



# **SUPREME COURT OF MISSOURI**

## **en banc**

March 26, 2021  
Effective March 26, 2021

### **OPERATIONAL DIRECTIVES**

As local COVID-19 levels fluctuate and access to approved COVID-19 vaccines increases, the Supreme Court of Missouri provides these Operational Directives to the courts of this state. The Court recognizes that conditions vary across the state; therefore, the appropriate precautionary measures for each court facility will also vary. Nevertheless, Missouri courts must maintain a certain degree of uniformity in our response to the COVID-19 pandemic. Lawyers, litigants, victims, judicial employees, witnesses, jurors, and the public need to know what to expect when they engage with the Missouri judicial system regardless of where that engagement occurs. Accordingly, even though the solutions may vary by locale, the purpose of these Operational Directives is to establish some uniformity in approach among Missouri courts to the challenges created by the COVID-19 pandemic and access to approved COVID-19 vaccines.

As courts navigate resuming in-person court proceedings with the public and court personnel at various stages of vaccination, the presiding or chief judge of the applicable circuit or court are directed to adhere to the following Operational Directives. While members of the judiciary, its employees, and litigants may be fully vaccinated,<sup>1</sup> courts must continue to operate in a manner that protects all persons who have business in Missouri courts regardless of vaccination status. The citizens and employees who enter Missouri court facilities must feel confident for their own safety and understand that the health and welfare of every litigant, juror, witness, victim, judicial employee, attorney, and participant is paramount in the decisions that are made under these Operational Directives.

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<sup>1</sup> Under the most recent Center for Disease Control and Prevention (CDC) guidelines, a person is fully vaccinated two weeks after he or she “received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna)” or two weeks after he or she “received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen).”

As set forth below, Missouri courts may operate in one of five operating phases. Each Operating Phase reflects differing approaches to in-person proceedings, personnel and staffing, and courthouse operations. How those approaches will vary depends on local conditions, the needs and rights of the litigants and victims, the physical layouts of court facilities, and the abilities of the judicial and non-judicial personnel. These Operational Directives are designed to assist courts in ensuring public safety when making decisions at the local level. Accordingly, presiding judges and chief judges should monitor local circumstances and conditions on a regular basis, including access to approved COVID-19 vaccines in the community in which the courthouse or court facility is located. Any movement to a higher operating phase under these Operational Directives can be made only after a court has been in the prior operating phase for a period of at least 14 calendar days. A court may revert back immediately to a prior operating phase when local conditions and circumstances require it. Prior to changing operating phases, the presiding judge or chief judge shall submit to the Clerk of this Court a notice in the form attached as exhibit A. Courts must notify the public when transitioning to a new operating phase and send any order or notice to this Court for posting on the Missouri Courts' website.

**A court may move to Operating Phase Four only upon approved COVID-19 vaccines being readily accessible in the community in which the courthouse or court facility is located.** No court can transition beyond Operating Phase Four until the Court's order dated March 26, 2021, is amended or rescinded.

The presiding or chief judge should make efforts to communicate to The Bar the precautions that are being taken and any other COVID-19 related developments in the circuit or district.

The Court is closely monitoring policy changes recommended by state and local government agencies and the CDC and will update these Operational Directives as necessary.

## **Directives**

### **A. Gateway Criteria**

Consider each of the criteria below before progressing or reverting to a new operating phase:

1. The number of confirmed COVID-19 cases in the court facility within the last 14 days.
2. Any local stay-at-home orders or gathering restrictions.
3. Improvement in local COVID-19 health conditions over a 14-day period, including the number of confirmed COVID-19 cases and related deaths.
4. Consultation with local health officials or departments concerning changes to levels of courthouse activities.

5. Consultation with local judiciary partners such as children's division personnel, juvenile officers, members of the local bar, prosecutors and public defenders, law enforcement, and probation and parole.
6. Accessibility to approved COVID-19 vaccines in the community in which the courthouse or court facility is located.

#### **B. Operating Phase Approach**

1. Based upon the Criteria above, a presiding or chief judge may order a change of Operating Phase for each court facility in which judicial functions are carried out.
2. All judicial functions and activity within each court facility must follow the same Operating Phase as directed by the presiding or chief judge as governed by these Operational Directives.
3. A presiding or chief judge may modify the terms and conditions of an operating phase to be more stringent than these Operating Directives provide, but not less stringent.
4. Any order moving courthouse operations from one operating phase to another must implement appropriate policies protecting litigants, witnesses, victims, judicial employees, attorneys, and other participants involved in judicial proceedings through:
  - a) Social distancing and/or occupancy rate restrictions;
  - b) A COVID-19 Notice prohibiting access to the premises for individuals who have been exposed to or are exhibiting symptoms of COVID-19, listing necessary contact information for individuals not authorized to enter the premises, and advising those entering a court facility of required precautionary measures, such as social distancing and the use of face masks or coverings;
  - c) Coordination with supervisors to ensure any employee experiencing COVID-19 symptoms, regardless of vaccination status, remains at home;
  - d) Preparation for reasonable workplace accommodations for employees who remain more vulnerable to COVID-19; and
  - e) Preparation for the potential resurgence of COVID-19 cases.

#### **C. Operating Phase Zero**

1. Consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions to local health conditions.
2. Suspend all in-person court proceedings consistent with the Court's April 17, 2020, Order.

The suspension of in-person proceedings is subject to the following exceptions:

- Proceedings necessary to protect the constitutional rights of criminal defendants, including the right to a speedy trial, and the rights afforded under section 544.676.3;
- Proceedings pursuant to chapters 210 and 211 pertaining to juvenile delinquency and abuse, neglect, and termination of parental rights;
- Proceedings pursuant to chapter 453 pertaining to adoption;
- Proceedings in which civil or criminal jury trials are already in progress as of March 16, 2020;
- Proceedings pursuant to chapter 455 pertaining to orders of protection;
- Proceedings related to emergency child custody orders;
- Proceedings related to petitions for temporary restraining orders or other forms of temporary injunctive relief;
- Proceedings related to emergency mental health orders;
- Proceedings pursuant to Chapter 475 for emergency guardianship or conservatorship;
- Proceedings directly related to the COVID-19 public health emergency;
- Oral arguments regarding time-sensitive matters; and
- Other exceptions approved by the Chief Justice of this Court.

Courts may set in-person hearings in the above listed proceedings but it does not mandate a judge set a hearing in any individual case. The presiding judge of each circuit court and the chief judges of each appellate court are authorized to determine the manner in which the listed in-person exceptions are to be conducted. Such proceedings shall be limited to the attorneys, parties, witnesses, security officers, and other individuals necessary to the proceedings as determined by the judge presiding over the proceedings. The judge presiding over such proceedings has the discretion to excuse jurors or other individuals who cannot or should not appear as a result of risks associated with COVID-19.

3. All proceedings that do not require in-person appearances of parties or counsel are not suspended and may continue in the manner and at the discretion of the judge in the matter as circumstances allow.
4. Encourage judges and court staff to continue utilizing all available technologies – including teleconferencing and video conferencing – whenever possible to limit in-person courtroom appearances to the extent not prohibited by constitutional or statutory provisions.
5. Implement appropriate levels of screening where possible at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.

6. Suspend any non-essential travel by judicial employees for work-related functions.
- Continually reevaluate the Gateway Criteria for indications that a courthouse is ready to move to a different Operating Phase.

#### **D. Operating Phase One**

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions consistent to local health conditions.
2. Reexamine and update local court orders and COVID-19 Notices as appropriate.
3. Consider resuming only the most critical in-person proceedings and restrict grand and petit jury proceedings to only the most extraordinary, pressing, and urgent cases. (Operational Directives on conducting jury proceedings will be forthcoming from this Court as pandemic and health conditions improve.)
4. Large venues and common areas such as break rooms should be closed. Keep occupancy rates in courtrooms, jury assembly rooms, and other areas in the court facility to an occupancy rate of 10 or less whenever possible and operate under strict social distancing protocols. Face masks or coverings shall be required in all public court areas and during all court proceedings unless good cause is shown to limit the requirement in a particular proceeding, such as for a witness who is testifying. Require tape or other visible means be used to demark six-foot distances where practical. Allow vulnerable<sup>2</sup> litigants, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or continue or postpone their required presence at the court facility.
5. Encourage judges and court staff to continue utilizing all available technologies – including teleconferencing and video conferencing – whenever possible to limit in-person courtroom appearances to the extent not prohibited by constitutional or statutory provisions.
6. Suspend any non-essential travel by judicial employees for work-related functions.
7. Implement appropriate levels of screening where possible at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.

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<sup>2</sup> Vulnerable individuals are defined by the CDC as individuals 65 years or older or individuals with underlying medical conditions, particularly if not well controlled, including those who suffer from chronic lung disease, moderate to severe asthma, serious heart conditions, immune disorders, obesity, diabetes, or chronic kidney or liver disease.

8. Increase cleaning and disinfection of common areas and consider providing hand sanitizers and wipes. **Consider utilizing HEPA air filters to maintain air quality given the specific size of each courtroom, office, or space in the court facility.**
9. Face masks or coverings shall be required except when an individual is alone in a private office.
10. Vulnerable judicial employees should work with supervisors to stay at home. Employees who live with or provide care for vulnerable individuals should do the same to the greatest extent possible to reduce chances that they could carry the virus to those vulnerable individuals.
11. Judicial employees should observe at least a six-foot minimum physical distance from others in all offices, meetings, and court proceedings. Require tape or other visible means be used to demark six-foot distances where practical.
12. Allow judicial employees to work in shifts whenever possible and feasible to keep staffing levels to a bare minimum to support court activity.
13. Allow judicial employees to stay home where possible if the employee:
  - a) Is subject to a quarantine or isolation order or is living with or caring for such an individual;
  - b) Has been advised by a health care provider to self-quarantine or is living with or caring for an individual who has been advised to self-quarantine;
  - c) Is considered high risk based on local or state health officials or departments criteria for contracting COVID-19, or is living with or caring for such an individual;
  - d) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual; or
  - e) Is caring for a child whose school or place of care has been closed or whose childcare provider is unavailable due to COVID-19 precautions.

A court cannot proceed to Operating Phase Two until it has completed at least 14 days in Operating Phase One. Before proceeding to Operating Phase Two, a court must reevaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

#### **E. Operating Phase Two**

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions to local health conditions.
2. Reexamine and update local court orders and COVID-19 Notices as appropriate.

3. Increased in-person court proceedings, including the most extraordinary, pressing, and urgent grand and petit jury proceedings, can begin where they can safely be conducted in compliance with social distancing protocols and occupancy rate limitations applicable to the local community. (Operational Directives on conducting jury proceedings will be forthcoming from this Court as pandemic and health conditions improve.)
4. Keep occupancy rates in large venues and common areas such as courtrooms, jury assembly rooms, jury deliberating rooms, break rooms, and other areas in court facilities to an occupancy rate of 25 or less whenever possible and operate under social distancing protocols. Face masks or coverings shall be required in all public court areas and during all court proceedings unless good cause is shown to limit the requirement in a particular proceeding, such as for a witness who is testifying. Require tape or other visible means be used to demark six-foot distances where practical. Continue to allow vulnerable litigants, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or postpone their required presence at the court facility.
5. Continue to encourage judges and court staff to utilize all available technologies – including teleconferencing and video conferencing – whenever possible to limit in-person courtroom appearances to the extent practicable and not prohibited by constitutional or statutory provisions.
6. Continue to suspend any non-essential travel by judicial employees for work-related functions.
7. Continue to implement appropriate levels of screening at court facility entrances to mitigate against individuals experiencing symptoms related to COVID-19 from entering court facilities. Such screening may include temperature checks and screening questions.
8. Continue increased cleaning and disinfection of common areas and consider providing hand sanitizers and wipes. **Consider utilizing HEPA air filters to maintain air quality given the specific size of each courtroom, office, or space in the court facility.**
9. Face masks or coverings shall be required except when an individual is alone in a private office.
10. Continue to allow vulnerable judicial employees to work with supervisors to establish reasonable accommodations for those vulnerabilities.
11. Judicial employees, when in the court facility, should continue to maximize physical distance from others. Six foot distancing should continue to be observed in all offices, meetings, and court proceedings. Require tape or other visible means be used to demark six-foot distances where practical.

12. Continue to allow judicial employees to work in shifts whenever possible and feasible to keep staffing levels to a bare minimum to support increased court activity.
13. Allow judicial employees to stay home if the employee:
  - a) Is subject to a quarantine or isolation order or is living with or caring for such an individual;
  - b) Has been advised by a health care provider to self-quarantine or is living with or caring for an individual who has been advised to self-quarantine;
  - c) Is considered high risk based on local or state health official or department criteria for contracting COVID-19, or is living with or caring for such an individual; or
  - d) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual.

A court cannot proceed to Operating Phase Three until it has completed at least 14 days in Operating Phase Two. Before proceeding to Operating Phase Three, a court must reevaluate the Gateway Criteria to ensure readiness to progress to the next Operating Phase.

#### **F. Operating Phase Three**

1. Continue to consult with local judiciary partners and rely on local health officials or departments and CDC guidance to adapt court operating decisions to local health conditions.
2. Reexamine and update local court orders and COVID-19 Notices as appropriate.
3. Resume in-person court proceedings, including grand and petit jury proceedings, that can be conducted in compliance with social distancing protocols and occupancy rate limitations applicable to the local community. (Operational Directives on conducting jury proceedings will be forthcoming from this Court as pandemic and health conditions improve.)
4. Large venues and common areas such as courtrooms, jury assembly rooms, jury deliberating rooms, break rooms, and other areas in the court facility can operate under social distancing protocols. Face masks or coverings shall be required in all public court areas and during all court proceedings unless good cause is shown to limit the requirement in a particular proceeding, such as for a witness who is testifying. Consider continuing to allow vulnerable litigants, witnesses, victims, attorneys, and other individuals involved in court proceedings to participate in the proceedings remotely or continue or postpone their required presence at the court facility.



5. Continue to encourage judges and court staff to utilize all available technologies – including teleconferencing and video conferencing – whenever possible to limit in-person courtroom appearances to the extent not prohibited by constitutional or statutory provisions.
6. Consider terminating enhanced screening procedures at court facility entrances.
7. Continue cleaning and disinfection of common areas and consider providing hand sanitizers and wipes. **Consider utilizing HEPA air filters to maintain air quality given the specific size of each courtroom, office, or space in the court facility.**
8. Face masks or coverings shall be required except when an individual is alone in a private office.
9. Allow vulnerable judicial employees to return to work but encourage supervisors to make reasonable accommodations to address those vulnerabilities.
10. Judicial employees should continue to adhere to social distancing guidelines in court facilities.
11. Consider resuming normal staffing schedules for judicial employees.
12. Consider discontinuing the suspension of non-essential travel by judicial employees for work-related functions.
13. Allow judicial employees to stay home if the employee:
  - a) Is subject to a quarantine or isolation order or is living with or caring for such an individual;
  - b) Has been advised by a health care provider to self-quarantine or is living with or caring for an individual who has been advised to self-quarantine;
  - c) Is experiencing symptoms of COVID-19 and seeking medical diagnosis, or is living with or caring for such an individual.

#### **G. Operating Phase Four**

**This phase is intended to help courts balance the need for continued precautionary measures when interacting with the public and the ability to ease such restrictions among smaller gatherings, particularly amongst court personnel, as a result of increased access to the approved COVID-19 vaccines and the number of individuals fully vaccinated. As with all prior phases, presiding and chief judges must continue to monitor local health conditions and CDC guidelines to best ensure the safety of the public and court personnel.**

##### **1. Interaction with the Public**

- a) **Precautionary measures are mandatory when conducting in-person court proceedings regardless of employees' and participants' vaccination status.**

**Precautionary measures include social distancing and use of face masks or coverings. The face mask or covering requirement can be modified for good cause shown in a particular proceeding, such as when a witness is testifying. Consider continuing to allow vulnerable litigants, witnesses, victims, attorneys, and participants to appear remotely or continue or postpone their required presence at the court facility.**

- b) Precautionary measures, such as social distancing and face masks and coverings, are mandatory in public areas of court facilities regardless of an individual's vaccination status.**
- c) Continue frequently cleaning and disinfecting common areas used by the public and provide access to hand sanitizer and cleaning wipes where possible. Consider utilizing HEPA air filters to maintain air quality given the specific size of each courtroom, office, or space in the court facility.**
- d) Courts and judges are encouraged, when appropriate, to continue utilizing all available technologies – including teleconferencing and video conferencing – to conduct court activities remotely in order to limit the number of in-person proceedings conducted in courthouses.**

## **2. Court Personnel**

- a) Court personnel that have no or limited interaction with the public in their respective workspaces are not required to wear face masks or coverings or comply with social distancing protocols.**
- b) Court personnel are not required to wear face masks or coverings or comply with social distancing protocols in shared workspaces or when interacting with other court personnel in non-public areas of court facilities.**
- c) Regardless of an individual employee's vaccination status, judicial employees should return to work duties unless otherwise instructed by a supervisor. Supervisors should encourage employees to receive an approved COVID-19 vaccine. Supervisors should make reasonable accommodations in the workplace for employees who remain more vulnerable to COVID-19.**
- d) Fully vaccinated employees who are exposed to someone who has COVID-19 or is suspected of having COVID-19 are not required to quarantine but should continue to monitor for symptoms for 14 days following the exposure.**
- e) Judicial employees can travel for necessary work-related functions.**

**EXHIBIT A**

**Notice to the Supreme Court of Missouri of Higher/Lower Operating Phase**

I, \_\_\_\_\_, (presiding judge or chief judge) of  
\_\_\_\_\_ notify the Supreme Court of Missouri that the  
following will move to Operating Phase \_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_, 2021.

Mark all that apply:

\_\_\_\_ Entire Judicial Circuit/Appellate District; or

\_\_\_\_ County/Counties of \_\_\_\_\_ within the Circuit;

and/or

\_\_\_\_ Municipal Division(s) of \_\_\_\_\_ within the Circuit.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Presiding Judge or Chief Judge)