New Jersey Courts

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New Jersey Supreme Court

Plan for Resuming Jury Trials

July 22, 2020

Starting Premises

Chief Justice Stuart Rabner and the New Jersey Supreme Court are committed to providing comprehensive court services, even during the COVID-19 pandemic.

To that end, the New Jersey courts are preparing to resume Civil and Criminal jury trials in or around September 2020.

We will mail juror summonses in July/August 2020 and empanel juries and start trials in September.

Starting Premises

Jury trials during the COVID-19 period will require adjustments based on public health requirements and other factors.

We face severe space restrictions. We will need multiple courtrooms for individual trials and will be unable in some counties to conduct multiple trials simultaneously for the foreseeable future.

Starting Premises

Our immediate focus is to develop the capacity to support jury trials statewide using a hybrid model with some virtual (video) and some in-person elements.

This is a **temporary** solution to an unprecedented situation. We will resume standard in-person jury operations when it is safe to do so.

Starting Premises

Resuming jury trials is necessary – and it is urgent.

- The suspension of new jury trials for nearly four months jeopardizes the rights of criminal defendants, including those who are detained, as well as victims seeking to complete a critical event in their recovery process.
- Civil litigants also must not be made to wait indefinitely for their day in court.

Waiting is not an option

We cannot predict if or when jury trials will be able to resume in a pre-COVID-19 format.

That time may be months or more than a year from now.

The Judiciary is responsible to ensure the fair and timely administration of justice. Resuming jury trials is a key part of fulfilling that responsibility.

Hybrid Approach: Virtual and In-Person

Starting Premises

The plan is based on the recommendations of the Judiciary's Post-Pandemic Planning Committee on Resuming Jury Trials, which considered national best practices and models introduced in other jurisdictions, including the federal courts.

The Committee – including representatives of the County Prosecutors Association and Public Defender's Office as well as Civil and Criminal judges – evaluated various options and recommended that a hybrid approach would be the best way to resume jury trials in New Jersey.

Starting Premises

The draft proposal was shared with Civil and Criminal attorneys who posed a number of questions and suggested certain refinements that are incorporated in this final report.

The Judiciary Stakeholder Coordinating Committee – which includes Attorney General, Public Defender, and New Jersey State Bar Association members – also reviewed and assisted in finalizing the report.

Starting Premises

Virtual jury selection is necessary. Based on public health guidance, we cannot support an entirely in-person jury **selection** process.

- The Judiciary annually summons 1.4 million jurors, with about 250,000 jurors reporting in person to courthouses.
- The pre-COVID-19 model of packed jury assembly rooms is simply not an option.

Starting Premises

- We cannot bring significant numbers of jurors into courthouses at one time.
- We cannot require jurors to report to court facilities without actually coming into the courthouse (especially considering jurors who travel by public transit).

Starting Premises

The Virtual Grand Jury Pilot Program currently is operating in Bergen and Mercer Counties and will be expanding to include State Grand Jury.

Through that pilot program, we have worked through the technical components of a virtual jury process – and we are ready to build on that foundation for virtual selections of trial juries.

Starting Premises

Few courtrooms are large enough to accommodate jury trials with social distancing.

- To support at least 1 Criminal trial and 1 Civil trial in each county at one time (which will be the maximum capacity in many counties), selection must be done in a primarily virtual format.

Starting Premises

High-volume counties (Essex, Camden) should be able to accommodate 3-4 trials at one time – but only if courtroom space is reserved for trial and deliberations.

There is no space to bring in more than 30 jurors at one time for the very final phase of selection.

Starting Premises

In counties without any courtroom large enough for a criminal trial, it may be necessary to use two courtrooms, with one used by the judge and attorneys and all of the jurors seated in another room with a live feed of the trial proceedings.

We will engage attorneys and parties in a walk-through in advance of any trial, so that all participants have accurate expectations.

Overview – Virtual Selections & In-Person Trials

The Judiciary will be implementing a hybrid model for jury selection and jury trials, including:

- Video and other public information for jurors
- Modified summoning and qualification
- Enhanced prescreening for additional statutory excusals, deferments, and COVID-19 issues
- Virtual (or mostly virtual) jury selection
- In-person jury trials

Tentative Timeline

- July/August 2020 – summonses mailed to jurors in first counties
- August 2020 – jurors qualify online and on paper; Jury staff prescreen jurors; Judiciary distributes technology as needed
- Mid-September 2020 – jurors report for virtual selection, followed by the final in-person phase of selection
- Late September – jurors report for socially distanced in-person trials (Criminal involving detained defendant)

Overview – Jury Selection Process

- Summoning prospective jurors
- Qualification and pre-reporting excuses
- Prescreening by Jury Management
- Virtual (video) jury selection
- In-person final phase of selection
- Socially distanced jury trials
- Next steps

Summoning Prospective Jurors

To test the process, we will begin with a straightforward Criminal trial (single defendant; less than 2 weeks for the trial itself (possible total of 4+ weeks with selection)).

- The Judiciary will mail initial notices, which direct jurors to go online to complete a qualification questionnaire.
- Jurors who do not respond to the online questionnaire will be mailed a follow-up customized hard copy qualification questionnaire.

Prescreening by Jury staff

In addition to standard pre-reporting excuses, during COVID-19 Jury staff also will contact all confirmed jurors to review:

- Ability to participate in a virtual selection process;
- Ability to participate in an in-person trial; and
- Factors related to COVID-19.

Prescreening – COVID-19 Questions

Jury staff will defer (reschedule to a future date) prospective jurors who substantiate that they should avoid in-person gatherings based on current CDC guidance.

As of mid-July 2020, this includes:

- Persons who are 65+ years of age; and
- Persons with specific underlying medical conditions (chronic kidney disease; COPD; immunocompromised state from solid organ transplant; obesity; serious heart conditions; sickle cell disease; Type 2 diabetes).

Medical excuses will require a doctor's note (without confidential medical information) as in non-COVID-19 cases.

Prescreening – COVID-19 Questions

Jury staff will speak with jurors who express general health/safety concerns about reporting and explain how the Judiciary is ensuring clean and safe facilities.

Jury staff also will speak with jurors who indicate non-health related concerns or views about COVID-19.

Those jurors will not be excused by staff and will instead be scheduled to report in a virtual setting to speak with a judge.

Prescreening by Jury staff

Prescreening serves two main purposes:

(1) Identifying jurors who need technology to participate in virtual selection (which technology will be provided by the Judiciary); and

(2) Eliminating from the pool jurors who could not report in person for the trial dates (including for COVID-19 reasons).

Prescreening by Jury staff – Complex Trials

For complex Civil trials or multi-defendant* or high-profile Criminal trials, Jury staff also may distribute case-specific questionnaires as approved by the attorneys and the judge.

* Multi-defendant trials will be especially difficult in many counties due to space limitations.

Prescreening by Jury staff – Complex Trials

The plan is to start with simple, shorter trials that will not involve case-specific questionnaires, which will be added as the types of jury trials expand.

We will expand to complex Civil trials as promptly as practicable, leveraging the technology we have employed during remote operations to facilitate presentation of evidence to jurors.

Supporting Participation in Virtual Selection

The Supreme Court is committed to ensuring representative and inclusive juries at every stage of the selection process.

As in the Virtual Grand Jury Pilot Program, the Judiciary will provide technology to jurors without a smartphone, tablet, or laptop with functioning web camera.

Judiciary IT staff will facilitate a virtual selection process using Zoom, essentially like a virtual court proceeding.

IT staff will provide assistance to jurors as needed.

Jury Selection Process – Virtual Phase

The Judge will pose questions to the jurors as a group and then individually as needed, asking all of the Model Voir Dire Questions.

The sequence of the Model Voir Dire Questions can be adjusted for remote selection.

Jurors will be excused for cause and may be peremptorily challenged.

Size of the Virtual Panel

Virtual selection will start with a panel of 30 jurors (so that all jurors are visible in the Zoom courtroom).

Those 30 jurors will have qualified and confirmed availability and further confirmed capacity to participate virtually and in person.

Virtual Selection

The virtual selection process will be substantive, with the following expectations:

- The attorneys and parties can be present in the courtroom with the judge or can participate remotely upon request.
- The judge will ask all model questions, the biographical questions, the omnibus questions, and open-ended questions.
- The judge will dismiss jurors for cause.
- Jurors requiring individualized questioning will have 1:1 follow-up virtual sessions.

Overview – Virtual and In-Person Selection; Trial

Step 1 – General Virtual Questioning

Step 2 – Individualized Virtual Questioning

Step 3 – In-Person Final Phase of Selection

Step 4 – In-Person Trial

Virtual Selection – Step 1

Step 1 – The judge will hold two Zoom sessions (morning and afternoon) with 30 jurors at each session. The judge will provide the basic information about the trial and excuse jurors for cause. Jurors not excused but requiring further questioning will be individually questioned – either during that session or later.

For a Criminal selection, with 30 jurors each morning and 30 jurors each afternoon, this might take up to a week.

Virtual Selection – Step 2

Step 2 – Jurors not excused for cause but requiring additional questioning (e.g., those who answer that they are more or less likely to believe police testimony) will be individually questioned by the judge in the presence of the attorneys, either during their initial session or on a future date.

The virtual phase will be similar to the process used in a "struck jury" and will yield a small group of pre-questioned jurors who actually report in person.

In-Person Selection – Step 3

For social distancing purposes, limited numbers of jurors will report at one time for the final phase of in-person questioning/challenges.

- The question "do you know any of the other jurors in the box?" will need to be asked in person.

Following general and individualized questioning, the starting group of 210 jurors will be reduced to about 60-70 jurors who will be scheduled to report in person on consecutive days.

Attorneys will exercise peremptory challenges, and the judge will dismiss additional jurors for cause as necessary.

In-Person Selection – Step 3

Some degree of in-person questioning (including as to anything that has changed) will be conducted.

During in-person questioning, to the extent possible, the judge and attorneys in the main courtroom will be provided a live feed view of the other jurors in a separate courtroom (e.g., 14 jurors in the main in-person courtroom and another 15-20 in a separate in-person room or rooms with video feed).

In-Person Selection – Step 3

Several options might be used for sidebar discussions with jurors.

- For brief conversations, jurors can be brought up closer than 6' from the judge, with plexiglass and/or face shield barriers, for questioning.
- For longer conversations, it may be necessary to provide a separate room for the judge, attorneys, and juror to relocate to for a sidebar discussion.
- Courtroom facilities will affect the best options.

In-Person Trial – Step 4

After selection, jurors will be directed to report in person to a courthouse.

- Jurors will receive a text message with COVID-19 screening questions reminding them not to report if sick.

Jurors will report on staggered schedules (to avoid crowding) and undergo point-of-entry screening, including COVID-19 symptoms, and, in some counties, thermal scanning.

All jurors will wear face masks (which will be provided if necessary).

In-Person Trials

Jurors and all trial participants will follow specific routes to get to courtrooms, taking into account elevator limits (1 or 2/elevator).

Once in the courtroom, jurors will be seated with 6 feet of social distance between them, typically in the gallery.

Jurors will receive personal materials (sanitizer; notepads/pens if applicable) and have access to designated restrooms and eating areas.

In-Person Trials

Courtroom setup will be modified to maintain social distancing, including by turning or moving counsel tables.

Confidential attorney-client communications will be supported through various options, including partial plexiglass dividers (that would enable seating closer than 6 feet apart) and earbuds.

In-Person Jury Trials

Few courtrooms are large enough to accommodate the number of jurors and other participants in a criminal trial.

The Judiciary has an obligation to reduce foot traffic in the courthouse and mitigate logistical challenges with court facilities to provide social distancing.

- At maximum capacity, a handful of trials (with social distancing) can be conducted in any vicinage.

Total in-person trial activity will be limited.

Socially Distanced Jury Trials

In-Person Jury Trials

In counties without any large courtrooms, trial proceedings might be broadcast into a second courtroom so that everyone is viewing the trial in real-time but in two locations.

- This will be planned with input from attorneys.

Jurors will deliberate in person in a designated courtroom or the assembly room, but not in smaller deliberation rooms.

Potential Exposures

Jurors will not be in close contact with each other or others.

- In the event that a juror develops symptoms of COVID-19, that juror will not report for service.
- If there is any risk of exposure as defined by the CDC or NJ DOH, then the Judiciary will provide notice.
- The Court will publish and post our COVID-19 notification policy before any jurors report in person.

Next Steps

The Judiciary must resume jury trials in order to provide access and justice for the people of New Jersey.

Our experience during remote operations – including 50,000+ virtual events involving almost 500,000 participants and an ongoing productive virtual grand jury pilot program – demonstrates that virtual processes are successful.

Next Steps

By early fall, jury trials will start in a few counties, which will help in getting baseline data (e.g., percentage of jurors who require technology) and refining the process.

The first cases will be straightforward Criminal matters expected to take less than 2 weeks for the trial itself (4-5 weeks overall).

Next Steps

As soon as capacity is established, trial activity will expand subject to local resources, including the number of courtrooms that can accommodate socially distanced trials.

Selection of cases will depend on a variety of factors – Assignment Judges will work closely with Civil and Criminal Presiding Judges to identify appropriate cases for the first trials and later expansion.

Next Steps

As Criminal and Civil jury trials resume in New Jersey, with virtual selection and in-person trials, procedures will be refined based on input from judges, attorneys, jurors, and the public.

The New Jersey courts will continue to provide information about jury trials and all current and upcoming court operations, including on our public webpage, njcourts.gov.