

CIRCUIT COURT PHASE ANNOUNCEMENT – 10/02/20

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

- “1. No confirmed COVID-19 cases in the court facility within a 14-day period.
2. Rescission or lack of stay-at-home orders or the relaxing of group gathering restrictions applicable to the community.
3. Improving COVID-19 health conditions over a 14-day period in the community, including conditions such as the number of confirmed COVID-19 cases and related deaths in relation to a community’s population density, size of particularly vulnerable populations, and availability of medical facilities including emergency and intensive care capacity.
4. Consultation with local health officials or departments concerning changes to levels of court and courthouse activities.
5. Consultation with local judiciary partners such as children’s division personnel, juvenile officers, members of the local bar, prosecutors and public defenders, law enforcement and probation and parole.”

Starting on May 12, 2020, the 21st Circuit has engaged in phasing discussions with judges, law enforcement officers, court administrators, prosecutors, public defenders, juvenile officers, Department of Public Health officials, probation officers, bar leaders and others. These discussions occur on a weekly basis, and will continue even after this Circuit enters into Phase Three, as the possibility of moving back to a lower phase always remains, depending on the status of the spread of the virus.

This Circuit has also engaged in discussions with the Chief Judge of the Eastern District Court of Appeals and the Presiding Judge of the 22nd Circuit; both Presiding Judges agreed to regularly speak with the Chief Judge and always before deciding to change phases.

The 21st Circuit is currently in Phase One, as it has been since September 17, 2020.

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

1. Courthouse Staff: No new cases of COVID-19 have been reported among Courthouse staff during the past two weeks.

2. DJS Jail and Detention Staff: One employee of the Justice Center reported testing positive for the coronavirus on September 27, 2020. He has not been in the building since that date. No employees of the Detention Center have reported positive during the past two weeks. *(Source: St. Louis County Department of Public Health, September 28, 2020).*

3. DJS Jail and Detention Residents: One new case of COVID-19 has been reported this week among the residents of the St. Louis County Juvenile Detention Center; that individual is in quarantine within the facility. No new cases of COVID-19 have been reported among the residents of the County Jail since the two cases that were reported on September 18; nine residents are awaiting test results. *(Source: St. Louis County Department of Public Health, September 28, 2020).*

4. St. Louis County: As of Friday morning, October 2, 2020, the total number of confirmed COVID-19 cases in St. Louis County was 24,707. There have been 815 deaths in St. Louis County since the start of the pandemic. St. Louis County accounts for approximately 19% of Missouri's 129,397 cases and 38% of Missouri's 2,144 deaths. *(Sources: Mo. Department of Health and Senior Services, October 2, 2020, St. Louis County Department of Public Health, October 2, 2020).*

As of Friday morning, October 2, 2020, St. Louis County's average rate of positive tests¹ for the past week was 4.9%. The positivity rate among St. Louis County residents has steadily fallen since August. *(Source: St. Louis County Department of Public Health, October 2, 2020).*

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¹ *An analysis of the "percent positive" results provides insight into how widespread the infection is in the community and whether levels of testing are keeping up with levels of COVID-19 transmission. "Simply put, there are two ways to lower the "percent positive": Reduce the amount of coronavirus transmission or increase the number of people who get tested. Fortunately, these two things often go hand-in-hand. If a place is doing more testing—and responding appropriately to positive tests, by making sure that people who might be contagious are isolated, for example—the amount of transmission should go down over time. But even without testing, measures such as stricter regulations regarding wearing masks, physical distancing, and avoiding large gatherings are all effective ways to reduce transmission." (Source: Johns Hopkins Bloomberg School of Public Health, www.jhsph.edu, August 10, 2020).*

The World Health Organization has advised state and local governments that before reopening, the rate of positivity in testing should remain at 5% or lower for at least 14 days. (Source: Johns Hopkins University of Medicine Coronavirus Resource Center, *coronavirus.jhu.edu*, August 31, 2020).

5. St. Louis Region: As of Monday September 28, 2020, there were 272 patients with confirmed COVID-19 hospitalized in the St. Louis area. Of those, 79 were in intensive care units and 49 were on ventilators. These numbers are collected from the BJC Healthcare, Mercy, SSM Health and St. Luke’s metro area hospitals. (Source: *St. Louis Post-Dispatch*, September 29, 2020).

St. Louis City and St. Louis County have seen a steady, downward trend of coronavirus cases, but outlying areas—like Franklin County and Jefferson County—continue to see increases. Hospital admissions due to COVID-19 are on the rise in these outlying parts of the St. Louis metro region. Mercy Hospital Washington, 50 miles southwest of St. Louis in Franklin County, is seeing higher numbers of virus patients than ever before; this week, the hospital transferred COVID-19 patients to another facility because of capacity concerns in the intensive care unit. Dr. Alex Garza, leader of the St. Louis Metropolitan Pandemic Task Force, expressed concern about the impact on St. Louis area hospitals when nearby rural hospitals can no longer hold any more patients. (Source: *St. Louis Post-Dispatch*, September 26, 2020).

“There’s a difference in transmission mitigation strategies across the St. Louis metropolitan area,” said Dr. Garza. “Because of this, the virus will continue to circulate in the metro area on both sides of the river as well as across the state of Missouri, as we’ve seen recently. This doesn’t mean that it’s safe for areas where the numbers are down to relax at all. There’s a reason the numbers are down in St. Louis City and County. We all need to wear a mask, stay away from large crowds, and wash our hands to avoid getting sick. If we stay on that path, then we can slowly do the things we all enjoy doing.” (Source: *St. Louis Post-Dispatch*, September 29, 2020).

6. Missouri: The rolling seven-day average number of new COVID-19 cases per day in Missouri spiked during the month of July. At the beginning of July, the average approximated 400 new cases per day. Near the end of the July, the average peaked at 1,590 new cases per day. The average then decreased, and by August 8th, the average had dipped below 900. (Continued)

Since early August, however, the average has steadily climbed and nearly revisited its peak on September 18th when it hit 1,567. As of Sunday September 27, 2020, the rolling seven-day average is 1,509. (*Sources: St. Louis Post-Dispatch citing the Missouri Department of Health and Senior Services, September 28, 2020*).

On Sunday September 27, 2020, Missouri reported 1,125 patients hospitalized with confirmed or presumed COVID-19 – the highest number the state has logged for a third consecutive day. (*Source: St. Louis Post-Dispatch, September 28, 2020*).

Missouri's COVID-19 hospitalizations have unsurprisingly been on a steady increase, breaking new records for 10 days in a row, according to the Missouri Department of Health and Senior Services. Missouri had no days in August with more than 1,000 patients in hospitals across the state. Fifteen days in September, however, have seen more than 1,000 COVID-19-related hospitalizations. Hospitalizations have increased significantly in the northwest, southeast, southwest and central regions of the state. (*Source: KMOV, October 1, 2020*).

On Friday morning, October 2, 2020, Missouri's seven-day average of percent positive tests was 14.5%. (*Source: Missouri Department of Health and Senior Services*).

On Wednesday September 30, 2020, Missouri introduced a new COVID-19 dashboard. The same day, Missouri reported a total of 129,397 COVID-19 cases since the start of the pandemic and 2,144 deaths due to the coronavirus. (*Source: Missouri Department of Health and Senior Services, 10.02.20*). The new Missouri COVID-19 dashboard is available at showmestrong.mo.gov/data/public-health/.

As of October 2, 2020, the transmission rate, R_0 , for Missouri was 1.14² (*Source: Statistica, October 2, 2020*).

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² This number 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 Actions: St. Louis County health officials are encouraging residents to get their flu vaccines soon. “Common symptoms of COVID-19 — fever, coughing, congestion, difficulty breathing — are similar to the symptoms of the flu,” officials said in a statement Monday. “Flu shots do not prevent COVID-19. However, getting a flu shot decreases your chances of getting the flu and keeps people healthy and out of the hospital for flu treatment.”
(Source: *St. Louis Post-Dispatch*, September 29, 2020).

8. Additional Supporting Information: Across the St. Louis area, there have been no coronavirus outbreaks associated with in-person learning, leading many school districts to bring students back after starting out fully virtual. In St. Louis County, only Jennings, Lindbergh and Normandy school districts started the year with in-person options. Based on declining rates of COVID-19 among students under 14 years of age, health officials recently updated their recommendations to allow for the return of elementary and middle school students. If the successful trend continues, school administrators in several districts plan to resume in-person learning in October. (Source: *St. Louis Post-Dispatch*, September 25, 2020).

Accordingly, after the aforementioned consultation and consideration, the 21st Judicial Circuit will remain in Operating Phase One on October 2, 2020. The Court’s phase status will continue to be reviewed on an ongoing basis.

Michael D. Burton, Presiding Judge of the 21st Circuit
St. Louis County, Missouri
October 2, 2020

SO ORDERED:


Judge Division 16

October 2, 2020

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WHAT DOES PHASE ONE ALLOW BEYOND WHAT PHASE ZERO ALLOWED?

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.³ The Court, however, did not suspend court operations; it simply indicated that proceedings continue, but through video conferencing and other means.

Court operations during Phase One do not significantly change from those permitted in Phase Zero. Only the "most extraordinary, pressing and urgent" cases can additionally be heard in person. Occupancy rates in courtrooms and other court areas must be ten people or less, whenever possible. The Supreme Court has consequently made it clear to presiding judges that Phase One does not allow for any jury trial exceptions whatsoever.

In summary, there simply cannot be any additional "in person" court proceedings than those allowed in Phase Zero, unless a judge deems them to be "most extraordinary, pressing and urgent."

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, as of September 2, 2020, are 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 is currently making plans to establish other Access to Justice sites in the County, outside of the Courthouse, including one located in the Northwest Crossings Government Building in St. Ann, MO.

³ 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.