



CENTERVILLE WORK SESSION AGENDA

NOTICE IS HEREBY GIVEN THAT THE CENTERVILLE CITY COUNCIL WILL HOLD ITS WORK SESSION MEETING AT 5:30 PM ON JULY 20, 2021 AT CENTERVILLE CITY HALL COUNCIL CHAMBERS, 250 N. MAIN STREET. THE AGENDA IS SHOWN BELOW.

Meetings of the City Council of Centerville City may be conducted via electronic means pursuant to Utah Code Ann. 52-4-207, as amended. In such circumstances, contact will be established and maintained via electronic means and the meeting will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.

Centerville City, in compliance with the Americans With Disabilities Act, provides accommodations and auxiliary communicative aids and services for all those citizens in need of assistance, including hearing devices. Persons requesting these accommodations for City-sponsored public meetings, services, programs, or events should call Jacob Smith, Administrative Services Director, at 801-295-3477, giving at least 24 hours notice prior to the meeting.

The full packet of backups materials can be found at <http://centerville.novusagenda.com/agendapublic>.

A. ROLL CALL

B. BUSINESS

1. Justice Court Discussion
2. Water Conservation Discussion

C. CLOSED SESSION (Closed Meeting, if necessary, for reasons allowed by State Law, including, but not limited to, the provisions of section 52-4-205 of the Utah Open and Public Meetings Act, and for the Attorney-Client matters that are privileged pursuant to Utah Code ann. 78B-1-137, as amended)

D. ADJOURNMENT

Jennifer Hansen
Centerville City Recorder

**CENTERVILLE
WORK SESSION
Staff Backup Report
7/20/2021**

Item No. 1

Short Title: Justice Court Discussion

Initiated By: City Council

Staff Representative: Justice Court Judge David Miller

SUBJECT

RECOMMENDATION

BACKGROUND

ATTACHMENTS:

Description

- ▢ Justice Court - Board Recommendation to Task Force
- ▢ Justice Court - Task Force
- ▢ Justice Reform - Editorial (2007)
- ▢ Pandemic Administrative Order
- ▢ Risk Phase Response Plan



UTAH STATE COURTS

Recommendations to the Utah Judicial Council's Task Force on Justice Court Reform



**Board of Justice Court Judges
June 30, 2020**

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<i>Bring justice courts under the umbrella of the Administrative Office of the Courts for administrative purposes.</i>	

Recommendation #9 19

The Utah Code should state clearly that justice courts, even if under local sponsorship, are a part of the judicial branch of government and are governed by the Utah Judicial Council, not local officials.

Recommendation #10 20

Standardize the budget of any justice courts that remain in local control by basing them on weighted caseload. Courts should be funded by general government funds. Funds used to supply advocates, like indigent defense services and prosecutorial services, should be excluded from court budgets. Court activities should be decoupled as much as possible from revenue generation.

Recommendation #11 24

Consolidate part-time clerical positions to the extent possible through interlocal agreements or by utilizing district court clerks with excess capacity.

Recommendation #12 26

The Council should determine the best judicial structure to implement the foregoing recommendations.



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June 18, 2020

Dear Utah Justice Court Reform Task Force Members:

Justices of the peace (the predecessors of modern-day justice court judges) existed in England since the mid-1300's. They were part of our common law system which the colonists brought with them from England as they settled in what later became known as the United States of America.

Justices of the peace were recognized in Utah in 1850, when Congress established the Utah Territory. The Utah Constitution, in 1896, contained a provision that courts not of record were to be established by statute, and that requirement was satisfied by the continuing function of justices of the peace.

In 1989, the office of justice of the peace was eliminated, and the state created justice courts, presided over by justice court judges. Justice courts are established by counties and municipalities and have authority to handle class B and C misdemeanors, violations of ordinances, small claims cases, and infractions which are committed within their territorial jurisdictions. The jurisdiction of justice courts is determined by the boundaries of local government entities such as cities or counties. The local government entities hire the justice court judges.

The two types of justice court judges are county judges who are appointed by a county commission and stand for retention election every six years, and municipal judges who are appointed by the city executive and stand for retention election every six years, as well.

Some justice court judges in busier courts hear cases daily, while others have more limited hours each week. Justice court judges are not required to be attorneys, except in Utah's five most populous counties. They are required to receive thirty hours of continuing legal education annually to retain their certification as judges. In July, 2019, there were eighty-one justice court judges who serve in one hundred and fifteen county and municipal courts.

The Utah Judicial Council is the policy-making body for the judiciary in Utah, and it has the constitutional authority to adopt uniform rules for the administration of all the courts in the state. This council sets standards for judicial performance, court facilities, and support services. By rule, this council established a Board of Judges for each level of court. These boards adopt administrative rules in accordance with the Utah Judicial Council guidelines, advise the Judicial Council, supervise implementation of Council policies, and serve as liaisons between judges and the Council.



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Present members of the Board of Justice Court Judges include: Judge Vernon F. Romney (Provo City justice court), chair of the board; Judge Brian Brower (Clearfield justice court), vice-chair of the board; Judge Jon Carpenter (Carbon County justice court); Judge Augustus Chin (Holladay justice court); Judge Morgan Cummings (Lehi justice court); Judge Paul Farr (Sandy justice court); Judge Mark McIlff (Sixth District justice courts); Judge Cyndee Probert (Fillmore justice court); Judge Brook Sessions (Wasatch County justice court); and Judge Clay Stucki (Ogden City justice court).

Justice Courts have continued to evolve over time, and the task force which you are a member of has been created to evaluate the structure and operations of justice courts, and to also propose potential improvements and reforms to justice courts in Utah. The Justice Court Board has been working on potential improvements to Utah's justice courts for many years. The recommendations in this report to the task force have been vetted by the Justice Court Board, and we recommend them to you for your consideration, and suggest their implementation as improvements to the structure and operation of justice courts in Utah.

If you have questions about these recommendations, or about Justice Court Board input on the recommendations, please feel free to contact members of the Board for their input.

Thank you for your service on the task force.

Sincerely,

Vernon F. Romney

Provo City Municipal Justice Court Judge

Introduction

The mission of the Utah Courts is to “provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.”¹ While that system is governed in its entirety by the Utah Judicial Council, many of Utah’s courts are not operated by the state’s judicial branch. In fact, the majority of Utah cases are heard in courts of limited jurisdiction known as “justice courts” that are managed by city and county governments in more than 100 different communities.

Because ordinary citizens interact with justice courts more than all other courts combined, the public’s trust and confidence in the judicial system as a whole may be largely based on their experience with a justice court. As the most commonly encountered face of Utah’s judiciary, justice courts must reflect the integrity, transparency and accountability of other court processes and proceedings. They already do so in many respects, but there is room for systemic improvement.

As such, the Board of Justice Court Judges has compiled the recommendations that follow. These recommendations were largely inspired by a 2014 policy paper from the Conference of State Court Administrators (COSCA)² which asserted that limited jurisdiction courts require:

- A qualified judge,
- Dispositions on the record that are reviewable,
- Judicial independence supported by processes for appointment or election of limited jurisdiction judges and court funding, and
- Professional court governance.

The Utah Judicial Council and the Board of Justice Court Judges have been working on these “essential elements” for over a decade, but they have yet to fully implement COSCA’s recommendations. The recommendations that follow describe the work that remains to be done. Adopting any one of them would improve the justice courts and strengthen Utah’s judiciary as a whole. Recommendations are presented in order of importance, but all are worthy of your consideration. The Board appreciates your taking the time to review them.

¹ See www.utcourts.gov.

² *Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century* (COSCA, Policy Paper, 2013-2014), https://cosca.ncsc.org/data/assets/pdf_file/0016/23641/2013-2014-policy-paper-limited-jurisdiction-courts-in-the-21st-century.pdf (last visited Jun.23, 2020).

Recommendation #1

Replace de novo appeals to district courts with on-the-record appeals to the Utah Court of Appeals.

In 2019, justice courts adjudicated approximately 60% of all cases filed in Utah.³ Justice courts are generally the *first* (if not the *only*) courts with which most of Utah's residents have experience. As the face of Utah's judiciary, justice courts have a critical impact on the trust and confidence that the public has in all courts. To the extent that the current justice court system:

- is inefficient,
- lacks transparency,
- provides no feedback to judges regarding the correctness or quality of their decisions,
- requires victims to testify twice,
- allows defendants to appeal and endure a second trial simply to get a lighter sentence,
- gives attorneys no precedent they can look to when formulating their arguments for court, and
- deprives pro se litigants, attorneys, justice court judges and the public generally of a body of law that would otherwise develop through appellate review,

these issues must be addressed. Even if no other reforms were adopted, converting justice courts into courts of record would strengthen Utah's judiciary by ameliorating each of the foregoing concerns.

If this proposal were adopted and justice courts were converted to "courts of record," there would necessarily be other reforms to consider as well. As currently written, the Utah Constitution and the Utah Code set forth requirements for courts of record that would then apply to justice courts. The Constitution would require that justice court judges be selected by the governor and ratified by the Senate (with appropriate input

³ According to data provided by Court Services on April 23, 2020.

from the jurisdiction to be served),⁴ compensation would be fixed,⁵ and the appointment of new justice court judges would be restricted to those admitted to the practice of law.⁶

History of the Current Reform Effort

The Utah Legislature created the justice courts in 1989 pursuant to Article VIII, Section 1 of the Utah Constitution, which allows the statutory establishment of “courts not of record.”⁷ Although records are maintained by this court in the form of paper, digital files and audio recordings, Utah’s justice courts have been, and continue to be, courts “not of record” because nothing that is said or done in the proceedings of a justice court is considered when a case is appealed.⁸ Instead, appeals from justice court decisions are heard in district courts as appeals *de novo*—as though the case were being heard for the first time.

Appeals *de novo* did not start with the justice courts.⁹ Justices of the peace were common throughout the United States at the time Utah was settled.¹⁰ The Organic Act of the Territory of Utah created a Supreme Court, district courts, probate courts and justices of the peace when Congress organized the Utah Territory in 1850. The Organic Act authorized appeals in all cases from the final decisions of the district courts, but said nothing about appealing a decision from a justice of the peace. It was also silent about the need to maintain a record in any of these original courts, even though it called for a secretary to “record and preserve all the laws and proceedings of the legislative assembly ... and all the acts and proceedings of the governor in his executive department.”¹¹

When Utah’s Constitution was ratified in 1895, it included “the right to appeal in all cases” among the “fundamental rights” listed in Article I. Section 9 of Article VIII provided that “[a]ppeals shall also lie from the final judgment of justices of the peace in civil and criminal cases to the district courts on both questions of law and fact, with such limitations and restrictions as shall be provided by law; and the decision of the district

⁴ UTAH CONST. Art. VIII § 8.

⁵ UTAH CODE ANN. § 67-8-2. See also Recommendation #6 *infra*.

⁶ UTAH CONST. Art. VIII § 7. See also Recommendation #3 *infra*.

⁷ UTAH CODE ANN. § 78A-7-101.

⁸ *Bernat v. Allphin*, 2005 UT 1, ¶ 8, 106 P.3d 707, 710, as corrected (Apr. 1, 2005).

⁹ Newton, Samuel P.; Welch, Teresa L.; and Hamilton, Neal G. (2012) “No Justice in Utah’s Justice Courts: Constitutional Issues, Systemic Problems, and the Failure to Protect Defendants in Utah’s Infamous Local Courts,” *Utah OnLaw: The Utah Law Review Online Supplement*: Vol. 2012, Article 2, <https://dc.law.utah.edu/onlaw/vol2012/iss1/2>.

¹⁰ Paul C. Farr, *Evolution of Utah’s Justice Courts* (2016).

¹¹ Organic Act of the Territory of Utah, UTAH CODE ANN. § 3, 9 Stat. 453 (1850).

courts on such appeals shall be final, except in cases involving the validity or constitutionality of a statute.”¹²

The Utah Constitution continues to require “an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.”¹³ When a case is initiated in the justice courts, a party unsatisfied with the judgment has the right to try its case again—*de novo*—in the district court.

In 2014, the Conference of State Court Administrators (COSCA),¹⁴ an organization dedicated to the improvement of state court systems, published a policy paper outlining “Four Essential Elements Required to Deliver Justice in Limited Jurisdiction Courts in the 21st Century”¹⁵ urging that dispositions be “on the record” and “reviewable.”¹⁶ Accordingly, it recommended that the practice of not creating a record and then providing for an appeal *de novo* be abandoned.¹⁷

Following its 2016 decision in *Simler v. Chilel*,¹⁸ which held that a litigant has a right to a jury trial in a small claims trial *de novo* in district court, the Utah Supreme Court created an Advisory Committee on Procedural Reforms for Justice Courts. The Supreme Court expressed its interest in “exploring the possibility of amendments to [its] rules, to controlling legislation, and (if necessary) to the Utah Constitution to pave the way for elimination of the appeal by *de novo* trial.”¹⁹ In addition, the Court invited the committee to make recommendations with regard to (1) the nature and extent of the “record” to be established in the justice court; (2) the form and nature of the expedited appeal from a justice court decision; (3) whether the reforms to the appeal process or to other procedures should be limited to small claims cases or should extend to criminal cases filed in justice courts; and (4) whether a limited right of disclosure or discovery should be available in small claims actions. After studying the issue for more than a year, the Advisory Committee joined the Supreme Court in recommending that the appeal *de*

¹² *Id.*

¹³ UTAH CONST. Art. VIII, § 5.

¹⁴ Established in 1955, COSCA is dedicated to the improvement of state court systems. Its membership consists of the state court administrator or equivalent official in each of the fifty states, the District of Columbia, Puerto Rico, American Samoa, Guam, Northern Mariana Islands, and the Virgin Islands.

¹⁵ https://cosca.ncsc.org/_data/assets/pdf_file/0016/23641/2013-2014-policy-paper-limited-jurisdiction-courts-in-the-21st-century.pdf.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ 2016 UT 23, 379 P.3d 1195.

¹⁹ Memorandum from the Advisory Comm. of the Utah Sup. Ct. Procedural Reforms for Justice Cts. (March 7, 2018) (on file with author).

novo be abolished. In addition, the Advisory Committee recommended forming the Task Force on Justice Court Reform to explore other improvements.

Although the Board of Justice Court Judges did not come to a consensus regarding the details of the Supreme Court's proposal, members of the Board unanimously agree that all misdemeanors adjudicated by the justice courts should be on the record with appeals heard by the Court of Appeals. The Board believes that this one change would strengthen the entire court system and is the most critical reform to be addressed.

Recommendation #2

Expand justice court jurisdiction to include Class A misdemeanors.

Jurisdiction for criminal cases in Utah is split between the district and justice courts. Generally, felonies are heard in district court, while all other crimes,²⁰ with the exception of Class A misdemeanors, are heard in justice court. The reasons for the exception for Class A misdemeanors are unclear, as are the specific reasons they are currently heard in district court. Although transferring jurisdiction for Class A misdemeanors to the justice courts would increase their workload, the Board of Justice Court Judges believes that there are a number of reasons for recommending this change. First, this change would clarify the role of each court, bringing some additional order to a system that, at times, must seem arbitrary to the public. Second, justice court judges are more than capable of performing the work. And third, it makes good, economic sense to restructure this way. Together, all three reasons can be employed to strengthen the trust and confidence the public has in the justice courts.

The Public Would Benefit from Clearer Division of Judicial Responsibility

The primary reason to adopt this recommendation is to benefit the public and those who interact with the courts on a professional level. Although most lay people don't know the difference between state courts and federal courts, or between trial courts and appellate courts, organizing the system so that felony cases are heard in district court and misdemeanor cases are heard in justice court would provide greater clarity to the public.

²⁰ Such crimes include offenses classified as Class B misdemeanors, Class C misdemeanors, infractions and violations of local ordinances.

This would reduce confusion in a system that can be very confusing to lay people—particularly when the difference between offenses classified as Class A misdemeanors and those classified as Class B misdemeanors seems fairly arbitrary. Those who interact with the courts on a professional level would also benefit by being able to align their teams and their expertise with the courts that handle the corresponding type of offense.

Justice would be better served by moving Class A misdemeanors to the justice courts. Although Class A misdemeanors are serious offenses, they are less important than the felony charges before a district court. As such, judicial economy may favor dismissing them in connection with plea negotiations. In a justice court, however, a Class A misdemeanor would be the most serious offense charged against a defendant, and it would therefore warrant the strongest intervention available to a justice court. Rather than being dismissed, defendants would be held accountable for the behaviors charged as Class A misdemeanors.

Justice Court Judges are Willing and Able to Do This Work

Data provided by Court Services in April 2020 indicate that the Class A misdemeanors most commonly filed in Utah in 2019 included the following:

- Possession or Use of a Controlled Substance,
- Enhanced Retail Theft (Shoplifting),
- Failure to Stop at the Command of Law Enforcement,
- Aggravated Assault,²¹
- False Personal Info with Intent to be Another Actual Person, and
- Violation of Protective Order.

Possession, theft and assault charges are already filed in justice courts as Class B misdemeanors. Other Class A offenses are similar to charges currently filed in the justice courts. For example, the skills and expertise required to adjudicate a marijuana offense effectively apply directly to other drug use and possession cases. Justice court judges may similarly apply experience with adjudicating a charge of failing to yield to an emergency vehicle to a charge of failing to stop at the command of law enforcement, apply experience with adjudicating a charge of disorderly conduct to a charge of assault; apply experience with adjudicating a charge of providing false information to law enforcement officers to a charge of impersonating another person, and apply

²¹ Generally, assault is a Class B misdemeanor. But “[a]ssault is a class A misdemeanor if: (a) the person causes substantial bodily injury to another; or (b) the victim is pregnant and the person has knowledge of the pregnancy.” UTAH CODE ANN. § 76-5-101(3).

experience issuing protective orders to deciding a charge involving the violation of protective orders. As such, the Board anticipates that very little training would be required to prepare the justice court judges to effectively adjudicate Class A misdemeanors.

Economic Arguments

Moving Class A misdemeanors to the justice courts makes better use of taxpayer resources. Data provided by Court Services indicate that cases in which a Class A misdemeanor is the most severe charge account for enough work to occupy 12.9 district court judges on a full-time basis. If Class A misdemeanors were handled by the justice courts instead, that work would be performed by judges who cost *at least* 10% less (see Recommendation #6). Assuming that the number of judges in district court were reduced by ten,²² the savings generated by adopting this recommendation would cover the cost of converting at least 11 justice court judges to state employees (see Recommendation #9).²³ Of course, savings could be utilized in other ways. Expanding the use of problem-solving courts, funding more mental health resources and involving AP&P in DUI and Domestic Violence cases are all options that should be explored in order to make justice courts even more effective than they already are.

Summary

Justice court judges have skills and expertise that are currently underutilized. They are capable of strengthening Utah's judiciary, and they are willing to do so. Justice court judges already preside over preliminary hearings, probable cause determinations and warrant reviews, so entrusting them with Class A misdemeanors that resemble work they already do only makes sense. This is especially true when that work would cost taxpayers less money and provide a more effective intervention for defendants by holding them accountable for charges that might otherwise be dismissed.

²² Because this work is currently performed on a district level, only whole numbers of judges were considered in the potential reduction. Fractional shares of workload associated with Class A misdemeanors would remain with the district court. These fractional shares amount to 2.9 judges.

²³ This assumes that justice court judges would receive the same benefits as district court judges. If they did not, even more positions could be converted.

Recommendation #3

Require newly appointed justice court judges to be members of the Utah Bar.

The idea of requiring all judges to have a law degree has been gaining momentum for some time, both in Utah and throughout the country. Half of the states now require judges of all their courts to be attorneys.²⁴ Of the remaining half, four of them limit non-attorney judges to solely civil proceedings or those that do not place defendants at risk of incarceration. Amid increasing concern about due process violations for defendants who are incarcerated by nonlawyer judges, 29 states now completely ban non-lawyer judges from presiding over criminal proceedings with the potential for incarceration.²⁵ Given this trend, the Board fully expects that membership in the bar will become a universal requirement.

For more than 150 years, the only formal education required of a justice court judge was a high school diploma or its equivalent. Such minimal requirements were reasonable back when lawyers were few in number, cases were simple in nature, and transportation was difficult. In the twenty-first century, however, such justifications no longer exist and a high school diploma is simply insufficient. In 2016, the Utah Legislature recognized the need to update judicial education requirements and passed HB 160 that required judges in Weber, Davis, Salt Lake, Utah and Washington counties to have a law degree that would qualify them for admission to the bar. Initially the bill required a law degree of judges *throughout* the state—but this proposal ultimately failed because the residency requirement for justice court judges to live in or adjacent to the county in which the court is located (see Recommendation #4) proved too difficult for sparsely populated areas to find qualified candidates. The final version of HB 160 struck a compromise by requiring only judges in the above-mentioned counties to have a law degree, thereby providing nearly 81% of the state's population with justice court judges who have law degrees.²⁶

²⁴ See generally David Carroll, *Should Non-Lawyer Judges Be Sending People to Jail? SCOTUS Asked to Review*, SIXTH AMENDMENT CENTER (Dec. 12, 2016), <https://sixthamendment.org/should-non-lawyer-judges-be-sending-people-to-jail-scotus-asked-to-review/>; and Task Force on Justice Court Reform's State Municipal Court Survey, (May-Jun. 2020) (on file with author).

²⁵ *Id.*

²⁶ As of July 1, 2019, Weber County had a population of 260,213, Davis County had a population of 355,481; Salt Lake County had a population of 1,160,437, Utah County had a population of 636,235 and

The Board anticipates that bar membership will be required of every judge at some point—particularly if its recommendations to convert the justice court to a court of record (see Recommendation #1) and relax the residency requirements for new judges (see Recommendation #4) are adopted. The Board has therefore resolved to support the requirement that newly appointed justice court judges be members of the Utah Bar, provided that (i) judges currently serving without a law degree are able to retain their positions and (ii) that they be allowed to apply for and serve in other justice court positions that open up in the future—as long as they meet other eligibility requirements and are selected for the position.²⁷

The Board recognizes that requiring judges to be members of the Utah Bar creates complications and may seem to come at an odd time given that the Utah Supreme Court is currently considering expanding the practice of law beyond those who are members of the bar.²⁸ Of the 81 Utah justice court judges currently serving, 32 (or 40%) of them do not have a law degree.²⁹ Many of these judges are demonstrating that the job can be done well without a law degree or passing the Bar exam. The Board opposes any policy that would remove a judge who is currently serving, but also acknowledges that retaining these judges once the justice courts have been converted to courts of record presents a significant challenge. Section 7, Article VIII of the Utah Constitution requires that judges of courts of record be admitted to practice law in Utah. As such, the Task Force could consider the following solutions:

Amend the Constitution

One option is to amend the Utah Constitution to eliminate the requirement that judges in courts of record be “admitted to practice law in Utah.”³⁰ Given the increased emphasis in all professions on credentials and licensure and the fact that eliminating this requirement would lower qualifications for the district courts, Court of Appeals, and Supreme Court, this option might well fail in the legislature or when it is proposed to the state’s citizens in a general election. The Board does not recommend this option.

Washington County had a population of 177,556. The population for all of Utah was 3,205,958 as of the same date. See <https://www.census.gov> (last visited May 27, 2020).

²⁷ This might be accomplished by amending UTAH CODE ANN. § 78-7-201(7) to read as follows: “A justice court judge holding office on May 10, 2016, who does not meet the qualification in Subsection (2)(a) may ~~continue~~ **serve** in the **any** judge’s position until the judge resigns, retires, is not retained in a retention election, or is removed from office.”

²⁸ *Utah Implementation Task Force on Regulatory Reform*, Initiative of the Utah Sup. Ct., <https://www.sandbox.utcourts.gov/> (last visited Jun. 23, 2020).

²⁹ *Judges’ Bio. Info.*, (last modified Jan. 27, 2020), <https://www.utcourts.gov/judgesbios/index.htm>.

³⁰ See UTAH CONST. Art. VIII, § 7.

Restructure the Justice Courts

A second option is to split the justice courts into two tiers. Justice court judges who are not admitted to the practice of law could continue to serve as long as justice courts were restructured so that some cases were handled by a court of record and others were handled by a court not of record (see Recommendation #12). The court not of record would hear only infractions, which do not put defendants at risk of jail time or entitle them to public defenders. Judges who are not admitted to the practice of law could preside over these cases as they do now. The court of record would hear misdemeanors (see Recommendation #2), perform magistrate functions (see Recommendation #7) and, if retained by the justice courts, hear small claims cases (see Recommendation #12). As required by Utah's Constitution, only judges admitted to practice law in Utah would preside in this court of record.

Admit All Justice Court Judges to the Utah Bar

A third option is to allow all judges to be admitted to the bar. If nothing about the current requirements were changed, financial assistance could be made available for those who want to attend law school and sit for the exam from the Justice Court Technology, Security and Training Account. But the Board would recommend that the requirements for bar admission, currently codified in Article 7 of Chapter 14 of the Code of Judicial Administration, be amended to add criteria for judicial applicants who would not otherwise qualify for admission. These admission criteria would apply to current justice court judges only and might require that applicants have a certain amount of time on the bench, obtain a certain number of education hours, or pass all or parts of the Utah Bar exam.³¹ Whatever the requirements, fulfilling them would result in their being admitted to the bar for the limited purpose of serving as a justice court judge.

If the Task Force is unable to support any of the foregoing proposals, the Board would strongly recommend, as a last resort, that judges who are not admitted to the practice of law be replaced only through attrition. As new vacancies occur, only candidates who are members of the bar would be able to apply and only then would that court transition to a court of record.

³¹ Due to COVID-19, the Utah Supreme Court recently authorized the admission of certain applicants without their having to take the bar exam at all. Similar accommodations might be considered for those who have been serving as justice court judges.

Recommendation #4

Remove geographic restrictions for applying for a justice court judgeship to follow the district court practice in which judicial applicants throughout the state may apply and the new judge is required to relocate to the district.

Those applying for a judgeship with the district or juvenile court are subject to eligibility requirements imposed by the Utah Constitution, which requires that judges of those courts “be at least 25 years old, United States citizens, Utah residents for three years preceding selection, and admitted to practice law in Utah. If geographic divisions are provided for any court, judges of that court shall reside in the geographic division for which they are selected.”³² As a practical matter, these requirements allow an attorney the opportunity to apply for a judgeship in *any* of the state’s courts of record; provided that, if selected, the new judge relocates to that district before taking the bench.

Unlike the judges of district and juvenile court, the Constitution provides that “judges of courts not of record shall be selected in a manner, for a term, and with qualifications provided by *statute*.”³³ The statute imposes a more restrictive residency requirement. Those applying for a justice court judgeship must have lived in the “county in which the court is located or an adjacent county for at least six months immediately preceding appointment.”³⁴ This requirement ensures that only local candidates may qualify to serve as a justice court judge, while excluding candidates from elsewhere in the state.

Restricting the applicant pool to local candidates complicates the neutral role of a judge. Being from the community or having family, friendships or business dealings in the community is more likely to compromise the judge’s neutrality. The Board does not recommend that the local candidates be overlooked in favor of nonresidents; it simply sees no downside to expanding the applicant pool to include those residing elsewhere in Utah—especially when judges for the district and juvenile courts are recruited statewide. As such, the Board of Justice Court Judges recommends eliminating the

³² UTAH CONST. Art. VIII, § 7.

³³ *Id.* at § 11 (emphasis added).

³⁴ UTAH CODE ANN. § 78A-7-201.

requirement that candidates live in “the county in which the court is located or an adjacent county for at least six months immediately *preceding* appointment.”³⁵

As for residency requirements *following* appointment, the Board recommends distinguishing between full- and part-time positions. The same standard used for district and juvenile courts should apply to full-time justice court judges. A nonresident appointed to serve as a full-time judge would have to relocate to the district in which the court is located before taking the bench.

The Board recommends a less restrictive standard for part-time judges. Justice court judges are currently allowed to reside in (a) the county in which the court is located or (b) a county adjacent to it.³⁶ Going forward, the Board recommends expanding the area in which a part-time judge must reside to include (i) the county where the court is located, (ii) a county adjacent to the county where the court is located, or (iii) anywhere within the judicial district in which the court is located. Unlike full-time judges, part-time judges often piece together multiple judgeships to make a full-time living. Even after expanding “residency” to include the entire district, there are judges currently on the bench who would lose one or more jobs if they were prohibited from living in a county adjacent to the one in which the court is located. As it is clearly to the advantage of the part-time courts to have a judge with full-time expertise, the Board recommends that judges with a part-time appointment to any single justice court be accommodated by combining the ability to reside in the district with the current ability to reside in an adjacent county. Accordingly, the Board recommends that Section 78A-7-201 of the Utah Code be modified as follows:

78A-7-201. Justice court judge eligibility -- Mandatory retirement.

- (1) A justice court judge shall be:
 - (a) a citizen of the United States;
 - (b) 25 years of age or older; and
 - (c) a resident of:
 - (i) Utah for at least three years immediately preceding his appointment; and
 - ~~(d)——~~(ii) the judicial district in which the court is located if the position is full time; or
 - (iii) the judicial district in which the court is located or a resident of the county adjacent to the county in which the court is located or an adjacent county if the position is part time. ~~for at least six months immediately preceding appointment.~~

³⁵ UTAH CODE ANN. § 78A-7-201 (emphasis added).

³⁶ UTAH CODE ANN. § 78A-7-201.

Recommendation #5

Transition to full-time judges as part-time judges voluntarily resign or retire.

Utah's justice courts are well served by numerous part-time judges. Two thirds of all justice court judges serve less than full-time.³⁷ Out of 81 current judges, 39 serve part-time in one court and 14 serve part-time in multiple courts. Only 28 justice court judges serve full-time in a single court.

Most of the full-time judges serve in heavily populated areas along the Wasatch Front. But even in Weber, Davis, Salt Lake, and Utah counties, part-time positions outnumber full-time positions.³⁸ And in the state's rural areas, part-time judges outnumber full-time judges by more than five to one.

Part-time positions appeal to sponsoring localities for a variety of reasons. They are less expensive for the counties and municipalities that employ them. Many part-time judges do not receive benefits, which significantly decreases the cost of the position. And the salary required by statute can be as little as 50% of a district court judge's salary *before* it is reduced in proportion to the jurisdiction's workload.³⁹

Part-time positions also appeal to many judges. Most applicants are simply not interested in full-time work. Applicants have often retired from a different career and want to work fewer hours. They may need to balance a judgeship with other personal or professional pursuits.⁴⁰ Some judges actually *are* interested in full-time work, but they combine part-time positions from multiple jurisdictions.

But more than the appeal of part-time judgeships to any judge or jurisdiction, the prevalence of these positions is more likely the result of a system deliberately designed

³⁷ Whether a judge is full-time or part-time depends on the workload for each court, as calculated by the Administrative Office of the Courts. Judges with a combined workload of 1.0 or greater are considered full-time; those with a workload of 0.99 or less are considered part-time.

³⁸ Because some of these part-time *positions* have been filled by judges with other courts, the Wasatch Front has more full-time *judges* than part-time judges.

³⁹ See UTAH CODE ANN. § 78A-7-206(1).

⁴⁰ Part-time judges have more latitude with their extracurricular activities than do full-time judges. See Canon 3 of the Code of Judicial Ethics.

to allow each municipality to have its own justice court—and its own judge—as each has its own mayor and city council.⁴¹ The American tradition of governance has featured separation of legislative, executive and judicial power, but justice courts present a unique challenge in this regard. Bringing the three branches of government together at the *local* level, when Utah’s Constitution vests the powers of the judiciary at the *state* level,⁴² has generated some confusion as to who “controls” the justice courts. From a legal perspective, justice courts are essentially state courts operated at the local level. But from an operational standpoint, it is not uncommon for local government to view the justice court as a “department” of the executive branch—rather than as a subsidiary of the state’s judicial branch (see Recommendation #9)—and manage it accordingly.

The recommendation that justice courts transition to full-time judges, as well as the suggestions made in connection with Recommendation #11, are as much about clarifying roles as they are about improving operational efficiencies. But perhaps the most important reason to transition to full-time judges is to create a bench that is wholly dedicated to a single profession. By hearing cases throughout the week, judges will become proficient faster than would otherwise be the case, they will be available to assist their peers in other jurisdictions, and they can take on the magistrate functions more fully described in Recommendation #7. For these reasons, the Board of Justice Court Judges recommends that caseloads be consolidated so that justice court judges serve full-time to the extent possible.

This could be accomplished in several ways, but the Board feels strongly that the total number of justice court judges should only be reduced as judges voluntarily resign or retire. As this occurs in jurisdictions whose workload is below some threshold amount, those judges should be replaced by judges already serving. This will require a change in the appointment process, a change in the appointing authority or both (see Recommendation #9). As the Task Force determines the best way to transition to full-time judges, it should consider which judges may resign or retire in connection with the retention election in 2022, expanding the use of interlocal agreements to combine jurisdictions, rolling up municipal courts into state or county courts (see Recommendation #12), and/or requiring that a jurisdiction support a minimum caseload to continue as a justice court.

⁴¹ Justice courts may have been established at the county level to serve the unincorporated areas of the county or as a fallback for municipalities that chose not to have a justice court of their own.

⁴² UTAH CONST. Art. VIII, § 1.

Recommendation #6

Set judicial salaries for full-time justice court judges at 90% of a district court judge's salary. Full-time justice court judges should receive the same benefits as all other judges in the state.

At present, justice court judges are compensated according to a statutory formula⁴³ that results in a wide range of pay for the same work. Because some variation in *annual* salary is to be expected because of local government's power to establish a salary that is commensurate with part-time workloads, one option for understanding the breadth of the range is to compare compensation calculated on an *hourly* basis. Doing so removes a judge's full- or part-time status from the analysis and, for 2019, results in a pay scale for justice court judges that ranged from \$26.67 to \$142.75 per hour.⁴⁴

One argument for such disparate pay is that qualifications among justice court judges vary so dramatically. Some have only a high school diploma with little to no prior experience, while others have a law degree with significant relevant experience. But neither relevant experience nor formal education fully explains current differences in pay. If relevant experience were a stronger consideration, then judges who have been on the bench longer would receive more pay, while newer judges—whatever their education—would be paid less. One reason that this may not be the case is because there is little coordination among the all the jurisdictions that are setting salaries for justice court judges.

Of even greater concern, the current approach to establishing justice court judges' salaries requires the judges to negotiate those salaries every year with local executives.

⁴³ If the Administrative Office of the Courts determines that a judge is full time, then UTAH CODE ANN. § 78A-7-206(1) requires that the judge be paid between 50% and 90% of a district court judge's salary. The salary of a district court judge is set by the legislature and is the same for every district court judge in the state. If the Administrative Office of the Courts determines that the judge is less than full-time, then the pay range is prorated by the same fraction that represents the percentage of a full-time workload for that judge in that location. A judge with 10% of a full-time workload, for example, should be paid between 5% and 9% of a district court judge's salary.

⁴⁴ These figures were derived from a survey in which each judge was asked to report the average number of hours worked each week or each month. The judge's annual salary, as reported by cities and counties pursuant to UTAH CODE ANN. § 78A-7-207, was then divided by the annualized number of hours for each judge who responded to the survey. By comparison, a district court judge receiving \$170,450 for 2080 hours of work is making approximately \$82 per hour.

County and municipal officials may be more concerned with expenses and revenue than with judicial independence. These conversations may rely on an analysis of whether the court is “making money” or “losing money” for the city or county. It may be the case that judges who negotiate better get paid more, while those who do not negotiate as well (or at all), have to settle for less.

The Board of Justice Court Judges recommends that full-time justice court judges be paid a fixed sum equal to 90% of a district court judge’s salary. Part-time judges would be prorated according to the judicial weighted caseload formula, as they are now. Fixing a salary for justice court judges, as is done for judges in courts of record, relieves the justice court judges of any pressure to increase fines and fees to justify an appropriate salary (see Recommendation #10). Justice court judges deserve to be fairly compensated for their work.

There are at least three other benefits of adopting this recommendation. Standardized salaries would attract a larger pool of candidates for the bench that hears nearly 60% of the state’s cases. The Elected Official and Judicial Compensation Commission found in 2018 that the pay gap between what a person can make in the private sector and what that person would receive as a judge could be discouraging qualified attorneys from applying for open judgeships.⁴⁵ Secondly, standardized salaries would resolve the discrepancy between the Utah Constitution and state statute, which has been invoked in many discussions regarding a judge’s salary.⁴⁶ Thirdly, standardized salaries would justify the additional work that would come with adoption of the proposal that justice court judges take on additional magistrate functions (see Recommendation #7) and Class A Misdemeanors (see Recommendation #2).

The salary of a district court judge is established each year in the Appropriations Act, subject to the limitation set forth in the Utah Constitution, which prohibits diminishing

⁴⁵ See Bethany Rodgers, *Salary Panel Recommends Pay Bump for Judges, Cost-of-Living Adjustments for Governor and Other Elected Leaders*, Salt Lake Tribune (Nov 14, 2018), <https://www.sltrib.com/news/politics/2018/11/14/salary-panel-recommends/>. See also Elected Official and Judicial Compensation Commission 2018 Report for the full report, <https://le.utah.gov/interim/2018/pdf/00004532.pdf>.

⁴⁶ UTAH CODE ANN. § 78A-7-207(2) says “The salary fixed for a justice court judge may not be diminished during the term for which the judge has been appointed or elected” while UTAH CONST. Art. VIII § 14 says “The salaries of justices and judges shall not be diminished during their terms of office.” The discrepancy between “term” and “terms” has led to confusion as to whether a city or county may reduce a judge’s salary every six years, which adds pressure to justice court judges to “perform” in such a way as to not tempt their employer.

judges' salaries during their terms of office.⁴⁷ Salaries for judges of other courts of record are then based on Section 67-8-2 of the Utah Code. The Board recommends that this statute be modified as follows:

67-8-2. Salaries of judges established annually in appropriations act -- Bases of salaries -- Additional compensation.

(1) The salaries of judges of courts of record, as described in Section 78A-1-101, shall be set annually by the Legislature in an appropriations act.

(2) Judicial salaries shall be based on the following percentages of the salary of a district court judge:

- (a) justice court judges: 90%;
- (ab) juvenile court judges: 100%;
- (bc) Court of Appeals judges: 105%; and
- (ed) justices of the Supreme Court: 110%.

Recommendation #7

Use justice court judges more extensively in their magistrate capacity.

The authority of justice court judges is generally limited to the geographical boundaries of the county or municipality in which they serve. However, justice court judges can also perform certain functions for cases outside of those boundaries in their capacity as magistrates.⁴⁸ This magistrate authority allows judicial officers to determine whether there was probable cause for a suspect arrested without a warrant, to approve warrants requested by law enforcement, and to conduct preliminary hearings to determine whether sufficient evidence exists to bind over a defendant charged with a Class A misdemeanor or a felony for trial in the district court.⁴⁹

District court judges and justice court judges share these responsibilities in every district. In some areas, district court judges handle most magisterial functions. In others,

⁴⁷ See UTAH CONST. Art. VIII, §14 and UTAH CODE ANN. § 67-8-2(1).

⁴⁸ UTAH CODE ANN. § 77-1-3(4) indicates that a magistrate can be "a justice or judge of a court of record or not of record or a commissioner of such a court..."

⁴⁹ See Utah R. CRIM. P. 7 and 7A.

justice court judges carry more of the load. However the caseload is divided, presiding judges for each court level are directed by Rule 3-104(3)(O) to “develop a rotation of magistrates that ensures regular availability of magistrates within the district. The rotation shall take into account each magistrate’s caseload, location, and willingness to serve.” Because judicial action on probable cause determinations and warrants could be required at any time of day on any day of the week, each rotation includes nights and weekends.

Full-time justice court judges have been generally willing to help with the magisterial caseload, even though they are not compensated for such work.⁵⁰ However, it is unfair to impose such duties on part-time judges—many of whom only serve on the bench for 10-20 hours each month and are legitimately engaged in other pursuits. Most (if not all) districts exclude part-time judges from the rotation for this reason.

If the recommendations proposed by the Board of Justice Court Judges are adopted, justice court judges could make a much greater contribution to the judiciary. Justice court judges would be transitioned to full-time positions to the extent possible (see Recommendation #5) and fairly compensated for their work (see Recommendation #6) as state employees (see Recommendation #9). They could then assist district courts to a greater extent with the magistrate functions performed currently, and they could serve as a resource for future reforms involving fines, fees and pretrial release.

Recommendation #8

Bring justice courts under the umbrella of the Administrative Office of the Courts for administrative purposes.

Justice courts are well supported by the Judicial Council and the Administrative Office of the Courts. That support has never been stronger than now, and for that the Board of Justice Court Judges is profoundly grateful. The Council itself includes three justice

⁵⁰ Justice court judges are compensated pursuant to a workload formula that does not presently consider magistrate work.

court judges, each of whom serves on the Council's executive committees⁵¹ and on the Board of Justice Court Judges. As such, justice court judges are an integral part of the judiciary's governing body and the board that makes recommendations to that body.⁵²

The Administrative Office of the Courts, which serves as staff to the Judicial Council, supports the justice courts as well. For many years it has provided equipment and training through Information Technology, provided analytics through Court Services, organized conferences and other training events through the Education Department, and provided training through the Audit Department—all beyond that which the Justice Court Technology, Security and Training Account pays for each year.⁵³ In addition, without any contribution from the Justice Court Technology, Security and Training Account—the Administrative Office of the Courts has provided advice and training from the Legal Department and, more recently, has provided services from the Communications Director and the Court Security Director that justice courts had not enjoyed previously.

Another recent improvement is the 2016 creation of a full-time Justice Court Administrator. Before the Council approved that position, only the district courts, the juvenile courts and the appellate courts had a full-time administrator; the justice courts were supported by an Assistant State Court Administrator who was involved in numerous initiatives, served as the Council's Legislative Liaison, and supported dozens of problem-solving courts throughout the state.

The Board of Justice Court Judges recommends that justice courts be supported by the Administrative Office of the Courts to the same extent as all other courts—whether the Justice Court Technology, Security and Training Account can pay for these services or not. In particular, the Task Force should explore the idea of supporting the justice courts with the Trial Court Executives and Clerks of Court who already support the district courts. This recommendation is made without regard to the question of whether justice court judges become state employees (see Recommendation #9).

⁵¹ These include the Management Committee, the Policy and Planning Committee, the Liaison Committee and the Budget and Finance Committee.

⁵² This overlap between the Judicial Council and a court-level board is unique to the Justice Courts. Pursuant to Rule 1-201(7) of the UTAH CODE OF JUD. ADMIN., these Council members are not allowed to vote at board meetings, but their involvement over the years has provided continuity that has proven to be a significant benefit to the justice courts.

⁵³ The Justice Court Technology, Security and Training Account is a restricted account funded by a portion of the surcharge imposed by UTAH CODE ANN. § 78A-7-122(4)(b)(iii). "Money shall be appropriated from the account to the Administrative Office of the Courts to be used for audit, technology, security, and training needs in justice courts throughout the state." UTAH CODE ANN. § 78A-7-301(2).

Recommendation #9

The Utah Code should state clearly that justice courts, even if under local sponsorship, are a part of the judicial branch of government and are governed by the Utah Judicial Council, not local officials.

The Utah Judiciary aspires “to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.”⁵⁴ In so many respects, it is the envy of other court systems throughout the country.⁵⁵ But there is one way in which it could be significantly improved. At present, the Utah Judiciary is not operated as a unified, independent system; rather, it is bifurcated into two systems that must be combined in order to achieve its vision. One system is comprised of the trial and appellate courts that are operated by the state; the other system is comprised of the justice courts that are operated by cities and counties. In theory, the justice courts are governed by the Judicial Council, but in practice they are governed by local officials. Ceding operational control to local government has often compromised the independence of the judiciary at the very level where the majority of Utah’s citizens interface with the judiciary. As such, the Board of Justice Court Judges strongly recommends that justice courts be consolidated into the state system so that (i) judges and clerks who do the work of the justice courts are employed by the state and supported by the Administrative Office of the Courts (see Recommendation #8) and (ii) to the extent possible, hearings are conducted in state facilities.

If the foregoing recommendations are not implemented, the Board recommends the enactment of a statute that recognizes the judiciary as an independent third branch of government at the local level. There are some who dispute the justice courts’ status as part of the judicial branch, which is one reason that the justice court is often viewed as a “department” to be managed by the executive branch. This new statute, together with the Judicial Council’s rules, should clarify the roles and responsibilities of Utah’s justice courts, their judges, and the staff who support them.

⁵⁴ See www.utcourts.gov.

⁵⁵ Mary C. McQueen, president of the National Center for State Courts, touted Utah’s court system as the “international gold standard” when she spoke at the annual judicial conference in October 2016. Salt Lake Tribune (Oct. 6, 2016), <https://archive.sltrib.com/article.php?id=4440373&itype=CMSID>.

It may also be time to reconsider the requirement that a clerk be available on-site five days a week—for just an hour in some cases. Instead, the courts might develop a system using Webex (like “Telehealth” or video banking) whereby centrally located (and state employed) clerks would be available during all business hours to assist justice court patrons with payments, filings and questions. In some jurisdictions, such a system could replace the front counter; in others, it would be available in addition to the front counter. Either way, it would spare the local government from having to allocate resources to this function, it would provide more separation between the judicial clerk and functions of the executive branch, and it would improve customer service in locations where clerical assistance is not currently available during all business hours.

Recommendation #10

Standardize the budget of any justice courts that remain in local control by basing them on weighted caseload. Courts should be funded by general government funds. Funds used to supply advocates, like indigent defense services and prosecutorial services, should be excluded from court budgets. Court activities should be decoupled as much as possible from revenue generation.

In the late 1800s, Judge Roy Bean was a Texas judge who owned the saloon that doubled as his courtroom. Customers were charged 25 cents for a beer but received no change if they paid with a dollar. If they complained, they were charged with disturbing the peace and fined 75 cents. Judge Bean reportedly kept the fine proceeds.⁵⁶

Such unethical behavior would not be tolerated today, and yet the perception persists for some that a justice court’s *primary* objective is to make money. Several reforms designed to decouple the courts from revenue generation have been implemented in

⁵⁶ Paul C. Farr, *An Introduction to the Utah Judicial Council Justice Court Reform Task Force*, Utah B.J., May/Jun 2020, at 12. https://www.utahbar.org/wp-content/uploads/2020/05/May_Jun_2020_FINAL.pdf.

recent years,⁵⁷ but practices persist that may cast doubt on whether some courts are motivated more by an interest in generating revenue than in dispensing justice. Examples include placing court clerks under the supervision of the city treasurer or manager, paying prosecutors, defense counsel or even the city attorney out of the court's budget, operating the justice court as an "enterprise fund" or, in extreme cases, closing the court altogether because it is "losing money." Such practices may cause the public to question the justice courts' purposes and responsibilities and thereby weaken public trust and confidence in the judiciary as a whole.

To strengthen public trust and confidence in the court system, the Board of Justice Court Judges believes that court operations, budgets and accounting practices should be kept as independent of other governmental agencies as possible. The Board therefore recommends the following:

Court Clerks Should Be Supervised by the Judge

The Code of Judicial Conduct provides an ethical framework for all judges. Rule 2.4(C) requires that a judge not "convey or permit others to convey the impression that any person or organization is in a position to influence the judge."⁵⁸ In addition, Rule 2.12(A) of the Utah Code of Judicial Conduct requires that a judge "take reasonable measures to require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's fulfillment of his or her obligations under this Code." This latter standard implies that court staff are subject to the judge's "discretion and control," and clearly requires that court staff avoid conveying any impression that the judge can be inappropriately influenced.

Supervision of judicial staff by anyone but a judge is inconsistent with these requirements. If judicial staff report to the executive branch, it confuses the roles of the two branches—both internally and externally—and the public may make inferences (whether justified or not) from the clerks' supervision by the treasurer or the city manager as the clerks prepare the orders imposing the fines and they are involved in collecting the fines. Court operations must be structured to prevent public perception that the court exists to generate revenue for the city or county that is sponsoring it.

⁵⁷ In Utah, for example, a change was enacted in 2008 that requires a judge's salary to be established within a statutory range (see Recommendation #6). Once set, that salary can be increased, but it cannot be reduced.

⁵⁸ This would include officials from the other branches of government. Comment [1] to Rule 2.4 explains that "[a]n independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences."

The Board recognizes the challenges of a judge supervising staff when that judge is physically present only part time. The Board also understands how other branches of government came to be involved with the day-to-day supervision of judicial staff. But now that technology offers many options for maintaining clerks' communication with the judge, there is no longer any reason that a judge would be unable to supervise court staff.⁵⁹

Court Budgets Should Be Standardized

To further disabuse the public of the notion that justice courts exist to make money, the Board recommends that court budgets be standardized and submitted to the Judicial Council in connection with recertification. Budgets should include the personnel and other costs essential to court operations, such as the judge, the number of clerks required to perform the amount and type of work referred to the court⁶⁰ and the funding necessary for interpreter services. They should also include equipment, supplies and an appropriate allocation for overhead expenses. Court budgets should *not* include costs for the city attorney, prosecution or defense counsel or any other expense that should be covered by the executive branch. The inclusion of prosecutorial and other advocates' expenses has allowed many jurisdictions to argue that justice courts cost too much, that fines and fees are not sufficient to cover those costs, and that the justice court should close because the court is losing money. Courts must not be required to financially support executive functions.

Courts Should Be Supported by General Funds

Justice courts should be supported by general fund dollars generated from taxes.⁶¹ Funding justice courts through tax revenue is consistent with the benefit they provide to the entire community, which justifies their being supported by all taxpayers. Schools, parks, playgrounds, libraries and fire departments are all funded this way—with no expectation that those who use these services will cover the costs of providing them. Viewed from the perspective of private enterprise, these services are all “losing money.” However, public services do not exist to “make money.”

The suggestion by some government officials that some services can “lose money” while justice courts need to cover their costs (and then some) only validates the

⁵⁹ At a minimum, the judge should supervise the local court administrator who, in turn, supervises any other staff involved in the court's operations.

⁶⁰ The Board further recommends that this number be determined by a clerical weighted workload formula to be developed by the Administrative Office of the Courts.

⁶¹ A general fund is the primary fund used by a government entity. The activities being paid for through the general fund constitute the core administrative and operational tasks of the government entity.

perception that justice courts exist to “make money.” At least one jurisdiction has gone so far as to structure the justice court as an “enterprise fund,” which means that “operations ... are financed and operated in a manner similar to private business enterprises.” When a justice court is structured as an enterprise fund, operations are funded with the fines and fees retained by the jurisdiction. If fines and fees were not ordered and collected in an amount at least equal to the court’s budget, there would not be enough money to pay the judge and staff. The Board recommends the termination of any arrangement by which a justice court is structured as an enterprise fund as such arrangements delegitimize justice courts by making them dependent on the fines they impose.

Summary

As noted by the National Association for Court Management, “The degree to which the judicial branch can promote the rule of law and protect individual rights is, in large part, determined by the respect of the public for its authority.”⁶² That respect is commensurate with the trust and confidence that the public has in the judiciary.

“Maintaining the public’s trust and confidence in the courts is integral to the credibility of the judicial branch. This trust cannot be assumed. The court must establish and nurture public trust through its core responsibility of resolving disputes. The court process must not only *be* just, it must have the *appearance* of being just.”⁶³ Public belief that the core responsibility of the justice courts is to make money undermines their ability to promote the rule of law and protect individual rights. The Board recommends that every effort be made to prevent the perception that justice courts exist to “make money.”

⁶² *Competency: Public Trust and Confidence*, Nat’l. Ass’n for Court Mgmt. (last visited June 23, 2020), <https://nacmcore.org/competency/public-trust-and-confidence/>.

⁶³ *Id.* (emphasis added).

Recommendation #11

Consolidate part-time clerical positions to the extent possible through interlocal agreements or by utilizing district court clerks with excess capacity.

Rule 9-105(3) of the Code of Judicial Administration sets the “hours of operation” required of each justice court. As a practical matter, these hours do not indicate when a judge will conduct hearings—or even when a judge will be present in the courthouse. Instead, these hours inform the public when a clerk will be available to assist them.

Only the busiest justice courts have “hours of operation” that align with traditional business hours. In other courts, those hours vary based on the number of average monthly filings. A justice court that receives 60 or fewer filings per month, for example, is required to make its clerk available to the public for only one hour per day.⁶⁴ As the number of average monthly filings increases, so does the number of hours that a clerk must be available. Once a court averages over 500 filings in a month, it is required to make one or more of its clerks available to the public for at least eight hours per day.

As such, Rule 9-105(3) requires each court to provide a level of public access that is commensurate with the need. All jurisdictions comply with this rule, but many of the smaller ones do so in ways that make clerical services more available and less expensive than they would be otherwise. The Board recommends that the Task Force identify ways to expand such efficiencies so that they benefit justice courts throughout the state.

Use the Same Clerk for District and Justice Court

The Sixth District Court located in Junction, Utah is co-located with the Piute County Justice Court, a Class IV Court⁶⁵ that is required to provide access to a court clerk at least one hour each day. Several other justice courts throughout the state are co-located with the district court in their respective counties,⁶⁶ but only Sixth District and Piute County use the same clerk for both courts. Since both district and justice court use

⁶⁴ Courts may be open for longer than the minimum number of required hours—and many are.

⁶⁵ UTAH CODE ANN. § 78A-7-101(2) divides justice courts into four classes based on the number of cases filed each month. A Class IV Court is the smallest court, receiving 60 or fewer case filings per month.

⁶⁶ These include justice courts in Rich, Morgan, Davis, Tooele, Millard, Sanpete, Wayne, Garfield, Kane, Grand, San Juan and Daggett counties.

the CORIS case management system, clerks are already cross-trained to support both courts.

Where justice courts are *not* co-located with a district court, it may still be feasible to share clerks between two nearby sites. A district court clerk could spend time each day at the justice court or justice court patrons could simply be directed to the district court for everything but the court hearings (although arrangements could be made to hold those at the district court as well).

Use the Same Clerk for Multiple Justice Courts

Another example from the Sixth District is an interlocal agreement that involves six different municipalities. In this case, the same judge presides in each of the six courts, and the same clerk accompanies him to each one to take minutes for the hearings. Personnel specific to each city are still deputized as court clerks so they can receive payments, as the contracted clerk is only on-site for hearings.

This arrangement solves a number of problems. If one clerk is in court taking minutes for a hearing, that clerk cannot easily check people in, process payments or answer the phone. Most, if not all, sites have developed other work-arounds for these challenges, but deputizing municipal employees solves the problem efficiently.

When a single clerk travels with the judge, that clerk becomes more proficient. The public benefits from this change because it creates a more experienced clerk, employers pay less for higher quality work, and such work is produced in less time. For these same reasons, the Board recommends exploring the possibility of combining front counters—either physically or electronically—so that a patron could be assisted by a clerk at a different counter locally or connect with a clerk electronically who is farther away (see Recommendation #9). If internet connectivity is a concern, that portal could be located at the justice court itself—in lieu of a front counter. Conceivably, a jurisdiction that subscribed to both of these concepts could maintain a justice court without needing to employ its own clerk.

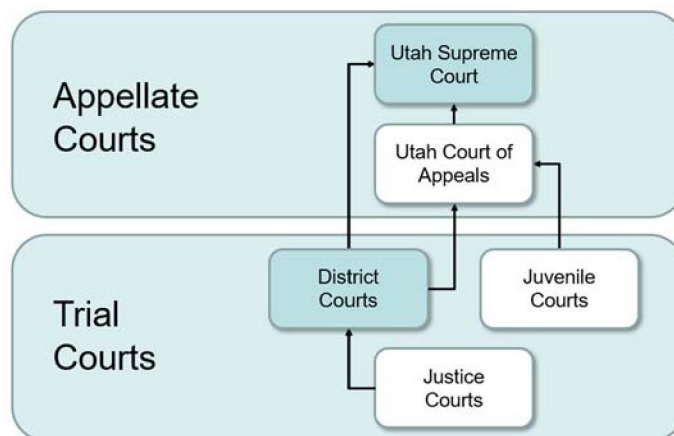
Create a Subcommittee

There are many ways that customer service could be improved for court patrons while lowering costs for taxpayers. To explore these and other ideas, the Board recommends that the Task Force create a subcommittee where justice court judges, administrators, and others could develop proposals for consideration by the Task Force.

Recommendation #12

The Council should determine the best judicial structure to implement the foregoing recommendations.

Related to the question of whether justice courts should be courts of record (see Recommendation #1) is how the court system as a whole would need to be restructured (if at all) to implement the Board's recommendations. Presently, as shown below, justice courts are one of three trial courts. As indicated by the black arrows, appeals from justice court go to another trial court, while those from the juvenile and district court are taken up by an appellate court. Courts in the shaded boxes were created by the Utah Constitution; those in white boxes were created by statute.



The Board of Justice Court Judges takes no position with regard to how Utah's court system might be restructured in connection with justice court reform, but it does recommend that various alternatives be explored. These include:

- Maintaining the status quo
- Dividing case types currently heard by the justice courts between a court of record and a court not of record
- Bringing all case types heard by the justice courts into a court of record

Status Quo

At present, justice courts are courts not of record. They operate in 113 county and municipal sites throughout the state. It is a fragmented system in which the number of part-time judges is double that of full-time judges. As a result, many clerks have an

insufficient amount of court work to occupy their part- or full-time schedules. To keep them busy, they are tasked with executive branch work to perform in their locations, which makes it difficult to learn and retain the clerical expertise they need to have. Even so, if certain recommendations are not ultimately adopted or implemented, then justice courts could continue to operate as they are.

Creating a Court of Record for Misdemeanors and Small Claims

One alternative to leaving the system as it is or transforming *all* justice courts into courts of record is to divide justice court cases between a court of record and a court not of record. This could be done in several ways, each of which merits further consideration. The first is to model the court of record after juvenile court. Like justice courts, juvenile courts are courts of limited jurisdiction. Unlike justice courts, however, juvenile courts are operated at the *state* level by *state* employees in *state* facilities. In this regard, justice courts could be patterned after the juvenile court. Misdemeanors and small claims cases would be handled at the state level by state employees in a court of record. That would leave infractions to be handled by courts not of record by the county and/or municipal courts.

A second option would be to divide the cases between the counties and the municipalities. Courts of record could be created at the county level, which house all the services for justice court defendants. Some of these services include the jail, substance abuse, mental health, and pretrial release services. Infractions would be handled by courts not of record at the municipal level. If judges for courts of record *must* be admitted to the practice of law, either of these two options would preserve the jobs of current justice court judges who are not members of the bar.

Create a Court of Record for All Misdemeanors and Infractions

A third option is that all case types heard by the justice courts could be heard in courts of record. These could be operated by the cities and counties that currently have a justice court or they could be divided between state operated courts and those operated by local government.

Other Considerations

Justice court reform might necessitate two other changes to the court system. Each of these changes merits the formation of additional subcommittees that can make recommendations to the Task Force.

The first relates to the dissolution of the circuit courts in 1996. From 1978 to 1996, circuit courts handled many of the same cases that justice courts do now. When they were merged into the district court, some circuit court sites remained intact at the

request of their host cities and became district courts. As a result, there are several district courts that hear cases more traditionally associated with district court, but they also hear cases that would otherwise be heard by justice court. The Board recommends forming a subcommittee comprised of Trial Court Executives (and others) from the Second, Fourth and Eighth Districts to study this issue and make recommendations to the Task Force.

A second subcommittee should study whether small claims cases should remain in justice court. This decision could impact the structure of the trial courts and is highly contingent on the success of Online Dispute Resolution (ODR). This technology was introduced in West Valley City as a pilot in September 2018; Orem City and Carbon County were added in 2019. In June 2020, the Judicial Council approved the expansion of ODR for small claims cases to all justice courts. Given the vast reduction in workload that the pilot sites have experienced and the plan to make this technology available statewide, some consideration should be given to whether small claims are best adjudicated at the municipal level, the county level, or the district level, and the future role, if any, of judges pro tem in justice courts.

Justice Court Reform Task Force

UTAH JUDICIAL COUNCIL • UTAH SUPREME COURT

Judge Paul Farr, *Chair*

Jim Peters, *State Justice Court Administrator*

Michael Drechsel, *Assistant State Court Administrator*

TASK FORCE MEMBERSHIP

Justice Courts

Judge Paul Farr (CHAIR)
Third District Justice Court – Sandy, Herriman, Alta

Justice Courts

Judge Brent Dunlap
Fifth District Justice Court – Cedar City, Parowan

Board of Justice Court Judges

Judge Brian Brower
Second District Justice Court – Sunset, Clearfield, Morgan

Utah Supreme Court

Paul Burke
Advisory Committee on Rules of Appellate Procedure

Utah Court of Appeals

Judge Ryan Harris
Court of Appeals

District Courts

Judge Roger Griffin
Fourth District Court – American Fork

Utah State Senate

Senator Kirk Cullimore
Senate District 9

Utah House of Representatives

Representative Craig Hall
House District 33

Utah League of Cities & Towns

Roger Tew
Senior Policy Advisor

Utah Association of Counties

Commissioner Jerry Taylor
Garfield County Commissioner

Civil Attorneys

George Sutton
Jones Waldo

Governor's Office

Ron Gordon
General Counsel

Comm. Criminal Justice

Kim Cordova, Executive Director
Joanna Landau, Director

Defense Attorneys

Ann Marie Taliaferro
Utah Assoc. of Criminal Attorneys

Prosecutors

Ryan Robinson
Statewide Association of Prosecutors

Prosecutors

Anna Anderson
Salt Lake District Attorney

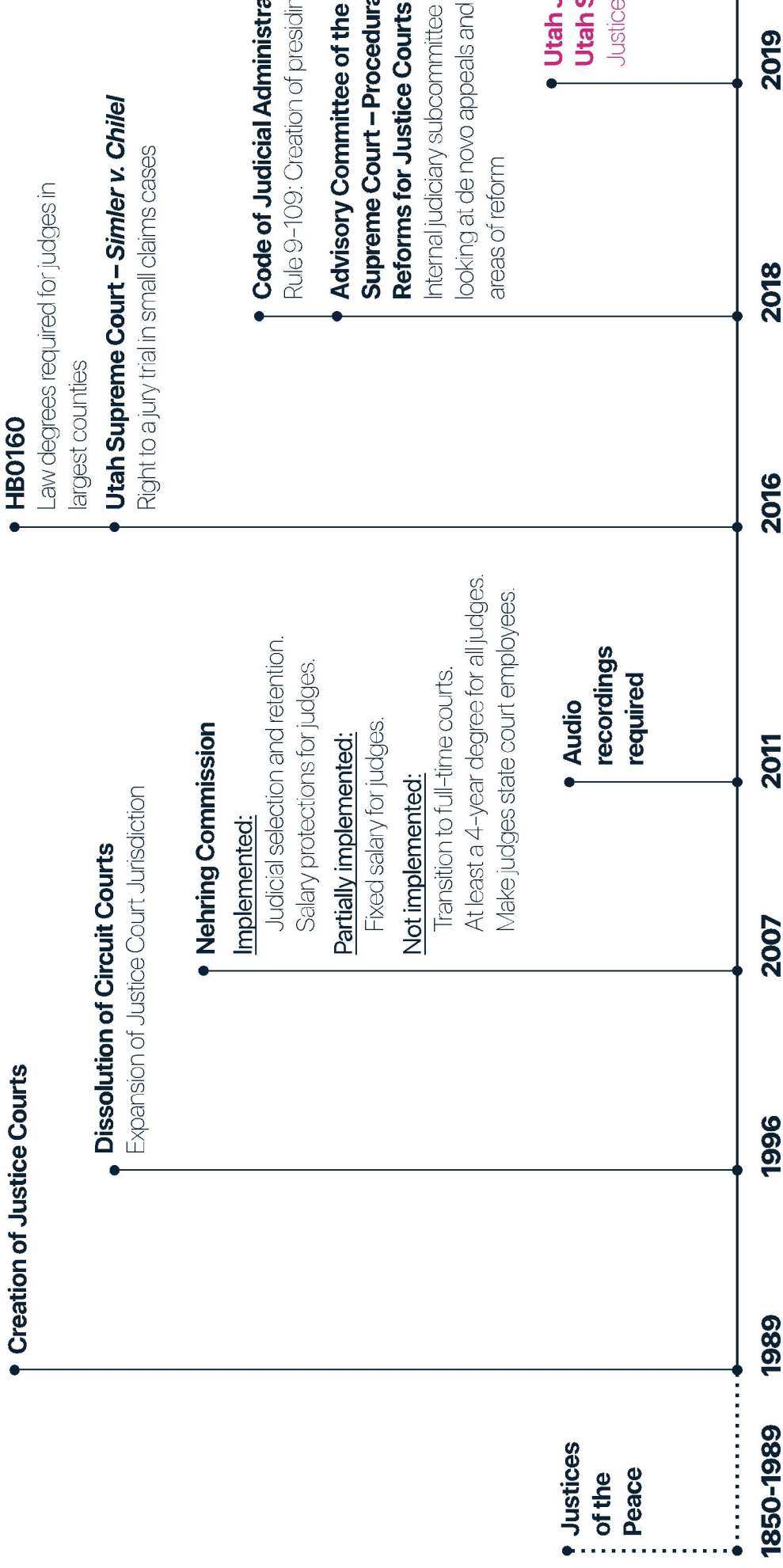
Task Force Staff:

Jim Peters
Justice Court Administrator

Cathy Dupont
Deputy State Court Administrator

Micah
Assistant

EVOLUTION OF JUSTICE COURTS



JUSTICE COURT APPEALS

Elimination of de novo appeals in favor of an on-the-record appeal requires changing justice courts to "courts of record"

Then the following apply:

Utah Constitution, Art. VIII, Sec. 1:

"Courts not of record shall also be established by statute."

Either a constitutional amendment would be required to eliminate this requirement, or some type of tiered system would be required where some cases (misdemeanors and small claims, for example) would be heard "on-the-record," while other cases (traffic and infraction) would not.

Utah Constitution, Art. VIII, Sec. 8:

The governor fills appointments on courts of record

Utah Constitution, Art. VIII, Sec. 7:

All judges of courts of record shall be admitted to the bar

Utah Constitution Art. VIII, Sec. 10:

Judges of courts of record may not practice law while they are judges of courts of record or require full-time judicial positions.

REFORM PROPOSALS (to date)

CONFERENCE OF STATE COURT ADMINISTRATORS

Law degree for all judges

On-the-record appeals

Independent appointment process (already implemented)

Court Governance (bring justice courts under the AOC)

TASK FORCE MEMBERS

Small claims online dispute resolution

Small claims jurisdiction (geographic and subject matter)

Collection of racial statistics

Pretrial release practices

Fine and sentencing practices

Indigent defense practices

BOARD OF JUSTICE COURT JUDGES

On-the-record appeal

Law degree for all judges

Expand jurisdiction to include Class A's

Remove geographic restriction for application

Transition to all full-time judges

Established a fixed salary for judges

More fully utilize magistrate capacity

Bring justice courts under the AOC umbrella

Utah Code to clarify justice courts are part of the judicial branch

Standardize budget and budget process

Consolidate part-time clerical positions

Evaluate best structure to accommodate the future

TASK FORCE NEXT STEPS

- **Receive and consider additional proposals and feedback**
- **Aggregate and study relevant data**
- **Prepare report and recommendations for future action**
- **Future task force meetings:**

Task force meetings are scheduled each month through May 2021.
The schedule is available on the committee website below.

To learn more visit
or email

<http://www.utcourts.gov/utc/jc-reform-justicecourtaskforce@utcourts.gov>

I write in response to the Tribune's August 7th "Blind Justice" editorial which urged speedy reform and state control of the justice court system to insure independence. Blindly eliminating local courts is not a wise solution.

In 1776, we declared independence from King George III because, among other things, "he has obstructed the administration of justice, by refusing ... judiciary powers," making "judges dependent on his will alone." We then jealously divided governmental power into three coequal branches, with Madison observing: "There can be no liberty where ... the power of judging be not separated from the legislative and executive powers." Utah's constitution enshrines the same three co-equal branches and likewise declares that "no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others."

We applaud the Utah Judicial Council for focusing attention on judicial independence. But the current proposal will eliminate local courts, and is reminiscent of King George's "refusing ... judiciary powers." It is a major mistake. Under the proposal, an effective local judiciary would be replaced by a centralized state system. That violates good policy and constitutional principles "essential to the security of individual rights and the perpetuity of free government."

The Bill of Rights carefully reserved to States and people all powers not delegated to the federal government. Similarly, "each city [under Utah's constitution is] granted, the authority to exercise all powers relating to municipal affairs..." How would Utahns respond if the federal government determined to abolish Utah courts based on the unproven idea that uniform federal courts nationwide would be more open, fair, efficient, and independent? The answer should be obvious - big government is not necessarily better - and balance is destroyed.

I am an attorney, a trustee, and have served as a part-time justice court judge for over ten years. I have presided over trials (jury and non-jury) involving theft, child abuse, drug charges, and DUI's in two cities. Never during my ten years as judge have the other two branches of local government interfered. We have had complete independence as one of the three legs of the democratic government stool. Ironically, if the reform is instituted as proposed, it may have the effect of causing many cities to simply shut down local courts, using the space and clerical personnel for other purposes. So, Utah may go from having an effective local third branch of government to absolutely no local judicial branch in some places -- truly no judicial independence. The damage will be worst in small areas away from the Wasatch Front which will not be well served by roving or centrally located state judges.

Other far less intrusive alternatives exist, such as: (1) involving the public in the selection process in partnership with local government, (2) retention elections for all judges, (3) setting uniform compensation requirements, and (4) formalizing the separation of power at the local level, including specific prohibitions against inappropriate intervention and the power to slap the hands of those who offend judicial independence.

The current proposal throws the baby out with the bath water, which may not even be dirty. If it is, the legislature can certainly take less intrusive steps to clean it up. Please, let us not be blind about justice - we must not join King George in being guilty of obstructing justice by "refusing judiciary powers" to local government. To do so severely jeopardizes the balance and stability of the three-legged stool of government on a local basis.

Administrative Order for Court Operations During Pandemic

ADMINISTRATIVE ORDER

June 3, 2021

The World Health Organization has declared the COVID-19 outbreak to be a pandemic. Governor Gary Herbert and Governor Spencer Cox declared a state of emergency. In light of the Governor's declaration, and to protect the public and all court participants, the Utah Judiciary continues to implement its Pandemic Response Plan.

The Judiciary has monitored the Governor's declarations in deciding the risk phases for the courts, but the Judiciary must follow the phases of its Pandemic Response Plan, which are Red, Yellow, and Green. This is because the courts are in the unique position of having the authority to compel individuals to appear at the court, and before that occurs the courts must be confident the health risks are low. Beginning June 7, 2021, all courts may operate in the Yellow phase if their risk response plan has been approved by the Management Committee. As courts move from the Red to Yellow or Green phases of operations, the districts and individual court locations will have flexibility in determining how best to resume in-court proceedings. Districts or individual court locations may continue to require hearings by remote transmission during these transitions. All districts and individual court locations must give priority to resuming in court proceedings that are not capable of being held remotely, such as jury trials. The Management Committee will begin creating standards for allowing courts to move to the Green phase and whether moving to the Green phase will occur on a statewide basis or individual courts will be able to seek permission to move to the Green phase.

To bring uniformity to the operation of the courts during the COVID-19 pandemic, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, issued a March 13, 2020 Administrative Order. The purpose of the March 13, 2020 Administrative Order was to identify mission-critical functions of the judiciary at each court level, ensure that the courts remain open to perform those functions, and to do so in a manner that promotes the health of the public and all court participants.

Since the March 13, 2020 Administrative Order, the Chief Justice, on behalf of the Utah Judicial Council and Utah Supreme Court, has issued a series of updated administrative orders, each of which has entirely supplanted the preceding order. Except for the May 21, 2021 Administrative Order ending the mask mandate, today's Order entirely replaces all preceding administrative orders. This includes a rescission of the Amended Administrative Order dated March 25, 2020, which means the standards and requirements in rules 3-101(2) & (3), 3-104(3)(L), and 3-111(3)(C) of the Utah Rules of Judicial Administration are no longer suspended.

This Order provides directives the courts must follow during Red and Yellow phases of operation.

To the extent any provision of this Order conflicts with the Utah Code of Judicial Administration or a rule of procedure or evidence, the provision in this Order will govern. The provisions of this Order are therefore subject to the same types of challenges that could be raised against a rule of administration, procedure, or evidence. Rules 2-205 and 11-105(5)(B) of the Utah Rules of Judicial Administration are suspended to the extent they require a rule amendment that has been adopted on an expedited basis to be immediately published for comment and to be published for 45 days. Rule amendments will be published for public comment as directed by the body that adopts the rule, including reducing the time for public comment.

IT IS HEREBY ORDERED:

Red Phase

General Orders

1. In accordance with page 6 of the Pandemic Response Plan, the Pandemic Response Plan is activated. A court in any county that is operating in the Red Phase, may submit a request to the Management Committee of the Judicial Council that they be allowed to operate in the Yellow phase. The request may be granted if the Management Committee is satisfied the criteria for the Yellow phase as described in the Risk Phase Response Plan are being met in that county. All court personnel should be provided access to the Pandemic Response Plan, the Continuity of Operations Plan, and the Risk Phase Response Plan. The Pandemic Response Plan remains operative. However, to the degree it is inconsistent with this Order and the Risk Phase Response Plan, this Order and the Risk Phase Response Plan supersede the Pandemic Response Plan.
2. The coronavirus response team formed by the Administrative Office of the Courts will continue to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.
3. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and should coordinate with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.
4. [Deleted]

Consistent with the Pandemic Response Plan, the coronavirus response team must help each court implement measures that will continue the mission-critical work of the judiciary while also protecting members of the judiciary and the general public.

Orders Applicable to All Court Levels

5. All courthouses shall remain open during regular business hours in a manner necessary to effectuate the mission of the courts, which may include being electronically or telephonically accessible. In accordance with the Risk Phase Response Plan, individuals who have been diagnosed with COVID-19 and have not recovered or who show symptoms of COVID-19, and anyone who has not been fully-vaccinated and has had sustained close contact with such individuals, may not enter the courthouse.
6. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails, and other communications. Individuals who do not have access to e-filing may file documents by email in any pending case. If an individual wishes to file a pleading to initiate a case or file a notice of appeal, the individual should contact the court by telephone to make arrangements for filing. Lawyers are encouraged to stipulate to extensions of time. Judges are directed to grant liberally motions for extensions of time. This Order does not extend filing deadlines. Any future extension of a specific deadline will be made by separate order.
7. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.
8. Except as provided below, absent exigent circumstances, all hearings shall be conducted on the papers, or through remote transmission, such as by telephone or video conferencing. If an in-person hearing is necessary due to exigent circumstances, the court shall conduct the hearing consistent with all applicable government and public health orders, the Court’s Pandemic Response Plan, and the Risk Phase Response Plan. A judge must obtain approval from the presiding judge before conducting an in-person hearing based on exigent circumstances. A person who appears at the courthouse in response to a summons or citation, or pursuant to a promise to appear, shall be given a new date to appear or provided with instructions on how their case may be handled through remote transmission, and the court or clerk may address summary matters and matters that should not be postponed to another date because the person would not have the technology necessary to participate.
9. (a) Except as provided below, district court and justice court judges are not to conduct any criminal jury trials (whether the defendant is or is not in custody) or civil jury trials during the Red phase. If a defendant is in custody on a class B or C misdemeanor offense, the assigned judge must reconsider the defendant’s custody status and is encouraged to release the defendant subject to appropriate conditions.

(b) [Deleted]

(c) The Management Committee is authorized to create standards for jury trials in the Red phase and to authorize any court that meets those standards to conduct jury trials. The Management Committee will consider the input and advice of health officials in determining whether jury trials can be safely conducted and the standards for conducting those trials. The Management Committee may authorize courts to deviate from the Risk Phase Response Plan to the extent necessary to conduct jury trials. The Supreme Court must review and approve any standards involving the Supreme Court's authority before those standards may be implemented.

(d) The Supreme Court adopts the following temporary rule modifications:

(i) Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following: (a)(4) In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. "Trial participants" is defined to include the judge and testifying witnesses. The defendant's waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.

(ii) Rule 17(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial, all felony cases must be tried by jury unless the defendant waives a jury on the record. The prosecution's consent is not required for a Red phase jury trial.

(iii) Rule 17.5(c) of the Utah Rules of Criminal Procedure is amended to include the following: In all cases tried during a Red phase jury trial and for good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location if (1) the defendant is the party calling the witness, or (2) the defendant waives any right to confront the witness in person. In the event the prosecution is the party calling the witness and the defendant does not waive any right to confront the witness in person, the court may nevertheless permit such testimony if the court (1) finds the witness has COVID-19, is exhibiting symptoms consistent with COVID-19, or has a health or other condition that places the witness at increased risk of harm if the witness contracts COVID-19, and (2) sets forth the reasons for its findings on the record.

(iv) The following paragraph is added as Rule 18(h) of the Utah Rules of Criminal Procedure: In all cases tried during a Red phase jury trial, jury selection should occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless

of the number of alternative jurors selected and regardless of the number of prospective juror groups that are created.

(v) The following paragraph is added as Rule 47(t) of the Utah Rules of Civil Procedure: In all cases tried during a Red phase jury trial, jury selection should occur through remote transmission using the struck method. The court may randomly divide jurors into groups with a minimum of ten prospective jurors in each group. If after following the struck method with the first group of jurors a full jury has not been selected, the court will examine the next group, and will continue to follow this process until a jury is selected. Each side is entitled to three peremptory challenges, regardless of the number of alternative jurors selected and regardless of the number of prospective juror groups that are created.

(e) The Judicial Council adopts the following temporary rule modifications:

(i) The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.

(ii) Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.

(iii) The following paragraph is added as rule 4-405(3)(E): During a Red phase jury trial a court may provide meals to jurors allowing them to remain in the protected environment of the courthouse during the course of a trial.

10. Presiding judges shall issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order. Any order issued by a presiding judge or individual judge before or after the effective date of this Order is superseded to the extent the order is inconsistent with this Order.

Orders Applicable to Appellate Courts

11. During the Red Phase of operation, the appellate courts will determine which cases to set for oral argument. In general, except where oral argument would not facilitate the decisional process, oral arguments will be conducted in cases such as child custody, juvenile detention, child-welfare adjudications and dispositions, and other hearings involving child safety, in-custody defendants, and election matters.
12. Oral arguments shall be conducted by remote transmission.

13. Cases not set for oral arguments may be decided on the briefs.

Orders Applicable to District Courts

Criminal Cases

14. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause reviews of warrantless arrests, bail hearings, bench warrant hearings, first appearances, appearances mandated by statute, preliminary hearings, and sentencing hearings.
17. District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

Civil Cases

18. In accordance with paragraph 9 above, district courts shall continue to perform all mission-critical functions. As used here, mission critical functions include, but are not necessarily limited to, protective order hearings, stalking injunction hearings, temporary restraining order hearings, guardianship hearings where the minor or incapacitated person is at risk of harm, involuntary commitment hearings, and hearings related to enforcement of custody and parent-time orders.
19. (a) District court judges may conduct any proceedings by remote transmission, including bench trials, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.
- (b) Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title

78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

20. Juvenile court judges may hold any hearing remotely.
21. Any child welfare, delinquency, or protective order timeline may be extended by the court.
22. (a) If a party desires an in-court hearing, a written request must be filed with an explanation as to why such a hearing is necessary and permitted under paragraph 9 and must explain in detail the exigent circumstances requiring an in-court hearing.

(b) Subject to paragraph 9 any remote or in-court hearing may be set by the court on its own motion.
23. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

Orders Applicable to Justice Courts

24. In accordance with paragraph 9 above, justice courts shall continue to perform all mission-critical functions for in-custody defendants. As used here, mission-critical functions include, but are not necessarily limited to, probable cause reviews of warrantless arrests, bail hearings, bench warrant hearings, arraignments, appearances mandated by statute, and sentencing hearings.
25. [Deleted]
26. [Deleted]
27. Justice court judges may conduct any proceedings by remote transmission, including bench trials and small claims hearings, if court staff is available and the proceedings comply with all applicable government and public health orders, the Court's Pandemic Response Plan, and the Risk Phase Response Plan. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless

the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

28. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Yellow Phase

General Orders and Orders Applicable to All Courts

29. The coronavirus response team formed by the Administrative Office of the Courts will continue to coordinate and implement the pandemic response. The response team should regularly communicate with members of the judiciary information about COVID-19 and about efforts that have been taken, should be taken, and will be taken in response to the pandemic.
30. Presiding judges, trial court executives, clerks of court, and chief probation officers should implement their district pandemic response plans and the transition from the Red phase to the Yellow phase in coordination with community partners, such as sheriffs, jails, prosecutors, and defense attorneys. The districts should continually communicate with the response team on the effects of the pandemic in their area.
31. Courts may conduct any court proceedings at the courthouse in accordance with the Yellow Phase of operations, if the court location has a Risk Response Plan approved by the Management Committee, which includes, but is not limited to remaining open during regular business hours for in person business at the court, and being electronically or telephonically accessible. In accordance with the Risk Phase Response Plan, individuals who have been diagnosed with COVID-19 and have not recovered or who show symptoms of COVID-19, and anyone who has not been fully-vaccinated and has had sustained close contact with such individuals, may not enter the courthouse.
32. Courts shall continue to accept filings, and shall be available to answer telephone calls, emails, and other communications. Individuals who do not have access to e-filing may file documents by email in any pending case.
33. Self-represented litigants may file, without a wet signature, protective order requests, stalking injunction requests, pleadings, and other documents. The court will consider such documents “signed” consistent with Title 46, Chapter 4 of the Utah Code, Uniform Electronic Transactions Act, if (1) self-represented litigants include their name on the signature line of a document with the necessary declaration; and (2) the document is sent as an attachment in an email with a visible email address, or through other secure electronic communication approved by the court. Clerks of court shall accept filings that meet these requirements.

34. A court may continue to conduct hearings, bench trials, and oral arguments by remote transmission. Presiding judges may issue whatever orders are necessary to facilitate remote transmission of court hearings and to implement all other provisions of this Order. Orders issued by presiding judges or individual judges before the effective date of this Order that are consistent with this Order remain in effect. Orders may be issued hereafter by presiding judges or individual judges provided they are consistent with this Order.
35. District Court and Justice Court judges may conduct civil and criminal jury trials in accordance with the Yellow phase risk response plan and if the court's risk response plan has been approved by the Management Committee. Priority should be given to addressing the case backlog for in-custody defendants. The Judicial Council adopts the following temporary rule modifications:
- (a) Rule 17(a) of the Utah Rules of Criminal Procedure is amended to include the following: (a)(4) In all cases tried to the bench, a defendant may waive the right to appear in person at trial and consent to appear through video conferencing if the defendant has an effective opportunity to participate, which includes the ability to view trial participants and to meaningfully interact with counsel of record in real time. "Trial participants" is defined to include the judge and testifying witnesses. The defendant's waiver and consent must be on the record and the court must make findings that the waiver and consent are voluntary.
 - (b) The calculation of time for determining juror terms of availability under rule 4-404(2)(B) of the Utah Rules of Judicial Administration is suspended. The suspension will be lifted for a particular court when jury trials resume in that court.
 - (c) Rule 4-404(6)(C)(i) is amended as follows: The summons may be by first class mail delivered to the address provided on the juror qualification form, by email to the email address provided on the juror qualification form, or by telephone.

Orders Applicable to District Courts

Criminal Cases

36. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case and a defendant may consent to a bench trial in other cases. Bench trials will be conducted as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.

Civil Cases

37. Rule 26.3 of the Utah Rules of Civil Procedure is temporarily amended. In unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, the plaintiff shall

include a completed form declaration, disclosing information relevant to federal, state, and local COVID relief law. Such declaration shall be provided with the required Rule 26.3(b)(1) disclosures. Rule 55 of the Utah Rules of Civil Procedure is also temporarily amended. The court may not enter default judgment in unlawful detainer cases under Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, unless the plaintiff has submitted to the court a completed form declaration showing compliance with federal, state, and local COVID relief law. A sample form declaration will be available on the Utah State Courts website after review by the Judicial Council.

Orders Applicable to Juvenile Courts

38. Any child welfare, delinquency, or protective order timeline may be extended by the court.
39. With respect to any court hearings or reports, any persons who provide information to the court shall obtain that information in a manner that is consistent with federal, state, and local law or directives and the policies and procedures of their agency or organization. In the event sufficient information cannot be safely obtained in this manner, the court shall continue that hearing until the information can be safely obtained.

Orders Applicable to Justice Courts

40. Rule 17.5(b) of the Utah Rules of Criminal Procedure is suspended in infraction cases and to the extent it requires the prosecution's consent in other cases. The parties' consent is not required for a bench trial by remote transmission in an infraction case or for a small claims hearing, and a defendant may consent to a bench trial in other cases. Bench trials and small claims hearings will proceed as scheduled unless the court determines it is not reasonably practical to do so in a particular case, given the issues and anticipated evidence.
41. Any justice court that fails to remain open and provide services in accordance with this Order is subject to decertification by the Judicial Council.

Order Subject to Amendment

42. This Order may be amended at any time to respond to changed conditions.

DATED this 3rd day of June, 2021.



MATTHEW B. DURRANT
Presiding Officer, Utah Judicial Council

DATED this 3rd day of June, 2021.



MATTHEW B. DURRANT
Chief Justice, Utah Supreme Court



UTAH STATE COURTS

State of Utah Judiciary Risk Phase Response Plan

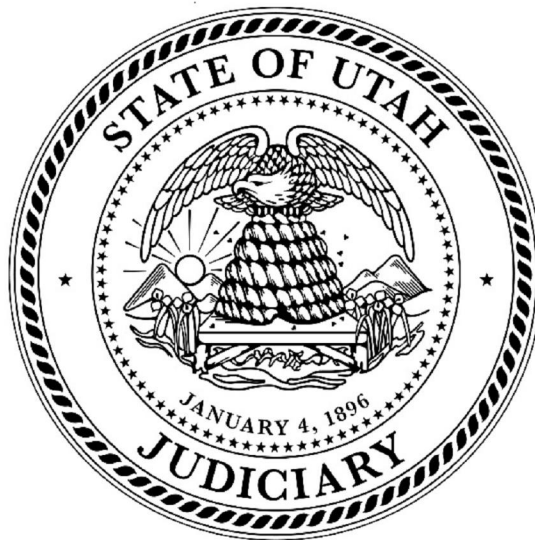


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Risk Phase Response Plan

INTRODUCTION

The purpose of this plan is to establish requirements and guidelines for the courts to follow during the various phases of the COVID-19 pandemic. The Utah State Governor has declared a state of emergency and has adopted standards that determine risk levels that will guide the people of this state through stages of restrictions and recovery. The Judiciary recognizes the standards adopted by the Governor but also recognizes that those phases may not always align with the concerns of the Judiciary, which is in a unique position to compel individuals to come to court. The Judiciary's Pandemic Response Plan includes three risk phases: **Green (new normal)**, **Yellow (low risk)**, and **Red (moderate or high risk)**. The Management Committee of the Judicial Council will determine when courts may transition to different phases. The Management Committee will create standards for conducting jury trials during the Red phase.

In making decisions, the Management Committee will consider the Governor's risk standards. The Management Committee recognizes that different counties or court sites might be in different phases at any given time considering the spread of COVID-19 in a particular area. The Management Committee has considered the Governor's risk standards and determined that a court may move to the Yellow phase when the risk index is moderate and the court's plan has been approved. The court will remain in Yellow during the low index phase subject to the Management Committee creating standards and providing a process for a court to transition to the Green phase. The Management Committee will consider guidance from state and local officials to determine when courts will be permitted to transition to Green. The Management Committee will decide whether all courts will transition to Green at the same time or whether individual courts may be permitted to transition. This plan will be updated or the Management Committee will otherwise provide guidance once decisions are made. This document will provide guidance to the courts on operations during each phase. The trial plans for each court level are included as appendices.

When the courts transition to the Yellow phase, in-person proceedings may resume in any district or court if the Management Committee has approved the district's or court's plan to resume operations. Each district must create a COVID-19 operation plan for every building within their district or, if the building is shared with other entities, for the portion of the building under the court's authority. In the juvenile courts, this includes probation offices. In the Second, Third, and Fourth Districts the juvenile courts and the district courts must create separate plans. Each justice court must create a plan for areas under the control of the court, recognizing that many justice courts are in multi-use buildings. Justice courts should consult with other building occupants in creating their plans. The appellate courts must create a plan addressing the areas for both appellate courts. The Administrative Office of the Courts must create a plan for the space it occupies, and the Office of Guardian ad Litem must create plans for their offices. In buildings with multiple court levels, such as the Matheson Courthouse or the Provo Courthouse, the court levels should consult with each other as they create their plans.

A checklist is provided to guide courts in creating their plans. The checklist is found in Appendix A. Courts must complete the checklist and certify they have completed the checked items. In instances where one or more of the requirements do not apply to the circumstances of a particular court, the submission must include a brief explanation about why those requirements do not apply and were not addressed. Courts may submit any written materials they have created to implement their plans. Courts should consult with local partners, such as attorneys, law enforcement, corrections officials, and service providers, in creating plans. Courts should continue to keep partners informed about court operations and changes that occur. The safety of court personnel and patrons is the most important consideration through all risk phases of recovery. In formulating plans each court should bear in mind that COVID-19 can be transmitted even by asymptomatic individuals.

The Judiciary will continue to abide by its Pandemic Response Plan, and the guidelines of the Centers for Disease Control, the Utah Health Department, and the World Health Organization. The guidelines can be found at <https://www.cdc.gov/>, <https://health.utah.gov/>, <https://www.who.int/>.

IMPORTANT CONCEPTS TO BE CONSIDERED THROUGH YELLOW AND RED PHASES OF THE PLAN.

- 1. Physical Distancing.** Physical distancing means maintaining a distance of at least six feet from others. When physical distancing requirements are in effect, physical distancing must be maintained throughout courthouses, including common areas, courtrooms, and workspaces. Floor markings, stanchions, and cones should be used in places where people might congregate, such as lines at security, waiting areas, or court counters. Physical distancing is not required when everyone present in a particular area voluntarily offers information that they have been vaccinated. Physical distancing is encouraged even in circumstances when it is not required.
- 2. Personal Hygiene.** Courts should encourage patrons and require personnel to frequently wash their hands to prevent the spread of COVID-19. Hand sanitizer with at least 60% alcohol content may be used when frequent hand-washing is not feasible. Courts must stock all restrooms with the materials necessary for hand-washing, and courts must provide hand sanitizer near high use touch points and areas where court personnel interact with court patrons. Courts must certify that hand sanitizer, soap, and towels are available and will continue to be available throughout all risk phases.
- 3. Sanitation.** Courts must clean high use touch points throughout the courthouse on a regular basis. In courtrooms, this includes chairs, tables, door handles, lecterns, counters and microphones. In workspaces, this includes door handles, tables, copiers, printers, other shared equipment, chairs, benches, and desks. In other areas of the courthouse this includes security bins, door handles, handrails, computers, benches, elevator panels, restrooms, and counter areas. During a Yellow phase courts should take steps to

minimize high use touch points, such as by propping doors open in certain areas, removing unnecessary furniture, closing break rooms, removing drink stations, and eliminating shared use of equipment. All areas in courthouses must be cleaned every night. During a Red phase courts should also eliminate high use touch points that can reasonably be eliminated.

4. **Capacity Limits.** Each phase may involve limits on the size of gatherings. Courthouses must adhere to those limits in all areas, including courtrooms, meeting rooms, lobbies, breakrooms, and workspaces. The limits will be based on the amount of net occupiable space – which excludes built-in furnishings – necessary to maintain physical distancing. The capacity limits can be determined by dividing the square footage in a particular area by half and then dividing that number by 36. The capacity limits must be posted outside those areas.
5. **COVID-19 Screening.** Any person who exhibits symptoms of COVID-19 may not be admitted to a courthouse. The symptoms of COVID-19 can be found on the above websites and include: fever, chills, cough, shortness of breath or difficulty breathing, abnormal fatigue, abnormal muscle or body aches, new loss of taste or smell, sore throat, congestion, or runny nose. Except for individuals who have been fully vaccinated or who have had COVID-19 in the past three months, individuals who have had sustained close contact with someone who has COVID-19 – even if those persons themselves are asymptomatic – may not enter a courthouse until the person has self-quarantined for ten days from the date of last contact or at least seven days have passed and the person has tested negative for COVID-19 after five days from the date of last contact. Sustained close contact means being within six feet of someone for a total of 15 minutes or more within any 24 hour period. Individuals who have been fully vaccinated or those who have had COVID-19 in the past three months are not required to self-quarantine after such contact unless they are experiencing COVID-19 symptoms. Any person who has had COVID-19 may not enter a courthouse until the person has not experienced symptoms for at least 24 hours without the use of fever-reducing medication or, if the person has been asymptomatic, until 10 days have passed since their positive test. The prohibitions apply to both personnel and patrons.

Courts must conduct COVID-19 screenings of patrons who enter courthouses. Courts must identify who will conduct those screenings. The screenings will include asking standard questions and may include using touchless thermometers if they are available. The list of standard questions is found in Appendix B. Courts must post notice of the requirements in conspicuous areas where people enter.

If a person is denied access to the courthouse, the person must exit through a path where contact does not occur with others. The person must be given information on how they may contact the court for further instructions. Court security must alert the presiding judge, TCE, or local court administrator when a person has been denied access.

Personnel will be required to conduct a self-check before coming to work. Personnel who have COVID-19 or are required to quarantine must contact their supervisor and must not

report to work until the supervisor authorizes a return to work. The information about personnel and patrons must be kept confidential.

- 6. Vulnerable Persons.** Courts may provide accommodations to vulnerable persons including employees, patrons, and judges, who have not been fully vaccinated. Vulnerable persons include those who are 65 or older and those of any age who have any of the following underlying health conditions:

- chronic lung disease,
- moderate to severe asthma,
- heart conditions,
- 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,
- severe obesity (body mass index [BMI] of 40 or higher),
- diabetes,
- chronic kidney disease,
- liver disease,
- thalassemia,
- COPD,
- pregnancy,
- sickle cell disease,
- smoking,
- cerebrovascular disease,
- cystic fibrosis,
- hypertension or high blood pressure, or
- neurologic conditions such as dementia.

Accommodations for patrons may include allowing them to appear remotely or having their cases continued. Accommodations for employees may include allowing them to work remotely or having their work schedules altered or workspaces rearranged. Courts should consider accommodations on a case-by-case basis after consultation with the vulnerable person, and assisted by the human resources department. Any action taken should be consistent with the Americans with Disabilities Act (ADA) (42 U.S.C., § 12101 et seq.).

- 7. Masks and Other PPE.** Masks are not a substitute for physical distancing. Masks are to be used in conjunction with physical distancing. Masks that cover the nose and mouth must be used. The courts will follow CDC guidelines on mask use. Mask requirements will be established through administrative order. The use of masks may be mandatory in certain circumstances, including for patrons entering the courthouse and whenever physical distancing cannot be maintained. The use of masks may be encouraged but not required in other circumstances. Employees and patrons will be encouraged to provide their own masks. Courts must have masks available for those who do not have one. When mask requirements are in effect, entrance will be denied to any patron who is required to wear a mask and who refuses to wear a mask, and the person may be removed from the

courthouse if the person refuses to wear a mask while in the courthouse. If a person is denied entrance or removed from a courthouse because of refusal to wear a mask, the person must be provided information about how to contact the court for further instructions. When mask requirements are in effect, employees who are required to wear masks must wear masks in all areas except their private workspace when physical distancing can be maintained. Those employees must wear masks even if they have recovered from COVID-19 or they have been vaccinated. If an employee is unable to wear a mask due to an underlying health condition, management may arrange to allow the employee to work remotely until further notice. Managers and supervisors should contact Human Resources to collaborate on an alternative approach if remote work for employees with underlying health conditions becomes problematic. Courts should also have gloves available for employees who want them. Courts must certify that sufficient personal protective equipment is available and will remain available throughout the Yellow and Red phases. In circumstances when certain individuals are required to wear masks, they may remove their masks in workspace common areas when eating or drinking and provided physical distancing is maintained at all times. Those individuals must avoid remaining maskless in enclosed common areas for extended periods.

- 8. Mail and Other Papers.** Courts must provide written directions to court personnel on how mail, packages, and other materials received from others will be received and distributed. Options include having the mail or other documents sit for a period of time before handling, or distributing masks and gloves and requiring frequent hand-washing.
- 9. Signage.** Courts must post notices at courthouse entrances and throughout courthouses informing patrons and employees of restrictions, requirements, and advisories and guiding them as they navigate through the courthouse.
- 10. Contact Tracing.** Contact tracing is used to help reduce the spread of COVID-19. When a person tests positive for COVID-19, efforts are undertaken to determine where that person has been and the persons with whom the individual may have been near. When it is discovered that a person who has tested positive for COVID-19 has been in the courthouse, the court should immediately begin contact tracing to determine where that person may have traveled in the courthouse and who may have been in contact with that person. The court must use its best efforts to trace employee contacts within the courthouse. Courts should provide employees with their contact tracing policy to provide assurances that steps will be taken in the event someone tests positive.
- 11. Vaccination.** The state is engaged in a concerted effort to administer vaccines as quickly as possible to those who wish to be vaccinated. State and local governments may ease restrictions when total vaccinations reach certain numbers. The courts will not automatically ease restrictions when state and local restrictions are eased. The courts will consider the unique nature of court operations, the safety of personnel and patrons, and the recommendation of health officials in deciding when to ease restrictions. The restrictions that apply to personnel and patrons may be impacted by whether those individuals are fully vaccinated. The courts will follow the CDC's guidance in

determining when a person is considered fully vaccinated. The courts will not require individuals to be vaccinated but they may volunteer that information.

GREEN PHASE

Court operations are in a “new normal” during this phase. **Advised but not required:**

- a. Consider using remote proceedings when it is the most effective use of time and resources;
- b. Employees may be offered more telework options;
- c. Courts will maintain a heightened awareness of hygiene and sanitation for patrons and personnel;
- d. Courts will continue to consider the needs and requests of vulnerable persons and provide reasonable accommodations;
- e. Business travel to an area where the CDC, WHO, or the Utah Department of Health recommends self-quarantine upon return is prohibited; and
- f. Personnel should notify supervisors when they will be traveling for personal reasons to an area where the CDC, WHO, or the Utah Department of Health recommends self-quarantine upon return. Personnel who have not been fully vaccinated will be required to self-quarantine upon return for the period recommended by those entities.

YELLOW PHASE

Personnel

1. COVID-19 Checks

Personnel must conduct a self-check for symptoms prior to leaving for work each day. Personnel who have been diagnosed with COVID-19 or are experiencing COVID-19 symptoms may not return to the workplace until the person has not experienced symptoms for at least 24 hours without the use of fever-reducing medication or, if the person has been asymptomatic, until 10 days have passed since the diagnosis. Personnel who are exhibiting any signs of COVID-19 must contact their supervisor and may not come to work without their supervisor's consent. Personnel who have not been fully vaccinated and have had sustained close contact with someone diagnosed with COVID-19 may not come to work until ten days have passed from the date of last contact, even if those individuals are asymptomatic, or the person may return after seven days if the person tests negative at least five days after the date of last contact. Sustained close contact means being within six feet of someone for a total of 15 minutes or more within any 24-hour period. Courts may provide touchless thermometers for personnel to regularly check their temperature. Personnel who have been fully vaccinated and those who have had COVID-19 within the past three months are not required to quarantine unless experiencing symptoms.

2. Workspaces

- a.** Personnel may work in the courthouses. Physical distancing should be maintained when possible. This may require reconfiguring workstations to ensure that all employees work at least six feet apart. Where possible, courts should consider allowing some personnel to work remotely. Courts should also consider creating teams to rotate between remote work and work at the courthouse if necessary to minimize the risk of a large number of employees being exposed to COVID-19 at the same time, or to at least create separate teams that do not interact with each other. The purpose is to help ensure the availability of employees in the event there is an outbreak of COVID-19 at the courthouse.
- b.** Furniture and equipment should be rearranged or removed as appropriate to facilitate physical distancing.
- c.** There may be no more than four people in an employee elevator at one time, except that individuals who have been fully vaccinated and members of the same family or household may ride together.

3. Accommodations

Courts should accommodate personnel who are impacted by school or daycare closures or who are taking care of family members who have COVID-19. Accommodations could include telework or alternating work schedules. Courts should also consider requests from personnel who travel to work by mass transit to have their work schedules adjusted to avoid times when mass transit vehicles might be crowded.

4. Work Hours

Courts should stagger work hours if possible to avoid having many employees arriving for work at the same time and to minimize the number of employees in workspaces at any given time.

5. Masks

The courts will follow CDC guidelines on mask use. The use of masks may be required in some circumstances and recommended in others. Mask requirements will be declared through administrative order. When a mask requirement is in effect, masks are mandatory in common areas, such as courtrooms, hallways, stairways, elevators, restrooms, breakrooms, and entryways. Masks may be removed in places such as offices and cubicles provided physical distancing is maintained. Masks may be removed in common areas such as breakrooms only when eating or drinking and only if physical distancing is maintained at all times. Employees are encouraged to wear masks at their workstations, even where appropriately distanced. Masks may be required even if the person has recovered from COVID-19. Employees who are required to wear masks should avoid remaining maskless in enclosed common areas for extended periods.

When a mask requirement is not in effect, personnel who have not been fully vaccinated are encouraged but not required to wear masks. Personnel are required to wear masks when assisting patrons who are wearing masks when physical distancing cannot be maintained.

6. Vulnerable Persons

Courts may provide accommodations to vulnerable employees who have not been fully vaccinated. Accommodations for those employees may include allowing them to work remotely or having their work schedules altered or workspaces rearranged. Courts should consider accommodations on a case-by-case basis after consultation with the vulnerable employee and the employee's supervisor, assisted by the human resources department. Any action taken should be consistent with the Americans with Disabilities Act (ADA) (42 U.S.C., § 12101 et seq.).

7. Markings and Signs

- a.** Courts should consider creating one-way travel paths and waiting queues for areas such as hallways, restrooms, and breakrooms using signage and floor markings to guide personnel.
- b.** Signs must be posted in restrooms and work areas reminding personnel of physical distancing requirements and proper hygiene.

8. Meetings

Meetings may be conducted in person if physical distancing can be maintained, and subject to requirements on wearing masks. Personnel are encouraged to continue remote meetings.

9. Testing

Courts may consult their local health authorities to determine whether arrangements can be made for regular testing of employees.

10. Travel

- a.** Out-of-state business travel to an area where the CDC, WHO, or the Utah Department of Health recommends self-quarantine upon return is prohibited. In-state travel is restricted to that which is necessary.
- b.** Personnel should notify supervisors when they will be traveling out-of-state for personal reasons. If a person who has not been fully vaccinated or who has not had COVID-19 within the past three months travels to an area where the CDC, WHO, or the Utah Department of Health recommends self-quarantine upon return, the person must self-quarantine upon return for the period recommended by those entities.

11. Court Visitor Program

The court may authorize in-person visits subject to mask and physical distancing requirements.

12. Guardian ad Litem

The Guardian ad Litem director may authorize in-person visits subject to mask and physical distancing requirements.

Courthouses

1. Screening

Court security must screen everyone who enters the courthouse. Security may accomplish this by asking the standard questions or posting notice of the restrictions and asking the person whether the person read them. Security may use touchless thermometers if available.

2. Physical Distancing

- a.** Courthouses should facilitate physical distancing between all persons in enclosed spaces such as conference and meeting rooms, jury assembly rooms, courtrooms, and other areas where people gather.
- b.** When possible and appropriate, courts should create barriers of at least six feet between patrons and employees. Plexiglass may be used but is not a substitute for physical distancing.
- c.** Courts must use signage and markers to create travel paths and waiting areas as appropriate, such as dividing common areas with tape, barriers, stanchions, or cones, and providing directions to patrons about expectations. For areas in which patrons may be standing in line, such as court entrances or service counters, courts must place markers six feet apart where people must stand while waiting.
- d.** There may be no more than four people in an elevator at one time, except that individuals who have been fully vaccinated and members of the same family or household may ride together.

3. Masks

- a.** When mask requirements are in effect, patrons who are required to wear masks must wear masks in order to enter the courthouse and must continue to wear masks at all times while in the courthouse, unless a judge permits removal during a court proceeding. Courts must post notice of mask requirements at entrances and provide masks to those who do not have one upon their request. If a person is denied entrance or removed from a courthouse because of refusal to wear a mask, the person must be provided information about how to contact the court for further instructions. The presiding judge, court administrator, or TCE should be notified when a person is denied access.
- b.** When mask requirements are in effect, personnel must wear masks while assisting patrons, such as at a front counter. Personnel who are not otherwise required to wear masks may remove their masks when they are not assisting anyone, provided they comply with other provisions on masks and physical distancing.

- c. When mask requirements are in effect, individuals who are required to wear masks must wear the masks even if the person has recovered from COVID-19 or has been vaccinated.
 - d. When mask requirements are not in effect, patrons who have not been vaccinated are encouraged to wear masks. Courts must provide masks to those who want to wear a mask. Court personnel must wear masks when assisting someone who is wearing a mask and physical distancing cannot be maintained.
- 4. Contractors**
When mask requirements are in effect, court contractors are required to wear masks and courts must have screening processes for contractors before they enter court buildings. In buildings where contractors occupy space, such as a café or a legal aid office, courts must ensure those contractors follow the requirements of their courthouse plans and require those contractors to submit their own plans.
- 5. Accepting Payments and Papers**
Employees should be offered the use of gloves, with appropriate instructions on their use and removal, in order to accept payments and papers.
- 6. Juvenile Court Probation Officers**
Juvenile court probation officers must comply with the Juvenile Court Probation Operations plan attached as Appendix F.
- 7. Ventilation Systems**
Ventilation and filtration systems must be in working order to facilitate clean air and circulation.

Court Proceedings

- 1. In-Person and Remote Hearings**
- a. Courts are encouraged to conduct remote proceedings as much as feasible. In-person proceedings may be conducted provided physical distancing can be maintained and masks requirements are followed. Courts should limit the number of people in the courtroom to those who are required to be present for that proceeding, subject to capacity limits. The court may allow remote participation by those who are able to participate remotely. If others wish to view the proceedings they should be given remote access. If possible, courts should provide an area in the courthouse where proceedings can be viewed remotely, provided physical distancing can be maintained and touch areas are cleaned after use.
 - b. Vulnerable persons may not be required to attend any court proceedings and, if feasible, courts may allow anyone who expresses health concerns to appear remotely.
 - c. The Judicial Council and the Supreme Court will issue administrative orders as necessary to establish criteria for those hearings and to provide other guidance to courts.

- d. Courts should provide a computer in a room in the courthouse where those who do not have a computer can conduct business, including remote participation in court hearings. See Appendix E.
- e. The number of people in a courtroom may not exceed capacity limits, which is one person for each 36 square feet of net occupiable space, which excludes built-in furnishings. Courts should provide waiting areas where physical distancing can be maintained.
- f. Courts must have signs or staff available to provide instructions and direct patrons through travel paths and to waiting areas.
- g. Courts should use signage, markers, stanchions, or cones to create travel paths. Patrons should be instructed on where they may walk, sit or wait.
- h. Furniture must be arranged as much as possible to facilitate physical distancing.
- i. Courts should minimize the shared use of equipment.
- j. Surfaces and equipment must be sanitized after each hearing, or at least at regular intervals, to help ensure that individuals are not required to touch areas that have not been cleaned after use by others. Hand sanitizer must be available in each courtroom near high use touch points, such as tables and doors. Courts must identify who will be responsible for sanitation after hearings. Courts should eliminate high use touch points as much as possible.

2. Jury Trials and Juvenile Court Trials

- a. Each court must comply with the requirements and guidelines developed for their court level. The district court and justice court plan is in Appendix C. The juvenile court plan is in Appendix D. If a provision in any of those plans conflicts with this plan, the provision in this plan must be followed.
- b. The mask and physical distance requirements for jurors are the same as court personnel during the Yellow phase. For example, when mask requirements are in effect, jurors may nevertheless remove their masks for eating and drinking provided physical distancing is maintained and the jurors limit their time together with masks removed.

3. Prioritizing Proceedings and Scheduling

- a. Courts must create plans prioritizing case types for in-person proceedings.
- b. Courts should schedule specific hearings at specific times, as opposed to large general calendars, to minimize the number of people in the courthouse at any given time and to avoid people congregating in waiting areas.
- c. Courts should consider using texting, paging, or other technology to allow people to wait for their proceedings outside the courthouse or in other areas where physical distancing is possible and to be notified when their hearing will begin.
- d. Courts must consider the availability of interpreters when scheduling proceedings and must ensure an interpreter will be available prior to scheduling a proceeding requiring an interpreter.

4. Notices to Attorneys and Patrons

- a. Court notices must inform patrons of prevention measures and court contact information by referring patrons to the web page where the court's plan can be found.
- b. Courts should notify prosecutors, defense counsel, and other participants that the court expects strict compliance with court schedules.

5. Masks

When mask requirements are in effect, individuals who are required to wear masks must wear the masks in courtrooms, except that a judge may allow a person to remove their mask when physical distancing can be maintained, or in circumstances when it is necessary to effectively communicate and when it is necessary for identification or to observe a person's facial reactions. Physical distancing must be maintained if masks are removed. Courts should take recesses as necessary to provide breaks from wearing masks.

6. Interpreters

- a. When an interpreter is needed, the court should first consider allowing remote interpretation in order to facilitate physical distancing. Remote equipment can include cell phones and headsets.
- b. If remote interpretation is not feasible, an interpreter may be in the courtroom and physical distancing must be maintained. If necessary for effective interpreting, the court should not require the interpreter or the person for whom interpretation is being done to wear a mask.
- c. If an observer, such as a victim, requires an interpreter and the courtroom has reached capacity limits, that person should be provided a room in the courthouse where the proceedings may be observed, and remote interpretation should be provided.

7. Exhibits

Judges should consider requiring parties to provide opposing parties with exhibits and handouts in advance of hearings to avoid the exchange of materials in the courtroom. If paper is to be transferred during a proceeding there should not be hand-to-hand transfer and should instead be placed in an area for others to retrieve. Hand sanitizer or gloves should be available in those areas.

8. Self-Represented Litigants

Courts must permit self-represented litigants to file documents by email. If a document is a pleading to initiate a case, the court should encourage the person to file the pleading by mail or in-person, but the court must accept the filing by email if the person chooses to do so.

RED PHASE

1. Continuation of Yellow Phase Restrictions

Subject to the provisions below, the restrictions and requirements in the yellow phase will apply when personnel and patrons are required to be in the courthouse.

2. Personnel

- a. At the discretion of managers, personnel who have been fully vaccinated may work at the courthouse provided capacity limits are followed.
- b. Personnel will otherwise work remotely except those who have been designated as essential to maintain a minimum courthouse presence for public service and those who are assisting with Red phase jury trials.
- c. Personnel will be granted leave or required to use accumulated leave according to local human resources department policies as circumstances dictate.

3. Courthouses

All court patrons, including parties and attorneys, will interact with the court system remotely unless exigent circumstances or a Red phase jury trial require in-person contact. A person may file documents in existing cases electronically, including by email.

4. Court Proceedings

- a. Courts must continue all mission-critical functions. All court hearings will be conducted remotely unless the court determines there are other exigent circumstances that require an in-person hearing. A court may conduct jury trials with permission from the Management Committee and Supreme Court.
- b. At their discretion, judges may continue any matter into the future except for in-custody criminal cases and mission-critical juvenile court cases.
- c. The Judicial Council and the Supreme Court will issue administrative orders as necessary to establish criteria for those hearings and to provide other guidance to courts.
- d. If exigent circumstances require an in-person hearing, or if a Red phase jury trial is held the proceeding must be limited to those who are required to attend and the requirements in the Yellow phase apply. Physical distancing must be maintained and surfaces and equipment must be thoroughly sanitized after each use. Anyone who is able to participate remotely must be allowed to do so.

5. Juvenile Court Probation Officers

Juvenile Court probation officers must comply with the Juvenile Court Probation Operations plan attached as Appendix F.

Resources

Utah Judiciary Alerts Webpage includes:

- All state and local judicial orders
- Individual courthouse status
- Information regarding filing documents
- COVID-19 information
- Notices regarding domestic cases
- Community information flyers for partners and partner organizations
- Frequently asked questions

<https://www.utcourts.gov/alerts/>

Utah Judiciary Pandemic Influenza Response Plan

https://www.utcourts.gov/intranet/security/docs/Pandemic_Response_Plan.pdf

Governor Spencer Cox's Coronavirus Website

<https://coronavirus.utah.gov/>

Utah state and local orders and directives

<https://coronavirus.utah.gov/special-orders/>

CDC guidance on COVID-19

<https://www.cdc.gov/coronavirus/2019-ncov/index.html>

CDC guidance on self-care during a pandemic

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

CDC guidance for social distancing

<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>

CDC guidance on vulnerable persons during a pandemic

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>

CDC guidance for businesses and workplaces

<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/businesses-employers.html>

Appendix

A

PANDEMIC RISK RESPONSE **CHECKLIST FOR THE** **COURT**

(Please provide the district and court location)

The following is a checklist to guide courts in creating their pandemic risk operations plans. The plans will apply to the Red and Yellow phases as declared by an Administrative Order issued by the Judicial Council and Supreme Court. Every district or court must submit to the Management Committee a completed and signed checklist. Consider every item on the checklist and indicate whether the item has been implemented. If an item on the checklist was not implemented, provide an explanation in the space provided about why the item was not implemented. Other written materials are not required to be submitted to the Management Committee unless otherwise noted.

1.

[Yes] [No] The court is asking the Management Committee to permit the court to operate in the Yellow phase because the rate of COVID-19 spread in the county have been stable or decelerating for at least the last 14 days.

(Attach verification from the local health department verifying the stable or decelerating rate.)

2. Planning

[Yes] [No] Discussed proposed plan with local stakeholders including, but not limited to, sheriff, prosecutors, defense counsel, service providers, local Bar members, local health department, and DHS to identify and address issues that might arise from your plan.

If no, please explain: _____

3. Personnel Safety

[Yes] [No] A. Provided direction to court personnel on self-checks and reporting results to management, and directions on staying home when COVID-19 symptoms are present, along with a policy to ensure confidentiality of personal information.

If no, please explain: _____

[Yes] [No] B. Identified protective steps to help keep employees safe, including:

- Arranged work spaces to maintain social distancing;
- Posted signs reminding employees of appropriate hygiene;
- Created barriers between staff and patrons to maintain social distancing;
- Eliminated or reduced high use touch points;
- Providing hand sanitizer near high use touch points when hand-washing is not available;
- Providing materials to sanitize equipment and work spaces;
- Reduced equipment sharing;
- Established a schedule for cleaning and who has the responsibility; and
- Created travel paths where feasible and warranted with signage and other areas marked to direct employees on appropriate use and distancing while moving around work areas.

If no, please explain: _____

[Yes] [No] C. With assistance from the HR Department, consulted with vulnerable employees that have not been fully vaccinated regarding accommodations, which may include allowing them to work remotely, altering their work schedule, or rearranging workspaces. (Any action taken should be consistent with the Americans with Disabilities Act (ADA) (42 U.S.C., § 12101 et seq.)).

If no, please explain: _____

[Yes] [No] D. Established procedures to allow vulnerable persons and those who frequently have sustained close contact with vulnerable persons to confidentially request accommodations.

If no, please explain: _____

[Yes] [No] E. Staggered work hours to reduce number of employees arriving and leaving at the same time.

If no, please explain: _____

[Yes] [No] F. Determined the employees who can work remotely and those who cannot and assigned duties accordingly.

If no, please explain: _____

[Yes] [No] G. Created employee teams to rotate shifts of working remotely and at the courthouse, or made other adjustments to schedules or workspace configurations to minimize interactions between teams.

If no, please explain: _____

[Yes] [No] H. Determined the employees who may need accommodations because of school or daycare closures and discussed potential solutions.

If no, please explain: _____

[Yes] [No] I. Designated an individual and set a schedule to frequently review information on the websites of federal, state, and county health organizations.

If no, please explain: _____

[Yes] [No] J. Created and distributed a policy requiring face coverings in accordance with mask requirements established through administrative order.

If no, please explain: _____

[Yes] [No] K. Informed employees of travel policies.

If no, please explain: _____

4. Courthouse

[Yes] [No] A. Reviewed and changed courthouse configurations to facilitate social distancing and sanitation, including common areas, courtrooms, and workspaces.

- Designated hallways and portions of hallways for one-way traffic;
- Placed markers or other materials in waiting areas and queues indicating to individuals where they must wait or stand;
- Eliminated or reduced high use touch points, such as propped open doors where security is not a concern, removed lecterns, removed unnecessary furnishings and equipment, or eliminated or reduced number of shared equipment;
- Created barriers between patrons and personnel;
- Arranged furniture in waiting areas, meeting rooms, and courtrooms to maintain separation;
- Posted notice of the limits on the number of people in elevators;
- Reduced the use of common areas, such as by closing meeting rooms, breakrooms, and limiting restroom capacity; and
- Provided waste receptacles for discarding face coverings and other PPE.

If no, please explain: _____

[Yes] [No] B. Established a plan for screening individuals who enter facilities,

- Screening questions to be asked;
- Temperature checks, including who will administer them;
- Process for removing those who should not be allowed to enter;
- Process for reporting information to PJ, TCE, or local court administrator;
- Self-reporting requirements for exposure, symptoms, or high-risk factors;
- Posted notice regarding face coverings in accordance with mask requirements established through administrative order;

- Designated the individuals who will frequently monitor common areas to facilitate social distancing and remind individuals as may be appropriate; and
- Identified areas to allow members of the public to maintain social distancing while waiting for their case to be called.

If no, please explain: _____

[Yes] [No] C. Determined the capacity limits of courtrooms, meeting rooms, and waiting areas – total net occupiable square footage, which is determined by dividing the total square footage in half then dividing that number by 36 – and posted notice of those limits.

If no, please explain: _____

[Yes] [No] D. Identified rooms to conduct proceedings such as jury selection and large dockets.

If no, please explain: _____

[Yes] [No] E. Consulted with those responsible for courthouse cleaning to develop plans for deep cleaning of courthouses every evening.

If no, please explain: _____

[Yes] [No] F. Providing a computer terminal in the courthouse for individuals who do not have a computer (district and juvenile courts only).

If no, please explain: _____

[Yes] [No] G. Created a plan for contact tracing for patrons and personnel.

If no, please explain: _____

[Yes] [No] H. Created a plan for screening contractors.

If no, please explain: _____

[Yes] [No] I. Created and communicated a process for how mail, packages, and other materials will be treated to reduce the risk of COVID-19 spread.

If no, please explain: _____

5. Court Proceedings

[Yes] [No] A. Determined the case and hearing types that will have scheduling priority.

If no, please explain: _____

[Yes] [No] B. Determined case and hearing types to be conducted remotely.

If no, please explain: _____

[Yes] [No] C. Considered the possibility of evening and weekend hearings (consult TCE or court administrator and H.R. before implementing).

If no, please explain: _____

[Yes] [No] D. Created a process and instructions for scheduling specific proceedings at specific times to eliminate mass calendars and to minimize contacts between individuals.

If no, please explain: _____

[Yes] [No] E. Identified the manner and means by which use of remote proceedings will be used in conjunction with in-person hearings.

- When witnesses will be allowed to testify remotely;
- Coordinated with the department of corrections, the county sheriff, or JJS to hold remote proceedings for in-custody individuals; and

- Determined what proceedings and matters may be handled remotely by senior judges and identify potential senior judges to employ (justice courts).

If no, please explain: _____

[Yes] [No] F. Developed a plan for wearing face coverings in the courtroom in accordance with mask requirements established through administrative order and have face coverings on hand for those who do not have a face covering.

If no, please explain: _____

[Yes] [No] G. With the assistance of the HR Department, developed plans to accommodate vulnerable persons who have not been fully vaccinated, and persons who are frequently in sustained close contact with vulnerable persons, who request accommodations such as appearing remotely or postponing hearings. (Any action taken should be consistent with the Americans with Disabilities Act (ADA) (42 U.S.C., § 12101 et seq.)).

If no, please explain: _____

[Yes] [No] H. Implemented a plan for texting, paging, or other technology that allows members of the public to wait outside the courthouse for their case to be called.

If no, please explain: _____

[Yes] [No] I. Determined who (e.g. attorneys, parties, witnesses, interested persons, spectators, media) will be allowed into courtrooms for each hearing and in what numbers.

If no, please explain: _____

[Yes] [No] J. Informed attorneys of expectations.

If no, please explain: _____

[Yes] [No] K. Modified court notices to direct patrons to website where court plan is located.

If no, please explain: _____

6. Other Risk Levels

[Yes] [No] Developed a plan for what changes might be necessary when a level is raised from a lower level to a higher level and vice versa.

If no, please explain: _____

Submitted by: _____

(district or juvenile presiding judge or judge of the justice court)

_____ (printed name)

Submitted by: _____

(district or juvenile TCE or justice court equivalent)

_____ (printed name)

Appendix

B

Screening Questions and Signage

These are examples of the subjects that must be covered in the screening questions and signage. The wording of the questions and signs are provided as examples, but can be modified by each court.

Screening Questions

- Have you ever tested positive for COVID-19?
- If yes,
 - Have you been symptom free for the last 24 hours without medication? or
 - If you have not experienced any symptoms, has it been at least 10 days since you tested positive?
- Have you had sustained close contact with someone who has COVID-19?
- If yes, has it been at least 10 days since you last had contact with that person or has it been at least 7 days and you have tested negative after 5 days from the date of last contact?
- Do you currently have any of these COVID-19 symptoms?
 - fever
 - cough
 - chills
 - shortness of breath or difficulty breathing
 - abnormal fatigue
 - abnormal muscle or body aches
 - new loss of taste or smell
 - sore throat
 - congestion and runny nose

Screening Signage

- **STOP!** You may not enter the courthouse if you are currently experiencing any of these COVID-19 symptoms:
 - Fever
 - Cough
 - Chills
 - Shortness of breath or difficulty breathing
 - Abnormal fatigue
 - Abnormal muscle or body aches
 - New loss of taste or smell
 - Sore throat
 - Congestion and runny nose

- You may not enter the courthouse if you have tested positive for COVID-19 unless:
 - you have gone at least 24 hours without experiencing any symptoms of COVID-19 without taking any medication for the symptoms, or
 - if you have not experienced any symptoms, it has been at least 10 days since you tested positive.
- You may not enter the courthouse if you have had sustained close contact with someone who has COVID-19 and it has been less than 10 days since the last contact unless it has been at least 7 days and you tested negative at least 5 days after last contact.

Appendix C



UTAH STATE COURTS

**Criminal and Civil
Trial Pandemic
Recommendations
for
District and Justice Court**

June 3, 2021

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I. Introduction

The purpose of this document is to establish minimum guidelines and recommendations for district and justice courts to conduct bench trials and jury trials while implementing COVID-19 preventative measures. Guidelines and recommendations for trial procedures are provided with the understanding that courts will adhere to:

- (i) the local pandemic risk operations plan that has been approved by the Management Committee of the Judicial Council,
- (ii) the Administrative Orders issued by the Judicial Council and Supreme Court, and
- (iii) the requirements detailed in the Risk Phase Response Plan.

Trials may resume in person once:

- (i) the COVID-19 risk level in the respective jurisdiction has reached a risk level at which in-person hearings can be conducted according to the Administrative Order and the Judiciary Risk Phase Response Plan, and
- (ii) the Management Committee of the Judicial Council has approved a district's or court's plan to resume operations. In the interim, it may be necessary to conduct all or portions of a trial remotely.

The health, safety and confidence of court staff and court patrons are essential at each step of the trial process.

The following are factors a court should consider when conducting jury trials in the Yellow and Red phases. Courts should consider the permissions and restrictions in applicable administrative orders and standards established by the Management Committee and the Risk Phase Response Plan when applying these factors. Courts may consider current requirements related to masks and physical distancing when applying these factors.

II. Pre-Trial Considerations

- A. Trials conducted in person are considered to be the gold standard. When court facilities or other factors are not conducive to holding a trial in person, the court may consider conducting all or part of the trial virtually.
- B. When deciding whether to conduct all or part of a trial virtually, the court will take into account the current functionality of Webex Meetings and Webex Events.
 - 1. Meetings provides a "lobby" function, which allows the host to move participants into a virtual waiting room where participants cannot see or hear what is happening in the Meeting. Participants can be moved back into the Meeting as determined by the court. Webex Events does not currently offer a lobby function, although it is expected to be added. In a Meeting, all who are invited to participate can be seen and have the ability to mute and unmute themselves.

2. Webex Events allows two levels of participation: panelist and attendee. Panelists can actively participate in the Event, and can be seen and heard. Panelists can mute and unmute themselves. Attendees may hear and view the proceedings, but their camera is not activated and they cannot unmute their microphone. All participants have to register for an Event to receive the access codes. Registrants can be approved automatically, or the host can approve or deny each one manually.
- C. The court should review the trial process with interested parties to identify and resolve concerns well ahead of the trial.
 - D. Depending on the length of the trial, one or more alternate jurors may need to be seated in case a juror is unable to complete the term of service due to illness or other circumstances.
 - E. If interpreter services are required for any segment of the trial, courts must consider how proceedings can be interpreted for those located in the courtroom, potential jury members, witnesses and others seated outside of the courtroom. Courts must also consider how interpretation can be provided for the public observing the proceedings. More information about interpreter options is provided in Section VII.
 - F. If there is the potential for multiple jury trials to take place simultaneously in one building, judges, court staff, security officers and transportation officers should collaborate and establish a plan of how to adhere to the approved local pandemic operations plan and the Risk Phase Response Plan.
 - G. If any portion of the trial process is conducted in person, as allowed by the administrative order and the Risk Phase Response Plan, the court should have a written plan outlining areas in the courtroom to be cleaned, how the courtroom will be cleaned, when the courtroom will be cleaned, and who will be responsible for cleaning.
 - H. Internet connections and bandwidth should be considered when planning for the possibility of virtual trials. Special attention should be given to internet connectivity when the jury panel, interpreters or witnesses are participating remotely.
 - I. An internet connection check should be conducted in preparation for a trial when any portion of the trial will be conducted through virtual means. It should also be confirmed that all parties have the necessary equipment.
 1. Remote parties should have a minimum internet speed of 10 Mbps to allow quality audio and video connection through Webex. Justice courts and remote parties who are not connected to the courts' network may go

to <https://fast.com/> to test internet speed. This test does not work accurately if connected to the AOC's network. Any questions about a district court's internet connection should be referred to the AOC's help desk. Questions about a justice court's internet connection should be referred to personnel responsible for IT at the local level.

- J. Judges and judicial assistants should pay close attention to the court recording throughout the trial process to ensure an acceptable court record is being made. This may be challenging when using technology to allow members of the jury, witnesses, attorneys, and others to participate remotely. When utilizing technology to facilitate any portion of the trial, the court should consider having an additional judicial assistant assigned to monitor the record and manage the technology. The court may also want to consider using wireless microphones for attorneys.
- K. Depending on the type and length of the trial, the court may consider issuing a Decorum Order outlining expectations of those participating in person and those participating virtually.

III. Jury Selection

A. Jury Pool

The court may consider requesting a larger prospective jury pool to account for an increased number of prospective jurors who may ask to be excused due to COVID-19.

B. Jury Summons Packet

The juror summons packet should be sent 15-20 days before trial to allow for the additional time that may be needed to seat a jury. The following items should be included in the packet:

1. Cover letter explaining the contents of the packet (Appendix A) to:
 - a. Explain that the prospective juror is under oath as they complete the questionnaire.
 - b. Provide a link to the juror instruction video on YouTube.
 - c. Provide a link to a Google form prospective jurors can use to answer the questionnaire electronically if they choose (Appendix B).
 - d. Provide a personal letter from the judge emphasizing the measures the courts have taken to ensure juror safety, including information about the precautions that have been considered, and what safeguards have

been put in place in accordance with COVID-19 guidelines. (Appendix C).

e. Refer to the separate COVID-19 Juror Questionnaire.

f. Provide the prospective juror their assigned number.

2. Questionnaire prepared by the judge and/or attorneys to consider for jury service.
3. Additional questionnaire prepared by the judge and court staff about the best way to contact the prospective juror for possible remote voir dire, and to screen the prospective juror for possible health issues / exposure to COVID-19 (Appendix D).
4. When applicable to the jury selection process, include an instructional step-by-step document on how to use and join Webex for remote voir dire.
5. Return envelope with prepaid postage.

C. Processing Questionnaire:

1. The judicial assistant will enter information from the completed paper questionnaire into the Google form.
2. Gather information about how each prospective juror can be reached for possible remote voir dire.
3. The judicial assistant will attempt to contact prospective jurors who have not responded to gather any missing information.
4. Once compiled, the judicial assistant will send the results from the questionnaire to the judge and attorneys.
5. Automatic exclusion of a particular segment of the community, such as individuals over age 60, would likely violate Taylor v. Louisiana, 419 U.S. 522 (1975). Instead, decisions about whether to excuse a prospective juror should be based on each individual juror's particular health concerns.

D. Voir Dire (In Person)

1. To the extent possible, it is recommended that voir dire be conducted virtually. If any portion of voir dire is conducted in person the jury pool will be given staggered intervals and times to appear to ensure appropriate

social distancing. The prospective jurors will be sorted into their staggered intervals according to their assigned juror number.

2. Because of the staggered intervals, voir dire is likely to take much longer than normal. It is recommended that a separate day be scheduled before the trial to conduct voir dire.
3. The defendant has the right to have the public be present during voir dire. When conducting voir dire in person, cameras may be set up so that the public, including media, has the ability to observe the process. It is recommended that Webex Events be used for members of the public and media.
4. Depending on the preference of the judge and attorneys, it is recommended that prospective jurors who have been excused via stipulation should be notified the day before voir dire is conducted.
 - a. It is recommended that prospective jurors who are excused not appear in person to facilitate voir dire with the remaining prospective jurors.
5. Remaining prospective jurors will appear at staggered intervals, according to what each courthouse will accommodate while maintaining appropriate safeguards outlined in the Risk Phase Response Plan. As each group of prospective jurors appears, they will be sworn in by the judicial assistant.
6. If the judge and/or attorneys want to question any prospective juror privately, accommodations must be made to ensure proper social distancing unless all those present have been fully vaccinated.
 - a. It is recommended that individual voir dire take place in the courtroom. Other prospective jurors should be excused to another area such as the lobby, another courtroom, or a large conference room. This is to better accommodate recommended distancing and to keep the record complete.
 - b. Although a judge's chambers may accommodate recording of voir dire, it may be too small to allow for proper distancing. In addition, in-custody defendants would not be allowed to enter the judge's chambers for security reasons.
 - c. If individual voir dire is conducted in the jury room or a conference room and the location is not set up to record directly into FTR, or other recording system used by justice courts, the proceeding should be recorded on a mobile recording device and uploaded later. Each court

should confirm that it has access to a working mobile recording device.

7. Judges should review whether there are in effect temporary suspensions or limitations of peremptory challenges under Utah Rule of Criminal Procedure 18(d) and Utah Rule of Civil Procedure 47(e). In cases where the juror pool is low, a judge should consider whether there are limits on peremptory challenges in order to seat a jury and allow the trial to move forward.
8. Once the panel has been chosen, the remaining prospective jurors will be excused.
9. The jury panel is then sworn in. Instructions will be given to the panel about how and where they will be placed during the trial, such as the courtroom gallery, elsewhere on court premises, or in an entirely different location.

E. Voir Dire (Remote)

1. The jury pool may be given intervals and times to appear when voir dire is conducted remotely because it may be easier to manage several small groups appearing remotely as opposed to one large group. If the court elects to divide the jury pool into separate intervals, the prospective jurors may be sorted according to their assigned juror number.
2. Voir dire is likely to take much longer than normal. It is recommended that the court and attorneys schedule a separate day before the trial to conduct voir dire.
3. The defendant has the right to have the public, including media, present during voir dire.
 - a. Prospective jurors will be invited to participate in the proceedings via Webex Meetings. This will allow prospective jurors to be placed in the lobby until invited back into the courtroom. At this time, Webex Events does not have this capability.
 - b. When using Webex Meetings, if the defendant wants members of the public and media present during voir dire, members of the public and

media should be invited into the virtual courtroom. Their microphones must be muted and cameras must be turned off.

4. If Webex Meetings is used during remote voir dire, the chat feature **must** be turned off to eliminate communication between the judge, jury panel, public, media, and others.
5. Depending on the preference of the judge and attorneys, it is recommended that prospective jurors who have been excused via stipulation be notified the day before voir dire is conducted.
6. Remaining prospective jurors will appear via Webex Meetings.
7. The judicial assistant will start the meeting and start the recording. Each panel will be sworn in as appropriate.
 - a. It is recommended that a separate Meeting be set up for each staggered interval to allow the judicial assistant to account for all the prospective jurors.
 - b. The court may also consider bringing all remaining prospective jurors into the courtroom at the same time via Webex Meetings to administer the oath and address statutory concerns as it will save time.
8. If the judge and/or attorneys want to question prospective jurors privately, the judicial assistant can place the other prospective jurors in the virtual lobby during that time period. Each prospective juror can be admitted to the Meeting or sent to the lobby according to the judge's and counsel's preferences.
9. Once the panel has been chosen, the remaining jury pool will be excused.
10. The jury panel is sworn in and instructions are given to the panel as to how they will be placed during the trial, whether that is in the courtroom gallery, elsewhere on court premises or in an off-site remote location.
 - a. If the court conducts remote voir dire by staggering small groups, chosen jurors will have likely participated in different Webex Meeting groups.
 - b. The judicial assistant will contact all selected jurors and provide instructions as to how they will be seated during the trial, whether that be in the courtroom gallery, partially in the jury box, in another large room elsewhere on court premises or in an off-site location.
 - c. The jury panel can be sworn-in together on the day the trial begins.

IV. Courtroom Set-Up and Jury Placement

Several things need to be taken into consideration when setting up the courtroom and placing the jury and will vary by court location. These considerations include the current risk prevention requirements and recommendations in the Risk Phase Response Plan, the size of courtroom, and the comfort level of the court and parties. For criminal trials, the judge, defendant (in accordance with Utah Rule of Criminal Procedure 17(a)), counsel, bailiff/security/transportation officers and judicial assistant(s) should be present in the courtroom. Witnesses, interpreters and jury members may appear virtually in order to achieve social distancing.

Various courtroom set-up schemes that involve remote and in-person jury participation should be considered to find a model that works best for the circumstances and facilities available. Judges and court staff should walk through the courtroom set-up and jury placement with the attorneys, security, transportation officers and other interested parties before the trial to identify potential conflicts that may arise.

A. Jury Seated Outside the Trial Courtroom

The court's Information Technology Department has designed a technological solution for the Matheson courthouse that allows the jury to be seated outside of the trial courtroom. [Virtual Jury Video] Similar arrangements may be set up elsewhere in the state. The key is to allow members of the jury to maintain social distance. Placement and configuration of the jury may vary based on court facilities. Alternate locations may include an adjacent courtroom, a large conference room, or an off-site public facility such as a city/county building, community building or school.

Cameras will be positioned to capture the witnesses, counsel, parties and the judge in the courtroom and streamed to members of the jury. Members of the jury will view courtroom proceedings on individual monitors while seated at least six feet apart. Cameras will capture members of the jury and be displayed on a single large screen for those seated within the courtroom.

B. Items to consider:

1. Is there a room large enough inside the courthouse that will allow the jury to be seated and maintain appropriate social distancing?
2. If not, is there another facility in the community (school buildings, community centers, hotel conference rooms, etc.)?
3. If the jury is seated in another facility, is the internet connection at each location adequate?
4. If the jury is seated in another facility, what security measures need to be in place?
5. How does the jury submit written questions under Utah Rule of Criminal Procedure 17(h)? (Please refer to the Risk Phase Response plan for guidelines concerning the transfer of paper)

- a. If questions from the jury are allowed by the judge and a juror wishes to submit a question for a witness, the juror may write the question on a piece of paper and place it in a collection tray.
 - b. The bailiff will retrieve the written question from the collection tray and deliver the question to the judge, scan the question and send it to the judge, or retype the question and email it to the judicial assistant who will then give the question to the judge for consideration.
 - c. The written question will be collected and preserved in the court file as per rule.
6. Except for recesses where the jury is permitted to leave, the jury will remain in this one location for the duration of the trial, including deliberation. The remote connection to the courtroom will be paused when the jury would ordinarily leave the courtroom.

C. Jury Seated Inside the Trial Courtroom

Decisions about the placement and configuration of how the jury will be seated will vary by court facility. A jury may be seated in the trial courtroom gallery and jury box, for example, to achieve the required level of social distancing and other precautions outlined in the Risk Phase Response Plan. Cameras will be used to capture the judge, witnesses, attorneys, and parties, who will be seated in the courtroom, for the public to view.

D. Items to consider:

1. Except for recesses where the jury is permitted to leave, the jury will need a space large enough to ensure social distancing during recesses and deliberation, such as a separate courtroom or large conference room.
2. When jurors are seated in the courtroom gallery, it may be necessary to rearrange counsel tables to allow visual contact between jurors and the defendant.
3. Depending on the courtroom setup, each judge will need to determine whether video of the jury may be viewed by the public and media.
4. Sidebar discussions may require the judge and counsel to exit the courtroom to engage in conversation while social distancing.

V. Public Access (Jury or Bench Trial)

- A. Public access to trial proceedings, including media access, will be managed through Webex Events until it is deemed safe to allow public observers into the courtroom.

1. Webex Events allows the public to observe trial proceedings from their place of choice.
2. In some instances, the court may consider streaming the proceedings to another room in the courthouse or to another facility in the community to accommodate members of the public who do not have the technological resources or ability to otherwise access the proceedings.

VI. Presentation and Processing of Evidence (Jury or Bench Trial)

- A. Documents, video, and photos may be shared electronically. Please refer to the guidelines on sharing of documents in the Risk Phase Response Plan.
- B. Video evidence should be presented electronically to facilitate smooth playback, and should not be embedded in electronic evidence presentations such as PowerPoint.
- C. The court may consider allowing attorneys to compile their proposed exhibits in PDF format and share it with opposing counsel and the judicial assistant by email in advance of the trial.
- D. The judicial assistant will provide to the judge copies of all exhibits submitted by email. All parties now have a copy of proposed exhibits.
- E. As exhibits are offered, argued, accepted, etc., the judicial assistant will print out those exhibits and mark them appropriately. These will be considered the 'original' exhibits.
- F. At the conclusion of the trial or hearing, the judicial assistant should have all offered exhibits printed and marked appropriately and can finalize the exhibits appropriately.
- G. This method will not work for video, audio, or physical evidence. Only documents and pictures can be converted to PDF format. There is no current electronic solution to share objects and large visual items presented as evidence. If such evidence is to be presented, attorneys will need to identify a method of delivery that is permitted by the court.

VII. Interpreters (Jury or Bench Trial)

- A. Items to consider
 1. Interpreters should be asked the same COVID-19 screening questions as prospective jurors if interpreting in person.
 2. Simultaneous interpretation is preferred to avoid unnecessary delays

during a trial.

3. If an attorney and his or her client need to meet privately and require interpreter services, the attorney, client, and interpreter may need to exit the courtroom and conduct their discussion in a room that can accommodate social distancing.
4. Interpreters should not wear a face covering once interpreting begins if it interferes with the clarity of the interpretation.

B. Remote Interpretation

1. Webex does not currently allow for simultaneous interpretation. In order to facilitate simultaneous interpretation, a secondary line of communication must be established through the use of a conference line and cell phones or landlines.
2. A secondary line of communication would be established as follows:
 - a. The proceeding begins on Webex. This also ensures the party can and does join by video.
 - b. The judge (through the interpreter) asks the party if they have a telephone available.
 - c. The judge (through the interpreter) instructs the party and the interpreter to call the conference line.
 - d. The party and the interpreter call the conference line and simultaneous interpreting begins.
3. The party must appear by video and have the means, such as a landline or second cell phone, in order for the secondary line of communication to be an option. If the party does not have the means necessary for the secondary line of communication, then the interpreter will have to render the interpretation in consecutive mode. This will require whoever is speaking to pause after every 2-3 sentences to allow the interpreter the necessary time and space to interpret. An interpreter cannot accurately interpret if they must speak over someone to render the interpretation.

C. In-Person Interpretation

Interpreters can appear in the same room with the party needing interpretation as long as social distancing protocols are maintained. The interpreter equipment should be utilized so that social distancing protocols can be maintained. If the interpreter equipment is not available, courts should consider using cell phones and a conference line for the interpreters and the party in order to create ad hoc interpreter equipment.

D. In-Person Interpreting Options:

1. Utilize the interpreter equipment, whether it is provided by the court or the interpreter. The interpreter equipment must be sanitized before and after each use, in front of the party. Courtroom staff will be responsible to ensure this happens.
2. Utilize ad hoc interpreter equipment to create the ability for interpreters to maintain social distancing protocols. For example:
 - a. A cell phone and headphone, with microphone capability, for the interpreter (ideally the interpreter's personal cell phone and headphones)
 - b. A cell phone and headphone for the party (ideally the party's personal cell phone and headphones)
 - c. A conference line for both the interpreter and the party to call from their cell phones. This will ensure the party does not gain the interpreter's personal contact information.
 - d. If the party does not have a cell phone, courts should consider providing the party with a laptop with a softphone application such as Jabber so that the interpreter could still render the interpretation simultaneously while keeping a safe distance from the party.
3. Consecutive mode of interpreting could be used as a last resort.
 - a. Interpreters should not stand beside the party. If space allows, maintain a distance of six feet and interpret in consecutive mode.
 - b. If a safe distance cannot be maintained, interpreters should position themselves slightly behind the party, and avoid positions where the interpreter and the party directly face each other.
 - c. If a victim requires an interpreter, the interpreter equipment or ad hoc interpreter equipment should be utilized. If crowd control measures prevent the victim from being in the courtroom where the proceeding is occurring, the victim should be placed in a room or courtroom next door. The interpreter equipment has the range to provide clear interpretation from the interpreter in the courtroom to the victim in the next room. If the ad hoc interpreter equipment is used, the victim could call the conference line from a location outside of the courthouse while simultaneously observing the proceeding via Webex.

VIII. Witnesses

- A. Witnesses should be asked the same COVID-19 screening questions as

prospective jurors if testifying in person.

- B. Witnesses may be precluded from testifying remotely per rule Utah Rule of Criminal Procedure 17.5.
- C. Webex Events does not currently have a “lobby” function. Witnesses should be told they may not observe or listen to other testimony, and that they will be asked to join the proceedings when it is time for them to testify. If participating remotely via Webex Meetings, the witness may be placed in the lobby until it is time for them to testify.

IX. Jury Deliberation

- A. In cases where the trial is conducted with the jury seated in the trial courtroom, it is recommended that jury deliberations take place in a separate courtroom or large meeting room whenever possible, so jurors can be isolated and follow social distancing requirements.
- B. In cases where another courtroom or other large room is not available, deliberation may take place in the trial courtroom.
- C. When deliberation is held in the trial courtroom, all attorney materials must be removed from the courtroom and computers must be locked.
- D. When jurors have questions during deliberations, they may write the question on a piece of paper and place it in a collection basket distanced from other jurors. They will notify the bailiff who will retrieve the paper and deliver it to the judge. The bailiff, judge, and anyone else touching the paper should wear gloves and exercise other precautions outlined in the Risk Phase Response Plan.

X. Jury Payment and Qualified Jury Pool

- A. Jury payments should be made in accordance with the Court’s Accounting Manual Section 10-01.01. The term “appear” in the context of remote appearance means that a prospective juror was invited to attend and entered the virtual courtroom.
- B. Prospective jurors who are excused for cause prior to appearing for voir dire, may be returned to the jury pool of qualified jurors and could possibly be summoned again. Since it may require more prospective jurors to seat a jury, returning jurors to the pool who excused for cause will assist in keeping enough prospective juror names in the active pool.

XI. Jury Priority

It is anticipated that the number of cases ready for trial will exceed the number of court locations equipped with the technological resources needed to conduct a jury trial using these guidelines. Therefore, consistent with Utah Rule of Criminal Procedure 17(b), priority of jury trials by court

location should be given in the following order:

- A. Misdemeanor cases in which the defendant is in custody: the case with the oldest filing date has the highest priority.
- B. Felony cases in which the defendant is in custody: the case with the oldest filing date has the highest priority.
- C. Felony cases in which the defendant is on bail or recognizance: the case with the oldest filing date has the highest priority.
- D. Misdemeanor cases in which the defendant is on bail or recognizance: the case with the oldest filing date has the highest priority.
- E. Civil cases: the case with the oldest filing date has the highest priority.

Each court location should make every reasonable effort to continue to use its available technological resources to reduce the anticipated backlog of jury trials. Those resources may need to be reallocated to other court locations depending on actual use and future need.

XII. Transportation and Security

- A. The court must work with transportation officers when defendants are in custody and need to be transported to the courthouse. The court and the holding authority must develop a transportation plan that accommodates social distancing.
- B. The court must work with security officers to ensure placement of officers will provide necessary security while practicing social distancing in a way that will not compromise the safety of others and will not alert the jury to the defendant's custody status.

XIII. Jury Meals and Snacks

- A. The court should consider whether jury meals will be brought into the courthouse or if members of the jury will be allowed to leave the courthouse and eat at a restaurant.

XIV. Media Access to Trial Proceedings

- A. Media outlets may access trial proceedings through the same Webex feature as the public if they are observing but not recording the proceedings.
- B. If a media outlet wishes to film, photograph or record trial proceedings through Webex they must submit a media pool request form for the judge's approval.

Appendix A

Dear Prospective Juror:

You have been chosen by random selection for jury service. Trial by jury is a fundamentally important part of our system of justice. It is both an opportunity and an obligation of every American to serve on a jury when selected.

This form is used to obtain information about you to determine if you are qualified to serve as a juror. It also helps the attorneys and parties choose the jury for their case.

Please complete the entire form and submit it (or return the paper form) within ten days. If you are unable to complete this form, someone else may do it for you. But that person must indicate the reason for completing the form instead of you.

By completing this form and submitting it, you affirm that the answers are true, correct, and complete to the best of your knowledge.

Section 1: (Juror Information)

1. Full name:
2. Juror number (This can be found on the cover letter / summons.):
3. Age:
4. Gender:
5. Email address:
6. Do you have access to the internet?
7. Do you have access to a laptop, a computer with a camera and microphone, or a smartphone?
8. If someone else helped you fill out this form, please write that person's name below and explain the reason they helped you. If this does not apply, please go to the next question.
9. Please affirm the following statement by signing your full name below: "I declare under criminal penalty under the law of Utah that the statements in this form are true and correct."
10. Based on your answers, your jury service may be deferred (postponed). Jurors who are deferred will receive a new summons for later service. Any questions should be directed to [email] or [phone].

Section 2: (COVID-19 Risk Factors)

The safety of jurors and court employees remains the Court's highest priority. As the COVID-19 outbreak continues to evolve, the Court is following current recommendations from the Centers for Disease Control (CDC) and local and national health authorities.

To prevent the spread of COVID-19 and reduce the potential risk of exposure to jurors and our staff, we are conducting a simple screening questionnaire. Your participation is important to help us take precautionary measures to protect you and everyone in our courthouses.

1. Have you been diagnosed with COVID-19?
2. Have you had close contact with anyone who has been diagnosed with COVID-19 within the last 14 days?
3. Have you experienced any cold or flu-like symptoms within the last 14 days (including fever, cough, sore throat, respiratory illness, or difficulty breathing)?
4. Are you over age 60, or a person of any age with an underlying medical condition that puts you at a higher risk of developing serious health complications from COVID-19?
5. Do you live with or provide direct care for a vulnerable person?
6. Do you have children at home who require your direct supervision due to school and/or daycare closings? (NOTE: Only answer 'Yes' if there is NO ONE else in the household who can provide care during your jury service.)
7. Are you an essential healthcare worker who has been treating, or is currently treating, COVID-19 patients?
8. If ANY of the above questions apply to you, please enter "Yes".

Section 3: (Prospective Juror Background)

1. Where do you live?
2. How long have you lived there?
3. What other places have you lived?
4. What do you do for a living? If you are retired, what did you do for a living?
5. What is the extent of your education and area of focus if any?
6. ETC.

Section 4: (Case-specific Information)

1. Have you or a family member been the victim of a crime?
2. Have you or a family member ever struggled with substance abuse?
3. Have any of your family members ever been arrested or convicted of a crime?
4. Are any of your family members an employee of a police department?
5. Have you ever been a witness, a defendant, or a victim in a trial?
6. ETC.

SIGNATURE:

Appendix B

Jury Selection Form

***Required**

Your Background

Where do you live? *	Answer:
How long have you lived there? *	Answer:
What other places have you lived? *	Answer:
How old are you?	Answer:
What do you or did you do for work?	Answer:
What is the extent of your education and area of focus, if any?	Answer:
Are you married? *	Answer:
If you are or have been in a long-term relationship, what does your significant other do for work?	Answer:
What is the extent of your significant other's education and area of focus?	Answer:

What publications do you regularly read? Answer:
What television programs do you regularly watch? Answer:
Do you have any mental or physical infirmity which would render you incapable of performing the duties of a juror? [Yes] [No]
If you answered Yes regarding a mental or physical infirmity, please briefly describe why it would prevent you from serving. Answer:
The Defendant's name is_____, are you related as 1 st cousin or closer to the defendant? [Yes] [No]
Do you have any social, legal, business, fiduciary or other relationship between another prospective juror or any party, witness or person alleged to have been victimized or injured by the defendant? [Yes] [No]
Have you been or are you a party adverse to the defendant in a civil action or you have complained against or been accused by the defendant in a criminal prosecution? [Yes] [No]
Have you previously served on a jury including a grand jury? [Yes] [No]
If you have previously served on a jury including a grand jury, please describe the

nature of the case and the outcome. Answer:
Have you formed or expressed an unqualified opinion or belief as to whether the defendant is guilty or not guilty of the offense charged? [Yes] [No] [Maybe]
Please rate your desire to serve as a juror. Not willing [1] [2] [3] [4] [5] Hope to serve
Please check all that apply to you [] Recently felt sick [] Have existing health issues [] Other: _____
If you selected other above, please describe the concern. Answer:
[] Send me a copy of my responses.

Appendix C

[date]

To All Prospective Jurors

RE: Your Upcoming Jury Service During the COVID-19 Pandemic

Dear Prospective Jurors:

You received a Summons directing you to appear for jury service at 00:00 a.m. on Monday, July X, 2020 at [Courthouse Address].

This will be among the first jury trials I have undertaken since the start of the COVID-19 pandemic. I want to assure you that every reasonable precaution is being taken to protect the health and safety of the jury, the parties, lawyers, and court staff during jury selection and the jury trial.

So that you won't be surprised when you arrive, please be aware of the following:

1. Each prospective juror might have their temperature taken via a hand-held thermometer as they enter the courthouse. This is to ensure that no one with a fever or elevated temperature is admitted.
2. You may be required to wear a face covering upon entering the building and to keep it on at all times while you are in the courthouse. Bring your own face covering. If you do not have a face covering, one will be provided to you.
3. Once you pass through security screening, you will be seated in a courtroom or other large room that has been set up to ensure maximum social distancing.
4. Latex gloves will be available for you to wear if you wish. Gloves are not required.
5. Smartphones, iPads, or similar electronic devices should be left outside the courthouse. You may leave them in your car, but do not bring them into the courthouse.
6. Hand sanitizer will be available at multiple locations inside the courthouse.
7. If you are selected to serve on the jury panel you will be seated in the [gallery, jury box, etc.] at least six feet away from other jurors and others.

If any of these apply to you, immediately contact XXX, Judicial Assistant, at the phone number on the Summons. They may ask you to provide documentation from your physician.

- You have been diagnosed by a licensed physician as having COVID-19 any time within the past 30 days.
- You are actively caring for a family member or loved one who has tested positive for COVID-19.
- You are self-quarantining and would still be in self-quarantine on July X.

If you have a scheduled surgical procedure, or if you have an obligation that would make it **extremely difficult** and create a **real hardship** on you to be here each day, please contact XXX by calling the phone number listed on the Summons.

The right to trial by jury is one of the cornerstones of our democracy, and a jury trial necessarily involves sacrifice from those citizens called upon to serve. Only those with extreme hardships should ask to be excused from jury duty.

It is vital that you appear for jury service on July XX. The Court is mindful of these challenging times and is taking every reasonable precaution to maintain your health as well as that of the parties, lawyers, and Court staff during this upcoming trial.

I look forward to seeing you on July XX.

Respectfully,

Appendix D

COVID-19 Juror Questionnaire

The safety of jurors and court staff are the Court's highest priority. The Presiding Judge is monitoring the COVID-19 situation closely and will ensure that the jury selection process follows the current recommendations from the Centers for Disease Control and local and national health authorities.

To prevent the spread of COVID-19 and to reduce the potential risk of exposure to jurors and our staff, we ask you to fill out a simple screening questionnaire. Your participation is important to help us protect you and everyone in our courthouses. You may either complete the form below and return it with your paper Jury Information Form, or you can answer the questions on our website: www.XXXXXX.gov.

Thank you for your time.

NAME: _____

PARTICIPANT NUMBER: _____

PHONE NUMBER: _____

Supplemental Screening Questionnaire

1. Have you been diagnosed with COVID-19 within the last 14 days?

Yes / No
2. Have you had sustained close contact with anyone who has been diagnosed with COVID-19 within the last 14 days?

Yes / No
3. Have you had any cold or flu-like symptoms in the last 14 days (including fever, cough, sore throat, respiratory illness, or difficulty breathing)?

Yes / No
4. Are you over age 60, or a person of any age with an underlying medical condition that puts you at a higher risk of developing serious health complications from COVID-19?

Yes / No

5. Do you live with or provide direct care for a person vulnerable to COVID-19?

Yes / No

6. Do you have children at home who require your direct supervision due to school and/or daycare closings?

Note: Only answer YES if there is **no one else in the household** who can provide care during your jury service. If you answer “yes” to any of the above questions, your jury service will be deferred.

Yes / No

You will receive written confirmation of your deferral by mail or email. Any questions should be directed to [email] or [phone].

Signature:_____

Date_____

Appendix

D



UTAH STATE COURTS

Juvenile Court

Virtual and In-person Trials

Best Practices Documents

Revised December 8, 2020

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Introduction

The Juvenile Trials Work Group developed best practices for virtual and in-person trials conducted in juvenile court. The common emphasis repeated at the beginning of each of the best practice documents is that *“Trials should ideally be conducted in person, if possible and when it can be done safely. If a trial can be reasonably delayed until an in-person opportunity becomes available, then the court should wait to conduct a trial.”*

This guide includes the best practice documents, along with sample notice and instruction documents which may be individually tailored and provided ahead of trial to parties and witnesses. The purpose of these guidelines is to provide recommendations for all parties regarding necessary preparations before the trial, during the trial, and after the trial. Examples of considerations and recommendations include issues related to notice to parties, public access, in-custody parties or witnesses, creation of a clear record, interpretation, submission of evidence, and attorney-client communication during trial.

Given the diversity of circumstances in our State, the Work Group recognizes that not every possible scenario can be anticipated and that each trial or evidentiary hearing will likely involve a hybrid of recommendations from both the virtual and in-person best practices. As such, the Work Group recommends that the judge and all parties to a case review these best practices at a final pretrial to establish a firm plan to conduct the hearing in the safest, most efficient way possible based on the unique circumstances in each case.

These best practice guidelines should be adapted to and used in compliance with the risk phase for each court location or district as determined by the Judicial Council.

JUVENILE TRIALS VIRTUAL Best Practices

Purpose/Scope

Trials should ideally be conducted in person, if possible and when it can be done safely. If a trial can be reasonably delayed until an in-person opportunity becomes available, then the court should wait to conduct a trial. However, when a trial is necessary and cannot be delayed, these are the best practices for conducting a completely virtual proceeding. The purpose of these best practice guidelines is to provide individual districts and court teams guidance on effectively conducting a virtual trial through the available Webex platforms while allowing flexibility for the unique circumstances and differences that exist between courtrooms across the state. A virtual trial will take more time than a regular trial and will require more work and planning to prepare for the proceeding. Additionally, parties and their attorneys will likely require more time and flexibility during the trial to communicate and consult with each other.

VIRTUAL PLATFORM OPTIONS FOR CONDUCTING A TRIAL

Webex Meetings

➤ Best Uses

Webex Meetings can be used for any hearing and is currently the best option for trials because of the ability to manage individual participants, including witnesses, during the hearing.

➤ Unique Features

- Offers a “lobby” function that allows moving witnesses into a virtual lobby that provides the court the ability to enforce the exclusionary rule. The lobby feature can also be used for sidebar and in camera meetings, and for the attorney-client communication.
- All participants have similar video and audio functions for full participation in the hearing.

Webex Events

➤ Best Uses

Webex Events may be used for trials that do not require multiple witnesses, but it is best suited for proceedings with multiple observers who may “attend” but are not entitled to participate in the hearing. Examples include adoption proceedings and hearings involving media or Judicial Performance Evaluation Commission (JPEC) observers.

➤ Unique Features

- Offers two participant categories: “panelists” who are allowed to fully participate in the proceeding and “attendees” who can view and hear the proceeding, but do not have an active camera and cannot unmute their microphone unless the host provides those functions to them.
- Participants have to register for an Event to receive the access code for the proceeding.

BEFORE THE TRIAL

I. Preparing for the Virtual Trial

- The judicial assistant should create the virtual hearing, either choosing the Webex Meetings or Webex Events platform depending on the needs for the hearing and preferences of the court. All juvenile court hearings should be titled consistently using the following format: Judge, Case #/Name, Hearing Description, Courtroom Name or Number [e.g. *Judge Jones, 1115555 YOGI BEAR children, Adjudication Trial, MOAJUVCRT1*].
- The hearing should be created on behalf of the judge or through a judge's Webex account.
- The judicial assistant should send a shareable Webex Meeting invitation or a Webex Event invitation in addition to the notice of the hearing to the attorneys and pro se litigants, as applicable.

II. Notice to Parties

- The attorney or pro se litigant must provide notice of the virtual hearing to the parties, witnesses, and anyone else intending to participate in or observe the trial. The notice should include links to the Webex platform and directions on how to participate in the virtual hearing. The attorney or pro se litigant should then provide the parties and witnesses with a time to call into the hearing or appear virtually. Judicial teams may need to assist pro se litigants with providing notices of virtual hearings.
- Notices should include instructions to contact the local court to make alternative arrangements if participants do not have access to needed equipment.
- Although the Webex platform allows for individuals to appear by phone, parties and witnesses should be encouraged to use a web platform with a camera, if possible. If safe and feasible, attorneys and their clients should be in the same physical location and appear together during the trial to facilitate attorney-client communication.
- Participants in the trial should be encouraged to use a hard wired internet connection, if possible, as Wi-Fi connections and phone data may be unstable.
- The court should provide notice to attorneys and other participants in the trial detailing virtual trial etiquette and features of the Webex platform to facilitate the hearing. Notices should be developed to reflect the needs and requirements of each district and judge. Examples of what may be incorporated in the notice include:
 - Guidance on muting/unmuting an individual's microphone when not speaking
 - Guidance on using headsets or speakers to listen and communicate during the hearing
 - Instructions for participants to seek a quiet place that offers privacy and protects confidentiality to view and participate in the hearing
 - An outline on how to object to an action or statement during the trial (e.g. verbal objections or other virtual methods, such as "raising a hand")
 - Instructions on sharing evidence before the trial with each party and the court via email to help facilitate the admission of evidence during the proceeding
 - Guidance on sharing screen content over the Webex platform during the proceeding

III. Patrons Without a Phone or Computer Access

Districts should be prepared to address how patrons without access to a phone or a computer can participate in a virtual trial. Options may include providing a private space in the courthouse with a phone/computer or making arrangements with partner agencies.

IV. Notice to Public and Access to Hearings

- There will be a juvenile court section on the Utah Courts public website stating: “If you are interested in observing juvenile court hearings, please contact the court clerk in the district where the hearing is held. Contact information for each courthouse is available at <https://www.utcourts.gov/directory/>.”
- If an interested person contacts the district to observe a hearing and the hearing is public, the judicial assistant will add them to the Webex Meeting invites for the hearing or send an invitation to register for a Webex Event.
- The judicial assistant will provide the person observing the hearing with the same information on the virtual hearing etiquette as outlined in the Notice to Parties section.

V. In-custody Trials

Districts should work with local detention centers, jails, and law enforcement to determine the best way to accommodate trials involving youth in detention or incarcerated parents. The ability to accommodate virtual trials in a facility and the current circumstances with transporting youth and parents from detention and jail need to be considered.

VI. Managing Webex Proceedings

Courtroom teams may consider using a second judicial assistant to help facilitate the hearing and provide virtual support during the proceeding. The person does not need to be in the courtroom during the trial and can assist from a different location to help maintain social distancing. To assist with managing the proceeding, the second judicial assistant must have “hosting rights” to control all Webex functions. Responsibilities of the second judicial assistant may include:

- Ensuring the hearing is being recorded
- Managing the participants, such as:
 - Unmuting/muting participants (unless the judge prefers to do this)
 - Moving users between the Webex lobby and the hearing
 - Expelling users at the direction of the judge
 - Locking the meeting
 - Helping manage the digital exhibits during the trial, including presenting them over the Webex platform as needed
 - Helping troubleshoot issues during the trial (witnesses, interpreters, attorneys sharing content)
 - Managing public comments and chats
 - Addressing technical problems via the private chat options

DURING THE TRIAL

I. Creating the Record

- During a virtual trial, the court record can be created through the FTR system (the in-court recording system) or through the Webex recording function. To avoid duplicate records and issues of inconsistencies between the recordings, only one record should be created. The best practice is to use the Webex recording function for a completely virtual trial. The Webex recording can then be pulled into FTR via the applicable software.
- In a hybrid trial, where there may be a judicial assistant in the courtroom, the FTR system should be used instead of the Webex recording. If the FTR system fails during the hearing, the judicial assistant should start the recording in Webex.
- If using the Webex recording, the judicial assistant managing the hearing should pause or stop the recording for off the record sidebars and recesses, and then resume recording after the hearing is back on the record.
 - If a recording is paused and then resumed later, the entire recording is saved in one recording file.
 - If a recording is stopped and then started again later, a separate recording file will be created. Separate recordings will be combined into one file when pulling the recording into FTR.
- Participants in the trial should be informed that the audio and video of the proceeding continue even if the recording is paused or stopped. As such, the participants should turn their audio and video off when the hearing recording is paused or stopped, unless they are participating in sidebar or in camera meetings.

II. Calling the Case

- Generally, persons who join the proceeding via the Webex platform will be identified by their registration information within the application. If someone who is not identifiable calls into the hearing, the judicial assistant or another designated individual should ask that individual to identify themselves. The individual that is hosting the Webex platform should then rename persons who are calling into the hearing to identify them to the court on the web application.
- The identity of callers will need to be verified by their attorney, caseworker, or another party if the judge is not familiar with their voice.
- For those who are appearing by video on the Webex platform, the attorney or caseworker should identify the parties appearing for the court.
- Additionally, the court may opt to perform a roll call of every individual at the beginning of the hearing to identify each person.

III. Virtual Recess

The court should consider the following when taking a recess:

- Make the recess time-specific.
- Recommend to the parties to turn their cameras off and to mute their microphones during the recess. Participants in the trial should be informed that the audio and video of the proceeding continue even if the recording is paused or stopped.
- If the recording is paused or stopped, the host should share a screen notifying the parties of the recess.
- During a longer recess, it may be best to require every party to log off from the hearing with instructions for logging back in at a specific time.

IV. Managing Multi-Day Trials

Depending on the need of the court and the number of witnesses, trials that span multiple days may be scheduled in different ways on Webex. The simplest method is to have one Webex Meeting or Event invite for the entire trial using the recurrence setting and allowing parties to reuse the link to join the trial each day. If there are multiple witnesses and concerns that one may return to the trial later under the same link, the court may send a different meeting invite for each day of the trial with a unique password to prevent unauthorized participants.

V. Interpretation During a Virtual Trial

When possible and in accordance with safety procedures, interpreters could appear in the same room with the party needing interpretation and participate in the same Webex hearing virtually. Whenever possible, simultaneous interpretation during the proceeding is preferred to avoid unnecessary delays during a trial. Webex does not currently allow for simultaneous interpretation. In order to facilitate simultaneous interpretation, a secondary line of communication must be established through the use of a conference line and cell phones or landlines.

Option 1 - this option is available if:

- A party appears by video on their computer or tablet and has a landline or a cell phone to establish a secondary line of communication.
- A party appears by video on their phone but has a landline or a second cell phone to establish a secondary line of communication.

A secondary line of communication could be established by:

- The interpreter and the party needing interpretation participate in the same Webex hearing, but appear virtually from separate locations. The interpreter and the party are muted during the proceeding.
- When the Webex proceeding begins, the judge (through the interpreter) asks the party if they have a phone available.
- The judge (through the interpreter) instructs the party and the interpreter to call the conference line. This will ensure the party does not gain the interpreter's personal contact information. Alternative options include the interpreter calling the party directly and entering *67 to hide their phone number or utilizing Google phone numbers.

Option 2

If the party does not have the means necessary for the secondary line of communication, then the interpreter will have to render the interpretation in consecutive mode. This will require whoever is speaking to pause after every 2-3 sentences to allow the interpreter the necessary time to interpret. An interpreter cannot accurately interpret if they have to speak over someone to render the interpretation.

American Sign Language interpreters will be able to sign by video in Webex as long as a clear and strong internet connection is maintained by both the interpreter and the party. The party should consider *locking the focus* in Webex on the ASL interpreter to ensure they always see the interpreter regardless of who is speaking. Locking focus on a participant can be accomplished by clicking the pin button located at the top center of the screen.

VI. Witnesses

Witnesses appearing and testifying virtually during a trial is not ideal and may require the court to be prepared for objections or other concerns, such as the credibility of a witness. Each judge should be aware of any potential issues regarding witness testimony and any objections should ideally be raised prior to trial.

Confrontation Clause (Delinquency or Adult Criminal Matters)

Judges should exercise caution in making blanket findings regarding the appearances of witnesses in delinquency proceedings. If parties do not stipulate to waive face-to-face confrontation in a physical trial setting, a judge should be prepared to make specific findings.

A judge should balance the various interests involved regarding the appearance and testimony of a witness in a delinquency proceeding before allowing the witness to appear virtually. Consideration of the pandemic response level in effect at the time of the ruling may be included in the court's analysis. Judges may also consider ordering the attorneys to fully brief any objections with specific arguments related to the witnesses, safety of the court, and any other relevant reasons that establish exigent circumstances that may override certain constitutional concerns.

Virtual Exclusionary Rule

The Webex Meetings platform has a function that allows witnesses to be removed from the proceeding and placed in a "lobby" until it is their time to testify. It may be helpful, however, to start the trial with all of the witnesses present until a party invokes the Exclusionary Rule. This allows the judge to address the witnesses and explain the requirements and purposes of the rule. The judge may admonish the witnesses to not communicate with the parties or other witnesses through electronic means or in-person during the trial before placing all of the witnesses into the virtual lobby. A witness may be moved from the lobby to the trial once the court is ready for their testimony.

If a witness is not testifying soon after the beginning of the proceeding or if it is a multi-day trial, the attorney should provide the witness with a time they would likely appear and notify the witness to call in or appear virtually at that time. When the witness appears, they can be placed immediately in the lobby until the court is ready for their testimony.

Expelling Witnesses from the Virtual Courtroom

After a witness is finished testifying, the host of the proceeding may need to expel (Webex term) the witness from the proceeding. Once expelled, the host will need to lock the meeting to prevent any witnesses from returning to the meeting via the same link. The court may consider admonishing the parties to avoid communicating with the expelled person.

VII. Child Testimony in Child Welfare Proceedings

The Webex platform may be used for the testimony of a child during these proceedings if a party invokes Rule 37A of the Utah Rules of Juvenile Procedure. If a party consents or is prohibited from being in view of the child during the testimony, precautions must be taken to ensure that the party's camera is turned off and that person's microphone is muted. If the court orders that a child's testimony be recorded outside of the courtroom, Webex may be used to create a separate recording which may be reviewed digitally to determine whether it may be admitted into evidence.

VIII. Submitting Evidence

- Courts should encourage parties to submit evidence via email to the court and other parties before the trial. Judges can review the evidence as it is admitted to the court during the trial, but sharing prior to the trial allows for parties to have documents, videos, and other files already available.
- Judges may advise or require attorneys to prepare and submit any potential evidence a certain number of days before the trial. If evidence is not ready by a specified time, the court may require attorneys to come to the trial prepared with digitized evidence that may be easily shared with other parties and the court.
- Webex platforms also allow parties to share and present their computer screens and individual files to others participating in the trial when they are given "presenter rights" by the host during the proceeding. This may be used to allow an attorney to share and publish evidence to everyone in the trial, including witnesses. Evidence shared this way may also be saved via Webex for purposes of admitting a file into evidence.
- All evidence during a virtual trial should be digitized and parties should be encouraged to take multiple photos or videos of any physical evidence to allow for it to be submitted virtually. If judges typically house the original exhibits at the courthouse, emailed exhibits that were admitted to evidence may be printed, marked, and kept as the "originals" in the courthouse.

IX. Attorney-Client Communication During a Trial

- If possible, and subject to social distancing practices and other considerations, attorneys and clients should appear at a virtual trial from the same location to facilitate attorney-client communication.
 - If appearing virtually from the same room, the attorney and the client should use one device to avoid audio interference from separate devices.
 - If appearing virtually from the same location but from different rooms (e.g. separate rooms at the law office), separate devices may be used without causing audio feedback.

- If attorneys and their clients cannot appear from the same location, it may be necessary for courts to provide the parties with additional breaks and opportunities to communicate privately. This may include additional recesses or breaks to communicate outside of the Webex platform.
- Attorneys and clients should take precautions in communicating on the Webex platform, such as the chat option, to avoid attorney-client privilege issues.
- The Webex lobby function may be utilized for attorney-client communication. The Webex host, such as a judicial assistant, would:
 - Move everyone to the lobby, other than the attorney and the client.
 - Pause or stop the hearing recording during the attorney-client communication while everyone else is in the lobby.
 - Notify the attorney that the host (judicial assistant) cannot be removed to the lobby and would turn the sound off on their device, mute their mic, and step away from the virtual hearing. The attorney would notify the host via the chat, a sign, or some other means when the attorney-client communication is finished.

In the alternative, the judicial assistant can transfer the meeting hosting rights to the attorney who can then move the judicial assistant to the lobby. When finished, the attorney would bring the judicial assistant out of the lobby and transfer the hosting rights back to the judicial assistant to resume the hearing.

 - In the near future, the Webex platform will have the “breakout” capability which may be utilized for a private conversation between an attorney and a client.

X. In Camera and Sidebar Meetings

The Webex lobby function may be utilized for in camera and off the record sidebar meetings. The host would move everyone to the lobby other than parties involved in the sidebar or in camera meeting. Webex recording should be paused during this time unless the discussions are on the record.

AFTER THE TRIAL

I. Accessing the Record

Many judges rely on the record of the hearing when drafting findings and orders. Webex recordings are generally available 24 hours after the hearing. The host of the hearing has an option to download, share, or delete the recording. Based on judicial preference, the host of the hearing may share the recording with a judge via email.

JUVENILE TRIALS IN-PERSON Best Practices

Purpose/Scope

Trials should ideally be conducted in person, if possible and when it can be done safely. If a trial can be reasonably delayed until an in-person opportunity becomes available, then the court should wait to conduct a trial. The purpose of these best practice guidelines is to provide individual districts and court teams guidance on how to best conduct a trial in-person while recognizing the unique circumstances and differences that exist between courtrooms across the state.

In response to the COVID-19 pandemic, the Court shall conduct the hearing consistent with all current Utah Supreme Court and Utah Judicial Council administrative orders and the Risk Phase Response Plan, as well as, applicable government and public health orders and guidelines as outlined in the Risk Phase Response Plan. If the local or state guidelines are in conflict with the Utah Supreme Court and Utah Judicial Council Administrative Order, the Administrative Order shall govern.

BEFORE THE TRIAL

I. Preparing the Courthouse and Courtroom Areas

When scheduling a trial at the courthouse, judicial teams should notify and consult with other court levels and teams in the building to prevent multiple trials from occurring at the same time to minimize large group gatherings.

Additional measures must be implemented in courthouses, as outlined in the Risk Phase Response Plan (RPRP). Examples of these measures include:

- Posters or signs about social distancing practices and proper hygiene procedures
- Frequent cleaning and hand sanitizer stations near high touchpoints and in areas where court personnel interact with patrons
- Floor markings for social distancing in courtrooms, galleries, and other common spaces
- Sufficient space in courtrooms to maintain social distancing measures during a trial
 - The number of people in a courtroom may not exceed capacity limits as outlined in the RPRP for each phase of the plan. The capacity limits can be determined by dividing net square footage that can be occupied (excluding built-in furnishings) by 36.
 - Each district team should determine how to best reconfigure the courtroom space to comply with social distancing.
- Signage to notify trial participants of any specific arrangements, potentially including a map of where parties are to sit or where the trial may be viewed from the gallery
- Other relevant measures per the RPRP plan guidelines such as minimizing high use touchpoints and limiting the number of people in certain spaces

All actions must be in compliance with the current Utah Supreme Court and Utah Judicial Council administrative orders, and the Courts' Risk Phase Response Plan.

II. Notice to Parties

Parties, including any witnesses or additional attendees, should be notified beforehand of the new courthouse and courtroom procedures. The notices may contain information on:

- Contacting the local court if a participant is unable to attend the hearing in-person and accommodations for vulnerable persons.
- Restrictions on entering the courthouse and any additional screenings that may take place such as health questionnaires and temperature checks.
- Social distancing requirements.
- The need to bring a face covering and personal water. Face coverings should not be limited to face masks and may include other alternatives as long as they cover the mouth and nose.
- Courts must provide face coverings to those unable to provide one for themselves. Entrance to the courthouse will be denied and a person may be removed from the courthouse if the person refuses to wear a face covering. If a court patron does not bring a face covering and the courts are unable to provide one, the patron must be given instructions on how to proceed.
- Any additional cleaning measures implemented in the courthouse while also encouraging individuals to clean any areas they use with supplies that are provided by the court. Cleaning supplies should be supplied to the parties to disinfect the areas they use.

III. Vulnerable Persons

Courts must provide accommodations to court patrons who are considered vulnerable persons as defined in CDC guidelines and as outlined in the courts' Risk Phase Response Plan. Accommodations may include allowing remote appearances, providing a private space in the courthouse with a phone/computer for the virtual appearance, or continuing the case.

IV. Health Screenings and Courthouse Procedures

- Courts must conduct COVID-19 screenings of those who enter courthouses and identify who will conduct screenings. Courts must post notice of screening requirements and questions in a clearly visible area where persons enter a courthouse. For specific guidance on restrictions to entering a courthouse and screening questions, refer to the *Risk Phase Response Plan*.
- Court security must alert the applicable court if a person is denied access to the courthouse. The court, through a court security officer, another designated individual, or a posted sign, must provide information regarding who the hearing participant should contact for further instructions. Under these circumstances, judicial teams should either continue the hearing or provide an alternative means for the person to appear.
- If it is determined that a person who has tested positive for COVID-19 has been in the courthouse, the court must immediately contact the local health authority to begin contact tracing to determine where that person may have traveled in the courthouse and who may have been in contact with that person.
- To minimize contact between people in a courthouse, courts should schedule individual hearings at specific times or blocks of time to allow parties to arrive at their scheduled hearing.
- To prevent crowding in courtrooms or waiting areas, court teams may notify participants when a trial is starting by contacting them by phone or text when a courtroom is clear.

V. Access to Hearings and Notice to the Public

To accommodate public access to juvenile court hearings and in accordance with social distancing guidelines, courts need to determine how many members of the public are able to attend a hearing depending on the number of participants involved. If the courtroom cannot safely accommodate members of the public, notice of an alternative means of viewing the proceeding should be provided.

VI. In-custody Trials

Districts should work with local detention centers, jails, and law enforcement to determine the best way to accommodate trials involving youth in detention or incarcerated parents. The ability to accommodate virtual trials in a facility and the current circumstances with transporting youth and parents from detention and jail need to be considered.

DURING THE TRIAL

I. Attorney-Client Communications

To facilitate attorney-client communications during a trial, accommodations should be made to allow them to confer privately while also maintaining social distancing. This may include frequent opportunities for an attorney to leave the courtroom with the client to confer privately. Other types of in-courtroom communication may be considered, such as note passing or text messaging to prevent physical contact. Attorneys and parties should be prepared to communicate by any alternative means.

II. Witnesses

Attorneys should be encouraged to schedule specific times for witnesses to appear in order to prevent too many people from being at the courthouse or in the courtroom at one time. Attorneys may be allowed to text upcoming witnesses of changes in their scheduled time to testify.

Witnesses should be encouraged to appear in the courtroom for an in-person trial. If a witness needs an exception to appearing in-person, attorneys should file a motion to allow individuals who are unable to attend or who are part of a vulnerable group to testify remotely. If a person is unable to testify in person in a delinquency proceeding, the court should be prepared to address any issues and make findings regarding the Confrontation Clause.

III. Exhibits

- To prevent the physical sharing of exhibits, attorneys should be encouraged to share any potential exhibits via email with each party and the court before the trial. When possible, all exhibits should be shared and submitted by document or photograph to limit the sharing of physical items with courtroom staff. The court's copy will be marked when offered.
- Media files presented during the trial that need to be marked as an exhibit should be provided to the court on a CD/Flash Drive before the trial.
- The attorney should prepare a courtesy copy of the exhibits to provide to witnesses who take the stand, when necessary.
- The court should make disposable gloves available if there are physical exhibits that need to be handled by the parties before being admitted into evidence. If a physical, non-document item must be submitted into evidence, it should be given to the judicial assistant in a plastic bag or another similar container.
- The court should be mindful of pro se litigants and make appropriate arrangements to provide and receive exhibits.

IV. Interpretation During an In-person Trial

If conducted safely, interpreters could appear in the same room with the party needing interpretation. The interpreting equipment should be utilized in compliance with the social distancing protocols. If the interpreting equipment is not available, courts should consider utilizing cell phones or a conference line for the interpreter and the party, in order to create ad hoc interpreter equipment.

In-Person Interpreting Options:

- Utilize the interpreting equipment, which may be provided by the court or the interpreter.
 - The interpreting equipment must be sanitized before, in front of the party, and after each use. Depending on whether the court or the interpreter supplies the equipment, the party using the equipment or the bailiff should clean the equipment after each use. Courtroom staff should ensure that equipment cleaning occurs after each use.
- Utilize ad hoc interpreting equipment to create the ability for interpreters to maintain social distancing protocols. This can be accomplished by:
 - A cell phone and headphones, with microphone capability, for the interpreter (ideally the interpreter's personal cell phones and headphones).
 - A cell phone and headphones for the party (ideally the party's personal cell phone and headphones).
 - A conference line for both the interpreter and the party to call from their cell phones. This would ensure the party does not gain the interpreter's personal contact information. Alternative options include the interpreter calling the party and entering *67 to hide their phone number or utilizing Google phone numbers.
 - If the party does not have a cellphone, the court should consider providing the party with a laptop containing a softphone application, such as Jabber, so that the interpreter could still render the interpretation simultaneously while keeping a safe distance from the party.
- Utilize the consecutive mode of interpreting as the last option.
 - Interpreters should not stand beside the party. If space allows for it, the interpreter should maintain a distance of three feet (more preferably six feet) and interpret in consecutive mode.
 - If a safe distance cannot be maintained, interpreters should position themselves slightly behind the party, and avoid positions where the interpreter and the party directly face each other as much as possible.

American Sign Language interpreters will be able to safely render the interpretation by signing a safe distance from the party. The interpreter cannot be located so far away that the party has trouble clearly seeing the signing.

Interpreters may not be required to wear a face covering once interpreting begins if it interferes with the clarity of the interpretation.

V. Additional Viewing Options for Persons Not Participating

To minimize the number of people entering the courthouse or the courtroom, additional options to view or listen to the trial should be made available. This may include the use of Webex Events that allow interested individuals to watch the hearing without disrupting the proceedings. The court should consider the use of a second judicial assistant to facilitate the Webex platform while the trial is proceeding to minimize disruptions.

AFTER THE TRIAL

I. Notification of Subsequent COVID-19 Diagnosis

If clients, witnesses, or other trial participants are diagnosed with COVID-19 within two weeks of the conclusion of a trial, they should notify the court and the health department of their participation in an in-person court proceeding. The court must immediately contact the local health authority to begin contact tracing to determine where that person may have traveled in the courthouse and who may have been in contact with that person.

II. Cleaning the Courtroom

Districts must ensure that courtrooms and waiting areas are thoroughly cleaned after trials.

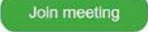
APPENDIX A

Juvenile Virtual Trials

Notice and Instructions for Appearing Remotely

Notice and Instructions for Appearing Remotely

A [trial/hearing type] has been scheduled in case [case #] for [00:00 a.m./p.m.] on [month-day-year] and will be conducted remotely via Webex. You are to join the virtual courtroom promptly at [00:00 a.m./p.m.] If you are appearing as a witness, you will be told what time to appear by the subpoenaing party. The host will move you to the virtual lobby until it is time for your testimony. You will hear no sound while in the virtual lobby.

Click on the  link found in the email below to appear by video from any laptop or mobile device. For additional instructions for attending remotely, see [First Time Webex User](#), Webex by [Computer](#), and Webex by [Mobile Device](#).

Because evidence may be presented during the virtual hearing, all attendees are encouraged to appear by video if possible. If you are unable to appear by video, you may appear by phone using these [instructions](#). You will need the *Meeting number (access code)* and *Meeting password (for phones)* found in the email below. If safe and feasible, attorneys and their clients are encouraged to be in the same physical location and appear together during the trial to facilitate better attorney-client communication.

If you do not have access to a phone or another device to appear remotely, please contact the court at [xxx-xxx-xxxx].

Participant Responsibilities & Best Practices for Remote Attendance

- The virtual hearing is a court proceeding and therefore an extension of the courtroom; appropriate conduct and attire are required.
- The Court creates an official record of the proceedings which may be provided to a party upon request. NO INDIVIDUAL OR INDEPENDENT RECORDING of the proceedings is permitted. Any person determined to have recorded or attempted to record proceedings may be held in Contempt of Court which may result in a monetary fine and imposition of jail.
- Participants should MUTE their mic at all times until prompted to speak, unless there is an objection or some other reason to speak out of turn. Participants who want to speak may “raise their hand” in Webex so the host can address them.
- Participants must use a private, quiet room free of interruptions and are strongly encouraged to use headphones to help reduce audio feedback problems. Also, video meetings need good, consistent lighting; avoid rooms with bright windows and/or back-lighting.
- Participants should have a hard wired internet connection whenever possible, as using Wi-Fi connections and phone data may be unstable.
- Participants must place their mobile devices on a solid surface with the camera at eye level. Do not hand-hold mobile devices and do not lay phones or tablets flat on a desk or tabletop.
- If you will be presenting evidence, you should email digital copies and/or pictures of all exhibits to opposing parties, or their counsel, and to the court at [xxxxxxxxx@utcourts.gov] [number of days or hours] prior to the hearing. You must follow all pretrial and decorum orders. Follow these [content sharing instructions](#) to present evidence during the virtual trial. Come prepared with all evidence digitized for content sharing.

Troubleshooting:

- If you receive a message “meeting has not yet started”, try again shortly.
- Weak Wi-Fi signals can cause video disruptions. **Hard-wiring into your modem is recommended.**
- If you have trouble joining or if you don’t have access to equipment, please contact the clerk’s office at [xxx-xxx-xxxx (option x)] or [xxx@utcourts.gov]. You may not appear in person unless explicitly permitted by the court to do so.

APPENDIX B

Juvenile In-person Trials

Notice and Instructions for Appearing In Court

Notice and Instructions for Appearing In Court

A [trial/hearing type] has been scheduled in case [case #] for [00:00 a.m./p.m.] on [month-day-year] and you are required to appear. If you are appearing as a witness, you will be told what time to appear by the subpoenaing party.

In response to the COVID-19 pandemic, the Court shall conduct the hearing consistent with all current Utah Supreme Court and Utah Judicial Council administrative orders and the Risk Phase Response Plan, as well as, applicable government and public health orders and guidelines as outlined in the Risk Phase Response Plan. If the local or state guidelines are in conflict with the Utah Supreme Court and Utah Judicial Council Administrative Order, the Administrative Order shall govern.

If you are unable to appear in court due to COVID-19 related concerns, please contact the court at [xxx-xxx-xxxx].

Participant Responsibilities & Best Practices:

- You will **not** be allowed to enter the courthouse if you:
 - Exhibit symptoms of COVID-19 (fever, chills, cough, shortness of breath or difficulty breathing, abnormal fatigue, abnormal muscle or body aches, new loss of taste or smell, sore throat, congestion, or runny nose).
 - Have been diagnosed with COVID-19 **until** you have not experienced symptoms for at least 24 hours without the use of fever-reducing medication **or**, if you have been asymptomatic, **until** 10 days have passed since the positive test.
 - Have had sustained close contact with someone who has COVID-19 **until** you have self-quarantined for 10 days from the date of last contact or at least 7 days have passed and you tested negative for COVID-19 at least 5 days after the date of last contact.
- If you develop symptoms or are exposed to someone in the days prior to the hearing, please contact your attorney and the court clerk by phone at [xxx-xxx-xxxx (option x)] or email [xxxxxxxxx@utcourts.gov] for further direction. DO NOT appear in person.
- If you are diagnosed with COVID-19 within two weeks of the conclusion of a trial, please notify the court and the health department of your participation in an in-person court proceeding.
- If you are in a “vulnerable persons” category of higher risk for the COVID-19 virus or need special consideration, please contact the court clerk at [xxx-xxx-xxxx (option x)].
- All persons entering the courthouse will be subject to health screening which may include a series of questions and a contactless temperature reading. Only persons satisfactorily screened may enter the courthouse. All others will be given instructions on making alternative arrangements to appear in court.
- You must follow the Courts’ administrative orders, when inside the courthouse and courtroom, including:
 - Wearing a face covering over your nose and mouth. A complimentary face covering may be requested at [A Mask for Every Utahn](https://coronavirus.utah.gov/a-mask-for-every-utahn/) (<https://coronavirus.utah.gov/a-mask-for-every-utahn/>). **You are strongly encouraged to bring your own face covering. Entrance to the courthouse will be denied to any patron who refuses to wear a face covering.**
 - Practicing social distancing of at least six feet at all times. Please watch for visual markings and listen for instructions from court staff and security personnel.
 - Washing or in the alternative, sanitizing your hands
- We are increasing the frequency in which we sanitize common areas and will make supplies available for additional sanitizing at counsel tables, the witness stand, and conference rooms.
- You are encouraged to bring a water bottle and a pen/paper as these will not be provided during this time.
- Attendance may be limited to parties to the case, their attorneys, and witnesses. Non-party observers and support persons may contact the court to request remote appearance.
- If you will be presenting evidence, please email digital copies and/or pictures of all exhibits to the opposing party/counsel and to the court at [xxxxxxxxx@utcourts.gov] at least [number of days] in advance. Be prepared to display or provide copies for the witness to refer to. The court’s copy will be the original. When a picture cannot be submitted in lieu of physical objects, a clear zip lock bag or container should be used to display the object.

Appendix

E

Addressing Technology Challenges for Self-Represented Parties

Some self-represented parties face technology challenges including lack of access to the internet, financial hardships which restrict their access to technology, and discomfort with technology. Requiring parties to use technology to participate in court processes may create barriers to their access to the courts. This document describes ways in which courts can remove barriers for these parties.

Short-Term Solutions

- Courts could allow parties to use a court phone in a private location to call in to their hearing. There could be a cost to the court if it is a toll call.
- Courts may have spare hardware that could be repurposed for public Webex use, such as a laptop or a PC, and a camera and microphone. Any computer used by the public should have security software such as DeepFreeze, which will restore the computer's default setup on restart.
- The spare hardware described above could be placed in a public conference room to allow patrons privacy. Some things to consider:
 - Whether the room can be secured or monitored by court staff.
 - Whether the hardware can be physically secured.
 - Whether social distancing can be maintained.
- Not all patrons will have the ability to use the technology. Courts will need to designate a staff person to provide technical support.
- Courts will need to provide cleaning supplies and determine who will be responsible for cleaning the equipment.
- Depending on demand, courts may need to design a scheduling system and develop procedures.
- A party may need to access technology in a courthouse other than the one in which their case is being handled. For example, a person in Price may need to access technology to participate in a hearing being held in Salt Lake City.

Long-Term Solutions

Even after the courts move to lower risk levels, there may be vulnerable persons who do not feel comfortable going into a courtroom with other people and who face technology challenges. Courts should determine the ongoing need for a workstation, kiosk, or conference room to provide access.

Appendix

F

Juvenile Court Probation Operations Pandemic Risk Phase Response Plan

Objective: Identify the operations of probation staff while adhering to the [Judiciary Risk Phase Response Plan](#) while implementing the CDC recommendations and social distancing guidelines.

Red Risk Phase Operations

Remote Office Appointments

1. During the Red phase, all probation contacts shall be performed remotely.
2. Preliminary Interview appointments will be conducted via teleconferencing or other media platforms such as google meet, or Webex.
3. Any materials should be sent by email or mailed out to the participants during the red phase.

DNA Collection

1. Due to the suspension of in-person visits, probation staff will not collect DNA during the Red phase.
2. If the youth has been ordered to submit DNA, the probation staff will wait until the Yellow risk phase to resume DNA collection while maintaining precautions outlined.
3. Probation shall submit a report and recommendation for any youth who has completed all court obligations other than DNA collection. If it is determined that court jurisdiction will be terminated and that DNA cannot be collected due to pandemic conditions, probation shall document in CARE by marking the DNA as "uncollectible". If other items in addition to DNA collection are owed, probation shall submit a report and recommendation to extend deadlines.

NCTI/ART/Cognitive Skill Building

1. Youth groups and classes shall be conducted via Zoom, Webex, or other video conference platforms.
2. Any materials should be sent by email or mailed out to the participants during the red phase.
3. Probation staff may deliver necessary materials to the home if they can do so without having contact with family or youth by dropping the items off on the porch.

House Arrest/Home Restriction/PASS

1. If necessary and with the permission from the supervisor, probation staff may do no contact compliance checks using a state vehicle.
2. Probation staff will not exit the vehicle and will call the youth to wave from the porch or from the front of their residence.
3. Probation staff will conduct a health check prior to entering the office and will adhere to social distancing and wear a mask.
4. Car interiors shall be cleaned with a disinfectant wipe by probation staff after use.

Work Crew

1. Probation staff will inform youth on the work crew that operations are suspended until further notice.
2. Probation staff will provide the youth with options and instructions on how the youth can fulfill their obligations by doing projects from home or in the community.

Yellow Risk Phase Operations

Probation is encouraged to continue remote contact during the Yellow phase but may begin in-person contacts with youth and their families' consent. Probation staff will do a self check for symptoms of COVID-19 and report the results to their supervisor before reporting to the office, work crew site or visits with youth and families. Prior to any in-person visits with youth and families, probation staff shall ask COVID screening questions and obtain consent from the youth and family. Probation staff should document consent and health screening questions completed in the youth's case notes in CARE.

Community/Field Visits

1. Probation staff may conduct visits in the community if all recommended social distancing guidelines and Juvenile Court safety policies can be maintained. Probation staff will not enter homes or approach doors but can meet with families outside if all parties can maintain social distance and wear a face covering. Probation staff should contact families prior to visits to ensure that all parties understand expected safety measures. Visits should only be conducted if no other reasonable options for service delivery are available. Visits shall only be conducted with the families' consent.
2. In the event that they become necessary, visits should be done on a rotating schedule to avoid the use of state cars and/or equipment on the same day. All equipment will be sanitized after it is used.
3. Probation shall have a supply of PPE (face covering, gloves, disinfecting wipes) in the event of unforeseen circumstances where social distancing cannot be maintained, and where the exchange of documents or items may occur.
4. Car interiors shall be cleaned with a disinfectant wipe by probation staff after use.

Office Visits

1. During the yellow phase, probation staff are encouraged to continue remote contact but may begin in-person contacts with youth and their families with their consent.
2. Probation staff shall provide an option to the youth and family for remote visits if they are not comfortable coming into the office.
3. If the youth and family consent to coming to the courthouse, the probation staff shall provide the information regarding the mandatory safety measures for court patrons prior to the office visit. If the probation staff's office is not large enough to allow for social distancing, the probation staff will make arrangements to hold the meeting in a conference room or an alternative area to provide adequate space for social distancing.
4. Probation staff shall ensure each person is wearing a face covering and provide one if needed.
5. Probation staff should instruct each person to use hand sanitizer prior to entering the office area for their appointment.
6. During visits, all individuals must wear face coverings and social distancing must be maintained.
7. Probation staff shall disinfect the office following each visit by wiping down desks, chairs, and any item touched during the office visit.

Drug testing

1. Probation staff may obtain a urinalysis during an office visit upon the consent of the minor and their parent(s) coming into the courthouse. A urinalysis may not be conducted in a youth's home.
2. Probation staff shall maintain social distancing measures, wear a face covering (face covering), eye protection, and nitrile/latex gloves.
3. The minor shall thoroughly wash/dry their hands in adherence to CDC guidelines. Instruct the youth to wet their hands with water, turn off the tap, and apply soap. Lather their hands by rubbing them together with the soap. Lather the backs of their hands, between the fingers, and under the nails. Scrub your hands for at least 20 seconds.
4. Probation should observe the minor while maintaining at least 6 feet in between the minor and probation staff. If probation staff is unable to maintain at least 6 feet distancing, they should find another method for conducting urinalysis and refer to local practice.
5. The minor shall secure the lid on the urinalysis cup and shall immediately wash/dry their hands.
6. Probation staff shall give the minor a disinfecting wipe to wipe the outside of the cup and set the cup in a space designated by the probation staff.
7. Instruct the youth to wash their hands following CDC guidelines above.
8. Probation staff shall review the results while maintaining social distancing.
9. Probation staff shall have the minor discard the specimen and the cup if it's not being sent to the lab. If the probation staff is sending specimens off to the lab, they shall continue to wear PPE while packaging the specimen.

10. Upon completion of the urinalysis, the probation staff shall wipe down all surfaces with a disinfecting solution or wipes while wearing gloves and eye protection.

DNA Collection

1. Probation staff may collect DNA in-office visits (upon the consent of youth/family coming into the courthouse) or in the community by maintaining proper protection and social distancing measures.
2. Probation staff shall wear latex/nitrile gloves, protective eyeglasses, and a face covering.
3. Have the youth wash their hands and dry..
4. Probation staff shall prepare the ink strip provided in the DNA kit and card while social distancing. Probation staff shall instruct the youth on how to proceed with the thumbprint stamp and allow them to stamp their own thumbprints prior to swabbing. The probation staff will not stamp the youth's print for them.
5. Probation staff should remove the swab from the package and hand the youth the swab. Staff shall ensure at least 6 feet away from the youth while instructing the youth to remove their face covering and place a swab into their mouth and swab the inside of both cheeks and underneath the tongue along the gum line.
6. The youth shall put the face-covering back on and hand the swab back to the probation officer. Probation staff shall instruct the youth to wash their hands or have them use sanitizer following the swab.
7. Probation staff shall continue to wear all PPE while transferring the saliva sample to the card and sealing the DNA kit.
8. Probation staff shall sanitize any surface touched during the process while wearing all PPE.

NCTI/ART/Cognitive Skills Group Classes

1. Youth groups and classes will continue to be conducted by Zoom, Webex, or other video conference platforms.
2. Any materials should be sent by email or mailed out if the youth doesn't have an email during the yellow phase when possible.
3. Probation staff may deliver necessary materials by dropping the items off on the porch.

Work Crews (outdoor projects away from the public)

1. The probation staff will organize a crew of 2-5 participants and give them instructions on where and when to meet.
2. Youth shall be delivered to and from the worksite by parent/guardian or an adult designated by the parent/guardian. probation staff shall not transport any youth.
3. The youth is to remain in the vehicle of parent/guardian until directed by the probation staff.
4. Probation staff shall verify that all participants have signed work crew contracts.

5. Probation staff shall review COVID specific guidelines.
6. The youth shall be searched for weapons and contraband prior to being allowed to work on-site. The youth will empty their pockets and will be searched with a wand by probation staff. Face coverings and gloves shall be worn throughout the search.
7. When the project is completed youth may use a cell phone to contact their parent/guardian.
8. Participants shall be responsible for cleaning/sanitizing equipment before and after use, using supplies furnished by the work crew supervisor (court issued).

Work Crew Break Procedure

1. Individual water bottles will be provided to each youth. Youth shall put their name on their bottle.

COVID specific guidelines for work crew participants

1. Each participant (including probation staff) shall be symptom-free and complete the health screening prior to coming to the work crew.
2. Social distancing shall be practiced (6' minimum spacing).
3. Each participant shall wear a face covering.
4. Participants should wear latex gloves (provided by the work crew supervisor).
5. Participants shall not shake hands.
6. Participants should avoid touching their faces.
7. Hand sanitizer shall be made available to all participants and dispensed by probation staff upon request.
8. Participants shall adhere to the CDC, Utah Department of Health, and local health department guidelines.

Green Risk Phase Operations

During the green phase, probation operations will resume with the following additional ongoing precautions along with following the recommendations of the CDC.

1. Probation staff will use heightened sanitation and hygiene practices for patrons and staff.
2. Probation staff will consider the needs and requests of vulnerable individuals and provide reasonable accommodations such as appointments being held remotely.
3. Probation leadership will consider the needs and requests of vulnerable employees and provide reasonable accommodations.

**CENTERVILLE
CITY COUNCIL
Staff Backup Report
7/20/2021**

Item No. 2.

Short Title: Water Conservation Discussion

Initiated By:

Staff Representative:

SUBJECT

RECOMMENDATION

BACKGROUND