



PRESS RELEASE

**New York State
Unified Court System**

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Chief Judge's Commission to Reimagine the Future of NY's Courts Issues First Set of Recommendations

NEW YORK—The Commission to Reimagine the Future of New York's Courts, chaired by former New York State Bar Association President Henry M. Greenberg, today issued a report outlining recommended plans and goals for restarting in-person court proceedings, including grand juries and jury trials. The Commission, appointed by Chief Judge Janet DiFiore in mid-June to examine technological, regulatory and other long-term innovations, was also charged with providing short-term recommendations as the courts resume in-person operations amid the Covid-19 crisis.

The Commission's "Goals and Checklist for Restarting In-Person Grand Juries, Jury Trials and Related Proceedings" report includes step-by-step guidance on how to create customized court plans, based on local conditions, that prioritize public health and safety. The report also contains a comprehensive checklist on restarting trials; courthouse and courtroom access; jury pools; jury reporting and selection, among other key topics.

The Commission is made up of six working groups: trials; appellate practice; online courts; regulatory innovations; structural innovations; and technology. The report was produced by the working group focused on trials—led by Court of Appeals Associate Judge Michael J. Garcia and Robert Giuffra, a senior partner at Sullivan and Cromwell—and then adopted by the full Commission. The guidelines and checklists contained in

the report are based on the working group's feedback, as well as on protocols developed by other state and federal courts across the country.

"The recommendations outlined in today's report are an excellent starting point for New York's judges, court administrators and relevant stakeholders to consider as the Court System works to safely re-establish in-person operations," said Chief Judge DiFiore. "I am pleased by the Commission's efforts to date and look forward to its long-range proposals as we strive to deliver quality justice services to New Yorkers in today's rapidly evolving society."

"I am deeply grateful to the Commission for meeting the moment and producing in real time a report that will serve as a resource for trial courts and courthouses across the State. It is imperative that our criminal and civil justice systems be as operational as possible under the circumstances, and that grand jury proceedings and jury trials are conducted in a safe and secure manner. To this end, the Commission's report reflects its best efforts to provide useful support, guidance and assistance," said Henry Greenberg.

The Commission's report is attached.

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GOALS AND CHECKLIST

FOR RESTARTING IN-PERSON GRAND JURIES, JURY TRIALS AND RELATED PROCEEDINGS



IN GOD WE TRUST



PRODUCED BY THE COMMISSION TO REIMAGINE
THE FUTURE OF NEW YORK'S COURTS
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I. Each court should generate its own plan, based on local conditions, that prioritizes health and safety when restarting in-person grand juries, jury trials and related proceedings.

II. General goals to keep in mind:

- A. Health and safety of all visitors and staff.
- B. Clear and up-to-date communications to all interested parties.
- C. Limit courthouse occupancy and interaction among those present.
- D. Dedicate exclusive space for jury trials and jury assembly/deliberations.
- E. Limit courtroom use and the need for interaction in the courtroom.
- F. Strict adherence to all legal and constitutional requirements.



III. Checklist for Developing A Restart Plan for Grand Juries, Jury Trials and Related Proceedings

A. When and how to restart trials

1. What is the status of the health emergency in your county? Consult local and state health officials and assess whether reopening is yet feasible in your community.
2. Consult all guidance from the Office of Court Administration (OCA) on required and recommended safety measures in light of the COVID-19 pandemic and ensure that plans and protocols for restarting jury trials and other jury procedures are consistent with that guidance.
3. What jury trials need to go forward or take priority?
 - a. Criminal cases:
 - i. matter continued because of pandemic;
 - ii. speedy trial issues; and
 - iii. the accused is detained.
 - b. Civil cases:
 - i. prior continuances of trial dates;
 - ii. filing date;
 - iii. nature of the relief sought; and
 - iv. circumstances of the parties.
 - c. Determine whether parties would consider a bench trial.
4. Before in-person trials restart, consider best practices for, and implementation of, social distancing:
 - a. Consult with local and state health officials on *voir dire* procedures, conducting trial, and maintaining safe distances for all participants.
 - b. Create a diagram of the courtroom and other space intended for use by juries in consultation with health officials to accommodate social distancing and create a safe environment that instills confidence in jurors, staff, lawyers, witnesses, victims and all other participants that the health of all participants has been fully considered.
5. For criminal cases, coordinate with local law enforcement to ensure that safe transportation of incarcerated defendants is possible, or if virtual appearances are appropriate and feasible.



6. Determine where jury trials will take place, considering the following:
 - a. Security;
 - b. Connectivity (internet, A/V and other resources for wired courtroom capabilities);
 - c. Restroom access and procedures that allow for social distancing;
 - d. Safe entry and egress through elevators or stairwells; and
 - e. Safe means of moving about within the facility.
7. Operations during the pandemic must not impede defense counsel's Sixth Amendment obligations, including compliance with ethical obligations under relevant Rules of Professional Conduct.
8. Create a press release from the court (and health officials, if possible) outlining amended procedures designed to ensure social distancing.

B. Courthouse and Courtroom Access

1. Require appropriate screening for visitors (including temperature checks or other screening before entry into the courthouse, as described in the June 30, 2020 OCA Memorandum to District Executives and New York City Chief Clerks).
2. Establish daily procedures to assess the health of those entering the courtroom.
3. Provide hand sanitizer at court entrances, in the courtroom and at other touchpoints in courthouse.
4. Provide masks and other personal protective equipment (PPE) as recommended by health professionals.
5. Establish procedures for cleaning the courtroom and jury spaces every night.
6. High-risk individuals should not be required to appear in court, nor should such individuals suffer any penalty or loss of rights for declining to participate.
7. Consider ways to limit the number of court staff on site (for example, staggering hours while allowing remote work for others).
8. Consider ways to appropriately limit public entry for non-essential matters.
9. If the courthouse has an elevator, post a notice stating the maximum number of people who can safely (with appropriate social distancing) use the elevator at one time.



10. Consider making stairways more accessible to reduce elevator traffic.
11. Consider ways to ensure appropriate access for persons with disabilities (e.g., masks for speakers may be problematic for those with hearing loss).
12. Use every possible communication medium (e.g., website, courtroom door signs with quick response (QR) codes, press releases, Facebook, Twitter) to broadcast the message that the Court considers health and safety as the top priority and has taken concrete steps to address the risks.

C. Initial Communications with Jurors

1. Inform prospective jurors of the steps the Court is taking to ensure their safety and how the process will work to address health concerns and provide them with the opportunity raise any specific issues (for example, whether they believe they are in a high-risk category for COVID-19 infection).
2. Provide a statement about the long tradition of jury trials and how continuance of jury trials is essential to our justice system.
3. Consider recording a statement from a Judge for jurors informing them that the trial will be proceeding and what precautions have been taken to ensure their safety.

D. Jury Pools

1. Determine how many jurors the Court needs to call, keeping in mind likely increases in deferral requests and absentees.
2. Consider pre-screening questions specific to COVID-19 or other common disqualifying issues to reduce the number of jurors required to come to the courthouse.
3. Create and disseminate a juror deferral policy that addresses COVID-19 issues.
4. Consider a more liberal deferral policy that avoids excusing jurors from duty (for example, permitting a one-time deferral without any required explanation). A more liberal deferral policy could also be provided for jurors in high-risk categories (e.g., senior citizens, respiratory condition, diabetes) who provide appropriate documentation as set forth in published guidelines.
5. Consider a more forgiving policy for jurors who fail to appear, while also impressing upon them that they cannot ignore or fail to respond to a summons.



6. Keep appropriate records concerning jurors who are excused or whose service is deferred.
7. Encourage all members of the jury to limit their travel and exposure to large groups and high-risk situations (e.g., keep jurors up-to-date on social distancing and safety guidelines).

E. Jury Reporting and Selection

1. Consider having jurors report later in the day, or in a staggered fashion, to avoid rush-hour commuting and use the time for other court business.
2. Consider ways to reduce exposure. For example, have each jury panel report directly to the courtroom rather than to the jury assembly room and use a staggered schedule for jury panels to report.
3. Consider ways to reduce the time and number of jurors needed for in-person *voir dire*. For example, consider case-specific *voir dire* questionnaires that jurors complete remotely. Answers could serve as a basis for making for cause or peremptory challenges without the need for the juror to appear.
4. Consider remote initial screening to identify jurors who will be excused because of time, hardship, or a for-cause conflict.
5. Consider impaneling extra alternates or extending service for grand juries to reduce the need for new panels to be picked, where permitted under the law.
6. Establish a process for reviewing juror identification that limits the need for close interaction and physical exchange of documents.
7. Consider establishing or revising existing protocols for sick jurors to accommodate jurors that test positive for COVID-19 while serving.
8. Ensure that changes to existing policies for both grand and petit juries are documented and communicated to jurors and interested parties.
9. Establish methods for private inquiry with jurors by judge and counsel.



F. Conduct of Trial

1. Consider courthouse space and other available local facilities for trial and jury assembly and deliberations, and whether physical modifications are necessary and feasible to ensure compliance with social distancing and other necessary health protocols.
2. Consider ways to keep groups from congregating in the courthouse.
3. Consider conducting pretrial proceedings (e.g., pretrial hearings, resolution of pretrial motions) virtually either by phone or video, if possible.
 - a. If a pretrial hearing is to be conducted by video in a criminal matter, secure the accused's voluntary and informed waiver;
 - b. Consider a pretrial proceeding with health officials and counsel to discuss all procedures for conducting trial.
4. Establish procedures for jurors during trial and deliberations, including:
 - a. Identification of alternative spaces in courthouse for deliberations if traditional jury rooms do not provide sufficient distancing (consider leaving jurors in the courtroom, locked for deliberations, rather than using the jury room);
 - b. Juror seating should comply with required social distancing protocols;
 - c. Do not collect or have jurors return any pens or pads that may be provided;
 - d. Limit collection of jurors' personal items, including phones (consider requiring jurors' phones be placed on the floor under their chairs to ensure they are not using their phones inappropriately);
 - e. Reduce common touch points in jury deliberation space. Items touched by everyone should be removed from the jury room, and a daily cleaning regime should be instituted;
 - f. Do not allow jurors to congregate during breaks or for meals;
 - g. Limit access to the well of the courtroom or other areas near jurors;
 - h. Use appropriate masks and other PPE.
5. Establish rules for lawyers during trial that address:
 - a. Appropriate use of masks and other PPE, including rules for those speaking in court;
 - b. Removal of all items from counsel table at the end of the day;
 - c. Responsibility for advising all witnesses and clients of courtroom procedures and ensuring witnesses and clients that attend trial are healthy;
 - d. Procedures for sidebars and/or alternatives to sidebars;
 - e. Procedures for ensuring confidential attorney-client communications where social distancing is required.



6. Consider protocol for presentation of evidence that:
 - a. Requires exhibit lists and exhibit marking in advance of trial, and deposition designations and objections thereto to be exchanged and addressed in advance (with good cause exception);
 - b. Requires written submissions or telephone/video conference to resolve as many evidentiary disputes as possible in advance of trial;
 - c. Uses electronic means for presenting exhibits if possible (including, but not limited to, screens/ELMO projectors), and avoids hard copy documents and other physical exhibits where possible (use caution in avoiding publishing exhibits to the jury that have not been admitted as evidence);
 - d. To the extent hard copy documents need to be used, requires copies be made so that one document is not handled by everyone (taking into account authentication issues);
 - e. Avoids exchange of evidence, papers or other physical objects among jurors and others;
 - f. Requires the parties to disclose their witness lists to the Court as early as possible and adhere to an agreed schedule. Avoid delays in calling scheduled witness in order to minimize time in the courthouse and the possibility of contact with other witnesses;
 - g. Encourages stipulations on facts and evidentiary issues (e.g., foundation objections) to reduce the need for witnesses;
 - h. Considers use of video testimony, where necessary/feasible and constitutionally permissible;
 - i. Establishes a procedure for live witnesses that:
 - i. Designates an area for each witness to wait before they testify, while ensuring effective sequestration where necessary;
 - ii. Provides guidelines for appropriate PPE before and during testimony;
 - iii. Designates areas for counsel and prohibits lawyers from approaching a witness.
7. Determine rules for spectators in the courtroom based on available space, including:
 - a. Family members of litigants;
 - b. Crime victims and their families;
 - c. Press or other media (consider use of pool reporter if significant media attention is anticipated);
 - d. Other members of the public and courthouse staff (consider livestreaming, where available).



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