

COVID-19

Protective Measures Taken by Prosecutors and Courts



Prosecutors and courts across the country are engaging in health safety actions to protect personnel from COVID-19. Other critical components of the criminal justice system, such as law enforcement and corrections, are also taking protective actions that have an impact on prosecutors, courts, and their efforts to continue to administer and operate the criminal justice system.

The US Centers for Disease Control and Prevention's (CDC's) Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) requires that:

"All employers need to consider how best to decrease the spread of COVID-19 and lower the impact in their workplace.

This may include activities in one or more of the following areas:

- Reduce transmission among employees,
- Maintain healthy business operations, and
- Maintain a healthy work environment."¹

All COVID-19 guidance lists social distancing at the most effective tool to achieve these goals. In light of this guidance, this document summarizes example actions and important considerations for prosecutors and courts as they respond and adapt their work environments during and following the COVID-19 pandemic.

01 RESTRICTING TRIALS, HEARINGS, AND OTHER PROCEEDINGS

• **Example actions**

- Suspending jury trials and in-person bench trials
- Suspending in-person hearings and other proceedings

• **Considerations and suggestions**

- Some hearings cover emergency needs and must be accounted for, including but not limited to criminal arraignments, preliminary hearings, and bail hearings; emergency custody hearings; juvenile criminal hearings; child neglect and abuse initial hearings; domestic violence hearings; and other emergency matters (e.g., show cause hearings, extraditions, orders of protection).

Suggestion: Using remote or virtual hearings, as discussed below, can facilitate essential hearings while still closing courthouses to protect court personnel.

- Prosecutors and courts have a duty to ensure that a defendant is not denied his or her right to a fair and speedy trial and that cases are prosecuted within the appropriate statute of limitations.

Suggestion: Some courts are issuing decisions allowing for emergency extensions to the statutes of limitations or the timeframes that define a fair and speedy trial.

02 IMPLEMENTING TELEWORK

• **Example actions**

- Identifying those who can telework and requiring them to do so
- Distributing technology to employees who can telework but do not have equipment
- Ensuring secure, accessible telework gateways to essential applications and data
- Distributing telework agreements for employees to sign²

¹ [Interim Guidance for Businesses and Employers to Plan and Respond to COVID-19](#), CDC, 2020.

² See the NDAA's [Telework Agreement](#) and [Telework Safety Checklist](#). Please note that the NDAA uses these documents but they did not develop these documents.



- **Considerations and suggestions**

- It may be more difficult to implement telework in the current environment, especially if many/most workers are already out of the office.
- Agencies must ensure that telework gateways are secure and accessible and that employees have the appropriate tools and training to telework.

Suggestion: Check with your jurisdiction's Information Technology (IT) unit, and your agency's IT unit (if available) regarding options for establishing telework.³

03 RESTRICTING ENTRY TO COURTHOUSES OR CLOSING COURTHOUSES

- **Example actions**

- Closing courthouses or prosecutors' offices entirely
- Restricting entry to courthouses or prosecutors' offices to essential personnel only
- Screening all people entering courthouses and prosecutor's offices for COVID-19 symptoms

- **Considerations and suggestions**

- It may be difficult to restrict entry when proceedings are still underway in the courthouse.
Suggestion: Some agencies have established a list of authorized personnel, including court staff, plaintiffs, prosecutors, defendants, counsel, witnesses, and pre-registered observers and press.
- Although many filings can be made electronically, some still need to be handled in person.
Suggestion: Give as much leeway as possible for electronic filing. When e-filing is not possible, consider establishing a physical drop box, PO Box, or PO Box with scanning service to handle filings.
- Individuals may find the symptom screening intrusive and/or a violation of their rights.
Suggestion: Using an infrared thermometer or infrared camera can allow temperature to be checked from a distance. EEOC-NVTA-2009-3 explicitly allows such screening during a pandemic.⁴ Consider creating a script for security personnel to use when screening that explains the EEOC, CDC, and OSHA guidance, which can help overcome most objections.

04 IMPLEMENTING REMOTE OR VIRTUAL HEARINGS

- **Example actions**

- Implementing telephonic hearings
- Implementing video or virtual hearings

- **Considerations and suggestions**

- Although virtual hearings can be implemented for most hearings and some bench trials, they may not work for jury trials.
Suggestion: Prosecutor's offices and courts can prepare for remote work as part of emergency and continuity planning.
- Many courts have experienced technical difficulties in establishing and executing remote or virtual hearings.
Suggestion: The National Center for State Courts (NCSC) has a list of states that have implemented virtual hearings and the software used for such hearings. Peer outreach to those court systems may help jumpstart a new program.

EXAMPLE CDC VERBAL SCREENING SCRIPT

1. TODAY OR IN THE PAST 24 HOURS, HAVE YOU HAD ANY OF THE FOLLOWING SYMPTOMS?

- Fever, felt feverish, or had chills?
- Cough?
- Difficulty breathing?

2. IN THE PAST 14 DAYS, HAVE YOU HAD CONTACT WITH A PERSON KNOWN TO BE INFECTED WITH COVID-19?



05 REDUCING ARRESTS AND CHARGES FOR MINOR OFFENSES

• **Example actions**

- Police citing low-level offenders, rather than arresting them
- Prosecutors declining to charge misdemeanors or low-level felonies
- Prosecutors reducing charges to reduce/eliminate court hearings

• **Considerations**

- Many crimes may not be prosecuted, which could lead to an increase in crime, and such actions may be incongruent with some prosecutors' philosophies.
- It is unclear how much public support such actions have now or will have in the future.

Suggestion: Consult with your jurisdiction's elected and public safety officials to develop a shared approach that all agree to and take responsibility for.

06 INCREASE USE OF ALTERNATIVES TO INCARCERATION

• **Example actions**

- Increasing plea offers, including alternatives to incarceration
- Consenting to releasing arrestees on their own recognizance
- Using home detention and/or GPS tracking

• **Considerations**

- Lack of program availability
- It is unclear how much public support such actions have now or in the future.

Suggestion: Consult with your jurisdiction's elected and public safety officials to develop a shared approach that all agree to and take responsibility for.

Suggestion: NCSC has a list of states that have implemented virtual hearings and the software used for such hearings. Outreach to those court systems may help jumpstart a new program.

07 RELEASING CERTAIN INMATE POPULATIONS

• **Example actions**

- Identifying and releasing these populations immediately, unless doing so would pose a serious risk to the physical safety of the community. By taking these measures, prosecutors and court staff may reduce the need for additional hearings and/or necessary court proceedings.
- Implementing procedures and advocating for reforms to revisit and support release for those individuals who can return safely to the community.

• **Considerations**

- Need to ensure that individuals are returning to a safe environment.

Suggestion: Consider following CDC guidelines regarding self-quarantining in case of prior exposure.

- There may be a lack of space in half-way homes and rehabilitation programs, especially when accounting for appropriate social distancing.

- It is unclear how much public support such actions have now or in the future.

Suggestion: Consult with your jurisdiction's elected and public safety officials to develop a shared approach that all agree to and take responsibility for.