second courtroom or other sufficiently large room could be designated as a public viewing room. The trial proceedings could be transmitted to

a screen in the secondary room. Members of the public, who could be required to provide names and identification, could watch the trial from that secondary location.

**C. *Proceedings Broadcast to another Room through Zoom***

14. This alternate would work the same as the second alternative, but would employ Zoom or a similar web conferencing service to capture the video and audio from the live courtroom.

15. Public access to trials has always been limited by the size of the courtroom and the willingness of interested persons to travel to the courthouse. As a result, public access has never meant access to an infinite public, nor has it included the ability of the public to record and redistribute trial proceedings.

16. Here, in order to solve the problem of conducting public trials during a pandemic, the First Judicial District has adopted a procedure far in excess of that required to fulfill its constitutional mandate. At the same time, it has drastically and unnecessarily increased the danger to witnesses, victims, and even defendants.

WHEREFORE, the Commonwealth respectfully requests this Court to:

a. Conduct a full hearing where technical experts and victims' advocates can make a full record regarding the problems created by the First Judicial District's approach and the possible alternative measures that could be employed to guarantee public access;

b. Reconsider its denial of the Commonwealth's objections to the use of YouTube streaming;

c. Recess these proceedings to permit a higher court to review the propriety of YouTube streaming of jury trials in the First Judicial District.

Respectfully submitted,

*/s/ Paul M. George* \_\_\_\_\_

Paul M. George, Asst. Chief, Law Division

Anthony Voci, Chief Homicide Unit

Robert Listenbee, First Assistant District Attorney

Lawrence S. Krasner, District Attorney

## **EXHIBIT A**

**REPORT OF MOSHE BERMAN  
CHIEF OF TECHNICAL SERVICES  
PHILADELPHIA DISTRICT ATTORNEY'S OFFICE  
9/8/2020**

The link to the livestream is made public with no security measure in order to ensure public access but that also allows anyone in the world to watch the proceedings. Several internet browsers or supplemental applications exist and are commonly used by laypersons to mask internet traffic in order to protect privacy. These tools are based on technology originally developed largely for nefarious purposes and operate by routing a users internet activity through a series of international networks to effectively "launder" the identity of the user. These same tools allow users to connect to international websites that would normally be unavailable to them otherwise. For example, using one of these easy to install browsers, a person in the United Kingdom could visit a website hosted in the United States that would be unavailable to them if they were using a traditional web browser. In effect this means that, rather than local Philadelphia court proceedings being accessible to the local public at a rate of some forty seats per courtroom, the court proceedings are now accessible for hundreds of millions of people if not billions worldwide.

Perhaps more alarming is that this scenario of expanded access simultaneously exponentially reduces the Court's ability to monitor viewers behavior for things like recording, which is a crime in Pennsylvania. In this reality of livestreaming proceedings to YouTube, or potentially another similar service, a recording of the broadcast could be easily made and distributed without the Court's knowledge and ability to trace the recording to the original source. A livestream itself is akin to a television station being broadcast to your house; it is a one-way street. The Court lacks the capacity to monitor who is viewing the livestream and in what environment the viewers may exist. The potential for abuse is alarming. Any recording device like a smart phone or even an old VHS camcorder could be set to record a computer screen that is displaying the livestream. Worse still is that widely available computer programs exist to allow a layperson to record whatever video is being displayed on their computer screen and whatever audio goes with it. With some quick Google searches and closely following instructions, an average person could even automate this process so they could record the entirety of multiple trials from several courtrooms with just the click of a button.

For the aforementioned reasons, I believe that livestreaming court proceedings to YouTube or a similar service is inappropriate . . . As an alternative to livestreaming court proceedings, I suggest one of the following alternatives:

1. Live, in-court, public proceedings



This is by far the safest and most preferred alternative. In-court hearings, with members of the public present, could be held in the largest courtrooms available. While the number of public viewers would be limited due to the need to social distance, there would still be seats available for the press, family or friends, and general public.

## 2. Proceedings Broadcasted Courtroom-to-Courtroom over a Local Network

To accomplish this alternative, a second courtroom or other sufficiently large room could be designated as a public viewing room. From the courtroom in which the proceedings take place, cameras and microphones can transmit video and audio to a device or devices in the secondary room. Members of the public can watch the proceedings from that secondary room while social distancing. This alternative may allow for a greater number of public viewers than the first option. This option would, however, require court staff to monitor two courtrooms to ensure public viewers are not acting inappropriately (e.g. recording the broadcasted proceedings).

The broadcast itself could be configured using free, open-source, software and software that is native to the Windows 10 operating system. An example would be using OBS (Open Broadcaster Software) and Microsoft Remote Desktop Protocol. This could also be accomplished using devices, like ones made by Polycom, that are designed for similar scenarios. Two pieces of Polycom equipment could be used to transmit the video and audio signal between courtrooms and display it for public viewing in a secondary room.

## 3. Proceedings Broadcasted Courtroom-to-Courtroom through Zoom or a Similar Service

This alternate works the same as the second alternative but would employ Zoom or a similar web conferencing service to capture the video and audio from the live courtroom. That “meeting” would then be accessed by the Court and displayed in the secondary room. This is less preferred because the service itself and use of a service like Zoom has security vulnerabilities that could be exploited as the video and audio signals themselves actually leave the JKS-CJC, travel to that service providers hardware, and finally travel back to the JKS-CJC.

## **EXHIBIT B**

**Op Ed: Court Opening and Victims' Rights in the time of COVID**  
**Jennifer Storm | August 27, 2020**

As courts begin re-opening across the Commonwealth and pivoting to meet the ever changing demands of balancing public health and public safety, we must be ever vigilant that we are also balancing rights within our justice systems. Over the course of several weeks, the Pennsylvania Office of Victim Advocate has received inquiries from victims and advocates seeking clarity on how their counties are choosing to move forward with case administration and what that means for victims of crime.

Courts are, understandably, grappling with how to properly ensure access to proceedings in courtrooms, given these new constraints issued for public safety. While we appreciate the dedication of the courts to reopen and continue to review cases swiftly, we ask that our collective focus is on those who have legal authority to be granted preference. These are unequivocally the judge, court reporter, security, prosecutor, defense counsel, defendant(s), and crime victim(s). The media and the general public also should be granted their right to attend hearings, once the aforementioned parties are considered.

Virtual hearings have become ideal, as they are the most protective in mitigating the spread of the virus and accommodating more individuals; we applaud these innovative efforts. However, advocates caution an over accommodation that could lead to violating a victims' right and/or potentially putting victims and witnesses in danger of harassment or risking their physical safety.

The process of livestreaming hearings to massive audiences is likely to result in re-traumatization for crime victims and witnesses, who are often required to disclose details of their victimization when engaging in the criminal law process. Livestreaming also fails to address victims' rights regarding safety and privacy. The number of potential viewers is nearly incalculable, adding unnecessary risks for victims and witnesses.

In our existing Crime Victims Bill of Rights, Act 111, all victims are to be treated with "dignity, respect, courtesy and sensitivity" and their rights are "to be honored and protected by... judges in a manner no less vigorous than the protections afforded criminal defendants." In the past year, Act 23 was also legally enacted. It states that a crime victim is not to be excluded from any criminal proceeding unless the court determines that testimony by the victim would be materially altered if the victim heard others at the proceeding. Before making a determination, the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim. The guidance in the law also states that the court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to, among other things, "protect witnesses from harassment or undue embarrassment."

On behalf of crime victims, OVA respectfully requests that PA courts implement the following guidelines:

- Not livestreaming hearings for criminal and civil protection order proceedings, release hearings, or other hearings in which the court anticipates testimony or other evidence concerning the victim will give;
- Ensuring that no recordings capture a victim's image or voice during any proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Limiting the number of "public" participants for any technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Affording the victim/witness an opportunity to proceed via a pseudonym in any technology-assisted hearing with issuance of a court order directing all parties witnesses to refer to the victim/witness via the pseudonym; and
- Preventing release of recordings of hearings to public websites, or if such release is to happen for it not to happen without prior review by a victim/witness, their advocate, and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety.

During these times, finding a platform that offers security features, such as waiting rooms and password protections, is paramount in adopting these protective measures. Interested parties wishing to attend live events should be required to file that request with the court administrator and be given passwords. This enables credentialed media and other interested parties their right to attend the proceeding, while lowering the risks of jury tainting and online public scrutiny, victim blaming, shaming, commenting and sharing which is never possible in a typical courtroom setting.

Advocates across PA continue to encourage our courts to open without delay so resolution can occur for all parties, and we continue to applaud the courts for their willingness to do so innovatively.

*Jennifer Storm serves as the Commonwealth Victim Advocate, and has recently been elected as the President of the National Crime Victims' Law Institute Board of Directors.*

## **EXHIBIT C**

September 8, 2020

The Honorable Idee Fox, President Judge  
Court of Common Pleas of Philadelphia County  
386 City Hall  
Philadelphia, PA 19107

cc: Members of the Administrative Governing Board  
Larry Krasner, District Attorney of Philadelphia  
Keir Bradford-Grey, Chief Defender, Defender Association of Philadelphia  
Honorable A. Michael Snyder, Chancellor, Philadelphia Bar Association

Your Honor:

The undersigned Victim Services Agencies provide courtroom accompaniment, supportive services and advocacy to victims of crime in Philadelphia.

It is our understanding that the courts of the First Judicial District will begin hearing in-person jury trials, starting today, Tuesday, September 8, 2020. We are concerned that the plan to use live-stream broadcast (i.e., YouTube or other public-access internet) for remote witness participation by all witnesses is likely to result in trauma and danger for crime victims and witnesses. Audiences may include past and future offenders of all types, persons who may pose a threat to victim/witnesses, and other people with nefarious intentions.

We share concern for the public health dangers of opening the building to the public while also needing to provide some form of public trial. Also, further delay of trials is generally not good for anyone involved in these cases. In other settings, virtual hearings on controlled platforms like Zoom and others have become necessary, as the most protective device to mitigate the spread of the virus and while affording access to justice in this most difficult time. We applaud these innovative efforts.

However, we urge caution against procedures that could lead to violating a victim's rights or potentially put victims and witnesses in danger of harassment or risking their physical safety.

The process of live streaming hearings to massive audiences is likely to result in re-traumatization for crime victims and witnesses, who are often required to disclose details of their victimization when engaging in the criminal law process. Live streaming also fails to address victims' rights regarding safety and privacy. The number of potential viewers is nearly incalculable, adding unnecessary risks for victims and witnesses.

On behalf of crime victims, we respectfully request that the FJD implement the following guidelines:

- No live stream of hearings for criminal and civil protection order proceedings, release hearings, or other hearings/trials in which the court anticipates testimony or other evidence by or about an identified victim;
- Ensure that no recordings capture a victim's image or voice during any proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Limit the number of "public" participants for any technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Afford the victim/witness an opportunity to proceed via a pseudonym in any technology-assisted hearing with issuance of a court order directing all parties and witnesses to refer to the victim/witness via the pseudonym; and
- Prevent release of recordings of hearings to public websites, or if such release is to happen, provide opportunity for prior review by a victim/witness, their advocate, and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety.

We remain ready to serve the victims of this community and the courts of the First Judicial District. Your attention to this important issue is much appreciated.

Natasha Danielá de Lima McGlynn  
Anti-Violence Partnership of Philadelphia

Diane Menio  
Center for Advocacy for the Rights and Interests of the Elderly (CARIE)

Johnathan Davis  
Central Division Victim Services

Carolina Cabrera DiGiorgio  
Congreso de Latinos Unidos

David Chiles  
Lutheran Settlement House

Barbara A. Deeley  
Northeast Victim Services

Melany P. Nelson  
Northwest Victim Services

Frank P. Cervone  
Support Center for Child Advocates

Alison Sprague  
Victim/Witness Services of South Philadelphia

Monique Howard  
WOAR

Molly Callahan  
Women Against Abuse Legal Center

Corinne Lagermasini  
Women In Transition

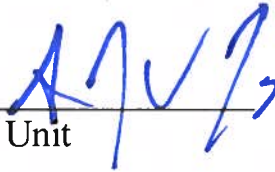


## CERTIFICATION OF SERVICE

I certify that on September 9, 2020, I served a copy of the foregoing Motion to Reconsider on the following individuals by hand-delivery in Courtroom 1 107 of the Stout Criminal Justice Center:

1. Hon. Rose Marie DeFino-Nastasi
2. Nino Tinari, Esquire

*/s/ Anthony Voci*  
Chief, Homicide Unit



# Appendix C

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**COMMONWEALTH** :  
 :  
**v.** : **CP-51-CR-0005990-2019**  
 :  
**DEHYRL FRIPPS** :

**COMMONWEALTH’S MOTION TO PRECLUDE  
STREAMING OF JURY TRIAL ON YOUTUBE**

The sexual assault case against defendant Dehryl Fripps is scheduled for a jury trial on September 14, 2020. In order provide a public trial, it is the policy of the First Judicial District to stream jury trials on YouTube.

For the following reasons, the Commonwealth objects to the streaming of this trial on YouTube. Given the obvious danger to victims and witnesses, the Commonwealth respectfully requests this Court to provide public access to defendant’s trial in an alternative manner.

**I. The Inherent Dangers Presented by YouTube Streaming**

1. YouTube streaming will enable anyone with internet access to record, redistribute, and permanently retain witnesses’ testimony and the details of a complainant’s victimization.

**A. *Danger to witnesses***

2. The First Judicial District traditionally goes to great lengths to preclude members of the trial audience from bringing cellphones into court, in order to prevent the video-recording of witnesses’ testimony.

3. However, by electing to stream jury trials *via* YouTube, the First Judicial District will essentially *perform that very function* for anyone who wants to record and redistribute a witness' testimony to an infinite number of recipients for malicious purposes. *See* Report of Technical Expert Moshe Berman (Exhibit A).

4. The recording and redistribution of witnesses' testimony inherently lends itself to the very dangers the First Judicial District has traditionally attempted to prevent.

- a. Such recordings can be used to intimidate a witness to prevent his or her testimony.
- b. Such recordings can also be used to alert a large audience that a particular witness has testified against a particular defendant, thus exposing that witness to retaliation.
- c. The very awareness that his or her testimony will be streamed on YouTube will disincline an already reluctant witnesses to testify.

*See* Letter, Jennifer Storm, Commonwealth Victim Advocate (Exhibit B); Letter, Eleven Victim's Rights Advocates (Exhibit C).

5. The Commonwealth asks this Court to take judicial notice that witness intimidation/retaliation—including the murder of Commonwealth witnesses—remains a serious problem in the First Judicial District. *See e.g.* Witness Intimidation in the Digital Age: Intimidation in Pretrial Proceedings – The Philadelphia Experience, *The Prosecutor* (January, February, March 2015). The Commonwealth

asks this Court to preclude the use of a streaming service that will inevitably enhance the already serious threat to witness safety.

**B. *Re-traumatization of Victims***

6. The ability to record and distribute the details of a victim's suffering, for whatever purpose, to an infinite internet audience exposes the victim to an enhanced loss of privacy and to re-traumatization.

7. It is one thing to have to the details of a victim's traumatization discussed one time, in open court in the presence of strangers, during a traditional trial. It is quite another to make those same details permanently available, to be employed for whatever prurient or bizarre purposes someone with internet access may choose.

8. The loss of personal privacy—particularly in cases involving sexual assault—would be incalculable. *See* Letter, Jennifer Storm, Commonwealth Victim Advocate (Exhibit B); Letter, Eleven Victim's Rights Advocates (Exhibit C).

9. In written legal submissions, our system often requires the use of a victim's initials, instead of his or her name. *See e.g.* Commonwealth v. McGhee, 230 A.3d 1277, 1281 (Pa. Super. 2020) (“In order to protect the privacy of the Victim, we have replaced her name and that of family members who share her last name with initials”). It would be ironic, if the same system that traditionally

goes out of its way to protect a victim's privacy would now facilitate the loss of privacy by providing a permanent video record of the victim's ordeal.

10. In this case, defendant is accused of sexually assaulting his 15-year-old daughter. He attempted to do the same incident a second time and the complainant disclosed both incidents to her mother. It is further alleged that the defendant gave the complainant a sexually transmitted infection as a result of this contact.

11. Details such as these should not be made permanently available, for use by anyone for any purpose they want.

## **II. Alternatives to YouTube Streaming**

12. This Court can fulfill its mandate to provide a public trial through alternative measures that will reduce the dangers outlined above. Report of Technical Expert Moshe Berman (Exhibit A). All of these alternatives could be combined with additional security measures, such as requiring names and identification from those in attendance. These alternatives include:

### **A. *Live, in-court, public proceedings***

13. In-court hearings, with members of the public present, could be held in the largest courtrooms available. While the number of public viewers would be limited due to the need to social distance, there would still be seats available for the press, family or friends, and general public.

### **B. *Proceedings Broadcast to another Courtroom over a Local Network***

14. A second courtroom or other sufficiently large room could be designated as a public viewing room. The trial proceedings could be transmitted to a screen in the secondary room. Members of the public, who could be required to provide names and identification, could watch the trial from that secondary location.

**C. *Proceedings Broadcast to another Room through Zoom***

15. This alternate would work the same as the second alternative, but would employ Zoom or a similar web conferencing service to capture the video and audio from the live courtroom.

16. Public access to trials has always been limited by the size of the courtroom and the willingness of interested persons to travel to the courthouse. As a result, public access has never meant access to an infinite public, nor has it included the ability of the public to record and redistribute trial proceedings.

17. Here, in order to solve the problem of conducting public trials during a pandemic, the First Judicial District has adopted a procedure far in excess of that required to fulfill its constitutional mandate. At the same time, it has drastically and unnecessarily increased the danger to witnesses, victims, and even defendants.

WHEREFORE, the Commonwealth respectfully requests this Court to:

a. Conduct a full hearing where technical experts and victims' advocates can make a full record regarding the problems created by the First Judicial District's

approach and the possible alternative measures that could be employed to guarantee public access;

b. Sustain the Commonwealth's objections to the use of YouTube streaming;

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'EJF', is positioned above the typed name of Elizabeth Fischer.

Elizabeth Fischer, Assistant District Attorney  
Branwen McNabb, Chief, Family Violence &  
Sexual Assault Unit  
Paul M. George, Asst. Chief, Law Division  
Robert Listenbee, First Assistant District Attorney  
Lawrence S. Krasner, District Attorney



# EXHIBIT A

**REPORT OF MOSHE BERMAN  
CHIEF OF TECHNICAL SERVICES  
PHILADELPHIA DISTRICT ATTORNEY'S OFFICE  
9/8/2020**

The link to the livestream is made public with no security measure in order to ensure public access but that also allows anyone in the world to watch the proceedings. Several internet browsers or supplemental applications exist and are commonly used by laypersons to mask internet traffic in order to protect privacy. These tools are based on technology originally developed largely for nefarious purposes and operate by routing a users internet activity through a series of international networks to effectively "launder" the identity of the user. These same tools allow users to connect to international websites that would normally be unavailable to them otherwise. For example, using one of these easy to install browsers, a person in the United Kingdom could visit a website hosted in the United States that would be unavailable to them if they were using a traditional web browser. In effect this means that, rather than local Philadelphia court proceedings being accessible to the local public at a rate of some forty seats per courtroom, the court proceedings are now accessible for hundreds of millions of people if not billions worldwide.

Perhaps more alarming is that this scenario of expanded access simultaneously exponentially reduces the Court's ability to monitor viewers behavior for things like recording, which is a crime in Pennsylvania. In this reality of livestreaming proceedings to YouTube, or potentially another similar service, a recording of the broadcast could be easily made and distributed without the Court's knowledge and ability to trace the recording to the original source. A livestream itself is akin to a television station being broadcast to your house; it is a one-way street. The Court lacks the capacity to monitor who is viewing the livestream and in what environment the viewers may exist. The potential for abuse is alarming. Any recording device like a smart phone or even an old VHS camcorder could be set to record a computer screen that is displaying the livestream. Worse still is that widely available computer programs exist to allow a layperson to record whatever video is being displayed on their computer screen and whatever audio goes with it. With some quick Google searches and closely following instructions, an average person could even automate this process so they could record the entirety of multiple trials from several courtrooms with just the click of a button.

For the aforementioned reasons, I believe that livestreaming court proceedings to YouTube or a similar service is inappropriate . . . .  
As an alternative to livestreaming court proceedings, I suggest one of the following alternatives:

1. Live, in-court, public proceedings

This is by far the safest and most preferred alternative. In-court hearings, with members of the public present, could be held in the largest courtrooms available. While the number of public viewers would be limited due to the need to social distance, there would still be seats available for the press, family or friends, and general public.

## 2. Proceedings Broadcasted Courtroom-to-Courtroom over a Local Network

To accomplish this alternative, a second courtroom or other sufficiently large room could be designated as a public viewing room. From the courtroom in which the proceedings take place, cameras and microphones can transmit video and audio to a device or devices in the secondary room. Members of the public can watch the proceedings from that secondary room while social distancing. This alternative may allow for a greater number of public viewers than the first option. This option would, however, require court staff to monitor two courtrooms to ensure public viewers are not acting inappropriately (e.g. recording the broadcasted proceedings).

The broadcast itself could be configured using free, open-source, software and software that is native to the Windows 10 operating system. An example would be using OBS (Open Broadcaster Software) and Microsoft Remote Desktop Protocol. This could also be accomplished using devices, like ones made by Polycom, that are designed for similar scenarios. Two pieces of Polycom equipment could be used to transmit the video and audio signal between courtrooms and display it for public viewing in a secondary room.

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## **EXHIBIT B**

**Op Ed: Court Opening and Victims' Rights in the time of COVID**  
**Jennifer Storm | August 27, 2020**

As courts begin re-opening across the Commonwealth and pivoting to meet the ever changing demands of balancing public health and public safety, we must be ever vigilant that we are also balancing rights within our justice systems. Over the course of several weeks, the Pennsylvania Office of Victim Advocate has received inquiries from victims and advocates seeking clarity on how their counties are choosing to move forward with case administration and what that means for victims of crime.

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Virtual hearings have become ideal, as they are the most protective in mitigating the spread of the virus and accommodating more individuals; we applaud these innovative efforts. However, advocates caution an over accommodation that could lead to violating a victims' right and/or potentially putting victims and witnesses in danger of harassment or risking their physical safety.

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In our existing Crime Victims Bill of Rights, Act 111, all victims are to be treated with "dignity, respect, courtesy and sensitivity" and their rights are "to be honored and protected by... judges in a manner no less vigorous than the protections afforded criminal defendants." In the past year, Act 23 was also legally enacted. It states that a crime victim is not to be excluded from any criminal proceeding unless the court determines that testimony by the victim would be materially altered if the victim heard others at the proceeding. Before making a determination, the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim. The guidance in the law also states that the court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to, among other things, "protect witnesses from harassment or undue embarrassment."

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- Ensuring that no recordings capture a victim's image or voice during any proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Limiting the number of "public" participants for any technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Affording the victim/witness an opportunity to proceed via a pseudonym in any technology-assisted hearing with issuance of a court order directing all parties witnesses to refer to the victim/witness via the pseudonym; and
- Preventing release of recordings of hearings to public websites, or if such release is to happen for it not to happen without prior review by a victim/witness, their advocate, and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety.

During these times, finding a platform that offers security features, such as waiting rooms and password protections, is paramount in adopting these protective measures. Interested parties wishing to attend live events should be required to file that request with the court administrator and be given passwords. This enables credentialed media and other interested parties their right to attend the proceeding, while lowering the risks of jury tainting and online public scrutiny, victim blaming, shaming, commenting and sharing which is never possible in a typical courtroom setting.

Advocates across PA continue to encourage our courts to open without delay so resolution can occur for all parties, and we continue to applaud the courts for their willingness to do so innovatively.

*Jennifer Storm serves as the Commonwealth Victim Advocate, and has recently been elected as the President of the National Crime Victims' Law Institute Board of Directors.*

## EXHIBIT C

September 8, 2020

The Honorable Idee Fox, President Judge  
Court of Common Pleas of Philadelphia County  
386 City Hall  
Philadelphia, PA 19107

cc: Members of the Administrative Governing Board  
Larry Krasner, District Attorney of Philadelphia  
Keir Bradford-Grey, Chief Defender, Defender Association of Philadelphia  
Honorable A. Michael Snyder, Chancellor, Philadelphia Bar Association

Your Honor:

The undersigned Victim Services Agencies provide courtroom accompaniment, supportive services and advocacy to victims of crime in Philadelphia.

It is our understanding that the courts of the First Judicial District will begin hearing in-person jury trials, starting today, Tuesday, September 8, 2020. We are concerned that the plan to use live-stream broadcast (i.e., YouTube or other public-access internet) for remote witness participation by all witnesses is likely to result in trauma and danger for crime victims and witnesses. Audiences may include past and future offenders of all types, persons who may pose a threat to victim/witnesses, and other people with nefarious intentions.

We share concern for the public health dangers of opening the building to the public while also needing to provide some form of public trial. Also, further delay of trials is generally not good for anyone involved in these cases. In other settings, virtual hearings on controlled platforms like Zoom and others have become necessary, as the most protective device to mitigate the spread of the virus and while affording access to justice in this most difficult time. We applaud these innovative efforts.

However, we urge caution against procedures that could lead to violating a victim's rights or potentially put victims and witnesses in danger of harassment or risking their physical safety.

The process of live streaming hearings to massive audiences is likely to result in re-traumatization for crime victims and witnesses, who are often required to disclose details of their victimization when engaging in the criminal law process. Live streaming also fails to address victims' rights regarding safety and privacy. The number of potential viewers is nearly incalculable, adding unnecessary risks for victims and witnesses.

On behalf of crime victims, we respectfully request that the FJD implement the following guidelines:



- No live stream of hearings for criminal and civil protection order proceedings, release hearings, or other hearings/trials in which the court anticipates testimony or other evidence by or about an identified victim;
- Ensure that no recordings capture a victim's image or voice during any proceeding that will be broadcast, or ensuring redaction prior to broadcast;
- Limit the number of "public" participants for any technology-assisted hearing to a number that does not exceed the physical capacity of the courtroom in which the hearing would have been conducted under ordinary circumstances;
- Afford the victim/witness an opportunity to proceed via a pseudonym in any technology-assisted hearing with issuance of a court order directing all parties and witnesses to refer to the victim/witness via the pseudonym; and
- Prevent release of recordings of hearings to public websites, or if such release is to happen, provide opportunity for prior review by a victim/witness, their advocate, and their attorney to ensure nondisclosure of any information that jeopardizes victim privacy or safety.

We remain ready to serve the victims of this community and the courts of the First Judicial District. Your attention to this important issue is much appreciated.

Natasha Danielá de Lima McGlynn  
Anti-Violence Partnership of Philadelphia

Diane Menio  
Center for Advocacy for the Rights and Interests of the Elderly (CARIE)

Johnathan Davis  
Central Division Victim Services

Carolina Cabrera DiGiorgio  
Congreso de Latinos Unidos

David Chiles  
Lutheran Settlement House

Barbara A. Deeley  
Northeast Victim Services

Melany P. Nelson  
Northwest Victim Services

Frank P. Cervone  
Support Center for Child Advocates

Alison Sprague  
Victim/Witness Services of South Philadelphia

Monique Howard  
WOAR

Molly Callahan  
Women Against Abuse Legal Center

Corinne Lagermasini  
Women In Transition

## CERTIFICATION OF SERVICE

I certify that on September 9, 2020, I served a copy of the foregoing Motion on the following individuals by electronic mail and electronic filing:

1. Hon. Mia R. Perez
2. Michael Spinney, Esquire



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# Appendix D

IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA

IN RE: 32<sup>nd</sup> JUDICIAL DISTRICT : PA SUPREME COURT NO. 30 MM 2020  
:   
*Criminal Section Cancelations and* :   
*and Revised Scheduling Protocols*<sup>1</sup> : DELAWARE COUNTY NO. 5120-17

**SECOND EMERGENCY ORDER EXTENSION – CRIMINAL SECTION**

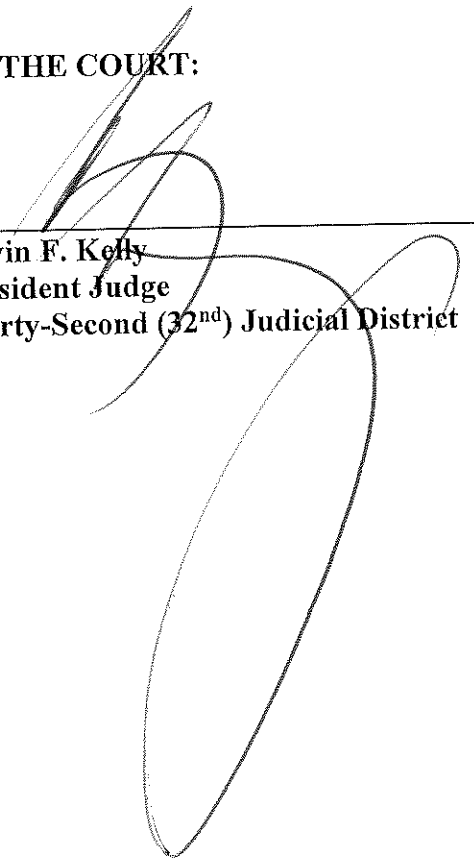
AND NOW, this 24<sup>th</sup> day of July, 2020, this court having previously declared in the 32<sup>nd</sup> judicial district (Delaware County) a judicial emergency and more recently once more extended that emergent declaration pursuant to such an order of the Pennsylvania Supreme Court sanctioning the same,<sup>2</sup> as well as Pa.R.J.A. No. 1952(B)(1)(2), and this court thus still having those authorities detailed under Pa.R.J.A. No. 1952(B)(2)(a-s), it is hereby **ORDERED** and **DECREED** in consultation with the liaison judge that the attached criminal section cancelations and/or revised scheduling protocols **SHALL** become **EFFECTIVE IMMEDIATELY** and continue through and including **OCTOBER 31, 2020**.<sup>3</sup>

That directed above and/or via the appended protocols as subsequent material circumstances warrant and/or it otherwise believes appropriate may be revisited by this court and modified to meet the evolving concerns presented by the ongoing COVID-19 public health crisis.

To the extent possible and practical under the material circumstances, notice of this order has been and/or will promptly be posted about the Delaware County courthouse, including but not limited to the complex's entry doors, the Delaware County Office of Judicial Support, the Court Administrator's Office of Delaware County, the Criminal Court Administrator's Office, the court's website, all magisterial district court facilities within Delaware County, the Delaware

County Bar Association's website, and submitted to the Administrative Office of Pennsylvania Courts ("AOPC") for posting on the Commonwealth's Unified Judicial System's website per Pa.R.J.A. No. 1952(C)(5).<sup>4</sup>

**BY THE COURT:**



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**Kevin F. Kelly  
President Judge  
Thirty-Second (32<sup>nd</sup>) Judicial District**

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<sup>1</sup> See Emergency Order – Criminal Section dated May 27, 2020; Emergency Order – Criminal Section, as Amended, dated June 5, 2020; Emergency Order – Criminal Section, as Amended, dated June 30, 2020; and Emergency Order – Criminal Section, as Amended, dated July 8, 2020.

<sup>2</sup> See Orders dated March 16, 2020, pp. 1-2; March 18, 2020, pp. 1-3; April 1, 2020, pp. 1-3; April 28, 2020, pp. 2-5; and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket; Emergency Declaration dated March 17, 2020; Emergency Declaration Extension dated April 2, 2020; Second Emergency Declaration Extension dated April 28, 2020; Third Emergency Declaration Extension dated May 27, 2020; and Fourth Emergency Declaration Extension dated July 8, 2020. See also Pa.R.J.A. No. 1952(B)(1)(2).

<sup>3</sup> See *Philadelphia Inquirer*, May 13, 2020, Section B, p. 1 (“Infections great at Delco Jail – Jail: Nearly half of inmates tested has virus”; infection rate 50 times that of population at large.”); May 16, 2020, Section A, pp. 1, 4 (“Over that past 14 days, Delaware County has on average 275 cases for each 100,000 residents ... significantly higher than the suburban counties surrounding it.”); May 19, 2020, Section A, pp. 1, 6 (“Virus Rate Remains Stubbornly High in Delaware County”); May 22, 2020, Section A, pp. 1, 9 (“Delaware County trails Philadelphia and the other counties in flattening the curve of new cases.”); July 2, 2020, Section A, pp. 1, 6 (“... Pa. reports biggest one-day increase since June 5. ... Cases ... June 1 ... July 1 ... Change ... +8%.”); July 8, 2020, Section A, pp. 1, 6 (Delaware County infection rate increases from 23 to 32 per 100,000 persons.); July 16, 2020, Section A, pp. 1, 6 (“New Pa. limits as cases rising ... After averaging about 400 new cases a day less than a month ago, this state is now averaging close to 800. Case counts have increased in 43 counties and the percentage of people testing positive has increased in 28 counties ... .”); July 20, 2020, Section A, pp. 1, 9 (Three (3) of the five (5) municipalities having the greatest number of Coronavirus cases per 10,000 residents within southeastern Pennsylvania are Delaware County communities.); July 22, 2020, Section, p. 1 (“Pennsylvania is reporting an average of 871 cases per day, an increase of 120% from June 19, following a two-month decline.”); and July 23, 2020, Section A, pp. 1, 9 (Delaware County’s Seven (7) day average of newly reported cases increased 220% since June 27, 2020.). See also Pa.R.J.A. No. 1952(B)(2)(a)(d)(f)(g)(h)(k)(l)(n)(o)(q); Orders dated April 28, 2020, pp. 2-5 and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket; Emergency Declaration dated March 17, 2020; Emergency Declaration Extension dated April 2, 2020; Second Emergency Declaration Extension dated April 28, 2020; Third Emergency Declaration Extension dated May 27, 2020; and Fourth Emergency Declaration Extension dated July 8, 2020.

*The appended criminal section protocol differs materially from the immediate past such directives (July 8, 2020) by including and adopting for the months of August, September and October 2020 interim sectional calendars. Also, additionally changes of note include six (6) criminal judges simultaneously sitting weekly beginning September 14, 2020, and the resumption of inmate custodial transportations, albeit for now on a most limited daily basis, from the George W. Hill Correctional Facility (Delaware County prison), as well beginning September 14, 2020. See Attached Criminal Section Emergency Cancellations and Revised Scheduling Protocols dated July 24, 2020.*

Beyond the *temporary* calendars, the changes adopted by this order as compared to the immediate past sectional directive (July 8, 2020) mostly begin on page six (6) of the appended criminal protocol (July 24, 2020) and all such modifications for ease of reference are throughout underlined.

<sup>4</sup> See Orders dated March 16, 2020, p. 2; April 1, 2020, pp. 2-3; April 28, 2020, p. 3; and May 27, 2020 p. 2, Fn. 1 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket.

# DELAWARE COUNTY COURT OF COMMON PLEAS

## ***CRIMINAL SECTION EMERGENCY CANCELATIONS AS WELL AS REVISED SCHEDULING AND OPERATIONAL PROTOCOLS, EXTENDED AND AMENDED***

### **PURPOSE**

Recognizing that the Supreme Court of Pennsylvania has directed, *inter alia*, that the Commonwealth's judicial districts while remaining focused on the discharge of critical court functions must now additionally make best efforts in all other type matters to accomplish a more full-scale processing of cases, subject to the constraining safety considerations brought about by the ongoing COVID-19 public health crisis,<sup>1</sup> this court in consultation with core systematic stakeholders has developed and implemented the below described plan as the continuation of what is yet anticipated to be numerous purposefully measured, operational increments realizing the balance between the upmost concern of the judiciary for the safety of the court staff, all counsel, every litigant, the various witnesses of the parties, and the public generally,<sup>2</sup> while also being mindful of the necessity to once more provide with regularity the timely administration of justice.

That directed below as subsequent material circumstances warrant and/or it otherwise believes appropriate may be revisited by this court without advanced notice and modified to meet the evolving concerns presented by the continuing COVID-19 public health crisis.

### **GENERAL SAFETY and OPERATIONAL DIRECTIVES**

**ALL** criminal (and civil) jury trials remain **SUSPENDED** and relatedly jury duty also continues to be **POSTPONED**, until further notice.<sup>3</sup>

For **ALL** *in-person* proceedings of any type and regardless of whether the listing also has some advanced communication technology ("ACT") participants, **NO ONE** other than the parties and/or witnesses, as well as counsel, will be permitted in the courtroom-hearing room and/or about the interior of the Delaware County courthouse-government center generally, absent a specifically reasoned basis to the contrary, including but not limited to a needed, Administrative Office of Pennsylvania Courts certified interpreter and/or a family member and/or some type of health aid assisting an infirm party and/or witness in navigating his or her way about the courthouse complex, as well as a parent and/or guardian accompanying a juvenile witness/complainant and/or party less than twenty-one (21) years old. Otherwise, **NO** spouses, significant others, family members and/or friends of any party and/or witness will be permitted access to the Delaware County courthouse-government center until further notice, unless he or she is as well a party to the proceeding and/or a witness.



The Delaware County courts (32<sup>nd</sup> judicial district) for purposes of ACT on the recommendation of the county's IT department utilize Microsoft Teams and/or because of its existing hardware configurations already throughout the systematic structures, including the George W. Hill Correctional Facility, Polycom. The use of other ACT's (E.g. Zoom) may at the discretion of the presiding judge be permitted.

Victims-complainants having a right to be present in court for listings of their criminal case, juvenile delinquency matters and/or protection from abuse actions may also attend all such schedulings. The complainant-victim may be accompanied by one (1) person when so appearing *in-person* and as the victim-complainant believes best that individual may be a family member, friend, and/or victim advocacy organization representative. The Delaware County District Attorney's Office must in advance timely notify the Delaware County Park Police via email at [ParkPoliceDailyCourtList@co.delaware.pa.us](mailto:ParkPoliceDailyCourtList@co.delaware.pa.us) of any victim-complainant intending to attend *in-person* a criminal, juvenile delinquency and/or PFA – indirect contempt listing, as well as who, if anyone, will then be escorting that specific victim-complainant. The complainant-victim and the person, if any, accompanying her or him on entering the courthouse are to proceed directly to the assigned courtroom. Likewise, the victim-complainant and any individual escorting him or her **MUST** immediately on the proceeding's conclusion directly leave and exit the courthouse-government center complex.

Subject to the direction of the presiding judge otherwise, **ALL** witnesses on arriving in the vicinity of the courthouse **MUST** remain waiting in his or her vehicle until contacted by the lawyer or self-represented party calling the person that he or she is now for purposes of testifying to enter the courthouse. On entering the courthouse the witness is to go directly to the assigned courtroom. Every witness immediately on the conclusion of his or her testimonial appearance **MUST** directly leave and exit the courthouse, unless the presiding judge directs to the contrary.

Credentialed members of the media will be allowed to attend any and/or all proceedings and are to arrange in advance for the same through District Court Administrator Gerald C. Montella, Esquire (610 891-4557). (Should the level of press attention in a given matter be of such a nature that permitting all requesting media members *in-person* access be contrary to then applicable public health guidelines (E.g. Social distancing in the courtroom because of the appreciable numbers present not possible), the District Court Administrator in collaboration the interested media will create a pool of representative media members to attend *in-person* the court proceedings.)

Unless the presiding judge directs to the contrary, credentialed press members will still be able to listen to audio recordings of court proceedings at the Office of Court Electronic Recording as arranged through its Director Richard J. Coogan (610 891-4477); however, no more than one (1) media representative may at a given moment be in the Court Electronic Recording Office.

Should a member of the general public want access to a certain court proceeding he or she was currently not permitted to attend *in-person*, arrangements may be made immediately subsequent to any such listing's conclusion for a person to review an audio recording of a particular hearing, unless the

presiding judge via his or her order directs otherwise, by arranging through its director, Richard J. Coogan (610 891-4477) to listen at the Court Electronic Recording Office to the same.

**ALL** interested persons should plan to arrive at the courthouse approximately thirty (30) minutes prior to the listing's schedule start to allow sufficient time to work through both the below referenced security and health screening processes. Take note that individuals arriving appreciably earlier than their set time may then be refused entry by the Park Police to prevent unnecessary loitering about the courthouse and/or courtrooms-hearing rooms.

**ALL** individuals entering the Delaware County courthouse-government complex **MUST** first undergo a COVID-19 health assessment, including but not limited to the taking of temperatures, by the Delaware County Park Police.<sup>4</sup> Based on the outcome of this Coronavirus screening assessment, the involved Park Police Officer at his or her discretion may prohibit a person from entering the courthouse-county government complex. Park Police personnel will promptly make the presiding judge aware as applicable should an individual based on the health screening not be permitted entry, including but not limited to lawyers, parties and/or witnesses. If a litigant and/or witness refused entry on health considerations cannot identify the judge before whom he or she is to then appear, contact is to be promptly made for such assistance with the Court Administrator's Office (Ext. 4550).

As it relates **SOLELY** to criminal defendants, those declined entry because of the health assessment's results will be asked to remain outside the building and/or another location the Park Officer may direct pending the assigned judge's chambers providing a date for that accused to return and the defendant executing as well as being provided a copy of such a written criminal notice form.

In addition to having successfully undergone the COVID-19 health screening, **ALL** persons entering the courthouse-government center **MUST** otherwise be in **FULL COMPLIANCE** with **ANY** federal and/or state directives then in place to stem the Coronavirus spread, including but not limited to the proper wearing of a recommended mask.

**ANY** litigant, lawyer, witness and/or other interested party experiencing a dry, persistent cough, shortness of breath-difficulty breathing, chills, muscle pain, sore throat, headache, a loss of smell or taste without congestion, and/or a fever greater than 99.5 Fahrenheit if taken with a temporal thermometer **MUST NOT** report as scheduled, but rather **PROMPTLY** notify the assigned or presiding judge's chambers that he or she is suffering from such symptoms. (If unaware of the assigned and/or presiding judge, an interested party should instead contact promptly the Court Administrator's Office – 610 891-4550.)

**ANY** litigant, lawyer, witness and/or other interested party having been past tested and/or diagnosed by a physician positive for COVID-19 **MUST NOT** report as scheduled, but instead **PROMPTLY** notify **PRIOR TO THE LISTED DATE** the Court Administrative Office of the same (610 891-4550) and follow the directions that office then provides.

ANY litigant, attorney, witness and/or other interested party wanting to appear and participate via some type of ACT in lieu of *in-person* **MUST** notify the assigned and/or presiding judge *no less than three (3) business days prior to the scheduled date* to allow for those necessary arrangements to be made by the Legal Audio Visual Department. The involved judge will for now allow the same subject to applicable constitutional limitations, if any,<sup>5</sup> or continue the listing to a future date should constitutional concerns dictate such and/or if he or she believes in the exercise of his or her discretion that the nature of the proceeding and/or individual requesting remote participation would otherwise be contrary to material law and/or occasion a party to suffer actual prejudice. (*E.g.* The inability of the factfinder to visually observe a witness only available to testify aurally by telephone.) A parties represented by a lawyer **MUST** first direct any such concerns about participating via some type of ACT to his or her counsel, and witnesses similarly in the first instance are to initially bring these issues to the attention of the attorney subpoenaing his or her appearance and subsequently the court only if the witness and involved counsel cannot make such mutually agreeable arrangements as the presiding and/or assigned judge may approve and subject to that which the Legal Audio Visual Department can timely and reasonably arrange.

In the event a self-represented litigant, lawyer, and/or other interested party does not know the assigned and/or presiding judge to whom a request to appear and participate via some manner of ACT should be submitted, such inquires consistent with the above three (3) business day advanced notification are to be directed to the Court Administrator's Office (610 891-4550).

**ALL** *in-person* listing days **MUST** be held in a manner to reasonably restrict COVID-19 exposure and undertaken wholly consistent with the Centers for Disease Control and Prevention Coronavirus guidelines, as well as any other such federal and/or state directives, including but not limited to presently social distancing and/or the wearing of a mask.

**ALL** courtrooms – hearing rooms utilized for proceedings will on the conclusion of a given day's cases be sanitized, as will those areas of the courthouse commonly used for individuals to get to and from a courtroom – hearing room (*E.g.* Courthouse's public elevators and the stairwell to the second floor).

The judges will provide in advance to the Delaware County Park Police through Superintendent Scott D. Mahoney a list of **ALL** cases scheduled on a given day, including but not limited to the names of any interested parties expected to appear, as well as counsel. Such information is to be timely forwarded by email as follows: [ParkPoliceDailyCourtList@co.delaware.pa.us](mailto:ParkPoliceDailyCourtList@co.delaware.pa.us).

For **ANY AND ALL** evidentiary hearings, the attorneys and/or self-represented parties **MUST** provide the presiding judge with a list naming **ALL** reasonably expected witnesses no later than one (1) full business day prior to any such scheduling. (The presiding judge most certainly may in his or her discretion direct counsel and/or the parties in whatever format he or she believes best for such a witness list to be submitted (*E.g.* As part of a pre-trial statement) and/or instruct that the same be sent by a sooner date.) The chambers of the presiding judge will promptly forward to the Delaware County Park Police through Superintendent Scott D. Mahoney copies of **ALL** received witness lists via email, [ParkPoliceDailyCourtList@co.delaware.pa.us](mailto:ParkPoliceDailyCourtList@co.delaware.pa.us).

Each section and/or division of the court will coordinate among those judges sitting on a given date start times staggered by at least thirty (30) minutes.

As is more fully described below, **ALL** *in-person* matters must be set for a specific hour or alternatively, that the number of interested parties, including counsel, present in a courtroom during a certain hour is no more than sixteen (16). The presiding judge may as he or she believes necessary to assure required social distancing and/or compliance with any other governmental directive to stem the Coronavirus spread may further limit the number of persons permitted at a given time in the courtroom.

Court officers assigned to the entry door of every operational courtroom – hearing room will be tasked subject to any such specific directives of the presiding judge with the general responsibility of managing in accord with this protocol the number of people at any given moment permitted in a particular courtroom – hearing room to allow for any required social distancing. As may be necessary to assure compliance with that salient to such considerations this protocol details, court officers may temporarily prohibit entry into a courtroom – hearing room and rather direct counsel, any interested parties and/or witnesses to remain in the outer waiting area or that unused courtroom and/or another area of the courthouse complex (*E.g.* jury assembly room) then designated for overflow purposes by the District Court Administrator.

Should a court officer observe any interested party, a lawyer and/or witness in a courtroom not observing social distancing, failing to wear a mask, and/or not following any other of the various governmental guidelines and/or that which this protocol directs, the same must be promptly reported to the presiding judge and if such personnel are present in the courtroom – hearing room, deputy sheriffs, and/or park officers.

Should a court officer observe an interested party, lawyer and/or a witness outside of a courtroom – hearing room failing to comply with salient governmental directives, including but not limited to social distancing and/or the wearing of a mask, he or she must promptly report the same to the Delaware County Park Police (Ext. 5000), as well as the judge presiding over the matter involving that party, attorney and/or witness, and if in proximity, any deputy sheriff.

The continued failure and/or refusal of an interested party, counsel and/or a witness to follow the governmental directives material to stemming the COVID-19 spread may, *inter alia*, result in any such individual's immediate removal from the courthouse-governmental complex by sworn personnel of the Delaware County Park Police and/or Delaware County Sheriff's Office. In the event a person for noncompliance with these safety measures is removed from the courthouse complex, involved law enforcement are to promptly notify the judge presiding over the matter involving that party, lawyer and/or witness of the removal.

## **CRIMINAL SECTION**

The nine (9) judge criminal section remains *temporarily* organized into three (3) subgroups as follows: Team A – Judges Bradley, Brennan and Amoroso; Team B – Judges Green, Capuzzi and Cappelli;

and Team C – Judges Pagano, Scanlon and Pileggi. From the present through and including September 16, 2020, each team (A, B, C) during a given week will have one (1) available courtroom for its use Monday, Tuesday, Wednesday and Friday. (There will for now be no criminal court proceedings on Thursday, unless the president judge or criminal liaison then approve an emergency listing, to allow protection from abuse (“PFA”) hearings to be divided among a number of judges as is further detailed in the current family section protocols<sup>6</sup> with smaller sized lists and all such cases heard in the larger criminal courtrooms. There may on occasion be a day other than a Thursday when protection from abuse matters are scheduled and if so, that week’s PFA cases will be set on Wednesday with no criminal prosecutions for those reasons noted above listed that day (Wednesday); however, the criminal judges sitting any such week can instead schedule such matters on Thursday.) Hence, on any day of a week until September 11, 2020, no more than three (3) criminal judges will be contemporaneously in session, absent some emergent need sanctioned by the president judge or criminal liaison. (As is further detailed just below, effective September 14, 2020, in lieu of only one (1) judicial team member sitting weekly, two (2) jurists from each team grouping (A, B, C) will be scheduled per week, or six (6) judges contemporaneously presiding versus the current complement of three (3) criminal jurists.)

Attached and wholly incorporated by reference is an *interim*, criminal section master calendar detailing, *inter alia*, from August through September 11, 2020, the specific three (3) criminal judges sitting weekly.

Effective September 14, 2020, as the appended, *temporary* sectional calendar directs, two (2) judges from each of the three (3) judicial teams (A, B, C) will be listed to contemporaneously sit weekly with a resultant total of six (6) criminal jurists then presiding each week.

For reasons such as vacations, the attached, interim criminal section master calendar is subject to change with the judges among a given judicial team exchanging, in whole or part, the otherwise assigned courtroom weeks.

To maximize the use of the operational criminal courts, the judge(s) listed to sit in a certain week will promptly notify the team’s other member(s) of any one-half (1/2) or greater day period when he or she does not need the courtroom so as a colleague jurists believes appropriate he or she may then list his or her case(s). If during a given week one of the judicial criminal teams (A, B, C) has no cause to utilize its courtroom for a one-half (1/2) day period or greater, the president judge and/or criminal liaison are to be promptly notified and will in turn make that courtroom available for that timeframe to a judge of another team.

The three (3) criminal judges listed weekly from the present until September 11, 2020, will continue to be scheduled to sit in courtroom Nos. 1, 2 and 3. As of September 14, 2020, when six (6) judges will begin presiding daily, courtroom Nos. 1, 2, 3, 4, 5 and 6 will be utilized. (Counsel and/or any other interested party should contact the chambers of the assigned judge to learn in a specific week what courtroom the he or she will be sitting.)

Consistent with this judicial district's (32<sup>nd</sup>) individual calendaring system, each criminal judge will be responsible for scheduling his or her assigned cases as he or she believes appropriate, along with providing the Commonwealth and defense notice of the same, excepting pretrial conference listings stemming from a defendant's formal arraignment, which in accord with long-term protocols will be designated by the Criminal Court Administrator's Office from those such dates the criminal judges have respectively provided that office.

Recognizing that the criminal judges will for now only be sitting four (4) days weekly, as well as just once every three (3) weeks and effective September 14, 2020, yet just two (2) weeks in an every three (3) week team cycle, time sensitive listings, including but not limited to bail filings and/or any other type hearings which may result in a defendant's discharge from prison (*E.g.* Time-served guilty pleas), although assigned to a judge may at the designated jurist's request and with the agreement of a judicial colleague be heard otherwise more timely by another judge on the designated court's judicial team.

There will from the present through September 11, 2020, be no *in-person* hearings involving inmates of any county, state and/or federal penal facility before the criminal courts, but rather **ALL** such listings where a defendant is for whatever reason incarcerated will be held through some available ACT means, assuming a defendant's agreement.<sup>7</sup> During this same timespan (present – September 11, 2020), **ANY** inmate of a county, state and/or federal correctional institution wanting to proceed with an *in-person* listing will have his or her matter continued for at least thirty (30) days.

After consultation with Jerry L. Sanders, Jr., the Sheriff of Delaware County, and his Chief Deputy, Michael A. Donohue, BEGINNING SEPTEMBER 14, 2020, each of the then sitting six (6) criminal judges will be allotted daily six (6) prisoner transportation slots with for now an aggregate daily total of no more than thirty-six (36) transported inmates among all presiding jurists, excepting Thursdays (or as applicable some Wednesdays) when because of protection from abuse lists there are no criminal court schedulings. Presently, **ONLY** inmates from the George W. Hill Correctional Facility (Delaware County prison) will be transported for *in-person* appearances before the trial court. ***Absent the prior approval of the president judge and/or criminal liaison for the most extraordinarily compelling of reasons, there are NO exceptions to the limitation for now of no more than six (6) inmates being transported daily from the George W. Hill Correctional Facility per each sitting judge.***

Effective September 14, 2020, until further court order, there will still be no *in-person* hearings involving inmates of any county jail other than the George W. Hill Correctional Facility (Delaware County prison), state and/or federal penal institutions, but rather **ALL** such listings where a defendant is whatever reason yet so incarcerated will be held through some available ACT means, assuming a defendant's agreement. **ANY** inmate of a county jail other than George W. Hill Correctional Facility (Delaware County prison), a state and/or federal correctional institution wanting to proceed with an *in-person* listing will have his or her matter continued for at least thirty (30) days with the hope that the currently ongoing public health crisis would have then sufficiently abated to safely allow for any such wider in scope prisoner custodial transportation and related *in-person* appearance before the trial court.<sup>8</sup>

The presiding judge should as he or she believes warranted schedule a lesser number of inmate transportation cases for any day as is reasonable in light of a given matter's nature and/or its expected duration and the balance of those cases making up the day's list. (E.g. Because a transported inmate defendant will be participating in an expected five (5) hour suppression hearing and there are thirty-six (36) in-person defendant matters also listed, no other prisoners are transported from the county jail.)

While the criminal judges will continue with the individual calendaring of scheduling their assigned cases as respectively believed appropriate, each of the three (3) judicial teams has for now been assigned one (1) day each week where the entire list will be comprised of only ACT (advanced communication technology) hearings involving inmates from the county jail and/or state correctional institutions. The teams' video hearing list days are as follows: Team A (Judges Bradley, Brennan and Amoroso) – Monday; Team B (Judges Green, Capuzzi and Cappelli) – Tuesday; and Team C (Judges Pagano, Scanlon and Pileggi) – Fridays. These recurring video list hearing days may in a certain week differ from the usual Monday, Tuesday, Friday schedulings because of holiday closures with any such changes noted on the appended *temporary*, criminal section calendar. (On the attached, *interim* criminal section master calendar these video hearing list days are referenced as "V.")

Each judicial criminal team's video hearing list(s) (Mondays-Team A – Judges Bradley, Brennan and Amoroso; Tuesdays-Team B – Judges Green, Capuzzi and Cappelli; and Fridays-Team C – Judges Pagano, Scanlon and Pileggi) will begin at 9:00 a.m., unless an individual judge directs to the contrary.

Effective September 14, 2020, when each judicial grouping (A, B, C) has two (2) judges sitting simultaneously, both will have respective such lists on the team's above-described video days. (E.g. Team A members, Judges Bradley and Brennan, will have respective lists in a given week on Monday, while that same week Judges Capuzzi and Cappelli as team B members will have their video lists on Tuesday, and team C Judges Pagano and Pileggi will on that same week have respective video lists on Friday.)

Appreciating the significantly increased volume of video proceedings in combination with the George W. Hill Correctional Facility (Delaware County Prison) having a limited number of video hearing room facilities, the judges are expected to make every reasonable effort to move forward as scheduled with all video listings.

Although unlike the *in-person* hearing lists further described below, there is no *per se* hourly cap on the number of matters comprising a video list, it is expected that each criminal judge when crafting his or her video day list will as a function of all salient considerations structure the same to as reasonably needed allow for social distancing and/or all other governmental recommended directives aimed at mitigating the COVID-19 spread, including but not limited to specific time slot schedulings.

On ANY day the judicial criminal teams have *in-person* schedulings for those defendants at liberty on bail and/or otherwise in the community, the teams will have the following staggered start times: 8:30 a.m. – Team B (Judges Green, Capuzzi and Cappelli); 9:15 a.m. – Team A (Judges Bradley, Brennan and Amoroso); and 10:00 a.m. – Team C (Judges Pagano, Scanlon and Pileggi).

In addition to the above-described staggered commencement times of each judicial group (A, B, and C), there is for now a limit of twelve (12) *in-person* per hour listings with a daily cap of seventy-two (72) such defendants. The presiding judge may at his or her discretion schedule a lesser number of *in-person* matters each hour and/or a daily total of *in-person* cases less than seventy-two (72) as is reasonably needed in light of a given matter's nature and/or expected duration to continually maintain the space within the courtroom and the hallway areas immediately adjacent necessary for social distancing and/or those other COVID-19 mitigation spread instructions then in place by the state and/or federal government. (*E.g.* An open guilty plea with an immediate following sentencing imposition where it is expected both the defense and prosecution will offer numerous witnesses may be the only case during a given afternoon hour scheduled with no other matters listed for that day subsequent.)

As the assigned criminal judge believes appropriate contested evidentiary hearings will once more be scheduled, including but not limited to suppression hearings and/or even non-jury trials. **ALL** these listings (*I.e.* disputed evidentiary matters) for now will be just those such cases reasonably expected to be concluded within at most a few days and certainly no later than the week a judge is listed to sit. These contested evidentiary schedulings may be conducted as the designated judge believes proper through both some manner of ACT and *in-person*. (*E.g.* An inmate accused appearing and participating via video conferencing while the Commonwealth's attorney, defense counsel and any witnesses are *in-person* before the presiding judge.)

Arrangements have been made for prisoners appearing and participating for purposes of a contested evidentiary hearings via ACT to contemporaneously be in contact with counsel as needed through a separate, nonrecorded line within the video room of the George W. Hill Correctional Facility. The specific details necessary to effectuating this contemporaneous and private avenue of communication between defendants and their lawyers can be obtained from Legal Audio Visual Director, Donna A. Reason (610 891-4577).<sup>9</sup>

While for systematic reasons the video list schedule detailed above must be followed (Team A – Monday; Team B-Tuesday; and Team C – Friday) and another day each week dedicated to an *in-person* list per that described above (*E.g.* no more than twelve (12) defendants per hour scheduled with a daily aggregate of not to exceed seventy-two (72)), the criminal judges as each believes appropriate may on those other days during the week he or she is sitting schedule a mix of *in-person* listings and video proceedings; however, **ALL** such video listings **MUST** be coordinated **IN ADVANCE** through the Legal Audio Visual Department's director, Donna A. Reason (Ext. 4577), to assure the prison is able to accommodate the request and the same does not conflict with another type of already scheduled ACT list such as preliminary hearings. These requests for additional ACT hearings on days other than a judge's weekly video hearing list day should be reserved for contested evidentiary hearings (*E.g.* PCRA's, suppressions *etc.*), time sensitive matters (*E.g.* bail filings) and/or any listings resulting from which a defendant is most likely to be released from custody (*E.g.* time-served negotiated guilty pleas).

Hearings pursuant to Pa.R.Crim.P. 150 and "Fast track" Guilty Pleas will for now continue to be listed every Monday, Wednesday and Friday with the following start times: Monday – 1:45 p.m.; Wednesday – 9:30 a.m.; and Friday – 9:30 a.m. The three (3) judges from the judicial teams (A, B, C)



sitting in a certain week will each preside over one (1) of the weekly Rule 150 – “Fast Track” Guilty Plea video lists as further detailed by the appended *interim*, criminal section master calendar and noted by a “GP-BW.”

Effective September 14, 2020, when six (6) judges will contemporaneously begin sitting daily, a member of each judicial team then scheduled will be assigned to preside over one (1) of the three (3) weekly Rule 150 – “Fast Track” Guilty Plea video lists as the attached, temporary sectional calendar describes and there identified by a “GP-BW.” These assignments are rotational so on an equal basis there will be certain weeks a judge otherwise sitting is not scheduled to cover these video hearings (Rule 150 – “Fast Track” Guilty Pleas) as his or her other team member also then listed for a court week will be presiding over the same.

Accelerated Rehabilitative Disposition (“ARD”) admissions will not for now be held monthly in large group numbers. Rather, each week the Office of the Delaware County District Attorney will forward to the Delaware County Criminal Court Administrator a list of those accused found to be proper candidates for the ARD program. The Office of the Criminal Court Administrator will promptly notify any assigned judge that those matters have been approved for ARD by the prosecution or as may alternatively be needed designate a criminal judge to such a case and then timely make aware the newly assigned jurist of the defendant’s ARD eligibility approval. The assigned judge will then schedule these pre-approved ARD cases as part of his or her regular recurring lists.

It is strongly suggested to not occasion a continuance of the case and delay a client’s admission into the ARD program that **ALL** financial responsibilities be satisfied before any such listings. **ALL** payments necessary to ARD admission can be made in advance through Court Financial Services which for now can be sent via mail as follows: Court Financial Services – 201 West Front Street, Media, PA 19063. ***Mailed payments are limited to a check or money order. DO NOT MAIL CASH.*** ARD defendants still owing money will immediately after the in-court programmatic admission be escorted by their counsel or a court officer to the Court Financial Services Office to then remit any required payment. These *in-person* payments may be by cash, check, money order or credit card.

As has been the long-time practice, defendants on the imposition of a sentence or admission into the ARD program will immediately subsequent undergo an intake meeting with the staff of the Delaware County Adult Probation and Parole Office. From the present through on or about September 11, 2020, the intake processing will temporarily continue in courtroom No. six (6) with at liberty defendants escorted to the same by court officers. **Effective September 14, 2020**, this initial processing of sentenced defendants or those admitted into the ARD program will return to the basement intake office of adult probation and parole and all those just sentenced and/or placed into the ARD program will be ushered to that office by court officers for those released on bail while prisoners will be accompanied in the custody of deputy sheriffs.

Regarding **ALL** cases past listed for *in-person* formal, criminal arraignments before the Delaware County Court of Common Pleas and previously canceled by such emergent orders of the president judge,<sup>10</sup> the Office of the Criminal Court Administrator **SHALL** relist every such matter not already scheduled

over the next two (2) Tuesdays subsequent (July 28, 2020 and August 4, 2020) allowing all those previously canceled cases to have then proceeded to formal arraignments.<sup>11</sup>

On these Tuesdays (July 28, and August 4, 2020), individual formal, *in-person* arraignments are to be scheduled by the Criminal Court Administrator's Office at the rate of no more than fifteen (15) defendants per hour beginning at 9:00 a.m., continuing through 12:30 p.m., and resuming again at 1:30 p.m. with 3:30 p.m. being the final such schedulings.

The Office of the Criminal Court Administrator **MUST** provide **ALL** defendants, as well as any of-record counsel, at least two (2) weeks advanced, written notice of these formal arraignment reschedulings.

The Criminal Court Administrator's Office will relative to any of these relisted formal arraignments accept an otherwise properly completed waiver of arraignment packet through and including the Thursday immediately preceding the relisted date. (*E.g.* Waivers for any formal arraignments listed on August 4, 2020, accepted through July 30, 2020.)

Other than that directed above, **ALL** in-person formal, criminal arraignments before the Delaware County Court of Common Pleas yet remain **CANCELED**.<sup>12</sup> The Office of the Delaware County Criminal Administrator will **CONTINUE** to conduct weekly video conferencing formal arraignments of those defendants incarcerated consistent with that office's material protocols and/or any such applicable local rules.<sup>13</sup> The Delaware County Criminal Court Administrator's Office will **CONTINUE** to accept and process in accord with that office's such salient protocols and/or applicable local rules written waivers of arraignment proffered by counsel on behalf of his or her clients.<sup>14</sup> **ALL** lawyers are strongly encouraged to timely and meaningfully discuss with each and every client a possible waiver of his or her formal arraignment, along with the obvious and related safety benefits in this yet ongoing public health crisis of not having to appear for such purposes *in-person* at some future date.

<sup>1</sup> See Orders dated April 28, 2020, p. 2; and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket. See also *Philadelphia Inquirer*, May 13, 2020, Section B, p. 1 (“Infections great at Delco Jail – Jail: Nearly half of inmates tested has virus”; infection rate 50 times that of population at large.”); May 16, 2020, Section A, pp. 1, 4 (“Over that past 14 days, Delaware County has on average 275 cases for each 100,000 residents ... significantly higher than the suburban counties surrounding it.”); May 19, 2020, Section A, pp. 1, 6 (“Virus Rate Remains Stubbornly High in Delaware County”); May 22, 2020, Section A, pp. 1, 9 (“Delaware County trails Philadelphia and the other counties in flattening the curve of new cases.”); July 2, 2020, Section A, pp. 1, 6 (“ ... Pa. reports biggest-one day increase since June 5 ... Cases ... June 1 ... July 1 ... Change ... +8%.”); July 8, 2020, Section A, pp. 1, 6 (Delaware County infection rate increases from 23 to 32 per 100,000 persons.); July 20, 2020, Section A, pp. 1, 9 (Three (3) Delaware County municipalities comprise region’s top five (5) COVID-19 cases per 10,000 population.); July 22, 2020, Section A, p. 1 (“Pennsylvania is reporting an average of 871 cases per day, an increase of 120% from June 19, following a two-month decline.”); and July 23, 2020, Section A, pp. 1, 9 (Delaware County’s seven (7) day average of newly reported cases increased 220% since June 27, 2020.).

<sup>2</sup> See Orders dated April 28, 2020, pp. 4-5; and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket.

<sup>3</sup> See Orders dated April 28, 2020, p. 9; and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket. See also Pa.R.J.A. No. 1952(B)(2)(d)(h)(i)(q). (This court under separate emergency orders of May 27, 2020, and as continued through subsequent amended and additional emergent orders for both the civil and criminal sections had extended the cancelation of jury trials and relatedly jury duty until at least July 31, 2020. See Emergency Order – Criminal Section dated May 27, 2020; Third Emergency Order Extension – Civil Section dated May 27, 2020; Third Emergency Order Extension – Civil Section, as Amended, dated June 22, 2020; Emergency Order – Criminal Section, as Amended, dated June 30, 2020; Emergency Order – Criminal Section, as Amended, dated July 8, 2020; and Fourth Emergency Order Extension – Civil Section, dated July 22, 2020. This current criminal section emergent order continues this constrained cancelation of jury trials and jury duty through October 31, 2020, as does the Fourth Emergency Order Extension – Civil Section.) See Fourth Emergency Order Extension – Civil Section, dated July 22, 2020.

<sup>4</sup> Although more specific to whether an employee will be permitted into the courthouse-government complex, the attached Chester County Health Department workforce screening materials provide at least a general overview of the assessment process the Delaware County Park Police will utilize for ALL individuals attempting to enter the county courthouse-government center.

<sup>5</sup> See Orders March 16, 2020, pp. 2-3; March 18, 2020, pp. 4, 6-7; April 1, 2020, pp. 4-5; and April 28, 2020, pp. 4-5 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket. See also Pa.R.J.A. No. 1952(B)(2)(d)(h)(i)(q).

<sup>6</sup> Fourth Emergency Order Extension – Family Section dated July 23, 2020, and Attached Protocol.

<sup>7</sup> After numerous meetings with the sheriff and his chief deputy, as well as that office having discussed such with involved personnel of the George W. Hill Correctional Facility and staff of the Chester County Health Department assigned to serve that same function in Delaware County, this restricted number of initial daily, inmate transportations limited to just those incarcerated at the county jail (George W. Hill Correctional Facility) was decided for now as sufficiently controlled attendant to the various health and safety concerns to reasonably allow the in-person appearance of such prisoners to resume.

<sup>8</sup> See Orders dated April 28, 2020, pp. 4-5; and May 27, 2020, pp. 1-3 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket. See also Pa.R.J.A. No. 1952(B)(2)(a)(d)(h)(k)(q). See also *Philadelphia Inquirer*, May 13, 2020, Section B, p. 1 (“Infections great at Delco Jail – Jail: Nearly half of inmates tested has virus”; infection rate 50 times that of population at large.”); May 16, 2020, Section A, pp. 1, 4 (“Over that past 14 days, Delaware County has on average 275 cases for each 100,000 residents ... significantly higher than the suburban counties surrounding it.”); May 19, 2020, Section A, pp. 1, 6 (“Virus Rate Remains Stubbornly High in Delaware County”); May 22, 2020, Section A, pp. 1, 9 (“Delaware County trails Philadelphia and the other counties in flattening the curve of new cases.”); July 2, 2020, Section A, pp. 1, 6 (“ ... Pa. reports biggest one-day increase since June 5. ... Cases ... June 1 ... July 1 ... Change ... +8%.”); and July 8, 2020, Section A, pp. 1, 6 (Delaware County infection rate increasing from 23 to 32 per 100,000 persons.; July 20, 2020, Section A, pp. 1, 9 (Three (3) Delaware County municipalities comprise region’s top five (5) COVID-19 cases per 10,000 population.); July 22, 2020, Section A, p. 1 (“Pennsylvania is reporting an average of 871 cases per day, an increase of 120% from June 19, following

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a two-month decline.”); and July 23, 2020, Section A, pp. 1, 9 (Delaware County’s seven (7) day average of newly reported cases increased 220% since June 27, 2020.).

<sup>9</sup> While efforts are currently ongoing to arrange for a manner of ACT (advanced communication technology) allowing participants to withdraw from a group discussion to have any needed private conversations and then timely rejoin the collective event, the same has yet to be effectuated. As this project progresses and a more definitive timeline is hopefully in the very near future developed, such information will be shared and otherwise made known. In the interim, private telephone type contact during certain hearings can be arranged with advanced notice through the Legal Audio Visual Office (610 891-4577).

<sup>10</sup> See Emergency Criminal Arraignment Cancellations Order dated March 18, 2020; Order Extending Criminal Arraignment Emergency Cancellations dated April 3, 2020; Second Order Extending Criminal Arraignment Emergency Cancellations dated April 28, 2020; and Third Order Extending Criminal Arraignment Emergency Cancellations dated June 22, 2020. Although duplicative, in an effort to make such more widely known among the bar and public generally, the emergency cancellation of *in-person* formal, criminal arraignments before the trial court was also directed under the Emergency Order – Criminal Section dated May 27, 2020, as well as the Emergency Order – Criminal Section, as Amended, dated June 5, 2020, the Emergency Order – Criminal Section, as Amended, dated June 30, 2020; and Emergency Order – Criminal Section, as Amended, dated July 8, 2020. See Emergency Order – Criminal Section dated May 27, 2020-Attached Protocol, p. 9; Emergency Order – Criminal Section, as Amended, dated June 5, 2020-Attached Protocol, p. 9; Emergency Orders – Criminal Section, as Amended, dated June 30, 2020 – Attached Protocol, pp. 9-10; Emergency Order – Criminal Section, as Amended, dated July 8, 2020 – Attached Protocol, pp. 9-10.

With some *in-person* formal arraignments once more resuming and to avoid any potential inconsistencies among the emergent orders, it is believed to be more prudent to now vacate the past duplicitous and single subject matter order (June 22, 2020) and disseminate to the bar and public this information through other and additional means. *See* Third Order Extending Criminal Arraignment Emergency Cancellations dated June 22, 2020. *See also* Emergency Order – Criminal Section, as Amended, dated July 8, 2020-Attached Protocol, p. 9-10.

The following formal arraignment lists were canceled through a combination of the emergent orders referenced immediately above: March 18, 2020; March 25, 2020; April 1, 2020; and April 8, 2020.

<sup>11</sup> Under the protocol adopted by the July 8, 2020, emergency criminal section order, these relistings of formal arraignments as there directed started as of July 21, 2020. See Emergency Order – Criminal Section, as Amended, dated July 8, 2020-Attached Protocol, pp. 9-10.

<sup>12</sup> *See* Order dated April 28, 2020, pp. 4-5 – Pennsylvania Supreme Court, Nos. 531 and 532, Judicial Administration Docket. *See also* Pa.R.J.A. No. 1952(B)(2)(d)(h)(q).

<sup>13</sup> *See* Pa.R.J.A. No. 1952(B)(2)(d)(h)(q).

<sup>14</sup> *See* Pa.R.J.A. No. 1952(B)(2)(d)(h)(q).




# Chester County Health Department

## Coronavirus COVID-19

Workforce Screening

Updated: April 22, 2020



# CORONAVIRUS COVID-19

CHESTER COUNTY HEALTH DEPARTMENT

LEARN THE FACTS, SHARE THE FACTS, STOP THE FEAR

## INSTRUCTIONS FOR INDIVIDUALS TESTED FOR COVID-19

Note: This guidance is not for antibody or serology testing.

### TEST RESULTS

Contact the physician who ordered the test for results.  
 Do not call the Health Department for your results.  
 Results are typically available within 7 days of testing, but may be delayed at times depending on testing volume and the laboratory used.

### WHILE YOU WAIT FOR YOUR RESULTS



Self-isolate to your home.



Others who live in your home should also stay home.



If you live with others, self-isolate in a private room and use a separate bathroom, if possible.



Wear a mask when you enter general living areas.



If your symptoms worsen, call your healthcare provider.



Make a list of close contacts - within 6 feet for more than 10 minutes - you have from two days before you became sick until you began self-isolating.

### WHAT TO DO IF YOU TEST POSITIVE

- ✓ Notify your close contacts and let them know to quarantine at home for 14 days.
- ✓ If your symptoms worsen or you require hospitalization, notify your healthcare provider immediately.
- ✓ Continue to self-isolate at home until you have recovered:



72 HOURS  
NO Fever  
without medicine



Other  
Symptoms  
have improved



7 DAYS  
since  
Symptoms began

### WHAT TO DO IF YOU TEST NEGATIVE

- ✓ If you had a known exposure to someone with COVID-19, continue to quarantine for 14 days after your exposure.
- ✓ If you did not have a known exposure to someone with COVID-19 and do not have symptoms, you can stop your quarantine.
- ✓ If you did not have a known exposure to someone with COVID-19 and have symptoms, you may have another illness. Stay home until 3 days after your last day of your symptoms.

For more information visit:  
 Chester County Health Department  
[www.chesco.org/coronavirus](http://www.chesco.org/coronavirus)



# Chester County Health Department

## Coronavirus COVID-19

Workforce Screening

Updated: April 22, 2020

**Purpose:** This guide has been developed to support the screening of **essential employees** to assess need to self-isolate and work remotely. Non-essential employees are encouraged to work remotely, until further notice.

### Procedure:

#### 1. Assess Current Symptoms upon arrival:

- Take temperature with temporal or forehead touchless thermometer
- Are you taking any medication to treat or suppress a fever? Yes/No
- Are you currently experiencing any of the following symptoms?

Column A	Column B
1 or more symptoms	2 or more symptoms
Fever (99.5°F or higher <sup>1</sup> )	Lack of smell or taste (without congestion)
Cough	Sore throat
Shortness of breath	Chills
Difficulty breathing	Muscle pain
	Headache

"Has Symptoms" is defined as having 1 or more symptom(s) in Column A  
**OR** 2 or more symptoms in Column B  
**OR** Yes to medication to suppress a fever.

#### 2. Provide Guidance (Table 1):

Status	Employer Recommendation	Guidance for Essential Employee
No Symptoms	Symptom and temperature check daily upon arrival	<ol style="list-style-type: none"> <li>1. Employee self-monitor for symptoms.</li> <li>2. Wear a face mask at all times.</li> <li>3. Practice social distancing in the work-place and do not congregate in common areas.</li> <li>4. Go home immediately if they become sick.</li> <li>5. Do not share headsets or objects used near face.</li> </ol>
Has Symptoms	Self-isolate at home	<ol style="list-style-type: none"> <li>1. Notify supervisor.</li> <li>2. Remain home and self-isolate until "COVID-19 Return to Work Guidance" is met.</li> </ol>
Positive Test Result	Self-isolate at home	<ol style="list-style-type: none"> <li>1. Notify supervisor.</li> <li>2. Follow the "COVID-19 Positive Test Result or Exposure" guidance.</li> <li>3. Remain home and self-isolate until "COVID-19 Return to Work Guidance" is met.</li> </ol>

<sup>1</sup> Taken with temporal thermometer



## Chester County Health Department

### Coronavirus COVID-19

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Workforce Screening

Updated: April 22, 2020

#### COVID-19 Exposure or Positive Test Result:

To ensure continuity of operations of essential functions, the Centers for Disease Control (CDC) advises that essential employees and healthcare personnel may be permitted to continue work following potential exposure to COVID-19, provided they remain asymptomatic and additional precautions listed in Table 1 are implemented to protect them and the community.

Individuals are notified by their physician or the Health Department about test results for COVID-19. If an employee receives a positive test result for COVID-19, employee should remain at home in isolation until *COVID-19 Return to Work Guidance* is met.

Test results would include the following:

- Detection of SARS-CoV-2 RNA in a clinical specimen using a molecular amplification detection test
  - Individuals should follow the guidance in Table 1 and "Instructions for Individuals Tested for COVID-19" (*see below*).
  
- Detection of specific antigen in a clinical specimen
  - Individuals should follow the guidance in Table 1 and "Instructions for Individuals Tested for COVID-19" (*see below*).
  
- Detection of IGM antibody in serum, plasma, or whole blood indicative of a new or recent infection
  - Individuals should follow the guidance in Table 1 and "Testing for COVID-19 Antibodies" (*see below*).

**Note:** If an individual is asymptomatic or has very mild symptoms, they will not be tested. Individuals are encouraged to follow the self-monitoring and quarantine guidance and call their primary care physician if symptoms worsen.

If an employee tests positive for COVID-19, the building does not need to be evacuated. An employer may choose to voluntarily close to perform a deep cleaning out of an abundance of caution (see "Cleaning and Hygiene" button at [www.chesco.org/coronavirus](http://www.chesco.org/coronavirus)).



# Chester County Health Department

## Coronavirus COVID-19

Workforce Screening

Updated: April 22, 2020

### Temperature Assessment:

The temperature considered a fever differs based on how temperature is taken.

Mode	Temperature for fever
Walk through scanner	97.5°F or higher
Axillary and temporal	99.5°F or higher
Oral	100.0°F or higher

### COVID-19 Return to Work Guidance:

Essential employees may discontinue home isolation and return to work under the following conditions:

- At least 3 days (72 hours) have passed since your fever went away without the use of fever-reducing medication.
- **AND** improvement in respiratory symptoms (e.g., cough, shortness of breath)
- **AND** At least 7 days have passed since symptoms first appeared.

Essential employees and healthcare personnel (HCP) with symptoms under home isolation **MUST** be excluded from work until:

- At least 3 days (72 hours) have passed since your fever went away without the use of fever-reducing medication
- **AND** improvement in respiratory symptoms (e.g., cough, shortness of breath)
- **AND** at least 7 days have passed since symptoms first appeared.

After returning to work, essential employees and HCP should:

- Wear a facemask at all times while at work until all symptoms are completely resolved or until 14 days after illness onset, whichever is longer.
- Be restricted from contact with severely immunocompromised individuals/patients (e.g., transplant, hematology-oncology) until 14 days after illness onset.
- Adhere to hand hygiene, respiratory hygiene, and cough etiquette (e.g., cover nose and mouth when coughing or sneezing, dispose of tissues in waste receptacles).
- Self-monitor for symptoms. Seek immediate re-evaluation from occupational health/primary care provider and do not work if symptoms recur or worsen.





# Chester County Health Department

## Coronavirus COVID-19

Workforce Screening

Updated: April 22, 2020

### Screening Procedure

Everyone entering a County building must complete screening, staff and visitors. The screening tool will assess potential symptoms and provide guidance to "GO" or "STOP" as shown below.

**Step 1:** Individuals entering the building should use the camera feature on their smart phone to scan the posted QR code and fill in the survey questions.

Note: if individuals do not have a phone, security staff should access the survey on a designated laptop or device to ask the question verbally and complete the screening assessment.

**Step 2:** Complete temperature screening of individual and tell person whether they have a fever based on temperature cutoffs:

Mode	Temperature for fever
Walk through scanner	98°F or higher
Axillary and temporal	99.5°F or higher

**Step 3:** Submit survey and receive "GO" or "STOP" guidance.

If GO: Show to security and continue into building

If STOP: Leave the building, return to car. Employees must call HR to notify them and receive additional instructions, prior to leaving.



# CRIMINAL CALENDAR 2020

September

	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W			
Liaison Judge Bradley	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Judge Pagano	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Judge Brennan	TR	GP-BW	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR
Judge Green	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Judge Capuzzi	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR
Judge Cappelli	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Judge Scanlon	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Judge Amoroso	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Judge Pileggi	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR	TR

### SPECIAL COURTS

P. Judge Kelly	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC	DC
S. Judge Osborne	VC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC	MHC
S. Judge Mallon																														

GP-BW = Rule 150 - Fast Track Guilty Plea Video List      V = Video Hearing List Days      TR = Non-Jury Trials & Hearings      DC = Drug Court      MHC = Mental Health Court      VC = Veterans Court      O = Office

Notes: Back up Judge shall secure a substitute Judge or switch weekly assignments with another Judge and notify Criminal Court Administrator of any changes.  
 The Judge which is presiding over GP/BW shall also secure substitute Judge for coverage if needed and notify Criminal Court Administrator of scheduling changes.  
 S. Judge Osborne will be presiding over Veteran's Court and Mental Health Court cases.  
 P. Judge Kelly will assist S. Judge Osborne in Mental Health Court and Veteran's Court as needed.  
 S. Judge Mallon will assist as needed.

### September

T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30		
B		C	C	C	B				C	A	B				C	A	B			C	A	B			C	A	B				

TEAM A: Judge Bradley, Judge Brennan, Judge Amoroso      TEAM B: Judge Green, Judge Capuzzi, Judge Cappelli      TEAM C: Judge Pagano, Judge Scanlon, Judge Pileggi

GCM:avh

**CRIMINAL CALENDAR  
2020**

	October																																
	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	
Liaison Judge Bradley		TR																															
Judge Pagano		GP-BW																															
Judge Brennan			TR																														
Judge Green				TR																													
Judge Capuzzi					TR																												
Judge Cappelli						TR																											
Judge Scanlon							TR																										
Judge Amoroso								TR																									
Judge Pileggi									TR																								

SPECIAL COURTS																																		
P. Judge Kelly																																		
S. Judge Osborne																																		
S. Judge Mallon																																		

GP-BW = Rule 150 - Fast Track Guilty Plea Video List    V = Video Hearing List Days    TR = Non-Jury Trials & Hearings    DC = Drug Court    MHC = Mental He VC = Veterans Court    O = Office

Notes: Back up Judge shall secure a substitute Judge or switch weekly assignments with another Judge and notify Criminal Court Administrator of any changes.  
The Judge which is presiding over GP/BW shall also secure substitute Judge for coverage if needed and notify Criminal Court Administrator of scheduling changes.

- S. Judge Osborne will be presiding over Veterans Court and Mental Health Court cases.
- P. Judge Kelly will assist S. Judge Osborne in Mental Health Court and Veterans Court as needed.
- S. Judge Mallon will assist as needed.

October																																		
VIDEO TEAM	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F	M	T	W	T	F		
TEAM A: Judge Bradley, Judge Brennan, Judge Amoroso	1	2	5	6	7	8	9	12	13	14	15	16	19	20	21	22	23	26	27	28	29	30												
TEAM B: Judge Green, Judge Capuzzi, Judge Cappelli																																		
TEAM C: Judge Pagano, Judge Scanlon, Judge Pileggi																																		

GCM:avh

# Appendix E

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

IN RE: AMENDED )  
FIFTH JUDICIAL DISTRICT ) No. 23 WM 2020  
EMERGENCY OPERATIONS )  
PLAN )  
)

**ORDER OF COURT**

**AND NOW**, this 31<sup>st</sup> day of August 2020, having previously declared a judicial emergency in the Fifth Judicial District of Pennsylvania, this Court amends its previous Emergency Operations Orders and now orders that the actions set forth below be taken pursuant to Pa.R.J.A. No. 1952(B)(2). All provisions of this Order apply through December 31, 2020.

**I. Public Access to Court Facilities**

- A Court Facility includes, but is not limited to:
  - The Civil Division located on the 7<sup>th</sup> and 8<sup>th</sup> floors of the City-County Building and the Housing Court Help Desk, located on the first floor of the City-County Building, 414 Grant Street, Pittsburgh, PA 15219;
  - The Criminal Division located on the 3<sup>rd</sup> and 5<sup>th</sup> floor of the Courthouse, 436 Grant Street, Pittsburgh, PA 15219;
  - The Family Law Center located at 440 Ross Street and 559 Fifth Avenue, Pittsburgh, PA 15219;
  - The Orphans' Court Division, located on the 17<sup>th</sup> floor of the Frick Building, 437 Grant Street, Pittsburgh, PA 15219;

- Pittsburgh Municipal Court, 660 First Avenue, Pittsburgh, PA 15219;
- All Magisterial District Courts located in Allegheny County;
- All Adult Probation Offices, located in Allegheny County;
- All Juvenile Probation Offices including the six Community Intensive Supervision Program sites located in Allegheny county;
- The Juvenile Dependency Hearing Officer Courtrooms located at:
  1. (East Region) 10 Duff Road—Suite 208, 10 Corporate Center, Penn Hills, PA 15235;
  2. (Mon Valley Region) 355 Lincoln Highway, North Versailles, PA 15137;
  3. (North Region) 421 East Ohio Street, Pittsburgh, PA 15212;
- Any Administrative Offices of the Fifth Judicial District; and
- Any other facility, building, or room designated by the President Judge to hear and dispose of matters pending before the Court of Common Pleas or Magisterial District Courts in the Fifth Judicial District.
- All court facilities, including the courtrooms in all Divisions of the Court of Common Pleas, the Magisterial District Courts and Pittsburgh Municipal Court, will be open to the public for matters as specified below in this Order.
- Persons must wear masks or face coverings to enter and remain in any court facility. Persons who are not compliant with this order, will be required to leave the court facility.
- Persons who enter any court facility shall comply with CDC and Health Department recommendations for social distancing as well as any signage posted in or on court facilities or instructions from a judge,

judicial officer, Sheriff's deputy, police officer, constable, building security, or court employee.

- News media shall be permitted into court facilities but only in a manner that is consistent with public safety. Cameras will not be allowed in any court facility, unless specifically authorized by the President Judge, Administrative Judge of a Division, or the District Court Administrator.
- Sheriff's deputies, police, constables, and building security assigned to any court facility are authorized to deny admission or remove a person who is visibly ill or who is exhibiting symptoms of COVID-19. Any person excluded or removed for health concerns shall be provided with information (telephone number or email address) to enable them to initiate, participate in, or complete necessary essential court business/functions during the judicial emergency.
- Only persons with essential court business are guaranteed admission into any court facility, subject to restrictions above. Friends and family members may be required to wait outside the facility.
- Sheriff's deputies, police, constables, and building security shall have the authority to enforce all of the conditions in this section. Persons who are not compliant with this order, will be required to leave the court facility.

## **II. Methods for Conducting Proceedings**

- Whenever appropriate and feasible, and as directed by the President Judge, the Administrative Judges of the Divisions, and the District Court Administrator, court proceedings shall be conducted by Advanced Communication Technology (ACT), primarily through Microsoft Teams, pursuant to the protocol for teleconference hearings issued by the Court. Other audio or teleconference methods may be employed, pursuant to the protocol for teleconference hearings issued by the Court, with the approval of the Administrative Judges. See Protocol for Teleconference Hearings found on the Fifth Judicial District website.



- Remote matters, conducted through Advanced Communication on Technology shall be conducted with the same decorum as in-person matters.
- When it is determined that conducting court proceedings through ACT is not appropriate or feasible, court hearings and proceedings shall be conducted utilizing protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order.
- Any administrative order, policy, or protocol issued by an Administrative Judge requiring certain proceedings to be conducted through ACT shall be followed. Any exceptions to such an administrative order, policy, or protocol must be approved by the Administrative Judge of the Division.
- In order to prevent overcrowding, court appearances and hearing times shall be staggered, and the Administrative Judges may require that scheduling of cases be centralized in each division.
- Attorneys are strongly encouraged to bring only essential witnesses and persons to in-person court proceedings. Attorneys should encourage their clients to refrain from having non-participants accompany them to court proceedings.
- When a court reporter or other approved form of recording court proceedings is unavailable, alternative forms of recording shall be permitted.
- All persons participating in a court proceeding, including but not limited to, judges and judicial officers, attorneys, court employees, court reporters, witnesses, and spectators, are required to wear a mask or face covering for the entire proceeding. The judge or judicial officer may permit a person to temporarily remove the mask to take testimony or where the presence of a mask would affect the ability to judge credibility, provided that the requirements for social distancing, and in the case of matter in the Criminal Division, the attached Criminal Division Procedures (as may be subsequently amended and posted on

the website of the Fifth Judicial District) are followed. In such cases, the person will be required to wear a face shield. The Court shall make every effort to minimize the number of people present for in-person court proceedings, including allowing particular attorneys or witnesses to appear remotely.

- Orders prohibiting and limiting the use of cellular phones in courtrooms and court facilities remain in effect. However, due to the requirements for social distancing, an attorney may use a cellular telephone to communicate with a client or a witness while outside of the courtroom. An attorney may use a cellular telephone to summon witnesses waiting in another location, to the courtroom; or for such other purpose deemed appropriate by the judge or judicial officer presiding over the court proceeding.
- The taking of photographs or the recording of any proceeding is strictly prohibited. Anyone violating this provision shall forfeit their cellular phone or device and shall be subject to contempt proceedings or other sanctions.
- Taking the testimony of witnesses through ACT is strongly encouraged. However, when a witness must testify in person in a courtroom, the witness may be required to wait in another location until such time as the court is prepared to take the testimony of the witness. Upon conclusion of the testimony, the witness shall be excused from the courtroom and shall leave the court facility unless the judge or judicial officer determines that there is a reason that the witness must remain in the court facility.
- News media may be permitted into a courtroom, if social distancing can be maintained. The court may designate certain seats for the news media, however, seats for attorneys, parties to the proceedings and essential court staff take priority over seats for the news media.
- Sidebar conferences are prohibited until further order of court.

### **III. Time Calculations and Deadlines**

- Except as otherwise set forth in this Order, the suspension of time calculations due to the judicial emergency that began on March 16, 2020 ended at the end of the day on June 1, 2020.
- Time calculations and deadlines were suspended during the judicial emergency so that they did not continue to run during that time. The suspension began on March 16, 2020 and continued through June 1, 2020—or for 78 days. New deadlines shall be calculated by adding the time period of the suspension (days during which time calculations were suspended due to the judicial emergency as applied to the particular time calculation) to the original deadline. The period of suspension caused by the judicial emergency added on to the deadline shall only include that period of the suspension during which the particular time calculation would have otherwise been running.
- For example, if an original 30-day deadline fell on March 19, 2020, and the period of suspension under the judicial emergency was 78 days (March 16<sup>th</sup> through June 1<sup>st</sup>), the new deadline would be June 5, 2020 (78 days after March 19<sup>th</sup>). In this example, the particular time calculation stopped running during the entire 78-day suspension when it would have otherwise been running. If, however, a deadline expired before the judicial emergency began, then that deadline would not be extended by the judicial emergency.
- The period of suspension caused by the judicial emergency added on to the deadline shall only include that period of the suspension during which the particular time calculation would have otherwise been running. For example, if a 20-day time period begins running on May 27, 2020, when a complaint is served, then the original 20-day deadline would be June 16, 2020. The period during which this particular time calculation would be suspended by the judicial emergency would be 6 days (from May 27<sup>th</sup> through June 1<sup>st</sup>) and the new deadline would be June 22, 2020 (6 days after June 16, 2020). Stated differently, if a 20-day time period begins running on May 27, 2020, when a complaint is served upon the defendant, the parties start counting the 20-day time

period from June 2, 2020, (i.e. June 3rd is day one), and the new deadline is again June 22, 2020.

- If, however, the particular time calculation did not start to run until after June 1, 2020, then the deadline would not be extended as it would be unaffected by the suspension. For example, if a 20-day time period begins running on June 3, 2020 when a complaint is served then the original 20-day deadline of June 23, 2020 would not be extended.
- Postponements or continuances resulting from the judicial emergency shall be considered court postponements and shall constitute excludable time, subject to constitutional limitations for purposes of the application of Rule 600. *See Commonwealth v. Bradford*, 46 A.3d 693 (Pa. 2012) and *Commonwealth v. Mills*, 162 A. 3d 323 (Pa. 2017).
- The suspension of Rule 600, subject to constitutional limitations, as indicated in this Court's previous Emergency Operations Orders, began on March 16, 2020 and will continue through December 31, 2020, subject to further order of court.
- Jury trials in both the Civil and Criminal Divisions remain suspended until further Order of Court.
- Attorneys and litigants shall not use the judicial emergency to secure strategic advantage in litigation, including by dilatory conduct. Individual judges may determine, on a case-by-case basis, whether a failure to meet a deadline was not directly the result of or affected by the judicial emergency, (such as in routine discovery matters) and whether the deadline should have been met during the judicial emergency. The judge may then take any action deemed appropriate to address the situation.

#### **IV. Transportation, Signatures, Fingerprinting, and Publication**

- There will be no identification process at time of arrest, unless processed through the Allegheny County Jail. Defendants will be assigned a fingerprint appointment for a later date.

- Until further Order of Court:
  - No inmates will be transported from the Allegheny County Jail or a state correctional facility for preliminary hearings.
  - Juveniles will not be transported from Shuman Detention Center or Hartman Shelter for court hearings, unless the judge orders the juvenile to appear in court.
  - Where the participation of the inmate or juvenile is required at a court hearing, Advanced Communication Technology shall be considered before issuing the order to transport.
  - All juveniles or inmates who are being transported shall wear a mask.
  - The Sheriff's deputies may refuse to transport an inmate or juvenile who is visibly ill, who is exhibiting symptoms of COVID-19, or who refuses to wear a mask, and shall immediately notify the assigned judge.
  
- Alternative methods of signing, delivery, and service of court documents and orders shall be permitted. This includes, but is not limited to, facsimile signatures, electronic signatures, proxy signatures, and designated court employees authorized to sign on behalf of a judge after the judge has reviewed and approved the document for signature. *Pro se* litigants completing forms at Pittsburgh Municipal Court may authorize court employees to sign documents, when necessary, for the safety of the litigants and court employees. Under such circumstances, the court employee will sign his/her name to the document indicating that the litigant has reviewed the document and that all of the information contained therein was provided by the litigant. If an employee must sign for a *pro se* litigant, he/she will do so in a manner allowing the litigant to see the employee sign the document.
  
- In the interest of public health, the *Pittsburgh Legal Journal* shall be published as an electronic PDF through the duration of the judicial emergency in the Fifth Judicial District. During the judicial emergency, proofs of publication produced by the *Pittsburgh Legal Journal* can be properly verified and signed by a notary public only, instead of a notary public and an affiant as is typically required. Proofs of publication may

be mailed or emailed to relevant parties. Records of all electronic proofs of publication and email correspondence shall be preserved.

## **V. Civil Division**

- Where appropriate and feasible, Civil Division proceedings shall be conducted by Advanced Communication Technology, primarily through Microsoft Teams, pursuant to the protocol for teleconference hearings issued by the Court. Other audio or teleconference methods may be employed, pursuant to the protocol for teleconference hearings issued by the Court, with the approval of the Administrative Judges. See Protocol for Teleconference Hearings posted on the Fifth Judicial District website.
- All published trial lists are temporarily suspended pending further Order of Court.
- Non-jury trials commenced in June 2020. Non-jury trials shall continue to be conducted pursuant to the protocols outlined in this Order. Such non-jury trials shall be identified by the Court and specially listed for non-jury trial by separate Order(s) of Court. Where appropriate and possible, such non-jury trials shall be conducted using Advanced Communication Technology (ACT). When it is not appropriate and possible to use ACT for non-jury trials, all parties, lawyers, witnesses, and persons participating in the trial must follow the Fifth Judicial District's protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order.
- Jury trials shall commence on a limited basis and only where the Court enters an Order specifically scheduling a jury trial. Parties with cases on previously published trial lists may jointly, with written consent by all parties involved in the litigation, submit consented-to motions to the Calendar Control Judge requesting that their case be scheduled to be tried before a jury.

- Consistent with this Order, the following matters shall be conducted remotely through the use of Advanced Communication Technology:
  1. Calendar Control Motions,
  2. Housing Court Motions,
  3. Discovery Motions,
  4. General Motions (contested and uncontested),
  5. Oral arguments on Preliminary Objections,
  6. Oral arguments on Motions for Summary Judgment, or Judgment on the Pleadings,
  7. Conciliations relating to cases on the May 2020 Trial List, and
  8. All other matters scheduled by any individual judge relating to a case specifically assigned to that judge, unless litigants lack the ability to participate using Advanced Communication Technology and under such circumstances, the individual Judge will utilize appropriate methods to adjudicate and/or conduct arguments/hearings utilizing protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order.
  
- See the Fifth Judicial District website, [www.alleghenycourts.us](http://www.alleghenycourts.us), for procedures and instructions relating to the following matters, including Operating Procedures for all judges and remote submissions of the following:
  1. Calendar Control Motions;
  2. Discovery Motions;
  3. General Motions;
  4. Housing Court Motions;
  5. Preliminary Objections; and
  6. Motions for Summary Judgment/Judgment on the Pleadings.
  
- Notwithstanding the suspension of time calculations and deadlines set forth in Section I above, individual judges are hereby invested with substantial discretion with the enforcement of time deadlines which he/she has established in a particular case when handling one of the matters outlined above in items (1) through (8) of the Civil Division section of this Order.

- The Governor's Orders of May 7 and May 22, 2020 prohibiting commencement of actions filed under the Landlord Tenant Act of 1951 for failure to pay rent, or due to an expired lease are scheduled to expire on August 31, 2020. Landlord tenant actions in the Civil Division of the Allegheny County Court of Common Pleas shall proceed pursuant to applicable rules and laws. Residential landlord tenant actions filed at the Magisterial District Courts shall proceed pursuant to the attached Order, filed this same date, entitled Fifth Judicial District Temporary Procedures Regarding Certain Residential Landlord Tenant Actions.
- Arbitration hearings resumed in June of 2020 utilizing the protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order. However, where all parties agree to using Advanced Communication Technology (ACT), or by Order of Court upon cause shown by one or more parties, arbitration hearings may be conducted remotely through use of ACT.
- Conciliations and hearings before the Board of Viewers shall be conducted remotely where appropriate and possible using ACT. Where the litigants are unable to participate remotely utilizing ACT, the Board of Viewers may proceed with in-person hearings, as necessary, utilizing protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order.
- In any case specially assigned to a judge, the judge assigned shall attempt to use Advanced Communication Technology for all hearings, conferences, and/or oral arguments on such matters so assigned. Where one or more parties is unable to participate using Advanced Communication Technology, then under such circumstances, the assigned judge may conduct in-person hearings, conferences, and/or oral arguments utilizing protocols and policies relating to the use of masks or other personal protective equipment, social distancing, and other guidance specified in Section II of this Order.



- The Commerce and Complex Litigation Center will hear all petitions, motions, conciliations, and hearings remotely using Advanced Communications Technology; see the standardized operating procedures for Administrative Judge Christine A. Ward, and Judge Philip Ignelzi, available on the Fifth Judicial District website, [www.alleghenycourts.us](http://www.alleghenycourts.us) for information concerning matters assigned to the Commerce and Complex Litigation Center.

## **VI. Criminal Division**

### **A. Remote Proceedings**

- During the judicial emergency, the following matters in the Allegheny County Court of Common Pleas, Criminal Division, shall presumptively be conducted remotely through Advanced Communication Technology:
  1. Bail Hearings and Motions Court;
  2. Motions for Continuance and other motions which do not require testimony;
  3. Guilty Pleas;
  4. Sentencing Hearings;
  5. ARD Hearings;
  6. Phoenix Docket and EDP Hearings;
  7. Review Hearings for SOC, Domestic Violence Court, Drug Court, DUI Court, Mental Health Court, PRIDE Court, and Veteran’s Court;
  8. Probation Violation Hearings;
  9. SOC Formal Arraignments.
- If a judge in a particular case determines that extenuating circumstances exist that justify an in-person proceeding, then one of the types of matters listed in the paragraph above may be heard in-person, in whole or in part, in the courtroom. Extenuating circumstances may exist, for example, when an interpreter is required or where there is a likelihood that a sentence of imprisonment will be imposed after a guilty plea. The Court shall make efforts to minimize the number of people present for these in-person matters including allowing particular attorneys or witnesses to appear remotely.

- Recognizing the difficulty that defendants representing themselves may have using Advanced Communication Technology, such defendants may appear in person for any matter at the discretion of the judge. Defendants representing themselves may also appear in person at Formal Arraignment or Pretrial Conferences.
- Defense Counsel is encouraged to conduct Formal Arraignments without appearing at the Formal Arraignment Office pursuant to the attached procedure.
- Absent extenuating circumstances, Pretrial Conferences for represented defendants should be conducted by email, telephone, or videoconferencing.

#### **B. In-Person Matters**

- Matters not listed in the first paragraph of section VI(A) of this Order, which would otherwise be conducted in person, may also be conducted using Advanced Communication Technology after consultation with the parties and if the defendant consents and waives his or her confrontation clause rights and his or her right to be physically present. This may include matters such as non-jury trials or pretrial suppression motions in which witnesses will be called.
- The Court shall continue to evaluate the circumstances regarding the pandemic in Allegheny County to determine an appropriate time to resume jury trials. A separate order will set forth additional requirements relating to resumption of jury trials.

#### **C. Conduct of Court Business**

- Attorneys are to participate in Case Status Conferences as set forth in the attached Case Status Conference Procedures. Judges or their staff may also conduct status conferences via telephone or videoconferencing. Attorneys are required to participate in any such status conferences.

- Absent extenuating circumstances unique to a particular case, inmates will not be transported to the courthouse for proceedings except for trials, hearings on matters which require witnesses, and cases where an interpreter is necessary for an incarcerated defendant.
- Attorneys are strongly encouraged to file motions (including motions to reduce bail), pleadings, and other documents through PACFile. Attorneys and self-represented parties shall add their email address on the cover page of all filings with the Court as part of their contact information. The Bail Review Request Form may continue to be utilized and emailed to Pretrial Services via the Court's website at [https://www.alleghencourts.us/criminal/pretrial\\_services/bail\\_services/brr.aspx](https://www.alleghencourts.us/criminal/pretrial_services/bail_services/brr.aspx).
- All bail and miscellaneous motions for cases at the Court of Common Pleas level that are assigned a CR number, should be filed through PACFile. Miscellaneous motions, however, may also be filed in person and brought to the motions counter in room 534 of the courthouse. All bail motions for cases at the Magisterial District Court level shall be filed by emailing the motion (with the OTN number of the case on the coversheet) to [DCRCriminal@AlleghenyCounty.us](mailto:DCRCriminal@AlleghenyCounty.us). A copy of any bail motion, at either level, and/or a Bail Review Request form, which can be found on the Criminal Division page of Fifth Judicial District website, shall be submitted to [PTS\\_Bail\\_Questions\\_Bin@alleghencourts.us](mailto:PTS_Bail_Questions_Bin@alleghencourts.us).
- All motions to lift detainers should be filed through PACFile and emailed to the assigned judge and his/her staff but may be filed in person at the Department of Court Records and brought to the appropriate courtroom. Email addresses for Criminal Division Judges and staff are located on the Fifth Judicial District website.
- Requests or Motions for Continuance should be liberally granted.

- Alternative methods of signing, delivery and service of court documents and orders shall be permitted. Such methods may include, but are not limited to:
  1. The signature of defense counsel on a defendant's behalf;
  2. The signature of court personnel while in the presence of the defendant or while on the record, with the defendant's verbal permission;
  3. The faxed, scanned or electronic signature of a defendant; and
  4. Other methods determined to be reliable by a judge.
  
- Defendants who wish to address warrants for failure to appear may do so by phoning (412) 350-1229, Monday through Friday between 9:00 A.M. and 3:00 P.M.
  
- Electronic monitoring supervision by the Adult Probation Department continues to be available at the discretion of the Criminal Division judges.
  
- The August 21, 2020 Order entitled Amended Fifth Judicial District Emergency Operations Plan Criminal Division is consistent with this Order and remains in effect.

#### **D. Safety Provisions Enforcement**

- In addition to social distancing, masking, and other safety requirements set forth in the Emergency Operations Plan Order dated May 28, 2020, and this Order, the attached Criminal Division Procedures (as may be subsequently amended and posted on the website of the Fifth Judicial District) shall be followed in the Criminal Division of the Allegheny County Court of Common Pleas.

## **VII. Family Division**

### **Child Support, Divorce, Alimony, and Equitable Distribution of Property**

- For information or questions about child/spousal support, custody, divorce or presentation of a pro se motion contact (412) 350-5600 or [1stFOP@pacses.com](mailto:1stFOP@pacses.com). The regional offices in the Penn Hills and Castle Shannon shall remain closed to the public.
- Consent Agreements and Orders may be sent to the following email address for review and processing: [pacsessupportconsentagreement@pacses.com](mailto:pacsessupportconsentagreement@pacses.com)
- Until further Order of Court, child support payments will not be accepted in person. Child supports payments may be made by credit card, check, and/or money order. Payment coupons and instructions are available on the Fifth Judicial District website: [www.alleghencourts.us](http://www.alleghencourts.us)
- All scheduled conferences and/or hearings shall be conducted telephonically. Litigants will receive telephonic conference/hearing instructions via US Postal Mail and, when possible, by text message.
- All evidence being submitted for support proceedings may be submitted by text message, email, or fax prior to or during the course of the proceeding.
- Exceptions to Hearing Officer Support Recommendations shall be filed electronically at [alleghenysupportexceptions@pacses.com](mailto:alleghenysupportexceptions@pacses.com). The complete "Exceptions Procedure" shall be maintained on the Fifth Judicial District website and is incorporated herein, by reference.
- Masters' Rules and Procedures are posted to the Fifth Judicial District website and are made applicable by this Order.
- The Court shall continue to review and grant divorces, administratively, when all required documents are filed with the Department of Court Records.

- Any matter may be presented to the Court by motion, without a hearing, pursuant to the judges' procedures on the website, for entry of an Order.

## **Custody**

- Custody motions will be addressed on a case by case basis. Any matter may be presented to the Court by Motion, without a hearing, for entry of an Order, pursuant to the assigned judge's procedures posted on the Fifth Judicial District website.
- For new custody cases originating by motion without a judicial assignment, please contact the Court by email at [emergencycustody@allegheycourts.us](mailto:emergencycustody@allegheycourts.us) with the following information: parents' names and dates of birth and the child(ren)'s names and dates of birth. The Court will respond to the inquiry with the appropriate judicial designation.
- *Pro se* emergency custody motions will be addressed by completing the Court's online submission platform for the same on the Fifth Judicial District website.
- Questions concerning custody matters may be submitted by email to [custodydepartment@allegheycourts.us](mailto:custodydepartment@allegheycourts.us) or by leaving a message at 412-350-4311. Emails and calls will be returned during regular business hours. For questions concerning an emergency custody matter, please call 412-350-1500, Monday through Friday, between 9:00 AM and 3:00 PM.
- Until further Order of Court, the Generations education seminar requirement shall be completed by reading and reviewing the Generations booklet, which is posted on the Fifth Judicial District website. The password to access the booklet is contained in the scheduling order. For litigants who do not have access to the internet, please call 412-350-4311 to receive the materials by regular mail.
- Until further order of Court, the Generations mediation session, DRO custody conciliation, interim relief hearing, and partial custody hearing

before the hearing officer, shall be conducted remotely, either by teleconference or videoconference, at the Court's direction. Five (5) days in advance of the scheduled court event, litigants shall send contact information (telephone number and email address) where they may be reached by the Court on the date and time of the scheduled court event to [custodydepartment@allegheycourts.us](mailto:custodydepartment@allegheycourts.us) or by phone at 412-350-4311. Failure to timely provide this information to the Court may result in the proceeding not being held and/or a delay in scheduling/rescheduling the custody case.

- All other custody proceedings, including those scheduled to be heard before the assigned Judge, shall be heard remotely by teleconference or videoconference at the Court's direction, until further Order of Court and unless the judge requires an in-person proceeding. Litigants should carefully review the scheduling order issued for each matter for information on the remote requirements, witness testimony, and submission of evidence and exhibits.
- Exceptions to Hearing Officer Custody Recommendations shall be filed at the Allegheny County Department of Court Records, with a copy sent to the Court via email at [custodydepartment@allegheycourts.us](mailto:custodydepartment@allegheycourts.us).

### **Protection from Abuse**

- All Temporary Protection From Abuse matters will be addressed at the Family Law Center, 440 Ross Street, Room 3030, Pittsburgh, PA 15219. Temporary Protection from Abuse Hearings shall be conducted generally through videoconference. If a hearing cannot be conducted through videoconference, the hearing shall be held by audio or teleconference.
- Temporary Protection From Abuse Petitions will be prepared and processed between the hours of 8:00 A.M. and 11:00 A.M., and videoconference hearings will be conducted until 2:00 P.M, Monday through Friday. This timeframe may be modified upon further order.
- Emergency Protection From Abuse Petitions will be addressed from 11:00 A.M.. until 8:00 A.M., Monday through Friday, and 24 hours

Saturday and Sunday and on court holidays at the Pittsburgh Municipal Court Building, 660 First Avenue, Pittsburgh, PA 15219.

- Emergency Protection From Abuse Petitions may also be addressed from 11:00 A.M. until 3:30 P.M. at the Magisterial District Courts.
- Final Protection From Abuse Hearings shall be heard through Advanced Communication Technology (ACT), until further Order of Court.
- Temporary Protection From Abuse Orders that were entered during the judicial emergency or that were extended due to the judicial emergency shall expire on June 16, 2020, unless an order entered after May 28, 2020 sets a different expiration date.
- Defendants (or their attorneys) intending to contest a Protection From Abuse action and participate in a hearing must submit an "Intent to Defend" form prior to the scheduled hearing. If the Defendant appears at the hearing without having completed and submitted the Intent to Defend form prior to the scheduled hearing, the hearing may be postponed and the Temporary PFA Order may be extended until the rescheduled hearing date.
- Until further Order of Court, Indirect Criminal Contempt (ICC) Complaints will not be accepted by private petition.
- ICC Police Complaints will be accepted, and bail hearings will be held before a Magisterial District Judge using Advanced Communication Technology. If a defendant is detained, a bail hearing shall be held before the judge assigned to hear the Temporary PFA Petitions.
- For questions concerning Protection from Abuse, please call (412) 350-4441, Monday through Friday between 9:00 A.M. and 3:00 P.M.

### **Juvenile Matters**

- Juvenile proceedings shall be conducted by Advanced Communication Technology, primarily through Microsoft Teams, pursuant to the protocol



for teleconference hearings issued by the Court. Other audio or teleconference methods may be employed, pursuant to the protocol for teleconference hearings issued by the Court, with the approval of the Administrative Judge. See Protocol for Teleconference Hearings posted on the Fifth Judicial District website.

- Delinquency adjudicatory hearings, where the juvenile requests a hearing or a trial may be conducted as an in-person hearing. Requirements for social distancing and masks and face coverings as set forth in this order, shall be strictly followed. With the consent of the juvenile, a delinquency adjudicatory hearing may be heard, in whole or in part, through Advance Communication Technology, provided that after conducting a colloquy on the record, the Court determines that:
  1. The juvenile understands the Constitutional right to confront witnesses;
  2. The juvenile understands the right to be present; and
  3. The right and knowingly and voluntarily waives these rights.
- All Juvenile Court matters will be heard by the assigned judges according to the scheduling protocol in effect prior to the judicial emergency. Matters may continue to be heard through Advanced Communication Technology, as the interest of public safety dictates.
- The Court shall continue to issue Orders for protective custody, pursuant to Pa. R.J.C.P. Rule 1210.
- Detention hearings will be heard by a hearing officer on Mondays, Wednesdays, and Fridays. Hearing officer recommendations will be sent to the daily assigned judge for approval and entry of an order.
- Shelter Care Hearings will be heard by a hearing officer three days a week. Walk-in Shelter Care Hearings will not be permitted. Hearing officer recommendations will be sent to the assigned judge for approval and entry of an order.

- Emergency motions will be heard in accordance with the weekly motions judge schedule. All Motions shall be filed through PACFile with a copy e-mailed to [juvenilemotions@allegheycourts.us](mailto:juvenilemotions@allegheycourts.us), the probation officer, and the caseworker.
- For emergency matters involving delinquency, please contact the Juvenile Probation Department at (412) 350-1501.
- In cases where the juvenile is detained prior to the adjudicatory hearing, the Court may schedule the adjudicatory hearing more than 10 days after the filing of the petition or the pre-hearing conference, as deemed appropriate by the hearing officer or the judge, but the Court must review the detention status by memo every 10 days until the adjudicatory hearing is held. The attorney for the juvenile and the attorney for the Commonwealth shall be provided the opportunity to provide input in writing and/or through Advanced Communication Technology. In all cases, the Court shall determine whether the continued detainment is necessary to ensure the safety of the public and is constitutionally permissible.
- Termination of Parental Rights Hearings shall be scheduled and heard by the assigned judge.
- Adoption Hearings shall be scheduled and heard as determined by the assigned judge.
- Post-dispositional hearings, where the recommendation is to close supervision, may be presented by memo for the entry of an Order to terminate supervision.
- Initial pre-hearing conferences shall be conducted through Microsoft Teams. With the consent of the parties, all other matters may be presented to the Court by memo, without a hearing, for entry of an Order.
- The Court shall continue to be available to issue orders for Authorization for Medical Treatment of a Minor, pursuant to 18 Pa. C.P.S. 3201.

- Private Dependency Petitions and Petitions to Modify/Enforce Permanent Legal Custodianship Orders shall be processed electronically or by US Postal Mail. Complete instructions are available on the Fifth Judicial District website.
- Questions concerning dependency matters, termination of parental rights, adoptions and juvenile scheduling matters may be submitted by email to [childrenscourt@allegheycourts.us](mailto:childrenscourt@allegheycourts.us) or by calling 412-350-0377, Monday through Friday, between 9:00 AM and 3:00 PM. Emails and calls will be returned during regular business hours.

### **VIII. Orphans' Court Division**

- Whenever appropriate and feasible, Orphans' Court Proceedings should be conducted by Advanced Communication Technology (ACT), primarily through Microsoft Teams, pursuant to the protocol for teleconference hearings issued by the Court. Other audio or teleconference methods may be employed, pursuant to the protocol for teleconference hearings issued by the Court, with the approval of the Administrative Judges. See Protocol for Teleconference Hearings found on the Fifth Judicial District website. Proceedings in Orphans' Court cases that are specially assigned to a judge may, at the discretion and direction of the judge, be conducted in-person in open court.
- The following types of Petitions/Motions may be filed at the Department of Court Records Wills/Orphans' Court Division for transmittal to the Orphans' Court Division for assignment to the trial judge or motions judge:
  1. Settlement Petitions involving minors, incapacitated persons, or Decedent's Estates;
  2. Petitions requesting the issuance of a Citation or Rule to Show Cause;
  3. Petitions requesting the scheduling of a hearing, including but not limited to, termination of parental rights, adoptions, guardianships of incapacitated persons and minors, and review of involuntary civil commitment;
  4. Petitions to Settle a Small Estate;

5. Petitions for Allowance involving minors or incapacitated persons; and
  6. Petitions or motions that are consented to in writing by all counsel of record and/or by all unrepresented parties in interest.
- Petitions or motions that are contested must comply with the requirements of Rule 3.1 of the Allegheny County Orphans' Court Division Rules and shall be presented in-person in open court to the motions judge at 9:30 a.m. or at such time and manner, including via Advanced Communications Technology, as directed by the motions judge.
  - In-person in court proceedings must follow the protocols and policies relating to the use of masks or other personal protective equipment, social distancing and other guidance specified in Section II of this Order.
  - Involuntary Civil Commitment hearings will continue as scheduled and will be conducted by audio or teleconference.

## **IX. Magisterial District Courts**

- All Magisterial District Courts and Pittsburgh Municipal Court are open for designated court proceedings as set forth in this order.
- Police agencies are to follow the Revised Magisterial District Courts COVID-19 Plan and the Pittsburgh Municipal Court, City of Pittsburgh COVID-19 Plan for the filing of criminal complaints, ICC complaints, arrest warrants, and search warrants. See attached Revised MDC COVID-19 plans.
- Magisterial District Judges will remotely handle criminal case initiation and processing. The remote operations include:
  - Criminal Complaint filing, arrest warrant requests, and cases initiated by on-view arrests only,
  - Search Warrant issuance,
  - Bail Hearings and Bail Hearings on ICC Complaints filed by police.

- Preliminary Arraignments conducted through Pittsburgh Municipal Court shall be handled remotely.
- Preliminary Arraignments conducted at the Magisterial District Courts shall presumptively be handled remotely but may at the discretion of the Magisterial District Judge be handled in person.
- Preliminary hearings with incarcerated defendants will be conducted using Advanced Communication Technology. Other parties may participate through Advanced Communication Technology.
- Preliminary hearings for non-incarcerated defendants may be conducted using Advanced Communication Technology. Other parties may participate through Advanced Communication Technology. There will be no identification process at time of arrest, unless processed through the Allegheny County Jail. Defendants will be assigned a fingerprint appointment for a later date.
- Constables that serve arrest warrants for misdemeanor/felony cases are to instruct defendants to turn themselves in or contact the police agency that requested the warrant.
- Defendants shall pay their court-ordered financial obligations—costs, fines, and fees—electronically, through Court Payment Services at [alleghenytx.com](http://alleghenytx.com) and through the Pennsylvania ePay system at [ujportal.pacourts.us](http://ujportal.pacourts.us). Cash payments at the Magisterial District Courts may be accepted at the discretion of the Magisterial District Judge. Cash payments will be accepted at Pittsburgh Municipal Court.
- Magisterial District Judges may *sua sponte* revise individual payment plans to reduce the minimum payment requirement.
- Facsimile signatures are to be used for documents generated in the Magisterial District Judge Computer System.
- Police complaints, affidavits, and search warrant requests filed with an electronic signature shall be accepted by the Court.

- After review and with their approval, a Magisterial District Judge may permit staff to sign a criminal complaint on his/her behalf. The Magisterial District Judge shall utilize the procedures set forth below.
  - The Magisterial District Judge shall review the criminal complaint and electronically notify the staff of their approval.
  - A record of this permission shall be attached to the criminal complaint.
  - The form of signature shall be Magisterial District Judge Name/Staff initials.
- Emergency Protection From Abuse Petitions will be addressed from 11:00 A.M. until 8:00 A.M., Monday through Friday, and 24 hours Saturday and Sunday and court holidays at the Pittsburgh Municipal Court Building, 660 First Avenue, Pittsburgh, PA 15219. Emergency Protection from Abuse Petitions may be addressed at the Magisterial District Courts from 11:00 A.M. until 3:30 P.M. Petitioners should call the Magisterial District Court in advance of arrival. Phone numbers may be found on the Fifth Judicial District Website: [https://www.alleghenycourts.us/district\\_judges/offices.aspx](https://www.alleghenycourts.us/district_judges/offices.aspx)
- Until further Order of Court, Indirect Criminal Contempt (ICC) Complaints will not be accepted by private petition.
- ICC Police Complaints will be accepted, and bail hearings will be held before a Magisterial District Judge using Advanced Communication Technology. If a defendant is detained, a bail hearing shall be held before the judge assigned to hear the Temporary Protection from Abuse Petitions.
- All other proceedings, including summary proceedings, civil actions, and landlord/tenant actions may be conducted using Advanced Communication Technology, which includes audio or videoconference at the discretion of the Magisterial District Judge.

- Private complaint interviews will not take place at the Magisterial District Courts. Please refer to the Allegheny County District Attorney's website for directions for filing a private complaint at <http://alleghenycountyda.us/>.
- Residential landlord tenant actions shall proceed pursuant to the attached Order, filed this same date, entitled Fifth Judicial District Temporary Procedures Regarding Certain Residential Landlord Tenant Actions.

BY THE COURT:



P. J.

Kim Berkeley Clark  
President Judge

IN THE SUPREME COURT OF PENNSYLVANIA  
WESTERN DISTRICT

IN RE: FIFTH JUDICIAL DISTRICT :  
TEMPORARY PROCEDURES : No. 23 WM 2020  
REGARDING CERTAIN RESIDENTIAL:  
LANDLORD TENANT ACTIONS :

**ORDER OF COURT**

**AND NOW**, this 31<sup>st</sup> day of August 2020, pursuant to Pa.R.J.A. No. 1952(B)(2), this Court having declared a judicial emergency in the Fifth Judicial District of Pennsylvania through December 31, 2020, and recognizing that rent assistance through the CARES Rent Relief Program and other programs is available for landlords and tenants in Allegheny County and that landlords and tenants may require time to apply for such assistance and additional time for their applications to be processed, the following is hereby **ORDERED, ADJUDGED and DECREED**.

1. Effective September 1, 2020, all residential landlord tenant actions will be accepted for filing within the Fifth Judicial District pursuant to the applicable statutes and rules governing those actions.
2. Initial hearing dates for residential landlord tenant actions filed at the Magisterial District Courts where the action is based solely on non-payment of rent shall be scheduled at the latest available landlord tenant court date consistent with Pa.R.C.P.M.D.J. 504 and may be scheduled up to seven (7) days beyond the time limit set forth in Rule 504, if the Magisterial District Judge finds it necessary due to the volume of cases already scheduled.
3. On such cases, if on or before the initial hearing date, the tenant provides an affidavit or testifies under oath affirming that the tenant has submitted or will submit an application for rental assistance under the CARES Rent Relief Program or any of the other available rental assistance programs, the initial hearing date shall be used to conduct a status conference rather than a hearing. During this status conference, the CARES Rent Relief Program or other program shall be considered by the parties who shall determine if they will move forward with an application.



4. If both parties agree to move forward with an application through the CARES Rent Relief Program or other available rental assistance program, the hearing shall be continued to allow for sufficient time for the application to be processed as agreed to by the parties and the Magisterial District Judge. Multiple continuances may be granted so there is sufficient time for the application to be processed and the relief to be provided. A hearing shall not occur until the application has either been granted, denied or withdrawn.
5. If, during the status conference, the parties do not both agree to move forward with an application, the case may be postponed to a new date for a hearing on the matter or the Magisterial District Judge may, in his or her discretion, continue the hearing to allow for an application to be made and processed.
6. The procedures in paragraphs 2 through 5 above apply only to residential landlord tenant actions at the Magisterial District Courts where the action is based solely on non-payment of rent.
7. Application for COVID-19 related rent assistance through the CARES Rent Relief Program can be made online at <https://covidrentrelief.alleghenycounty.us>.
8. Additional information about other rental assistance programs may be found at the following links:
  - <https://www.ura.org/pages/covid-19-resources-for-residents>
  - <https://www.alleghenycounty.us/human-services/index.aspx>
  - <https://renthelppgh.org/>

The Fifth Judicial District Judicial Temporary Prohibition on Commencement of Certain Residential Landlord Tenant Actions expires on August 31, 2020. This Order shall become effective on September 1, 2020 and shall remain in effect until further Order of Court.

BY THE COURT:



,P. J.

Kim Berkeley Clark  
President Judge

# **CRIMINAL DIVISION PROCEDURES**

## **Additional Courtroom Procedures**

### **Participants Who Cannot Be Heard Clearly While Wearing Masks**

- Paper masks will be provided in each courtroom where the judge determines that a witness, defendant or other participant cannot be heard or understood while wearing a cloth or other mask.
- The judge may permit a witness to temporarily remove a mask to take testimony where the presence of a mask would adversely affect the ability to evaluate credibility. In such cases, the witness will be required to wear a face shield but will put their mask back on whenever approached by an attorney.
- A participant shall not be asked to lower or remove their mask at any time while they are within 15 feet of another person unless protected by a plexiglass partition.

### **Private Attorney/Client Communication in Courtroom**

- During any hearing requiring a witness, the defendant, defense counsel, prosecutor, and affiant will each be provided with paper and a pen (if consistent with safety concerns of the Court, Deputy Sheriff, and attorneys) and will be permitted to write confidential notes to each other. The court may permit other means of confidential communication including providing for brief recesses or allowing the defendant and attorney to briefly exit the courtroom to confer consistent with safety concerns.

### **Early arrival for court proceedings**

- Attorneys and witnesses arriving more than 30 minutes prior to a scheduled court event may be asked by the Court to leave and return later in order to maintain social distancing and reduce the amount of people in the courtroom at any given time.

### **Signing of Subpoenas**

- Alternative methods of signing should be used to avoid contact between court staff and defendants.

# **CRIMINAL DIVISION PROCEDURES**

## **Document Transfer**

- All efforts shall be made to transfer as many documents as possible to court staff electronically. When a physical document must be provided to court staff in a courtroom, it shall be done, whenever possible, by placing the document on a table provided for the exchange rather than by a direct hand- to-hand exchange.

# **CRIMINAL DIVISION PROCEDURES**

## **Formal Arraignment Waiver**

The following steps must be taken by defense counsel to waive appearance at Formal Arraignment during the judicial emergency:

- Defense counsel must enter their Appearance on behalf of the Defendant.
- After the Praecipe for Appearance has been filed with the Department of Court Records, defense counsel may download and complete Waiver of Appearance at Formal Arraignment form. This document can be found on the Fifth Judicial District Website, <https://www.alleghencourts.us/Criminal/Default.aspx>
- Once completed, the Waiver of Appearance at Formal Arraignment form must be forwarded to [ccformalarraignment@alleghencourts.us](mailto:ccformalarraignment@alleghencourts.us).
- The email must include defense counsel and the defendant's phone number, email address, and mailing address.
- The Formal Arraignment Office will review the waiver request and determine if the Criminal Information has been filed by the District Attorney's Office.
- If the Criminal Information has been filed, the Formal Arraignment Office will email the attorney of record the information and all paperwork along with the judge assignment and a subpoena for the Defendant to appear on the scheduled Pretrial Conference date or Phoenix Court date. When required, a Court Reporting Network (CRN) appointment will be included in the paperwork; the defendant shall attend the scheduled CRN appointment and complete the full drug/alcohol assessment, if required, prior to the scheduled court date.
- If the case is eligible for ARD, information will be provided to defense counsel to contact the District Attorney's ARD unit and complete the ARD interview. Upon receipt of the ARD paperwork from defense counsel showing that the defendant has been accepted into the ARD program, the Formal Arraignment Office will provide an ARD date and subpoena to defense counsel via email.

## **CRIMINAL DIVISION PROCEDURES**

- If the Criminal Information has not been filed, the Formal Arraignment Office will reschedule the Formal Arraignment date and notify defense counsel of the new date.
- Defense Counsel will sign the subpoena on the defendant's behalf with the defendant's permission or will make arrangements for the defendant to sign the subpoena and return it to the Formal Arraignment Office by email.
- Pretrial Conferences for defendants should be conducted by email, telephone, or videoconferencing, but may be conducted in person.
- Defense counsel may accept a subpoena on a defendant's behalf by completing a Waiver of Appearance at Pretrial Conference. This document can be found on the Fifth Judicial District Website, <https://www.alleghenycourts.us/Criminal/Default.aspx>.
- Defendants without an attorney must appear in person to schedule their cases, unless other arrangements have been made by court staff, in which case the Pretrial Conferences may be conducted by telephone or videoconferencing

# **CRIMINAL DIVISION PROCEDURES**

## **In-Person Proceedings**

Attorneys shall confer with their witnesses and clients prior to the hearing date to ensure that they are not exhibiting symptoms of COVID-19 and are not awaiting the results of a COVID-19 test. Those exhibiting COVID-19 symptoms or awaiting a test result are not permitted in any court facility. Information on appropriate actions to take when experiencing COVID-19 symptoms can be found on the CDC website at <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/index.html>.

Attorneys shall notify the Court of any witness or client exhibiting symptoms or awaiting the results of a COVID-19 test. Arrangements shall be made for the person to participate remotely or the matter shall be postponed.

Taking the testimony of witnesses through Microsoft Teams is strongly encouraged. However, when a witness must testify in person in a courtroom, attorneys will be responsible for management of their witnesses.

Witnesses may be required to wait in designated areas of the Courthouse, outside the Courthouse or elsewhere so that social distancing may be maintained and to reduce the amount of people in the courtroom at any time.

Witnesses who wait in the hallways may not congregate and must socially distance.

Attorneys shall inform the Court of the status and location of their witnesses prior to the start of a proceeding so that the attorneys may be given adequate time to notify and call each witness to testify. Upon conclusion of the testimony, the witness shall be excused from the courtroom and shall leave the court facility unless the judge or judicial officer determines that there is a reason that the witness must remain in the court facility.

The taking of photographs or the recording of any proceeding is strictly prohibited. Anyone violating this provision shall forfeit their cellular phone or device and shall be subject to contempt proceedings or other sanctions. Notwithstanding, with the permission of the presiding judge, an attorney may use a cellular telephone to summon a witness waiting in another location or for such other purpose authorized by the judge. When a judge is on the bench, the attorney shall first request permission from the judge.

# **CRIMINAL DIVISION PROCEDURES**

## **ARD Procedures**

After the defendant completes the ARD interview and accepts the ARD offer, the defendant will receive a subpoena from the Court Arraignment Office with the hearing date and time noted.

ARD Court staff will email defense counsel (or the defendant, if not represented) the ARD Packet with instructions to complete it and return it at least 7 days prior to the ARD hearing date.

ARD Court staff will email an invitation for the Microsoft Teams ARD Hearing to both the Defendant and Defense Counsel the week of the ARD hearing.

The ARD Hearing and Admission into the ARD program will take place as scheduled through Microsoft Teams.

Upon the conclusion of the ARD Hearing on Microsoft Teams, the ARD Officer and defendants will remain on the Teams call so that the ARD Officer may review the ARD rules with the defendants.

ARD Probation either will complete the intake interview at the conclusion of the ARD TEAMS hearing or will contact the defendant approximately one week after the hearing. If a defendant has not had an intake interview within 14 days of the ARD hearing, please contact the ARD office at 412-350-4632.

# **CRIMINAL DIVISION PROCEDURES**

## **Phoenix Court Procedures**

On all Phoenix cases a full discovery packet, sentencing guidelines and offer are presented to the Defendant at the time of Formal Arraignment.

The Phoenix Hearing will be conducted remotely through Advanced Communication Technology primarily through Microsoft Teams unless extenuating circumstances exist that justify an in-person proceeding.

The Remote Plea Packet should be completed and sent to the assigned courtroom staff two (2) business days before the assigned court date. The protocol during the Plea Hearing via remote access will also be followed.

If the Phoenix Offer is rejected, a Rejection of Phoenix Offer and Election to Proceed to Trial form must be completed and filed with the Court.

A trial date will then be set by the Court and the Case Status Conference protocol must be then followed.



# **CRIMINAL DIVISION PROCEDURES**

## **Case Status Conferences (CSC)**

All attorneys will be required to engage in an audio and/or video case status conference with opposing counsel in every case at least one week prior to the next scheduled court date during which the following matters must be addressed:

- Whether any plea offers have been made; all plea negotiations must occur before the CSC deadline;
- If a plea offer has been made and the defendant intends to reject the plea offer and proceed to trial, the rejection of the offer shall be placed on the record. The court, in its discretion, may notify the defendant that, once the plea is rejected and the case is scheduled for trial, the Court will no longer accept a negotiated plea;
- If a plea offer will not be made, a determination will be made as to whether the case is ready to proceed to jury or nonjury trial. If the parties are not prepared to proceed, a postponement request must be submitted electronically via <https://www.alleghencourts.us/criminal/MotionForContinuance.aspx> at least four (4) business days before the next court date. Postponement requests submitted in this fashion will be granted or denied by the end of the next business day after submission.

After the CSC is complete, but in no event later than 4 business days before the next court listing, the Prosecutor shall submit an email to the minute clerk and the designated court staff for each courtroom, with a copy to defense counsel, which shall include the following:

- Defendant's name,
- Date of proceeding,
- Attorneys' names and email addresses (prosecution and defense),
- Defendant's contact information, including their email address if the proceeding is to take place remotely,
- Whether the case will resolve by plea, nonjury or jury trial or whether a postponement request will be submitted and by whom;
- Whether any motions are pending and, if so, whether any such motion requires a hearing with or without witnesses;
- Whether the defendant and witnesses and victims necessary for the scheduled proceeding have been contacted.

# **CRIMINAL DIVISION PROCEDURES**

Counsel shall not send multiple CSC emails on the same case as such emails burden the court staff, overwhelm their email accounts and create confusion.

When a matter is scheduled as a remote plea or hearing, all paperwork shall be emailed to court staff 48 hours prior to the scheduled plea or hearing date, or, in the case of a defendant who is incarcerated, 24 hours prior to the plea or hearing date including:

- Plea Packet
- Sentencing Guidelines
- Restitution Form
- Other forms required for SORNA or Domestic Violence cases

If a case will be proceeding to trial, the parties are encouraged to stipulate to any evidence or testimony, where possible, to avoid the need for witnesses to be called to testify. If stipulations may be furthered by a party making a potential witness available via conference call with all counsel, counsel are encouraged to utilize this method or other similar opportunities to further discussions regarding possible stipulations. Where stipulations cannot be reached regarding the testimony of a witness, the parties should discuss whether any witnesses might be permitted to testify via video.

In a matter which is to proceed remotely, exhibits should be exchanged via email between the parties at least 24 hours prior to the proceeding, with a copy to court staff. If a party believes that circumstances exist that a prior exchange of a particular exhibit should not occur, the issue should be brought to the Court's attention through the Case Status Conference process.

When a defense attorney has been unable to contact the defendant, the Prosecutor shall not bring in any witnesses but shall have them available by phone in the event that a previously "unreachable" defendant appears and determines to enter a guilty plea.

If the defendant then fails to appear on their scheduled court date, a warrant shall be issued.

If the defendant does appear on their scheduled date, the courtroom staff should direct the defendant to the location previously supplied by defense counsel so that the defendant can make contact with defense counsel. The case may proceed in a manner that does not require witnesses such as a plea, or a stipulated non-jury trial, or other method agreed upon by the parties.

## CRIMINAL DIVISION PROCEDURES

Otherwise, a short defense postponement may be granted with a definite date for trial.

Prosecutors shall make every effort to contact their witnesses well in advance of the scheduled court date and shall comply with the requirements of the Case Status Conferences or status conferences held by judges and their staff.

When a Prosecutor has been unable to contact a witness or victim, the prosecutor shall include on any postponement request, the efforts made to contact the witness or victim.

If a Commonwealth postponement is not granted, defense counsel shall not bring in any witnesses but shall have the defendant available by phone in the event the Commonwealth witness or victim does appear for the proceeding on the specified date.

In the event the Commonwealth witnesses do not appear on the scheduled court date, the case may be *nolle prossed*, dismissed or, at the discretion of the judge, a postponement maybe granted on that date.

If the Commonwealth witness or victim does appear on the scheduled court date, the case may proceed in a manner that does not require witnesses such as a plea, stipulated non-jury trial, or other method agreed upon by the parties. Otherwise, a short Commonwealth postponement shall be granted with a definite date for trial.

All defendants without counsel will be required to engage in a CSC with the assigned prosecutor consistent with the above procedures. Prior to the CSC, the assigned prosecutor will notify the Office of the Public Defender that the defendant is unrepresented so that the defendant can be provided counsel from the Office of the Public Defender or the Office of Conflict Counsel to explain the following:

- The right to counsel for future court proceedings;
- The right to have counsel appointed if the defendant is unable to afford an attorney; and
- If the defendant elects to proceed *pro se*, the fact that counsel will serve as a third-party witness to ensure the CSC is fairly conducted.

# CRIMINAL DIVISION PROCEDURES

## Designated Staff to Receive CSC Emails for Each Courtroom

JUDGE	ADDITIONAL STAFF	EMAIL	MINUTE CLERK	EMAIL
Bruce R. Beemer	Diana Colosimo	<a href="mailto:DColosimo@allegheycourts.us">DColosimo@allegheycourts.us</a>	Janine McVay	<a href="mailto:McVayJ@allegheycourts.us">McVayJ@allegheycourts.us</a>
Alexander P. Bicket	Carley Donnelly	<a href="mailto:CDonnelly@allegheycourts.us">CDonnelly@allegheycourts.us</a>	Kathy Burford	<a href="mailto:KBurford@allegheycourts.us">KBurford@allegheycourts.us</a>
Kelly E. Bigley	Teri Michaels	<a href="mailto:TMichaels@allegheycourts.us">TMichaels@allegheycourts.us</a>	John D'Abruzzo	<a href="mailto:JD'Abruzzo@allegheycourts.us">JD'Abruzzo@allegheycourts.us</a>
Edward J. Borkowski	Pamela Farrell	<a href="mailto:Pam.Farrell@allegheycourts.us">Pam.Farrell@allegheycourts.us</a>	John Halloran John Matter - <b>ARD</b>	<a href="mailto:John.Halloran@allegheycourts.us">John.Halloran@allegheycourts.us</a> <a href="mailto:JMatter@allegheycourts.us">JMatter@allegheycourts.us</a>
David R. Cashman	Wendy Hayes	<a href="mailto:Wendy.Hayes@allegheycourts.us">Wendy.Hayes@allegheycourts.us</a>	Derek Smith	<a href="mailto:DJSmith@allegheycourts.us">DJSmith@allegheycourts.us</a>
John J. Driscoll	Mary Angela Ogg	<a href="mailto:MOgg@allegheycourts.us">MOgg@allegheycourts.us</a>	Lindsay Williamson	<a href="mailto:LWilliamson@allegheycourts.us">LWilliamson@allegheycourts.us</a>
Susan F. Evashavik DiLucente	Mary Lou Conroy	<a href="mailto:mlconroy@allegheycourts.us">mlconroy@allegheycourts.us</a>	Dan Cregan	<a href="mailto:DCregan@allegheycourts.us">DCregan@allegheycourts.us</a>
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# CRIMINAL DIVISION PROCEDURES

## Remote Pleas

When a matter is scheduled as a remote plea or hearing, all paperwork shall be emailed to court staff 48 hours prior to the scheduled plea or hearing date, or, in the case of a defendant who is incarcerated, 24 hours prior to the plea or hearing date.

If the case will be a plea, the following paperwork should be included:

- Request for Remote Hearing \*
- Instructions for Scheduling a Remote Plea \*
- Guilty Plea Colloquy \*
- Waiver of Rights and Consent to Plea/Sentencing by Video Conference\*
- Adult Probation Intake Form \*
- General Rules and Condition of Probation Acknowledgement Form \*
- Sentencing Guidelines
- Restitution Form

\*Denotes items the are included in the Plea Packet.

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If the case is a Domestic Violence case, include also:

- Order of Relinquishment
- 

If the case is a SORNA case, include also:

- Specific Special Conditions of Probation
- General Rules and Condition of Probation Acknowledgement Form
- Sexual Offender Registration/Notification Act (SORNA) Colloquy

The SORNA Packet includes these 3 forms as well as all of the forms in the Plea Packet denoted by \* above.

# **CRIMINAL DIVISION PROCEDURES**

## **Miscellaneous Motions**

Updated instructions and forms for filing Miscellaneous Motions in Motions Court can be found at:

<https://www.alleghencourts.us/criminal/MiscellaneousMotions.aspx>.

# **CRIMINAL DIVISION PROCEDURES**

## **Criminal Division Forms**

Criminal Division forms may be found at  
<https://www.alleghenycourts.us/Criminal/Default.aspx>

Waiver of Appearance at Formal Arraignment

Waiver of Appearance at Pretrial Conference

Plea Packet – includes:

- Request for Remote Hearing
- Instructions for Scheduling a Remote Plea
- Guilty Plea Colloquy
- Waiver of Rights and Consent to Plea/Sentencing by Video Conference
- Adult Probation Intake Form
- General Rules and Condition of Probation Acknowledgement Form

ARD Packet – includes:

- Instructions for Scheduling a Remote ARD Hearing
- Explanation of ARD Proceeding
- Waiver of Rights and Consent to Entry into ARD by Video Conference
- PAePay Instructions
- General Rules for ARD Probationers

SORNA Plea Packet – includes:

- Request for Remote Hearing
- Instructions for Scheduling a Remote Plea
- Guilty Plea Colloquy
- Waiver of Rights and Consent to Plea/Sentencing by Video Conference
- Charge Specific Special Conditions of Probation
- Adult Probation Intake Form
- General Rules and Condition of Probation Acknowledgement Form
- Sexual Offender Registration/Notification Act (SORNA) Colloquy

Order of Relinquishment (for Domestic Violence Cases)

Nolo Contendere Colloquy

Guilty Plea Colloquy

Waiver of Rights and Consent to Plea/Sentencing by Video Conference

Waiver of Rights and Consent to Non-Jury by Video Conference

# COURT OF COMMON PLEAS OF ALLEGHENY COUNTY



## FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA

### **Revised Magisterial District Courts COVID – 19 Plan**

Due to the Covid-19 Pandemic Magisterial District Courts in the Fifth Judicial District have modified/alterd their operations.

#### **Safety Measures:**

- Court users may be checked/wanded by a security guard/state constable upon entry.
- No one will be permitted into the District Court without a face mask or similar face covering.
- If a court user does not have a mask, a disposable mask will be provided.
- The number of people in the court facility shall be limited to ensure safe social distancing.
- Court Users will not be permitted to linger in court facility.
- Some District Courts will have a check in procedure wherein parties will be instructed to check in/provide phone number and wait outside (could wait in an automobile).
  - Parties will be called when it is time for their hearing.
- News media may be permitted into court facilities but only in a manner that is consistent with public safety.
- If court users are sick or have underlying medical/health issues that put them at a higher risk, please do not come to District Court. Please contact the District Court in advance of the hearing. Contact information can be found on the Fifth Judicial District Website:  
[https://www.alleghencourts.us/district\\_judges/offices.aspx](https://www.alleghencourts.us/district_judges/offices.aspx)

#### **Scheduling:**

- The Magisterial District Courts will stagger court times to ensure proper social distancing.
- Parties are required to be on time for their court proceeding.
- Parties are encouraged to conference with one another prior to the court proceeding.
- Parties should be prepared to proceed upon arrival.
- If a party is to complete community service check with District Court about sending completion paperwork prior to scheduled hearing review date. Some District Courts may accept without court appearance.

#### **Hearings:**

- Incarcerated individuals will not be transported to the Magisterial District Courts. These individuals will appear for the preliminary hearings via Advanced Communication Technology.
- Interpreters will work remotely by either phone or video.



- Other parties may participate via Advanced Communication Technology

**Case Filings:**

- Civil/LT cases will be accepted by mail.
- If a party wishes to file in person, please contact the District Court to schedule an appointment time.

**Payments:**

- Payments will be accepted by mail – check or money order.
- Parties are encouraged to make online payments through [alleghenytix.com](http://alleghenytix.com) and [ujportal.pacourts.us](http://ujportal.pacourts.us).
- Lock boxes may be provided for cash payments.
- District Courts may accept cash payments if processed safely.

**Criminal Case Processing:**

- The Magisterial District Courts will not be conducting any criminal case initiation in person at the District Court.
- All criminal case initiation, requests for arrest warrants, on-view arrest complaints and search warrants, will be conducted remotely per the Magisterial District Court COVID-19 Criminal Processing Plan.
- All criminal arraignments will be presumptively conducted remotely per the Magisterial District Court COVID-19 Criminal Processing Plan. In person criminal arraignments may take place at the discretion of the Magisterial District Judge.

**Emergency Protection from Abuse:**

- Petitions will be handled at the Pittsburgh Municipal Court facility, 660 First Ave., Pittsburgh, PA 15219, Monday through Friday from 11:00 a.m. through 8:00 a.m., and 24 hours on weekends and holidays.
- Petitions will also be handled at the Magisterial District Courts from 11:00 a.m. through 3:30 p.m., please call in advance of arrival, [https://www.alleghecourts.us/district\\_judges/offices.aspx](https://www.alleghecourts.us/district_judges/offices.aspx)

# COURT OF COMMON PLEAS OF ALLEGHENY COUNTY



## FIFTH JUDICIAL DISTRICT OF PENNSYLVANIA

### **COVID – 19 Pittsburgh Municipal Court Protocol**

Due to the Covid-19 Pandemic Pittsburgh Municipal Court has modified/alterd their operations.

#### **Safety Measures:**

- Court users will enter through the main entrance.
- Employees will enter through the employee entrance.
- Court users will exit the building in the back - new designated exit door on the first floor - towards the river.
- Security guards will be at the entrance and exit.
- Court users will go through security.
- Court users will not be readmitted at the exit (if a person goes outside for a cigarette break – they will have to enter in the front of the building).
- Face masks are required – no person will be permitted into PMC without a face mask or similar face covering.
- If a court user does not have a mask, a disposable mask will be provided.
- The number of people in the court facility shall be limited to ensure safe social distancing.
- Court Users will not be permitted to linger in court facility
- News media will be permitted into court facilities but only in a manner that is consistent with public safety.
- If court users are sick or have underlying medical/health issues that put them at a higher risk, please do not come to Pittsburgh Municipal Court. Please contact Pittsburgh Municipal Court in advance of the hearing.
- Germ guards have been installed at the bench.

#### **Scheduling:**

- Pittsburgh Municipal Court will have staggered appearance times:
  - Every 15 minutes from 8:00 a.m. – 11:00 a.m.
  - Every 15 minutes from 12:30 p.m. – 4:00 p.m.
  - The number of cases scheduled will ensure proper social distancing.
  - Parties are expected to appear at the scheduled time and be prepared to proceed.
- Criminal Cases:
  - If necessary criminal cases may be heard in 2 – 3 courtrooms, city, traffic and non-traffic courtrooms.
  - Please check hearing notice for courtroom assignment and time.
  - Parties will check in at a window designated for the courtroom assignment.

- Parties are encouraged to conference with one another prior to the court proceeding. Parties should be prepared to proceed at scheduled time.

**Hearings:**

- Parties are to remain at counsel tables and not approach the bench.
- Parties must speak loudly so FTR can record.
- Speaker systems have been installed.

**Payments:**

- Payments will be accepted by mail – check or money order.
- Parties are encouraged to make online payments through [alleghenytix.com](http://alleghenytix.com) and [ujportal.pacourts.us](http://ujportal.pacourts.us).
- Payments may be made by cash if safety procedures are followed.
- Bail documents may be presented electronically via fax or email. Any fees will be mailed directly to the Department of Court Records if it is a Common Pleas bail.

**Criminal Case Filings – Police Agencies:**

- All criminal cases filed at Pittsburgh Municipal Court shall be handled remotely
- Police agencies please refer to the Pittsburgh Municipal Court Covid-19 Criminal Processing Plan.

**Emergency Protection from Abuse:**

- Petitions will be handled at the Pittsburgh Municipal Court facility, 660 First Ave., Pittsburgh, PA 15219, Monday through Friday from 11:00 a.m. through 8:00 a.m., and 24 hours on weekends and holidays.

# Appendix F

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>IN RE:</b>	:	
	:	
<b>FIFTH EXTENSION OF</b>	:	<b>STANDING ORDER</b>
<b>ADJUSTMENTS TO COURT</b>	:	
<b>OPERATIONS DUE TO THE</b>	:	
<b>EXIGENT CIRCUMSTANCES</b>	:	
<b>CREATED BY COVID-19</b>	:	

This Order is issued in furtherance of the Court’s prior Standing Orders issued on March 13, 2020, March 18, 2020, April 10, 2020, May 29, 2020, June 30, 2020, and July 31, 2020, which implemented and extended certain adjustments to Court operations due to the exigent circumstances created by the ongoing coronavirus disease 2019 (COVID-19) pandemic and in the interest of public health and safety. This Order addresses civil and criminal jury selections and jury trials, as well as grand jury selections, all of which were previously continued through August 31, 2020. It also addresses Central Violations Bureau proceedings, which were previously continued pending further Court order.

The COVID-19 pandemic continues to significantly impact Court operations in this district, as outlined in the Court’s prior Standing Orders. The national emergency declared by the President under the National Emergencies Act, 50 U.S.C. § 1601 et seq., with respect to COVID-19 remains ongoing. The finding by the Judicial Conference of the United States that emergency conditions due to the COVID-19 national emergency have materially affected and will materially affect the functioning of the federal courts generally also remains in effect.

Within the Commonwealth of Pennsylvania, the Governor has extended his declaration of a disaster emergency due to the COVID-19 pandemic. There have been more than 137,000 cases of COVID-19 in Pennsylvania to date, including more than 89,000 cases in this district. In the

past few months, the Commonwealth has undertaken a phased reopening pursuant to the Governor's Process to Reopen Pennsylvania. As part of this process, the stay-at-home orders previously in place in the counties in this district have been lifted, and some of the other restrictions previously in effect have been eased as the counties in this district have transitioned to the "yellow" and "green" phases of the Governor's plan. As the virus continues to circulate, however, many restrictions remain, and new mitigation measures have been implemented. Even in the "green" phase, masks or face coverings must be worn in public settings, six-foot physical distancing must be maintained, and indoor gatherings of more than 25 persons are prohibited. Businesses are required to conduct their operations through individual teleworking whenever possible and, if conducting in-person operations, must comply with all applicable guidance issued by the Governor, the Department of Health, and the Centers for Disease Control and Prevention (CDC). In addition, individuals who travel to areas with a high number of COVID-19 cases are advised to quarantine for 14 days upon their return to Pennsylvania.

The CDC and State and local public health authorities continue to emphasize the need for precautions to avoid exposure to the virus and prevent its spread. Recommended precautions include maintaining six feet of physical distance from others, wearing masks or face coverings in public, limiting nonessential travel, avoiding public transportation when possible, working from home, avoiding large gatherings, limiting the number and duration of in-person interactions, and regularly cleaning and disinfecting frequently touched surfaces.

With the lifting of the stay-at-home orders in the counties in this district in June 2020, this Court also began the process of reopening pursuant to the Federal Judiciary COVID-19 Recovery Guidelines issued by the Administrative Office of the U.S. Courts. The Court is committed to reopening gradually and cautiously to protect the health and safety of Court employees and all

those entering Court facilities and to mitigate the risk of a resurgence of new COVID-19 cases. To that end, the Court has continued to carefully monitor the COVID-19 data for this district and the available guidance from government officials and public health authorities to ensure that any increases in on-site activity can be accomplished safely.

In the initial phase of reopening, the Court began bringing additional employees into the courthouse on a rotating basis and resumed holding a limited number of essential in-person proceedings in a limited number of designated courtrooms to ensure that the courtrooms in use could be adequately cleaned and disinfected between proceedings. During this phase, criminal proceedings and shorter proceedings with fewer participants have been prioritized.

The Court has also been carefully planning for the resumption of jury trials, which pose additional challenges during the pandemic due to their longer duration and the large number of people involved, including jurors who often must travel significant distances to participate. The Court has been developing guidelines for the reinstatement of jury trials in this district with the goal of allowing jury trials to proceed safely and in accordance with public health guidance. The guidelines include a number of health and safety precautions, and trials conducted pursuant to the guidelines will require more staff and space than would be required in ordinary circumstances. For example, to limit the number of people in one room at a time and to ensure adequate space for physical distancing, jury selection for each trial will require the use of four courtrooms as well as the jury assembly room. Once a jury is selected, two courtrooms will be used for each trial, and an additional courtroom will be used to allow the public to observe the proceedings. To limit the number of jurors in the courthouse at one time and to ensure adequate staffing and the availability of sufficient space for jury selection and trial, only one trial will be conducted at a time, at least initially. Thus, while the Court anticipates that jury trials may resume on a limited basis in mid-

September, due to the health and safety considerations outlined above, it will be possible to convene only a small number of jury trials in September and October.

As jury trials resume on this limited basis, criminal cases will be prioritized. The Court has worked with representatives of the U.S. Attorney's Office and the Federal Community Defender Office in this district to identify those cases that are ready to proceed to trial and to prioritize the cases suitable to proceed in the initial round of jury trials. All other trials will be continued in the interest of health and safety due to the ongoing public health emergency and its impact on Court operations. It is therefore ORDERED as follows:

1. All civil jury selections and jury trials scheduled to begin before November 2, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

2. With the exception of the limited number of cases designated for trial in September or October pursuant to the procedure described above, all criminal jury selections and jury trials scheduled to begin before November 2, 2020, before any district or magistrate judge in any courthouse or Court location in this district are CONTINUED pending further Court order.

3. All jury selections and jury trials impacted by this Standing Order will be rescheduled by the presiding judge. Aside from ordering a jury trial, individual judges presiding over criminal proceedings may take such actions consistent with this Standing Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties.

4. With respect to criminal trials continued by this Standing Order, the Court is cognizant of the right of criminal defendants to a speedy and public trial under the Sixth Amendment and the particular application of that right in cases involving defendants who are



detained pending trial. In light of the circumstances regarding the COVID-19 pandemic and its impact on Court operations outlined above and in the Court's prior Standing Orders, the Court finds the ends of justice served by granting a continuance outweigh the best interest of the public and each defendant in a speedy trial. For trials continued by this Standing Order, given the current circumstances regarding COVID-19 in this district and the precautions necessary to protect health and safety during a jury trial, failure to postpone these jury trials through November 2, 2020, would be likely to make the continuation of such trials impossible or result in a miscarriage of justice. Accordingly, the additional time period from August 31, 2020, through November 2, 2020, shall be excluded under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), for all criminal cases impacted by this trial continuance. This period of exclusion is in addition to the period of exclusion previously granted for the time period from March 13, 2020, through August 31, 2020. The Court may extend the period of exclusion by further order as circumstances may warrant, and the presiding judge in any criminal case for which trial is continued under this Standing Order may make any additional findings and exclude additional time, as necessary and appropriate, regarding the scheduling of any new date for trial. Any motion by a criminal defendant seeking an exception to this Standing Order for the purpose of exercising the defendant's speedy trial rights shall be referred to the Chief Judge.

5. Grand jury selections may resume in September 2020, if conditions allow and with appropriate health and safety precautions in place. Because grand jury selections will involve the same precautions as petit jury selections, grand jury selections will not be held on days when petit jury selections are occurring.

6. Central Violations Bureau proceedings may resume in September 2020, if conditions allow and with appropriate health and safety precautions in place.

Except as modified herein, the May 29, 2020, June 30, 2020, and July 31, 2020, Standing Orders remain in effect.

IT IS SO ORDERED.

/s/ Juan R. Sánchez  
Juan R. Sánchez  
Chief Judge

Date: August 31, 2020