



Michigan Supreme Court

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MEMORANDUM

DATE: September 25, 2020

TO: All Judges

CC: Court Administrators and Probate Registers

FROM: Thomas P. Boyd

SUBJECT: Recommended Metrics for Jury Trials

With the issuance of [Administrative Order 2020-19](#) on June 26, 2020, Michigan courts in phase three, and some courts in phase two, of the Return to Full Capacity (RTFC) guidance were allowed to resume jury trials. As required by the AO and the guidance, these courts developed data-driven plans to safeguard the public's health, while recognizing the important role that jury trials play in our justice system. Much has changed since the RTFC guidance was published, including a better understanding of COVID-19, the increased likelihood of a prolonged pandemic, and improved partnerships with local public health officials to assess risk. These changes create a need to adapt guidance regarding jury trials that will enable courts to move forward safely and consistently.

To that end, SCAO has partnered with state and local public health experts to develop new criteria for courts to conduct jury trials. The key element of the new criteria is that *all phase two and phase three courts are required to submit one LAO that will apply to all jury trials in that jurisdiction*. Phase two courts are no longer required to submit a jury checklist. Only those courts with an approved [jury trial LAO](#) may proceed with jury trials; however, courts must still assess safety as part of the decision-making process for determining whether to conduct each particular trial.

The following guidance builds on the RTFC guidance and supersedes them where appropriate:

1. Jury trials are limited to courts in phases two and three of the SCAO Return to Full Capacity process.
2. In order to conduct jury trials, while maximizing the safety of the public and court personnel, courts shall conduct all other work remotely (as much as possible) to reduce the number of people in the courthouse.
3. As a starting point for consideration of whether it is safe to conduct jury trials in a jurisdiction, local health department data or data available on the MiStart [Map](#) must show a 7-day average in the county of less than 70 COVID-19 cases per million per day AND

- less than 10 percent positive diagnostic tests. If a county has a daily 7-day average of fewer than 20 cases, the criteria of 70 cases per million or less may not apply, depending on county population.
4. Each chief judge must consult with their local public health official to determine the risk level and the mitigation measures necessary to avoid excessive risk. The chief judge shall decide whether, with mitigation measures in place, a jury trial can be conducted that will not create excessive risk to public health. Excessive risk is the probability of disease transmission that cannot be reasonably mitigated through implementation of the safety precautions provided in [LAO 51](#), or other precautions recommended by the local public health department.
 5. On days when jury proceedings are being conducted, to the extent possible, collect the names and contact information of anyone coming into the building. Assure the individual that the collected information will only be used for contact tracing, if necessary.
 6. The chief judge's decision about whether to proceed with a jury trial must include consideration of the following:
 - a. The percentage of cases in the county that are associated with an outbreak, such as cases confined to a nursing home;
 - b. The number of COVID-related deaths among county residents;
 - c. The proportion of emergency department visits for coronavirus-like symptoms for the Michigan Economic Recovery Council (MERC) region;¹
 - d. The COVID-19 hospitalization rates for the MERC region; and
 - e. The known COVID-19 cases associated with the court facility over the past 14 days, and any evidence of ongoing transmission within the facility.
 7. A jury trial may not commence if the chief judge determines, based on information provided by the local health department, that such a trial would create an excessive public health risk.
 8. The court must also have risk mitigation strategies in place including screening, social distancing, frequent sanitizing of common surfaces, and wearing of masks in all places where people may congregate. Each court must submit an LAO to the SCAO regional office for approval. The LAO must outline minimum mitigation strategies for all trials and should include additional safety measures, where appropriate. The LAO must be approved before jury trials may be conducted. It is the responsibility of each chief judge to assure that commencing a jury trial complies with this policy and does not create an excessive risk to the public.

This guidance was developed to help ensure that courts across the state place consistent emphasis on safety measures prior to each trial. The initial metrics of cases per million per day and the percentage of positive tests are a starting point for that discussion. If you have questions or need assistance with your LAO, please contact your regional administrator.

¹ MERC regions on the MiStart MAP were developed by the Michigan Economic Recovery Council (MERC). MERC regions were developed by merging Michigan's Emergency Preparedness Regions and Michigan's labor sheds – the major areas of the state where people live and travel to work based on U.S. Department of Labor data – so that any outbreak resulting from a return to work can be handled effectively under public health laws.