

CIRCUIT COURT PHASE ANNOUNCEMENT – 05/28/21

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 specific “Gateway Criteria” to consider.

Today, the Missouri Supreme Court announced that, effective June 15, 2021, “circuit courts – including all associate, family, juvenile, treatment, municipal, and probate divisions – are no longer required to conduct court proceedings and courthouse activities pursuant to the previously prescribed operational phases.”

The Court further indicated that “presiding judges shall continue to: (1) monitor local health conditions; (2) consult with local health officials or departments regarding what, if any, precautionary measures are necessary in the community in which the courthouse or court facility is located; and (3) monitor the Centers for Disease Control and Prevention (CDC) COVID-19 guidelines and implement any new or amended guidelines as necessary to ensure the safety of those appearing or working in court facilities.”

The Court’s May 28, 2021 order also stated that “[b]ased on local health conditions and the recommended CDC guidelines, chief and presiding judges may exercise their discretion in determining whether precautionary measures should be utilized to ensure the health and safety of those in the courtroom or court facility.”

The Court recognized that, in many instances, in-person proceedings may still not be warranted: “When possible, judges should consider continuing to allow vulnerable litigants, witnesses, victims, attorneys, and participants to appear or participate remotely or continue or postpone their required presence at the court facility. Courts and judges continue to be encouraged, when appropriate, to utilize all available technologies – including teleconferencing and video conferencing.”

The 21st Circuit is currently in Phase Two, as it has been since March 26, 2021.

(Continued)

Factors (“Gateway criteria”) that this Circuit has considered this week include the following:

1. Courthouse Staff:

No new cases of COVID-19 have been reported among courthouse employees. Three employees are currently in quarantine due to potential exposure to the virus. There have been no COVID-19 positive employees in the courthouse for 30 days.

All staff are returning to the Courthouse on a fulltime in-person basis on June 1, 2021.

To improve access to justice during the pandemic, secure computer stations (“E-Court”) have been 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:

One resident of the jail has COVID-19 and is receiving medical care; two residents who had tested positive for the virus last week are in quarantine.

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.

Over the six weeks, 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 in the Juvenile Detention Center have tested positive for the coronavirus since early February.

4. St. Louis County:

The number of new COVID-19 cases in St. Louis County continues to decline. On Wednesday, May 26, St. Louis County reported a seven-day rolling average of 63 (confirmed and probable) COVID-19 cases per day.¹ A week earlier (on May 19), the seven-day average was 69 cases per day. Two weeks prior (on May 12), the average was 74 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* daily cases on November 12.] (*Source: showmestrong.mo.gov, May 26, 2021*).

Deaths from COVID-19 in St. Louis County also continue to decline and are down significantly since peaking in early December. On May 26, the County reported no deaths due to COVID-19 over the prior seven days. On May 16, the seven-day moving average number of deaths per day was 1.² Two weeks earlier (on May 9), the seven-day average was 2. The seven-day average is down from highs of approximately 13 deaths per day in early December. Since the start of the pandemic, 2,228 St. Louis County residents have died due to the coronavirus. (*Sources: showmestrong.mo.gov; stlcorona.com, May 26, 2021*).

¹ In May 2021, Missouri's COVID-19 dashboard was moved to the Missouri Department of Health of Senior Services' website at health.mo.gov/living/healthcondiseases/communicable/novel-coronavirus/data/public-health/. However, the dashboard can also still be accessed by going to showmestrong.mo.gov.

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, more than 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 Wednesday, May 26, no COVID-19 deaths have been reported in St. Louis County since May 16. 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*).

On Wednesday, May 26, St. Louis County’s seven-day average rate of positive tests was 3.7%, approximately the same as the rate of 3.5% 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 26, 2021*).

As of Wednesday, May 26, more than 448,629 St. Louis County residents—i.e., 45.1% of the County’s population—have received at least one dose of the COVID-19 vaccine. 35.7% of the population are fully vaccinated. (*Source: showmestrong.mo.gov, May 26, 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 73 new confirmed and probable cases per day—a 16% decrease from the average two weeks ago.⁵ The County remains in the category of “High Risk” for unvaccinated people.⁶ (*Source: nytimes.com, May 26, 2021*).

5. St. Louis Region:

New hospital admissions due to COVID-19 in the St. Louis area continue to decline. On Wednesday, May 26, the St. Louis Metropolitan Pandemic Task Force⁷ reported that 27 new COVID-19 patients were admitted to St. Louis area hospitals, making the seven-day daily average 27. The week before (on May 19), the seven-day average was 23. It was 32 the week before that (on May 12).

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 means only 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.

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.

(Source: St. Louis Metropolitan Pandemic Task Force Facebook page, May 26, 2021).

The number of COVID-positive patients hospitalized across St. Louis area hospitals has decreased substantially over the past few weeks. On Wednesday, May 26, the Task Force reported that the seven-day average total number of COVID-positive patients in Task Force hospitals was 141. The Task Force reported 161 a week prior (on May 19), and 216 two weeks prior (on May 12). The average had hovered at approximately 200 since early March. *(Source: St. Louis Metropolitan Pandemic Task Force Facebook page, May 26, 2021).*

As of May 26, St. Louis area hospitals were operating at approximately 82% staffed in-patient bed capacity and 82% staffed ICU bed capacity. *(Source: showmestrong.mo.gov, May 26, 2021).*

Unfortunately, the Task Force is still seeing some deaths due to COVID-19 across St. Louis area hospitals, though the number has been greatly reduced compared to earlier in the pandemic. On Wednesday, May 26, the Task Force reported a seven-day moving average of 2 deaths per day due to COVID-19 in Task Force hospitals. That is down from the average of 4 deaths per day reported a week prior (on May 19) and 2 daily deaths reported two weeks earlier (on May 12). The average is down significantly from December, when it was above 20. *(Source: St. Louis Metropolitan Task Force Facebook page, May 26, 2021).*

Dr. Alex Garza, the Task Force's leader, has seen many of the important metrics continue to trend in the right direction. For instance, Dr. Garza found that daily hospital admissions due to COVID-19, currently averaging 27 per day, are nearing the Task Force's "green line" of 25 per day. Dr. Garza added that the Task Force expects hospital admissions to continue to decline. *(Source: St. Louis Metropolitan Task Force Facebook page, May 26, 2021).*

As for the vaccination effort, Dr. Garza indicated that the percentage of vaccinated St. Louis area residents continues to climb higher, but there is still room for improvement. "Of course, we still have a long way to go with vaccinations to reach a significant level of immunity in the population, and to stop the virus from spreading, we need to continue to vaccinate more of the population, including adolescents and even younger children," he said. *(Source: St. Louis Metropolitan Task Force Facebook page, May 26, 2021).*

6. Missouri:

Missouri's seven-day moving average number of new COVID-19 cases has also decreased recently. On Wednesday, May 26, the state reported 463 new confirmed and probable cases, making the seven-day average 434.⁸ The seven-day average is up slightly from 412 reported a week earlier (on May 19), but down from 471 reported two weeks prior (on May 12). Since the start of the pandemic, Missouri has reported 596,451 confirmed and probable cases. (*Source: St. Louis Post-Dispatch, May 26, 2021*).

Deaths in Missouri due to COVID-19 continue to trend downward.⁹ For the week starting May 16, the state reported 6 deaths. For the week of May 9, the state reported 12 deaths. For the week of May 2, the state reported 15 deaths. (For the week of April 25, Missouri reported 33 deaths, and for the week of April 18, the state reported 36 deaths). Missouri has recorded 9,062 deaths due to COVID-19 since the start of the pandemic. (*Source: St. Louis Post-Dispatch, May 26, 2021*).

The number of patients in Missouri who are hospitalized due to COVID-19 has declined dramatically since the start of the year, and the numbers continue to trend in the right direction. As of May 23, Missouri had 624 patients hospitalized with confirmed or suspected COVID-19, making the seven-day moving average of 665. A week earlier (on May 16), the seven-day average was 745. A week before that (on May 9), the average was 781. [On March 1, the average was 1,102. On Jan 1, the average was 2,704.] (*Source: showmestrong.mo.gov, May 26, 2021*).

On Wednesday, May 26, Missouri reported a seven-day average positivity rate of 3.9%, about the same as the rate of 3.7% reported the previous week. These averages reflect the positivity rate for confirmed cases (PCR test results only) and are calculated using the CDC method. The positivity rate for antigen tests is 3.3%, about the same as the rate of 3.1% the previous week. (*Source: showmestrong.mo.gov, May 26, 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.

As of May 17, the transmission rate for Missouri is 0.90.¹⁰ That is about the same as the rate of 0.87 a week earlier (on May 10). (*Source: covidactnow.org, May 26, 2021*).

Missouri hospitals are operating at 77% staffed in-patient bed capacity and 76% staffed ICU bed capacity. (*Source: showmestrong.mo.gov, May 26, 2021*).

As of Wednesday, May 26th, 2,530,280 people statewide—i.e., 41.2% of the population—were reported to have received at least one dose of the vaccine. 34.1% of the population is completely vaccinated. Among Missouri residents who are 18 years of age and older, 51.6% have had at least one dose of the vaccine, and 43.5% are completely vaccinated. (*Source: showmestrong.mo.gov, May 26, 2021*).

Missouri is in line with the national average when it comes to the number of new COVID-19 cases reported over the past week. Missouri is tied for the 21th lowest number of cases per capita over the last seven days, with 7 cases per 100,000 people. [Colorado has the most with 15 cases per 100,000; California has the lowest with 3; the national average is 7.] (*Source: nytimes.com, May 26, 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 37th among the states, with 42% of the population having received at least one shot. [The national average is 49%; the state of Vermont ranks first, at a rate of 70%; Mississippi ranks last with 34%.] (*Source: nytimes.com, May 26, 2021*).

The Missouri Department of Social Services (DSS) is now considering incentive options. Governor Parson is currently considering several ways to get more Missourians to get vaccinated. (*Source: FOX 4, WDAF-TV; May 28, 2021*).

A COVID surge in northern Missouri is causing great concern. Linn and Livingston counties are experiencing the worst outbreaks of the virus since the beginning of the pandemic. (*Source: Missouri Independent, May 28, 2021*).

¹⁰ 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.

The mass vaccination site at The Dome at America's Center will be open through Memorial Day weekend, scheduled to close its doors at the end of the day on June 1, 2021. (*Source: St. Louis Post-Dispatch, May 24, 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 26, 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 26, 2021; St. Louis Post-Dispatch, May 14, 2021*).

The St. Louis County Department of Public Health's co-director, Spring Schmidt, has indicated to this Court on May 26, 2021 that social distancing in the Courthouse is no longer necessary – as long as everyone in the building wears masks.

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 continue to wear masks, practice 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 Tuesday, May 25, the seven-day moving average number of new cases in the U.S. was 22,139. A week before that (on May 18), the average was 28,776 new cases per day. Two weeks prior (on May 11), the average was 35,907 new cases per day. Since the start of the pandemic, the U.S. has recorded approximately 32.9 million cases. (*Source: CDC.gov, May 26, 2021*).

Daily deaths due to COVID-19 in the U.S. are also declining. On Tuesday, May 25, the seven-day moving average was 435 deaths per day. A week before that (on May 18), the average was 531 deaths per day. And two weeks prior (on May 11), the average was 561. The U.S. has recorded 587,830 deaths due to COVID-19 since the start of the pandemic. *(Source: CDC.gov, May 26, 2021).*

Approximately 49% of U.S. residents have received at least one dose of the vaccine; 39% have been fully vaccinated. *(Source: nytimes.com, May 26, 2021).*

This week, the U.S. surpassed a notable milestone—at least 50% of all adults (age 18+) are fully vaccinated. 61% of all adults have received at least one dose of the vaccine. *(Source: St. Louis Post-Dispatch, May 25, 2021).*

The CDC now recommends vaccination for “all people 12 years and older for the prevention of coronavirus disease 2019 (COVID-19) in the United States under the U.S. Food and Drug Administration’s Emergency Use Authorization.” No COVID-19 vaccines have yet to be authorized for the nearly 50 million children in the U.S. who are younger than 12 years old. *(Source: CDC.gov, May 28, 2021).*

Unvaccinated Americans planning to celebrate Memorial Day with friends and family over the weekend should take precautions, says Dr. Rochelle P. Walensky, Director of the CDC. “If you are vaccinated, you are protected, and you can enjoy your Memorial Day,” she said. “If you are not vaccinated, our guidance has not changed for you, you remain at risk of infection. You still need to mask and take other precautions.” *(Source: nytimes.com, May 26, 2021).*

Dr. Walensky also urged those who remain unvaccinated to get the shot. “I want to encourage you to take this holiday weekend to give yourself and your family the gift of protection by getting vaccinated,” she said. “We are on a good downward path, but we are not quite out of the woods yet.” *(Source: nytimes.com, May 26, 2021).*

Earlier this month, the CDC said it was no longer necessary for fully vaccinated people to wear masks or social distance in most settings. Since the announcement, states, local governments and retailers across the country have been gradually adopting protocols pursuant to the CDC’s guidance, essentially resulting in an honor system that relies on those who are unvaccinated to wear masks in public. *(Source: nytimes.com, May 26, 2021).*

The number of coronavirus cases, hospitalizations, and deaths in the U.S. have been declining. Still, the numbers remain high in other parts of the world. *(Source: nytimes.com, May 26, 2021)*. Argentina is experiencing a record-setting surge in cases, far worse (per capita) than the situation in India. *(Source: The Guardian, May 28, 2021)*.

Vietnam recently detected a highly contagious new coronavirus variant. *(Source: Washington Post, May 28, 2021)*.

IN CONCLUSION

The number of COVID cases and deaths in this community continues to decline. Hospitalizations are decreasing. The positivity rate is decreasing, having reached 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 36% of the County’s population has been fully vaccinated (and more than 45% 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 allow for the St. Louis County Courthouse and other court facilities to operate without the need to practice social distancing – as long as everyone wears face coverings.

The Missouri Supreme Court will no longer mandate courts to conduct proceedings and activities pursuant to its operational phasing guidelines as of June 15, 2021. This court will consult with court and community leaders and the Department of Public Health to determine how to proceed thereafter.

Regardless, this court will continue to monitor local health conditions, consult with local health departments and adhere to the CDC's COVID-19 guidelines to ensure the health and safety of all those who enter the St. Louis County court facilities.

In the meantime, this circuit is gearing up to move to Phase Three on June 11, 2021. 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 28 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 28, 2021

SO ORDERED:


Judge Division 16
May 28, 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.