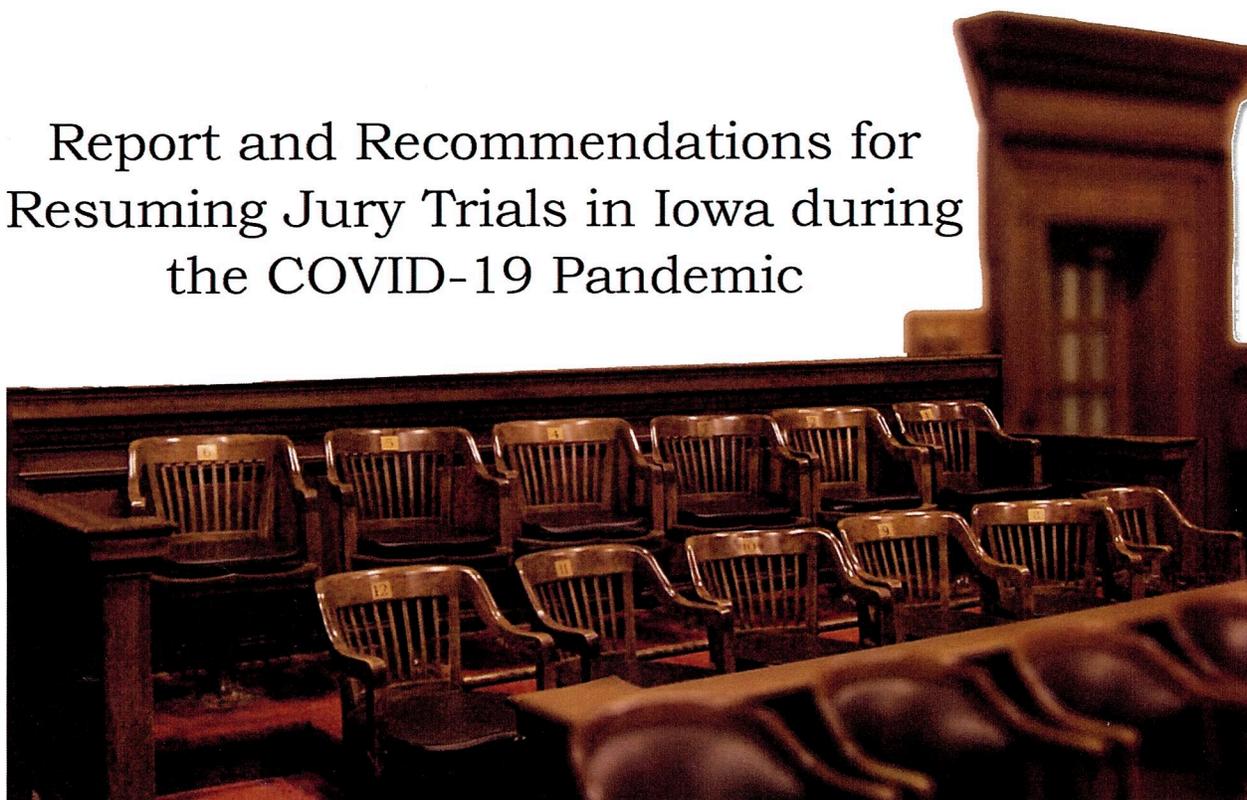


JUMPSTART JURY TRIALS TASK FORCE

Report and Recommendations for
Resuming Jury Trials in Iowa during
the COVID-19 Pandemic



July 6, 2020

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Resources

[Iowa Department of Public Health](#)
[University of Iowa College of Public Health](#)
[Centers for Disease Control and Prevention](#)
[American Board of Trial Advocates COVID-19 Task Force Report](#)
[United States Courts COVID-19 Judicial Task Force Report](#)
[NACDL Task Force on Criminal Court Reopening Report](#)
[National Center for State Courts](#)

Special thanks from the Task Force to

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Introduction

A. Creation of the Jumpstart Jury Task Force

On May 6, 2020, following COVID-19 postponements of all jury and non-jury trials, the Iowa Supreme Court by order of Chief Justice Christensen created the Jumpstart Jury Trials Task Force. The Task Force—composed of a cross-section of judges, attorneys, and court personnel from across Iowa in consultation with public health experts, county officials, and law enforcement—was charged with developing recommended temporary policies and procedures for the safe and fair resumption of jury trials in Iowa’s courts.

COVID-19 is a highly infectious disease of the respiratory and other organ systems. Both the public health experts consulting with the Task Force and the Centers for Disease Control and Prevention (CDC) characterize the manner of transmission primarily by airborne particles emitted by people through breathing, talking, coughing, and sneezing. A public health consensus has formed that the most effective way to minimize transmission is for people to remain physically distant, to keep mouths and noses covered, avoid congregating in indoor spaces, and to disinfect commonly handled surfaces and objects. The disease can be serious and potentially fatal for people of any age, with increasing morbidity and mortality rates among older adults and people with chronic health conditions. Current data also indicates a disproportionate burden of illness and death among racial and ethnic minority groups.

These characteristics of the disease, and the unprecedented public health risks associated with them, present unique challenges as Iowa’s courthouses prepare to resume jury trials. Jury trials generally bring together many members of the community, of diverse ages and races, in an indoor space, for extended periods of time, with participants speaking throughout the process.

Drawing on a wide range of information and proposed practices from around the country, the Task Force has examined procedures toward the goal of protecting the health and safety of jurors and all other participants in the trial process while upholding the fundamental legal rights and protections owed to parties and the public.¹

After considerable research, deliberation, and consultation with public health experts, the Task Force now submits these recommended policies and procedures for the resumption of jury trials in Iowa. These recommendations

¹ The Task Force previously provided input to the Iowa Supreme Court concerning the rescheduling of nonjury and jury trials and other trial issues set forth in the Court’s May 22, 2020 supervisory order. That order authorized courts to begin resuming jury trials, which had been suspended by prior court order, beginning September 14, 2020.

constitute the Task Force’s collective best effort to address anticipated jury trial challenges resulting from the COVID-19 pandemic.

Many of the recommendations are guidelines that will need to be adopted to suit individual locales in recognition that jury trials occur in Iowa’s 100 unique courthouses across the state. Local implementation and strategies inevitably will vary based on physical layout, local needs, and available resources of the judicial branch. The recommendations in this report should be limited to address challenges with jury trials resulting from the COVID-19 pandemic.

To ensure a fair trial, jurors must be able to focus on the evidence presented. The safety procedures outlined below, the Task Force believes, will help comfort jurors about the efforts made to protect their safety so they can focus on their critical duties as jurors. This will require courts taking into consideration juror issues beyond their presence in our courtrooms, however, and must include consideration of jurors’ personal characteristics (such as age and underlying health issues), living situations (such as residence with elderly or health-compromised family members), and related considerations made more weighty by the ongoing epidemic.

B. The critical need to resume jury trials in Iowa

The right to a trial by jury remains one of the most cherished values of our judicial system as enshrined in both the Sixth and Seventh Amendments of the United States Constitution and Article I, section 9 of the Iowa Constitution. Vital to the promise of a trial by jury are of course the jurors themselves—citizens who come together in decision making as the “collective conscience” of the community. Dating back to before the founding of America, the jury remains a bedrock of our judicial system.

The Task Force recognizes the tension in balancing the rights of all participants in the jury trial process with the need to protect the health and safety of those same participants. The Task Force acknowledges, for example, the right of an accused defendant, presumed innocent, to a speedy and public trial by a jury selected from a fair cross section of the community, and the health risks the same accused defendant faces while in pretrial detention in jail and while on trial in an indoor courthouse. The Task Force takes seriously the arguments that proceeding with jury trials before the existence of a vaccine or widespread immunity presents risks not only to parties, but to the summoned jurors and subpoenaed witnesses who do not necessarily participate voluntarily in the trial.

The Task Force also recognizes the particular requirement in criminal cases for defense counsel, consistent with their Sixth Amendment obligations, to have sufficient opportunity to confer with clients to enable intelligent and informed

choices at all stages of the representation, including during trial. The Task Force similarly recognizes that measures potentially appropriate for civil jury trials might not be appropriate for criminal trials because of confrontation rights guaranteed by the Sixth Amendment. Measures implemented to continue court operations should be designed to avoid impeding defense counsel's compliance with counsel's ethical obligations.

The Task Force's recommendations seek to preserve the jury's critical function of analyzing witness credibility and weighing the evidence. "The very ceremony of trial and the presence of the factfinder may exert a powerful force for truth telling. The opportunity to judge the demeanor of a witness face-to-face is accorded great value in our tradition." Fed. R. Civ. P. 43, Notes of the Advisory Committee (1996). While the Task Force recognizes that the challenging circumstances created by COVID-19 might warrant expanded use of remote testimony made possible by technological advances, it also believes that appropriate safeguards can be put in place to enable the jury to hear evidence presented in-person with health risks appropriately managed.

The COVID-19 pandemic has placed a significant strain on many of the regular practices in our jury trial process. Despite these challenges, we must continue to preserve the fundamental institution of jury trials for both criminal and civil cases even during these extraordinary times. Responding to this crisis, the Task Force has worked to balance the public's health and safety with parties' Constitutional rights to trial by jury in the following recommendations.

Recommendations

I. Communicating with the public at large about efforts to maintain the safety of all participants in jury trials and importance of jury service

The Task Force worked diligently to consider the current guidance available from public health officials, along with judicial resources from around the country, concerning measures to ensure the public's safety at jury trials. The Task Force also consulted directly with experts at the University of Iowa College of Public Health concerning COVID-19 transmission and safety measures to protect participants throughout jury trial proceedings. The Task Force recommends the creation and promulgation of public service announcements about the safety measures the judicial branch and counties are taking to ensure jury participants' safety, the importance of jury service in our system of justice, and appreciation for those who serve on juries.

II. Preparing the court-controlled areas of the courthouse

- a. *Entrance*: Jurors' entrances and travel paths must be planned and clearly marked. Jurors must be directed to gathering areas with physically-distanced seating that ensures a minimum of six feet of separation between persons.
- b. *Hallways and queuing areas*: Courts, in consultation with the county board of supervisors, are encouraged to place physical distancing markers and signage throughout hallways and queuing areas indicating where individuals should stand to maintain physical distancing.
- c. *Restrooms*: Physical distancing markers must be placed inside and outside court-controlled restrooms, with occupancy limits established for restrooms. Floor markings must indicate where individuals should stand or use sinks or urinals to maintain physical distancing within restrooms, and must be marked with proper signage.
 - i. To limit congregating inside or outside restrooms, courts as necessary may stagger breaks and provide longer breaks to accommodate potential restroom use delays.
 - ii. Courts, in consultation with the county board of supervisors, are encouraged to implement frequent restroom sanitizing procedures during jury trials and to place signage about the importance of hand washing.
- d. *Elevators*: Courts, in consultation with the county board of supervisors, are encouraged to place physical distancing markers in and near elevators. Elevator use in court-controlled areas must be limited to accommodate physical distancing of six feet. Stairwells may be encouraged as alternatives to elevators (as appropriate) and marked with proper signage.
- e. *Courtrooms*: Courts must mark courtrooms to ensure physical distancing, including markings showing where participants should sit or stand to ensure six feet of distance from others. Courts must also ensure, to the greatest extent possible, that individuals enter and exit courtrooms in patterns that maintain physical distancing.
 - i. Courts must reconfigure courtrooms as necessary to accommodate physical distancing, including as appropriate placing jurors in the gallery or relocating the witness stand (table, box, or seat).

- ii. Attorneys must not approach witnesses, court reporters, or judges during all phases of the trial absent specific permission from the judge.
 - iii. Courts must adjust or move courtroom microphones to permit adequate sound amplification.
- f. *Cleansing*:
 - i. Courts must provide participants in court operations (including jurors, counsel, and court staff) hand sanitizer and disinfectant wipes to self-clean high-touch surfaces in their personal space such as chairs, tables, or railings.
 - ii. Court staff are encouraged regularly to clean with disinfectant wipes high-touch surfaces in common areas such as door handles, stair railings, elevator buttons, and microphones.
- g. *Air purification and flow*: Courts, in consultation with the county board of supervisors, are encouraged to consult with industrial hygiene specialists about air flow and ventilation in court-controlled areas, including potential use of appropriately-sized HEPA (High Efficiency Particulate Air) purifiers in courtrooms or opening windows and doors to facilitate ventilation.
- h. *Signs*: Signs must be posted in all court-controlled public areas stating:
 - i. *“Do NOT enter if any of the following apply:*
 - 1. *You have recently been in close contact with someone who has COVID-19.*
 - 2. *You have tested positive for COVID-19 in the last 14 days.*
 - 3. *You are experiencing symptoms of COVID-19 (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue).”*
 - ii. *“A face covering must be worn when entering this space.”*
 - iii. *“Upon entering, please maintain 6 feet of distance in all directions between yourself and others.”*
- i. *Courtroom admittance*: Courts must institute courtroom admittance policies to limit the number of people permitted in the courtroom.
 - i. Courts must ensure sufficient space for people whose presence is essential to the trial—parties, attorneys, jurors, witnesses, and court staff—with six feet of physical distancing. Family members,

the public, and others whose presence is not essential to the trial may be permitted into the courtroom as physically-distanced space permits.

- j. *Live streaming*: If the courtroom doesn't have sufficient space to seat spectators with appropriate physical distancing, courts must set up live streaming of public court proceedings in another room in the courthouse (or, as necessary, streaming online or by videoconference) to permit simultaneous viewing by anyone unable to attend because of space or health limitations.
 - i. Courts may prohibit trial witnesses who ordinarily would be sequestered from viewing live streams of courtroom proceedings.
- k. *Enforcement of protocols*: Courthouse security or staff (including bailiffs and deputies) must be empowered to enforce physical distancing and admittance policies as necessary.
- l. *Consulting with public health officials*: Court personnel are encouraged to consult with local public health officials or medical professionals to verify that court-controlled areas comply with physical distancing requirements and other recommended safety practices.
- m. *Reporting concerns*: Courts must provide contact information for members of the public to contact the district court administrator to report lack of compliance with required protocols.

III. Screening and personal protective equipment

- a. Each person entering court-controlled areas of courthouses for jury trials must answer the following questions:

Have you experienced any of the following symptoms during the past three days:

- 1. *Fever greater than 100 degrees?*
- 2. *New loss of taste or smell?*
- 3. *Unusual shortness of breath?*
- 4. *Fatigue?*

Anyone reporting having experienced at least two of these four symptoms must be sent home and asked to contact a physician.

- b. Courts must require everyone entering court-controlled areas to wear coverings (face masks or face shields) covering the nose and mouth, and to wear them consistently while in court-controlled areas.
 - i. Exceptions to wearing face coverings may be considered by courts upon request on an individualized basis.
- c. Courts must provide a face covering to any person entering court-controlled areas who does not have one.

IV. Pretrial preparations

- a. *Pretrial hearings*: Courts must conduct hearings on pretrial motions with proper physical distancing and at times that help minimize in-courthouse waiting by prospective or actual jurors.
 - i. Courts and counsel are encouraged to handle pretrial hearings by video conference to the greatest extent possible.
- b. *Timing of pretrial conferences*: Courts are encouraged to schedule pretrial conferences for farther in advance of trials than typical (perhaps at least three weeks or more in advance of trial) to help parties better determine earlier whether cases will in fact be proceeding to trial.
 - i. Courts are encouraged to stress to parties the importance of avoiding using a “waiting jury” as a plea or settlement tactic.
- c. *Briefing on COVID-19 challenges for trials*: Prior to the final pretrial conference, courts are encouraged to require counsel to brief legal issues related to any anticipated extraordinary or particularized challenges in conducting the trial because of the COVID-19 pandemic.
- d. *Limit the number of simultaneous trials*: Within a courthouse, courts must limit the number of jury trials that start on a given day as necessary to reduce the population of prospective jurors to accommodate physical distancing.
 - i. Courts are encouraged to coordinate schedules with other county officials to minimize congestion in the courthouse on specific dates or times to accommodate physical distancing.
- e. *Consider modified trial schedules*: Courts are encouraged to modify trial schedules to avoid unnecessary movement of jurors around the courthouse (for example, scheduling trial days from 8:30 a.m. until

2:30 p.m. with no lunch break and two twenty-minute restroom breaks).

V. Juror summoning and check-in

- a. *Communication on safety efforts:* Courts are encouraged to inform prospective jurors (possibly with a joint communication from Chief Justice Christensen and a public health official) on the considerable efforts undertaken by the judicial branch and counties to ensure their safety when fulfilling their civic duties as jurors, of the importance of jury service in our system of justice, and appreciation for those who serve. Courts are also encouraged to remind jurors of the steps they must take for their enhanced safety, including frequent hand washing, face coverings, and physical distancing.
 - i. Courts are encouraged to provide a link to prospective jurors to view an online video on the court's safety protocols and the importance of jury service.
- b. *Summon more than typical:* District courts are encouraged to increase the number of jurors typically summoned (perhaps 50 percent more) recognizing there will be more no-shows and excused jurors than typical.
- c. *Summon earlier than typical:* District courts are encouraged to send juror summonses further in advance (recommended 2-4 weeks earlier) than typical to allow supplemental summoning if the initial yield is too low.
- d. *Other facilities:* Courts are encouraged to consider options for conducting trial operations at alternate facilities in larger spaces outside the courthouse, such as school gyms or public auditoriums. If using non-courthouse facilities, courts must create a plan to address security, internet or Wi-Fi needs, technological needs, restrooms, and sound amplification.
- e. *Advance screening:* Before the jury service date, state court administration must develop a questionnaire to send jurors with the following questions:
 - i. Are you experiencing COVID-19 symptoms (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue) and have tested positive for COVID-19?

- ii. Are you experiencing COVID-19 symptoms (fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue) and concerned you might test positive for COVID-19?
 - iii. Are you caring for someone who tested positive for COVID-19?
 - iv. Are you a member of a high-risk population for COVID-19 (for example, over 65 or with an underlying medical condition)?
 - v. Are you caring for or living with someone who is a member of high-risk population for COVID-19?
 - vi. Are you afraid to be in a large group for an extended period even if physically distanced six feet from others and everyone is wearing a face covering?
 - vii. Are you a medical professional currently treating COVID-19 patients?
- f. *Advanced handling of hardship challenges:* To minimize both the number of prospective jurors at the courthouse and the time prospective jurors must spend there, courts are encouraged to handle hardship challenges by online communications with the court to the extent feasible before the prospective juror reports for service.
- g. *Deferrals:* Courts may grant deferrals to another date within a 12-month period to anyone answering “yes” to any of these questions and requesting a deferral. (Note: Iowa Code section 607A.6 provides that a court may defer a term of service upon a finding of hardship, inconvenience, or public necessity.)
- h. *Advance calls if symptomatic:* Courts must provide prospective jurors a court phone number and request that prospective jurors, if experiencing two or more COVID-19 symptoms on the date they are to report for jury duty (i.e., fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath, fatigue), communicate this information *before* coming to the courthouse. Prospective jurors reporting by phone two or more of these symptoms should be told not to come to the courthouse and to seek medical advice.
- i. *Interactions necessitating less than six feet of distancing:* For interactions where less than six feet of distancing is possible (for example, service points or counters where encounters will not permit distancing), courts must install temporary plexiglass dividers.

- j. *Juror reporting and check-in:* Depending on the size of the jury pool and number of trials scheduled for the same time, courts are encouraged to take the following actions:
- i. Stagger times for jurors to arrive to avoid congestion of people in indoor spaces.
 - ii. Split up juror check-in locations to avoid congestion of people in indoor spaces.
 - iii. Use paging or text messaging to permit potential jurors to remain outside the court facility until they need to come in, including having potential jurors stay in their cars or under tents outside the courthouse until called.
 - iv. Provide pre-printed, stick-on disposable juror badges instead of plastic badges that need to be returned to court staff.
 - v. Instruct all potential jurors to keep all personal items (including water bottles and food) separated from other jurors' personal items.
 - vi. Instruct potential jurors to hold up documentation (summons and driver license) for review by court staff without court staff taking possession. Any court staff taking hold of potential jurors' documentation must sanitize or wash hands frequently.
 - vii. Enable potential jurors to bypass typical juror assembly areas or gathering rooms and directed them instead to report directly to the courtroom for check-in and seating.
 - viii. Direct jurors to bring their own reading material and remove magazines and newspapers from any jury rooms.
 - ix. Plan how prospective jurors will eat lunch (if a modified trial day schedule is not instituted) and consider risks associated with jurors either bringing in outside food to eat in the courthouse or leaving the courthouse to get lunch, including having lunch delivered to jurors at their expense to avoid leaving the courthouse or, if jurors are permitted to bring their own lunches, a procedure for the use of the refrigerator or microwave (with clearly marked individual containers or bags) and regular disinfecting of handles and other high-touch surfaces.
- k. *Symptomatic jurors:* If a prospective juror experiences two or more COVID-19 symptoms while at the courthouse (i.e., fever greater than 100 degrees, new loss of taste or smell, unusual shortness of breath,

fatigue), courts must excuse the person immediately, send the person home, and ask the person to seek medical help. Courts must immediately consider further action necessary based on contacts the affected potential juror had with other court participants, including contacting local public health officials relating to contact tracing, disinfection, and related measures.

- i. Courts are encouraged to establish lines of communication with local public health officials prior to resuming jury trials to facilitate timely responses in the event a trial attendee becomes symptomatic during trial.

VI. Jury selection

- a. *Limiting the number of prospective jurors in the courtroom:*
 - i. *Smaller jury panels:* Courts are encouraged to consider bringing smaller jury venires into the courtroom for voir dire.
 - ii. *Remote video voir dire:* In civil cases or criminal cases with consent, courts are encouraged to consider virtual voir dire with jurors participating remotely by video conference.
- b. *Transparent face shields:* Courts must provide to all persons speaking during the voir dire process, including members of the jury venire who are selected for questioning as the jury panel, transparent face shields enabling a full view of the face (including the person's mouth), which must be worn throughout the proceedings.
- c. *Distancing:* Courts must reconfigure courtrooms as necessary to accommodate proper distancing. Courts must space seats during jury selection at least six feet apart in all directions. Staff are encouraged to use tape or similar indicators to mark seats for use or non-use and to mark the ground to show where counsel may stand during voir dire.
 - i. Courts must make readily available hand sanitizer and disinfectant wipes in court-controlled areas.
 - ii. Courts must remind jurors to sanitize their hands upon every return to the courtroom.
- d. *Sight lines and sound:* Courts must ensure adequate sight lines and sufficient sound amplification to enable prospective jurors to hear and see all proceedings. Courts must test lines of sight and sound

- amplification in advance of trials. Courts must instruct all potential jurors to advise the court if they cannot hear or see any part of the proceedings. Courts are encouraged to consider using wireless headphones connected through a courtroom audio system for the court, counsel, and the court reporter.
- e. *Time limitations*: Courts should exercise reasonable control over the time spent on voir dire questioning by attorneys to expedite the process of jury selection. Where appropriate, courts are encouraged to employ greater use of advance written questionnaires or agreed upon common questions to prospective jurors to minimize repetition.
 - f. *Private conferences with prospective jurors*: Courts must determine where individual conferences will occur to discuss private matters involving the court, counsel, and individual potential jurors while still observing physical distancing protocols and the defendant's right in criminal cases to be present for all proceedings.
 - g. *Private attorney-client communications*: Attorneys and their clients may mutually agree not to adhere to physical distance during the trial process. But if attorneys and their clients choose to adhere to physical distance during the trial, courts must permit attorneys and clients to speak confidentially while physically-distanced in a private space outside the courtroom or in court using headphones with microphones.
 - i. After each break in the trial, whether overnight or midday, courts on the record are encouraged to ask defendants in criminal cases whether they were able to speak to their counsel.
 - ii. If attorneys and their clients choose to keep physical distance, to the extent attorney-client conferences are conducted in the courtroom with others present, courts are encouraged to consider use (or expanded use) of white noise machines to mask the participants' voices.
 - iii. If attorneys and their clients choose to keep physical distance, courts are encouraged to consider use of real-time electronic messaging feeds between counsel and clients that allow them to communicate during the trial.

VII. Conducting jury trials

- a. *Assigned seating*: After the jury is selected from the venire, courts must reconfigure the courtroom as necessary to accommodate proper distancing and assign jurors seats. Courts are encouraged to use tape or similar indicators to clearly mark seats for use or non-use.
- b. *Sight lines and sound*: Courts must ensure adequate sight lines and sufficient sound amplification to enable jurors to hear and see all proceedings. Courts must test lines of sight and sound amplification in advance of trials. Courts must instruct all jurors to advise the court if they cannot hear or see any part of the proceedings.
- c. *Record acceptance on setup*: Courts are encouraged to request that counsel for all parties accept on the record the setup for the courtroom, or that counsel lodge specific objections for the court to address as appropriate.
- d. *Transparent face shields*: Courts must instruct all members of the jury to continue wearing the transparent face shields they were provided during voir dire throughout the trial. All persons speaking during the trial, including the judge, attorneys, and witnesses, must also continue wearing transparent face shields enabling a full view of the speaker's face.
 - i. Court may instruct jurors to take home the face shields at end of each day for cleaning, and to bring them back for the next day's proceedings.
- e. *Opening statements and closing arguments*:
 - i. *Time limits*: Courts should exercise reasonable control over the time spent on opening statements and closing arguments by attorneys to expedite the trial.
 - ii. *Distancing*: Courts may place tape markings on the floor showing where counsel may stand during opening statements and closing arguments to comply with physical distancing protocols.
- f. *Addressing the court and witnesses*: Courts must instruct attorneys to address the court and question witnesses while physically distanced at counsel tables.
- g. *Exhibits*:
 - i. Courts may require that parties present exhibits electronically using a computer or document camera, and not pass exhibits

hand-to-hand during trial, including from counsel to witnesses, court reporters, judges, or jurors.

- ii. Courts are encouraged to provide additional projectors, screens, or monitors to display exhibits to enable jurors at appropriate physical distances equal visibility and access to viewing documentary or other physical evidence.
 - 1. To the extent jurors must receive physical copies of documentary evidence, courts may require the documents be sanitized (to the extent possible) and left in a designated spot where the jurors can access them without hand-to-hand passing.
- iii. Courts may require any original exhibits necessary for physical receipt by the court reporter to be pre-marked, sanitized (to the extent possible), and left in a designated spot where the court reporter can retrieve them without hand-to-hand passing.
- iv. Courts must encourage parties to present exhibits, to the greatest extent possible, by screen or video to minimize physical contacts and ensure distancing while permitting sufficient examination of the exhibits.
- h. *Sidebars:* Courts must establish before trial where sidebar conferences will occur, possibly in the jury room or an unused courtroom while the jury remains in courtroom.
 - i. Courts may discourage sidebar conferences due to difficulties of maintaining proper distancing and delays.
 - ii. To the extent sidebar conferences must be conducted in the courtroom with others present, courts are encouraged to consider use (or expanded use) of white noise machines to mask the participants' voices.
 - iii. Courts are encouraged to consider use of real-time electronic messaging feeds between counsel and the court that allows lawyers to submit issues and the court to rule on them electronically.
- i. *Special considerations for criminal defendants:*
 - i. If the defendant is in custody, courts must make certain that any new courtroom configurations do not reveal any in-custody status (e.g., preventing the jury from seeing or hearing shackles, handcuffs, prison garb, etc.).

- ii. Courts are encouraged to require parties to brief whether they intend to elicit testimony from witnesses on in-court identification of individuals wearing face coverings and, if so, how it will be performed.
- j. *Witness holding*: Courts must determine where witnesses will wait (with appropriate physical distancing) before they testify, including outside the building (in their vehicles or elsewhere close by) until contacted to come inside.
- k. *Witness testimony by video*: By agreement of the parties, courts may permit remote testimony from witnesses through live video streaming. If the court permits remote testimony, the court must consider:
 - i. Any evidentiary concerns or objections raised by the parties prior to the testimony;
 - ii. How to verify the witness's identity;
 - iii. How to identify documents or exhibits used with the witness during testimony;
 - iv. How documents or exhibits will be provided to the witness; and
 - v. How to ensure that the witness will be alone and not subject to the influence or instruction of other people or sources while testifying.
 - 1. Courts may consider requiring the witness to report to a secure location and to testify in the presence of an authorized court agent if courts have concerns about these issues.
- l. *Break timing*: Courts are encouraged to consider the best manner in which restroom breaks may proceed with proper physical distancing based on the number of available restrooms.
 - i. Recognizing that jury collaboration might be influenced by jurors' interactions with each other outside the presence of the court and the attorneys as they gather and take breaks, courts are encouraged as feasible not to separate the jury (and not to separate the jury the same way each time) to avoid factions or coalitions unwittingly forming.
- m. *Break locations*: Instead of using generally smaller jury deliberation rooms, courts are encouraged (as feasible) to permit jurors to use a

larger courthouse conference room or training area, or even to vacate the building, for breaks during trial.

- i. Alternatively, courts are encouraged to consider keeping jurors in the courtroom for recesses (in effect becoming the jury room) with all other court participants leaving and the jurors remaining.
- n. *Notebooks*: Courts may provide jurors a large envelope in which jurors can store their own notebooks and pens at the end of the trial day in the jury room with no one else handling the notebooks.
- o. *Private attorney-client communications*: Courts may permit attorneys and clients to speak confidentially while physically-distanced in court using a closed-circuit phone system, headphones with microphones, or in a private space outside the courtroom.
 - i. After each break in the trial, whether overnight or midday, courts are encouraged to ask defendants on the record whether they were able to speak to their counsel.
 - ii. To the extent attorney-client conferences must be conducted in the courtroom with others present, courts are encouraged to consider use (or expanded use) of white noise machines to mask the participants' voices.
 - iii. Courts are encouraged to consider use of real-time electronic messaging feeds between counsel and clients that allow them to communicate during the trial.
- p. *Symptomatic participants*: If any trial participant experiences COVID-19 symptoms during trial, courts must excuse the participant immediately, send the person home, and ask the person to seek medical help. Courts must immediately consider further action necessary based on contacts the affected person had with other court attendees, including contacting local public health officials relating to contact tracing, disinfection, and related measures.
- q. *Report of post-trial COVID-19 positive test*: If, after the conclusion of a jury trial, courts learn that any trial attendee has tested positive for COVID-19, courts must immediately consider further action necessary based on contacts the affected person had with other court attendees, including contacting local public health officials relating to contact tracing, disinfection, and related measures.
- r. *Advance planning with local public health officials*: Courts are encouraged to establish lines of communication with local public

health officials prior to resuming jury trials to facilitate timely responses in the event the court learns any trial attendee experiences COVID-19 symptoms or tests positive for COVID-19 either during or after a jury trial.

VIII. Deliberations

- a. *Location:* Courts must determine where the jury will deliberate while permitting appropriate physical distancing, whether in a vacant courtroom, the actual courtroom used for trial, or other large space.
- b. *Transparent face shields:* Courts must require all members of the jury to wear their transparent face shields during deliberations. Courts must instruct jurors to take home the face shields at end of each day for cleaning and to bring them back for the next day's deliberations.
- c. *Sight lines and sound:* Courts must ensure adequate sight lines and sufficient sound amplification to enable jurors to hear and see one another while deliberating. Courts must test lines of sight and audio amplification in advance of trials. Courts must instruct all jurors to advise if they cannot hear or see any other jurors during deliberation.
- d. *Maintaining integrity and confidentiality:* Courts must ensure no outside presence interferes in the deliberations. As necessary, courts may instruct a bailiff or other court personnel to stand outside the doors to the jury's deliberation room and ensure no one overhears jurors during deliberations, as jurors likely will be talking louder than normal to overcome physical distancing.
- e. *Equipment to view exhibits:* While deliberating, courts must provide the equipment required for the viewing or projection of all exhibits and jury instructions during deliberations.
 - f. *Physical exhibits:* While deliberating, courts must place admitted physical exhibits on a central table with protective measures to allow for sanitizing of the exhibit after a juror handles it.

IX. Pilot trials

- a. The Task Force recommends that the supreme court direct state court administration to work with district court administrators and judicial council to identify suitable cases for one or more pilot jury trials to

test and report on the feasibility of the procedures recommended in this document.

- b. The Task Force recommends that the supreme court target initial pilot jury trials to start as soon as possible after procedures for jury trial are approved, beginning with civil jury trials of relatively short duration and expanding to criminal trials of similarly short duration.
- c. The Task Force recommends that the supreme court require all pilot trials to adhere to the directives for jury trials set forth by the supreme court as those directives might be updated or modified based on additional information or changed circumstances.
- d. Courts engaging in pilot trials must provide feedback to the supreme court and the Task Force prior to a statewide commencement of jury trials. The feedback should include information from surveys of court staff and participants in the trial (including jurors) pertaining to the ability to maintain physical distancing, juror processes, the ability to maintain necessary supplies, courtroom technology, and issues not anticipated or addressed in the procedures for trials during the COVID-19 pandemic.
- e. The Task Force recommends, in the event suitable cases for pilot jury trials cannot be identified, that the supreme court conduct one or more mock jury trials to test the procedures and solicit the feedback recommended above.
- f. The supreme court should modify procedures for the statewide commencement of jury trials as appropriate to address the feedback from the pilot trials.

Conclusion

Implementation of the proposed procedures and safeguards in this report will enable jury trials in Iowa to proceed in a safer, more effective, and fair manner under the circumstances. The Task Force also recognizes that effective measures to address the COVID-19 pandemic will likely evolve and courts will need to identify and evaluate issues requiring further analysis, planning, and implementation. Thus, this report is not the last word on the protocols courts will need to consider and implement as experience dictates and conditions change throughout the remainder of the pandemic.