

**IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

ADMINISTRATIVE ORDER NO. 2020-35

**IN RE: RESUMPTION OF FULL PHASE TWO OPERATIONS/EMPLOYEE
 COVID SCREENING POLICY**

As a result of the Coronavirus Disease 2019 (COVID-19) pandemic, and the resulting state of emergency, the Florida state courts have taken extensive measures to mitigate the effects of this pandemic upon the judicial branch and its participants. To that end, the Supreme Court of Florida has issued administrative orders implementing temporary measures essential to the administration of justice during the COVID-19 pandemic. The overarching intent of those orders has been to mitigate the impact of COVID-19, while keeping the courts operating to the fullest extent consistent with public safety.

On June 8, 2020, by entry of Administrative Order 20-21, the First Judicial Circuit entered Phase 2 of operations as defined by the Florida Supreme Court in AOSC20-32. Following a decline in local health data, and based on the directives contained in AOSC 20-32, Amendment 2, the First Judicial Circuit entered a modified Phase 2 of operations on July 16, 2020, as reflected in Administrative Order 20-26. The undersigned has continued to monitor health data as directed by the Supreme Court of Florida in AOSC 20-32, Amendment 3, and has remained in consultation with the relevant court partners and stakeholders. The undersigned now concludes that the current local health data justifies a return to full Phase 2 operations. A memorandum to the Chief Justice will be provided in support of this modification to First Judicial Circuit operations.

As previously stated in Administrative Order 20-21, the following directives are applicable in Phase 2 of court operations:

A. GUIDING PRINCIPLES

1. The presiding judge in all cases must consider the constitutional rights of crime victims and criminal defendants and the public's constitutional right of access to the courts.
2. To maintain judicial workflow to the maximum extent feasible, chief judges are directed to take all necessary steps to facilitate conducting proceedings with the use of technology.
3. Nothing in this order is intended to limit a chief judge's authority to conduct court business or to approve additional court proceedings or events that are required in the interest of justice, if doing so is consistent with protecting the health of the participants and the public health.
4. Judges and court personnel who can effectively conduct court and judicial branch business from a remote location shall do so. Participants who have the capability of participating by electronic means in remote court proceedings shall do so.

B. COURT PROCEEDINGS

1. **Jury Proceedings and Jury Trials.** Effective September 8, 2020, grand jury proceedings and criminal jury trials may proceed only to the extent that all protocols relevant to maintaining the public safety are strictly enforced. Limited civil jury trials may be allowed only as permitted as provided in section C of the instant order.

2. Essential and Critical Trial Court Proceedings.

- a. Essential and critical trial court proceedings should continue to be conducted remotely or, if necessary, in person, as follows:
 - First Appearances
 - Criminal Arraignments – (Appearances for out-of-custody clients may be waived by counsel)
 - Bond hearings
 - Juvenile detention hearings
 - Juvenile Dependency/Shelter Hearings
 - Chapter 39 injunctions
 - Petitions for Judicial Waiver of Parental Notice under section 390.01114(4), Fla. Stat.
 - Petitions for Emergency Incapacity Petitions and Appointment of Emergency Temporary Guardian
 - Petitions for Dating Violence, Domestic Violence, Repeat Violence, Sexual Violence or Stalking Injunctions
 - Petitions for Risk Protection Orders
 - Proceedings Involving Requests for “Do Not Resuscitate” Orders
 - Vulnerable Adult Petitions
 - Issuance of search or arrest warrants or authorizations for wiretaps
 - Baker Act and Marchman Act proceedings
 - Adult Protective Services Act proceedings
 - Family Law and Dependency cases in which the imminent safety of children is at issue
 - Extraordinary Writs as necessary to protect constitutional rights
 - Proceedings related to the state of emergency or public health emergency, including but not limited to violation of quarantine or isolation orders, violations of orders to limit travel, violation of orders to close public or private buildings; seizure of bodily fluids, and enforcement of curfew orders
 - Proceedings involving violations and sanctions for Drug Court, Veteran’s Court, and Mental Health Court participants
 - 48-hour hearings for those arrested for failure to pay child support
 - Any other emergency proceedings or hearings as authorized by the Chief Judge.
- b. In addition to essential proceedings, all circuit and county courts shall perform, as necessary and applicable, critical proceedings related to the state of emergency or the public health emergency, including but not limited to proceedings related to: violation of quarantine or isolation; violation of orders to limit travel; violation of orders to close public or private buildings; and enforcement of curfew orders.
- c. It is recognized that certain essential or critical trial court proceedings in some jurisdictions may in extraordinary, limited circumstances be unavoidably delayed due to the exigencies of the ongoing emergency. When this occurs, chief judges are required to take all steps feasible to minimize the delay.

- d. In conducting essential proceedings and proceedings critical to the state of emergency or the public health emergency, circuit and county courts shall employ all methods feasible to minimize risk of COVID-19 exposure to individuals involved in the proceedings or the general public.

3. **Non-Essential and Non-critical Court Proceedings.** The chief judge shall continue to review cases and court events and the communications technology resources available to the circuit, each county, and each judge. The following proceedings are amenable to being conducted remotely:

- (a) Alternative dispute resolution proceedings;
- (b) Status, case management, and pretrial conferences in all case types;
- (c) Non-evidentiary and evidentiary motion hearings in all case types;
- (d) Pleas in absentia in county court misdemeanor cases;
- (e) Hearings in juvenile delinquency cases;
- (f) Hearings in noncriminal traffic infraction cases;
- (g) Hearings in involuntary commitment of sexually violent predator cases;
- (h) Problem-solving court staffings, hearings, and wellness checks; and
- (i) Non-jury trials in all case types, except for:
 - Criminal cases unless the parties in such case agree to the remote conduct of a non-jury trial; or
 - Termination of parental rights or juvenile delinquency cases, unless the chief judge or the presiding judge in the case determines that the non-jury trial should proceed remotely.

It is hereby ordered that each of the above-listed proceedings shall be conducted using telephonic or other electronic means available in the subject jurisdiction unless a judge determines that one of the following exceptions applies:

- Remote conduct of the proceeding is inconsistent with the United States or Florida Constitution, a statute, or a rule of court that has not been suspended by administrative order; or
- Remote conduct of the proceeding would be infeasible because the court, the clerk, or other participant in the proceeding lacks the technological resources necessary to successfully conduct the proceeding or, for reasons directly related to the state of emergency or the public health emergency, lacks the staff resources necessary to conduct the proceeding.

The Chief Judge shall take all necessary steps to ensure that the above-listed proceedings are conducted to the fullest extent possible, consistent with the guidance established in this section.

4. Limits on In-Person Hearings. No proceedings or other court events other than essential proceedings and proceedings critical to the state of emergency or the public health emergency shall be conducted through in-person hearings. However, non-essential and non-critical court proceedings that cannot be conducted remotely because one of the exceptions under B.3. applies, or those proceedings specifically approved by the Chief Judge or relevant administrative judge, may be conducted in-person in a manner consistent with the circuit's operational plan.

C. CIVIL PROCEEDINGS

The following civil proceedings may be conducted in-person if one of the exceptions under B.3. applies, or if specifically approved by the Chief Judge or relevant administrative judge:

1. Petitions to determine incapacity and other guardianship matters;
2. Authorized *ex parte* matters, e.g., administrative, emergency, or settlement matters;
3. Cases in which a statutory timeframe may soon expire;
4. Actions subject to summary procedure under Chapter 51, Florida Statutes;
5. Claims of exemption from a garnishment of wages; and
6. Approval of settlements, structured settlements (e.g., annuities), and transfers of structured settlement payment rights.

D. FAMILY COURT PROCEEDINGS

The following family court matters may be conducted in-person if one of the exceptions under B.3. applies, or if specifically approved by the Chief Judge or relevant administrative judge:

1. Termination of parental rights trials, advisory hearings, and dependency arraignment hearings;
2. Juvenile delinquency trials;
3. Child support contempt hearings; and
4. Other family court hearings that do not use mass calendar docketing, e.g., final judgments for dissolution of marriage, name changes, adoptions, or other evidentiary hearings.

E. CRIMINAL PROCEEDINGS

The following criminal proceedings may also be conducted in-person if one of the exceptions under B.3. applies or if specifically approved by the Chief Judge or relevant administrative judge:

1. Motions to dismiss;
2. Motions related to custody, e.g., pretrial detention, non-adversarial probable cause, adversarial preliminary hearings, 33-day motions (or post-trial release);
3. Motions to suppress;
4. Motions related to evidence, e.g., *Williams* Rule, sex crimes, motions in limine, or *Daubert* issues;
5. Stand Your Ground hearings;
6. Motions and hearings related to incompetence, mental health experts, intellectual disability, or insanity;
7. Motions relating to indigency for costs or to appoint mitigation experts;
8. Pleas, including out-of-custody pleas;
9. Jimmy Ryce Act proceedings (except for trial proceedings);
10. Sentencings or violation of probation or violation of community control hearings;
11. *Nelson/Faretta* hearings;
12. Discovery related motions;
13. Problem-solving court staffings, hearings, and wellness checks;
14. Motions to withdraw plea;
15. Motions for furlough;
16. Motions for new trial or in arrest of judgment;
17. Motions for early termination of probation;
18. Motions to consolidate, sever, or join;

19. Motions for change of venue;
20. Motions for the return of property;
21. Motions to seal and expunge;
22. Post-conviction motions, e.g., Rules 3.800(b) or (c), 3.850, 3.851, or jail credit, juvenile sentencing review; DNA testing, or *Brady* issues; and
23. Contempt hearings.

All judges are encouraged to consider the guidance contained in the Workgroup Report for prioritization of in-person trial court proceedings which fall under one of the exceptions in B.3 of this order. The priority recommendations are contained in the Memorandum from Chief Justice Charles T. Canady dated May 21, 2020. A copy of the Memorandum is attached hereto as Exhibit "A".

All judges shall comply with all other provisions of Florida Supreme Court AOSC20-23, *as amended*, relating to use of technology, administering of oaths, suspension of time periods in certain rules of criminal procedure, defendants arrested on warrant or *capias* from another Florida jurisdiction, speedy trial procedure and non-criminal traffic court proceedings, suspension of time periods in certain small claims rules, writs of possession, family law forms, and visitation for children under the protective supervision of the Department of Children and Families.

F. SCREENING POLICY

All judges and court employees are directed to comply with the human resources policy on COVID screening, which is attached as Exhibit "B", and any subsequent amendment of same. This guidance may be updated and distributed at the discretion of Court Administration without the need for additional order of the undersigned.

G. ADMINISTRATIVE ORDER 2020-26 VACATED IN PART

Administrative Order 2020-26 is vacated **only** to the extent that it limits Phase 2 court proceedings and transportation of inmates. Additional direction with regard to

transportation of inmates will be provided by the undersigned or the administrative judges in the respective counties of the First Judicial Circuit. All other provisions of Administrative Order 2020-26, with regard to current safety protocols, security, and the use of remote technology remain in effect.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, on this

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day of September, 2020.



JOHN L. MILLER
Chief Judge

Copies furnished to:

All Judges, First Judicial Circuit
All Clerks, First Judicial Circuit
William Eddins, State Attorney, First Judicial Circuit
Bruce Miller, Public Defender, First Judicial Circuit
All Sheriffs, First Judicial Circuit
Robin Wright, Trial Court Administrator
Elizabeth Miller, Child Welfare Legal Services
Bryan Carter, Guardian Ad Litem
Mark Jones, Family First Network
Julie Gaither, Department of Corrections
Paul Wallis, Florida Department of Juvenile Justice
Justice Administrative Commission
Candice Brower, Office of Criminal Conflict Counsel
Craig Waters, Florida Supreme Court
For Broadcast by: Escambia-Santa Rosa Bar Association
For Broadcast by: Okaloosa County Bar Association
For Broadcast by: Walton County Bar Association
For Posting at www.FirstJudicialCircuit.org

Supreme Court of Florida

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CHARLES T. CANADY
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JORGE LABARGA
C. ALAN LAWSON
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JUSTICES

JOHN A. TOMASINO
CLERK OF COURT

SILVESTER DAWSON
MARSHAL

MEMORANDUM

TO: Chief Judges of the Trial Courts
Trial Court Administrators

FROM: Chief Justice Charles T. Canady *Char. T. Canady*

DATE: May 21, 2020

SUBJECT: Proceeding Priority When Limited In-Person Contact is
Authorized in Phase 2

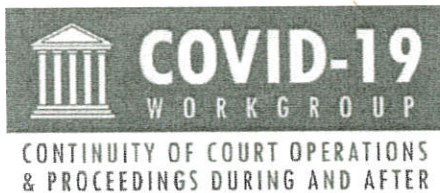
The Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19 has considered the priority in which proceedings should resume in person if the proceedings cannot be remotely conducted when the court has transitioned to Phase 2 of the pandemic because an exception applies.¹ Courts are encouraged to consider the guidance in the attached Workgroup report.

CTC:aqj

Attachment

cc: Workgroup on the Continuity of Court Operations and Proceedings During and After COVID-19

¹ The conditions for transitioning to Phase 2 are specified in AOSC20-32 and the authorization for certain limited in-person proceedings is provided in AOSC20-23, Amendment 2.



PHASE 2

Recommendations for the Priority in Which to Resume Certain In-Person Trial Court Proceedings

May 19, 2020

Introduction

This guide provides recommendations for the priority in which trial courts may wish to conduct in-person, non-essential court proceedings, which cannot be conducted remotely, for civil, criminal, and family cases when limited, in-person proceedings become authorized in Phase 2. See Florida Supreme Court Administrative Order 20-23, 2nd Amended (AOSC20-23, 2nd Amended), for the conditions that must be met to conduct in-person, non-essential proceedings during Phase 2.

Civil

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential civil proceedings when authorized by AOSC20-23, 2nd Amended:

1. Petitions to determine incapacity and other guardianship matters
2. Authorized ex parte matters, e.g., administrative, emergency, or settlement matters
3. Cases in which a statutory timeframe may soon expire
4. Actions subject to summary procedure under Chapter 51, Florida Statutes
5. Claims of exemption from a garnishment of wages
6. Approvals of settlements, structured settlements (e.g., annuities), and transfers of structured settlement payment rights

Family/Unified Family Court

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential family and Unified Family Court proceedings when authorized by AOSC20-23, 2nd Amended:

1. Termination of parental rights trials, advisory hearings, and dependency arraignment hearings
 - The presiding judge should be given discretion as to the order in which the cases are tried with considerations that include, but are not limited to, the length of time the child has been in care, the age of the child, or the number of people involved in the case.
2. Juvenile delinquency trials

- The presiding judge should have discretion as to the order in which the cases are tried.

3. Child Support Contempt Hearings

- Efforts should be made to limit the number of cases that are set for each docket with the appropriate amount of time set between each hearing in order to limit congestion in the courtroom or hallways.

4. Other family court hearings that do not use mass calendar docketing, e.g., final judgments for dissolution of marriage, name changes, adoptions, or evidentiary hearings

Criminal

The Workgroup recommends the prioritization below for the conduct of in-person, non-essential criminal proceedings when authorized by AOSC20-23, 2nd Amended. Priorities were assigned based on the following scale:

- Priority One means highest importance.
- Priority Two means medium importance.
- Priority Three means lowest importance.¹

1. Priority One Proceedings

- Motions to dismiss (e.g., C4, double jeopardy, or defect)
- Motions related to custody (e.g., pretrial detention, non-adversarial probable cause, adversarial preliminary hearings, 33-day motions, or post-trial release)
- Motions to suppress if dispositive
- Motions related to evidence if dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
- Stand Your Ground hearings
- Motions and hearings (except status hearings) related to incompetence, mental health experts, intellectual disability, or insanity
- Motions relating to indigent for costs or to appoint mitigation experts
- Pleas, including out-of-custody pleas
- Jimmy Ryce Act proceedings (except for trial proceedings)
- Sentencings or violation of probation or violation of community control hearings

¹ The Workgroup notes, however, that each criminal case is often unique on its own facts and similarly, that each of the proceedings listed may be qualitatively different from one case to the next. For these reasons, the priority in any given case may be dictated by factors including, but not limited to, the nature of the underlying charge, the stage of the case, or the potential consequences based on the outcome of the proceeding.

2. Priority Two Proceedings

- Nelson/Faretta hearings
- Discovery-related motions (e.g., orders to show cause, subpoenas for medical records, protective orders, or motions relating to the perpetuation of testimony or fingerprint, DNA, or handwriting issues)
- Motions to suppress if not dispositive
- Motions related to evidence if not dispositive (e.g., Williams rule/sex crimes, motions in limine, or Daubert issues)
- Problem-solving court staffings, hearings, and wellness checks
- Motions to withdraw plea
- Motions for furlough
- Motions for new trial or in arrest of judgment (however, may wish to assign as Priority One if the motion may result in release)
- Motions for early termination of probation

3. Priority Three Proceedings

- Status hearings related to incompetence, mental health experts, intellectual disability, or insanity
- Motions to consolidate, sever, or join
- Motions for a change of venue
- Motions for the return of property (however, may wish to assign a higher priority based on the nature of the property)
- Motions to seal and expunge
- Post-conviction motions (e.g., Fla. R. Crim. P. 3.800(b) or (c), 3.850, or 3.851 or jail credit, juvenile sentencing review, DNA testing, or Brady issues) (however, may wish to assign as Priority Two if the motion may result in release)
- Contempt hearings

HUMAN RESOURCES POLICY¹

If a judge, judicial assistant, or other court employee has COVID-19 symptoms; has been exposed to persons who have tested positive for COVID-19 or who is exhibiting symptoms; has taken a COVID-19 test due to symptoms or exposure to someone who has tested positive for COVID-19; or has tested positive for COVID-19, they must notify as follows:

- Judges must notify the Chief Judge.
- Judicial assistants must notify the judge for whom they work and the Trial Court Administrator.
- Other court employees must notify the Trial Court Administrator.

Once the Chief Judge or the Trial Court Administrator is notified by a judge, judicial assistant, or other court employee as directed above, the Trial Court Administrator will ask the judge, judicial assistant or other court employee for a list of court employees and building partners they may have had contact with while symptomatic. The Trial Court Administrator will then notify the court employees who may have been exposed and building partners whose employees may have been exposed. The Trial Court Administrator will not identify the judge, judicial assistant, or other court employee when notifying court employees and building partners of possible exposure.

If any court employee develops COVID-19 symptoms while at work, they will be instructed to go home and consult with a health provider.

¹ For purposes of this document, the term “employee” includes Court Administration employees, judicial assistants, and judges.