

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

In re: Coronavirus (COVID-19) Phased-in
Recovery Plan and Extension of Temporary
Procedures Under the Coronavirus Aid,
Relief, and Economic Security (CARES) Act

Administrative Order

20-AO-038

ADMINISTRATIVE ORDER

The Court issues this Administrative Order as another in a series of Administrative Orders to address court operations during the time of the spread of the Coronavirus Disease that emerged in 2019, known as COVID-19.

In response to the exponential spread of COVID-19 and the declaring of a public emergency by the Governor of the State of Michigan and the President of the United States, the court previously issued 20-AO-020 (Restrictions on Visitors To Eastern District of Michigan Courthouse Facilities); 20-AO-021 (Court Operations Under The Exigent Circumstances Created by COVID-19 and Related Coronavirus Health Conditions); 20-AO-022 (Initial Appearances During Period of Limited Court Operations Due to COVID-19); 20-AO-023 (Misdemeanor Ticket Call During Period of Limited Court Operations Due to COVID-19); 20-AO-024 (Temporary Procedure for Motions to Extend Self-Report Dates and to Review Detention Orders); 20-AO-025 (Limited Operations Due to COVID-19 Pandemic - Authorization To Use Video and Telephone Conferencing); 20-AO-026 (*Pro Se* Filings The Exigent Circumstances Created by COVID-19 and Related Coronavirus Health Conditions); and 20-AO-027 (Temporary Use of Video Teleconferencing, Telephone Conferencing, and Other Procedures in Criminal Matters Pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES ACT")).

The threat to public health presented by COVID-19 has not abated. However, precautionary measures mandated by the Governor of Michigan have helped check the spread of the virus. The Centers for Disease Control and Prevention (CDC) and other public health authorities have continued to advise taking precautions to reduce the possibility of exposure to the virus and slow the spread of the disease, including the implementation of multi-phase business recovery plans gradually to resume operations.

The Court's recovery plan will follow a multi-phase approach. The pace and progression of recovery through each phase will be based on health and business recovery guidance from the Administrative Office of the United States Courts and the State of Michigan. The Court has applied the Gating Criteria recommended by the Administrative Office (incorporating the JDART 14-Day COVID Trend Service), which indicates that a phase adjustment presently is appropriate. As of June 29, 2020, there were 70,223 confirmed cases of COVID-19 (6,161 confirmed deaths) in Michigan (11,572 confirmed cases and 1,441 confirmed deaths in the City of Detroit). The number of confirmed cases in Michigan since the highest 7-day moving average on April 4, 2020 of 1,626 has declined to a 7-day moving average of 298 as of June 26, 2020, with some

days at less than 100 cases per day, due to the mitigation efforts by the citizens and many officials in the State of Michigan.

The purpose of this order is to outline a basic plan for the first phase to return the Court to normal operations. During the first phase, employees will return to the Court's physical facilities gradually and in staggered shifts. Once the return process is in place and the Court is satisfied that in-person business can be conducted without seriously jeopardizing public health and safety, the Court will release its plan for reopening its physical facilities to the public.

Throughout all phases of recovery, the Court will institute measures to protect those individuals at higher risk of complications should they contract COVID-19 (vulnerable individuals). Vulnerable individuals are:

- People 65 years and older;
- People who live in a nursing home or long-term care facility;
- People of all ages with underlying medical conditions, particularly if not well controlled, including:
 - People with COPD (chronic obstructive pulmonary disease), moderate to severe asthma, or pulmonary fibrosis;
 - People who have serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies;
 - People who are immunocompromised (many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications);
 - People with severe obesity (body mass index [BMI] of 30 or higher);
 - People with diabetes;
 - People with chronic kidney disease;
 - People with liver disease;
 - Pregnant women;
 - People with sickle cell disease;
 - People with type 1 or type 2 diabetes mellitus;
 - People with cerebrovascular disease (affects blood vessels and blood supply to the brain);
 - People with cystic fibrosis;
 - People with hypertension or high blood pressure;
 - People with neurologic conditions, such as dementia;
 - People with thalassemia (a type of blood disorder).

Reasonable accommodations will be provided wherever possible for individuals and employees who: 1) are vulnerable individuals; 2) are caring for vulnerable individuals in their households; 3) rely solely on public transportation; or 4) have child care complications due to the closure of schools or daycare centers because of COVID-19.

Jury trials during the pandemic present unique challenges. Jury selection in all places of holding court in this District involve large jury venire pools. These pools often consist of many individuals in the categories identified by the CDC as being at risk, individuals involved in essential public functions, and individuals responsible for children unable to attend school or daycare due to the pandemic. Conventional courtroom layouts do not allow jury trial participants to adhere to the necessary precautions to reduce the possibility of exposure to the disease. Attorneys who represent criminal defendants are severely limited, or in some cases prohibited, from physical visitation of detained clients for purposes of consultation and trial preparation.

THEREFORE, to continue to protect the health and safety of the public, court personnel, counsel, litigants, jurors, and all other case participants; to implement a multi-phase recovery plan to gradually resume all court operations; to reduce the size of public gatherings necessarily attendant to jury selection and reduce unnecessary travel; and to permit effective trial preparation of counsel, the United States District Court for the Eastern District of Michigan hereby issues the following ORDER:

FACILITIES:

1. All courthouses of the United States District Court for the Eastern District of Michigan shall remain closed to the public until further order of the Court. Only persons having official business authorized by this Administrative Order or by the Chief Judge (or a judicial officer to whom a particular case is assigned after consultation with the Chief Judge), may enter courthouse property. This restriction applies to all divisional locations.

Ann Arbor

200 East Liberty Street
Ann Arbor, Michigan 48104

Bay City

1000 Washington Avenue
Bay City, Michigan 48708

Detroit

Theodore Levin United States Courthouse
231 W. Lafayette Boulevard
Detroit, Michigan 48226

Flint

600 Church Street
Flint, Michigan 48502

Port Huron

526 Water Street
Port Huron, Michigan 48060

2. All mass public gatherings are suspended, including, but not limited to, naturalization ceremonies, group tours and visits, moot courts and mock trials, bar group meetings, and seminars. During this phase, naturalization ceremonies will be held at the United States Customs and Immigration Services building in Detroit.

3. The use of face masks, cloth face coverings, or approved face shields is required for all individuals in a courthouse, unless otherwise directed by the Court or a courthouse official designated by the Chief Judge. The face covering must completely

cover the wearer's nose and mouth at all times. Visitors seeking entrance to a courthouse without a face covering will be directed to contact by telephone the office to be visited to explore alternatives to entering the courthouse. All visitors to the courthouses will be subject to questionnaire screenings and temperature checks at the courthouse entrances and will be denied admittance if they have a temperature in excess of 100.4° or do not pass a screening.

4. Common areas where employees or the public congregate to interact (e.g., snack shops, break rooms, fitness centers) will be closed. Physical distancing will be enforced in other public or common areas such as jury assembly, court entrances, intake, lobbies and reception areas by visible means to demark six-foot distances where practical. Elevator use is restricted to one occupant(s). Conference rooms may not be used unless social distancing measures are observed.

CRIMINAL CASES:

1. After review of the previous authorization and based on the findings above on the status of the continued public health crisis, on my own motion, I hereby continue to authorize under section 15002(b)(1) and (b)(3) of the CARES Act, the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for the following proceedings, with the consent of the defendant, or juvenile, after consultation with counsel:

- Detention hearings under section 3142 of title 18, United States Code;
- Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
- Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
- Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
- Arraignments under Rule 10 of the Federal Rules of Criminal Procedure
- Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
- Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
- Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
- Misdemeanor pleas and sentencing as described in Rule 43(6)(2) of the Federal Rules of Criminal Procedure;
- Proceedings under chapter 403 of title 18, United States Code (commonly known as the "Federal Juvenile Delinquency Act"), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

For the reasons stated above, on my own motion, I find that felony pleas under Rule 11 of the Federal Rules of Criminal Procedure; felony sentencing under Rule 32 of the Federal Rules of Criminal Procedure; and equivalent plea and sentencing, or disposition, proceedings under chapter 403 of title 18, United States Code (commonly

known as the “Federal Juvenile Delinquency Act”) cannot be conducted in person without seriously jeopardizing public health and safety. I therefore continue to authorize video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, to be used in such proceedings under the following conditions:

- (1) the defendant, or juvenile, after consultation with counsel, consents to the use of video teleconferencing or teleconferencing for the proceeding; and
- (2) the presiding judge finds that the proceeding cannot be further delayed without serious harm to the interests of justice.

Because the CARES Act does not require the consent of a defendant or juvenile to be in writing, such consent may be obtained in whatever form is most practicable under the circumstances, as long as the defendant’s consent is clearly reflected in the record.

Under section 15002(b)(3) of the CARES Act, these authorizations will remain in effect until September 29, 2020 unless terminated earlier by order of this Court. If emergency conditions continue to exist after September 29, 2020, I will review these authorizations and determine whether to extend all or some of them.

If in-person court proceedings are necessary, they will be limited to 12 people, including court staff.

Public access to public/in-court proceedings will remain available.

2. Jury trials will not resume until the following can be accomplished:

- screening can be commenced on potential jurors to minimize the chance of an infected individual entering the courthouse;
- courtrooms and jury gathering spaces can be modified to comply with physical distancing and safety requirements;
- prospective jurors and sworn jurors can be provided with personal protective equipment (e.g., face masks, gloves, possibly face shields) where necessary.

3. Jury trials will commence on a date to be announced, but no earlier than the month of August 2020, and then only for critical criminal trials. A critical criminal trial will be determined by the presiding judge after assessing and balancing the following factors:

- Defendant is in custody;
- Time in detention approaches a defendant's likely sentencing guidelines minimum term;
- Detained defendant not receiving credit for custody time before trial;
- Passage of time may affect availability of prosecution or defense witnesses;
- Defendant has made speedy trial demand;
- COVID-19 high risk factors affecting defendant or defense counsel;

- Material witness is in custody;
- Seriousness of the charge;
- Issues that a delay may have on a victim;
- Jury trial was underway when the court was closed;
- Likelihood that the public's interest may draw a crowd to the courthouse;
- Needs of the case affecting the potential size of the jury pool;
- Potential length of trial;
- The impact that the case might have on trials in related cases;
- Lawyers' travel needs;
- Need for individual *voir dire* questionnaires;
- Multiple defendants.

4. Bench trials in critical criminal cases may not begin until the courthouse at the place of holding court is open to the public.

5. Grand jury proceedings will proceed only when necessary and with the approval of the Chief Judge, upon conditions prescribed by the Chief Judge to minimize and ameliorate the transmission of COVID-19.

6. All in-person reentry and restart court sessions will be conducted via videoconference or teleconference.

7. All petty offense proceedings are suspended until further notice.

8. All other criminal matters before magistrate judges, including initial appearances, arraignments, detention hearings (and appeals to district judges from detention or bail orders), and issuance of search warrants shall continue to take place via remote video link.

9. All detainees, upon arrival at a courthouse and before appearance in court, will undergo screening for fever and other symptoms of COVID-19 contamination. Such screening will be administered by or at the direction of the United States Marshals Service (USMS) or its agencies or designees. The assigned judicial officer must be notified if the detainee exhibits risk factors and will have the discretion to order the detainee returned to the facility from which they came.

CIVIL CASES:

1. Jury trials will commence on a date to be announced, but no earlier than the month of November 2020.

2. In-court bench trials will commence on a date to be announced, but no earlier than the date the courthouse at the place of holding court is open to the public.

3. Videoconferences and teleconferences will continue to be used for all oral arguments, pretrial conferences, and settlement conferences until it is determined that individuals may safely enter the building and appear in person.

4. When in-person court proceedings are permitted, they will be limited to 10 people (including court staff), and in-person chambers proceedings will be limited to the number of people that permits the observance of the physical distancing requirement of six feet in all instances.

5. Public access to public/in-court proceedings will remain available.

EMPLOYEES:

1. All employees of the District Court will continue to telework. Beginning on the start date set out in paragraph 2, below, employees of the District Court may return to the courthouses only as needed and when directed by their supervisors to perform essential functions that cannot be performed remotely. Supervisors must establish rotating shift/work-day schedules for days in the office/workplace to ensure that minimum six-foot social distancing is strictly followed at all times while in the workplace. Work schedules for case managers and court reporters will be approved by their supervisors, in consultation with the judicial officer, but in no case may more than three members of chambers staff be present in chambers on the same day.

2. The start dates for the places of holding court in this district are as follows:

Ann Arbor – July 20, 2020

Bay City – July 20, 2020

Detroit – July 20, 2020

Flint – July 20, 2020

Port Huron – July 20, 2020

3. Employees (including judicial officers) must be tested for the active COVID-19 virus with negative results within four days before first entering a courthouse. Probation and Pretrial Services officers may be subject to additional testing subject to the direction of their court unit executive. Employees required to report to a courthouse must self-monitor for COVID-19 symptoms (as outlined by the CDC as of July 1, 2020) before reporting to the workplace. Those employees must complete a daily health screen before leaving home to determine if they have COVID-19 symptoms associated with COVID-19. Health screens also may be conducted by a department supervisor or electronically (when available). If an employee does not pass a health screen, that employee is not permitted to enter a courthouse and must contact a health care provider for further instructions. The employee must also notify his or her immediate supervisor that he or she did not pass the daily health screening. Employees will be subject to temperature checks at the courthouse entrances and will be sent home if they have a temperature in excess of 100.4°. Employee temperature checks will occur at the start of the workday and upon reentry after exiting the courthouse during the workday. If any COVID-19 symptoms are present, the employee must stay home and contact his or her healthcare

provider for medical care and guidance regarding when it is safe to return to the workplace. Employees who are sent home may telework, health permitting.

4. While in the workplace, employees must follow current guidance from the Centers for Disease Control and the Michigan Department of Health, which includes frequent hand washing, maintaining social distancing of six feet from others, refraining from touching nose and face with unwashed hands, and sanitizing personal workspace. Employees must sanitize common use areas and items within their department or unit (e.g. door handles, copy machine, galley appliances). Use of another person's telephone, electronic office equipment or desk supplies is prohibited.

5. The use of face masks, cloth face coverings, or face shields is required for all employees in a courthouse. Face coverings must completely cover the wearer's nose and mouth at all times. Employees may temporarily remove face coverings when alone in a private office or workspace that permits at least six feet of physical distance from other persons.

6. All employees will maintain individual attendance logs to show when they are present in the courthouse.

7. All employees will maintain individual movement logs listing the locations of where they go in courthouse public areas, as well as all places outside of the courthouse during the workday. Employees must limit movement within the courthouse to business that cannot be conducted virtually.

8. Logs will be produced when an employee has contracted, or been exposed to someone who has contracted, COVID-19.

OTHER:

1. The Clerk's Office intake windows remain closed. In person *Pro Se* filings continue to be suspended. *Pro Se* filers may file documents by United States mail, or by email to the Court using the temporary procedures outlined in Administrative Order 20-AO-036. Electronic filings may continue to be made through the CM/ECF system. For those without access to CM/ECF, documents may be submitted by mail. Non-business hours emergency filings must follow the procedure outlined on the Court's internet website, mied.uscourts.gov, under the Clerk's Office tab. Clerk's Office staff will be available by telephone from 8:30 a.m. to 4:30 p.m. each business day as follows:

Ann Arbor: (313) 234-5000
Bay City: (989) 894-8800
Detroit: (313) 234-5000
Flint: (810) 347-7840
Port Huron: (313) 234-5000

2 Payments by attorneys using the CM/ECF system will be processed via credit card or ACH utilizing Pay.gov. Payments by check or money order will be accepted by mail and will be processed when received. Cash payments are not accepted.

3. All Pretrial Services & Probation Office employees will operate remotely, except as needed and directed by their supervisor. For information or assistance, a duty probation officer will be available at 313-234-5400; a duty pretrial services officer will be available at 313-234-5300.

This Administrative Order supersedes Administrative Order 20-AO-021, which is hereby vacated.

The Court will continue to monitor developments relating to the COVID-19 outbreak in Michigan and elsewhere, as well as the guidance from the CDC and the Michigan Health Department. The Court will issue further Orders as necessitated by such developments. This Order shall remain in effect until amended or vacated.

IT IS SO ORDERED.

FOR THE COURT

S/DENISE PAGE HOOD

Denise Page Hood
Chief Judge