

CIRCUIT COURT PHASE ANNOUNCEMENT – 01/08/21

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: Three members of the Courthouse staff have COVID-19 and are in isolation. Thirteen staff members are in quarantine, awaiting test results after potential exposure to COVID-19 positive family members. The Courthouse is currently operating with a skeleton staff.

The E-Court kiosks remain off-limits to the public 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):

There are currently no cases of COVID-19 among jail residents at the Buzz Westfall Justice Center. Jail health officials are continuing to carry out rigorous sanitation and hygiene protocols that have been highly effective in limiting the potential spread of the virus among inmates and employees.

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 the 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.

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. *(Source: Missouri Department of Corrections Website, “COVID-19 Data,” January 7, 2021).*

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Missouri's 22 corrections facilities have recorded a total of 5,059 cases, including 40 deaths. According to Missouri Department of Corrections spokesperson Karen Pojmann, "[n]early all COVID-related deaths in the incarcerated population resulted from a statewide surge of COVID that occurred in every part of Missouri in October and November... Infection surges outside prisons affect populations inside prisons." 75% of the 40 deaths were from prisoners age 60 or older, and all but two inmates had serious underlying health conditions. Half of the deaths were reported in November. The department has taken steps to curb the spread of the virus, including mass testing, and installing air purifying devices and disinfectant sprayers. *(Source: St. Louis Post-Dispatch, January 7, 2021).*

According to the co-founder of the COVID Prison Project, Lauren Brinkley-Rubinstein, prisoners "are at greater risk of COVID-19 for a number of reasons including on average, people who are incarcerated tend to have at least one chronic condition[.]" Add to that "dormitory, congregate-style living facilities, overcrowded conditions and very little ability to engage in quarantine or medical isolation," and the result is a public health crisis in many prisons and jails across the United States. *(Source: St. Louis Post-Dispatch, January 7, 2021).*

3. Detention Center Residents and Staff: No Detention Center residents or staff are positive for the virus.

4. St. Louis County: As of Thursday, January 7, the seven-day average of new COVID-19 cases in St. Louis County was 486 per day, up from 355 a week earlier (on December 31), and 374 two weeks earlier (on December 23). These numbers, however, are significantly lower than the numbers in November (e.g., 726 cases on November 12.) *(Source: showmestrong.mo.gov, January 7, 2021).*

Deaths in St. Louis County have sharply declined since peaking in early December. On December 8, the seven-day moving average number of deaths per day due to COVID-19 was 12. On December 15, the average was 6 deaths per day. On December 22, the average 4 per day. On January 3, the average was 2 per day. For the week of December 29 through January 4, St. Louis County recorded 13 deaths due to COVID-19. *(Source: showmestrong.mo.gov, January 7, 2021).*

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On Thursday, January 7, St. Louis County's seven-day average rate of positive tests was 18.5%, up from 16.1% the week before.² These averages are calculated using the Centers for Disease Control and Prevention's (CDC) method.³ (*Source: showmestrong.mo.gov, January 7, 2021*).

5. St. Louis Region: This week, Dr. Alex Garza, the leader of the St. Louis Metropolitan Pandemic Task Force,⁴ said the admission rate is still “way too high,” despite a recent trend in the right direction. (*Source: St. Louis Post-Dispatch, January 5, 2021*). On Thursday, January 7, the Task Force reported 86 new COVID-19 patients were admitted to St. Louis area hospitals, making the seven-day average 100. A week earlier (on Dec. 31), the seven-day average was also 100 new admissions per day. Two weeks ago (on December 24), that number was 111. (*Source: St. Louis Metropolitan Pandemic Task Force Facebook page, January 7, 2021*).

Dr. Garza also warned that the region's COVID-19 patient numbers are still “dangerously high” and could still overwhelm hospitals. (*Source: St. Louis Post-Dispatch, January 7, 2021*). The Task Force reported that the seven-day average total number of COVID-positive patients across Task Force hospitals was 795, down from 826 a week prior (Dec. 31) and 858 two weeks ago (Dec. 24), but well up from the 407 on November 1. (*Source: St. Louis Metropolitan Pandemic Task Force Facebook page, January 7, 2021*).

On Thursday, January 7, the Task Force reported a seven-day moving average of 19 deaths per day due to COVID-19 in Task Force hospitals. A week earlier (on Dec. 31), the average was 17 deaths per day. The average was also 17 deaths per day two weeks prior (on Dec. 24). The number has increased dramatically since early November, when the Task Force hospitals averaged approximately 7 deaths per day. (*Source: St. Louis Metropolitan Task Force Facebook page, January 7, 2021*).

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² 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*).]

³ 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.

⁴ 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.

St. Louis area hospitals are currently at 72% in-patient bed capacity and 76% ICU bed capacity. *(Source: showmestrong.mo.gov, January 7, 2021).*

Dr. Garza said he is still concerned about a spike in cases following the holiday season. *(Source: St. Louis Post-Dispatch, January 7, 2021).*

Dr. Garza also said that 47,843 health care workers—45% to 65% of frontline employees—have received doses of the vaccine across the BJC HealthCare, Mercy, SSM Health and St. Luke’s Hospital facilities in the area. “We don’t know how many more doses of vaccine will arrive, or how quickly we can get to the general public, but we do know that vaccines will come,” Garza said. “They’ll come eventually, and we’re working as hard and as fast as we can.” Garza also said that the Task Force is working with health departments to plan for vaccinating health care workers who are not affiliated with major hospital systems and should be able to offer more information in a week. *(Source: St. Louis Post-Dispatch, January 7, 2021).*

6. Missouri: On Thursday, January 7, the state reported 3,518 new cases, making the rolling seven-day average 2,467 new cases per day.⁵ The seven-day average is slightly above the averages of 2,407 reported a week earlier (on Dec. 30), and 2,416 reported two weeks ago (on Dec. 24). The current seven-day moving average is down from its mid-November peak of 4,722, but is still higher than any level reported before November. [On November 1, the seven-day average was 2,291. On October 1, the average was 1,371. And on July 1, the average was only 437.] Since the start of the pandemic, Missouri has reported 412,426 cases. *(Sources: St. Louis Post-Dispatch and showmestrong.mo.gov, January 7, 2021).*

For the week of December 29, 2020 through January 4, 2021, Missouri recorded 17,270 new COVID-19 cases. This represents an increase of 9.9% from the week before. Missouri ranks 31st 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 7, 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 of late.

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⁵ This data is delayed 3 days to ensure accuracy.

On Thursday, December 24, the average was 65.7 deaths per day. Then, the average fell sharply to 32 deaths per day a week later (on Dec. 31). After that, the average spiked back up to 52.4 on January 6.⁶ Missouri has recorded 5,912 deaths since the start of the pandemic. (*Sources: fox2now.com, January 5, 2021; St. Louis Post-Dispatch, January 7, 2020; showmestrong.mo.gov, January 8, 2021*).

On Thursday, January 7, Missouri reported a seven-day average positivity rate of 20.5%, up from 18.0% from the previous week. These averages are calculated using the aforementioned CDC method. (*Source: showmestrong.mo.gov, January 7, 2021*).

On Thursday, January 7, Missouri reported 2,784 patients were hospitalized with confirmed or suspected COVID-19. That made the seven-day moving average to be 2,735 hospitalized patients.⁷ The average number of patients hospitalized for COVID-19 in Missouri has remained in the 2,600 – 2,800 range since November 22, 2020. (*Source: showmestrong.mo.gov, January 7, 2021*).

As of January 4, 2020, the transmission rate, R_0 , for Missouri is 1.03. The transmission rate has increased from 0.97 on December 14.⁸ (*Source: statista.com, January 7, 2021*).

Missouri hospitals are currently at 73% in-patient bed capacity and with their ICU bed capacity at 77%. These numbers are at approximately the same levels that they were on December 17. (*Source: showmestrong.mo.gov, January 7, 2021*).

On Wednesday, Missouri officials indicated that the state will receive approximately 71,000 doses of the COVID-19 vaccine in the coming days, which will be used to inoculate frontline health care workers. Gov. Mike Parson said that Missouri will receive enough vaccinations by the end of January for frontline health care workers and long-term care facilities, but not enough for the general public.

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⁶ The volatility may be attributed to the fact that deaths are often reported in batches and with a delay. For instance, a new single-day high of 263 deaths in Missouri was reported on January 5, though not all those deaths occurred within a 24-hour span. As a result, zooming out and looking at trends beyond the most recent 7 days is often helpful.

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.

The director of the Missouri Department of Health and Senior Services, Dr. Randall Williams, indicated that more details will be released next week about Phase 1B, which would allow for the vaccination of first responders, essential workers, residents older than 65, and individuals with medical conditions that place them at higher risk. *(Source: Saint Louis Post-Dispatch, January 7, 2021).*

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).*

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

On Wednesday, St. Louis County Executive Sam Page announced that the St. Louis County Health Department will start vaccinating its clinical employees on Friday, January 8, 2021 and other “patient-facing” health care workers in St. Louis County, not connected to a hospital provider, this coming Monday, January 11. *(Source: St. Louis American, January 6, 2021).* Phase 1A allows for the vaccination of the first group of vaccine recipients -- “patient-facing” health care workers and long-term care facility residents and staff. *(Source: covidvaccine.mo.gov, January 8, 2021.)*

“The health department will be providing vaccinations to 1A workers across the county until notified by the state to proceed to the next category,” Page said at his morning news briefing on January 6. Examples of health care workers not connected to a hospital provider includes dentists, school nurses, behavioral health workers, substance abuse providers, optometrists and physical therapists.

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Page said the supply of vaccines to the County has not been as robust as hoped, and cautioned that the virus is still spreading in the community.

8. Other considerations: Thursday was this country's worst day of the pandemic. State and local officials announced more than **4,100 deaths** and more than **280,000 new cases**, both records. (*Source: New York Times, January 8, 2021*).

The seven-day moving average number of new cases in the United States is also at an all-time high. On January 6, the average was 228,003 new cases per day. A week before that (on Dec. 30), the average was 185,883 new cases per day. And two weeks prior (on Dec. 23), the average was 212,991. (*Source: CDC.gov, January 7, 2021*).

Since the start of the pandemic, the U.S. has recorded approximately 21.2 million cases. Approximately 1.6 million of those have come in the last seven days. (*Source: CDC.gov, January 7, 2021*).

On Wednesday, January 6, the U.S. set a new single-day record with at least 3,964 new coronavirus deaths.⁹ (*Source: nytimes.com, January 7, 2021*). On January 6, the seven-day average was 2,664 deaths per day. A week before that (on Dec. 30), the average was 2,283 deaths per day. And two weeks prior (on Dec. 23), the average was 2,682. The U.S. has recorded 359,849 deaths due to COVID-19 since the start of the pandemic. (*Source: CDC.gov, January 7, 2021*).

December was by far the deadliest month yet for the United States. Health experts are warning that January could be even worse because of family gatherings and holiday travel from the past two weeks. (*Source: St. Louis Post-Dispatch, January 7, 2021*).

Around the world, approximately 1.9 million people have died due to COVID-19. In addition, a more contagious variant of the virus is starting to spread across the globe and in the U.S. (*Source: St. Louis Post-Dispatch, January 7, 2021*).

On Thursday, January 7, Dr. Anthony Fauci, the nation's top leading infectious disease expert, told a group of Washington University doctors and students that the coronavirus pandemic will get worse before it gets better, but vaccinations "will be the real gateway" to a return to normal. (*Continued*)

⁹ Delayed recording due to the holidays may have played a role.

Fauci called the recent record number of new cases, deaths and hospitalizations “really stunning.” “We expect it to get a bit worse as we get into the middle and end weeks of January,” as cases will likely surge after holiday gatherings, Fauci said. “On the other side of the coin, there is light at the end of the tunnel with regard to vaccinations,” Fauci said. He indicated the vaccines are highly successful and very safe. *(Source: St. Louis Post-Dispatch, January 7, 2021).*

Dr. Fauci also said in an interview this week that, although he expects “things will get worse as we get into January,” it is still possible to “blunt that acceleration” by strictly adhering to public health measures like social distancing and mask-wearing. “Now’s not the time to pull back on this,” he cautioned. *(Source: nytimes.com, January 7, 2021).*

The U.S. Centers for Disease Control and Prevention predicted this week that a post-holiday uptick of 900,000 to 1,800,000 new cases nationwide will likely be reported in the week ending January 30, 2021, including an additional 2,000-4,000 new cases in St. Louis County, depending on whether current social distancing measures continue to be observed or change. *(Source: CDC: Cases, Data & Surveillance, Case Forecasts, January 6, 2021).*

IN CONCLUSION

As indicated, many factors are encouraging. The presence of COVID in this community at this time is not the same as it was in November. While a holiday spike is predicted, this Court notes that the forecasted post-Thanksgiving spike was not evident in the Courthouse, the Jail or the Detention Center. (The low numbers in the Courthouse could simply be due to the Courthouse’s operating with a skeleton staff since early November.) Nonetheless, the COVID numbers in the community have been increasing over the past few weeks.

The hospital capacity percentages remain a concern. News about the vaccines is very encouraging, of course, but the limited availability for the near future is problematic. This court hopes that these recent trends will stabilize; if they do, this court hopes to return to Phase One on February 1, 2021.

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Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase Zero on January 8, 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 8, 2021

SO ORDERED:



Judge Division 16
January 8, 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.¹⁰

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.

¹⁰ 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.