

CIRCUIT COURT PHASE ANNOUNCEMENT – 09/10/20

As directed by the Missouri Supreme Court on May 4, 2020, judicial circuits cannot rush to “open their doors” during this pandemic. They must do so gradually. The Court developed four phases (Zero through Three) to allow for this process. In determining whether changing phases is appropriate, the Court provided the following specific “Gateway Criteria” to consider:

- “1. No confirmed COVID-19 cases in the court facility within a 14-day period.
2. Rescission or lack of stay-at-home orders or the relaxing of group gathering restrictions applicable to the community.
3. Improving COVID-19 health conditions over a 14-day period in the community, including conditions such as the number of confirmed COVID-19 cases and related deaths in relation to a community’s population density, size of particularly vulnerable populations, and availability of medical facilities including emergency and intensive care capacity.
4. Consultation with local health officials or departments concerning changes to levels of court and courthouse activities.
5. Consultation with local judiciary partners such as children’s division personnel, juvenile officers, members of the local bar, prosecutors and public defenders, law enforcement and probation and parole.”

Starting on May 12, 2020, the 21st Circuit has engaged in phasing discussions with judges, law enforcement officers, court administrators, prosecutors, public defenders, juvenile officers, Department of Public Health officials, probation officers, bar leaders and others. These discussions occur on a weekly basis, and will continue even after this Circuit enters into Phase Three, as the possibility of moving back to a lower phase always remains, depending on the status of the spread of the virus.

This Circuit has also engaged in discussions with the Chief Judge of the Eastern District Court of Appeals and the Presiding Judge of the 22nd Circuit; both Presiding Judges agreed to regularly speak with the Chief Judge and always before deciding to change phases.

The 21st Circuit is currently in Phase Zero, as it has been since July 22, 2020.

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Factors that this Circuit has considered this week include the following:

1. Courthouse Staff: No new cases of COVID-19 were reported among Courthouse staff during the past week. However, a security officer with the St. Louis County Police Department, who has regularly been in the Courthouse's security office for the past few weeks at least, received a positive test result on September 4, 2020. He had last been in the building on September 3, 2020.

2. DJS Jail and Detention Staff: One employee of the St. Louis County DJS Jail was diagnosed with COVID-19 this past week. No employee of the St. Louis County Detention Center has tested positive for the past ten days. *(Source: St. Louis County Department of Public Health, September 9, 2020).*

3. DJS Jail and Detention Residents: Of the 177 DJS Jail tests conducted since September 1, 2020, there have been no positive COVID-19 results (121 negative results, 56 results are still pending). There have been no identified positive results from any residents of the St. Louis County Detention Center since mid-July. *(Source: St. Louis County Department of Public Health, September 9, 2020).*

4. St. Louis Region: Over the week starting September 1, 2020, the St. Louis metro area has averaged approximately 540 new cases per day. That number is about the same as the previous week. *(Source: St. Louis Public Radio, September 9, 2020).*

On Tuesday, September 8, 2020, the St. Louis Metropolitan Pandemic Task Force reported 28 new COVID-19 hospital admissions and a seven-day moving average of 35 admissions. As of Tuesday, the seven-day moving average for new COVID-19 hospital admissions had trended downward; however, on Wednesday, September 9, 2020, the task force reported an average of 40 new admissions. *(Sources: KSDK.com, September 8 and 9, 2020).*¹

Based on data reported by the St. Louis Metropolitan Pandemic Task Force and analyzed by Dr. Christopher Prener at St. Louis University, average new hospitalizations for COVID-19 at SSM, BJC, Mercy, and St. Luke's hospitals in the St. Louis metro area increased by 0.4 percent between August 18, 2020 (39.57 admissions per day) and August 31, 2020 (39.71 admissions per day). *(Source: St. Louis County Department of Public Health, September 9, 2020).*

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¹ These numbers are collected from a collaboration of healthcare systems in the St. Louis region that includes BJC HealthCare, SSM Health, Mercy and St. Luke's Hospital. *(Source: KSDK.com, September 8, 2020).*

5. St. Louis County: On Friday September 4, 2020, St. Louis County health officials released data on COVID-19 cases in public and private schools. During August, 39 students and 34 staff members tested positive for COVID-19. Most of the students with positive results were attending middle school or high school. Two Catholic schools in St. Louis County moved to remote learning because of possible COVID-19 exposure. (*Source: St. Louis Post-Dispatch, September 9, 2020*).

In St. Louis County, the average number of new COVID-19 cases decreased by 12.8 percent between August 18, 2020 (210.4 new cases per day) and August 31, 2020 (183.4 new cases per day). This represents the most current data as of September 3, 2020. (*Source: St. Louis County Department of Public Health, September 9, 2020*).

As of Wednesday morning, September 9, 2020, St. Louis County's average rate of positive tests for the week was 8.1%. (*Source: St. Louis County Department of Public Health, September 9, 2020*).²

As of Wednesday morning, September 9, 2020, the total number of confirmed COVID-19 cases in St. Louis County was 21,001. There have been 762 deaths in St. Louis County since the start of the pandemic. St. Louis County, which has less than 17% of Missouri's population, has had approximately 22% of Missouri's 96,475 cases and 45.5% Missouri's 1,673 deaths. (*Source: Missouri Department of Health and Senior Services, September 9, 2020*).

6. Missouri: The rolling seven-day average number of new COVID-19 cases per day in Missouri spiked during the month of July. At the beginning of July, the average was near 400 new cases per day. Near the end of the July, the average peaked at 1,600 new cases per day. The average then decreased, and by August 8th, the average had dipped below 900. Since then, the average has climbed to 1,377 new cases per day on September 7, 2020. (*Sources: St. Louis Post-Dispatch citing the Missouri Department of Health and Senior Services, September 9, 2020*).

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² An analysis of the "percent positive" results provides insight into how widespread the infection is in the community and whether levels of testing are keeping up with levels of COVID-19 transmission. "Simply put, there are two ways to lower the "percent positive": Reduce the amount of coronavirus transmission or increase the number of people who get tested. Fortunately, these two things often go hand-in-hand. If a place is doing more testing—and responding appropriately to positive tests, by making sure that people who might be contagious are isolated, for example—the amount of transmission should go down over time. But even without testing, measures such as stricter regulations regarding wearing masks, physical distancing, and avoiding large gatherings are all effective ways to reduce transmission." (*Source: Johns Hopkins Bloomberg School of Public Health, www.jhsph.edu, August 10, 2020*).

As of September 5, 2020, the transmission rate, R_0 , for Missouri is 1.05.³

On Wednesday, September 9, 2020, Missouri's seven-day average of percent positive tests was 13.8%, up from 12.5% on August 31, 2020. (*Source: Missouri Department of Health and Senior Services*). The World Health Organization has advised state and local governments that before reopening, the rate of positivity in testing should remain at 5% or lower for at least 14 days. (*Source: Johns Hopkins University of Medicine Coronavirus Resource Center, coronavirus.jhu.edu, August 31, 2020*).

The rate of deaths in Missouri caused by COVID-19 has decreased since the spring of this year. Missouri's fatality rate has fallen from 7% in April and May to less than 1% in August. Dr. Alex Garza, the leader of the St. Louis Metropolitan Pandemic Task Force, said that improved COVID-19 treatments, a rise in cases with younger patients and a decrease in cases from nursing homes has contributed to the lower rate. Although a higher percentage of known COVID-19 patients are surviving, the average number of daily deaths in the state has been rising for several weeks. (*Source: St. Louis Post-Dispatch, September 9, 2020*).

On Saturday, September 5, 2020, Missouri reported a backlog of new COVID-19 deaths after a data review revealed dozens of virus deaths from earlier this summer that were never counted. Missouri added 77 deaths Saturday, but 72 of those occurred in June, July and August. (*Source: St. Louis Post-Dispatch, September 7, 2020*).

7. St. Louis County and St. Louis City Executive Orders: On Wednesday September 9, 2020, St. Louis County Executive Sam Page announced the loosening of some restrictions on youth sports. The changes, effective on Friday, September 11, 2020, will allow players younger than 14 to participate in games for sports with "moderate-frequency" contact activities, like baseball, cheerleading, softball and volleyball. (Up to this point, youths had been able to practice, but not compete against other teams. Page cited the low number of coronavirus cases among younger children as the rationale for easing the restrictions.)

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³ This number measures the average number of people who become sick from an infectious person. An R_0 value of 1.0 means each case causes, on average, one new case. If the value is less than one, the spread of the disease is slowing. The higher the R_0 number, the worse the spread. (*Source: Statista, September 9, 2020*).

Restrictions were not eased for the 15- to 19-year-old age group, however, which has recently seen a steady increase in cases. According to Page, 90% of COVID-19 cases in schools over the past two weeks have been among middle and high school students. In addition, the 15- to 19-year-old age group has a positivity rate of 20% compared to an 8% positivity rate across all county residents. "These recommendations are coming forth based on what's best to protect the health and welfare of teenagers, who are currently having a rate of COVID transmission that is not acceptable," Page said. "It puts them at risk, and it puts their families at risk." (Source: *St. Louis Post-Dispatch*, September 9, 2020).

8. Additional Supportive Information: Dr. Anthony Fauci, a leading infectious disease expert and member of the White House Coronavirus Task Force, said Missouri is among seven states "at risk of surging" after Labor Day. "Those states are starting to see an increase in the percent positive of their testing," Dr. Fauci said. "That is generally predictive that there's going to be a problem." (Source: *St. Louis Post-Dispatch*, September 9, 2020).

Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase Zero on September 10, 2020. The Court's phase status will continue to be reviewed on an ongoing basis.

Michael D. Burton, Presiding Judge of the 21st Circuit
St. Louis County, Missouri
September 10, 2020

SO ORDERED:



Judge

Division 16

September 10, 2020

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WHAT DOES PHASE ZERO ALLOW?

According to the Missouri Supreme Court's May 4, 2020 Operational Directives, during Phase Zero, all in-person proceedings must be suspended, with very few designated exceptions.⁴

The Supreme Court, however, did not mandate the suspension of court operations; it simply indicated that proceedings continue, but through video conferencing and other means.

The St. Louis County Courthouse is not closed to the public. People may come into the building to file pleadings, motions and responses. Petitioners may enter the building to file for *ex parte* (temporary) orders of protection, as the Adult Abuse Office remains open.

Due to the current pandemic, however, this court strongly encourages the public to visit the St. Louis County Circuit Court's website. The website provides means to participate in proceedings and avoid physically entering the building. For example, petitioners can obtain orders of protection through online filing.

To improve access to justice during the pandemic, secure computer stations, as of September 2, 2020, are available on the street level of the St. Louis County Courthouse to allow members of the public to participate in live court proceedings, including criminal preliminary hearings, small claims, landlord-tenant and order of protection dockets. Court staff members are available to assist litigants in connecting to their hearings before the judges. This Court is currently making plans to establish other Access to Justice sites in the County, outside of the Courthouse.

⁴ a. Proceedings necessary to protect the constitutional rights of criminal defendants, including the right to a speedy trial, and the rights afforded under section 544.676.3;

b. Proceedings pursuant to chapters 210 and 211 pertaining to juvenile delinquency and abuse, neglect, and termination of parental rights;

c. Proceedings pursuant to chapter 453 pertaining to adoption;

d. Proceedings in which civil or criminal jury trials are already in progress as of March 16, 2020;

e. Proceedings pursuant to chapter 455 pertaining to orders of protection;

f. Proceedings related to emergency child custody orders;

g. Proceedings related to petitions for temporary restraining orders or other forms of temporary injunctive relief;

h. Proceedings related to emergency mental health orders;

i. Proceedings pursuant to Chapter 475 for emergency guardianship or conservatorship;

j. Proceedings directly related to the COVID-19 public health emergency;

k. Oral arguments regarding time-sensitive matters; and

l. Other exceptions approved by the Chief Justice of this Court.