



Resuming Operations of the Trial Courts

PROTOCOL FOR IN-COURTHOUSE COVID-19
EXPOSURE OR SYMPTOMS BY A PARTICIPANT IN
INDIANA STATE COURTS

September 15, 2020

Indiana Supreme Court

Office of Judicial Administration

Table of contents

Introduction.....	3
1. Participant	3
2. Symptoms and exposure defined	3
3. Need for communication with appropriate court staff when a participant with any symptoms or exposure is denied access to the courthouse.....	4
4. Need for judge presiding over calendar to direct participants to report symptoms or exposure by participants to the court.....	5
5. Manner of reporting of symptoms or exposure.....	6
6. Protocols for specific types of participants	7
7. Appropriate Follow Up and Disclosure	10
Appendix 1: Recommended Indiana courts health screening protocols for the public.....	12
Appendix 2: Sample advisements.....	15
Appendix 3: Checklist for in-courthouse COVID-19 exposure or symptoms by a participant in Indiana state courts.....	18

Introduction

The most important and fundamental protocol is that the Court require all persons to wear masks and social distance at all times when in a shared space in the court facilities. An exception may be for testimony when necessary. COVID-19 is a direct threat to employees and the public. Failure to enforce the basic safety measures could cause liability to the court, the county and the State. Even with the Court's own best practices, there will be occasions when COVID-19 will occur and potentially impact the Court proceedings.

This document sets forth a recommended protocol for courts to address in-courthouse COVID-19 exposure or symptoms by a participant in Indiana state courts. This Protocol is the product of the Supreme Court of Indiana's Resuming Court Operations Task Force. It is provided to assist Indiana judges in responding to COVID-19 exposure or symptoms by a participant in Indiana state courts. Because knowledge is changing quickly, additional information available (both from a public health perspective and based on experience in courts) should be referenced in addressing any such incident that arises.

Appendix 1 provides a separate protocol for the general public entering the court facilities.

1. Participant

In this Protocol, "Participant" is defined as including each of the following: (1) a criminal defendant; (2) a juror (defined to include both a potential juror and a juror selected to participate in a trial); (3) the judge presiding over a matter; (4) a witness; (5) an attorney representing a party or witness; (6) a party, other than a criminal defendant, and including a party representative; (7) a victim, victim representative, and victim advocate; (8) a court reporter; (9) an interpreter; (10) security personnel (particularly where a criminal defendant is in custody), and (11) court staff involved in a matter, including a bailiff, a deputy clerk, and others present. These Participants are discussed in four categories (criminal defendant; potential juror or juror; judge; and all others) in Section 6 below.

2. Symptoms and exposure defined

According to the CDC, symptoms include any one of "the following conditions or persistent unexplained symptoms:" Within the last 48 hours:

- Shortness of breath or difficulty in breathing;
- Diarrhea, nausea or vomiting, abdominal pain;
- Body temperature over 100.4 degrees Fahrenheit;
- Chills, muscle pain or sore throat;
- Cough;
- New loss of taste or smell; or
- Had a COVID-19 diagnosis or positive test result within the last 30 days.

Exposure includes “contact with someone who has tested positive for COVID-19 or has symptoms consistent with the COVID-19 virus during the last 14 days.”

3. Need for communication with appropriate court staff when a participant with any symptoms or exposure is denied access to the courthouse

Any Participant with any Symptoms or Exposure seeking to enter a courthouse should be excluded from entering the courthouse until cessation of Symptoms, a diagnosis other than COVID-19 explains the symptoms, or negative COVID-19 test results indicate COVID-19 infection is no longer present under CDC guidelines. This includes, where applicable, self-screening. Any Participant who is refused entrance to a courthouse for any of these reasons, based on self-reporting or screening, should be provided a telephone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing motions, or other court services. Courts should provide notice to the public of this and other screening information by posting the information on the court’s websites and posting signage at all entrances at the courthouse.

Local courts should identify, communicate, and implement a communication protocol to immediately relay to appropriate court personnel when a Participant with any Symptoms or Exposure is denied access to the courthouse, based on self-reporting or screening. Such communication is essential to ensure that appropriate measures are taken; to ensure that other Participants are not waiting for extended periods of time for a Participant who has been refused entrance to the courthouse and, as a result, will not be appearing; and to prevent warrants being issued or matters proceeding by default for a failure to appear. Although guided by the needs and structure of the specific local court, at a minimum the communication protocol must require immediately communicating the fact of a Participant with any Symptoms or Exposure being refused access to the courthouse, based on self-reporting or screening, as follows:

Criminal defendant with any symptoms or exposure

Immediately communicate to court administration and the specific trial judge/division where the criminal defendant was set for a hearing, the fact of being refused access to the courthouse and any available details, including the name of the individual.

Potential juror or juror with any symptoms or exposure

- **For a potential juror:** Immediately communicate to court administration and the jury staff where the juror is to report the fact of the potential juror is being refused access to the courthouse and any available details, including the name of the individual.
- **For a juror:** Immediately communicate to court administration and the specific trial judge/division where the juror was serving, the fact of the juror being refused access to the courthouse and any available details, including the name of the individual.

Judge presiding over the matter with any symptoms or exposure

Immediately communicate to court administration, the presiding judge of the court and, if applicable, the relevant department presiding judge, and the specific trial judge division where the judge presiding over the matters was serving the fact of being refused access to the courthouse and any available details.

Other participant with any symptoms or exposure

Immediately communicate to court administration, the presiding judge of the court and, the specific trial judge(s)/division(s) where the other Participant was set for a hearing(s), the fact of being refused access to the courthouse and any available details, including the name of the individual.

4. Need for judge presiding over calendar to direct participants to report symptoms or exposure by participants to the court

During the final pretrial conference, at the beginning of a jury trial when jurors are selected, and at the beginning of each court day, the judge presiding over the calendar should direct Participants in court (including the jurors), on the record, of the need for all Participants to bring to the judge's attention, through a pre-determined manner (ideally through electronic means, but with other options available), any concerns about Symptoms or Exposure by any Participant as soon as possible after learning of such information. This would include reporting of Symptoms or Exposure of any Participant to the court

through electronic or other means, what means are appropriate, recipients of such information (including more than one recipient to ensure redundancy, such as the judge's judicial assistant, bailiff and a court administrator), specific contact information for recipients and the need, upon receipt of such a report, for the court to take appropriate actions, including to undertake questioning based on such a report to understand the details and circumstances and decide how to proceed.

Attached as Appendix 2 are samples of: (1) an advisement to be given at the beginning of each court day and at the beginning of each day of trial (or, as appropriate, each matter) when the appropriate Participants are present; (2) notification language in an ongoing matter; (3) notification language in a completed matter; (4) questions for a jury regarding Symptoms or Exposure and (5) a disclosure.

5. Manner of reporting of symptoms or exposure

Remote reporting through electronic means

Because any Participant with any Symptoms or Exposure should not be allowed to enter a courthouse, reporting of such Symptoms or Exposure by any Participant **should** be made remotely by electronic means, which could include electronic mail, text message, telephone or video conferencing. In that case, the participant with any Symptoms or Exposure **should not** be allowed in the courthouse and **should not** be asked to return to the courthouse. Instead, as soon as possible, appropriate questioning of the participant with any Symptoms or Exposure should be attempted and made (if possible) by the appropriate individual (typically the judge presiding over the calendar or, if the judge has any Symptoms or Exposure, another judge) on the record through electronic means and then appropriate disclosure and follow up taken, as discussed below in Section 7.

In-courthouse reporting

If a Participant with any Symptoms or Exposure either reports such information while in the courthouse, or becomes symptomatic while in the courthouse, that Participant: (1) should be isolated; (2) should be removed from the courthouse immediately; and (3) as soon as possible after having been removed from the courthouse, appropriate questioning of the Participant with any Symptoms or Exposure should be attempted and made (if possible) by the appropriate individual (typically the judge presiding over the calendar or, if the judge has any Symptoms or Exposure, another judge) on the record through electronic means and then appropriate disclosure and follow up should be taken, as discussed below in Section 7.

Attached as Appendix 3 is a Checklist summarizing appropriate steps to be taken, depending upon the manner such information is reported, as well as the protocols for specific types of Participants.

6. Protocols for specific types of participants

Criminal defendant with any symptoms or exposure

If the Participant with any Symptoms or Exposure is a criminal defendant, a record should be made of the Symptoms or Exposure, with the criminal defendant present remotely using electronic means (and, if such remote appearance by the criminal defendant is not possible, made without the criminal defendant present). Unless the criminal defendant with any Symptoms or Exposure does not have a right to be physically present or properly waives the right to be physically present, either by agreeing to be remotely present using electronic means (unless such remote appearance is not possible) or to not be present at all, and is found to have knowingly, voluntarily and intentionally waived the right to be physically present, the judge presiding over the matter would need to either (1) continue the matter until the criminal defendant could again properly be present in court to participate or (2) if a trial, and the trial cannot be continued, declare a mistrial. Appropriate disclosure and follow up would need to be taken as discussed below in Section 7.

Potential juror or juror with any symptoms or exposure

If the Participant with any Symptoms or Exposure was a potential juror, the court should determine whether jury selection and the trial can proceed and if any disclosures to other Participants is appropriate. This would depend, chiefly, on whether the potential juror with any Symptoms or Exposure was ever in the courthouse during the time period in question.

- 1. Does any court have contingencies if a juror is exposed to a COVID-19 case during trial?**

This should be handled on a case-by-case basis by the trial judge. Jurors must follow the screening protocol required by the Court each day before they travel to the courthouse. It is recommended that the judge who is presiding over the trial have some type of daily check-in with the jurors, i.e., a reminder to bring to the judge's attention, through a pre-determined mechanism, any concerns about the juror's health. If a seated juror reports an exposure to COVID-19, the judge may need to question the juror to understand the circumstances and consider releasing the juror if necessary. This can be done remotely with a juror who stays home based on the self-screening.

If a juror was in contact with others at the court, consult Heather Falks to determine who should be informed and what information should be provided. Heather Falks may be reached at heather.falks@courts.in.gov or 317-234-2620. A consultation, rather than general guidelines, is recommended because the guidance changes as health officials learn more and because there are many factors to consider.

2. **Are there any confidentiality concerns when a juror or potential juror discloses health information during the *voir dire*/selection process?**

When a juror discloses concerns based on health issues, or a potential juror discloses during the qualification/*voir dire* process a similar concern, this is confidential information. If this discussion becomes an “in chambers” discussion, this adds another complexity, much like sidebar conferences. Courts may consider a telephonic alert from the juror of significant symptoms, then a video conference to interview the juror on the record. The explanation to the rest of the panel can then become a generic, “Juror #6 has been excused upon his/her request for personal reasons.”

Technically, if a juror with any Symptoms or Exposure is excused and there are sufficient alternate jurors to allow the trial to proceed (or an agreement/waiver that the trial could proceed without the juror), the remaining jurors could continue and allow the trial to proceed. Practically, however, the inquiry by the presiding judge with the remaining jurors, on the record with the parties present, would provide information for the trial judge to determine whether the trial properly should proceed.

Judge Presiding Over the Matter with any Symptoms or Exposure

If the Participant with any Symptoms or Exposure is the judge presiding over the matter, that judge should immediately leave the courthouse and should report such Symptoms or Exposure to court staff and the applicable presiding judge, or other applicable court administrator, by electronic means. The issue should be raised with counsel and the parties on the record, with another judge presiding, and appropriate questioning of the originally assigned judge presiding over the matter with any Symptoms or Exposure should be attempted and made (if possible) on the record through electronic means and then appropriate disclosure and follow up should be taken, as discussed below in Section 7.

Whether another judge could replace the judge presiding over the matter who developed any Symptoms or Exposure would involve a case-by-case inquiry in consultation with the parties and their attorneys. If the parties agree to another judge assuming jurisdiction, ensure this agreement is in writing and on the record. If the new judge believes after reviewing the record that continuing the proceeding would be

unduly prejudicial, the judge must order a new trial or proceeding. The judge should consider the manifest necessity of declaring a mistrial over the objection of the defendant before ordering it.

Other Participants with any Symptoms or Exposure

Other Participants include witnesses; attorneys; parties (other than a criminal defendant) and party representatives; a victim, victim representative, and victim advocate; court reporters; interpreters; security personnel and other court staff, such as a bailiff and a deputy clerk; and others present. The manner of reporting of Symptoms or Exposure by these other Participants should follow the protocol in Section 5 above.

If the Participant with any Symptoms or Exposure is one of these other Participants, the issue should be raised with the judge presiding over the matter, counsel and the parties on the record, and appropriate remote questioning of the other Participant should be attempted and made (if possible) on the record through electronic means and then appropriate disclosure and follow up should be taken, as discussed below in Section 7.

When any Symptoms or Exposure are reported for such other Participant, in deciding how the matter should continue, the judge presiding should consider whether the other Participant could be replaced, whether the participation of the other Participant could be waived, or whether the other Participant could remotely participate.

1. Could the Participation of the Other Participant with any Symptoms or Exposure Be Replaced or Waived?

Resolving this question would be based on a case-by-case inquiry addressing relevant issues that could include: (1) is the other Participant a witness? (2) if so, could another witness provide the necessary testimony instead? (3) if so, is the other Participant's testimony necessary? (4) if the other Participant is an attorney, is co-counsel available to continue? (5) can the involvement of the other Participant be waived (for example, a client or client representative in a civil matter or trial, or a case agent in a criminal trial)? (6) if the other Participant is a member of court staff, is there another member of court staff who could replace that person? and (7) any other factors that would impact the ability of the other Participant to be replaced or waived. Depending upon the case-specific answer to these questions, and any other issues identified by the parties, the judge presiding over the matter would then need to decide whether the matter should continue with the other Participant being replaced, whether the participation of the other Participant could be waived, or whether the other Participant could participate remotely.

2. **Could the other participant with any symptoms or exposure participate remotely**

If the other Participant could not be replaced or their presence waived, consideration should be given as to whether the other Participant could remotely participate. Resolving this question would be based on a case-by-case inquiry addressing relevant issues that could include: (1) is the other Participant a witness? (2) if so, has the witness begun testifying? (3) is the witness medically well enough to complete testimony remotely? (4) does the Confrontation Clause apply? (5) if the Confrontation Clause does apply, could remote testimony be allowed?¹ (6) is remote participation feasible given available technology? (7) is remote participation feasible given the role of the other Participant in the proceeding? and (8) any other factors that would impact the ability of the other Participant to participate remotely. Depending upon the answers to these case specific questions, as well as any other issues identified by the parties, the judge presiding over the matter would need to decide whether the matter should continue with the other Participant participating remotely, whether a continuance would be needed, or whether a mistrial should be declared.

7. Appropriate Follow Up and Disclosure

Immediately gathering available details about when and how the participant with any symptoms or exposure developed symptoms or was exposed

While protecting privacy rights, gathering available details about when and how the Participant with any Symptoms or Exposure developed those Symptoms or was Exposed may provide critical information to help prevent further Exposure. Accordingly, immediately gathering available relevant details may be essential to further those significant public health functions. To the extent practical or possible, such information should be gathered by the court in a manner that furthers privacy rights. In addition, the court should safeguard information so that it is shared only with appropriate health officials inside and outside of the court.

¹ See *Maryland v. Craig*, 497 U.S. 836, 850 (1990) (authorizing remote testimony where the State shows that (1) the denial of face-to-face confrontation is necessary to further an important public policy; (2) the reliability of the testimony is otherwise assured; and (3) there is a case-specific showing of necessity for the accommodation); see also *State ex rel Montgomery v. Kemp*, 239 Ariz. 332, 336 ¶ 19 (Ariz. Ct. App. 2016) (adopting *Maryland v. Craig* standard for the use of two-way video testimony in a criminal trial).

Communicating with Courthouse Personnel to Ensure Remedial Efforts Are Undertaken

To supplement safety measures, including wearing of masks, screening, social distancing, and deep and frequent cleaning in courthouses, when a Participant with any Symptoms or Exposure is identified, along with ensuring that individual is not allowed back in the courthouse and encouraging that person to seek medical care, communication efforts should relay the information, including available details, to the presiding judge, court administration, court security, and any other individuals involved in the courthouse to allow for those individuals to take measures to ensure safety and security in the courthouse. Subsequent follow up would include deep cleaning and other remedial efforts, appropriate quarantines, clarification in protocol based on information learned, and documentation of such measures undertaken by the court. Such communication may also involve others implicated, including agencies providing services and assigning counsel to represent individuals.

Appendix 1:

Recommended Indiana courts health screening protocols for the public

The Indiana Judiciary is committed to the safety of the public, judges, and court personnel. Supreme Court Case No. 20S-CD-00123, in part, requires all Indiana Courts to develop health screening protocols working in conjunction with county emergency and public health authorities. The Indiana Supreme Court further DIRECTS trial courts to utilize Indiana Office of Judicial Administration assistance to prepare appropriate emergency local plans to protect the health of court personnel, court users, and the public through enhanced social distancing. The following health screening protocols may be used in Indiana Courts:

Level 1: Basic Screening (*no security personnel; no body temperature screening*)

In courts that do not have security screening, courts should ask the public to self-screen prior to coming to court for any of the following conditions or persistent unexplained symptoms within the last 48 hours:

- Shortness of breath or difficulty breath
- Diarrhea, nausea or vomiting, abdominal pain;
- Body temperature over 100.4 degrees Fahrenheit
- Sore throat
- Cough
- New loss of taste or smell
- Have had contact with someone who has tested positive for COVID-19 or has symptoms consistent with the COVID-19 virus during the last 14 days
- Have had a recent COVID-19 diagnosis or a positive test result

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, by posting the information on the court's website, and posting signage at all entrances at the courthouse.

Service to Individuals Who Report Symptoms or Conditions

Courthouse visitors who have any of the above symptoms or conditions should call the court to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of

motions, or other court services. Court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards. In person proceedings should not be scheduled until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Information on COVID-19 symptoms and a self-check process can be found on the CDC website at [Symptoms of Coronavirus](#).

Level 2: Basic + enhanced screening (*security personnel; no body temperature screening*)

In courts with security screening, security officers or other designated court staff shall ask courthouse visitors the following three questions:

- Have you had or have you been exposed to someone who has tested positive for the COVID-19 virus? In the last 30 days.
- Do you have a cough?
- Are you experiencing shortness of breath or difficulty breathing?

If a courthouse visitor answers yes to any of these questions, the visitor shall be excluded from entering the courthouse until cessation of symptoms, a diagnosis other than COVID-19 explains a symptom, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, by posting the information on the court's website, and by posting signage at all entrances at the courthouse.

Service to Individuals Refused Entry

Courthouse visitors who are refused entrance will be provided a phone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions, or other court services. Security and other court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards.

Security officers should be masked and gloved while screening courthouse visitors.

Level 3: Enhanced + security personnel doing body temperature screening

Courthouse visitors may be screened for body temperature at entrances to the courthouse if:

- Temperature screening is conducted by authorized personnel with a non-touch, calibrated human electronic temperature device;
- Security is masked and gloved; and
- Equipment is frequently sanitized.

In the event that a courthouse visitor is found to have a temperature of 100.4 degrees Fahrenheit or above, the visitor should be retested after the initial temperature test. If the temperature is not below 100.4 degrees Fahrenheit, the visitor shall be excluded from entering the courthouse until body temperature is below 100.4 degrees Fahrenheit, a diagnosis other than COVID-19 explains an excessive temperature, or negative COVID-19 test results no longer indicate COVID-19 infection under CDC guidelines.

Courts shall provide notice to the public of this additional screening through communications about any court proceeding, by posting the information on the court's website, and by posting signage at all entrances at the courthouse.

Service to Individuals Refused Entry

Courthouse visitors who are refused entrance will be provided a phone number to reschedule or be referred to appropriate electronic or on-line options for finding information, filing of motions or other court services. Security and other court staff should take appropriate action to provide access to court services while maintaining appropriate safeguards.

Courts should check manufacturer specifications to confirm temperature screening devices being used are accurate when used in high-temperature climates.

Appendix 2: Sample advisements

Sample advisement to be given at the beginning of each court day and at the beginning of each day of trial when the appropriate participants are present

Attention Courtroom Participants: _____ County is currently responding to a public health crisis related to COVID-19. As you saw before entering the courthouse today, the court is taking various safety precautions to help minimize your risk while you are in the courthouse. As you know, you had your temperature taken upon entry, you are required to wear your mask while in the building, and we are asking that you keep at least 6 feet distance from others while you are in the courthouse.

We understand that the virus is present in the community and may be present in the courthouse. As we continue our operations, we anticipate that we will have individuals who are diagnosed with COVID-19 or test positive for the virus, who develop symptoms of the virus, or who are exposed to the virus. Symptoms of the virus include any one of the following conditions or persistent and unexplained symptoms:

- Shortness of breath or difficulty breathing;
- Muscle pain;
- Body temperature over 100.4 degrees Fahrenheit;
- Chills, muscle pain or sore throat;
- Cough; or
- New loss of taste or smell.

Exposure includes contact with someone, during the last 14 days, who either has tested positive for the virus or has symptoms consistent with the virus. Exposure includes close contact with someone infected with the virus in which you were within 6 feet of that person for at least 15 minutes, starting from 48 hours before the person began feeling sick until the time the person tested positive for the virus or had symptoms consistent with the virus.

We have developed a protocol in conjunction with public health recommendations to address those situations when they arise. You will be notified by court staff if we receive confirmation of a positive diagnosis. We expect that we will be able to continue forward with many of our court proceedings during the public health crisis, but we may have some delays as we continue to evaluate the safest process for all involved.

If you are not feeling well, if you are diagnosed with COVID-19, test positive for COVID-19, develop any of the symptoms of COVID-19 or are exposed to someone with COVID-19, please immediately contact and let any of the following individuals know: my judicial assistant *INSERT NAME HERE* or bailiff *INSERT NAME HERE* or *OTHER SPECIFIC PERSON NAMED HERE*. Please do so by calling them at *XXX*, via text message at *XXX*, by electronic mail via *INSERT EMAIL ADDRESS HERE* or by telling them, while at least 6 feet distant. Thank you.

Sample notification language in an ongoing matter

Attention Courtroom Participant: The court has been advised that on _____, 20__ an individual was present in the courtroom between _____ and _____; was seated at _____ (if known) and that individual was reported to the court on _____, 20__ as [AS APPLICABLE: having been diagnosed with COVID-19; tested positive for COVID-19.] As a result, the court has immediately delayed any further proceedings in this matter until _____, 2020 or will be conducted remotely. The delay will allow for additional information to be gathered and shared, if possible, as well as additional deep cleaning of the courtroom and other relevant portions of the courthouse before any further proceedings are being held in the courtroom. As additional information becomes available to share, including further scheduling in this matter, you will be contacted by court staff. In addition, you may be contacted by public health employees and you may wish to consult your own health care provider for further guidance. At this time, you are free to leave the courthouse and you need not return until you are later contacted with further details.

Sample notification language in a completed matter

Attention Courtroom Participant: The Court has been advised that on _____, 20__ an individual was present in the Courtroom _____ between _____ and _____ was seated at _____ (if known) and that individual was reported to the court on _____, 20__ as [AS APPLICABLE: having been diagnosed with COVID-19; tested positive for COVID-19.]. As a result, additional deep cleaning is being taken in the courtroom and other relevant portions of the courthouse before any further proceedings are held in the courtroom. As additional information becomes available to share, you may be contacted by court staff. In addition, you may be contacted by public health employees and you may wish to consult your own health care provider for further guidance.

Sample questions for reported exposure

1. Why do you think you have been exposed to a person suffering with COVID-19?
2. When was your most recent contact with that person? (The prior two weeks is the relevant time-period)
3. Were you in *close contact* with this person? (The CDC defines “close contact” as “a person that has been within 6 feet of the infected person for a prolonged period of time.” A prolonged period of time is considered to be 15 minutes or more.)²
4. Has the person with which you had contact been tested for COVID-19?
5. If YES, was the test positive for COVID-19?
6. If NO to question 4, why do you think the person is suffering from COVID-19?
7. How are you feeling?
8. What symptoms are you having, if any? ³

Sample questions for reported symptoms

1. How are you feeling?
2. What symptoms are you having?⁴
3. How long have you had these symptoms?
4. Have you had any recent contact with a person suffering with COVID-19?
5. If YES, when was your most recent contact with that person?
6. Who have you been in *close contact* within the courthouse? (The CDC defines “close contact” as “a person that has been within 6 feet of the infected person for a prolonged period of time.” A prolonged period of time is considered to be 15 minutes or more.)⁵

If Excused

Instruct the person to get a COVID-19 test if the symptoms continue, and to report to the court the results of the test. The State website for testing sites is found at:

<https://www.coronavirus.in.gov/2524.htm> (archived at <https://perma.cc/KR4Q-8AD7>)

² <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

³ See Exhibit “A” for a checklist of COVID-19 symptoms.

⁴ See Exhibit “A” for a checklist of COVID-19 symptoms.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

Appendix 3:

Checklist for in-courthouse COVID-19 exposure or symptoms by a participant in Indiana state courts

This Checklist is provided as a quick reference for courts to address with in courthouse COVID-19 Exposure or Symptoms by a Participant in Indiana State Courts. This checklist is based on the *Protocol for In-Courthouse COVID-19 Exposure or Symptoms by a Participant in Indiana State Courts* (“Protocol”). Along with portions of the Protocol referenced here, the Protocol in its entirety should be referenced for definitions, details, and guidance. This Checklist is designed to be available on the bench and elsewhere to guide immediate and appropriate responsive action upon receipt of information regarding Exposure or Symptoms by a Participant, based on answers to two primary questions:

1. How was exposure/symptoms by a participant reported?

In the courthouse (i.e., the Participant with Exposure or Symptoms is currently in the courthouse)

- **IMMEDIATELY:** (1) take action to isolate the Participant; (2) have the Participant removed from the courthouse; (3) obtain appropriate information remotely; (4) take appropriate action and institute communications as necessary; and (5) take appropriate action based on the identity of the Participant with Exposure or Symptoms and those persons with whom they had contact as indicated in Question 2 below.
- **REMOTELY** (i.e., the Participant with Exposure or Symptoms is not currently in the courthouse)
- **PROMPTLY:** (1) obtain appropriate information remotely; (2) take appropriate action and institute communication as necessary; and (3) take appropriate action based on the identity of the Participant with Exposure or Symptoms and those persons with whom they had contact as indicated in Question 2 below.

2. Who was the participant with exposure or symptoms?

Criminal defendant with exposure or symptoms

1. Make a record with the criminal defendant present remotely using electronic means (and, if such remote appearance by the criminal defendant is not possible, in the absence of the criminal defendant).
2. Does the criminal defendant have a right to be physically present for the upcoming proceeding(s)?
 - a. If no, consider proceeding accordingly.
 - b. If yes, and the criminal defendant is present remotely using electronic means, does the criminal defendant waive the right to be physically present, either by agreeing to:
 - i. be remotely present using electronic means (if possible), or
 - ii. not be present at all?
3. If the criminal defendant wishes to waive the right to be physically present, is the waiver knowing, voluntary, and intelligent?
 - a. If yes, make the finding and consider proceeding accordingly.
 - b. If no, and after consulting with the parties and hearing from any victim or victim representative,
 - i. continue the matter and schedule periodic status hearings (e.g., once per week) until the criminal defendant can again properly be present in court to participate, or
 - ii. if it is a trial and the trial cannot be continued, declare a mistrial, and reschedule a new trial.
4. Make appropriate disclosure and follow up as described in Protocol §7.

Potential juror/juror with exposure/symptoms

1. Make a record with the parties present.
2. If the court has maintained the safety requirements of masks, social distancing, assigned seats and no shared equipment, there should be no impact on the remaining jurors.
3. If the Participant with Exposure or Symptoms was a potential juror, no action should be necessary if proper safety measures of masks and social distancing were followed. Determine whether jury selection and the trial can continue and if any disclosures to other Participants is appropriate (which would depend, chiefly, on whether the potential juror with Exposure or Symptoms was ever in the courthouse during the time period in question).

4. If the Participant with Exposure or any Symptoms had been selected and was serving as a juror:
 - a. Are there sufficient alternate jurors to allow the trial to proceed (or an agreement/waiver that the trial could proceed without the juror)?
 - i. If no, declare a mistrial.
 - ii. If yes, excuse the juror and privately inform the juror to let the court know if tested for COVID -19 and the results of the test.
 - b. After undertaking that disclosure and inquiry with the remaining jurors, and after consulting with the parties and hearing from any victim or victim representative in a criminal matter, determine whether the trial can proceed as scheduled, whether a continuance is necessary, or whether a mistrial should be declared.
5. Make appropriate disclosure and follow up as described in Protocol § 7.

Judge presiding over the matter has exposure/symptoms

1. A different judge makes a record with the parties present.
2. Determine whether the proceedings can continue with a different judge.
 - a. If yes, proceed forward with having a different judge conduct the proceedings, with appropriate disclosures.
 - b. If no, and after consulting with the parties and hearing from any victim or victim representative in a criminal matter, either:
 - i. Reschedule the proceedings to allow sufficient time for the judge presiding over the proceedings who had Exposure or Symptoms to rejoin the proceedings after being cleared medically, or
 - ii. Begin anew the proceedings before a different judge (including declaring a mistrial if the issue arises during trial).
3. Make appropriate disclosure and follow up as described in Protocol § 7.

Other participants with exposure/symptoms

1. Make a record with the parties present, either in the absence of the Participant with Exposure or Symptoms, or with that Participant appearing by electronic means.
2. Can the role of the Participant with Symptoms or Exposure be filled by another individual?
 - a. If yes, consider moving forward accordingly.
 - b. If no, can the presence of the Participant with Symptoms or Exposure be waived?
 - i. If yes, and if waived (or if a waiver is not necessary), consider moving forward accordingly.
 - ii. If no, can the Participant with Symptoms or Exposure appear remotely?

1. If yes, consider moving forward accordingly.
2. If no, after consulting with the parties and hearing from any victim or victim representative in a criminal matter, determine whether to continue the proceedings and, if the issue arises during trial, declare a mistrial.
3. Make appropriate disclosure and follow up as described in Protocol § 7.