

## **CIRCUIT COURT PHASE ANNOUNCEMENT – 10/30/20**

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 21<sup>st</sup> 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 22<sup>nd</sup> Circuit; both Presiding Judges agreed to regularly speak with the Chief Judge and always before deciding to change phases.

**The 21<sup>st</sup> 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:** One employee tested positive for the coronavirus in the last week. Contact tracing determined there were no exposures to other staff. 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:** Health Department officials report that they are “cautiously optimistic” about the results of their recent approaches to the presence of COVID in the correctional facilities.

At the beginning of this month, the Buzz Westfall Justice Center experienced an outbreak of COVID-19 cases. This week, one additional COVID-19 case was identified, bringing the total number of positive cases since October 2, 2020 to 50. Almost all of the positive residents had resided in two housing units.

Most of those individuals are no longer infectious. Only nine remain in active isolation, including two who are exhibiting symptoms. Since early October, officials have tested, and retested, nearly 900 people who have been incarcerated at the facility. “The protocols we put in place early have helped us keep the number of cases low and we are cautiously optimistic about the current state of COVID-19 prevalence at the facility among our residents and staff,” said Valerie Nelson, Chief Operating Officer of Corrections Medicine for the Department of Public Health. (*Source: St. Louis County Department of Public Health, October 29, 2020*).

Nevertheless, with the potential for “likely transmission” in the jail, and an increasing number of cases reported in the community at large, the potential for exposure to the virus from transporting inmates to and from the courthouse for trials must be a consideration when gauging potential risk, Nelson said. In addition, the transportation from the Jail to the courthouse of witnesses who had been incarcerated in the Missouri Department of Corrections system, where the extent of the spread of COVID-19 is not entirely clear, also presents a potential health risk. As bed space becomes more limited (as it has been over the past month or so), quarantining becomes more challenging.

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**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 29, 2020*).

**4. St. Louis County:** The number of new COVID-19 cases per day in St. Louis County has trended upward during the month of October. On October 6, 2020, the seven-day average number of new cases per day was 126. On October 12, 2020, the average was 186. On October 19, 2020, the average was 221. On October 25, 2020, the average was 223. (*Source: showmestrong.mo.gov, October 29, 2020*).

Today, St. Louis County reported 505 new cases of coronavirus. This marked the first time in three months when a single-day total exceeded 500 cases. (*Source: St. Louis Post-Dispatch, October 30, 2020*).

For the week of October 20 – 26, St. Louis County recorded 1,572 new COVID-19 cases. This represents an increase of 1.6% from the previous week. (*Source: showmestrong.mo.gov, October 29, 2020*).

On Thursday October 29, 2020, St. Louis County's average rate of positive tests for the past week was 8.1%. That number is essentially the same as the 8.2% reported a week earlier on October 22. From mid-September to mid-October, the positivity rate among St. Louis County residents had hovered at 5%. (*Source: STLcorona.com, October 29, 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:** Total and daily hospital admissions due to COVID-19 in the St. Louis region have risen dramatically over the past month, pushing hospitals and their staff to their limits. [The statistics provided by the task force 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 Metropolitan Pandemic Task Force Facebook page, October 29, 2020*).]

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On October 2, there were 341 patients hospitalized. On October 8, that number increased to 367. By October 15, there were 424 patients hospitalized. On October 22, there were 465, and by October 27, there were 513 patients hospitalized. (*Source: St. Louis Post-Dispatch, October 29, 2020*).

On Wednesday October 28, 2020, the St. Louis Metropolitan Pandemic Task Force reported a record 72 new hospital admissions in a single day from COVID-19. The previous record of 69 new admissions was set on April 8. “In September, we were concerned when our admissions totals climbed over 40. Seeing totals like this is heartbreaking,” said task force leader Dr. Alex Garza. (*Source: St. Louis Post-Dispatch, October 29, 2020*).

On October 28, the task force reported that the seven-day moving average of daily hospital admissions in the St. Louis area was 56. This number has been steadily climbing. On October 22, the average was 49. On October 15, the average was 43. On October 8, the average was 34. On October 1, the average was 38. On September 24, the average was 33. (*Sources: St. Louis Post-Dispatch, October 29, 2020; St. Louis Metropolitan Pandemic Task Force Facebook page, October 29, 2020*).

While most of the new COVID-19 admissions at St. Louis area hospitals previously were coming from the outlying rural areas, hospitalizations from the urban areas are significantly on the rise, Dr. Garza said. “We’re having to turn away transfers to our hospitals because our ICUs are full,” said Garza. He also added that hospitals might have to once again delay elective procedures to create more capacity for COVID-19 patients. (*Source: St. Louis Post-Dispatch, October 26, 2020*).

The task force also reported on Wednesday, October 28, that hospitals in the St. Louis region are operating at near or over capacity. “We have a lot of sick people in our care, and they don’t just have COVID-19,” Garza said. “But we can prevent the number of patients sick with the virus if we all just wear a mask, social distance, stay away from large gatherings and wash our hands.” According to the task force, St. Louis area hospitals are in the St. Louis region are averaging 90% capacity, with intensive care units at 90% capacity and growing. (*Source: St. Louis Post-Dispatch, October 29 and 30, 2020*).

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According to Dr. Aamina Akhtar, the chief medical officer of Mercy Hospital South and an infectious disease specialist, health care workers are tired and frightened. “We’re starting to see our resources being depleted, whether it’s nursing labor, physician labor, the bed capacity in our hospitals,” Akhtar said. “We’re scared of what’s coming.” (*Source: St. Louis Post-Dispatch, October 27, 2020*).

Dr. Garza expresses great concern. “I do want to stress again the extremely dangerous situation that we’re facing. Our numbers are really alarming, and the window of opportunity to turn the tide is rapidly closing. With each passing day, it gets harder and harder to imagine a path where the health care systems will not become overwhelmed.” (*Source: St. Louis Post-Dispatch, October 30, 2020*).

**6. Missouri:** The number of Missouri residents who have tested positive for COVID-19 has risen dramatically from last week. For the week of October 20 through 26, 2020, Missouri recorded 12,887 new COVID-19 cases. For the week of October 13 through 19, Missouri recorded 10,655 new COVID-19 cases. For the week of October 6 through 12, Missouri recorded 10,780 new COVID-19 cases. (*Source: showmestrong.mo.gov, October 29, 2020*).

For the week of October 20 through 26, 2020, Missouri recorded 88 new deaths due to COVID-19. For the week of October 13 through 19, Missouri recorded 68 new deaths due to COVID-19. For the week of October 6 through 12, Missouri recorded 63 new deaths due to COVID-19. (*Source: showmestrong.mo.gov, October 29, 2020*). For this past week, Missouri has the seventh highest per capita death rate in the country. (*Source: KMBC News, October 30, 2020*).

On Thursday October 29, 2020, Missouri reported a seven-day average positivity rate of 25.2, up from 21% the week before (October 22) and 17.9% the week before that (October 15). (*Source: showmestrong.mo.gov, October 29, 2020*). [As indicated earlier, 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*).]

On Wednesday October 28, Missouri reported 1,446 patients were hospitalized with confirmed or suspected COVID-19, making the seven-day moving average 1,480 patients hospitalized. That average has trended upward during the month of October.

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[On October 1, the average was 1,156 patients. On October 7, the average was 1,204. On October 14, the average was 1,374. On October 21, the average was 1,470.] (*Sources: St. Louis Post-Dispatch, October 29, 2020; showmestrong.mo.gov, October 29, 2020*).

“Unfortunately, we’re trending in the wrong direction,” said Dave Dillon, spokesman for the Missouri Hospital Association. He added that Missourians must take precautions to decrease the spread of COVID-19 and preserve hospital bed capacity. (*Source: St. Louis Post-Dispatch, October 29, 2020*).

Since the beginning of October, Missouri’s rolling seven-day average of new COVID-19 cases per day has been rising and volatile. On October 4, the average was 1,289 cases. By October 10, the average spiked to 1,875, then fell to 1,528 on October 17. On October 20, the average jumped up to 2,199. The average then fell again to 1,709 on October 23, but since then, has been trending upward and reached 1,966 on October 28. (*Source: St. Louis Post-Dispatch, October 29, 2020*).

As of October 26, 2020, the transmission rate,  $R_0$ , for Missouri is 1.12. The transmission rate 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. Missouri’s transmission rate has hovered at or above 1.0 during the month of October. On October 4, the number was 1.08. On October 10, the transmission rate fell to 1.0. By October 20, the transmission rate was at 1.11, approximately where it sits today. (*Source: statista.com, October 29, 2020*).

**7. St. Louis County Executive Action:** October 28, 2020, St. Louis County Executive Dr. Sam Page called the recent rise in COVID-19 cases “alarming” and cautioned that now is not the time to relax restrictions. “The most recent COVID-19 numbers are alarming and reinforce the need for public health orders including wearing masks, social distancing and limiting gatherings,” Page said. “Any talk of relaxing restrictions cannot be seriously considered. This pandemic is raging. Please do your part.” (*Source: St. Louis Post-Dispatch, October 29, 2020*).

**8. Other considerations:** Daily Covid-19 cases in the U.S. reached a record high on Thursday, with experts warning that death rates could triple by mid-January if states do not react to rising numbers by re-imposing prevention mandates such as requiring masks, limiting social gatherings and restricting hours of business operations. (*Continued*)

There were 88,521 new cases of the coronavirus reported in the U.S. on October 29, according to data from Johns Hopkins University -- 9,540 more cases than on Wednesday.

National experts at the Institute for Health Metrics and Evaluation at the University of Washington School of Medicine say it is most likely that the anticipated fall/winter surge in coronavirus cases could lead to a daily death toll by mid-January that is approximately three times higher than it is now by mid-January. Hospital systems, particularly ICUs, are expected to be under extreme stress in December and January. (Source: *St. Louis Post-Dispatch*, October 30, 2020.)

## **IN CONCLUSION**

The aforementioned sudden increase of COVID cases in the community and the significantly reduced availability of medical facilities are sources of tremendous concern.

**Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase One on October 30, 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 30, 2020

## **SO ORDERED:**

  
Judge Division 16  
October 30, 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.<sup>1</sup> 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, have been made 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 has established another Access to Justice site in the County, outside of the Courthouse, in the Northwest Crossings Government Building in St. Ann, MO. That site will open on November 9, 2020.

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<sup>1</sup> 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.