

CIRCUIT COURT PHASE ANNOUNCEMENT – 05/21/21

As directed by the Missouri Supreme Court on May 4, 2020 (and ultimately modified on July 24, 2020 and March 26, 2021), judicial circuits cannot rush to “open their doors” during this pandemic. They must do so gradually. The Court developed five phases (Zero through Four) to allow for this process. (The Supreme Court added a fifth phase, Phase Four, on March 26, 2021.) In determining whether changing phases is appropriate, the Supreme Court provided the following specific “Gateway Criteria” to consider:

- “1. The number of confirmed COVID-19 cases in the court facility within the last 14-day period.
2. Any local stay-at-home orders or gathering restrictions.
3. Improvement in local COVID-19 health conditions over a 14-day period, including the number of confirmed COVID-19 cases and related deaths.
4. Consultation with local health officials or departments concerning changes to levels of 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.
6. Accessibility to approved COVID-19 vaccines in the community in which the courthouse or court facility is located.”

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 Four, 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 Two, as it has been since March 26, 2021.

(Continued)

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

1. Courthouse Staff:

No new cases of COVID-19 have been diagnosed among courthouse staff members; two employees are in quarantine due to potential exposure to the virus. There have been no employees with COVID-19 in the building for more than three weeks.

To improve access to justice during the pandemic, secure computer stations (“E-Court”) are now available on the street level of the St. Louis County Courthouse and the St. Ann satellite court at The Crossings at Northwest in St. Ann. The E-Court allows 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.

2. DJS Jail Residents and Staff:

No new cases of COVID-19 have been reported in the jail since May 6, 2021.

The Court has engaged in regular communication with prosecuting attorneys, defense attorneys and public health experts to develop and maintain a detailed plan to address the resumption of jury trials in Phase Two. (Please refer to Administrative Orders No. 20-54 and No. 21-7.) Jury trials for designated criminal cases resumed seamlessly on April 12, 2021. Trials have been carried out under heightened public health and safety conditions, as recommended by the CDC and the County Department of Public Health, in tandem with consultation with a local epidemiologist.

Criminal jury trials will continue to take place two at a time until this Circuit enters Phase Three (which will occur next month).

The Department of Public Health has had concerns of exposure to its residents, primarily due to both the potential for “likely transmission” in the Jail and the presence of cases reported in the community at large. Of special concern to the Department of Public Health was the risk of bringing inmates who are currently housed in the Missouri Department of Corrections to the Jail to address pending criminal matters here.

Over the past month, this circuit has writ in numerous inmates from the MDC who have filed speedy trial motions (to address their felony charges pending in this circuit), pursuant to Sect. 217.460 of the Revised Statutes of Missouri. Due to a coordinated effort of the circuit court bench, all of these defendants' motions have been addressed – either by trial, plea, dismissal or waiver. Accordingly, this court is no longer bringing in large groups of defendants from the MDC.

3. Detention Center Residents and Staff:

No new residents or staff members have been reported to have tested positive for the coronavirus since early February.

4. St. Louis County:

The number of new COVID-19 cases in St. Louis County has continued its recent decline. On Thursday, May 20, St. Louis County reported that the seven-day rolling average of 67 (confirmed and probable) COVID-19 cases per day.¹ A week earlier (on May 13), the seven-day average was 75 cases per day. Two weeks prior (on May 6), the average was 108 cases per day. [On April 1, the average was 143. The average number of new cases per day has decreased significantly from its peak of 728 *confirmed* cases on November 12.] (*Source: showmestrong.mo.gov, May 20, 2021*).

Deaths due to COVID-19 in St. Louis County have also continued to decline and are down significantly since peaking in early December. On May 12, the seven-day moving average number of deaths per day due to confirmed cases of COVID-19 was 1.² A week earlier (on May 6), the seven-day average was 1. Two weeks prior, (on April 28), the seven-day average was 2. The seven-day average is down from highs of approximately 13 deaths per day in early December.

¹ Missouri's COVID-19 dashboard reports confirmed and probable cases separately. For this report, they have been combined. A *confirmed* case means a positive PCR test. A *probable* case means a positive antigen test. Experts consider the PCR test the "gold standard" for detecting the virus. It detects the genetic material of the virus within days of infection, even in individuals who have no symptoms. Results come back in two or three days. Antigen tests, also known as rapid tests, detect protein fragments specific to the coronavirus. Turnaround time for results is only 15 minutes. A positive antigen test is considered highly accurate, especially for those experiencing symptoms, but negative test results are less reliable. Both PCR and antigen tests are conducted by nasal swab. If a person tests positive using both a PCR test and antigen test, they are counted only once—the PCR test is counted as a confirmed case. Antigen testing started growing in usage around November of last year. Currently, about 30% of all tests are antigen tests. The most recently reported COVID-19 case numbers are delayed 3 days to ensure accuracy. (*Sources: showmestrong.mo.gov, March 18, 2021; St. Louis Post-Dispatch, February 10, 2021*).

² These numbers only include those individuals with confirmed COVID-19 by a positive PCR test and who were determined to be a COVID-19 death. As of Thursday, May 20, no COVID-19 deaths have been reported in St. Louis County since May 12. However, deaths are often reported with a significant delay. Consequently, it is helpful to review these numbers over the past few weeks or months to understand the trends. (*Source: showmestrong.mo.gov, May 20, 2021*).

Since the start of the pandemic, 2,224 St. Louis County residents have died due to coronavirus. (*Sources: showmestrong.mo.gov; stlcorona.com, May 20, 2021*).

On Thursday, May 20, St. Louis County's seven-day average rate of positive tests was 3.5%, down from 3.9% from the previous week.³ This positivity rate is calculated using the Centers for Disease Control and Prevention's (CDC) method.⁴ (*Source: showmestrong.mo.gov, May 20, 2021*).

As of Thursday, May 20, more than 436,186 St. Louis County residents—i.e., 43.9% of the County's population—have received at least one dose of the COVID-19 vaccine. 34.9% are fully vaccinated. (*Source: showmestrong.mo.gov, May 20, 2021*).

According to an analysis by the *New York Times*, the seven-day average number of new COVID-19 cases in St. Louis County has fallen to 81 new confirmed and probable cases per day—a 49% reduction from the average two weeks ago.⁵ The County recently fell from “Very High Risk” to “High Risk” for unvaccinated people.⁶ (*Source: nytimes.com, May 19, 2021*).

St. Louis County is continuing its vaccination effort. St. Louis County Library locations in Moline Acres and Eureka will soon offer free COVID-19 vaccines at walk-in clinics. “The library is a trusted partner in the community...that folks can turn to for information, and now, access to a vaccine,” said St. Louis County Executive Sam Page. (*Source: St. Louis Post-Dispatch, May 19, 2021*).

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.

⁵ The case numbers reported by the *New York Times*, Missouri's dashboard at showmestrong.mo.gov, and St. Louis County's dashboard at stlcorona.com may be different. This can be attributed to differences in reporting methods. Missouri's dashboard at showmestrong.mo.gov reports probable and confirmed cases separately. In contrast, the case count reported by the *Times* and St. Louis County includes both confirmed and probable cases. There are also differences in the way probable cases are reported. On Missouri's dashboard, a probable case refers to those individuals with a positive antigen test. On the St. Louis County dashboard and *Times* website, the definition of probable cases follows CDC guidelines and is broader. One of the major differences is that probable cases from those sources (St. Louis County and the *Times*) include not only individuals with positive antigen test results, but also those individuals who have COVID-19 symptoms and are known to have had close contact with a COVID-positive person in the 14 days prior to the onset of their symptoms, but have not had a confirmatory test. (*Sources: stlcorona.com; nytimes.com; stlcorona.com; March 17, 2021*).

⁶ St. Louis County is in the “High Risk” category for unvaccinated people because there was an average of 8 daily cases per 100,000 people reported in the past two weeks. A county is “High Risk” for unvaccinated people if it reports 3 or more cases per 100,000 people over the past two weeks.

5. St. Louis Region:

New hospital admissions due to COVID-19 in the St. Louis area have decreased recently, after hovering at 40 per day for over a month. On Thursday, May 20, the St. Louis Metropolitan Pandemic Task Force⁷ reported that 28 new COVID-19 patients were admitted to St. Louis area hospitals, making the seven-day daily average to be 22. The week before (on May 13), the seven-day average was 31. It was at 36 the week before that (on May 6). *(Source: St. Louis Metropolitan Pandemic Task Force Facebook page, May 20, 2021).*

The number of COVID-positive patients hospitalized across St. Louis area hospitals decreased substantially over the past week. On Thursday, May 20, the Task Force reported that the seven-day average total number of COVID-positive patients in Task Force hospitals was 155. The Task Force reported 208 a week prior (on May 13), and 210 two weeks prior (on May 6). The average had hovered just above 200 since early March. *(Source: St. Louis Metropolitan Pandemic Task Force Facebook page, May 20, 2021).*

As of May 20, St. Louis area hospitals were operating at approximately 79% staffed in-patient bed capacity and 81% staffed ICU bed capacity. *(Source: showmestrong.mo.gov, May 20, 2021).*

Deaths due to COVID-19 across St. Louis area hospitals have plateaued since mid-March. On Thursday, May 20, the Task Force reported a seven-day moving average of 3 deaths per day due to COVID-19 in Task Force hospitals. That is the same average that was reported a week prior (on May 13) and two weeks earlier (on May 6). The average is down significantly from December, when it was above 20. *(Source: St. Louis Metropolitan Task Force Facebook page, May 20, 2021).*

Dr. Alex Garza, the Task Force's leader, expressed hope as important hospitalization metrics continue to fall. "We're starting to see some encouraging signs in our admissions data," said Dr. Garza. "We are headed in the right direction[.]" *(Source: St. Louis Post-Dispatch, May 18, 2021).*

⁷ 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.

Though Dr. Garza and others public health experts are optimistic as a result of the falling numbers, they still have some concerns. First, it is not clear how the relaxed restrictions announced last week will affect case numbers. Second, the pace of vaccinations has slowed over the past month. “We don’t, at this point, have as many people vaccinated as we would like,” said Dr. Sarah George, associate professor of infectious diseases at St. Louis University. “That concerns me, because the virus is still out there.” (*Source: St. Louis Post-Dispatch, May 18, 2021*).

6. Missouri:

Missouri's seven-day moving average number of new COVID-19 cases has decreased recently. On Thursday, May 20, the state reported 192 new confirmed and probable cases, making the seven-day average 421.⁸ The seven-day average is down from 470 reported a week earlier (on May 13) and 478 reported two weeks prior (on May 6). Since the start of the pandemic, Missouri has reported 593,856 confirmed and probable cases. (*Source: St. Louis Post-Dispatch, May 20, 2021*).

Deaths in Missouri due to COVID-19 continue to trend downward.⁹ For the week starting May 9, the state reported 10 deaths. For the week starting May 2, the state reported 14 deaths. For the week starting April 25, the state reported 32 deaths. For the week of April 18, Missouri reported 36 deaths. (For the week of April 11, Missouri reported 40 deaths, and for the week of April 4, the state reported 39 deaths). Missouri has recorded 8,990 deaths due to COVID-19 since the start of the pandemic. (*Source: St. Louis Post-Dispatch, May 20, 2021*).

The number of patients in Missouri hospitalized with COVID-19 has declined dramatically since the start of the year, and more recently, continue to trend in the right direction. As of Monday, May 17, Missouri had 657 patients hospitalized with confirmed or suspected COVID-19, making the seven-day moving average 730. A week earlier (on May 10), the seven-day average was 781. A week before that (on May 3), the average was 788. [On March 1, the average was 1,102. On Jan 1, the average was 2,704.] (*Source: showmestrong.mo.gov, May 20, 2021*).

⁸ This data lags 3 days to ensure accuracy. A positive PCR test is a confirmed case. A positive antigen test is a probable case.

⁹ The most recent weeks likely undercount the number of deaths because deaths are often reported in batches and with a delay. Therefore, the most recent numbers reported here are likely to increase over time.

On Thursday, May 20, Missouri reported a seven-day average positivity rate of 3.7%, down from 4.2% reported the previous week. These averages reflect the positivity rate for confirmed cases (PCR test results only) and are calculated using the CDC method.¹⁰ The positivity rate for antigen tests is 3.1%, down from 4.1% the previous week. (*Source: showmestrong.mo.gov, May 20, 2021*).

As of May 12, the transmission rate for Missouri is 0.84.¹¹ That is down from the rate of 0.89 a week earlier (on May 5). (*Source: covidactnow.org, May 20, 2021*).

Missouri hospitals are operating at 77% staffed in-patient bed capacity and 78% staffed ICU bed capacity. (*Source: showmestrong.mo.gov, May 20, 2021*).

Through Wednesday, May 12th, 2,472,539 people statewide—i.e., 40.3% of the population—were reported to have received at least one dose of the vaccine. 33.4% of the population is completely vaccinated. Among Missouri residents who are 18 and older, 50.7% have had at least one dose of the vaccine, and 42.5% are completely vaccinated. (*Source: showmestrong.mo.gov, May 20, 2021*).

Missouri compares favorably to other states in the U.S. when it comes to the number of new COVID-19 cases reported over the past week. Missouri is tied for the 14th lowest number of cases per capita over the last seven days, with 7 cases per 100,000 people. [Delaware has the most with 22 cases per 100,000; California and Oklahoma are tied for the lowest with 3; the national average is 9.] (*Source: nytimes.com, May 20, 2021*).

Missouri does not rank well compared to the other states in the U.S. in administering the vaccination doses received from the federal government. Missouri is tied for 40th among the states, with 40% of the population having received at least one shot. [The national average is 48%; the state of Vermont ranks first, at a rate of 66%; Mississippi ranks last with 33%.] (*Source: nytimes.com, May 20, 2021*).

¹⁰ See footnote 4.

¹¹ The transmission rate represents how fast COVID-19 is spreading in a given area. It measures the average number of people who become sick from an infectious person. A value of 1.00 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 number, the worse the spread.

Coronavirus levels in Missouri's wastewater show that the effort to slow the spread of the virus is working. The Missouri Department of Health and Senior Services (DHSS) indicates that wastewater samples from across the state indicate levels have remained "relatively stable." "This stability suggests that efforts to minimize transmission of the virus are working, and stresses the importance of continued testing, vaccinations, and adherence to local recommendations to stop the spread of the virus," according to a statement from DHSS. *(Source: St. Louis Post-Dispatch, May 17, 2021).*

Missouri's wastewater testing also shows that the U.K. variant, known as B.1.1.7, has spread to all parts of the state, according to DHSS. Presence of the U.K. variant is noteworthy because of evidence it is highly transmissible. Other variants have not been found as consistently across Missouri. *(Source: St. Louis Post-Dispatch, May 17, 2021).*

7. St. Louis County Executive Action:

On May 14, 2021, St. Louis County Executive Sam Page announced that, effective immediately, St. Louis County was rescinding its public health orders requiring face masks. Prior capacity and distancing restrictions applicable to businesses, which were set forth in the "Safer at Home" and "Reopen STL" orders, have been rescinded. *(Sources: stlcorona.com, May 21, 2021; St. Louis Post-Dispatch, May 14, 2021).*

As a result, masks are no longer required in most places in St. Louis County. Masks should still be worn in health care settings (hospitals, doctors' offices, long-term care facilities, etc.) and are still required on public transportation (airplanes, busses, trains, etc.). Businesses and workplaces may still require masks at their discretion. *(Sources: stlcorona.com, May 21, 2021; St. Louis Post-Dispatch, May 14, 2021).*

The St. Louis County Department of Public Health has indicated that the new CDC guidelines essentially do not change the Courthouse's health and safety protocols. Staff and visitors must continue to wear masks and practice social distancing.

A Public Health Advisory from Dr. Faisal Khan, Acting Director of the County's Department of Public Health, issued May 14, 2021, recommends that those who are unvaccinated should continue to wear masks, social distance and avoid large gatherings. *(Sources: stlcorona.com, May 21, 2021).*

8. Other considerations:

The number of new COVID-19 cases across the United States has declined dramatically. On Wednesday, May 19, the seven-day moving average number of new cases in the U.S. was 27,788. A week before that (on May 12), the average was 34,501 new cases per day. Two weeks prior (on May 5), the average was 45,558 new cases per day. Since the start of the pandemic, the U.S. has recorded approximately 32.8 million cases. *(Source: CDC.gov, May 20, 2021).*

Daily deaths due to COVID-19 in the U.S. are also declining. On Wednesday, May 19, the seven-day moving average was 497 deaths per day. A week before that (on May 12), the average was 556 deaths per day. And two weeks prior (on May 5), the average was also 607. The U.S. has recorded 584,337 deaths due to COVID-19 since the start of the pandemic. *(Source: CDC.gov, May 20, 2021).*

Approximately 48% of U.S. residents have received at least one dose of the vaccine; 38% have been fully vaccinated. *(Source: nytimes.com, May 20, 2021).*

Last week, the CDC published new guidelines providing that vaccinated people no longer need to wear masks or socially distance in most settings, indoors or outdoors. "If you are vaccinated, we are saying you are safe, you can take off your mask and you are not at risk of severe disease or hospitalization from Covid-19," said CDC director, Dr. Rochelle Walensky. "If you are not vaccinated, you are not safe. Please go get vaccinated or continue to wear your mask." *(Source: nytimes.com, May 16, 2021).*

Dr. Walensky also said that communities with high case numbers should consider keeping mask requirements in place. She added that children who are not vaccinated and individuals with compromised immune systems should also continue wearing face masks. *(Source: nytimes.com, May 16, 2021).*

Dr. Anthony Fauci, the chief medical adviser to President Biden, expects vaccinations for children as young as 4 years old to be available in the future. He said that the younger age group "would likely be able to get vaccinated by the time we reach the end of calendar year 2021 and at the latest, into the first quarter of 2022." *(Source: npr.org, May 20, 2021).*

Globally, the vaccination effort is not going as well as it is in the United States. The world's largest vaccine producer, The Serum Institute of India, said it would not be able to export doses until the end of the year. All doses manufactured by the Institute will be staying in India, as the country has been hit hard by the virus in recent weeks. "It simply means that poor countries of the world, the low- and middle-income countries of the world are going to have to wait longer to come anywhere close to the kind of vaccination coverage that we've achieved in some of the wealthier countries[,]" said Dr. Arthur Reingold, chief of the epidemiology division at the University of California, Berkeley. (Source: *nytimes.com*, May 20, 2021).

IN CONCLUSION

The number of COVID cases and deaths in this community is declining. Hospitalizations are decreasing. The positivity rate continues to decrease, reaching a level that the World Health Organization advises is safe for state and local governments to "reopen." The transmission rate in Missouri is significantly below 1.0.

All courthouse staff members have now had the opportunity to be fully vaccinated. Approximately 35% of the County's population has been fully vaccinated (and approximately 44% have received one dose).

Jury trials have been proceeding in St. Louis County since April 12, 2021, with no significant challenges.

The CDC has recently brought great news: those who are fully vaccinated need not wear masks or keep socially distant. Unfortunately, the CDC has provided no guidance yet as to how workplaces should best function with this new information. The County Department of Public Health has indicated that the new CDC guidelines essentially do not change the Courthouse's health and safety protocols: staff and visitors must continue to wear masks and practice social distancing.

In the meantime, this circuit is gearing up to move to Phase Three on June 11, 2021, assuming that no unforeseen problems arise. Entering Phase Three will allow the St. Louis County Courthouse to engage in more in-person proceedings (while still mostly proceeding with virtual hearings). Municipal courts that have had their Continuity of Operations Plans approved by this court may also resume in-person proceedings as soon as June 11.

Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase Two on May 21, 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
May 21, 2021

SO ORDERED:


Judge Division 16
May 21, 2021

(Continued)

WHAT DOES PHASE TWO ALLOW BEYOND WHAT PHASE ONE ALLOWED?

According to the Missouri Supreme Court's May 4, 2020 Operational Directives (which were ultimately modified on July 24, 2020 and March 26, 2021), during Phase One, most in-person proceedings must be suspended, with very few designated exceptions. Only the "most critical in-person proceedings could occur." The Supreme Court ultimately made it clear to presiding judges that Phase One does not allow for any jury trial exceptions whatsoever.

The Court did not suspend court operations even during Phase Zero; it simply indicated that proceedings continue, but through video conferencing and other means. That is still the case for most proceedings during Phase Two.

Court operations during Phase Two do not significantly change from those permitted in Phase One. Increased in-person proceedings, including the "most extraordinary, pressing and urgent ... petit jury proceedings" can additionally be heard. Through its various administrative orders, including AO Nos. 20-54 and 21-7, certain criminal cases have been deemed to be "extraordinary, pressing and urgent" and ready for trial shortly after the Circuit enters into Phase Two. These all involve confined defendants, many of whom have filed motions for speedy trials.

According to the Operational Directives, these aforementioned prioritized criminal trials can only be heard during Phase Two "where they can safely be conducted in compliance with social distancing protocols and occupancy rate limitations applicable to the local community." Occupancy rates in courtrooms, jury assembly rooms, jury deliberation rooms, break rooms and other court areas must be 25 people or less, whenever possible.

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 ("E-Court") are now 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 St. Louis County Government Center at the Crossings in the old Northwest Plaza in St. Ann, MO. At that location, a similar "E-Court" set of secure computer stations are available for litigants, connecting them to the live proceedings in the Courthouse in Clayton. Court staff members are available to assist litigants in connecting to their hearings.

Victims of domestic violence can now seek temporary (*ex parte*) orders of protection at the Northwest Crossings location. Court staff members are now available to assist litigants in completing their petitions for orders of protection. Domestic violence victim advocates are available to assist with safety planning and providing resources.