

**8<sup>th</sup> JUDICIAL DISTRICT JURY TRIAL PLAN FOR LARIMER COUNTY**  
**BEGINNING JULY 20, 2020**

**1. Overview**

The 8<sup>th</sup> Judicial District formed a committee to address how to resume jury trials in light of the public health crises related to Covid-19 and the associated social distancing requirements and concerns of prospective jurors. The committee consisted of the Jury Commissioner, Court Executive, Deputy Court Executive, a County Court Judge, a District Court Judge and the Chief Judge. The committee has worked closely with the Larimer County Department of Health and Environment in preparing this plan and has met twice with representatives of the District Attorney's office, the Public Defender's office and the office of Alternate Defense Counsel and has considered their input. We recognize the need to be flexible to address issues that may arise when we put the plan into effect, so we anticipate making minor changes without requesting further approval.

Larimer County has flattened the Covid curve. The number of Covid cases has declined since mid-May. There are currently 6 Covid patients in hospitals in Larimer County (as of June 22) compared to having had 40 or more from April 11 through May 5. The number of new cases, the hospital utilization and the percentage of positive tests are all deemed low risk.

We are requesting that the Chief Justice grant the 8<sup>th</sup> Judicial District a waiver from his order suspending jury trials effective July 20, 2020. We have concluded that we should have approximately 60 jurors for a typical 3-4 day felony trial in anticipation that an increased number of prospective jurors will be excused due to the public health crisis. We have concluded that we should have approximately 30 jurors for a typical county court criminal trial. Our jury assembly room will accommodate 45-50 prospective jurors with social distancing. We have three courtrooms (3A, 4A and 5A) that will accommodate more than thirty people in addition to court staff, counsel and parties. Our largest courtroom, Courtroom 3A, will accommodate up to 26 people in the gallery and approximately 14 prospective jurors in or near the jury box. Courtrooms 4A and 5A will accommodate up to 18 people in the gallery and approximately 14 prospective jurors in or near the jury box. An audio-visual connection is available between the jury assembly room and Courtrooms 3A, 4A and 5A. As a practical matter, people in the courtroom would not be able to see many of the people in the jury assembly area and people in the jury assembly area would not be able to address the court. Our other courtrooms do not have audiovisual connections to the jury assembly area.

Our plan is to conduct one or two district court jury trials per week lasting no more than four days and one or two county court jury trials per week. The Chief Judge, after consulting with the

judges assigned to preside over scheduled trials, will determine which cases should proceed to trial. The judge assigned to the cases which do not proceed to trial shall declare a mistrial and set a new trial date. It is important that we slowly resume jury trials to confirm that our procedures are appropriate and that doing so is safe for all concerned. We are also limited in our ability to conduct a larger number of jury trials in a week with the required distancing for a number of reasons including having only three courtrooms with adequate size for jury selection, uncertainty about the length of trials, having only three elevators and no public stairs to access the courtrooms on the third, fourth and fifth floors and that public health considerations mandate that we limit the number of people in the courthouse and moving through the courthouse. Felony trials will require combining the jury assembly area and the courtroom for jury selection purposes so two trials could not begin the same day. Also, our jury rooms are not big enough to seat a 12- person jury with spacing, much less have room for alternate jurors. We have two jury rooms on each of the three floors of the Larimer County Justice Center that has a district court courtroom. Once the jury is selected, we plan to use both jury rooms on a floor to accommodate the jurors during trial. When the case goes to the jury for deliberation, we will use a courtroom as the jury room. We also cannot do a long felony trial or high publicity trial because we cannot at this time accommodate the larger number of jurors that would be required.

## **2. Juror Summonses and Information**

Summonses for jury duty beginning the week of July 20<sup>th</sup> and continuing through the waiver period will contain language notifying recipients that if they have Covid-19 symptoms they should not come to the courthouse and should instead call to defer their jury service. Summonses will also include language that if the recipient is in the population vulnerable to Covid-19 and wishes to reschedule jury duty, he or she may do so by contacting the Larimer County Jury Commissioner to request a postponement. There will also be language urging citizens to bring their own masks to the courthouse. Those who report for jury duty without a mask will be provided one by court staff for the duration of their jury duty.

The map portion of the summons will be removed for the time being and will be replaced with Covid-19 information. This will be done in lieu of a second questionnaire. The summons will also refer prospective jurors to the 8<sup>th</sup> Judicial District web page. The juror information section of the web page will contain a written notice explaining the actions that have been taken for protection of public health and will have a video showing as well as explaining those actions. The message on the juror information phone line will reference the website information and will invite prospective jurors to ask specific questions related to Covid-19. The various messages will assure the public that the jury trial plan has been approved by both the Larimer County Department of Health and Environment and by the Chief Justice of the Colorado Supreme Court.

### **3. Juror Arrival at Courthouse**

The jurors waiting to get into the courthouse will be appropriately spaced. There will be two tables set up outside jury check-in. Staff at the tables will ask prospective jurors about the recent or current presence of Covid symptoms and will defer jury service for anyone with positive symptoms. If any prospective juror has not filled out their jury summons, they will do so at the counter in front at locations marked to assure safe spacing. Staff will also identify any individuals who are vulnerable to Covid-19 (as defined by the Governor in his general Covid-19 order) and offer them the opportunity to reschedule their jury service. Staff will also identify anyone who is living with or caring for any individuals who are vulnerable to Covid-19 and offer them the opportunity to reschedule their jury service. Those in the vulnerable population will not automatically be excused from jury duty but will be allowed to reschedule if they choose.

The Jury Commissioner will also ensure that every summoned citizen has a mask. She will provide masks for those without one. Any prospective juror who refuses to wear a mask or says he or she has health reasons for not doing so will have jury service deferred to a later date.

### **4. Juror Check-in**

The Larimer County jury assembly room normally holds approximately 256 people. To ensure social distancing, the jury assembly room can safely seat 45-50 people. The written notice from the website explaining the actions that have been taken for protection of public health will be displayed prominently in multiple locations in the jury assembly room.

As jurors enter the jury check-in area, there will be markers on the floor indicating six-foot distancing. Jurors will formally check in and then walk to one of the empty chairs in the jury assembly room, always maintaining six-foot distancing from all other people in the jury assembly room. There will be signs near the jury assembly room kitchen area and restrooms reminding prospective jurors to maintain spacing while using those facilities.

As part of the jury orientation the prospective jurors will be shown the video from the website showing and explaining the actions that have been taken to protect the public health. The trial judge will endeavor to greet the jury panel or arrange for another judicial officer to do so to thank them for appearing and to assure them that we are concerned for their health and safety and have taken appropriate precautions.

There will never be two felony trials scheduled to begin the same day and we will try to avoid beginning a county court trial and a district court trial the same day. If there should be multiple

jury trials beginning the same day, prospective jurors for the county court trial will have jury orientation in the courtroom where the trial is being conducted. As we progress to trials involving a large jury pool, we can have a staggered jury call to assure there are never too many jurors to maintain spacing. One jury panel can report at 7:45 am. The second panel can report at a sufficiently later time to assure the initial panel is no longer in the jury assembly room and the room has been sanitized.

Any jury trials which had been scheduled to be held in Loveland will instead be held in Fort Collins.

Division staff/law clerks will bring jurors to courtroom with a maximum of 4 people at a time in an elevator. Although there are no public stairs, prospective jurors may be escorted to the courtroom using the emergency stairs with the approval of security and consent of the juror. Prospective jurors will be permitted to bring their own small bottles of hand sanitizer, wipes, gloves, and writing implements.

## **5. Voir Dire**

The jury pool will enter the courtroom and be spaced throughout not only the jury box but also the gallery to ensure six-foot social distancing. Seats will be marked throughout the courtroom where jurors shall sit. If there are more prospective jurors than can be seated with 6 foot distancing the additional jurors will remain on call in the jury assembly area where they will be able to see and hear the proceedings in the courtroom. Prospective jurors will be required to wear a mask except when speaking. During voir dire the use of a microphone will be avoided to the extent possible. Prospective jurors will be asked to stand to answer questions so that they can more easily be heard. If there are jurors who cannot be heard there will be a microphone available. If practical and available there will be one or more microphones on stands that do not need to be touched. Any handheld microphone will be wiped with disinfectant wipes between each speaker. Hand sanitizer will be available at multiple locations in the area of the courtroom where prospective jurors are seated. Webex will be used to make the proceedings available to any prospective jurors who remain in the jury assembly area due to space limitations and to members of the public who will not have available seating due to the need to maintain spacing for the prospective jurors.

## **6. Trial**

Once the jury is selected all jurors will be seated in front of the bar with appropriate spacing. There will then be room in the gallery for the public to attend the trial with the seating marked to assure appropriate spacing. In the event there is insufficient seating for the public the trial judge

will have discretion to make the trial available remotely through Webex. Hand sanitizer will continue to be provided. For felony trials there will need to be two widely spaced rows of jurors in front of the jury box so counsel table will be rearranged to the other side of the courtroom to assure adequate spacing.

Each person in the courtroom shall maintain six-foot distancing from others and shall always wear a mask with the following exceptions: Any person speaking on the record may remove their mask. The defendant shall generally have the option to either wear no face covering or a clear shield if identity is disputed. If identity is stipulated the defendant shall also have the option to wear a mask. The judge will not be required to wear a mask while sitting on the bench if the judge is at least six feet from anyone else.

The witness stand will be more than six feet from anybody else in the courtroom. At the discretion of the trial judge the witness stand may have a plexiglass “sneeze-guard” in place. The witness will not wear a mask while on the stand unless all parties agree to the witness wearing a mask. The witness shall enter the courtroom and exit the courtroom wearing a mask.

Before each witness testifies, the witness stand shall be sanitized. There will be a new piece of saranwrap wrapped around the microphone for each new witness.

Questioning of the witness shall occur from counsel table. The lectern that is ordinarily used to question witnesses will be removed. The attorney asking questions may remove his/her mask during questioning, with proper six-foot distancing.

The trial judge will be strongly encouraged to not allow juror questions for witnesses. Trial logistics should be discussed with counsel at a conference prior to the day of trial to assure that everybody understands the mechanics of conducting the trial during a public health crisis and to try to expedite the proceedings through stipulations and to minimize interactions in the courtroom.

To the greatest extent possible any document which any party wishes to have admitted will be presented to counsel and the witness electronically and, if admitted, displayed to the jury electronically. Any other item of evidence shall only be handled by a person wearing rubber gloves.

Sidebars will be discouraged and should be conducted during recesses to the extent possible. Otherwise, the judge will have discretion to determine whether the side bar can reasonably be conducted with adequate distancing/masking. If not, the side bar shall be conducted with distancing in the rear hallway or in a vacant jury room.

During recesses, half of the jurors will be escorted to one jury room and the remaining jurors to the other jury room on the same floor so that six-foot social distancing can be maintained. The jury rooms shall be equipped with hand sanitizer and wipes.

The courtroom will be fully cleaned during each lunch break and every evening, including the cleaning of every surface or thing touched that is not someone's personal possession.

The courtroom used by the jury during recesses will be fully cleaned every evening after use and after each lunch break, including the cleaning of every surface or thing touched that is not an individual person's item.

## **7. Jury Deliberations**

Following closing arguments, the jurors will be escorted to a vacant courtroom. They shall remain in the courtroom during their deliberations. The bailiff will escort jurors to the restroom as needed maintaining distancing. The division CJA will ensure no one enters the courtroom while the jury is deliberating. Signs will also be placed on the courtroom door and hallway doors to the courtroom indicating the jury is deliberating.

If it is necessary for the jury to deliberate in the trial courtroom, the judge, the parties, and the attorneys will leave the courtroom out the back doorway to the courtroom, even if the defendant is in custody.

The jurors will be admonished they must always maintain six-foot social distancing during deliberation and that they must keep their masks on when not speaking. The exhibits will not be left with the jury. If the jury asks to examine an exhibit, the bailiff or CJA, while wearing rubber gloves, shall bring the exhibit to the jury and display it for them so that no juror will need to touch the exhibit. The trial judge shall have discretion to modify the procedure for exhibits in the interest of justice with consideration for public health best practices.

Any food provided to the jury during deliberations shall be individually packaged for each juror.

Any post-verdict discussions between the judge, jury, and attorneys shall occur in the courtroom with proper social distancing and mask-wearing when not speaking.