

CIRCUIT COURT PHASE ANNOUNCEMENT – 11/13/20

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 Supreme 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 November 6, 2020.

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

1. Courthouse Staff: Numerous Courthouse employees and two judicial officers have tested positive for the coronavirus in the past two weeks, mirroring an alarming upward trajectory of confirmed cases of COVID-19 in the community. All of these individuals are currently quarantined. After contact tracing, additional staff members, who have been exposed to these individuals, have been quarantined.

Due to the cluster of coronavirus cases and potential exposures in the courthouse, St. Louis County Circuit Court employees returned to a skeletal staffing schedule on Tuesday. Several Sheriff's Office employees and deputies have been relocated in the Courthouse to increase social distancing.

The E-Court kiosks remain temporarily off-limits until further notice. The opening of a satellite court facility at the Crossings at Northwest Plaza in St. Ann, planned for the week of November 9, 2020, has been postponed until the Court returns to Operating Phase One.

The Court has begun comprehensive commercial cleaning and disinfecting, using fogging machines in the Jury Assembly Room, loading dock, St. Louis County Municipal Court Office, the Adult Abuse Office, the Sheriff's Office, E-Court, various courtrooms and judges' chambers.

2. DJS Jail Residents and Staff: Last month, the Buzz Westfall Justice Center experienced an outbreak of some 50 COVID-19 cases, which began Oct. 2, 2020. Almost all of the positive residents had resided in two housing units. These individuals are no longer infectious.

Health Department officials continue to be cautiously optimistic about the results of their approaches to the recent presence of COVID in the correctional facilities. The cluster of COVID-positive patients at the jail has significantly diminished, and infection-control protocols remain.

On November 6, 2020, one resident was found to be positive for COVID-19. Three employees have reported positive over the past week. These individuals are all currently quarantined. (*Source: St. Louis County Department of Public Health, November 4, 2020*).

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While the outbreak has essentially subsided, concerns about exposure to the virus from transporting inmates to and from the Courthouse for hearings is a consideration when gauging potential risk, according to Valerie Nelson, the Chief Operating Officer of Corrections Medicine for the Department of Public Health. These concerns are primarily due to both the potential for “likely transmission” in the Jail and an increasing number of cases reported in the community at large.

In addition, the transportation from the Jail to the Courthouse of inmates who had been incarcerated in the Missouri Department of Corrections system, where the extent of the spread of COVID-19 is not entirely clear, presents a potential health risk. As bed space becomes more limited (as it has been since late September), quarantining becomes more challenging.

3. Detention Center Residents and Staff: The Detention Center continues to quarantine and test new admissions, with none presenting with COVID-19 since the summer. Two employees tested positive within the last week. As has been the case since the outset of the pandemic, the infected individuals have been quarantined. Sanitization and contact tracing began immediately. *(Source: St. Louis County Department of Public Health, November 10, 2020).*

4. St. Louis County: The number of new COVID-19 cases in St. Louis County has been skyrocketing. According to St. Louis County Executive Dr. Sam Page, over the past week, there has been an average of 600 new cases per day. On Thursday alone, there were more than 900 cases. *(Source: stlcorona.com, November 13, 2020).* As recently as October 12, 2020, the seven-day average number of new cases per day was 186. [On October 19, the average was 221. On October 25, the average was 223. On November 2, the average was 331. On November 9, the average was 461.] *(Source: showmestrong.mo.gov, November 11, 2020).*

For the week of November 3 through 9, 2020, St. Louis County recorded 3,669 new COVID-19 cases, showing an alarming 41.1% increase from the previous week.¹ *(Source: showmestrong.mo.gov, November 12, 2020).* This figure does not even consider the startling statistics quoted by Dr. Page for the latter part of this week.

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¹ Most of the noted statistics in this announcement lag three days to ensure accuracy.

For the week of November 3 through 9, St. Louis County recorded 9 deaths. This represents an increase of 12.5% from the previous week. (*Source: showmestrong.mo.gov, November 12, 2020*).

On Thursday November 12, 2020, St. Louis County's average rate of positive tests for the past week was 15.1%. That percentage has increased from 9.5% reported a week earlier (November 5, 2020).² (*Source: showmestrong.mo.gov, November 12, 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*).]

Health officials in the St. Louis area have pinpointed small gatherings as a primary source of infection. (*Source: St. Louis Post-Dispatch, November 11, 2020*). As the pandemic rages on – in spite of surging cases – people are being less careful in their efforts to social distance, wear a mask, and wash their hands. “We feel like people are being lulled into a false sense of security around their friends and extended family members,” St. Louis County Department of Public Health spokesman, Christopher Ave, said. “And that’s what our experts believe is the biggest factor” responsible for the surge. (*Source: St. Louis Post-Dispatch, November 11, 2020*).

According to St. Louis County health officials, a significant number of COVID-19 cases have been traced to probable transmission in schools. Ave said that the Department of Public Health will continue to follow federal guidance for schools, which requires a 14-day quarantine for anyone in close contact to a student or staff member who tests positive. "Schools in St. Louis County have seen significant transmissions of COVID-19 among teachers and students," said Ave. "Cases and hospitalizations in our region are surging. Now is not the time to weaken our quarantine policies here in St. Louis County." (*Source: St. Louis Post-Dispatch, November 12, 2020*).

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² Using the State's method of calculation, which “de-duplicates” by excluding test results from individuals who have already received a positive or negative test within the previous seven days, the average is 33%, up from 20.7% from last week. (*Source: showmestrong.mo.gov, November 12, 2020*).

The surge in cases has overwhelmed contact tracers³ across the St. Louis area, who are struggling to keep pace. Dr. James Hinrichs, an infectious disease expert for the St. Louis County Department of Health, said last week that it was impossible for investigators to interview the 250 to 300 people who had tested positive each day. (Since then, the numbers have increased dramatically.) “We generally can only reach, on a daily basis, about 30% to 40% of the new cases at present,” Hinrichs said. The department prioritizes cases in schools and workplaces that could lead to outbreaks.

Even with the large number of daily new cases, as of Wednesday November 11, the health department was monitoring only 475 positive cases in isolation and 879 close contacts in quarantine. “It reflects our current challenges,” Hinrichs said. “When we were 100 to 150 cases (a day) two months ago, we could reach most of the new cases each day, but that’s clearly more challenging now.” (Source: *St. Louis Post-Dispatch*, November 11, 2020).

In addition, many St. Louis County residents are unwilling to cooperate with contact tracing efforts. Dr. Hinrichs estimates that approximately 25% of the close contacts they are able to reach “are not interested in taking part” in contact tracing. (Source: *St. Louis Post-Dispatch*, November 11, 2020). This adds another level of uncertainty to health experts’ ability to track the spread of the virus through the community, potentially exposing even more individuals.

5. St. Louis Region: Hospitals in St. Louis and the surrounding metropolitan area saw this week record daily admissions of new patients that were double the numbers seen at the height of the pandemic in the spring.

On Thursday November 12, 2020, the St. Louis Metropolitan Pandemic Task Force reported 110 new hospital admissions from confirmed COVID-19, making the seven day-average 101 patients. [On October 8, the average was 34. On October 15, the average was 43. On October 22, the average was 49. On October 28, the average was 56. On November 4, the average was 63.] (Sources: *St. Louis Post-Dispatch*, November 12, 2020; *St. Louis Metropolitan Pandemic Task Force Facebook page*, November 12, 2020). (Continued)

³ Contact tracing is a tool used in public health to interrupt the spread of a disease. It involves interviewing those in the community who have recently tested positive, identifying who they came in close contact with while infectious, and quarantining those contacts to reduce the spread of the disease. Contact tracing can provide key insights into how a virus is spreading in the community. (Source: *St. Louis Post-Dispatch*, November 11, 2020).

The admissions pushed the seven-day average of patients hospitalized with COVID-19 to a record of 599 per day on Thursday, the St. Louis Metropolitan Pandemic Task Force reported. *(Source: St. Louis Post-Dispatch, November 13, 2020).*

The Task Force has also reported that total hospitalizations in the St. Louis area due to confirmed and suspected COVID-19 has radically increased over the past month. On November 11, 2020, there were 656 patients hospitalized. [On October 8, there were 367 patients hospitalized. On October 15, there were 424 patients hospitalized. On October 22, there were 465. On October 29, there were 496 patients hospitalized. On November 4, there were 588.]⁴ *(Sources: St. Louis Post-Dispatch, November 12, 2020; St. Louis Metropolitan Pandemic Task Force Facebook page, November 12, 2020).*

On Monday November 9, 2020, the St. Louis Metropolitan Pandemic Task Force reported more people are hospitalized in the St. Louis area with COVID-19 than has ever been reported previously. *(Source: St. Louis Post-Dispatch, November 11, 2020).* St. Louis metropolitan hospitals have had to refuse admitting patients from rural areas. *(Source: stltoday.com, November 13, 2020).* In anticipation of a continued rise in COVID-19 hospitalizations, on Monday November 9, 2020, BJC HealthCare has started rescheduling elective surgeries that require inpatient or overnight beds at four of the system's local hospitals. *(Source: St. Louis Post-Dispatch, November 10, 2020).*

Dr. Alex Garza, who leads the Task Force, said that not only is the virus spreading faster than ever, “but more people are getting sick enough to be hospitalized[.]” Dr. Garza added, “all of that is happening before we get into the colder weather, where we know the virus will spread even faster.” The St. Louis area is running out of intensive care unit capacity, Dr. Garza said, as most ICUs in the region are nearly full or full. *(Source: St. Louis Post-Dispatch, November 11, 2020).*

Garza said today that the current number of coronavirus hospitalizations in the St. Louis region is nearly three times what the Task Force considers sustainable. At the current pace, virus hospitalizations could easily double within two weeks. “We’re at war. And right now, the virus is winning that war,” Garza indicated.

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⁴ The Task Force's data comes from the four major health systems that serve the St. Louis region, BJC HealthCare, Mercy, SSM Health and St. Luke's. *(Source: St. Louis Metropolitan Pandemic Task Force Facebook page, November 12, 2020).*

“It will take significant and decisive action through individual action through individual acts and determined public policy to get us through.” (*Source: St. Louis Post-Dispatch, November 13, 2020*).

6. Missouri: Missouri has seen an astonishing increase of COVID-19 cases. For the week of November 3 through 9, 2020, Missouri recorded 25,961 new COVID-19 cases. [For the week of October 20 through 26, Missouri recorded 12,887 new COVID-19 cases. For the week of October 27 through November 2, Missouri recorded 17,464 new COVID-19 cases.] (*Source: showmestrong.mo.gov, November 12, 2020*).

Missouri’s rolling seven-day average of new COVID-19 cases per day continues to surge. On October 4, 2020, the average was 1,289. The average increased to 2,627 on November 4 and 4,113 on November 12. (*Source: St. Louis Post-Dispatch, November 12, 2020*).

For the week of November 3 through 9, 2020, Missouri recorded 63 deaths due to COVID-19. [For the week of October 20 through 26, Missouri recorded 88 deaths due to COVID-19. For the week of October 27 through November 2, Missouri recorded 78 deaths due to COVID-19.] (*Source: showmestrong.mo.gov, November 12, 2020*).

Missouri’s transmission rate, R_0 , has steadily increased over the past month. As of November 9, 2020, the transmission rate, R_0 , for Missouri was 1.19.⁵ [On October 10, the transmission rate was 1.0. On October 20, the transmission rate was at 1.11. On October 26, the transmission rate was 1.12. On November 2, the transmission rate was 1.19.] (*Source: statista.com, November 12, 2020*).

On Thursday November 12, 2020, Missouri reported a seven-day average positivity rate of 22.4%, up from 15.2% from the previous week (November 5).⁶

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⁵ 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. (*Source: statista.com, November 12, 2020*).

⁶ These averages are calculated using the Center for Disease Control’s method of calculation. Missouri’s method “de-duplicates” by excluding tests from individuals who have already tested positive or negative in the previous seven days. According to the Missouri method, the positivity rate for this week is 40.8%, up from 30% from the week of November 5, 2020. The CDC does not adjust for those duplicate tests. (*Source: showmestrong.mo.gov, November 12, 2020*). “Positivity rates can tell us whether a state’s testing capacity is sufficient.... A positivity rate over 5% indicates a state may only be testing the sickest

On Thursday November 12, 2020, Missouri reported 2,248 patients were hospitalized with confirmed or suspected COVID-19, making the seven-day moving average 2,038 patients hospitalized. The average has trended significantly upward over the last month. [On October 14, the average was 1,374. On October 21, the average was 1,470. On October 28, the average was 1,495. On November 5, the average was 1,779.] (Source: *showmestrong.mo.gov*, November 12, 2020).

Johns Hopkins Center for Health Security and NPR partnered to collect state data on contact tracing. It found contact tracing is only effective in mitigating the spread of COVID-19 when the daily new cases are at or below 10 cases per day for every 100,000 people. When cases exceed that number, tracers become overwhelmed and cannot notify people to quarantine in time. Missouri is reporting an average of 2,495 cases per day, which is approximately 41 cases per 100,000 people. "There are more cases and contacts to follow up with than contact tracers have time for," said Larry Jones, the executive director of the Missouri Center for Public Health Excellence. "This means days can go by between the time that someone is exposed and when they are called by a contact tracer." (Source: *St. Louis Post-Dispatch*, November 11, 2020).

Jones also reports that across Missouri, health officials are seeing the public become increasingly less forthcoming with investigators. Many do not see the importance or do not want to inconvenience their close contacts. "Because this has gone on so long, and because we are still seeing the spread of disease, a portion of the population has decided that contact tracing doesn't work and that they don't need to isolate or to share their contacts," he said. (Source: *St. Louis Post-Dispatch*, November 11, 2020).

Top St. Louis area medical leaders called on Missouri Gov. Mike Parson to institute a statewide mask mandate and a "safer at home" policy, before the coronavirus pandemic reaches such proportions that hospitals no longer have room to care for the sick. (Source: *St. Louis Post-Dispatch*, November 13, 2020).

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patients who seek out medical care, and are not casting a wide enough net to identify milder cases and track outbreaks." (Source: *Johns Hopkins University of Medicine Coronavirus Resource Center*, available at coronavirus.jhu.edu, November 5, 2020).

"Healthcare systems across Missouri need Gov. Parson and the state to take additional action to prevent unnecessary illnesses and deaths," said Dr. Alex Garza, head of the St. Louis Metropolitan Pandemic Task Force. Garza emphasized that coordinated action from statewide leaders is needed now. Hospital projections show that a delay of even one week would allow a far more severe crisis to develop. (Source: *St. Louis Post-Dispatch*, November 13, 2020).

Nevertheless, Gov. Parson has steadfastly refused to issue a statewide mask mandate, On Thursday November 12, 2020, Gov. Mike Parson said "[i]t's also time for all of us to take responsibility," to slow the spread of COVID-19. "We know in the last 30 days these numbers have increased — more than we ever thought they would. That is the hard fact of where this virus is going." He remained steadfast in his decision not to issue a statewide mask mandate, saying the issue is one that should be left to local leaders. (Source: *St. Louis Post-Dispatch*, November 12, 2020).

7. St. Louis County Executive Action: St. Louis County Executive Dr. Sam Page stated today that "COVID-19 transmissions in our community are overwhelming our health systems. The number of cases continue to rise exponentially... Our hospitals are nearly full and our frontline workers are worn out... We cannot possibly responsibly wait any longer to take the steps that are needed to get the spread of this virus in check in our community."

Accordingly, at a press briefing this morning, Page announced three new executive orders that will take effect on Tuesday, November 17, 2020: a "Safer at Home" order, a modified face covering order and a revised isolation and quarantine order. (Source: stlcorona.com/news/dph-covid19-update-11132020, November 13, 2020).

A. "Safer at Home": Individuals must remain at home, unless it is necessary to leave for specific activities such as going to work or school, seeking medical care, and buying food or other daily necessities. Noted exceptions include attending religious services, visiting family members and for gathering with members of "support bubbles" which can consist of no more than 10 people.⁷ (Continued)

⁷ No one can belong to more than one "bubble." All participants in the group should practice masking, social distancing and other steps to reduce the risk of transmission. Further, if any member of the bubble gets sick, that person must immediately notify the other members.

The “Safer at Home” order prohibits any gathering of more than 10 people, a significant reduction from the current limit of 50.

Restaurants cannot offer indoor dining. Outdoor dining, take-out, and delivery are allowed. Bars may only provide carryout and delivery.

Businesses must reduce their capacity from 50% of the maximum allowed by the fire code to 25%. Noted exceptions include hospitals, medical offices and schools.

B. *Face Coverings:* Masks must be worn by anyone older than 5, whenever outside the home. Parents are encouraged to have their 3 to 5-year-olds wearing face coverings whenever possible.

This mandate applies when inside others’ homes. A noted exception is when eating, which must be done at a distance of at least six feet between diners.

Face coverings must be worn while working out at a gym or recreational center (with the exception of swimming of course).

They must be worn during organized sports activities, when not actively playing in the game.

Students in school must wear masks. Noted exceptions are made for students with medical excuses. Also, students who are eating, involved in physical education or are in music class may be excused, while maintaining social distance.

C. *Isolation and Quarantine:* Because overwhelmed contact tracers for the St. Louis County Department of Public Health may not be able to reach all contacts in a timely fashion, residents must take action on their own.

Anyone who tests positive for COVID-19, must immediately isolate for at least 10 days after the test result is provided or after the first symptoms occur. They must immediately inform everyone with whom they had close contact to quarantine. “Close contact” is defined as being within six feet of someone for at least 15 minutes over the course of a day.

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In addition, anyone in close contact with someone who has COVID-19 must quarantine for 14 days from the day on which the last contact with that person occurred. Anyone who develops symptoms should get a COVID-19 test and remain quarantined.

Steps must be taken to notify family members, friends and coworkers if someone has tested positive and may have exposed others, who would need to be quarantined. (*Source: stlcorona.com/news/dph-covid19-update-11132020, November 13, 2020*).

8. Other considerations: On Thursday, November 12, 2020, public health officials recorded more than 150,000 new cases in the U.S. in a day for the first time — more than 160,000. That has pushed the seven-day average of new daily cases to more than 134,000, as of Thursday, an increase of 72 percent from the average two weeks earlier. Today, more than 184,000 cases were reported. (*Source: CBS News, November 13, 2020*).

As the United States shatters record after record on coronavirus cases and hospitalizations, more warnings have emerged from officials across the country urging residents to adjust their behavior and prepare for more possible changes on the horizon. (*Source: New York Times, November 13, 2020*).

Hospitalizations for Covid-19 also set a national record on Thursday for the third-straight day, reaching 67,096 patients. (*Source: Covid Tracking Project, November 12, 2020*). That figure has doubled in just five weeks. More than 68,000 were hospitalized today. (*Source: CBS News, November 13, 2020*).

The virus has killed more than 1,000 Americans a day in the past week. (*Source: New York Times, November 13, 2020*).

IN CONCLUSION

The aforementioned sudden and dramatic increase of COVID cases in the community and the Courthouse, the significantly reduced availability of medical facilities, the inability to keep pace with contact tracing and many residents' unwillingness to cooperate with the DPH's demands are sources of tremendous concern.

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Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase Zero on November 13, 2020. The Court's phase status will continue to be reviewed weekly on an ongoing basis.

Michael D. Burton, Presiding Judge of the 21st Circuit Court
St. Louis County, Missouri
November 13, 2020

SO ORDERED:



Presiding Judge

Div. 16

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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.⁸

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, had been 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 have been available to assist litigants in connecting to their hearings before the judges.

This Court established another Access to Justice site in the County, outside of the Courthouse, in the Northwest Crossings Government Building in St. Ann, MO. These sites will not be available while this Circuit is in Phase Zero, in order to reduce the possibility of exposure to the coronavirus.

⁸ 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.