

CIRCUIT COURT PHASE ANNOUNCEMENT – 01/15/21

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.¹
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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¹ On July 24, 2020, the Supreme Court indicated that such confirmed cases would warrant the court facility to be in a phase no higher than Phase One.

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

1. Courthouse Staff: Two active cases of the coronavirus have been reported among courthouse staff; these individuals are in isolation. Five additional employees are quarantined due to an exposure, residing with a positive household member, or waiting for test results. The courthouse continues to operate with a skeleton staff.

The E-Court kiosks remain off-limits until further notice. The satellite court facility at the Crossings at Northwest Plaza in St. Ann will not open until the Court returns to Operating Phase One.

2. DJS Jail Residents and Staff (and the Missouri Department of Corrections):

One resident of the Buzz Westfall Justice Center was positive for the COVID-19 upon admission; a second resident is awaiting test results, but is being isolated and treated as a presumptive positive for the coronavirus.

No “in person” trials are being conducted while the Court is in Phase Zero, due in part, to ongoing concerns about exposure to the virus from transporting inmates to and from the Courthouse for hearings. These concerns, as expressed by the Department of Public Health, 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. Of special concern to the Department of Public Health is the risk of bringing inmates who are currently housed in the Missouri Department of Corrections to the Jail to address pending criminal matters.

As of last week, Missouri’s 22 corrections facilities have recorded a total of 5,059 cases, including 40 deaths. The Missouri Department of Corrections system has taken a number of steps to reduce the transmission of the virus and contain outbreaks when they occur. Containment measures include suspending regular transfers among facilities, isolating those who are or may be infected, and additional medical care. The department is also turning to new technology to fight the spread of COVID-19, including wastewater testing equipment, air purifiers, and disinfecting sprayers. *(Source: Missouri Department of Corrections Website, “COVID-19 Data,” January 14, 2021).*

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Dr. Alex Garza, the head of the St. Louis Metropolitan Pandemic Task Force, approves of implementing the new technology, saying “every little bit helps,” but stressed that the best way to keep COVID-19 out of the prisons is to reduce the spread outside the prison system. (*Sources: St. Louis Post-Dispatch, January 7, 2021; fox2now.com, January 4, 2021; Missouri Department of Corrections Website, “COVID-19 Data,” January 14, 2021*).

Missouri corrections staff, like all corrections employees in Missouri, will be eligible to receive COVID-19 vaccinations in the near future. (*Source: Missouri Department of Corrections Website, “COVID-19 Data,” January 14, 2021*).

3. Detention Center Residents and Staff: One resident is in quarantine after test results for the virus came back as “inconclusive;” this individual will be retested. One staff member is in quarantine after exposure to immediate family members who tested positive for COVID-19.

4. St. Louis County: As of Thursday, January 14, the seven-day average of new COVID-19 cases in St. Louis County was 384 per day,² down from 454 a week earlier (on January 7), but slightly up from 362 two weeks earlier (on December 31). The average number of new cases per day is significantly lower than two months ago (i.e., 726 on November 12). (*Source: showmestrong.mo.gov, January 14, 2021*).

Deaths in St. Louis County have sharply declined since peaking in early December. On January 11, the seven-day moving average number of deaths per day due to COVID-19 was down to 1. On January 3, the average was 2 per day; on December 22, the average was 4 per day. (*Source: showmestrong.mo.gov, January 14, 2021*).

On Thursday, January 14, St. Louis County’s seven-day average rate of positive tests was 15.6%, down from 17.4% from the previous week.³ (These averages are calculated using the Centers for Disease Control and Prevention’s (CDC) method.⁴) (*Source: showmestrong.mo.gov, January 14, 2021*). (*Continued*)

² This number lags three days to ensure accuracy.

³ 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*.)

⁴ Under the CDC method, the total number of positive PCR tests is divided by the total number of PCR tests. This methodology does not “de-duplicate”, meaning it is not adjusted for instances where the same individual has been tested multiples times in the same week.

The St. Louis County Department of Public Health hosted its first vaccination event on Friday, January 8, 2021 and conducted additional vaccinations during the week of January 11, 2021, for those individuals included in the first vaccination phase – Phase 1A. (On January 14, 2021, the director of the Missouri Department of Health and Senior Services established three phases, with various sub-phases and tiers; each sub-phase (or tier) provides for the administration of the COVID-19 vaccine to distinct groupings of Missouri residents. The groupings are based on occupations, health conditions and/or places of residence.⁵)

DPH will continue to provide vaccination opportunities when it has confirmed vaccine inventory, also delivered by the State. The availability of vaccines is uncertain at this time. However, it is anticipated that vaccinations will be available for eligible 1B individuals starting the week of January 18, 2021. (Source: *St. Louis County Department of Public Health, January 11, 2021.*)

5. St. Louis Region: New hospital admissions due to COVID-19 in the St. Louis area have trended downward since peaking in late November. But more recently, new admissions have been flat. On Thursday, January 14, the Task Force reported that 112 new COVID-19 patients were admitted to St. Louis area hospitals, making the seven-day average 100. The week before (on January 7), the seven-day average was also at 100 new admissions per day, the same it was the week before that (on December 31). In late November, the average was up approximately 140. Before October, the average was closer to 40. (Source: *St. Louis Metropolitan Pandemic Task Force Facebook page, January 14, 2021.*)

The Task Force reported that the seven-day average total number of COVID-positive patients across Task Force hospitals was 751, down from 795 from the previous week (on January 7) and 826 two weeks ago (on December 31), but well up from the 407 on November 1. (Source: *St. Louis Metropolitan Pandemic Task Force Facebook page, January 14, 2021.*)

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⁵ Phase 1A includes “Patient-Facing Health Care Workers and Long-Term Care Facility Residents and Staff.” Phase 1B – Tier 1 includes “First Responders, Emergency Services and Public Health Infrastructure.” Phase 1B – Tier 2 includes “High-Risk Individuals” (i.e., anyone aged 65 and older and adults with certain severe illnesses). Phase 1B – Tier 3 includes those whose jobs provide “Critical Infrastructure,” (i.e., “keep the essential functions of society running”). This tier specifically addresses those whose employment is in “Education, Childcare, the Communications Sector, the Dams Sector, the Energy Sector, the Food/Agriculture Sector, Government, the Information Technology Sector, the Nuclear Reactor/Materials/Waste Sector, the Transportation Systems Sector and the Water and Wastewater Systems Sector.” Phase 2 includes those who protect “those who have been disproportionately affected” and those who “accelerate... economic recovery.” Phase 3 includes everyone else who wishes to be vaccinated. (Source: *MO DHSS 01/14/21 letter from DHSS Director Dr. Randall W. Williams.*)

On Thursday, January 14, the Task Force reported a seven-day moving average of 17 deaths per day due to COVID-19 in Task Force hospitals. A week earlier (on January 7), the average was 19 deaths per day. The average was 17 deaths per day two weeks prior (on December 31). The number of deaths across Task Force hospitals has increased since early November, when the average was approximately 7 deaths per day. The average is down from mid-December, when it was more than 20. *(Source: St. Louis Metropolitan Task Force Facebook page, January 14, 2021).*

St. Louis area hospitals are now operating at 80% in-patient bed capacity and 81% ICU bed capacity. *(Source: showmestrong.mo.gov, January 14, 2021).*

Dr. Alex Garza, the leader of the St. Louis Metropolitan Pandemic Task Force,⁶ warns that we still have too many coronavirus patients in St. Louis area hospitals, though the numbers are improving. "Now it has come down, and we welcome that news, but it is still much too high," he said. "We still have a ways to go before we'll feel comfortable by saying that we have a manageable population in our hospitals." *(Source: KSDK.com, January 13, 2021).*

As for the vaccine rollout, Dr. Garza is cautious, concerned that many health care workers in the St. Louis area are not taking advantage of their priority status for receiving the vaccine. "Right now, just looking at how many people have received an invitation to get the vaccines and how many have actually signed up and received the vaccine, that hovers anywhere between 45% and 65%" among the area hospital facilities that comprise the Task Force. *(St. Louis Post-Dispatch, January 14, 2021).*

Dr. Garza has no definitive explanations about why some health care workers have not signed up for the vaccine. Though, he surmises, "I do think there is as a segment of that population across health care that is going to have some hesitancy in getting the vaccine for various reasons." Garza said the reluctance among health care workers follows the same demographic lines of the general population, as attitudes toward the vaccine vary, depending on geography, age, education level and race.

Hospital officials are discussing a deadline for workers to commit to whether or not they will get vaccinated. "We recognize that we can't be a barrier to moving vaccinations forward," Garza said, "so if we have people that are absolutely not going to get vaccinated, then we don't want to delay getting to that next tier of vaccine." *(St. Louis Post-Dispatch, January 14, 2021).*

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⁶ The Task Force is a collaboration of local health systems and collects data from BJC HealthCare, Mercy, SSM Health and St. Luke's Hospital facilities in the region.

This week, St. Louis and St. Louis County launched online systems for residents to learn about COVID-19 vaccination opportunities. *(Source: St. Louis Post-Dispatch, January 13, 2021).*

6. Missouri: After a two-week uptick, Missouri's seven-day average of COVID-19 cases declined for the third day in a row on Thursday, January 14, when the state reported 2,780 new cases. That makes the rolling seven-day average 2,790 new cases per day. The seven-day average is down slightly from 2,836 reported a week earlier (on January 7), and up from 2,182 reported two weeks ago (on December 30). *(Source: St. Louis Post-Dispatch, January 14, 2021).* Since the start of the pandemic, Missouri has reported 412,426 cases. *(Sources: St. Louis Post-Dispatch and showmestrong.mo.gov, January 14, 2021).*

For the week of January 5 through 11, Missouri recorded 16,982 new COVID-19 cases. This represents a decrease of 11.9% from the previous week. Missouri ranks 32nd among the states in new cases per capita over the past week (with number 1 representing the state with the highest rate of new cases and 50 being the lowest). *(Source: showmestrong.mo.gov, January 14, 2021).*

The seven-day moving average number of deaths due to COVID-19 in Missouri has been trending upward since September and has been volatile as of late. On December 31, the average fell sharply to 32 deaths per day. Then, the average spiked back up to 52.4 on January 6. On January 14, the average was back down to 45.6. *(Source: St. Louis Post-Dispatch, January 14, 2020).* [The volatility may be attributed to the fact that deaths are often reported in batches and with a delay. For instance, on January 12, Missouri reported more than 200 new deaths for the fourth time in 30 days. Not all of these deaths occurred in a 24-hour period. *(Source: fox2now.com, January 12, 2021).* As a result, looking at trends beyond the most recent 7 days is often helpful.] Missouri has recorded 6,201 deaths since the start of the pandemic. *(Source: showmestrong.mo.gov, January 14, 2021).*

On Thursday, January 14, Missouri reported that a seven-day average positivity rate of 16.3%, down from 19.8% the week before. These averages are calculated using the CDC method. *(Source: showmestrong.mo.gov, January 14, 2021).*

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On Thursday, January 14, Missouri reported that 2,614 patients were hospitalized with confirmed or suspected COVID-19. That made the seven-day moving average to be 2,683 hospitalized patients.⁷ The average number of patients hospitalized for COVID-19 in Missouri has generally remained in the 2,600 – 2,800 range since November 22, 2020. (Source: *showmestrong.mo.gov*, January 14, 2021).

As of January 9, 2021, the transmission rate, R_0 , for Missouri is 1.08. The transmission rate has increased from 1.03 on January 4.⁸ (Source: *statista.com*, January 14, 2021).

Missouri hospitals are now operating at 77% in-patient bed capacity and at 78% ICU bed capacity. (Source: *showmestrong.mo.gov*, January 14, 2021).

On Thursday, January 14, Gov. Mike Parson announced that the second phase of COVID-19 vaccinations, “Phase 1B,” which expands availability of the vaccine to first responders, high-risk residents and those 65 and older, is set to commence over the next few days. Parson said the U.S. government is planning to “significantly” increase vaccine shipments next week, which should allow the rollout of the next phase. “The more supply we receive, the quicker we can reach our goal of making vaccines available to every Missourian who wants one,” Gov. Parson said. (Source: *St. Louis Post-Dispatch*, January 14, 2021).

The number of Missouri citizens who are not planning to get vaccinated is staggering. According to a survey of 800 Missouri registered voters by the Missouri Hospital Association, 58% of the respondents were “very” or “somewhat” likely to immediately get the vaccine when it becomes available. 20% indicated they would definitely not be getting the vaccine. (The survey was conducted during the first week of January; the results are similar to nationwide poll results.) (Source: *St. Louis Post-Dispatch*, January 14, 2021).

On Tuesday, the Centers for Disease Control and Prevention (CDC) reported that approximately 2.6% of Missouri’s population has already been vaccinated. (Source: *St. Louis Post-Dispatch*, January 12, 2021).

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⁷ Data lags 3 days to ensure accuracy and not every hospital reports every day.

⁸ 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.

7. St. Louis County Executive Action: Three executive orders issued by St. Louis County Executive Dr. Sam Page went into effect November 17, 2020: 1.) a “Safer at Home” order (which imposed significant limitations on activities outside the home); 2.) a modified face covering order (which expanded the areas where masks should be worn) and 3.) a revised isolation and quarantine order (which imposed directives to those infected by or exposed to the virus). *(Source: stlcorona.com/news/dph-covid19-update-11132020, November 13, 2020).*

On Monday, January 4, St. Louis County Executive Sam Page lifted the ban on indoor dining. Under the new restrictions, restaurants are limited to 25% occupancy, must close by 10 p.m., and must write down the name and contact information of at least one member of each dining party, in order to assist with contact tracing. *(Sources: stlcorona.com, January 4, 2021; St. Louis Post-Dispatch, January 5, 2021).*

8. Other considerations: The United States is presently seeing COVID-19 cases hit all-time highs. The seven-day moving average number of new cases in the United States on January 13 was 243,708 new cases per day. A week before that, (on January 6), the average was 220,860 new cases per day. Two weeks prior (on December 30), the average was 181,279 new cases per day. *(Source: CDC.gov, January 14, 2021).*

Since the start of the pandemic, the U.S. has recorded approximately 23 million cases. Approximately 1.7 million of those have come in the last seven days. *(Source: CDC.gov, January 14, 2021).*

Deaths from the coronavirus in the U.S. are also spiking to record levels, largely fueled by surges in California and Arizona. *(Source: nytimes.com, January 14, 2021).* On January 13, the seven-day average was 3,357 deaths per day. A week before that (on January 6), the average was 2,664 deaths per day. And two weeks prior (on December 30), the average was 2,283. The U.S. has recorded 383,351 deaths due to COVID-19 since the start of the pandemic. *(Source: CDC.gov, January 14, 2021).*

Contact-tracing of about approximately 20,000 individuals suggests that the new coronavirus variant that has spread through London is 30 to 50 percent more contagious than other strains, according to a report by Public Health England. The new variant has been spotted in only a few states so far, but is expected to spread quickly and become the primary source of infections in the U.S. by March.

(Source: nytimes.com, January 14, 2020).

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In addition, researchers from the Southern Illinois University Carbondale published a study identifying a variant of the coronavirus that is unique to and already widespread in the U. S., and appears to be more transmissible than other variants. (Source: *St. Louis Post-Dispatch*, January 14, 2020).

IN CONCLUSION

Like last week, many factors continue to be encouraging. The presence of COVID in this community is clearly not as horrific as it was in November. While a holiday spike has been predicted nationally and locally, the presence of COVID-19 in St. Louis County has simply not substantiated that forecast – as of today.

The hospital capacity percentages remain a concern, but they have not worsened in the past week. News about the vaccines is very encouraging, of course, but the large numbers of health care workers who refuse to get vaccinated is troubling. The national COVID news continues to be problematic – whether it is indicative of what is to come in the St. Louis area is uncertain. The rapid presence of the new coronavirus variant strain in this country – one that is more transmissible than the initial strain -- has caused the infectious disease experts to worry.

This circuit is hardly out of the pandemic woods yet. Nonetheless, this court continues to hope to return to Phase One on February 1, 2021. A downward trend of infections and deaths in the County over the next two weeks will be critical.

Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase Zero on January 15, 2021. 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
January 15, 2021

SO ORDERED:


Judge Division 16

January 15, 2021

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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.⁹

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 two sites will not be available while this Circuit is in Phase Zero, in order to reduce the possibility of exposure to the coronavirus.

⁹ 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.