
Supreme Court of New Jersey

DOCKET NO. 085288

STATE OF NEW JERSEY, : CRIMINAL ACTION
Plaintiff-Respondent, : On Direct Certification to the
v. : Superior Court of New Jersey,
OMAR VEGA-LARREGUI, : Law Division, Mercer County.
Defendant-Appellant. : Sat Below:
Hon. Darlene J. Pereksta, J.S.C.

BRIEF ON BEHALF OF THE ATTORNEY GENERAL
AMICUS CURIAE

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PRELIMINARY STATEMENT

Extraordinary times call for extraordinary measures. In the last year, the State - like states across the nation, and countries across the globe - has grappled with an unprecedented pandemic that has so far claimed the lives of over 450,000 U.S. residents and 20,000 New Jerseyans. Because COVID-19 spreads through person-to-person contact, this virus has led to monumental changes in the ways individuals live and work. From telework and telemedicine to Zoom gatherings and virtual classrooms, time and again individuals have replaced all manner of in-person activities with their most analogous remote counterparts to guard against - and to reduce the spread of - a disease for which there remains no cure.

The operations of our Judiciary are no exception. After all, in-person courtroom operations present the same risks to the public as other forms of in-person contact. From status conferences to oral arguments to jury trials, in-person participation presents risks to judges, attorneys, parties, and jurors, and to all of the individuals they later come into contact with. As a result, over the past eleven months, this Court has systematically replaced in-person court operations with their remote equivalents, conducting a range of hearings and conferences by phone and video. New Jersey judges have held more than 100,000 remote court events involving more than 1.2 million participants - a remarkable feat. See N.J. Supreme Court, Order - Suspension of New In-Person Jury Trials, at 1

(Nov. 16, 2020). These remote activities have allowed for the essential operations of courts to continue, while at the same time appropriately protecting public health.

The question this case presents is whether the Constitution prohibits the use of similar remote proceedings in the context of the grand jury. Grand juries, of course, present exactly the same tension this State has confronted over and over: their operations are critical to a well-functioning state criminal justice system, but in-person grand jury sessions would present a risk of further spread of COVID-19. The Court thus established a Working Group on Remote Grand Jury Operations to consider whether grand juries could resume in a virtual format, and it ultimately concluded that they could indeed achieve twin aims of functioning court operations and protecting public health. And so this Court ultimately adopted a pilot virtual grand jury program in Bergen and Mercer Counties and later expanded it to the entire State. Currently, there are 45 sitting virtual grand juries in nineteen counties, involving more than 1,000 grand jurors. Virtual grand juries have handled over 3,000 presentments, with over 70 defendants receiving full no-bills and over 190 defendants receiving partial no-bills.

Despite the need for a virtual grand jury, defendant contends that the Judiciary lacked the authority to establish them. While he implicitly recognizes, as he must, that the Constitution itself has nothing to say regarding when a grand jury must proceed on an in-person basis, defendant argues the

use of virtual grand juries will prevent grand juries from reflecting the cross-section of the community; undermine the secrecy of these proceedings; and stop jurors from taking their responsibilities seriously. But at their core, these views rely on supposition - a series of hypothesized problems about how virtual grand juries will operate in practice. And the available evidence proves conclusively these suppositions are incorrect. For one, the court provided technology and training to all eligible grand jurors who need it - and nobody was turned away for lack of technology or internet access. For another, court staff took careful steps to ensure the secrecy and the integrity of virtual grand juries. Although the challengers argue that no virtual grand jury could validly occur - no matter the appropriate safeguards that have been imposed - the experience from the past year has demonstrated precisely the opposite.

And most strikingly there are no available alternatives. The only proffered options are to require consent from the defendant, or to wait until in-person grand juries can safely resume. But as this Court discovered, defendants have refused to consent, making such a virtual grand jury program impossible. And waiting is no better: because it is uncertain when this Court will find that in-person activities can resume, the backlog of preindictment charges will continue to pile up in the meantime. At bottom, reasonable minds may differ as to the virtue of virtual grand juries and as to the public health and

policy questions they present. But as a question of constitutional law, this is a straightforward case: virtual grand juries are constitutionally valid, especially with the safeguards this Court carefully imposed on them.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY¹

The State, like the country, is currently in the middle of an unprecedented pandemic relating to the spread coronavirus disease 2019, or "COVID-19." This disease, which is highly contagious and can be fatal, is a respiratory illness caused by the SARS-CoV-2 virus. See N.J. Exec. Order 103 at 1, 4 (Mar. 9, 2020). The virus transmits through person-to-person contact, most commonly when an infected individual coughs or sneezes. On March 9, 2020, Governor Philip D. Murphy issued Executive Order No. 103, which declared that both a Public Health Emergency and State of Emergency exist as a result of the threats and dangers associated with COVID-19. Ibid. In light of the continued public health risks presented by COVID-19, the Governor has each month declared the Public Health Emergency continues to exist, continuing to the present day. See, e.g., N.J. Exec. Order 215 at 5 (Jan. 19, 2021).

As a result of these threats, the pandemic has required and continues to require each branch of our Government to adjust its policies and operations to ensure the State's important functions can continue while minimizing any in-person interactions and thus reducing the spread of this virus. The instant case concerns the Judiciary's efforts to ensure grand juries can continue their work responsibly while addressing those public health needs.

¹ The procedural history and counterstatement are closely related and are presented together for the Court's convenience.

A. The Calibrated Orders Relating To Virtual Grand Juries.

Just three days after the Governor announced both a State of Emergency and Public Health Emergency existed in New Jersey, this Court took action. On March 12, 2020, this Court explained that in-person court operations - and especially those involving juries - risked spreading this deadly illness. As a result, this Court suspended all reporting for jury services - except for any ongoing trials - and directed that no new criminal jury trials be conducted until further notice. See AOC, Notice of Court Operations Due to COVID-19, at 1 (Mar. 12, 2020).

Just five days later, this Court likewise postponed all grand-jury empanelment dates and suspended current grand-jury sessions, including the State Grand Jury, on the same grounds. See N.J. Supreme Court, Order Suspending Grand Jury Empanelment & Sessions, at 1 (Mar. 17, 2020). (Aa11).² On March 27, 2020, this Court extended the postponement of grand jury empanelment dates and grand jury sessions through April 26, 2020, given the

² As used in this brief, "Da" refers to the appendix to defendant's Supreme Court brief; "Aa" refers to the appendix attached to the ACDL-NJ amicus brief; "Pa" refers to the appendix attached to the State's (Mercer County) brief; "BJM Cert." refers to the Feb. 12, 2021 Certification of Brian J. McLaughlin, Statewide Manager of Jury Programs for AOC; "DS Cert." refers to the Feb. 10, 2021 Certification of Dalia Seidel, Jury Manager for the Mercer County Vicinage; "MS Cert." refers to the Feb. 11, 2021 Certification of Mallory Shanahan, Special Assistant to the Director of the Division of Criminal Justice and the attorney supervisor of the State Grand Jury; "1T" refers to the Grand jury transcript dated July 9, 2020; "Db" refers to defendant's Supreme Court brief; "ACDL-Br" refers to the ACDL-NJ Supreme Court amicus brief; and "NJSBA-Br" refers to the NJSBA Supreme Court amicus brief.

evidence that COVID-19 would continue to remain a threat to the public on an ongoing basis. See N.J. Supreme Court, First Omnibus Order on COVID-19 Issues, at 2 (Mar. 27, 2020).

The suspension of jury trials and grand juries then allowed this Court to take a considered approach towards the balancing of two competing and pressing needs: the need for judicial operations to continue throughout the pandemic, and the need to reduce in-person interactions to keep New Jersey residents safe. Recognizing that virtual means of communication provided a way to achieve both ends, on April 20, 2020, this Court authorized the continued use of video and/or telephonic options to conduct all Central Judiciary Processing and for pretrial detention hearings. See N.J. Supreme Court, Notice and Order - Continuation of Remote Court Proceedings; Public Access; Sentencing, at 1-2 (Apr. 20, 2020). At that time, however, this Court explicitly stated that grand jury, as well as petit jury, selections were not to be conducted remotely. Ibid. As a result, just four days later - on April 24, 2020 - this Court continued the suspension of in-person grand jury selections and sessions through May 31, 2020. (Aa13).

But as the pandemic showed no signs of coming to an end, this Court recognized the status quo could not last forever. So in the same April 24, 2020 order, this Court indicated that options were being considered for conducting virtual grand jury selections and grand jury sessions. (Aa13). To ensure that the ultimate approach to grand juries would properly respect the

needs of a functioning grand jury system, public health interests, and the rights of the affected parties, this Court established a Working Group on Remote Grand Jury Operations (Working Group) to consider whether and how grand jury proceedings could resume in a virtual format while in-person proceedings are suspended due to COVID-19 health concerns. See N.J. Supreme Court, Second Omnibus Order on Court Operations and Legal Practice, at 2 (Apr. 24, 2020). (Aa28-29).

The Working Group included representatives from the Attorney General's Office, Office of the Public Defender, the County Prosecutors Association of New Jersey, the American Civil Liberties Union of New Jersey, the New Jersey State Bar Association, the private defense bar, and judges and court staff. (Aa29). The Working Group ultimately recommended that grand jury proceedings resume in virtual format in certain counties, but that they include safeguards to preserve the secrecy of proceedings and to protect the rights of defendants, victims, jurors, and the public alike. (Aa29).

That process led to the establishment of a virtual grand jury pilot program. On May 14, 2020, this Court issued an order that authorized empaneled grand juries to reconvene in a virtual format, starting with pilot programs in Mercer and Bergen counties. See N.J. Supreme Court, Order Authorizing Pilot Program for Virtual Grand Jury Sessions in Mercer and Bergen Counties (May 14, 2020). (Aa28 to 34). In explaining its decision to take this step, this Court noted that "nearly all

court proceedings" had "transitioned to remote operations," and that the courts had amply "demonstrated the ability to support virtual (video) court events," including by conducting "more than 23,000 virtual proceedings involving more than 189,000 participants" in two months alone. (Aa28). Not only had courts shown an ability to handle remote proceedings, but their use had been proven necessary: N.J. Department of Health guidance confirmed that "the COVID-19 virus will continue to disrupt normal court operations for months" and "may well prevent grand juries from reconvening in an in-person format for an extended period of time." Ibid. That was untenable: "1400 defendants are currently detained in county jails awaiting indictment," and still others on pretrial release were in the same boat. Ibid. Given these facts, virtual grand juries were both critical and workable.

Still, this Court recognized that safeguards would be needed to ensure the proper functioning of virtual grand juries. Relying on the recommendations of the Working Group, the order establishing the virtual pilot program required that virtual grand jury sessions be conducted with secure video technology; that requirements for secrecy and prohibitions of recordings be maintained and enforced; and that grand jurors be required to swear or affirm a supplemental oath regarding confidentiality of the virtual grand jury process. (Aa30).

Moreover, the Court ensured that grand jury service would remain open to all eligible residents: any time "a grand juror

is otherwise able to participate in virtual proceedings but requires technological support, the Judiciary shall provide restricted-use devices (laptops or tablets) and related items, which shall be configured and administered solely by the Judiciary." (Aa32). see also ibid. (noting "the Attorney General has consented to seek emergency funding for such equipment"). Finally, this Court found that, at least during the pilot stage, "[c]ases shall be presented to a grand jury operating remotely only with the consent of the defendant to proceed in a remote format." (Aa32).

Unfortunately, this Court quickly confronted a problem: the lack of consent to virtual grand juries by defendants. In an order issued three weeks after the establishment of a pilot program, the Court recognized that Bergen and Mercer Counties had appropriately "taken all necessary steps to prepare for implementation of virtual grand jury proceedings." N.J. Supreme Court, Order - Virtual Grand Jury Pilot Program - Consent Not Required to Proceed, at 1 (June 4, 2020). (Aa34 to 35). That meant following the many "safeguards to ensure the secrecy and solemnity of grand jury proceedings," providing "orientation on the virtual (video) process" to the grand juries, and administering both the supplemental charge and oath of secrecy. Ibid.

Moreover, "[t]he value of exploring a virtual grand process remains compelling": since May 14, 2020, "the number of defendants detained preindictment has increased from 1400 to

1,540," and "the need to move forward with virtual grand juries" would only "become more urgent" as time went on. (Aa35). But despite the progress in implementation and critical need for the program, the "requirement that a defendant consent to presentation of charges to a grand jury convening remotely (rather than in person) ha[d] inhibited bringing cases before those ready grand juries" - no defendants consented to their use, and so no pilots could proceed. (Aa34 to 35). In response the Court decided "the requirement of consent" needed to "be eliminated so that a modest number of cases can be presented" in the pilot. Ibid.

Five days later, this Court expanded the virtual grand jury pilot program to include grand jury selection, in addition to grand jury proceedings. See N.J. Supreme Court, Order on Expansion to Grand Jury Selection (June 9, 2020). The Court explained that the same "operational steps undertaken to prepare for virtual (video) grand jury proceedings also would support selection of new grand juries using a comparable video conferencing process." Ibid. The Court indicated that the grand jurors would participate using their own technology and internet service, but as before, if they lacked devices or internet access, "grand jurors would participate using technology configured and administered by the Judiciary" to ensure that all eligible residents could participate. Ibid.

Based upon the success of the virtual grand jury program, the Court began expanding its use from the initial two pilot

counties to other contexts in a measured manner. First, on June 25, 2020, this Court issued an order expanding the virtual grand jury pilot program to include the state grand jury in addition to the virtual grand jury proceedings in Bergen and Mercer counties. See N.J. Supreme Court, Order on Expansion to State Grand Jury (June 25, 2020) (explaining that this Court could take that step based upon the "results of those virtual proceedings" in the pilot counties, including "matters hav[ing] been presented and indictments [having been] returned").

Second, on July 24, 2020, this Court clarified that grand jurors in every participating county "will be summoned for new grand jury selections starting on or after September 21, 2020, with those selections to be conducted in a virtual format." N.J. Supreme Court, Seventh Omnibus Order on Court Operations and Legal Practice, at 2 (July 24, 2020) (Aa37); see also ibid. (noting virtual grand jury sessions would continue in the meantime "in Bergen and Mercer Counties and for the State Grand Jury").

That expansion continued apace in the fall. In this Court's Eighth Omnibus Order, issued September 17, 2020, the Court noted that "[j]urors have been summoned for new grand jury selections starting on September 29, 2020 (in Passaic County) and expanding statewide by the end of October 2020," all of which had to be and would be "conducted in a virtual format consistent with the Court's June 9, 2020 Order." N.J. Supreme Court, Eighth Omnibus Order on Court Operations and Legal

Practice, at 2-3 (Sept. 17, 2020). (Aa46-47). Not only that, but “[e]xisting grand jury panels will continue to participate in virtual sessions,” including the grand jury in Atlantic County, and “[o]n or before December 1, 2020 all counties will have new grand jury panels equipped and ready to convene in a virtual format.” Ibid.

Similarly, the Court’s Ninth Omnibus Order continued the virtual selection of grand juries, and confirmed that before December 1, 2020, all counties would have capacity for virtual grand juries. See N.J. Supreme Court, Ninth Omnibus Order on Court Operations and Legal Practice, at 3 (Oct. 8, 2020) (Aa55); id. at 1 (explaining that this is part of the Judiciary’s “‘remote first’ approach to court events, with most proceedings being handled using virtual technologies”).

The establishment and expansion of the virtual grand juries were inextricably linked to this Court’s suspension of in-person grand juries. As laid out above, because COVID-19 spreads through person-to-person contact, this Court recognized in-person judicial operations – including grand juries – heightened the health risks during the pandemic. (Aa11). So as this Court was considering, developing, testing, and expanding its virtual grand jury program, it was also maintaining its suspension of in-person grand jury proceedings. See, e.g., N.J. Supreme Court, Fourth Omnibus Order on Court Operations and Legal Practice, at 4 (June 11, 2020); N.J. Supreme Court, Fifth Omnibus Order on Court Operations and Legal Practice, at 3-4

(June 25, 2020); N.J. Supreme Court, Sixth Omnibus Order on Court Operations and Legal Practice, at 1 (July 9, 2020); N.J. Supreme Court, Seventh Omnibus Order on Court Operations and Legal Practice, at 2 (July 24, 2020) (Aa37); N.J. Supreme Court, Eighth Omnibus Order on Court Operations and Legal Practice, at 2-3 (Sept. 17, 2020) (Aa46-47).

Although this Court attempted to restart in-person grand jury operations, see N.J. Supreme Court, Ninth Omnibus Order on Court Operations and Legal Practice, at 1;3 (Oct. 8, 2020) (Aa53; Aa55) (noting in-person grand juries had been suspended for six months, and authorizing Assignment Judges "to convene in-person grand jury panels in court facilities consistent with social distancing and other health precautions (including as to wearing face masks)"), that effort proved short-lived. On November 16, 2020, this Court found that while in-person grand juries could meet "[w]hen COVID-19 cases in New Jersey were relatively small," the facts on the ground had worsened. N.J. Supreme Court, Order - Suspension of New In-Person Jury Trials, at 3 (Nov. 16, 2020) (Aa64-65). Simply, "[a] second wave of COVID-19 has struck New Jersey and the rest of the nation. The increasing rates of new cases, hospitalizations, and deaths make it impracticable and unsafe for certain in-person court events to continue at the level reached during the past few months." Ibid. The Court thus suspended in-person grand juries once again. Ibid. But, the Court recognized, virtual grand juries can continue to fulfill their important role: "Virtual grand

juries have now been established in all counties, and the Judiciary has provided technology as necessary to enable participation by all qualified jurors." Id. at 2 (Aa64).

B. Implementation Of The Court's Virtual Grand Jury Orders.

Consistent with this Court's orders, judicial staff - and the relevant prosecuting agencies - have carefully ensured the proper functioning of virtual grand juries. As a certification from the statewide Manager of Jury Programs at the Administrative Office of the Courts explains, see Certification of Brian J. McLaughlin ("BJM Cert.") (Feb. 12, 2021) (Pa1-7), those actions focused primarily on making sure that all eligible individuals could participate as grand jurors, and that the secrecy and integrity of the grand jury would be protected in the virtual format.

As to the former, the Judiciary ensured that anyone who would be eligible to serve on a grand jury could do so - even in virtual form. While many of the typical court processes applied as easily to in-person grand juries as virtual ones, see BJM Cert. ¶¶ 10-12 (Pa4). (discussing processes for summoning juror pool and for handling requests to be relieved of grand jury service), the Judiciary did recognize the need to offer technology and related training to any individuals who might need it. So staff "provide[d] technology and assistance to summoned and selected jurors who otherwise could not participate in the grand jury process (both selection and sessions). This

includes configuring and administering Judiciary tablets (with Broadband capacity) and delivering those tablets to jurors who require them to participate in virtual proceedings." Id. ¶ 15 (Pa5); see also id. ¶ 25 (Pa6) (noting "the Judiciary has distributed over 150 tablets (with Broadband activated as necessary) to support participation in virtual grand jury selections and sessions"). Beyond distributing technology, court staff also provided training as necessary. See id. ¶ 16 (Pa5) ("Consistent with statewide protocols, [appropriate staff] offer general and individualized training to summoned and selected jurors to facilitate their participation in remote proceedings using Zoom."). Simply, "[t]he Judiciary has supported otherwise qualified jurors in participating in virtual selection and serving on virtual panels by providing technology and training in all cases." Id. ¶ 24 (Pa6). As a result, "No juror has been excluded from selection or from serving on a virtual grand jury based on lack of technology." Ibid. (emphasis added).

Court staff also took steps to ensure that the secrecy and integrity of the grand jury would be protected even in the virtual format. Not only did AOC issue supplemental charges and oaths to "emphasize the sanctity of the proceedings, the requirement of absolute secrecy, and the potential for punishment if any violation occurs," id. ¶¶ 8-9 (Pa3), but it took steps to make sure the rules were followed. Among other things, "before each virtual session, grand jury staff check in

each juror individually. As part of that individual check-in process, the grand juror performs a 360-degree scan of their environment and staff confirm that the juror is in a private environment. Jurors also are required to turn off cell phones and other devices during each session." Id. ¶ 13 (Pa4). In the same vein, "additional security safeguards have been implemented for grand jury selections and sessions, including requirements for participants to establish named (not anonymous) Zoom accounts that jury staff verify prior to each session." Id. ¶ 14.

Beyond addressing any threats to integrity or security from the participants, the Judiciary ensured virtual proceedings would be protected from external threats as well. Indeed, across a broad range of contexts, "the Judiciary has demonstrated its capacity to use Zoom to conduct remote proceedings that are (to the greatest possible extent) secure from outside attack and configured and managed to minimize other risks." Ibid.; see also N.J. Supreme Court, Order - Suspension of New In-Person Jury Trials, at 1 (Nov. 16, 2020) (Aa63) (noting "Judges at all levels of the courts have now conducted more than 100,000 remote court events involving more than 1.2 million participants"). Those efforts proved successful: "[t]he technical security of virtual grand jury proceedings has not been compromised. No one has breached or hacked a virtual grand jury selection or session." BJM Cert. ¶ 26. (Pa6).

Relying on the protocols laid out above, virtual grand

juries have operated in 19 counties. See id. ¶ 23 (Pa6) (noting that “[w]hile the Court never has mandated presentment of cases to virtual grand juries, as of January 29, 2021, 19 counties are using virtual grand juries. Virtual panels also are established and equipped (with technology and training) in the remaining two counties, although cases are not being presented.”). “There are a total of 45 sitting county-level virtual grand juries, involving more than 1000 grand jurors.” Id. ¶ 27 (Pa6). “Since June 18, 2020, virtual grand jury panels statewide have handled over 3,000 presentments with over 70 defendants have received full no-bills and over 190 defendants have received partial no-bills.” Id. ¶ 28 (Pa7).

The experience of Mercer County fits this mold perfectly. As laid out by the certification from the Jury Manager for the Mercer Vicinage, see Certification of Dalia Seidl (“DS Cert.”) (Feb. 10, 2021) (Pa8-13), on February 13, 2020, a panel of 329 jurors were summoned for in-person grand jury selection before the Honorable Peter Warshaw, P.J.Cr., and 23 jurors were chosen. DS Cert. ¶¶ 5-6 (Pa8-9). In light of the rise of COVID-19 and this Court’s orders, the in-person sessions for this grand jury were suspended, and so its term was extended through August 10, 2020. Id. ¶¶ 8-9 (Pa9).

Following this Court’s May 14, 2020 order authorizing virtual grand jury proceedings in Mercer County, the already empaneled grand jurors were personally contacted by the Jury Manager to see whether they were still able to continue as grand

jurors. DS cert. ¶ 10 & 11 (Pa9). All were available except for one, who had moved out of the county. Ibid. Most jurors had electronic devices for access to the virtual proceedings - and the Judiciary provided the five jurors who did not with both SurfacePro tablets and Broadband internet capacity. DS cert. ¶ 12 (Pa9). No grand juror was unable to participate in virtual selection participation based on the lack of technology. DS cert. ¶ 34 (Pa12).

All grand jurors successfully completed Zoom training before orientation and demonstrated their ability to use the technology, and to communicate with staff and each other. DS cert. ¶¶ 13 & 14 (Pa10). They were also administered the supplemental charge on virtual grand jury proceedings and enhanced secrecy oath. DS cert. ¶ 15 (Pa10).. Before each virtual session, grand jury staff check in each juror individually. BJM cert. ¶ 13; DS cert. ¶ 17 (Pa4; Pa10). As part of that individual check-in process, the grand juror performs a 360-degree scan of their environment and staff confirm that the juror is in a private environment. Ibid. Jurors also are required to turn off cell phones and other devices. BJM cert. ¶ 13 (Pa4).

The virtual State Grand Jury operates in a similar manner. The grand jurors appear via Zoom and the Mercer County Jury staff ensures that every individual who needs technology to participate in the selection process or virtual grand jury proceedings are provided with a tablet and/or internet

connectivity. MS Cert. ¶¶ 22, 23, 24 (AGa76). No one is excused for reasons relating to technology access or capability. MS Cert. ¶¶ 21 & 22 (AGa78). At the start of each session all jurors are checked in on the record by the State Grand Jury staff. MS Cert. ¶ 30 (AGa80). During the check-in, the jurors are asked to show identification, and then to do a 360 degree scan of the space around them to prove that they are alone and in a secure and private area. Ibid.

Moreover, the State Grand Jury instituted a rotating assignment wherein a second Deputy Attorney General - who is not presenting to the Grand Jury that day - sits in on the presentations along with the State Grand Jury staff to monitor the jurors for any technical issues. MS Cert. ¶¶ 26, 27, 29, 30, 32, 33 (AG79-81). During the virtual State Grand Jury sessions, the State Grand Jury staff and monitoring DAG make sure that the jurors are paying attention to the proceedings and following the rules, and that there is no breach of secrecy by third parties. MS Cert. ¶¶ 26, 27, 29, 30, 32, 33 (AGa 79-81) .

C. Defendant's Arrest And Indictment By Grand Jury.

On August 22, 2019, defendant Omar Vega-Larregui was arrested for the possession of a Controlled Dangerous Substance (CDS), possession of CDS with the intent to distribute, and obstruction of justice. On August 24, 2019, defendant was released on pretrial monitoring. (Aa5-8).

On July 9, 2020, the grand jury for Mercer County that had been selected and constituted in February of 2020 returned

Mercer County Indictment No. 20-07-0221-I, charging defendant with third degree possession of CDS, N.J.S.A. 2C:35-10(a)(1) (count one), second degree possession of CDS with the intent to distribute, N.J.S.A. 2C:35-5(a)1) and 2C:35-5(a)(2) (count two), second degree possession of CDS with the intent to distribute on or near a public facility, N.J.S.A. 2C:35-7.1(a), 2C:35-5(a)(1) and 2C:35-5(b)(1) (count three), and fourth degree obstruction of justice, N.J.S.A. 2C:29-1(a) (count four). (Da16-19).

On November 10, 2020, defendant filed a motion in the Law Division before the Honorable Darlene J. Pereksta, J.S.C., to dismiss the indictment. (Da20-23). Among other things, defendant argued his indictment was invalid because the virtual grand jury operated contrary to the Constitution. On November 21, 2020, Judge Pereksta entered an order permitting the ACDL-NJ to appear as amicus curiae on this point. (Aa9-10). On January 4, 2021, the ACDL-NJ filed its amicus brief with the trial court, agreeing with defendant that virtual grand juries are unconstitutional.

On January 13, 2021, this Court entered an order granting direct certification of this case pursuant to R. 2:12-1. (Aa1-4). The certification order was limited to defendant's challenge to the constitutionality of the virtual grand jury that returned the indictment in this case. (Aa1-2). The Court set forth a briefing schedule and invited the Office of the Attorney General to participate as amicus in this case. (Aa3). Oral argument is scheduled for March 15-16, 2021. (Aa4).

LEGAL ARGUMENT

POINT I

THE VIRTUAL GRAND JURY PROGRAM IS CONSTITUTIONAL.

The only question this case presents is whether establishment of a virtual grand jury in the midst of a global pandemic violates the New Jersey Constitution. Said another way, defendant argues that the Constitution forbids the Judiciary from making the choice to establish any virtual grand jury, however pressing the public health need, and however powerful the safeguards put in place. In his view, the Constitution presents a binary choice: conduct in-person grand jury proceedings (and accept the risk to public health during a pandemic) or decline to conduct grand jury proceedings at all (and accept the consequences for the State's criminal justice system). As this brief explains, however, this arguments find no support in either the Constitution's text or in the evidence and experience relating to New Jersey's own virtual grand juries.

A. The Use Of Virtual Grand Juries With Careful Safeguards In A Pandemic Reflects A Constitutionally Valid Choice.

Although defendant and his amici claim that the use of virtual grand juries is unconstitutional, their arguments fall short in three distinct ways. First, there is nothing in the text or case law that would foreclose the use of virtual grand juries, and the compelling need for this virtual option during a pandemic - along with the lack of current alternatives -

justifies them. Second, while the challengers claim that virtual grand juries are infirm because they undermine equal protection and the role of the grand jury as a fair cross-section of the community, their supposition is mistaken: the record demonstrates that those who are otherwise eligible to serve all received the technology and related training necessary to participate. Third and finally, while the challengers charge that virtual grand juries violate the Constitution because they undermine the secrecy and integrity of the proceedings, those fears have likewise not been borne out in reality.

1. Virtual Grand Juries Are Permissible And Critical.

As a threshold matter, two central principles demonstrate the constitutionality of virtual grand juries: the lack of any text or case law to foreclose them, and the compelling evidence that they are necessary during a public health pandemic.

As to the former, the text, purpose, and case law regarding the constitutional provision mandating grand juries says nothing to undermine the Judiciary's virtual program. As this Court has held repeatedly, our courts must "look first to the plain language of a constitutional provision to understand its meaning and the Framers' intent." N.J. Republican State Committee v. Murphy, 243 N.J. 574, 592 (2020); see also ibid. (emphasizing the importance of Constitution's "text," "structure," language," and "history"). In reviewing the text, courts keep in mind the need the branches of government have to address new and

unforeseen circumstances –and therefore provide “a strong presumption of validity” to their actions. Id. at 591; see also ibid. (explaining that this means a measure will be held unconstitutional “only if its ‘repugnancy to the constitution is clear beyond a reasonable doubt’”) (quoting State v. Buckner, 223 N.J. 1, 14 (2015)). Defendant cannot meet his high burden of showing that a grand jury acts validly only if it has been selected and is meeting in person.

Although defendant and his amici brush past this point, none of the traditional interpretive sources foreclose use of virtual grand juries. The text of the relevant provision states only that, with limited exceptions, “[n]o person shall be held to answer for a criminal offense, unless on the presentment of indictment of a grand jury.” N.J. Const. Art. I § 8. In other words, “State and county prosecutors have the responsibility and authority to present cases to a grand jury and seek an indictment,” and grand juries “decide whether the State has presented sufficient evidence to establish probable cause that a crime has been committed and that the accused committed it.” State v. Shaw, 241 N.J. 223, 238 (2020). In essence, the grand jury “is an arm of the court,” constituted to fulfill a “judicial function” of assessing whether the prosecutor “satisf[ied] the lower standard of probable cause” for the prosecution to proceed. Ibid.; see also In Re Grand Jury Appearance by Loigman, 183 N.J. 133, 141 (2005); State v. Fortin, 178 N.J. 540, 638 (2004).

But neither the text nor the precedents state that the grand jurors can only issue an indictment or assess whether the probable cause standard has been met when the evidence is presented in person and they deliberate in the same way. And there is nothing inherent in their assigned duties to demand in-person action either. Just as this Court can hear oral arguments and deliberate through video conferencing, so too can grand jurors do the same. The Constitution is not a straightjacket - especially not when its text is entirely silent on the issue presented.

In contrast to the lack of textual evidence against the use of virtual grand juries, compelling evidence exists that virtual grand juries advance core judicial functions during this public health pandemic. As explained above, the COVID-19 pandemic has taken the lives of more than 450,000 U.S. residents and 20,000 New Jerseyans. There is no denying "the obvious: COVID-19 has created an ongoing health crisis of enormous proportions for all of society." In the Matter of the Request to Release Certain Pretrial Detainees ("Pretrial OTSC"), __ N.J. __, __ (slip op., at 9) (Feb. 11, 2021); see also N.J. Exec. Order 215 at 5 (Jan. 19, 2021) (confirming COVID-19 "constitutes an ongoing public health hazard that threatens and presently endangers the health, safety, and welfare of [New Jersey] residents").

And because the virus spreads via person-to-person contact, in-person operations (including in-person grand jury operations) would have presented "health risks ... to jurors, participants,

and members of the public with whom they interact." Pretrial OTSC, Slip Op., at 2. Yet while the ongoing pandemic made in-person grand juries risky, their need has in no way dissipated. See N.J. Supreme Court, Order Authorizing Pilot Program for Virtual Grand Jury Sessions in Mercer and Bergen Counties (May 14, 2020) (Aa28) (finding that, just two months into the pandemic, "1400 defendants [we]re currently detained in county jails awaiting indictment"). A solution was needed to allow public functions to go forward consistent with public health.

A remote grand jury is precisely the option that allowed both grand juries to take place and the public health to be protected. Indeed, as this Court has explained, "nearly all court proceedings" have "transitioned to remote operations" based on the Judiciary's "ability to support virtual (video) court events," N.J. Supreme Court, Order Authorizing Pilot Program for Virtual Grand Jury Sessions in Mercer and Bergen Counties (May 14, 2020) (Aa28), and the courts have "conducted more than 100,000 remote court events involving more than 1.2 million participants," N.J. Supreme Court, Order - Suspension of New In-Person Jury Trials, at 1 (Nov. 16, 2020) (Aa63). This transition to remote work makes good sense: it allows for the court proceeding (whether a grand jury or an oral argument) to go forward, but reduces or eliminates the person-to-person contact that is unfortunately so risky.

Moreover, there are no available alternatives at this time. The challengers present just two options: allow for virtual

grand jury proceedings only where the defendant consents, or simply wait until in-person grand juries resume. Neither is workable. As to the former, as this Court has discovered, defendants will simply withhold consent - exercising the veto they effectively are being granted over the process that could result in their indictment. Indeed, from May 14, 2020 - when the Court first launched its pilot virtual grand jury program in Bergen and Mercer Counties predicated on defendant consent - to June 4, 2020, zero defendants in either county agreed to allow virtual grand juries to proceed. See N.J. Supreme Court, Order - Virtual Grand Jury Pilot Program - Consent Not Required to Proceed, at 1 (June 4, 2020) (Aa34 to 35) (finding "requirement that a defendant consent to presentation of charges to a grand jury convening remotely (rather than in person) ha[d] inhibited bringing cases before those ready grand juries"). There is no reason to think the situation would be different now.

The latter option - waiting until in-person juries restart - is no better. After all, this Court has specifically noted that while it will restart any proceedings involving juries "as soon as practicable," the Court also warned all litigants that it is still too "difficult to be precise in estimating the projected length of detention at this time because of the ongoing and evolving nature of the pandemic." Pretrial OTSC, Slip Op., at 20-21.

And the uncertainty and delay that would remain in the meantime will have costs: the backlog of individuals who are

charged and even detained but without an indictment will only grow. See, e.g., N.J. Supreme Court, Order - Virtual Grand Jury Pilot Program - Consent Not Required to Proceed, at 1 (June 4, 2020) (Aa35) (noting in less than three weeks, "the number of defendants detained preindictment ha[d] increased from 1400 to 1,540" and that problem would "become more urgent"); Pretrial OTSC, Slip Op., at 28 (acknowledging when in-person operations resume "there will be a considerable backlog of cases").

Virtual grand juries will not be necessary when in-person grand juries are safely reconstituted, but they are needed until that time. So if authorizing defendants to veto grand juries and/or simply allowing the backlogs to pile up are the proffered alternatives, then there are no alternatives.

Indeed, in light of these considerations, New Jersey is hardly alone in adopting a virtual approach. To the contrary, because COVID-19's impact has been felt across the country, other States have likewise resorted to innovative and resourceful measures to keep its judicial systems functioning. States that have authorized the use of virtual grand juries include Alaska, Georgia, Kentucky, South Carolina, and Texas. (AGa1-3; AGa16-30; AGa31, AGa37, AGa44; AGa60; AGa71). In Alaska, for example, video and teleconferencing grand jury proceedings are permitted (although the foreperson is present at the courthouse) - and participants are again subject to security and privacy measures. (AGa 1-3). Similarly, in Georgia, written guidance and best practices were issued for remote grand

juries, including that jurors are to be provided an electronic device and technological support as needed to facilitate the remote proceedings. (AGa16-30).

The point is not that a decision by any other States to take this approach can show conclusively that they are consistent with our Constitution. But the fact that New Jersey finds support in its sister States adds further proof that there is nothing inherent about the grand jury that would prevent remote operations; that there is a need in the middle of a pandemic for them; and that other States likewise recognize the lack of adequate alternatives to meet their needs.

Ultimately, then, there is good reason why defendant spends little time with the constitutional grand jury provision itself - the text and case law in no way foreclose the use of a virtual grand jury during a pandemic, and the reality compels them.

2. Virtual Grand Juries Do Not Deprive Defendants Of A Fair Cross-Section Or Violate Equal Protection.

Unable to show the inherent unconstitutionality of a virtual grand jury, defendant and his amici instead largely argue that the virtual grand jury violates other provisions, i.e., the rights to equal protection and to have a grand jury reflecting a fair cross-section of the population. Defendant's argument, under either provision, boils down to the same core: that those jurors without technology access or knowledge will systematically and unlawfully be excluded from grand jury participation. But that hypothetical problem has not been borne

out by evidence or experience.

There is little dispute regarding the governing law on these questions. As this Court has explained, because grand juries are designed as a "democratic safeguard to our judicial system," their members must be "drawn from a cross-section of the community." Shaw, 241 N.J. at 238 (quoting Fortin, 178 N.J. at 638); see also, e.g., State v. Coyle, 119 N.J. 194, 213 (1990) (recognizing "state precedent applies the fair-cross-section requirement to grand-jury selection in certain cases"). The "elements of a prima facie fair-cross-section claim" are thus that "a defendant must identify a constitutionally-cognizable group, show that the representation of that group has not been fair and reasonable over a period of time, and demonstrate that the under-representation resulted from systematic exclusion." Coyle, 119 N.J. 194, 213.

In a similar manner, "[t]he equal protection clause "requires that grand- and petit-jury selection be 'free from any taint of discriminatory purpose.'" Id. at 212 (quoting State v. Ramseur, 106 N.J. 123, 215-16 (1987)). To prove a prima facie equal protection violation, a defendant must, among other steps, "identify a constitutionally-cognizable group" and "prove substantial under-representation over a significant period of time." Id. at 213.

Although a number of analyses would prove fatal to defendant's equal protection and fair cross-section theories, the most obvious shortcoming is at the first step of the tests.

Said another way, this Court need not even delve into whether the defendant can show "under-representation was substantial over a significant period of time (equal protection) nor that the representation was unfair and unreasonable over time (sixth amendment)", id. at 214, when virtual grand juries are designed to be short lived during this pandemic. And this Court need not decide whether persons lacking technology constitute a cognizable group under either provision. Id. at 213. Instead, this Court should reject these claims on the grounds that the virtual grand program has not led to the exclusion of anyone, let alone any group on a systematic basis, and that defendant has failed to meet his burden of demonstrating otherwise.

In fact, while defendant and his amici posit that the virtual grand jury system bars eligible grand jurors from participating if they lack technology, the material now before this Court disproves that supposition. As a threshold matter, much of the process of selecting jurors is unchanged. Potential jurors still complete a standard qualification questionnaire, either via an online juror portal or by mailing a hard copy version, and all such prospective jurors still have to complete the standard juror qualification questionnaire before requesting to be disqualified, excused, or rescheduled. BJM Cert. ¶ 10 (Pa4).

As usual, the Assignment Judge or their designee is authorized to handle grand juror requests for disqualification, pre-reporting excusal, and/or rescheduling of service, and

requests are still handled in a standardized manner during COVID-19. BJM Cert. ¶ 11 (Pa4). The standardized procedures for addressing financial hardship and minor childcare excuse requests, too, remain in place. BJM Cert. ¶ 12 (Pa4). For the most part, then, the process for selecting grand jurors remains unchanged.

But most critically for the purposes of the instant case, the Judiciary has also taken steps to ensure all individuals who need technological devices and/or training receive it so that they too can participate in a virtual grand jury. This, of course, was a requirement of this Court's orders - at both the pilot and expanded stages. See (Aa28) (May 14, 2020 order that if "a grand juror is otherwise able to participate in virtual proceedings but requires technological support, the Judiciary shall provide restricted-use devices (laptops or tablets) and related items, which shall be configured and administered solely by the Judiciary"); ibid. (noting that "the Attorney General has consented to seek emergency funding for such equipment"). And the Judiciary has made good on its promise. See (Aa64) (Nov. 16, 2020 order finding that the "[v]irtual grand juries have now been established in all counties, and the Judiciary has provided technology as necessary to enable participation by all qualified jurors") (emphasis added).

The McLaughlin Certification, in particular, demonstrates the ways in which all potential and actual grand jurors consistently have been accommodated. As laid out above, all

necessary devices were provided to "summoned and selected jurors who otherwise could not participate in the grand jury process (both selection and sessions). This includes configuring and administering Judiciary tablets (with Broadband capacity) and delivering those tablets to jurors who require them to participate in virtual proceedings." BJM Cert. ¶ 15 (Pa5). Strikingly, the Judiciary has "distributed over 150 tablets (with Broadband activated as necessary) to support participation in virtual grand jury selections and sessions."

And at the same time, the Judiciary gave "general and individualized training to summoned and selected jurors to facilitate their participation in remote proceedings using Zoom" - to ensure not just that they have these devices, but that they know how to use them. Id. ¶ 16 (Pa5). In short, evidence and experience show that, to date, "[t]he Judiciary has supported otherwise qualified jurors in participating in virtual selection and serving on virtual panels by providing technology and training in all cases." Id. ¶ 24 (Pa6). No on-the-ground evidence has been presented to the contrary.

Mercer County's experience as one of the first pilot programs is again illustrative. More than one hundred residents of Mercer County have participated in county-level virtual grand jury sessions. DS Cert. ¶ 32 (Pa12). Additional Mercer County residents have participated in virtual State Grand Jury sessions and in virtual selections for county-level and State Grand Jury and for hybrid jury trials. Ibid. County-level grand jurors

are contacted by the Jury Management Office about their ability to participate in a virtual grand jury proceedings. DS cert. ¶¶ 11, 12, 13 (Pa9). They provide technology and assistance to summoned and selected jurors who otherwise could not participate in the virtual grand jury proceedings. BJM Cert. ¶ 15; DS cert ¶ 13 (Pa5, Pa9-10).

This includes configuring and administering Judiciary tablets (with Broadband capacity) and delivering those tablets to jurors who require them. BJM Cert. ¶ 15; DS ¶¶ 12, 21 Pa5, Pa9-10). The jurors are provided technical instructions and complete Zoom training in addition to demonstrating the capacity to use the technology, see and hear the proceedings, communicate with staff and with each other, and indicate if they experienced any difficulties or otherwise required assistance. DS cert. ¶¶ 13 & 14 (Pa9-10). Of the county-level grand jurors, only 21 have required technology, which the Judiciary has provided to every single juror that has needed it. DS Cert. ¶ 33 (PA16).

So too for the State Grand Jury. As the Certification from DAG Mallory Shanahan, the Division of Criminal Justice's State Grand Jury attorney supervisor, see certification of DAG Mallory Shanahan ("MS Cert.") (Feb. 12, 2021) (AGa 75-81), explains, all "[p]otential jurors are also polled as to their access to technology, and the Mercer County Jury staff ensures that every individual who needs technology to participate in the selection process is provided with a tablet and/or internet connectivity." MS Cert. ¶ 10 (AGa 76). "During the selection, if any

individual expresses concern regarding the technological aspects of participating in a virtual process, they are assured that the Courts will provide whatever technology they require, and they will be assisted at every turn with its use." MS Cert. ¶ 21 (AGa78).

And after selection but before any sessions, jurors are again "polled as to their access to technology. If any juror indicated that they did not have access to a computer or tablet with a webcam and microphone, they were provided with one by the AOC," and would also be provided (as necessary) with "internet access through AT&T, paid for by the Judiciary." MS Cert. ¶ 22 (AGa78). That technology also came with training to ensure participation by these jurors, including "an 'on-boarding' process, wherein their tablet is set up, and they are walked through how to use it," and available state IT staff "on call to assist with jurors technical problems." MS Cert. ¶¶ 23, 25. (AGa79). "Of the six panels that have participated in virtual State Grand Jury thus far, 17 jurors were provided with tablets by the Judiciary." MS Cert. ¶ 24 (AGa 79).

The challengers to the virtual grand jury have thus failed to meet their burden of demonstrating that there has been "systematic exclusion" or "substantial under-representation" of participants who lack access to technology. Instead, certifications provided by the staff overseeing the program confirm that "No juror" - not a one - "has been excluded from selection or from serving on a virtual grand jury based on lack

of technology.” BJM Cert. ¶ 24 (emphasis added); see also DS Cert. ¶ 34 (confirming that in Mercer County, no juror has been unable to participate in selection or sessions based on a lack of technology); MS Cert. ¶ 21 (AGa78) (agreeing for the State Grand Jury, “[n]o one is excused for reasons relating to technological access or capability”).

Wherever this Court would draw the line for what qualifies as systematic or substantial, the number cannot be zero. In other words, while virtual grand juries may have theoretically have posed obstacles to these jurors, the Judiciary took steps on the front end to resolve those problems in reality. A hypothesized constitutional infirmity cannot overcome the plain evidence that the problem was addressed.

Of course, there have been isolated hiccups for individual jurors adapting to new technology - but these incidents too have been resolved through intervention and training from Judiciary personnel. For example, the DS Cert. explains that at the outset of virtual service in Mercer, the technological skills of summoned and selected grand jurors were varied. DS Cert. ¶ 35 (Pa12). Indeed, one initial grand juror empaneled in-person prior to the pandemic previously did not have an email address and did not have experience with digital technology. DS Cert. ¶ 36 (Pa13). But as the Certification laid out, this grand juror was ultimately able to participate in sessions when the panel reconvened virtually after receiving both technology devices and technology training from the Judiciary. Ibid. Such isolated

and remedied experiences are the opposite of the sorts of systematic or substantial exclusions that the Constitution forbids. Instead, they confirm the system works, and that the system is consistent with law.

3. Virtual Grand Juries Do Not Unconstitutionally Undermine The Secrecy And Integrity Of The Process.

Because there is nothing in the text or case law to forbid a virtual grand jury, and because virtual grand juries still reflect fair cross-sections of the community, the challengers claim that grand juries fall short because the participants will not maintain secrecy or otherwise fulfill their duties. Not so.

It is well-settled that grand jury proceedings are generally secret. State v. Clement, 40 N.J. 139, 142 (1963); Barlyn v. Dow, 436 N.J. Super. 161, 170 (App. Div. 2014); Doe v. Klein, 143 N.J. Super. 134, 140 (App. Div. 1976); R. 3:6-7 (providing for "secrecy of proceedings of the grand jury" except for discovery in criminal cases). The secrecy of the grand jury is not absolute and can be disclosed if justice so requires. Clement, 40 N.J. at 142; State v. Moffa, 36 N.J. 219, 223 (1961); Doe, 143 N.J. Super. at 140-41. The Legislature requires every grand juror to swear under oath to "keep secret the proceedings of the grand jury." N.J.S.A. 2B:21-3; Barlyn, 436 N.J. Super. at 170. Grand jury secrecy is based on statute and court rule rather than constitutional principles. N.J.S.A. 2B:21-3; R. 3:6-7. The secrecy rule promotes the rights of the accused and integrity of the proceedings.

This case does not require this Court to define the precise contours of when potential secrecy violations would contravene our Constitution, however, because this procedures the Judiciary has adopted address all the asserted concerns. That should come as no surprise: the need to maintain secrecy was one of the first things the Working Group recommended as part of its proposal to allow for use of virtual grand juries during this pandemic. (Aa29). That is true both for security threats from "without" (such as hackers) and from "within" (i.e., participants in the proceedings).

As to the former, the Judiciary has taken important steps to prevent any technological attacks on the integrity of the grand jury proceedings. As detailed above, the McLaughlin Certification explains how "the Judiciary has demonstrated its capacity to use Zoom to conduct remote proceedings that are (to the greatest possible extent) secure from outside attack and configured and managed to minimize other risks." BJM Cert. ¶ 14 (Pa4).

This is true not only for grand jury proceedings but also for other private court events - including any video or telephonic deliberations by jurists. As the Certification confirms, "[t]he technical security of virtual grand jury proceedings has not been compromised. No one has breached or hacked a virtual grand jury selection or session." Id. ¶ 26. Defendant has not offered any evidence in this case suggesting the opposite.

The real focus for defendant (and amici) is that participants in the virtual grand jury will not respect the proceedings' privacy - but the evidence again refutes that hypothetical concern. For one, the Judiciary adopted careful measures to ensure individuals are alone and in a sufficiently private space, including a scan by court personnel of their surroundings. See, e.g., BJM Cert. ¶ 13 (Pa4) ("[B]efore each virtual session, grand jury staff check in each juror individually. As part of that individual check-in process, the grand juror performs a 360-degree scan of their environment and staff confirm that the juror is in a private environment."); DS Cert. ¶ 17 (Pa10)(same for Mercer); MS Cert. ¶ 30 (AGa 80) (noting for State Grand Jury that "jurors are asked to show their identification, and then do a 360 degree scan of the space around them to prove that they are alone in a secure and private area. Our monitoring DASG watch the room scans, ask follow up questions or request adjustments as necessary, and once satisfied place on the record that the juror has been properly identified and their room has been scanned to ensure that they are alone.").

Not only do staff confirm that every juror is alone and in a private location, but all jurors are required to turn off cell phones and other devices during each session. BJM Cert. ¶ 13 (Pa4). Furthermore, to take virtual State Grand Jury sessions as an illustration, the State Grand Jury staff and DAG monitor the jurors during the proceedings to ensure there is no breach

by third parties. MS Cert. ¶¶ 29, 30, 32, 33, (AGa 80). Once again, the safeguards in reality address hypothetical concerns.

But the biggest problem for defendant is that his argument presupposes jurors will not take the oaths of secrecy seriously - and will work to evade the requirements. Indeed, oaths of secrecy has been a critical part of the transition to virtual grand juries: the Working Group recommended that all jurors be required to swear or affirm a supplement to the usual oath, (Aa30), and instructions specifically tailored to virtual grand jury sessions were issued to emphasize the secrecy requirements. See AOC, Supplement to the Grand Jury Charge and Oath of Secrecy (May 15, 2020). The grand jurors are instructed: 1) to not allow other persons to see, hear, or otherwise observe the grand jury proceeding; 2) to be in a private location; 3) to take steps to maintain their privacy, including shielding their computer or tablet monitor so that others cannot see it; 4) to use earbuds or headphones so that no one else can hear the grand jury proceeding; 5) to immediately tell the prosecutor if someone comes into the room or becomes able to observe the proceeding, and 6) to tell the prosecutor if they have a technical problem and are unable to see or hear the grand jury proceeding. AOC Directive #23-06.

The instructions and oath include many other requirements to promote secrecy. The jurors are strongly directed not to discuss the case with anyone. Ibid. They are also told they are prohibited from recording the grand jury proceeding,

including any sort of photographic, video, or audio recording, must not permit anyone else to do so, and must not share or broadcast the proceeding in any way. Ibid. The jurors are told that any violation of these rules can have serious consequences for them - namely, that if a grand juror violates these rules, he or she can be held in contempt of court and be subject to fines and jail time. Ibid.; see also MS Cert. ¶¶ 31, 32, 33 (AGa80) (describing in detail the oaths and monitoring in the State Grand Jury). Each grand juror also swore or affirmed a supplemental oath of secrecy that included all the instructions in the supplemental charge. DS Cert. ¶ 15 (Pa10). All jurors participating in virtual grand juries are so instructed. BJM Cert. ¶ 9 (Pa3).

Those instructions - and the related oaths - undermine any claims that grand jurors will disrespect the secrecy requirements of the virtual proceedings. Of course, in context after context, jurors of this State are presumed to follow a court's instructions. State v. Burns, 192 N.J. 312, 335 (2007); State v. Herbert, 457 N.J. Super. 490, 504 (App. Div. 2019). After all, even for an in-person jury, it is always the case that an unscrupulous grand juror could theoretically share what the private material he learned (or the deliberations in which he engaged) with family, friends, or another third party any time after he leaves the private grand jury room. (Indeed, given the security protocols mentioned for virtual grand juries above, it would be even easier for a juror to share information after

leaving the in-person proceeding than it would be for a virtual grand juror to sneak someone into the room.) Said another way, for in-person grand juries no less than the virtual variety, secrecy is maintained only by instructing grand jurors on their duties, requiring them to sign oaths that they will follow them, and imposing serious consequences if they do not. There is no reason to believe that jurors in a virtual proceeding will be less willing to follow the law than the in-person grand jurors on whom the State always relies.

The experiences of the virtual grand jury demonstrate this. Although ACDL-NJ identifies one incident in support of their claim that secrecy of the grand jury cannot be preserved, the isolated incident demonstrates that such incidents are quickly detected and resolved. Indeed, as laid out in the Seidel Certification, there was one grand juror, having difficulty with her audio, who received technical assistance from her grandson prior to the start of the session. DS Cert. ¶ 35 (Pa12). But the Assistant Prosecutor conducting the session immediately noticed the presence of the grandson, and directed he leave the room, which he did. Ibid. While it was inappropriate for the grand juror to have her grandson assist with the audio rather than seeking help from Judiciary support staff, this incident happened before the start of the grand jury session and the breach was quickly discovered and remedied. This is hardly enough to demonstrate that the virtual grand jury model has proven to violate our Constitution.

Finally, the NJSBA amicus brief suggests that even if a risk of secrecy violations alone is not enough to prove a constitutional violation, the risk that jurors will not take their jobs seriously when performed in a virtual format adds fuel to the constitutional fire. See NJSBA Br. 4. But that hypothesized practical concern falls short in three ways. First, as before, these hypotheticals have been carefully addressed in practice during implementation of the virtual grand jury process. To take the State Grand Jury for example, "staff and the DAG assigned to monitor the day's session are also on guard to ensure that all of the jurors are paying attention to the proceedings." MS Cert. ¶ 29; see also id. ¶ 26 (AGa79-80 (noting that "DAsG and State Grand Jury staff are also monitoring for jurors whose screens may have frozen or gone dark. If a juror has a technical issue, ... we can go back and repeat the portions that they missed. If they have missed too much, that juror will be excused from voting on that case.")). The point is not this is the only way to ensure jurors are following along - just that these are practical problems with practical solutions.

Second, there is no reason to believe jurors will refuse to fulfill their duties because both the presentations and deliberations are virtual (and no evidence in this case of that happening, see Point I.B, infra). All manner of activities have gone "virtual" during the pandemic - none of which is possible if individuals refuse to be attentive and engaged in that

setting. Third, the evidence regarding no-bills and partial no-bills confirms the grand juries still consider and engage with the evidence. See BJM Cert. ¶ 28 (Pa7) (noting “over 70 defendants have received full no-bills and over 190 defendants have received partial no-bills”); DS Cert. ¶ 37 (Pa13) (explaining that virtual presentments in Mercer “result[ed] in 208 indictments, 114 partial no-bills, and 10 full no-bills”). Far more must be offered in order to establish unconstitutionality.

In short, the Constitutional text allows for the use of these virtual grand juries, and the facts of the pandemic compelled them. While concerns have been raised as to whether these grand juries reflect a cross-section of the community, follow the secrecy rules, and engage in sufficient deliberations, the reality on the ground disproves these hypothetized infirmities.

B. The Presentment of this Case to a Virtual Grand Jury Operated in a Safe Environment for all Participants while Preserving the Secrecy and Integrity of the Grand Jury Process, and Protecting Defendant’s the Constitutional Rights.

The grand jury in this case was selected in person by Judge Warshaw on February 23, 2020.³ DS Cert. ¶¶ 5 & 6 (Pa8-9). The panel had orientation on February 20, 2020, and held sessions on February 27, March 5, and March 12, 2020, before all grand jury

³ On May 20, 2020, the grand jury in this case was extended through August 10, 2020. (DS Cert. ¶ 8).

proceedings were suspended. DS Cert. ¶7 (Pa9).

Following this Court's May 14, 2020 order authorizing virtual grand jury proceedings, Dalia Seidl, Jury Manager for Mercer County, contacted each grand juror in this grand jury panel by phone and/or email and inquired as to their capacity to continue as a grand juror. DS Cert. ¶ 10 & 11 (Pa9). Of the 23 grand jurors selected and empaneled on February 13, 2020, one requested to be excused from service for reasons not related to technology.⁴ Ibid.

Another five grand jurors confirmed willingness to serve but indicated that they lacked reliable personal technology to participate in virtual sessions. DS Cert. ¶ 12 (Pa9). The Mercer County Jury Manager coordinated with the AOC to arrange for delivery of SurfacePro tablets, with Broadband internet capacity, to those five jurors. Ibid.

The Mercer County Jury manager also worked with judiciary staff to assist all jurors, including those using their own electronic devices and those using devices supplied by the Judiciary, to complete Zoom training before the scheduled orientation session for the virtual proceedings. DS Cert. ¶ 13 (Pa9). As part of the May 20, 2020 orientation process, the grand jurors were required to demonstrate their ability to use the technology, to see and hear the proceedings, to communicate with staff and each other, and to indicate if they experienced

⁴ The grand juror was disqualified after moving to Camden County. DS Cert. ¶ 11 (Pa9).

any difficulties or otherwise required assistance. DS Cert. ¶¶ 13 & 14 (Pa9-10). All grand jurors successfully participated in the orientation session. Ibid. During this orientation proceeding, Judge Warshaw administered a supplemental charge to the grand jury in accordance with AOC Directive #23-06. DS Cert. ¶ 15 (Pa10).

This grand jury panel convened on July 9, 2020, and reaffirmed their commitment to uphold the standard and supplemental oath of secrecy. DS Cert. ¶ 18 (Pa10). Four grand jurors used technology provided by the Judiciary to participate in the July 9, 2020 virtual session. DS Cert. ¶ 21 (Pa10). The Mercer County Prosecutor's Office presented six matters to the grand jury panel on this date, including this case. The grand jury returned six indictments and five partial no-bills. DS Cert. ¶ 20 (Pa10).

Mercer County Jury Manager Seidl was present in the July 9, 2020 virtual grand jury session, along with three additional grand jury staff. According to her certification, no technical issues were reported by grand jurors or other participants during the virtual grand jury session. DS Cert. ¶ 22 (Pa11).

The transcript of the July 9, 2020 virtual grand jury session, indicates the Assistant Prosecutor asked the grand jurors at various points if they could see and hear the proceedings and if they had any questions. (1T3-16 to 22; 1T4-3 to 10; 1T6-5 to 9; When some or all of the grand jurors did not answer audibly to the questions, the Assistant Prosecutor

described on the record their non-verbal responses such as nodding their heads or raising their hands, circumstances that also occur during in-person proceedings. (1T3-18 to 4-9; 1T6-5 to 9; 1T11-4 to 8; 1T17-1 to 6; 1T18-5 to 9). DS Cert. ¶ 23 (Pa11). For example, when the presentation began the following colloquy took place:

Prosecutor: By a show of hands, do any members of the grand jury recognize these names, know any of these people, or are unable to remain fair and impartial in regard to this case?

(No audible response)

Prosecutor: I do not see any hands raised in the affirmative. And, at this point, everybody can hear and see me clearly, correct?

(No audible response)

Prosecutor: Okay. I see you nodding your heads indicating yes. Okay. And you've previously been instructed on the law for controlled dangerous substances along with obstructing the administration of law. Does any member of the grand jury wish to have any portion of that law re-read?

(No audible response)

Prosecutor: I do not see any hands raised. [1T3-18 to 4-9].

Jury Manager Seidl recalled, and the transcript reflects, that the foreperson conducted the required pre-deliberation technology check. Before deliberating in the breakout room, the foreperson asked the members of the grand jury whether they experienced any technical problems that affected their ability to hear and/or observe the proceedings and they answered in the

negative. (1T15-18 to 16-19). DS Cert. ¶ 24 (Pa11).

Jury Manager Seidl recalled, and the transcript reflects, that the foreperson also conducted the required post-vote technology check. After the vote in the breakout room, the foreperson asked the members of the grand jury if there were any technical problems that affected their ability to deliberate and vote and the grand jury answered in the negative. (1T17-20 to 18-9). DS Cert. ¶ 25 (Pa11). The record in this case demonstrates that all precautions were taken to preserve the secrecy of the virtual grand jury proceedings and protect the constitutional rights of the defendant.

The criminal justice system cannot be held hostage to the COVID-19 pandemic. It must be allowed to move forward in a way both ensures the grand juries' functioning and protects the public health. The virtual grand jury program established by this Court, including careful security safeguards and the provision of technology to those who need it, does just that.

CONCLUSION

This Court should hold that the virtual grand jury program, as presently constituted, is constitutional.

Respectfully submitted,

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APPELLATE BUREAU

OF COUNSEL AND ON THE AMICUS BRIEF

DATED: February 12, 2021

IN THE SUPREME COURT OF THE STATE OF ALASKA
SPECIAL ORDER OF THE CHIEF JUSTICE
ORDER NO. 8148

Regarding Grand Jury Proceedings

The court system is authorized to resume grand jury proceedings statewide on June 1, 2020. Upon review, it appears that many court locations lack a courtroom designed to accommodate a grand jury, witnesses, interpreters, clerks, and prosecutors with appropriate social distancing. Also many grand jury locations continue to require quarantines that will interfere with air travel. Therefore, under the authority of Supreme Court Order No. 1957, and despite the contrary provisions of Alaska Criminal Rule 6,

IT IS ORDERED:

1. The presiding judge may allow witnesses and interpreters to appear at grand jury proceedings by videoconference or teleconference;
2. The presiding judge may allow the grand jury to meet in two or more courtrooms at a single location connected by videoconference or teleconference; a technician may be present while the grand jury is in session if necessary for a videoconference presentation;
3. For videoconference or teleconference proceedings, the prosecutor shall ensure that all grand jurors can hear the other participants and that all grand jurors can communicate with the other participants;
4. If a witness or interpreter participates by videoconference or teleconference, then the prosecutor shall require that participant to state their location, to verify that their participation cannot be overheard, and to notify the grand jury immediately if any person can overhear their participation;
5. If the court facilities at the location designated in Criminal Rule 6(b) are inadequate for social distancing, then the presiding judge may convene a grand jury at another location in the same district; and

6. All participants shall maintain the secrecy of grand jury proceedings as required by Criminal Rule 6(l).

DATED: May 20, 2020


Joel H. Bolger
Chief Justice

Distribution:
Supreme Court Justices
Presiding Judges
Area Court Administrators
Administrative Director
Clerk of the Appellate Courts

IN THE SUPREME COURT OF THE STATE OF ALASKA
SPECIAL ORDER OF THE CHIEF JUSTICE
ORDER NO. 8204


Update regarding Authorizing Videoconference Grand Jury Proceedings

Under Chief Justice Order 8157, the Second Judicial District was authorized to conduct a pilot project allowing grand jury proceedings by videoconference. This project has been successful in Kotzebue. Due to recent case counts, the presiding judges in other districts have suspended in-person grand jury proceedings in some locations. This order would allow grand jury proceedings to be conducted by videoconference statewide. Therefore under the authority of Supreme Court Order No. 1957,

IT IS ORDERED:

1. For any location or district affected by the coronavirus pandemic, the presiding judge may allow witnesses, interpreters, prosecutors, grand jurors, and other required participants to participate by videoconference, but the grand jury foreperson must be personally present at the courthouse;
2. The prosecutor and the foreperson shall ensure that all grand jurors can see, hear, and communicate with the other participants;
3. The prosecutor shall require all participants to verify that their participation cannot be overheard and to notify the foreperson immediately if an person can overhear their participation; and
4. All participants shall maintain the secrecy of grand jury proceedings as required by Criminal Rule 6(l).

DATED: November 2, 2020



Joel H. Bolger
Chief Justice

Distribution:
Supreme Court Justices
Presiding Judges
Area Court Administrators
Administrative Director
Clerk of the Appellate Courts



SUPREME COURT OF GEORGIA

FILED

Administrative Minutes

January 8, 2021

Thérèse S. Barnes

Clerk/Court Executive

SUPREME COURT OF GEORGIA

TENTH ORDER EXTENDING DECLARATION OF STATEWIDE JUDICIAL EMERGENCY

On March 14, 2020, in response to the COVID-19 pandemic, the Honorable Harold D. Melton, as the Chief Justice of the Supreme Court of Georgia, issued an Order Declaring Statewide Judicial Emergency pursuant to OCGA § 38-3-61. That Order has been extended nine times, with modifications, by orders issued on April 6, May 11, June 12, July 10, August 11, September 10, October 10, November 9, and December 9, 2020 (with Section I (B) relating to conducting jury trials modified on December 23, 2020). After consulting with the Judicial Council of Georgia and other judicial partners, recognizing again that most in-court proceedings compel the attendance of various individuals rather than allowing them to decide how best to protect their own health, and further recognizing that the novel coronavirus continues to spread in Georgia, it is hereby determined that the Order should be extended again.

Courts in Georgia have continued to perform essential functions despite the pandemic. Courts have also greatly expanded the use of remote proceedings and have resumed limited in-person proceedings that can be conducted safely. In an effort to return to more robust court operations, many of the deadlines imposed by law on litigants in civil and criminal cases that had been suspended, tolled, or extended since the initial March 14 Order were reimposed as of July 14, allowing more pending and newly filed cases to move forward in the judicial process. The September 10 order authorized the Chief Judge of each superior court, in his or her discretion after consultation with the District Attorney, to resume grand jury proceedings if doing so can be done safely and in compliance with public health guidance based on local conditions. A number of courts have utilized this authority, and many more are expected to do so going forward.

The October 10 extension order recognized that the blanket prohibition of jury trials, which require the assembly of larger numbers of people, could not continue, even though the pandemic continues, because our judicial system, and the criminal justice system in particular, must have some capacity to resolve cases by trial, and our trial courts have accumulated many cases that are awaiting trial. The September 10 order directed the Chief Judge of each superior court to convene for each county in his or her circuit a local committee of judicial system participants to develop detailed guidelines for the safe resumption of jury trials in the county, utilizing the “Guidance for Resuming Jury Trials” included in the Appendix to this order. The October 10 order authorized the Chief Judge of each trial court, in his or her discretion, to resume the jury trial process if local conditions allow and the Chief Judge, in collaboration with the local committee, has developed and issued a final jury trial plan. A number of courts have already issued their plans to safely resume jury trials, and many more are in the process of developing those plans with their local committees.

Because of the escalating danger presented by the significant increase in COVID-19 cases late in 2020, however, the December 9 order was modified on December 23 to prohibit jury trials not already in progress. That prohibition is continued in this order, as specified in Section I (B) below. As stated in the modified order, **all courts are again urged to use technology, when practicable and lawful, to conduct remote judicial proceedings as a safer alternative to in-person proceedings. Where remote proceedings are not practicable or lawful, courts are reminded that in-person proceedings must be conducted in full compliance with public health guidance and the other requirements set forth in this order and in light of local conditions. In particular, courts should manage case calendars to minimize the number of participants gathering both in the courtroom and in common areas outside of courtrooms.**

It should be recognized that grand jury hearings and jury trials will not actually start until a month or longer after the process for resuming them begins in a particular county or court, due to the time required to

summon potential jurors for service. It also should be recognized that there are substantial backlogs of unindicted and untried cases, and due to ongoing public health precautions, these proceedings will not occur at the scale or with the speed they occurred before the pandemic. Thus, while our justice system must resume moving cases to indictment and trial as rapidly as can be done safely, **statutory deadlines based on indictments and jury trials will remain suspended and tolled.** As grand jury proceedings resume, however, the deadlines in OCGA §§ 17- 7-50 and 17-7-50.1 for presenting cases involving detained defendants to a grand jury may be reimposed. This will be done with at least 30 days prior notice, but where grand jury proceedings are occurring, district attorneys should already be prioritizing these cases to reduce backlogs.

As has been the direction since the original Order, all Georgia courts must continue to conduct proceedings, remotely or in-person, in compliance with public health guidance, applicable statutes and court rules, and the requirements of the United States and Georgia Constitutions, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom. All courts should continue to use and increase the use of technology to conduct remote judicial proceedings as a safer alternative to in-person proceedings, unless required by law to be in person or unless it is not practicable for technical or other reasons for persons participating in the proceeding to participate remotely. This order again delineates the health precautions required for all in-person judicial proceedings and requires courts to adopt and maintain operating guidelines consistent with the Georgia Court Reopening Guide and any more specific local public health guidance.

Accordingly, the Order Declaring Statewide Judicial Emergency, which would have expired on Friday, January 8, 2021, at 11:59 p.m., is further **extended until Sunday, February 7, 2021, at 11:59 p.m.** All Georgia courts shall continue to operate under the restrictions set forth in that Order as extended; **the provisions of this order below are identical to the December 9 extension order except Section I (B) relating to jury trials.** Where this order refers to “public health guidance,” courts should consider the most specific current guidance provided by the federal Centers for Disease Control and Prevention (CDC), the Georgia

Department of Public Health (DPH), and their local health departments.

I. Grand Jury Proceedings and Jury Trials

(A) Grand Jury Proceedings Authorized

(1) The Chief Judge of each superior court, in his or her discretion after consulting with the District Attorney, may resume grand jury proceedings in person or remotely (where consistent with law), if doing so can be done safely and in compliance with public health guidance based on local conditions. When a Chief Judge exercises this authority, he or she must provide sufficient notice to the appropriate clerk of court or court administrator to allow the process of summoning potential jurors, and potential jurors should be informed in advance about the practices that the court will use to ensure their safety. Guidance for safely conducting in-person grand jury proceedings, based on recommendations from the Judicial COVID-19 Task Force, and guidance on conducting remote grand jury proceedings are included in the Appendix to this order.

(2) Courts and counsel are reminded that many criminal cases may proceed on accusation and do not require a grand jury indictment.

(B) Jury Trials Prohibited; Local Committees to Develop County Jury Trial Guidelines

(1) In response to the recent rapid escalation of COVID-19 cases, and to protect the health and safety of the public and court personnel while continuing to allow access to essential judicial functions, all jury trials not already in progress, including in-person proceedings to select jurors, are prohibited. This order does not preclude the issuance of juror summonses.

(2) As directed in the September 10 extension order, before jury trials resume, every county should have in place a local committee of judicial system participants, convened by the Chief Judge of the county's

superior court, which is charged with developing a plan for safely resuming jury trials in the county as further described in the “Guidance for Local Committees on Resuming Jury Trials” included in the Appendix to this order. The local committees should utilize the “Guidance for Resuming Jury Trials” also included in the Appendix in developing their plans, which must be submitted to the Administrative Office of the Courts (AOC) as soon as possible and before the jury trial process begins.

(C) Because there are substantial backlogs of unindicted and untried cases and because grand jury proceedings and jury trials even when resumed will not occur at the scale or with the speed as before the pandemic, deadlines calculated by reference to the date of grand jury proceedings or jury trials, including but not limited to the speedy trial deadlines in OCGA §§ 17-7-170 and 17-7-171 and the deadlines for indicting detained individuals in OCGA §§ 17-7-50 and 17-7-50.1, will remain suspended and tolled as discussed in Section II (A) (1) below.

II. Reimposition of Deadlines on Litigants

(A) The July 10 extension order reimposed all deadlines and other time schedules and filing requirements (referred to collectively herein as “deadlines”) that are imposed **on litigants** by statutes, rules, regulations, or court orders in civil and criminal cases and administrative actions and that had been suspended, tolled, extended, or otherwise relieved by the March 14, 2020 Order Declaring Statewide Judicial Emergency, as extended, on the following schedule and with the following exceptions and conditions:

(1) Consistent with Section I above, **deadlines for jury trial proceedings (including statutory speedy trial demands), deadlines for grand jury proceedings, and deadlines calculated by reference to the date of a civil or criminal jury trial or grand jury proceeding shall remain suspended and tolled.** This provision does not apply to deadlines calculated by reference to the date of non-jury (bench) trials. Statutes of limitation in criminal cases shall also remain tolled until further order.

(2) **All other deadlines imposed on litigants were reimposed effective July 14, 2020**, as further explained below.

(3) In cases that were pending before the March 14 Order, litigants were provided the same amount of time to file or act after July 14 that they had as of March 14.

(4) In cases filed between March 14 and July 13, 2020, the time for deadlines began to run on July 14.

(5) In cases filed on or after July 14, 2020, litigants must comply with the normal deadlines applicable to the case.

(6) If the reimposed deadline falls on a weekend or legal holiday, the deadline will as normal be the next business day. See OCGA § 1-3-1 (d) (3).

(7) Any extension of time for a litigant's filing or action that was granted by a court, or was agreed or consented to by the litigants as authorized by law, before July 14, 2020, also extended the time for that filing or action after July 14.

(8) Litigants may be entitled to additional time based on the provisions of a local judicial emergency order applicable to their case if such an order tolled applicable deadlines before the March 14, 2020 Order Declaring Statewide Judicial Emergency or tolls applicable deadlines after July 14, 2020.

(9) The tolling and suspension of deadlines imposed on litigants in civil and criminal cases that are calculated by reference to terms of court were lifted as of July 14, 2020, and any regular term of court beginning on or after July 14 counts toward such deadlines. See also the May 4, 2020 "Guidance on Deadlines and Time Limits Defined by Reference to Terms of Court" included in the Appendix.

(10) The 122 days between March 14 and July 14, 2020, or

any portion of that period in which a statute of limitation would have run, shall be excluded from the calculation of that statute of limitation.

(11) Litigants may apply in the normal way for extensions of reimposed deadlines for good cause shown, and courts should be generous in granting extensions particularly when based upon health concerns, economic hardship, or lack of childcare.

(B) Recognizing the substantial backlog of pending cases, deadlines imposed on courts shall remain suspended and tolled. All courts should nevertheless work diligently to clear the backlog and to comply with usual deadlines and timetables to the extent safe and practicable.

(C) If before July 14 a court reimposed deadlines by order in a specific case based on the authority to do so granted by prior extension orders, the case-specific order reimposing deadlines shall control over the deadlines for the same filings or actions reimposed by this statewide order.

(D) If in a divorce or adoption case a time period required by law actually passed or passes before the court entered or enters a consent order, consent judgment, or consent decree regarding the divorce or adoption, such order, judgment, or decree shall not be invalid based on any suspension or tolling of the applicable period by the March 14 Order as extended.

III. Proceedings Conducted Remotely Using Technology

(A) All courts should continue to use and increase the use of technology to conduct remote judicial proceedings as a safer alternative to in-person proceedings, unless required by law to be in person or unless it is not practicable for technical or other reasons for persons participating in the proceeding to participate remotely.

(B) Courts should understand and utilize the authority provided and clarified by the emergency amendments made to court rules on video conferences and teleconferences.

(C) Courts may compel the participation of litigants, lawyers, witnesses, and other essential personnel in remote judicial proceedings, where allowed by court rules (including emergency amendments thereto). Such proceedings, however, must be consistent with public health guidance, must not impose undue burdens on participants, and must not be prohibited by the requirements of the United States or Georgia Constitutions or applicable statutes or court rules.

(D) In civil, criminal, juvenile, and administrative proceedings, litigants may expressly consent in the record to remote proceedings not otherwise authorized and affirmatively waive otherwise applicable legal requirements.

(E) Courts must ensure the public's right of access to judicial proceedings and in all criminal cases, unless affirmatively waived in the record, a criminal defendant's rights to confrontation and an open courtroom.

IV. In-Person Proceedings Under Guidelines for Safe Operations

(A) Courts have discretion to conduct in-person judicial proceedings, but only in compliance with public health guidance and with the requirements of the United States and Georgia Constitutions and applicable statutes and court rules, including the public's right of access to judicial proceedings and a criminal defendant's rights to confrontation and an open courtroom.

(B) No court may compel the attendance of any person for a court proceeding if the court proceeding or the court facility in which it is to be held is not in compliance with this order, including in particular large calendar calls. Courts are also prohibited from compelling in-person participation in any court-imposed alternative dispute resolution session that is to be conducted in a manner inconsistent with applicable public health guidelines.

(C) **Each court shall develop and implement operating guidelines** as to how in-court proceedings generally and particular types of proceedings, including grand jury proceedings and jury trials, will be conducted to protect the health of litigants, lawyers, jurors, judges, court personnel, and the public.

(1) The Judicial Council Strategic Planning Committee and the Judicial COVID-19 Task Force have issued a bench card entitled “Georgia Court Reopening Guide,” which is included in the Appendix and should be used as the template for such operating guidelines, which at a minimum should include all subject matters contained therein. Courts should also consider guidance from local health departments and guidance provided by CDC and DPH; if local public health guidance is more restrictive than the bench card, the local public health guidance should be followed instead.

(2) With regard to everyone who works in a court facility, the operating guidelines shall require **isolation** of any person with known or suspected COVID-19 and **quarantine** of any person with COVID-19 exposure likely to result in infection, in accordance with the DPH Tenth Amended Administrative Order for Public Health Control Measures, a link to which may be found in the Appendix, or any subsequent version thereof.

(3) When there is reason to believe that anyone who works at or has visited a court facility has been exposed to COVID-19, DPH or the local health department shall be notified, and **notification** of persons who may have been exposed shall occur as directed by DPH or the local health department.

(D) Courts of different classes that share courthouse facilities or operate in the same county should coordinate their operating guidelines, and should seek to coordinate operating guidelines with non-judicial entities sharing courthouse facilities.

(E) Each court must submit its operating guidelines to the AOC at <https://georgiacourts.gov/covid-19-court-operating-guidelines-form> to be posted at <https://georgiacourts.gov/covid-19-court-operating-guidelines/> as

a centralized website available to litigants, lawyers, and the public. Operating guidelines also should be prominently posted at courthouse entrances and on court and local government websites to provide advance notice to litigants, lawyers, and the public.

(F) Operating guidelines shall be modified as public health guidance is modified, and shall remain in effect until public health guidance indicates that they are no longer required.

V. Discretion of Chief Judges to Declare More Restrictive Local Judicial Emergencies

(A) Nothing in the Order Declaring Statewide Judicial Emergency as extended and modified limits the authority of the Chief Judge of a superior court judicial circuit under OCGA §§ 38-3-61 and 38-3-62 to add to the restrictions imposed by the statewide judicial emergency, if such additional restrictions are constitutional, necessitated by local conditions, and to the extent possible ensure that courthouses or properly designated alternative facilities remain accessible to carry out essential judicial functions. A Chief Judge may impose such additional restrictions only by a properly entered order.

(B) No court may disregard the restrictions imposed by the Order as extended and modified.

VI. Guidance on Application of the Order

Included in the Appendix are several guidance documents that clarify the application of the order in particular contexts. Additional guidance documents may be posted on the AOC's website at <https://georgiacourts.gov/judicial-council/aoc/>. Guidance related to the tolling of deadlines should be read in light of the reimposition of deadlines by this order and by orders in specific cases.

VII. Professionalism

With regard to all matters in this challenging time, all lawyers are reminded of their obligations of professionalism, including the obligation to engage in discovery in good faith and in a safe manner. Judges are also reminded of their obligation to dispose of all judicial matters promptly and efficiently, including by insisting that court officials, litigants, and their lawyers cooperate with the court to achieve that end, although this obligation must not take precedence over the obligation to dispose of matters fairly and with patience, which requires sensitivity to health and other concerns raised by court officials, litigants and their lawyers, witnesses, and others.

VIII. Notice Provisions

(A) Notice will be provided as to the expected termination of the Order as extended and modified at least one week in advance to allow courts to plan for the transition to fuller operations.

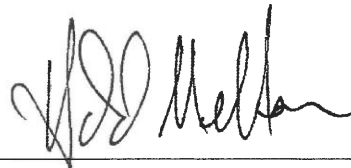
(B) The clerks and court administrators of trial courts that conduct jury trials and convene grand juries will be provided sufficient notice of the resumption of jury proceedings to allow the complicated process of summoning potential jurors to be completed.

(C) The impact of COVID-19 varies across the state, and the level of response and adjustment will likewise vary among courts. Courts should make available to the public the steps they are taking to safely increase operations while responding to the COVID-19 pandemic. Recognizing that not all courts have a social media presence or website, the AOC will continue to post court-specific information as it becomes available on the AOC website at <https://georgiacourts.gov/covid-19-preparedness>.

(D) Pursuant to OCGA § 38-3-63, notice and service of a copy of this order shall immediately be sent to the judges and clerks of all courts in this State and to the clerk of the Court of Appeals of Georgia, such service to be accomplished through means to assure expeditious receipt, which include

electronic means. Notice shall also be sent to the media, the State Bar of Georgia, and the officials and entities listed below and shall constitute sufficient notice of the issuance of this order to the affected litigants, counsel for the affected litigants, and the public.

IT IS SO ORDERED this 8th day of January, 2021, and effective at 11:59 p.m.

A handwritten signature in black ink, appearing to read "H.D. Melton", written in a cursive style.

Chief Justice Harold D. Melton
Supreme Court of Georgia

GUIDANCE FOR REMOTE GRAND JURY PROCEEDINGS

The Chief Justice recently lifted a statewide stay of regular grand jury proceedings and authorized the chief judges of the superior courts to resume regular grand jury proceedings as of September 10, 2020.¹ The resumption of regular grand jury proceedings already is underway in several counties, and more counties are expected to resume regular grand jury proceedings soon. To the extent that grand jurors can be assembled safely and consistent with public health guidance, it is anticipated that the resumption of regular grand jury proceedings in most counties will involve the whole grand jury meeting in person at the courthouse. Public health conditions, however, vary from county to county and may change over time, and the availability of facilities suitable for grand jury proceedings likewise varies from county to county. In some counties, it may be inadvisable in light of existing public health conditions for a grand jury to meet in person, and in some counties, facilities in which a grand jury could meet in person consistent with public health guidance may not be readily or routinely available. Moreover, even in counties in which it now is feasible to resume meetings of a grand jury in person, a deterioration of public health conditions could render meetings in person inadvisable, and competing demands could reduce the availability of facilities suitable for meetings in person, especially after the resumption of jury trials.² For these reasons, it is prudent to issue guidance for remote grand jury proceedings as an alternative to proceedings in person.

As described below, remote grand jury proceedings may take a variety of forms, and this guidance is intended to afford the flexibility necessary for the resumption and continuation of regular grand jury proceedings in adverse or changing public health conditions and in counties with limited facilities suitable for grand jury proceedings consistent with public health guidance. In each county, it is for the chief judge of the superior court, in consultation with the district attorney, to determine whether regular grand jury proceedings should be resumed and continued, and if so, whether those proceedings should be conducted

¹ See Sixth Order Extending Declaration of Statewide Judicial Emergency (Sep. 10, 2020).

² See Seventh Order Extending Declaration of Statewide Judicial Emergency (Oct. 10, 2020).

in person under guidance previously issued³ or remotely under this guidance.

Form of Remote Grand Jury Proceedings

Remote grand jury proceedings may take a variety of forms, depending on public health conditions, the availability of facilities for grand jury proceedings, the availability of technology, communications infrastructure, and technological support necessary for remote grand jury proceedings, and other local circumstances. These various forms include, but are not limited to:

- Proceedings in which all of the grand jurors are physically present in the courthouse or another public building, but they are dispersed in small groups or individually to multiple locations within the building, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in one or more other public buildings, all of which are linked by closed-circuit, intranet-based, or internet-based video-conferencing and document-sharing technology.
- Proceedings in which some grand jurors are physically present in the courthouse or another public building, and other grand jurors are physically present in their places of residence or other private places, all of which are linked by internet-based video-conferencing and document-sharing technology.
- Proceedings in which all of the grand jurors are physically present in their places of residence or other private places and participate remotely with internet-based video-conferencing and document-sharing technology.

³ See Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

This wide range of forms offers significant flexibility for the resumption and continuation of regular grand jury proceedings in a variety of public health conditions and other local circumstances. Each form has its own advantages and disadvantages, and the form of remote grand jury proceedings that is best for one county may not be suitable for another.

Preliminary Considerations

In assessing whether remote grand jury proceedings are feasible and advisable, and if so, which form of remote grand jury proceedings is most suitable, a chief judge should consider:

1. *Current public health conditions* in the county and the extent to which, in light of those conditions, grand jurors safely may be assembled in person at the courthouse or another public building suitable for in-person grand jury proceedings. To the extent that public health conditions are conducive to an assembly in person of most grand jurors, consideration also should be given to grand jurors who may be especially vulnerable to COVID-19 by virtue of age or medical condition, including whether the participation of those grand jurors may be enhanced by some form of remote grand jury proceedings. Moreover, to the extent that public health conditions do not absolutely preclude an assembly in person of the grand jury but there nonetheless is substantial community spread of COVID-19, consideration should be given to the possibility that, if the grand jury meets in person, the infection or exposure of one or more grand jurors could require some or all of the remaining grand jurors to quarantine,⁴ significantly impeding the work of the grand jury, whereas remote grand jury proceedings may mitigate that risk.

2. *The availability of facilities* in the courthouse or other public buildings in which the whole grand jury or a part of the grand jury may be assembled in person consistent with public health guidance, including guidance on social distancing, and in which grand jury proceedings may

⁴ See DPH Eighth Amended Administrative Order for Public Health Control Measures (July 28, 2020).

be conducted with reasonable assurance that grand jury secrecy is maintained. In counties in which the regular grand jury room is too small to permit the assembly of the whole grand jury consistent with public health guidance, the most obvious alternative for grand jury proceedings in person may be a ceremonial courtroom, other large courtroom, or a jury assembly room. Consideration must be given, however, to competing demands for those facilities, including jury trials and essential nonjury proceedings that cannot lawfully or practically be conducted remotely, some of which may be entitled to equal or greater priority than grand jury proceedings. Moreover, although a facility certainly may be repurposed from time-to-time, such that it could be used for grand jury and other proceedings, the inherent uncertainty about the duration of jury trials and other proceedings, as well as public health guidance requiring sanitation measures for facilities used by different persons for different purposes, may impede the reliable scheduling of grand jury proceedings in facilities also used for other purposes. Aside from facilities in a courthouse, it may be feasible to assemble the whole grand jury in an auditorium, gymnasium, conference center, or other large room in another public building consistent with public health guidance, although the use of facilities outside a courthouse may present concerns about the extent to which grand jury secrecy can be reasonably assured. When no facility suitable for the assembly of the whole grand jury in person is available, consideration should be given to the availability of multiple smaller facilities in the courthouse or one or more other public buildings to which grand jurors may be dispersed in small groups or individually for remote grand jury proceedings and in which grand jury secrecy can be reasonably assured.

3. *The availability of technology, communications infrastructure, and technological support* for remote grand jury proceedings. Whether grand jurors participate in remote proceedings from a courthouse, another public building, or a private place, and whether they are dispersed in small groups or individually, remote grand jury proceedings are feasible only to the extent that the court can ensure:

- That the grand jury has access to video-conferencing and document-sharing applications with security features that provide reasonable assurance of grand jury secrecy, which

would allow the grand jurors to observe and hear one another in a manner sufficient to enable each grand juror to fully participate in the proceedings, to observe and hear the prosecuting attorney, to observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility, and to view documentary evidence. If all grand jurors are physically present in the courthouse or one or more other public buildings for remote grand jury proceedings, it may be feasible to use closed-circuit or intranet-based video-conferencing and document-sharing applications, which may be especially conducive to assuring grand jury secrecy. But even when internet-based applications are used, a variety of video-conferencing and document-sharing applications are commercially available with a range of security measures that may give reasonable assurance of grand jury secrecy.

- That grand jurors have access to technology necessary to utilize the video-conferencing and document-sharing applications. Personal ownership of computers, tablets, and other electronic devices suitable for video-conferencing and document-sharing purposes is common but far from universal, and the portion of the population with private access to such devices may vary significantly from county to county. In the event that it is necessary for each grand juror to individually have access to such a device, the court should be prepared to provide devices for grand jurors without a suitable device, and in counties in which personal ownership of such devices is less common, the court should anticipate the possibility that a significant number of grand jurors may need to be provided with suitable devices. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to such devices, although lack of personal access to such a device should not be a reason for excusing a prospective grand juror. In the event that the grand jurors will be dispersed in small groups to multiple locations within the courthouse or one or more other public buildings, it may not be necessary for each grand juror to individually have

access to a device, and the court should consider whether technology is available to permit the grand jurors in each of those locations to participate remotely without individual devices.

- That grand jurors have access to communications infrastructure necessary to reliably and securely connect with the video-conferencing and document-sharing applications. In the event that all or some of the grand jurors will participate remotely in grand jury proceedings from their own places of residence or other private places, it will be necessary for those grand jurors to have reliable access to high-speed internet service, the availability of which may vary significantly from county to county and within each county. The court may wish to inquire of prospective grand jurors about the extent to which they have personal access to high-speed internet service, although lack of personal access to such service should not be a reason for excusing a prospective grand juror. For grand jurors without access to high-speed internet service, the court should be prepared to provide such access, whether at the courthouse or another public building or by installation of an internet hotspot at some other location. In the event that all of the grand jurors will be physically located within the courthouse or another public building for remote grand jury proceedings, the court with greater confidence can assure access to the necessary communications infrastructure, whether closed-circuit, intranet, or internet.
 - That the court has sufficient resources to provide grand jurors with technological support as needed to facilitate remote grand jury proceedings. This requirement may be satisfied most effectively when grand jurors participate in remote grand jury proceedings from locations within the courthouse or one or more other public buildings, where court IT personnel are near and can be readily available to provide assistance.
4. *Any other relevant circumstances.*

Essential Requirements for Remote Grand Jury Proceedings

If a chief judge determines that remote grand jury proceedings are feasible and advisable, the chief judge should prepare a written protocol for remote grand jury proceedings, which at a minimum must address:

1. *The physical location of grand jurors participating remotely in grand jury proceedings, including:*

- Whether grand jurors are to be dispersed in small groups or individually, and if grand jurors are to assemble in small groups, the measures necessary to assure that those assemblies are consistent with public health guidance.⁵
- The physical locations from which grand jurors are permitted to participate remotely in grand jury proceedings, whether in the courthouse, in one or more other public buildings, or in private places to be selected by each grand juror.
- A description of any security measures associated with those physical locations that are necessary to reasonably assure grand jury secrecy, such as measures for securing locations within the courthouse or other public buildings from which grand jurors may participate in remote grand jury proceedings, as well as special instructions to be given to grand jurors who may participate in remote grand jury proceedings from private places of their choosing.
- How the oath of grand jurors is to be administered.⁶

⁵ To the extent that grand jurors are assembled in person at any location, any such assembly must comport with the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

⁶ See OCGA § 15-12-67 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020) (“[A]ny purported requirement of the laws of this state, including but not limited to certain provisions of Code Sections 15-12-67 and 15-12-68, that prohibits remote administration of oaths for grand jury purposes is hereby suspended.”).

2. *The technology, communications infrastructure, and for remote grand jury proceedings, including:*

- A designation of the video-conferencing and document-sharing applications to be used in remote grand jury proceedings, as well as a description of any security measures associated with those applications that are necessary to reasonably assure grand jury secrecy, including instructions or other measures necessary to ensure that the proceedings are not recorded by any person other than an authorized court reporter.
- A designation of the person to host or otherwise control the video-conferencing application during remote grand jury proceedings, and if such person is not the foreperson or another grand juror, the measures necessary to assure that such person does not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- A description of computers, tablets, other electronic devices, other technology, and communications infrastructure to be used by grand jurors to participate remotely in grand jury proceedings.
- A procedure for providing access to necessary technology and communications infrastructure for grand jurors without such access.
- A designation of IT personnel assigned to support remote grand jury proceedings.
- If applicable, a description of any technical training to be provided to the foreperson, assistant foreperson, secretary, and other grand jurors prior to the commencement of remote grand jury proceedings.

3. *The participation of prosecuting attorneys, witnesses, court reporters, and other persons in grand jury proceedings, including:*

- The physical locations from which such persons are permitted to participate in remote grand jury proceedings and whether

such persons will appear in the physical presence of one or more grand jurors.

- To the extent that witnesses will not appear in the physical presence of one or more grand jurors, how the oath is to be administered to such witnesses.⁷
- To the extent that prosecuting attorneys, witnesses, court reporters, and other persons are to be given their own access to the video-conferencing and document-sharing applications used for remote grand jury proceedings, the procedures necessary to assure that such persons do not have access to the deliberations of the grand jury, so as to reasonably assure grand jury secrecy.
- Measures necessary to ensure that grand jurors can observe and hear witnesses in a manner sufficient to enable the grand jurors to assess their demeanor and credibility.

4. *If the grand jury is to be selected remotely, the procedures to be employed in connection with remote grand jury selection, including:*

- The content of any written questionnaire to be sent to prospective grand jurors to facilitate remote grand jury selection.
- Instructions to be given to prospective grand jurors in connection with remote grand jury selection.
- How the oath of prospective grand jurors is to be administered.⁸

⁷ See OCGA § 15-12-68. See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

⁸ See OCGA § 15-12-66 (b). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- The process by which prospective grand jurors are to be examined by the presiding judge or the district attorney as to their qualifications to serve.⁹
- A procedure for providing access to necessary technology and communications infrastructure for prospective grand jurors without such access.

5. *The procedures to be employed by the foreperson and grand jurors in connection with remote grand jury proceedings, including:*

- Instructions to be given to grand jurors about the procedures for remote grand jury proceedings and the maintenance of grand jury secrecy in remote grand jury proceedings, including the need for grand jurors to participate remotely from a location in which no unauthorized person can observe or hear the proceedings, that no portion of the proceeding may be recorded other than by an authorized court reporter, and the need for grand jurors to be present during the entirety of each presentment.
- Instructions to be given to grand jurors about the steps to be taken in the event of a breach of grand jury secrecy, such as the appearance of an unauthorized person through the video-conferencing application or in the physical presence of any grand juror participating in remote grand jury proceedings.
- Instructions to be given to grand jurors about steps to be taken in the event that a grand juror encounters a technical problem or that a grand juror requires a break to address any personal issues.
- A process whereby the foreperson may confirm that each participating grand juror is able to see and hear the prosecuting attorney, the witnesses, and the other grand jurors.

⁹ See OCGA § 15-12-66 (a). See also Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020).

- A process for the presentation of evidence whereby the foreperson or prosecuting attorney may ensure that each participating grand juror is able to participate fully, including by asking questions of any witness.
- A process for grand jurors to observe and inspect any non-documentary evidence that cannot be shared with grand jurors through the document-sharing application.
- A process for deliberations whereby the foreperson may ensure that each participating grand juror is able to participate fully.
- A process for voting whereby the foreperson may ensure that the vote of each participating grand juror is accurately counted.
- The procedure for sealing and returning indictments in open court. This guidance does not suspend or alter the law requiring the return of indictments in open court. See *State v. Brown*, 293 Ga. 493 (2013).

In connection with the preparation of this written protocol, the chief judge must consider whether grand jury proceedings conducted pursuant to the protocol will meet all legal requirements for grand jury proceedings, including that the protocol reasonably assures grand jury secrecy. If the chief judge is satisfied that the protocol assures the lawful conduct of grand jury proceedings remotely, the chief judge should enter an order incorporating and adopting the written protocol.

Best Practices for Remote Grand Jury Proceedings

The following are recommended as best practices for remote grand jury proceedings:

1. To the extent permitted by public health conditions, the availability of suitable facilities, and technology resources available to the court, a form of remote grand jury proceedings in which grand jurors are physically located within the courthouse or one or more other public buildings, but dispersed in small groups or individually to multiple

locations within those buildings, is generally preferable. Such a form enables the court to better secure the physical locations from which grand jurors participate remotely in grand jury proceedings, so as to reasonably assure grand jury secrecy; potentially avoids technical complications that may arise when grand jurors participate remotely from other locations; and places the grand jurors near IT personnel in the event that technical support is necessary.

2. If it is not feasible or advisable for all grand jurors to be physically located in the courthouse or one or more other public buildings during remote grand jury proceedings, it is recommended that the foreperson, and perhaps the assistant foreperson and secretary as well, participate in such proceedings from a location in the courthouse, to the extent permitted by public health conditions. The physical presence of the foreperson at the courthouse allows the prosecuting attorney and witnesses to appear before the grand jury in the physical presence of the foreperson; allows the foreperson to administer oaths to the witnesses in person; allows the foreperson to seal and readily deliver indictments to the bailiff; allows the foreperson to be present for the return of indictments; and places the foreperson, assistant foreperson, and secretary near IT personnel in the event that technical support is necessary.

3. To the extent permitted by public health conditions and the availability of suitable facilities, the prosecuting attorney, witnesses, and other persons authorized to be present for the presentation of evidence to a grand jury should appear in person before the foreperson and should have access to the video-conferencing application used for remote grand jury proceedings only in the presence of the foreperson.¹⁰ Rather than allowing the prosecuting attorney, witnesses, and others to participate in the remote grand jury proceedings with their own devices, security and grand jury secrecy are promoted by requiring these persons to access the video-conferencing application with one or more devices set up for the use of such persons in the room in which the foreperson is located. This

¹⁰ To the extent that such other persons appear in person in the physical presence of the foreperson, their appearance must comport with public health guidance and the previously-issued Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020).

practice enables the foreperson to ensure that such persons are excused from the location in which the foreperson is present—and that they, therefore, no longer have access to the video-conferencing application—prior to the commencement of deliberations, better assuring grand jury secrecy.

4. Prior to the commencement of remote grand jury proceedings, the presiding judge should deliver a modified charge to the grand jury, instructing the grand jury about special issues that may arise from the remote conduct of the proceedings, including measures to reasonably assure grand jury secrecy, what steps should be taken in the event of a breach of grand jury secrecy, what should be done in the event that a grand juror has a technical problem with the video-conferencing or document-sharing application, and what should be done in the event that an emergency arises or a grand juror otherwise needs to leave the proceedings early. The content of such a modified charge should be adjusted to fit the particular form of remote grand jury proceedings that is employed. Among other things, if any grand juror may participate remotely in grand jury proceedings from their own place of residence or another private place of their choosing, the grand jury should be instructed about the need for grand jurors to participate remotely in a secluded location within such private place and that all grand jurors participating remotely must be physically located within the geographic jurisdiction of the court.

5. Each grand juror should be given a phone number at which they can contact the foreperson during remote grand jury proceedings in the event of a technical problem or emergency.

6. It is recommended that the foreperson, assistant foreperson, or secretary be designated as the person to host or otherwise control the video-conferencing application during remote grand jury proceedings and that the foreperson, assistant foreperson, or secretary receive technical training on the use of the video-conferencing application prior to the commencement of remote grand jury proceedings. To allow a prosecuting attorney, clerk of court, judicial staff, or IT personnel to control the video-conferencing application would arguably suggest a breach of grand jury secrecy.

7. Because participants may be especially fatigued by video conferences—more so than by meetings in person—regular breaks should be scheduled for snacks, for the use of restrooms, and for grand jurors to attend to personal issues that may have arisen during the remote proceedings.

8. Throughout the remote proceedings, the foreperson should, from time-to-time, confirm that the grand jurors are encountering no technical difficulties and can see and hear the prosecuting attorney, the witnesses, the other grand jurors, and the evidence being presented.

9. It is important to ensure that all grand jurors are given a fair opportunity to ask questions, and before releasing a witness, the foreperson should confirm that no grand jurors have additional questions for the witness.

10. It is important that all grand jurors have a fair opportunity to participate in deliberations and that their vote is recorded, and special care should be taken to mitigate the risk that the remote nature of the proceedings might impede full deliberations and accurate voting. Before concluding deliberations, the foreperson should confirm that no grand jurors have additional comments. And to ensure that all votes are recorded accurately, the foreperson should consider requiring some affirmative act by each grand juror to cast a vote, whether by voice, visible hand signal, or otherwise.

October 26, 2020

APPENDIX

Helpful Resources for Remote Grand Jury Proceedings

Executive Order No. 09.10.20.02, Reducing Grand Jury Regulations to Assist the State's Response to the Spread of COVID-19 (Sep. 10, 2020)

Guidance for Resuming In-Person Grand Jury Proceedings (Sep. 10, 2020)

Potential Constitutional and Statutory Issues with Virtual Grand Jury Proceedings (Memorandum from Michael B. Terry, Esq. to Justice Blackwell, Aug. 24, 2020)

Virtual Grand Jury Pilot Program (New Jersey Courts Jul. 27, 2020)

Supreme Court of Kentucky

2020-40

ORDER

**IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19
EMERGENCY: EXPANSION OF COURT PROCEEDINGS**

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that “[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

Considering the Governor’s new guidelines authorizing the phased reopening of Kentucky’s businesses and government offices, and the constitutional rights guaranteed to the people of this Commonwealth, this Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders as follows, effective June 1, 2020:

1. Jury trials shall be postponed and rescheduled for no sooner than August 1, 2020, with in-custody criminal trials taking priority over all other matters.
2. Grand jury proceedings may resume upon the effective date of this order.
3. A grand jury may be conducted remotely via available telephonic or video technology, subject to applicable Rules of Criminal Procedure. The indictment may be returned to the circuit judge using available technology. If a grand juror is unable to participate remotely, the chief circuit judge shall excuse that grand juror either temporarily or permanently and swear another grand juror from the current jury panel in place of the one excused.
4. Access to view the return of indictments pursuant to RCr 5.20 must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.

5. Any case where the 60-day period in RCr 5.22(3) or an extension thereof was tolled by operation of Administrative Order 2020-28 shall be presented to the grand jury on or before July 30, 2020. The Commonwealth's Attorney is encouraged to give priority to cases where the defendant is in custody and proceedings have been tolled by the Supreme Court's response to the COVID-19 emergency.
6. Existing grand jury panels may be extended at the discretion of the court, subject to the 20-day limitation set out in AP Part II, Sec. 19(3).
7. If an existing grand jury panel is unable to be extended, juror education shall be conducted by one of the following formats, as directed by the chief circuit judge:
 - a. Requiring jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or
 - b. Requiring jurors to attend a video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person jury orientation; or
 - c. Requiring jurors to report in person for orientation, but in no event can the number of persons present in the designated juror orientation area exceed 33% of its occupancy capacity. Jury panels shall be subdivided into smaller groups so that there is six feet distance between all jurors in the designated juror orientation area at all times. The Jury Management Program may be utilized for grouping.

The Chief Circuit Judge shall ensure that each designated juror orientation area is demarked with six-foot spacing to maintain appropriate social distancing and shall require jurors to report in smaller groups with staggered reporting times.
8. Jurors who are ill, caring for someone who is ill, or in a high-risk category shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.

9. Jurors who are unable to wear a facial covering because doing so would pose a serious threat to their health or safety shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.
10. Jurors who were laid off, became unemployed, or otherwise suffered an economic loss due to the COVID-19 pandemic, and who show they would suffer further economic loss as a result of jury service, shall be excused for undue hardship.
11. Juror qualification forms shall be reviewed prior to the first day of service and any jurors who meet the criteria under sections 8, 9, or 10 of this Order shall have their service postponed or be excused prior to reporting.
12. The following health and safety precautions for grand jury proceedings must be followed:
 - a. Proceedings must be conducted in a large ventilated space. If the designated area is not large enough, then grand jury proceedings shall be conducted in the courtroom. The number of persons present in the designated area shall not exceed 33% of its occupancy capacity.
 - b. All jurors will be required to wear facial coverings while inside the court facility.
 - c. The judge presiding over the grand jury and the Commonwealth Attorney shall ensure that each designated area is demarked with six-foot spacing to maintain appropriate social distancing.
 - d. Any common area in the court facility that cannot be configured to maintain appropriate social distancing must be closed.
 - e. The proceedings must be scheduled so as to reduce the number of individuals entering, exiting, or gathering at a certain time; and
 - f. At the conclusion of the proceedings, the presiding judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the COVID-19 Health and Safety Requirements for the Expansion of Operations for the Kentucky Court of Justice, Administrative Order 2020-39.

Each chief district and chief circuit judge is encouraged to develop a local plan and enter local court rules regarding any additional restrictions or changes in local procedure, consistent with this Order. Notwithstanding the requirement in SCR 1.040(3)(a) that proposed local rules be published and submitted to the local bar and circuit court clerk(s), any proposed local court orders or rules shall have binding effect if submitted with majority support of the judges and approved by the Chief Justice. Proposed local court orders or rules shall be submitted electronically by the chief district or chief circuit judge in Word format to localrules@kycourts.net for review. To the extent any Local Rules are inconsistent or otherwise conflict with this Order, this Order prevails.

This Order shall be effective June 1, 2020, and until further Order of this Court.

Entered this 19th day of May 2020.


CHIEF JUSTICE

All sitting; all concur.

Supreme Court of Kentucky

2020-64

AMENDED ORDER

**IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19
EMERGENCY: EXPANSION OF COURT PROCEEDINGS**

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that “[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

In light of the declared federal and state emergencies and considering the need to balance access to the courts and the constitutional rights guaranteed to the people of this Commonwealth with the health and safety of court employees, elected officials, and the public during the COVID-19 emergency, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders Administrative Order 2020-44 replaced in its entirety as follows:

A. JURIES

1. Postponements and Excusals. Juror qualification forms shall be reviewed prior to the first day of service and any jurors who meet the following criteria shall have their service postponed or be excused prior to reporting.
 - a. Jurors who are ill or in a high-risk category or are caring for someone who is ill or in a high-risk category shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.
 - b. Jurors who are unable to wear a facial covering because doing so would pose a serious threat to their health or safety shall have their jury service postponed to a later date. The court should document the reason as COVID-19 for the postponement of service.
 - c. Jurors who were laid off, became unemployed, or otherwise suffered an economic loss due to the COVID-19 pandemic,

and who show they would suffer further economic loss as a result of jury service, shall be excused for undue hardship.

2. Petit Jurors and Jury Trials. Criminal jury trials may resume after August 1, 2020, with in-custody trials taking priority over all other matters. Civil jury trials may resume after October 1, 2020.

Jury trials shall only resume if the trial judge determines in his or her discretion, after having considered local public health conditions and the health and safety requirements established by the Supreme Court, that it is advisable.

- a. Jury trials and voir dire must be conducted at a court facility in the county, unless otherwise authorized by the Supreme Court in accordance with KRS 26A.100.
- b. Petit juror orientation shall be conducted by one of the following formats, as directed by the chief circuit judge:
 - i. Requiring petit jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or
 - ii. Requiring petit jurors to participate in a remote video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person juror orientation; or
 - iii. Requiring petit jurors to attend orientation as part of the voir dire proceedings. Jury panels shall be subdivided into smaller groups so that there is six (6) feet distance between all jurors in the courtroom at all times. The Jury Management Program may be utilized for grouping.
- c. Voir dire shall be conducted in smaller groups with staggered reporting times and over the course of multiple days, if necessary.
- d. In all cases scheduled for a jury trial, a final pretrial conference shall be conducted no more than three days prior

- to the date of trial. If jurors still need to report for a jury trial, they shall be notified after the final pretrial conference.
- e. Bench conferences shall be conducted outside the presence of the jury where a complete record can be made while still maintaining appropriate social distancing.
 - f. The use of technology to publish exhibits to the parties, counsel, and jurors should be strongly encouraged, with preservation of the exhibits shown.
 - g. Attorneys shall be granted a reasonable continuance if they or their clients are ill or in a high-risk category or are caring for someone who is ill or in a high-risk category.
 - h. Access to view jury trials must be provided to members of the public and media. However, in-person viewing shall be subject to the social distancing, capacity limitations, and other restrictions set out in this Order or any other subsequent Order issued by this Court. If there is no room for members of the public or media to be inside the courtroom, the court shall provide access to view the trial by live audio or video or by digital recording.
3. Grand Jury Proceedings. A grand jury may be conducted remotely via available telephonic or video technology, subject to applicable Rules of Criminal Procedure. The indictment may be returned to the circuit judge using available technology. If a grand juror is unable to participate remotely, the chief circuit judge shall excuse that grand juror either temporarily or permanently and swear another grand juror from the current jury panel in place of the one excused.
- a. Access to view the return of indictments pursuant to RCr 5.20 must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.
 - b. Any case where the 60-day period in RCr 5.22(3) or an extension thereof was tolled by operation of Administrative Order 2020-28 shall be presented to the grand jury on or before July 30, 2020. The Commonwealth's Attorney is encouraged to give priority to cases where the defendant is in custody and proceedings have been tolled by the Supreme Court's response to the COVID-19 emergency.

- c. Existing grand jury panels may be extended at the discretion of the court, subject to the 20-day limitation set out in AP Part II, Sec. 19(3).
 - d. If an existing grand jury panel is unable to be extended, juror education shall be conducted by one of the following formats, as directed by the chief circuit judge:
 - i. Requiring grand jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring grand jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or
 - ii. Requiring grand jurors to participate in a remote video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person grand jury orientation; or
 - iii. Requiring grand jurors to report in person for orientation on the date they report for grand jury service. Grand jury panels shall be subdivided into smaller groups with staggered reporting times. The Jury Management Program may be utilized for grouping.
 - e. The Chief Circuit Judge shall ensure that each designated grand juror orientation area is demarked with six-foot spacing to maintain appropriate social distancing.
4. Health and safety precautions. The following health and safety precautions for grand jury proceedings and jury trials must be followed:
- a. Grand jury proceedings must be conducted in a large ventilated space so that there is six (6) feet distance between all jurors in the courtroom at all times. If the designated grand jury area is not large enough, then grand jury proceedings shall be conducted in the courtroom.
 - b. For grand jury proceedings, the judge presiding over the grand jury and the Commonwealth Attorney shall ensure that each designated area is demarked to maintain

appropriate social distancing among witnesses, the Commonwealth Attorney, and grand jurors.

- c. For jury trials, the judge presiding over the trial shall ensure that the courtroom is demarked to maintain appropriate social distancing among and proper use of facial coverings by parties, attorneys, witnesses, jurors, and members of the public or media.
- d. Any space utilized by grand jurors or petit jurors must be configured to maintain appropriate social distancing.
- e. Grand jury proceedings and voir dire must be scheduled so as to reduce the number of individuals entering, exiting, or gathering at a certain time.
- f. At the conclusion of the proceedings, the presiding judge shall ensure the microphones, tables, and other exposed surfaces are thoroughly cleaned and disinfected as provided by the COVID-19 Health and Safety Requirements for the Expansion of Operations for the Kentucky Court of Justice, Administrative Order 2020-55.

B. CIVIL MATTERS

- 1. **Evictions.** All actions for residential and commercial eviction may proceed, subject to the following:
 - a. All eviction filings must be accompanied by form AOC-1027 (“Verification of Compliance with CARES Act”), verifying that the eviction is not prohibited under Public Law 116-135 (the “CARES Act”). The AOC-1027 shall be filed with every eviction filing, and the circuit court clerk shall reject any such filing unless it is accompanied by the AOC-1027. The fillable version of this form is available at kycourts.gov on the Legal Forms page under the Resources tab.
 - b. Residential evictions subject to the CARES Act must comply with the following requirements:
 - i. In accordance with Section 4024 of the CARES Act, the following provisions shall apply to actions for eviction from “covered dwellings,” as defined in subsection (a) of Section 4024, for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent.

- a) Thirty days' notice to vacate is required prior to filing an action for eviction. The lessor of a "covered dwelling" shall not require the tenant to vacate until 30 days after the date on which the lessor provides the tenant with notice to vacate; and
 - b) Fees, penalties, or other charges are prohibited. The lessor of a "covered dwelling" shall not charge a tenant any fees, penalties, or other charges that accrued during the period between March 27, 2020, and July 25, 2020, when those fees, penalties, or other charges are related to nonpayment of rent.
- ii. In accordance with Section 4023 of the CARES Act, the following provisions shall apply to actions for eviction from "federally backed multi-family properties," as defined in subsection (f) of Section 4023, solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent:
- a) Evictions and notice to vacate are prohibited during the period of forbearance. Evictions from "federally backed multi-family properties" solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent are prohibited for the duration of the period during which the borrower has received forbearance of its mortgage loan payments, and notice to vacate shall not be issued until after the expiration of the forbearance.
 - b) Thirty days' notice to vacate is required prior to filing an action for eviction. The multi-family borrower shall not require the tenant to vacate until 30 days after the date on which the borrower provides the tenant with notice to vacate.
 - c) Fees, penalties, or other charges are prohibited. The multi-family borrower shall not charge a tenant any fees, penalties, or other charges that accrued during the period of forbearance when those fees, penalties, or other charges are related to nonpayment of rent.

- c. Actions for eviction that were filed prior to March 27, 2020, are not subject to the CARES Act and, therefore, are not subject to the provisions of subsection b above.
 - d. In consideration of the creation of the Healthy at Home Eviction Relief Fund, and to ensure landlords and tenants have access to available rental assistance, the following procedures shall apply effective September 21, 2020 to evictions from residential premises in which only nonpayment of rent is alleged:
 - i. At the initial hearing noticed by the summons, the parties must be verbally informed that funding agencies may be able to assist tenants with payment for some or all of the rent that is owed and assist landlords with recouping missed or late rent payments. Parties should also be informed that a judgment is not necessary to receive assistance.
 - ii. Following the initial hearing, all eviction proceedings shall be held in abeyance for fourteen days and rescheduled for the next available court date unless the landlord dismisses the complaint, with or without prejudice; a tenant who was properly served under KRS 383.210 or KRS 383.540 fails to appear; or the parties reach an agreement and file an AOC-218, Forcible Detainer Settlement Agreement, before the fourteen days expire.
 - iii. A request for a jury trial must be made within fourteen days of the initial hearing.
 - iv. To the extent possible, the court should require remote participation in eviction proceedings. If a party cannot appear remotely, in-person proceedings must be held in accordance with Administrative Order 2020-63.
 - e. Nothing in this Order shall be interpreted to suspend or otherwise excuse an individual's duty to pay rent or to comply with any other obligation under tenancy.
2. **Judicial Sales.** Upon the effective date of this Order and with the authorization of the Chief Circuit Judge, judicial sales pursuant to Administrative Procedures of the Court of Justice (AP) Part IV may resume.

- a. All sales conducted in-person must meet the health and safety measures required by Kentucky Supreme Court Administrative Order 2020-55, “Kentucky Court of Justice Response to COVID-19 Emergency – Health and Safety Requirements,” including but not limited to, the requirements for facial coverings, limited occupancy capacity, social distancing, and cleaning/disinfecting. The Chief Circuit Judge must ensure that the master commissioner is observing and enforcing the health and safety measures required by Administrative Order 2020-55.
- b. Notwithstanding AP Part IV, Section 5 (3), when conducting sales in-person, the advertisement shall include a brief description of the COVID-19 health and safety measures that must be observed.

C. FAMILY MATTERS

1. **Child Support.** Until October 1, 2020, judges shall give priority to the following child support matters:
 - a. Cases that are determining paternity;
 - b. Cases establishing initial child support obligations;
 - c. Cases that are being reopened; and
 - d. Cases in which the obligee’s **only financial support** is income from employment or unemployment benefits, maintenance support, non-public benefits, or child support.

All other child support matters shall be continued until after October 1, 2020, unless a judge determines in his or her discretion that a matter requires prompt attention.

D. CRIMINAL MATTERS

1. **Show Cause Dockets.** All show cause dockets for payment of fines and court costs shall be scheduled no sooner than November 1, 2020.
2. **Bench Warrants.** Judges should continue to issue summonses or notices to appear in lieu of bench warrants, unless the judge has good cause to believe a defendant will not appear voluntarily upon a summons or notice to appear.

E. NIGHT TRAFFIC COURT

Due to health considerations and current staffing limitations, night traffic courts in Jefferson County are suspended until further notice.

F. LOCAL PROTOCOLS

1. Each chief district and chief circuit judge must develop a local protocol regarding any additional restrictions or changes in local procedure, consistent with this Order. Proposed local protocols shall be submitted electronically by the chief district or chief circuit judge to localrules@kycourts.net for posting to the Kentucky Court of Justice website. To the extent any local protocols are inconsistent or otherwise conflict with this Order, this Order prevails. Any local protocol that substantially deviates from this Order or other Administrative Orders of this Court may be subject to review and final approval by the Chief Justice under SCR 1.040(3).
2. Concerns regarding local application or implementation of this order may be submitted to COVIDcourtconcerns@kycourts.net.

This Order shall be effective upon entry, with the exception of Section B(1)(d), which shall be effective September 21, 2020.

Entered this 28th day of August 2020.


CHIEF JUSTICE

All sitting; all concur.

Supreme Court of Kentucky

2021-02

AMENDED ORDER

**IN RE: KENTUCKY COURT OF JUSTICE RESPONSE TO COVID-19
EMERGENCY: COURT PROCEEDINGS**

In addition to those rights provided by the U.S. Constitution, Section 14 of the Kentucky Constitution guarantees the citizens of this Commonwealth that “[a]ll courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.”

In light of the declared federal and state emergencies and considering the need to balance access to the courts and the constitutional rights guaranteed to the people of this Commonwealth with the health and safety of court employees, elected officials, and the public during the COVID-19 emergency, the Supreme Court, under Section 116 of the Constitution and Supreme Court Rule 1.010, hereby orders Administrative Order 2020-72 replaced in its entirety as follows:

A. JURIES

1. Jury Trials. All civil and criminal jury trials shall be postponed until after April 1, 2021, with in-custody criminal trials taking priority over all other matters.
2. Grand Jury Proceedings. Grand juries shall be conducted remotely via available telephonic or video technology, subject to applicable Rules of Criminal Procedure. The indictment may be returned to the circuit judge using available technology. If a grand juror is unable to participate remotely, the chief circuit judge shall excuse that grand juror either temporarily or permanently and swear another grand juror from the current jury panel in place of the one excused.
 - a. Access to view the return of indictments pursuant to RCr 5.20 must be provided to members of the public and media. Access may be provided by live audio or video or by digital recording.
 - b. If a jurisdiction determines that a grand jury cannot be conducted remotely, the 60-day period in RCr 5.22(3) shall be tolled during the effective dates of this Order. Any case where the 60-day period or an extension thereof is tolled by operation of this Order shall be presented to the grand jury within 60 days from the expiration of this Order.

- c. After the expiration of this order, courts are encouraged to give priority in setting hearing and trial dates to cases where the defendant is in custody and proceedings have been tolled by the Supreme Court's response to the COVID-19 emergency.
- d. Existing grand jury panels may be extended at the discretion of the court, subject to the 20-day limitation set out in AP Part II, Sec. 19(3).
- e. If an existing grand jury panel is unable to be extended, juror education shall be conducted by one of the following formats, as directed by the chief circuit judge:
 - i. Requiring grand jurors to read juror reporting information posted on each county's juror information page on the Kentucky Court of Justice website or requiring grand jurors to watch the statewide videos entitled "Jury service: A jury of your peers starts with you" (Video #2) and "Jury service: A fair trial starts with you" (Video #3) on the Jury Service page located on the Kentucky Court of Justice website; or
 - ii. Requiring grand jurors to participate in a remote video or audio orientation using telephonic or video technology such as Zoom, Skype, etc., which shall be conducted in the same manner as an in-person grand jury orientation.

B. CIVIL MATTERS

- 1. **Evictions.** All actions for residential and commercial eviction may proceed, subject to the following:
 - a. All eviction filings must be accompanied by form AOC-1027 ("Verification of Compliance with CARES Act"), verifying that the eviction is not prohibited under Public Law 116-135 (the "CARES Act"). The AOC-1027 shall be filed with every eviction filing, and the circuit court clerk shall reject any such filing unless it is accompanied by the AOC-1027. The fillable version of this form is available at kycourts.gov on the Legal Forms page under the Resources tab.
 - b. Residential evictions subject to the CARES Act must comply with the following requirements:
 - i. In accordance with Section 4024 of the CARES Act, the following provisions shall apply to actions for eviction from "covered dwellings," as defined in subsection (a) of Section 4024, for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent.

- a) Thirty days' notice to vacate is required prior to filing an action for eviction. The lessor of a "covered dwelling" shall not require the tenant to vacate until 30 days after the date on which the lessor provides the tenant with notice to vacate; and
 - b) Fees, penalties, or other charges are prohibited. The lessor of a "covered dwelling" shall not charge a tenant any fees, penalties, or other charges that accrued during the period between March 27, 2020, and July 25, 2020, when those fees, penalties, or other charges are related to nonpayment of rent.
- ii. In accordance with Section 4023 of the CARES Act, the following provisions shall apply to actions for eviction from "federally backed multi-family properties," as defined in subsection (f) of Section 4023, solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent:
- a) Evictions and notice to vacate are prohibited during the period of forbearance. Evictions from "federally backed multi-family properties" solely for nonpayment of rent or fees, penalties, or other charges related to nonpayment of rent are prohibited for the duration of the period during which the borrower has received forbearance of its mortgage loan payments, and notice to vacate shall not be issued until after the expiration of the forbearance.
 - b) Thirty days' notice to vacate is required prior to filing an action for eviction. The multi-family borrower shall not require the tenant to vacate until 30 days after the date on which the borrower provides the tenant with notice to vacate.
 - c) Fees, penalties, or other charges are prohibited. The multi-family borrower shall not charge a tenant any fees, penalties, or other charges that accrued during the period of forbearance when those fees, penalties, or other charges are related to nonpayment of rent.

- c. Actions for eviction that were filed prior to March 27, 2020, are not subject to the CARES Act and, therefore, are not subject to the provisions of subsection b above.
 - d. In consideration of the creation of the Healthy at Home Eviction Relief Fund, and to ensure landlords and tenants have access to available rental assistance, the following procedures shall apply to evictions from residential premises in which only nonpayment of rent is alleged:
 - i. At the initial hearing noticed by the summons, the parties must be verbally informed that funding agencies may be able to assist tenants with payment for some or all of the rent that is owed and assist landlords with recouping missed or late rent payments. Parties should also be informed that a judgment is not necessary to receive assistance.
 - ii. Following the initial hearing, all eviction proceedings shall be held in abeyance for fourteen days and rescheduled for the next available court date unless the landlord dismisses the complaint, with or without prejudice; a tenant who was properly served under KRS 383.210 or KRS 383.540 fails to appear; or the parties reach an agreement and file an AOC-218, Forcible Detainer Settlement Agreement, before the fourteen days expire.
 - iii. A request for a jury trial must be made within fourteen days of the initial hearing.
 - iv. Proceedings must be held in accordance with Administrative Order 2020-71.
 - e. Nothing in this Order shall be interpreted to suspend or otherwise excuse an individual's duty to pay rent or to comply with any other obligation under tenancy.
2. **Judicial Sales.** Master Commissioners are authorized to conduct judicial sales remotely. In-person judicial sales shall be postponed or rescheduled until after April 1, 2021, unless they can be conducted outdoors safely and in accordance with CDC guidelines.

D. CRIMINAL MATTERS

- 1. **Show Cause Dockets.** All show cause dockets for payment of fines and court costs shall be rescheduled no sooner than April 1, 2021.
- 2. **Bench Warrants.** Judges should continue to issue summonses or notices to appear in lieu of bench warrants, unless the judge has good

cause to believe a defendant will not appear voluntarily upon a summons or notice to appear.

E. NIGHT TRAFFIC COURT

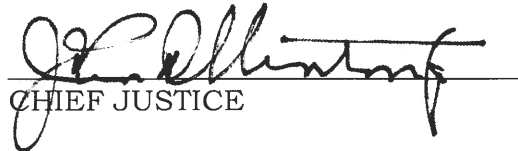
Due to health considerations and current staffing limitations, night traffic courts in Jefferson County are suspended until further notice.

F. LOCAL PROTOCOLS

1. Each chief district and chief circuit judge must develop a local protocol regarding any additional restrictions or changes in local procedure, consistent with this Order. Proposed local protocols shall be submitted electronically by the chief district or chief circuit judge to localrules@kycourts.net for posting to the Kentucky Court of Justice website. To the extent any local protocols are inconsistent or otherwise conflict with this Order, this Order prevails. Any local protocol that substantially deviates from this Order or other Administrative Orders of this Court may be subject to review and final approval by the Chief Justice under SCR 1.040(3).
2. Concerns regarding local application or implementation of this order may be submitted to COVIDcourtconcerns@kycourts.net.

This Order shall be effective January 6, 2021.

Entered this 6th day of January 2021.


CHIEF JUSTICE

All sitting; all concur.

Court News ...

The Supreme Court of South Carolina

DONALD W. BEATTY
CHIEF JUSTICE

POST OFFICE BOX 3543
SPARTANBURG, SOUTH CAROLINA 29304-3543

MEMORANDUM

TO: Circuit Court Judges
Family Court Judges
Probate Court Judges
Summary Court Judges

FROM: Chief Justice Beatty

RE: Amended Order Regarding the Operation of the Trial Courts During the
Coronavirus Emergency

DATE: December 16, 2020

Enclosed is an Amended Order Regarding the Operation of the Trial Courts During the Coronavirus Emergency. This order was filed by the Supreme Court of South Carolina today.

I do want to emphasize that this Amended Order should not be interpreted as having any impact on my decisions to stop the commencement of jury trials after December 4, 2020, and to delay the selection of new grand jurors. As indicated by footnote 3 of the Amended Order, I will continue to issue additional guidance and instructions as may be necessary to either expand or restrict trials and other activities as this pandemic progresses.

Enclosure

2020-12-16-01

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency
(As Amended December 16, 2020)1
Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants,

AGa49

lawyers and court employees.

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCrimP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMCMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Summary Court: the magistrate and municipal courts.

(4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) General Guidance. This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. If done in accordance with a plan approved by the Chief Justice,2 jury selections and jury trials may be conducted. These plans should adhere to the guidance contained in section (c)(3) below.

(2) Non-Jury Trials and Hearings. Subject to the guidance provided in section (c)(3) below, non-jury trials and hearings may be conducted.

(3) General Guidance Regarding Trials and Hearings.

(A) Remote Non-Jury Trials and Hearings. Except as may be restricted by any constitutional provision, statutory provision or other provision of this order, a non-jury trial or a hearing on a motion or other matter, including a first appearance in a criminal case, may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel.

(B) In-Person Trials and Hearings.³ An in-person trial or hearing may be conducted if a judge determines (1) it is appropriate to conduct an in-person trial or hearing and (2) the trial or hearing can be safely be conducted. If an in-person trial or hearing is held, the following will apply:

(i) Start and end times for trials and hearings must be staggered to minimize the number of persons who will be present at the same time in the courtroom or hearing room, and the waiting rooms, hallways or other common areas which support the courtroom or hearing room.

(ii) Unless the judge authorizes another person to attend, attendance at the trial or hearing shall be limited to the attorneys or parties in the matter, necessary witnesses and necessary court staff. In the event the matter has numerous counsel or parties, the judge may further limit attendance as may be necessary to safely conduct the hearing.

(iii) Except as restricted by constitutional or statutory provision, a judge may allow a party to appear or a witness to testify using remote communication technology. As an example, allowing a person who is at a heightened risk from COVID-19 due to age or serious underlying medical condition to appear or testify remotely might be an appropriate accommodation if requested by that person.

(iv) Except when necessary for the proceeding (such as handing an exhibit to the judge or opposing counsel, or counsel consulting with their client), all persons in the courtroom or hearing room must maintain at least six feet of distance from other persons in the room. Masks must be worn by all persons as specified by order of the Chief Justice dated July 30, 2020.⁴ To ensure social distancing can be maintained, it is recommended the maximum number of persons not exceed one person per 113 square feet of space in the courtroom or hearing room. This area may be reduced if plexiglass shields are being used, but the six foot distancing set forth above should be maintained.

(v) Efforts should be made to sanitize the witness stand and/or podium between witnesses and presentation by counsel. Further, before a subsequent trial or hearing is held, the courtroom or hearing room surfaces which may have been touched by participants in the prior matter, including door handles, should be sanitized.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may

readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Preliminary hearings may be conducted in-person or by remote communication technology subject to the requirements specified by section (c)(3) above. However, a preliminary hearing conducted by remote communication technology will not be conducted over the objection of the defendant. In the event a defendant objects to a preliminary hearing being conducted using remote communication technology, and the judge determines that an in-person hearing cannot safely be conducted, the preliminary hearing may be continued until such time as the judge determines an in-person hearing can be safely conducted.⁵

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is

preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders.

(A) Scheduling Orders Issued Prior to April 3, 2020. Under a prior version of this order, all deadlines under scheduling orders issued prior to April 3, 2020, were stayed, retroactive to March 13, 2020. Forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency, this stay shall end.

(B) Scheduling Orders Issued On or After April 3, 2020. A new or amended scheduling order issued on or after April 3, 2020, will not be subject to any stay under this order. Both the decision to issue such an order and the terms of that order must consider the impact the emergency has on the ability of the parties and counsel to proceed. Judges are encouraged to seek input from the parties and counsel before issuing a new or amended scheduling order.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. Due to the increased need for extensions at the start of this emergency, the filing fees for a motion for an extension of time were waived, and the due dates for trial court filings due on or after April 3, 2020 were automatically extended for thirty (30) days. That need has now decreased.⁶ Accordingly, the filing fee waiver shall not apply to any motions for extensions filed on or after January 16, 2021. Further, the automatic extension shall not apply to any action or event due on or after January 16, 2021.

(B) Forgiveness of Procedural Defaults Since March 13, 2020, to April 3, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default was forgiven, and the required action was required to be taken by May 4, 2020. If a dismissal or other adverse action has been taken, that adverse action was to be rescinded.

(C) Extensions by Consent. The provision in Rule 6(b), SCRPC, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCPP, or Rule 29, SCRCrimP. Further, these provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.⁷ Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(D) Entrance Screening and Protective Masks. All persons entering a courthouse shall be screened for fever and shall wear a protective mask while in the courthouse as required by the order of the Chief Justice dated July 30, 2020.⁸

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).⁹ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be

construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRPC, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRPC, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRPC, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on

that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(17) Arrest and Search Warrants. Due to this emergency, it may not be possible for an officer seeking an arrest warrant or a search warrant to appear before the judge to be sworn and sign the warrant. Therefore, a judge may use the procedures provided in section (c)(7) above to remotely administer the oath to the officer and, if appropriate, the judge may take sworn testimony using remote communication technology to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

(18) Discovery. Depositions and other discovery matters may be conducted using remote communication technology.

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. The Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above. County grand juries may convene in-person so long as the Chief Judge for Administrative Purposes determines grand jurors can be safely distanced and equipped with protective gear, and meeting rooms and courtrooms sanitized. To help ensure appropriate social distancing can be maintained, a minimum of 113 square feet of space per person should be available during any grand jury proceedings, including deliberations.

(3) Guilty Pleas. Guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at <https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf>. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) **Family Court.** The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

- (i) The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.
- (ii) Updated signed Financial Declarations for each party.
- (iii) An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.
- (iv) Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:

- a. The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.
- b. Setting forth the education level obtained by the party, the employment status of the party and the health of the party.
- c. There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.
- d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.
- e. The party has given and received full financial disclosure.
- f. The party has had the benefit of an experienced family law attorney.
- g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.
- h. The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.
- i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.
- j. The Agreement is in the best interests of the children, if there are any.
- k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.
- l. The party is aware of the applicable contempt sanctions associated with non-compliance.

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3) of this order.

(4) Execution of Bench Warrants. While the Chief Justice temporarily suspended the execution of bench warrants for non-payment of child support and alimony, that suspension has expired. Therefore, bench warrants issued by the family court shall be promptly executed by appropriate law enforcement personnel.

(g) Probate Court. The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann. § 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at <https://www.sccourts.org/forms/> which are either an affidavit or require an oath or affirmation to be administered.

(h) Summary Court. The following additional guidance is provided regarding the Summary Courts:

(1) Bond Hearings in Criminal Cases. Bond hearings shall be conducted in the manner specified by section (c)(3) above. The frequency of these bond hearings shall be specified by the Chief Justice.¹¹ In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) Transmission of Warrants for General Sessions Offenses. Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP. If the defendant is incarcerated at the South Carolina Department of Corrections, the judge shall also transmit a copy of the annotated warrant to the Office of General Counsel at the South Carolina Department of Corrections.

(3) Guilty Pleas. For offenses within the jurisdiction of the summary court (including those cases transferred to the summary court pursuant to S.C. Code Ann. § 22-3-545), guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. A defendant charged with criminal offenses, traffic violations, ordinance violations, and administrative violations within the jurisdiction of the summary courts may plead guilty by affidavit or certification. This procedure may only be utilized by persons represented by an attorney and desiring to plead guilty where the charge does not carry imprisonment as a possible punishment or where the prosecutor or prosecuting law enforcement officer

and defense attorney have agreed that the recommended sentence will not result in jail time. If applicable, the prosecutor or prosecuting law enforcement officer must comply with the Victims' Bill of Rights under Article I, § 24 of the South Carolina Constitution.¹²

(i) Effective Date and Revocation of Prior Orders and Memoranda.

This order is effective immediately. Unless extended, this order shall be rescinded in ninety (90) days. This order replaces the following orders and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

(3) Order dated May 29, 2020, entitled "County Grand Juries."

1 This order was initially filed on April 3, 2020, and has been amended three times. On April 14, 2020, changes were made to sections (c)(5) and (c)(8). On April 22, 2020, section (c)(17) was added. This latest order amends sections (c)(1), (c)(2) (c)(3), (c)(4), (c)(6), (c)(8), (c)(9), (d)(2), (d)(3), (f)(1)(C), (h) (1), (h)(2), (h)(3), and (i), and added new sections (c)(11)(D), (c)(18), (f)(4) and (i)(3).

2 To obtain approval of a plan, the plan should be submitted to the Office of Court Administration. Since the plan will have to address courtroom and other facility specific information, a separate plan will need to be submitted for the circuit court in each county. Further, a separate plan will need to be submitted by each magistrate, municipal and probate court. Court Administration should be contacted to obtain additional advice and assistance regarding the content and requirements that should be addressed in any plan.

3 The guidance in this order is, of course, subject to such additional orders and directions as the Chief Justice may prescribe as the administrative head of the unified judicial system under Article V, § 4, of the South Carolina Constitution. As it relates to live hearings or trials, the ability to safely conduct live proceedings will undoubtedly vary significantly over time, and we are confident the Chief Justice will provide the trial courts with additional guidance and instructions as may be necessary to either expand or restrict live proceedings as this pandemic progresses.

4 This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

5 If a preliminary hearing is not held before the defendant is indicted by the grand jury, a preliminary hearing will not be held. Rule 2(b), SCRCrimP.

6 As explained by the order of April 3, 2020, the automatic extension was intended to give "lawyers and self-represented litigants appearing before the trial courts ... time to take actions to protect themselves and their families." Since sufficient time has been provided for this to occur, and most lawyers and litigants have been able to adjust to working remotely, this automatic extension is no longer warranted.

7 One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard. <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

8 This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

9 The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. _

10 See Orders of the Chief Justice dated May 7, 2020 and June 5, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2510> and <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2497>).

11 Currently, the Chief Justice has directed bond hearings be held twice a day. See Memorandum of the Chief Justice dated September 25, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2530>).

12 This language regarding pleas by affidavit or certification incorporates language from a May 7, 2020, order of the Chief Justice (available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-07-01>).

s/Donald W. Beatty_____ C.J.

s/John W. Kittredge_____ J.

s/Kaye G. Hearn_____ J.

s/John Cannon Few_____ J.

s/George C. James, Jr._____ J.

Columbia, South Carolina
April 3, 2020

As Amended December 16, 2020

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9135

TWENTY-NINTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. The Twenty-Sixth Emergency Order (Misc. Dkt. No. 20-9112) is renewed as amended.

3. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than February 1, 2021;

b. in all proceedings under Subtitle E, Title 5 of the Family Code:

(i) extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1);

(ii) for any case previously retained on the court’s docket pursuant to Section 263.401(b) or (b-1), or for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19, extend the dismissal for an additional period not to exceed 180 days from the date of this Order;

c. except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

d. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

e. conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;

f. require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has: (i) COVID-19 or flu-like symptoms, or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;

g. take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

4. Courts must not conduct in-person proceedings contrary to the *Guidance for All Court Proceedings During COVID-19 Pandemic* (“Guidance”) issued by the Office of Court Administration, which may be updated from time to time, regarding social distancing, maximum group size, and other restrictions and precautions. Prior to holding any in-person proceedings, a court must submit an operating plan that is consistent with the requirements set forth in the Guidance. Courts must continue to use all reasonable efforts to conduct proceedings remotely.

5. Existing grand juries may meet remotely or in-person as long as adequate social distancing and other restrictions and precautions are taken to ensure the health and safety of court staff, parties, attorneys, jurors, and the public. Courts should consider extending the term of a grand jury under Section 24.0125 of the Texas Government Code and reassembling discharged grand juries under Article 19.41 of the Texas Code of Criminal Procedure.

6. A justice or municipal court must not hold an in-person jury proceeding, including jury selection or a jury trial, prior to February 1.

7. A district court, statutory or constitutional county court, or statutory probate court must not conduct an in-person jury proceeding unless:

a. the local administrative district judge for the county in which the court is located has, before the jury proceeding and after conferring with the judges in the county and the local public health authority, submitted a plan for conducting jury proceedings consistent with the Guidance issued by the Office of Court Administration for conducting jury proceedings;

b. to assist with coordination of local resources and to manage capacity issues, the court has obtained prior approval for that jury proceeding from the local administrative district judge and Regional Presiding Judge;

c. not more than five days before the jury proceeding, the local administrative district judge has consulted the local public health authority and verified that local health conditions and plan precautions are appropriate for the jury proceeding to proceed;

d. the court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding; and

e. the court has established communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 30 days, currently have symptoms of COVID-19, or have had recent known exposure to COVID-19.

8. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor. In all other cases, including cases in justice and municipal courts, remote jury proceedings must not be conducted unless the court has complied with paragraph 7(d).

9. Except for non-binding proceedings, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.

10. The Office of Court Administration should issue detailed guidance to assist courts wishing to conduct remote jury proceedings and should offer, to the greatest degree possible, assistance to those courts in conducting the remote jury proceedings.

11. Pursuant to Sections 74.046 and 74.047 of the Texas Government Code, the Regional Presiding Judges are assigned the following duties:

a. ensure that all courts in each region are operating in full compliance with the Court's Orders and the Guidance issued by the Office of Court Administration;

b. ensure that all trial court judges in each region, including justices of the peace and municipal court judges, do not conduct in-person proceedings, including in-person jury proceedings, inconsistent with the Court's Orders and the latest Guidance issued by the Office of Court Administration;

c. report to the office of the Chief Justice of the Supreme Court any proceedings that are being conducted in the regions—and the court in which the proceedings are being conducted—that are inconsistent with the Court's Orders and the Guidance issued by the Office of Court Administration; and

d. assist each region's local governments and courts to ensure that courts have the ability to conduct court business.

12. The Office of Court Administration should coordinate with the Regional Presiding Judges to monitor jury and other court proceedings in Texas and the Texas Department of State Health Services regarding the public health situation in Texas and its regions. The Office of Court Administration should adjust its Guidance and make recommendations to the Court as necessary to ensure the health of court staff, parties, attorney, jurors, and the public.

13. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.

14. An evidentiary panel in an attorney professional disciplinary or disability proceeding may—and must to avoid risk to panel members, parties, attorneys, and the public—without a participant's consent:

a. conduct the proceeding remotely, such as by teleconferencing,

videoconferencing, or other means;

b. allow or require anyone involved in the proceeding—including but not limited to a party, attorney, witness, court reporter—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and

c. consider as evidence sworn statements or sworn testimony given remotely, such as by teleconferencing, videoconferencing, or other means.

15. This Order is effective immediately and expires February 1, 2021, except as otherwise stated herein, unless extended by the Chief Justice of the Supreme Court.

16. The Clerk of the Supreme Court is directed to:

a. post a copy of this Order on www.txcourts.gov;

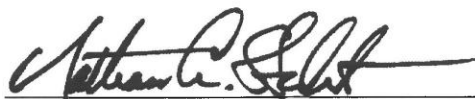
b. file a copy of this Order with the Secretary of State; and

c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

17. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

Dated: November 11, 2020

JUSTICE BLACKLOCK dissents.



Nathan L. Hecht, Chief Justice

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
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DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
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TRENTON, NEW JERSEY 08625-0085

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
CRIMINAL PART
INDICTMENT NO. 20-07-00221-I

STATE OF NEW JERSEY,	:	
	:	
Plaintiff,	:	<u>CRIMINAL ACTION</u>
	:	
v.	:	CERTIFICATION OF DAG MALLORY SHANAHAN REGARDING VIRTUAL STATE GRAND JURY
OMAR VEGA-LARREGUI,	:	
	:	
Defendant.	:	

I, MALLORY SHANAHAN, of full age, certifies as follows:

1. I am a Deputy Attorney General of the State of New Jersey and as such, I am fully familiar with the facts set forth herein. I make this certification in support of the Office of the Attorney General’s amicus brief in opposition to the Motion to Dismiss the Indictment in the matter of State v. Omar Vega-Larregui, Mercer County Indictment No. 20-07-00221-I, currently being prosecuted by the Mercer County Prosecutor’s Office.
2. On March 18, 2020 the operations of the State Grand Jury were suspended due to the COVID-19 pandemic, and declared State of Public Health Emergency.
3. For over five months, the State Grand Jury remained closed, foreclosing cases from moving forward in the legal process, and stalling active investigations.
4. On May 14, 2020, the Supreme Court authorized a pilot program for virtual grand jury. And on August 17, 2020, the State Grand Jury joined Mercer and Bergen Counties in presenting matters in a completely remote format.

5. Since that time the Division of Criminal Justice has successfully presented more than 60 cases to date ranging from straightforward drug and weapons charges, to multi-defendant Human Trafficking cases.
6. In my capacity as a Special Assistant to the Director of the Division of Criminal Justice, I have acted as the attorney supervisor of the State Grand Jury since the switch was made to virtual proceedings.
7. At the outset of the virtual pilot program, I, along with the State Grand Jury staff and Mercer County Jury Management Office, worked extensively in cooperation with the Administrative Office of the Courts (“AOC”) to craft and refine our virtual program. Prior to going live with grand jurors, we participated in numerous practice sessions, and were required to demonstrate our proficiency with the technology in mock sessions for the AOC Director’s Office. We also developed and put into place a number of safeguards to ensure that the virtual State Grand Jury process remained secure, fair, and impartial.
8. As we began our program, the Director’s Office instructed us to begin presenting smaller, more straightforward cases to start off our panels. We were not instructed to limit our presentations with regard to degrees of crime, or detainment status. At the time, I explained to the Director’s Office representatives that we would begin with the smaller cases on our backlog list, but we would need to expand to more complicated matters in short order due to the nature of the cases prosecuted by the Division.
9. We initially began our program with two State Grand Jury panels that were selected prior to the shutdown, but had not yet begun their jury service. As those panels expired, they were replaced with new panels that were selected using a virtual selection process with the Mercer County Jury Management Office and Mercer County Judges. We have thus far participated in four virtual selections.
10. Our virtual State Grand Jury impanelments are organized by the Mercer County Jury Management Office. Summonses are sent out to jurors in the normal course, however rather than appearing in person in Trenton, the jury pool is given instructions to appear via Zoom. Potential jurors are also polled as to their access to technology, and the Mercer County Jury staff ensures that every individual who needs technology to participate in the selection process is provided with a tablet and/or internet

connectivity. Additionally, during the selection process, jurors are permitted to use their cell phones to participate.

11. Just as when we impanel a State Grand Jury in person, 100 potential jurors were summoned to participate in the virtual State Grand Jury selections. For purposes of context, it should be noted that the four selections that occurred virtually had been previously summoned for jury service prior to the pandemic, and had to be rescheduled a number of months later. As is evident from the jury pool statistics, the number of potential jurors in the jury pool during selection was not significantly different in the virtual context than in person.
12. State Grand Jury Panel 749 was selected on November 19, 2020. Prior to that date 13 potential jurors were excused from the selection process by the Court. An additional 30 potential jurors failed to appear on the date of the selection, resulting in 57 potential jurors present at the selection.
13. State Grand Jury Panel 750 was selected on December 3, 2020. Prior to that date 5 potential jurors were excused from the selection process by the Court. An additional 26 potential jurors failed to appear on the date of the selection, resulting in 69 potential jurors present at the selection.
14. State Grand Jury Panel 751 was selected on December 17, 2020. Prior to that date 9 potential jurors were excused from the selection process by the Court. An additional 26 potential jurors failed to appear on the date of the selection, resulting in 65 potential jurors present at the selection.
15. State Grand Jury Panel 752 was selected on January 21, 2021. Prior to that date 6 potential jurors were excused from the selection process by the Court. An additional 21 potential jurors failed to appear on the date of the selection, resulting in 73 potential jurors present at the selection.
16. For comparison purposes, the four previous selection processes, which were conducted in person were Panels 744, 745, 746, and 747. Panel 748, due to be selected on March 19, 2020, was dismissed by the Court due to the pandemic.
17. State Grand Jury Panel 744 was selected on November 21, 2019. Prior to that date 18 potential jurors were excused from the selection process by the Court. An additional

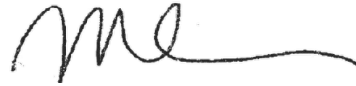
- 7 potential jurors failed to appear on the date of the selection, resulting in 75 potential jurors present at the selection.
18. State Grand Jury Panel 745 was selected on January 16, 2020. Prior to that date 14 potential jurors were excused from the selection process by the Court. An additional 3 potential jurors failed to appear on the date of the selection, resulting in 83 potential jurors present at the selection.
 19. State Grand Jury Panel 746 was selected on February 20, 2020. Prior to that date 6 potential jurors were excused from the selection process by the Court. An additional 13 potential jurors failed to appear on the date of the selection, resulting in 81 potential jurors present at the selection.
 20. State Grand Jury Panel 747 was selected on March 5, 2020. Prior to that date 19 potential jurors were excused from the selection process by the Court. An additional 5 potential jurors failed to appear on the date of the selection, resulting in 76 potential jurors present at the selection.
 21. During the selection, if any individual expresses concern regarding the technological aspects of participating in a virtual process, they are assured that the Courts will provide whatever technology they require, and they will be assisted at every turn with its use. No one is excused for reasons relating to technological access or capability. Jurors are excused from service for the statutory excuses in N.J.S.A. 2B:21-2, and N.J.S.A. 2B:20-10, or in the discretion of the Assignment Judge or her designee.
 22. After selection, but before each one of our State Grand Jury panels began, the jurors were polled as to their access to technology. If any juror indicated that they did not have access to a computer or tablet with a webcam and microphone, they were provided with one by the AOC. Jurors are not permitted to access virtual grand jury on a cell phone. Likewise, if a juror indicated they did not have internet access, they were provided a tablet by the AOC that had internet access through AT&T, paid for by the Judiciary.
 23. If a juror is provided with technology, that device is dropped off on their doorstep by their local County Judiciary Information Technology (“IT”) staff. County IT staff then call the juror and go through an “on-boarding” process, wherein their tablet is set up, and they are walked through how to use it.

24. Of the six panels that have participated in virtual State Grand Jury thus far, 17 jurors were provided with tablets by the Judiciary.
25. In addition, for every State Grand Jury session, the jurors are provided the names and phone numbers of three Office of the Attorney General IT staff who are on call to assist with jurors technical problems. Moreover, our State Grand Jury staff are on the Zoom sessions each day to walk jurors through whatever steps they need to take, including explicitly instructing them on which buttons to press, and where to find them.
26. During the sessions, we have created a rotating assignment wherein a second Deputy Attorney General will sit in on the presentations, along with our State Grand Jury staff, to monitor the jurors for technical issues. Jurors are instructed to interrupt or waive at their screens if they have any technical problems, or missed a part of the testimony. However, our DAsG and State Grand Jury staff are also monitoring for jurors whose screens may have frozen or gone dark. If a juror has a technical issue, the proceedings are paused while we attempt to remedy the issue for our jurors, sometimes with the assistance of our on call IT staff. If it can be remedied quickly, and the juror has not missed much of the testimony, we can go back and repeat the portions that they missed. If they have missed too much, that juror will be excused from voting on that case.
27. At the conclusion of each presentation, our juror foreperson also ensures that no one on the jury missed any portions of the testimony by reading a statement to the jury that is displayed upon the screen for him by our State Grand Jury staff. That statement asks the jurors the following: “Jurors, during the presentation of this case, did any of you experience any technical problems that affected your ability to hear and/or observe the proceedings. If so, please let me know by raising your hand now so we can call the witness back.” The Deputy Attorney General monitoring the proceedings that day will then ask for a show of hands. Again, any juror who missed any portion of the proceeding, will not be permitted to vote on that case.
28. If any juror has repeated technical problems during the presentations that cannot be cured by our on call IT staff, we would then make arrangements to provide them with a Judiciary tablet in order to continue their participation in jury service.

29. During the State Grand Jury sessions, our staff and the DAG assigned to monitor the day's session are also on guard to ensure that all of the jurors are paying attention to the proceedings, following the rules, and that no other individuals are able to see and/or overhear the presentations.
30. At the start of each session all of the jurors are checked in, on the record, by our State Grand Jury staff. During the check-ins, the jurors are asked to show their identification, and then do a 360 degree scan of the space around them to prove that they are alone in a secure and private area. Our monitoring DAsG watch the room scans, ask follow up questions or request adjustments as necessary, and once satisfied place on the record that the juror has been properly identified and their room has been scanned to ensure that they are alone.
31. Once all of the jurors have been checked in for the day, our monitoring DAG then reads to the jury the Supplemental Secrecy Charge as written in the Supplement to Directive 23-06, dated May 15, 2020. Among other important instructions, this Charge informs the jurors that they "must not allow other persons to see, hear, or otherwise observe the grand jury proceeding," that they "must not make a record of the grand jury proceeding" or allow others to do so, and that they must not discuss the nature of the grand jury proceedings outside of the deliberation process with their fellow grand jurors. The Supplemental Charge also warns jurors that there are "serious consequences for violating the rules," and a juror who violates the rules is subject to fines, jail time, or both.
32. Jurors are further instructed by our State Grand Jury staff and monitoring DAsG that they need to keep their eyes on the screen during the presentation of evidence. Jurors are frequently reminded that they are not permitted to have their cell phones out, be doing any other work, or be distracted in any other way from the matter at hand. Additionally, pursuant to an Order from our Supervising State Grand Jury Judge, Assignment Judge Mary C. Jacobson, jurors are not permitted to take notes during the sessions.
33. Our State Grand Jury staff and monitoring DAsG are watching out for any of these activities, and the jurors are aware that they are being watched for these purposes. If the monitoring DAG or the State Grand Jury staff suspects that any juror is not

following the rules, they will stop the proceeding and call out any problematic behavior. If necessary, the DAG may also have one of our Mercer County State Grand Jury Judges join us on the Zoom session to address any suspect juror behavior. Any such discussions are held on the record, and would a part of the transcript for that particular matter.

34. Thankfully, we have not have significant issues in this regard. Our State Grand Jury staff and Deputy Attorneys General take our responsibility to maintain a fair and secure Grand Jury seriously, and our jurors have acted in accordance with the solemnity of the process.



MALLORY SHANAHAN
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE

Dated: February 12, 2021