

In the Indiana Supreme Court

In the Matter of the Petition of the Elkhart
County Courts for Administrative Rule 17
Emergency Relief.

Supreme Court Case No.
20S-CB-177



Order Approving Expansion of Operations Plan In Part

By orders issued April 24 and May 13, 2020, this Court ordered trial courts statewide to submit plans for gradually resuming normal operations under limitations appropriate to the 2019 novel coronavirus (COVID-19) public health emergency. Pursuant to that order, the petitioning courts filed an expansion of operations plan (“Plan”) on May 29.

The Court finds that the Plan was made in coordination with appropriate local officials and local justice system partners to account for local health conditions, facility readiness, and litigants’ needs; and that the Plan makes reasonable provisions for resuming normal staffing, providing public access to non-confidential proceedings, and resuming jury trials. A copy of the Plan is attached to this order and incorporated by reference.

Being duly advised, and pursuant to Indiana Administrative Rule 17 and this Court’s inherent authority to supervise the administration of all courts of this State, the Court ORDERS as follows:

1. All emergency relief previously granted to the petitioning courts under Administrative Rule 17 is deemed to expire as of the effective date of this order, except as provided by this Court’s “Order Extending Trial Courts’ Emergency Tolling Authority and Setting Expiration of Other Emergency Orders” issued May 29, 2020 in Case No. 20S-CB-123. However, this Court’s May 13, 2020 “Emergency Order Permitting Expanded Remote Hearings” and paragraph 3 of its May 13 “Order Extending Time for Expanding Trial Court Operations” in Case No. 20S-CB-123 (prohibiting jury trials before July 1 without prior approval of this Court) remain in full force and effect.
2. The Plan is approved **in part**, with the exception that the petitioning courts shall resume jury trials, subject to the health precautions proposed in the Plan, no later than the week of **August 17, 2020**. The petitioning courts may seek relief from this requirement pursuant to Administrative Rule 17 if a particularized local emergency requires suspending jury trials beyond that date. The petitioning courts shall comply with the terms of the Plan **as modified above** through its stated duration, subject to further order of this Court.

Done at Indianapolis, Indiana, on 6/8/2020 , **effective May 29, 2020.**

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

EXHIBIT A
ELKHART COUNTY COURTS'
TRANSITION PLAN

PHASE I: PREPARATION TO REOPEN

The Elkhart County Courts have been operating in Phase I and will continue to do so through the remaining phases of this transition plan. Phase I as well as all other phases of the Transition Plan will be amended as necessary to accommodate the circumstances present in Elkhart County at the time.

CARE OF OUR EMPLOYEES

The requirements in Phase I apply to court staff, probation employees, clerk staff, CASA programs and Juvenile Detention Center employees. We have identified employees who are essential to our performance in providing essential services to the public, and we have encouraged all other employees to work remotely. We will continue to follow this policy as long as is feasible, and we anticipate this will proceed into Phase II. We have given priority to our most vulnerable employees.

As per the CDC and ISDH Guidelines, a person is at increased risk if the person:

1. Is over the age of 60,
2. Has chronic lung diseases or moderate to severe asthma;
3. Has serious heart conditions;
4. Is immunocompromised from any disease such as cancer, AIDS, or medications that compromise immunity;
5. Has severe obesity (BMI of 40 or higher); or
6. Chronic kidney disease requiring dialysis.

We have explained to our employees who is at risk and asked them to identify if they are at risk or not. We are maintaining this information separate from other personnel files.

If at all possible, employees who are at increased risk shall work remotely. Employees with increased risk who cannot work remotely are being kept away from the public, being provided medical-grade personal protection equipment, when available, and are encouraged to practice increased social distancing.

We determine if an employee has had recent contact with someone who has COVID-19. When this has occurred, we have required the employee to self-quarantine and not return to work until the employee has been symptom-free for 14 days. We require the employee who has COVID-19 to either be tested or to provide medical authorization before they return to work. We have discussed with employees and published various safety requirements. We require employees to report if they are experiencing any symptoms of COVID-19 in the preceding three days, including:

1. Measured temperatures equal to or greater than 99.6°F,
2. Chills,
3. Muscle and body aches,
4. Headache,
5. Sore throat,
6. Cough,
7. Chest tightness,
8. Shortness of breath,
9. New loss of taste or smell,
10. Difficulty breathing
11. Diarrhea, or
12. Repeated shaking with chills.

Any employee experiencing any of these symptoms shall not be allowed to enter the workplace. Employees who violate this policy are subject to disciplinary consequences including but not limited to termination of employment. We require employees who experience any of the foregoing symptoms during the workday to immediately report the symptoms and to go home to self-quarantine.

We require employees to report if someone they live with or have been with in the last 14 days test positive for COVID-19. Any such employee is required to stay home on leave or to work remotely for as long as is needed.

We require any employee who travels, whether for personal or business, may not return to work without being self-quarantined from the workplace after travel for a period of 14 days.

SAFETY PROVISIONS FOR EMPLOYEES

We have measured and distant work stations so that they are a minimum of six feet of distance between each work station where possible. In areas where this is not possible, we have taken corrective measures to minimize contact between staff such as directional patterns in hallways, installing plexiglass, rotating work hours, and other measures to reduce the contact between our employees.

We have written policies and signs posted reminding our employees to use good hygiene in the workplace, such as a washing hands with soap and water or with alcohol-based sanitizer, avoid touching their face, sneezing or coughing into a tissue or

their elbow, frequent disinfection of used items and surfaces, and most importantly, maintaining six feet social distance.

We have directed employees not to share computers or other equipment. Equipment that must be shared has been assigned to one person or is sanitized between each use.

We are requiring employees to wear face covering when they enter and leave the facility, when they have contact with the public, and when they cannot maintain six feet of social distancing.

ADA REQUIREMENTS FOR EMPLOYEES

If an employee reveals they have COVID-19, we recognize our responsibility and will inform all persons who had contact with the employee. We will not reveal the name of the employee without the employee's consent. We will also notify the Health Department so that "contact tracing" can occur.

PREPARATION OF THE PHYSICAL FACILITIES

We are working with the county officials to insure that there is deep cleaning of the courtroom, chambers, and offices of our employees before resuming non-emergency hearings. This will likely require the county to contract with a professional cleaning service to provide the necessary deep-cleaning as well as cleaning of courtrooms and common areas of the courthouse after reopening. Each court and the clerk's office for

each court is limiting the number of employees that handle mail. Any employee handling mail is doing so while wearing a face covering and gloves.

Each court has determined the number of people that may safely be in the courtroom and each area surrounding the courtroom practicing safe-social distancing. Courts have appropriately marked where people are to sit or where people are to stand by marking and meeting the six foot social distancing requirement. Where necessary, plexiglass has been installed for further protection of employees.

PHASE II: RESUMING NON-EMERGENCY HEARINGS AND OPERATIONS

We are hopeful that all courts in Elkhart County will be able to be in Phase II by July 1, 2020 even with the current increase in COVID-19 within Elkhart County. Where individual courts are able to meet the COVID-19 protocol set forth in this Transition Plan prior to July 1, 2020, those courts will resume non-emergency hearings and operations sooner. We also understand that we will have to slow the implementation of our transition plan if in fact COVID-19 continues to increase at the present rate it is increasing in Elkhart County.

EMPLOYEES

All vulnerable employees will continue to work remotely where possible. Employees who live with or provide care for vulnerable individuals will continue to work remotely to the greatest extent possible to reduce chances that they could carry

the virus to vulnerable individuals. We will provide reasonable accommodation options where possible to any employee requiring the same.

Prior to coming to work each day, all employees shall conduct a health assessment as required by Elkhart County Government which includes taking their temperature. If an employee's temperature is greater than 99.6°F or if an employee is exhibiting symptoms of COVID-19, the employee shall self-report to supervisors, stay home, and call their physician for treatment. Employees will have their temperatures taken at some point each mid-day to make certain their temperature is not greater than 99.6°F. Each court and each department will keep a log of employee temperatures.

Employees will be required to wear masks when entering and exiting a facility. Employees are required to wear masks at any time they are within the facility and unable to maintain the safe social distancing of six feet. Employees will be required to maintain safe social distancing of six feet unless it is physically impossible to do so.

Our probation department will continue to conduct remote visitation as much as is possible. During Phase II, probation will begin off-site visits to probationers and clients as needed and based on prioritization as established by each court. Face coverings are required for all face-to-face meetings where social distancing cannot be maintained. Probation will begin to meet at the courthouse with fact-to-face meetings of high-risk and prioritized medium-risk clientele.

GAL/CASA visits will resume while maintaining social distancing. Masks are to be worn by GAL and CASA staff.

Essential business travel may resume. Personal travel may resume. Employees are required to continue to take benefit time at home or work remotely for 14 days when returning from out-of-state travel or from travel within state to an area that is a hot spot for COVID-19.

HANDLING THE PUBLIC

As much as possible, all courts will continue to hold hearings remotely. Courts may begin to expand hearing types to include family and civil hearings that would better be conducted in person rather than remotely. Some courts are already capable of using Webex and Zoom to conduct hearings remotely, and our goal will be to have all courts have the capability of conducting such remote hearings. In-custody criminal hearings will be conducted by videoconferencing whenever possible and whenever due process rights and Constitutional rights do not require otherwise. Similarly, out-of-custody criminal hearings will be conducted remotely whenever due process rights and Constitutional rights do not require otherwise. Each court will determine the priority of hearings, giving high priority to hearings that may be held remotely.

Anyone entering a courthouse will be screened. The screener will ask each individual if they have a temperature greater than 99.6°F, if they have exhibited COVID-19 symptoms such as a cough, shortness of breath, a fever or muscle aches and pains within the past three days, if they have traveled outside of the United States, if they have traveled within the United States to an area that was a hot spot for COVID-19 within the 14 days prior, if they have tested positive for COVID-19 or been in contact

with someone who has tested positive. The temperature of each individual will be taken, and no one will be allowed admittance into the courthouse if their temperature is 99.6°F or greater. If a person does not meet the screening protocol, the person will not be allowed to enter the courthouse. Individuals entering the courthouse will be required to wear masks. We will provide masks to anyone entering the courthouse who does not have one. We plan on the county providing us with independent contractors to provide this screening. In the event the county does not provide independent contractors, each court will be required to provide a screener.

Each court will have its courtroom and waiting areas set up to comply with the requirement of six feet social distancing. When in-person hearings must be held, each court will limit the participants to only essential persons. High volume courts will schedule their hearings so as to minimize contact and provide space to comply with social distancing requirements. Courts will no longer have “cattle call” hearings that do not comply with social distancing requirements. Courts will continue to schedule a limited number of hearings for a specific date and time as the size of their respective courtroom allows to comply with social distancing. Witnesses shall be allowed to testify remotely where a criminal defendant’s due process and Constitutional rights do not require otherwise.

Masks will be made available for anyone entering the courtroom or court offices. Each person entering the courthouse will be required to use hand sanitizer before proceeding further into the courthouse. Each person entering a courtroom will be required to use hand sanitizer before entering the courtroom. Whether individual

courts require individuals within their courts to continue to wear masks will be up to each individual judge but it will be highly recommended. Whenever possible, courts will maintain the six foot social distancing requirement. The courtroom will be cleaned between each hearing. When possible, the court will utilize independent contractors provided by the county. Courts may also require litigants or their attorneys to sanitize their area with sanitation cleaning materials supplied by the court prior to their hearing.

Courts will continue to attempt to arrange hearings to be held remotely by senior judges where possible to reduce the backlog of cases. Senior judges may utilize either Webex or Zoom for these remote hearings.

During Phase II, we will limit public access to courtrooms to only the essential participants. We will allow the media to attend proceedings in courtrooms so that the media will be able to report what occurs in court to the public. We will work towards having remote hearings and in-person hearings available to the public through Cisco Webex.

PHASE III: RESUMPTION OF JURY TRIALS

We had hoped to be able to resume jury trials by August 3, 2020. Because of the recent surge in COVID-19 in Elkhart County, we are concerned that potential jurors, especially those over age 60, will be reluctant to participate in jury duty until COVID-19 is in decline in Elkhart County and residents feel safe to travel to a courthouse to participate in a jury trial. We, therefore, plan on resuming jury trials September 1, 2020.

EMPLOYEES

Vulnerable employees may return to work, but they will be urged to work remotely where it does not hinder the work of the court. We will continue to monitor the health of all employees as previously described herein until we are advised by our local health department that it is not necessary to do so. The restrictions on entering the workplace shall be continued for any employee with symptoms of COVID-19. We shall continue with all prior practices to protect our employees until further direction from our local health department indicating that it is not necessary to do so.

FACILITY AND JURY

Anyone entering a courthouse will be screened for COVID-19 and required to wear a mask as previously described herein. Each court will determine how it will handle litigants, attorneys, witnesses, and jurors wearing masks. Each court will send an additional COVID-19 questionnaire to all prospective jurors. Courts will allow automatic deferrals for potential jurors who:

- a. Are essential workers, including those working in long-term care facilities;
- b. Are jurors with vulnerable health conditions or living with those who are vulnerable;
- c. Have had COVID-19 exposure;
- d. Are people returning to work just after having been furloughed;
- e. Who exhibit COVID-19 symptoms occurring while or after the jury is impaneled.

Each court will determine how to secure social distancing for gathering of a jury

pool. Courts will utilize two courts of a courtroom where necessary, even if the courts are on separate floors in order to gather a jury pool to impanel a jury. For example, when either the Elkhart Circuit Court or the Elkhart Superior Court No. 3 has a criminal jury trial, the Elkhart Circuit Court courtroom, the Elkhart Circuit Court assembly room and the Elkhart Superior Court No. 3 courtroom would all be utilized to safely gather a jury pool and utilize social distancing. This will require that criminal jury trials be staggered from week-to-week as it would not be possible to hold a criminal jury trial in the Elkhart Circuit Court and a criminal jury in the Elkhart Superior Court No. 3 the same week. A similar procedure would likely need to be utilized for Elkhart Superior Courts No. 1 and 2 as far as criminal jury trials are concerned. Where necessary, Elkhart Superior Courts No. 4, 5 and 6 will utilize the space in other courts to accommodate their need to conduct criminal jury trials. Traffic will be controlled as best as is possible under the circumstances to meet the requirement of six foot social distancing. Bathrooms and other common areas will have access limited to the number of people who can be in the public area and maintain social distancing. Each court will determine whether it requires staggering the call of prospective jurors at separate times of the day to minimize the number of persons present at one time for the entire jury pool.

The courts will continue to research and consider doing jury selection remotely.

Courts will prepare a video for jurors showing them the courtroom facilities and the COVID-19 protocol implemented to insure their safety. This video will include a walk-through of jury selection procedure from the front door of the courthouse to the

jury room and to the courtroom. An explanation will be given as to all of the steps being taken to keep them safe. We will advise prospective jurors that they are required to wear masks and that if they do not have one, we will provide them with one. We will also explain to them the health precautions being taken such as the use of hand sanitizer and cleaning of the courtrooms.

After a jury is impaneled, each court will set requirements to comply with social distancing. It is likely that jurors will need to be seated and socially distanced through the gallery seating of each courtroom rather than in the jury box as social distancing will not be possible if all jurors are seated in the jury box. This will necessarily mean that the public will not be allowed to have access to the courtrooms during jury trials. The courts will continue to allow the media to serve as the means by which the public has access to what occurs in court. The courts will continue to work to have remote production of jury trials for the public.

The court will have gloves available for jurors in the event that jurors need to handle exhibits. Each court will make every effort to reduce the exposure of jurors to COVID-19 by limiting the physical passing of exhibits between jurors where possible.

For most courts, jury deliberation will have to occur in the courtroom as the jury deliberation rooms are of insufficient size to allow social distancing. Jurors will be encouraged to maintain social distancing, to continue to wear face masks, and to take all necessary steps to keep them and their fellow jurors safe from COVID-19.

MISCELLANEOUS

At some time as determined by Elkhart Superior Court No. 4 Judge Gretchen S. Lund, the problem-solving court known as Drug Court will determine that face-to-face hearings may be again conducted. Judge Lund will comply with all social distancing and COVID-19 protocol requirements set forth herein.

During Phase III, probation will begin to resume in-person office visits as well as home visits. Probation will continue to comply with the screening and personal protection equipment requirements as set forth herein until the local health department determines that those requirements are no longer needed.

GALs and CASAs will resume home visits during Phase III. They will continue to follow the protocol of screening and use of personal protection equipment as outlined in this Transition Plan until directed that it is no longer necessary to do so by the local health department.

Our Elkhart County Courts' Transition Plan will be displayed on the Elkhart County website. Additionally, we will provide the Plan to the local Bar Associations and various local law firms. We will also provide the Plan to the Office of the Prosecuting Attorney and the Office of the Public Defender. Finally, we will provide a copy of the Plan to local media. We will also attempt to convince local media that this is so important to public safety that local media should provide additional media coverage to help promote our Plan.