

How Courts Around the Country are Handling Jury Trials During the COVID-19 Pandemic

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NOTE: Please note that the information in this article is current as of the date of publication. At the time of reading, mandates and procedures may have change. This article dives into different approaches and precautions courts across the country are taking but should not be used as an ultimate resource for preparing for a jury trial.



Currently, courts across the country are taking varying precautions when scheduling and facilitating jury trials. There is no one size fit all approach so protocols for resuming jury trials in the COVID-19 era differ from state to state and jurisdiction to jurisdiction. Most courts provide access to hand sanitizer and personal protective equipment such as masks and possibly gloves; However, courts vary in their requirements when it comes to wearing PPE and other regulation measures. This article is written to serve as a summary of the precautions and safety measures that are being taken by various courts across the country. It is not all inclusive but contains a

broad cross section of what jurors, attorneys and litigants should anticipate and expect should they be involved in a jury trial.

Health Screening

Many states are screening potential jurors' health before trial.

COLORADO - Jurors will be contacted and screened a week before their expected service. Jurors will be automatically excused if they exhibit a fever, cough, shortness of breath, or if they lose their sense of taste or smell.

FLORIDA - Potential jurors should self-report any symptoms of illness.

MONTANA - In Montana, potential jurors will receive a pre-screening electronic questionnaire or survey in the mail. Those who report COVID-19 vulnerabilities will be excused from jury duty.

NORTH CAROLINA - Potential jurors will receive a COVID-19 questionnaire with their jury summons. If a juror answers yes to any of the questions, their jury duty will be postponed. Jurors will also be provided a phone number to call if there is a change in their symptoms leading up to the trial.

OHIO - Anyone entering the courthouse will have their temperature taken upon arrival. There may be screening for COVID-19 symptoms.

OKLAHOMA - Prior to trial, if a juror has any symptoms of COVID-19, they must call to report symptoms. The court clerk office will require supporting written documentation from a medical provider for verification.

TENNESSEE - Upon arrival to the courthouse, jurors will be asked a series of questions pertaining to their health. If they, or a member of their household, have exhibited any COVID-19 symptoms in the past two weeks, the juror will be excused.

All attendees will have a touchless temperature check. If a potential juror has a temperature of 100.4 or above, they will be rescheduled.

Personal Protective Equipment

Some states require masks to be worn by all individuals at all times and other states allow for masks to be removed when speaking.

CALIFORNIA - The judge, trial participants, and witnesses may choose to not wear a mask when maintaining social distance; However, they may be asked to wear a mask at times like when speaking at the sidebar.

COLORADO - In Colorado, all individuals in the courtroom must wear a mask. Jurors are urged to bring their own masks, but disposable masks will be provided to anyone who doesn't bring their own.

Witnesses must also wear a mask in the courtroom. If the witness would prefer not to wear a mask, they can video conference from the jury deliberation room.

Attorneys are provided the same option as witnesses when asking questions. They can ask questions in the courtroom while wearing a mask or they can video conference questions without a mask from the jury deliberation room.

FLORIDA - All trial participants and observers must wear a mask or face covering. Masks will be supplied to all potential jurors who did not bring their own.

Clear plexiglass barriers may be used instead of a mask to separate court staff such as the judge, deputy, and court reporter.

Counsel will wear both a clear face shield and a face mask. Counsel may remove their mask, but keep their face shield on, when addressing the jury or witness from the podium.

A witness may wear just a clear face shield when speaking and may have a clear plexiglass barrier in between their self and others.

MISSOURI – Missouri is taking a similar approach as Tennessee. Masks are mandatory except for when someone is speaking.

Clear plexiglass panels have been installed in courtrooms to create barriers that minimize the spread of the virus.

NORTH CAROLINA - North Carolina gives jurors the most flexibility and freedom. Ultimately, it is up to the juror if they want to wear a mask or not. They can bring one, be supplied one, or choose to not wear any personal protective equipment.

OHIO - Ohio has a stricter mask enforcement. Judges, counsel, clients, public observers, court staff, and law enforcement must wear personal protective equipment at all times.

OKLAHOMA – All individuals entering the courthouse must wear a face covering that covers their mouth and nose at all times.

TENNESSEE - Tennessee differs from most states in their approach to masks. Counsel must wear a mask except for when questioning or stating their argument.

In a criminal case, the defendant may choose whether they want to wear a mask.

Witnesses may take their mask off when on the stand. Plexiglass will be placed between the witness and judge and also between the witness and court staff. After each witness speaks, the space will be sanitized.

Jurors must wear a mask at all times in the courthouse, unless the court instructs them otherwise.

Most courts are practicing social distancing measures to some degree.

CALIFORNIA – At the entrance of the courthouse, markers will be placed on the floor in 6-foot intervals, to guide social distance. No more than 2 people should be on an elevator at a time.

COLORADO – Potential jurors will enter the courthouse through a separate security line than other individuals entering the courthouse. The line will promote social distance.

NORTH CAROLINA – A North Carolina court has practiced adding an additional row to the jury box. With the additional row, jurors were able to sit a space apart from each other to allow 4-6ft of distance between one another.

OKLAHOMA – Seating will be marked and spaced out to allow for at least 6ft of distance. Additional routes to courtrooms will be utilized to reduce crowding.

TENNESSEE- Spectators must sit at marked spots on the benches that allow for 6ft of distance between others.

Counsel will keep at least 6ft of distance between one another. Counsel may not touch or lean on the podium.

Electronic Exhibits

Most states agree that electronic exhibits are an ideal solution for avoiding unnecessary contact.

CALIFORNIA - Electronic exhibits are also encouraged. Paper exhibits may be shown on an overhead projector.

Jurors will be provided gloves to wear when reviewing plastic protected paper exhibits during deliberations. The plastic is to be disinfected with a sanitizing wipe periodically.

A TV or monitor is suggested for displaying exhibits to jurors to avoid minimize contact.

COLORADO - Again, to avoid individuals touching the same paper, electronic exhibits are recommended.

OHIO - Electronic exhibits are encouraged and hard copies are only to be used if needed. If hard copies are used, they will be sanitized between exchanging.

OKLAHOMA – Gloves will be provided to jurors to handle exhibits.

Voir Dire

During Voir Dire, states are taking various precautions such as social distancing and sanitizing.

CALIFORNIA - During Voir Dire, potential jurors should not wear a mask.

FLORIDA - Potential jurors will sit 6ft apart from each other or be separated by clear physical barriers in a courtroom. To ensure distance, jury selection may take multiple sessions. The courtroom will be sanitized in between each session.

Jurors will be given disposable gloves to wear when handling the microphone or the microphone will be disinfected after every use.

MONTANA - To promote social distance, spectators will not be allowed during Voir Dire. When potential jurors are approaching the podium, they will retain social distance. Staff will sanitize microphones after each use.

When the jury is selected, the court will take recess and utilize the time to clean the courtroom.

Other Efforts

OHIO - Witnesses may testify through video conference from a remote location rather than coming to the courthouse.

TENNESSEE - Jurors will have their own disposable writing materials that will be destroyed after the verdict.

Conclusion

Based off our research, the measures courts are taking to protect against COVID-19 during jury trials vary from one state to another and it is yet to be seen what the most effective way will be to protect both jurors and litigants. Pre-screening for health, protective barriers like masks or plexiglass, social distancing efforts, remote video testimony, and use of electronic exhibits are common variables courts have in place to protect one another, from the spread of COVID-19, during jury trials.

The appropriate time to reconvene jury trials may vary from jurisdiction to jurisdiction as will the protective measures necessary, but courts must do their best to resume jury trials while balancing their obligation and responsibility to protect the health and safety of jurors, litigants, counsel, court employees, and the public.