

CIRCUIT COURT PHASE ANNOUNCEMENT – 10/16/20

As directed by the Missouri Supreme Court on May 4, 2020 (and ultimately modified on July 24, 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 One, as it has been since September 17, 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 have been reported among Courthouse staff during the past two weeks. Courthouse employees resumed working an A/B schedule starting October 13, 2020, allowing more people access to the building.

2. DJS Jail Residents and Staff: On Thursday October 15, 2020, St. Louis County health officials reported that twelve inmates at the St. Louis County Jail tested positive for COVID-19, bringing the total number of inmates with the virus over the past two weeks to 32 out of a total of 898. Of the 32 inmates who have tested positive, only three have exhibited any symptoms, according to County health department spokeswoman Sara Dayley. All 32 inmates with COVID-19 have been isolated and have a medical provider attending to them, she added. *(Sources: St. Louis Post-Dispatch, October 15, 2020; St. Louis County Department of Public Health, October 15, 2020).*

The outbreak was first identified on Oct. 2, 2020, when an inmate tested positive for the disease during routine screening, Dayley said. All residents of the inmate's housing unit were tested. Over the past week, the Department of Public Health then tested all others in the Jail – both residents and staff. Unfortunately, some positive results came from outside the aforementioned housing unit.

While this is a break in the strong control of the virus in the facility, County health department officials maintain confidence in the protocols established across these seven months. The plan to support the Jail's COVID-positive patients and address the entry point of the virus continues. The inmate patients who were deemed likely to be affected were immediately isolated and the quarantine process that has been in place for several months was enacted successfully.

The St. Louis County Department of Public Health is currently conducting case investigations and contact tracings. Jail officials have indicated that more results – from both residents and staff are still pending. *(Source: St. Louis County Department of Public Health, October 13, 2020).*

3. Detention Center Residents and Staff: Quarantine protocols remain in place at the Juvenile Detention Center, with no new COVID-positive patients identified since mid-July. No cases of COVID-19 have been reported among Detention Center staff over the past two weeks (which is the relevant time period of concern). *(Source: St. Louis County Department of Public Health, October 13, 2020). (Continued)*

4. St. Louis County: From October 8 through October 14, 2020, 1310 St. Louis County residents have had positive test results for COVID-19; 10 residents have died from the virus. As of Thursday, October 15, 2020, the total number of confirmed COVID-19 cases in St. Louis County was 25,341. There have been 841 COVID-related deaths in St. Louis County since the start of the pandemic. St. Louis County accounts for approximately 17% of Missouri's 150,554 cases and 34% Missouri's 2,442 deaths. (St. Louis County's population represents approximately 17% of the state's population.) (*Source: showmestrong.mo.gov, October 15, 2020*).

As of Thursday, October 15, 2020, St. Louis County's average rate of positive tests for the past week was 5% -- half that of the rest of the state. The positivity rate among St. Louis County residents has remained approximately 5% since mid-September. (*Source: St. Louis County Department of Public Health, October 15, 2020*).

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*).

5. St. Louis Region: On Wednesday, October 14, 2020, the St. Louis Metropolitan Pandemic Task Force reported a spike in hospital admissions of 63, up from 44 from the previous day. The increase moved the seven-day average of daily admissions to 44. The number has been on a steady rise since Oct. 5, 2020, when the average was 34. 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: St. Louis Post-Dispatch, October 14, 2020*).

From October 8 to October 14, 2020, the St. Louis metropolitan area has averaged approximately 594 new cases per day. That is an increase of approximately 141 (+31.0%) from the previous week. (*Source: St. Louis Public Radio, October 15, 2020*).

6. Missouri: "The new coronavirus is spreading faster than ever in Missouri. A record number of people are hospitalized, fighting to recover. The month of September was the state's deadliest yet." (*Source: St. Louis Post-Dispatch, October 16, 2020*).

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This week the number of patients hospitalized due to COVID-19 across the state set a record, reaching more than 1,400, according to a newsletter from the Missouri Hospital Association. “Whether we’re in a second wave, or the second crest of the first, our current situation is critical, especially outside of the well-resourced metro areas,” said Dave Dillon, spokesman for the association. The percentage of positive coronavirus tests is more than 10% in all regions of Missouri, which the association warns is a dangerous sign of widespread community transmission. (*Source: St. Louis Post-Dispatch, October 15, 2020*).

“The virus has permeated rural areas, where the population is often older and sicker.” The pandemic’s impact on rural areas is now having an impact on the St. Louis metropolitan area. According to Dr. Alex Garza, who leads the St. Louis Metropolitan Pandemic Task Force, the sick and dying from other areas are now coming to St. Louis area hospitals. Health systems are on the edge of a “perfect storm.” (*Source: St. Louis Post-Dispatch, October 16, 2020*).

“People of color (in Missouri) are still becoming infected and dying, at disproportionate rates.” Despite making up 12% of the state’s population, African Americans account for 20% of the virus fatalities. (*Source: St. Louis Post-Dispatch, October 16, 2020*).

On Thursday October 15, 2020, Missouri reported a seven-day average of percent positive tests of 17.9%. According to Johns Hopkins University data, the national seven-day positivity rate was 5.1%. (*Source: St. Louis Post-Dispatch, October 15, 2020*).

From September 6 through October 12, 2020, Missouri reported 10,780 new COVID-19 cases, which ranks 8th most among the 50 states. During that same time period, Missouri reported 63 new COVID-19 deaths, ranking 4th highest among the states. (*Source: showmestrong.mo.gov, October 15, 2020*).

7. St. Louis County Executive Action: Due to the local stabilization of the virus spread, St. Louis County Executive Sam Page announced several rollbacks of restrictions last week. He recommended that high school students have the option to return to in-person learning. Page allowed for students to participate in high contact sports, such as football, basketball and hockey. Businesses can now allow patrons into their establishments at a rate of up to 50% of their occupancy limits (up from 25%). Page insists, however, that despite these roll-backs, this is hardly the time to “let our guard down.” (*Source: KTVI, October 5, 2020*).

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IN CONCLUSION

The aforementioned COVID-19 outbreak in the Jail remains a source of continuing concern. This Court continues to consider and receive information from the Department of Public Health about the containment of the virus in the Jail and adjacent buildings before considering moving to Phase Two. **Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase One on October 16, 2020.** The Court's phase status will continue to be reviewed on an ongoing basis.

Michael D. Burton, Presiding Judge of the 21st Circuit Court
St. Louis County, Missouri
October 16, 2020

SO ORDERED:



Judge Division 16
October 16, 2020

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WHAT DOES PHASE ONE ALLOW BEYOND WHAT PHASE ZERO ALLOWED?

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.¹ The Court, however, did not suspend court operations; it simply indicated that proceedings continue, but through video conferencing and other means.

Court operations during Phase One do not significantly change from those permitted in Phase Zero. Only the "most extraordinary, pressing and urgent" cases can additionally be heard in person. Occupancy rates in courtrooms and other court areas must be ten people or less, whenever possible. The Supreme Court has consequently made it clear to presiding judges that Phase One does not allow for any jury trial exceptions whatsoever.

In summary, there simply cannot be any additional "in person" court proceedings than those allowed in Phase Zero, unless a judge deems them to be "most extraordinary, pressing and urgent."

The St. Louis County Courthouse is not closed to the public. People may enter 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, including one located in the Northwest Crossings Government Building in St. Ann, MO.

¹ 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.