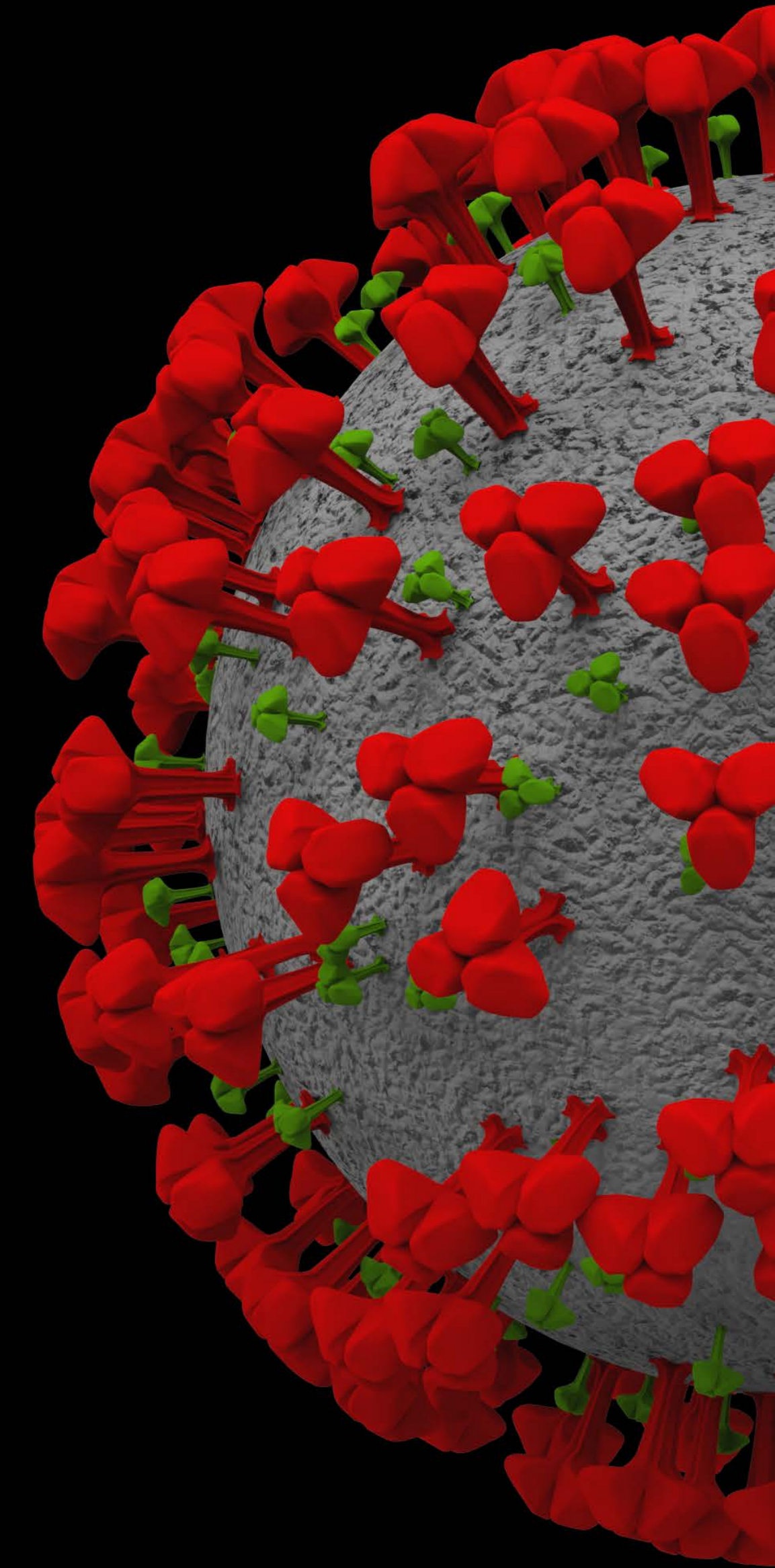
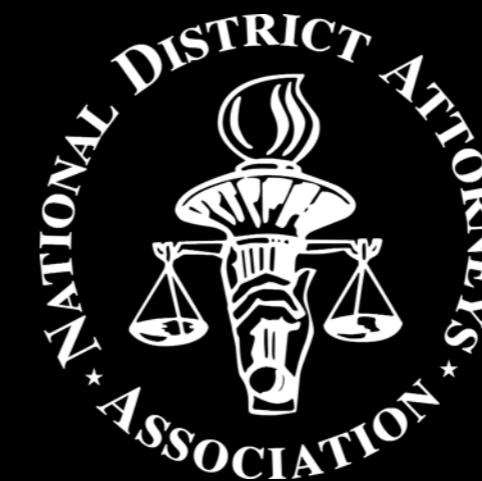




**CNA**  
ANALYSIS & SOLUTIONS



**COVID-19**  
RESPONSE FOR PROSECUTORS AND COURTS  
HEALTH SAFETY

# Introduction

As states re-open following closures due to the COVID-19 pandemic, prosecutors from across the nation are presented with new challenges for maintaining health safety in their work environments, particularly in the courtroom. Recently, prosecutors from across the country volunteered to participate in a working group with CNA and the National District Attorneys Association (NDAA) to discuss challenges related to maintaining the health safety of prosecutors, court staff, and court visitors and to help provide information and guidance to the field. Over the span of a week, CNA conducted two focus groups with a total of 11 practitioners. The diverse participants represented large, suburban, and rural jurisdictions.

This report summarizes highlights from these discussions and provides specifics on how agencies are currently managing and responding to these health safety concerns.

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# NAVIGATING THE DOCUMENT

This is an interactive document that allows you to advance through the information provided at will.

KEY TAKEAWAYS

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# KEY TAKEAWAYS

**COURT REOPENINGS**

**SAFETY POLICIES**

**COURT CLEANLINESS**

**SOCIAL DISTANCING IN COURTS**

**JURY TRIALS**

**MASK WEARING IN COURTS**

**OUTSTANDING NEEDS**

# COURT REOPENINGS

Courts are beginning to reopen; however, they continue to restrict the types of matters being heard.

Even during closures, **courts continued to hear emergency matters**; however, courts are now beginning to hear non-emergency matters. Various jurisdictions reported that their courthouses are **gradually increasing capacity**, but the matters being heard are limited. For example, **jury trials have not begun**, but a few jurisdictions have conducted in-person hearings and bench trials.

[Northwestern District Attorney's Office](#)

[Indiana Courts](#)

[Kittitas County](#)

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# COURT REOPENINGS

Courts are beginning to reopen; however, they continue to restrict the types of matters being heard.



## Northwestern District Attorney's Office

The Northwestern District Attorney's Office's courts closed on March 16, 2020, with **only emergency hearings** being heard. Police officers are issuing summons to appear at a later date to most defendants, as an **alternative to arrest**. Currently, the courts are planning a slow re-opening to hear non-emergency matters, but they **will not resume jury trials until September**. The office is also reviewing minor cases, such as driving with a suspended license, to determine which cases can be **dismissed outright** and which cases can be resolved without trials or terms of incarceration.

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# COURT REOPENINGS

Courts are beginning to reopen; however, they continue to restrict the types of matters being heard.



Indiana courts **postponed jury trials until July**, and all courts had to submit a reopening plan by the end of May. Within Indiana, prosecutors are concerned that different jurisdictions have **different levels of health safety standards** in place and **different reopening plans**. Although the State Supreme Court issued emergency rules to expand video proceedings, some courts have continued with “**business as usual**” procedures throughout the pandemic.

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# COURT REOPENINGS

Courts are beginning to reopen; however, they continue to restrict the types of matters being heard.



**Kittitas County**

Kittitas County in Washington has begun conducting some **in-person hearings with social distancing**, and they have conducted some **bench trials**. Additionally, they have conducted contested infraction hearings with law enforcement officers testifying telephonically.

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.

Prosecutors' offices have devised a number of plans and policies focusing on the health safety of their employees. One jurisdiction mentioned that they obtained a UV light to aid in cleaning, and another jurisdiction noted they were conducting "industrial cleanings" of their building. These vary from jurisdiction to jurisdiction, but some common practices include the following:

- Limiting the number of people in the office (based on the size of the office and the number of employees);
- Requiring employees to wear masks when in the office and courtroom;
- Mandating social distancing in the office and courtroom;
- Increased the frequency of cleaning and sanitizing of common areas;
- Requiring visitors have appointments, and;
- Asking visitors COVID-19 screening questions

**18<sup>th</sup> District in Colorado**

**Los Angeles District Attorney's Office**

**22<sup>nd</sup> District in Louisiana**

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.



## 18<sup>th</sup> District of Colorado

Even though the District Attorney's office for the 18th Judicial District in Colorado has been continuously staffing court rooms for certain pleas and arraignments, their office is **limiting capacity to 50 percent** and **requires temperature checks** before entering the building. Their office also requires **social distancing** and recommends that **masks** be available, but they are not required. Masks and temperature checks are also not required in the courthouse.

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.



## 22nd District in Louisiana

The District Attorney's office and the courts for the 22nd District in Louisiana shut down in early March and began a **soft re-opening** towards the end of May, including in-person dockets. Although some jurisdictions expressed frustration over unclear guidance, the 22nd District in Louisiana received **clear guidance from the Louisiana Supreme Court** and was able to **develop working committees** early on. This allowed the office to create their **Employee Return-to-Work Policy** for maintaining safety standards.

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.



## 22nd District in Louisiana

The Employee Return-to-Work Policy includes, among other things, regulations on who can occupy certain spaces in the courthouse, limitations on the number of people allowed in a courtroom, and procedures guiding in-person dockets:

- Everyone, including the defendant is temperature checked when entering the courthouse and required to wear a mask while inside
- The maximum number of individuals allowed in any courtroom is 14, and they must maintain 15–20 feet between counsels
- Sneeze guards have been installed and no one is allowed to approach the bench.
- Between each group of 14 individuals, a cleaning crew disinfects the courtroom.

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.



## Los Angeles District Attorney's Office

The Los Angeles District Attorney's Office has remained open under **limited circumstances** and encourages employees to **telework**. The office is currently planning to slowly have employees **return to work**. One of their main concerns with returning to work is that their summer law clerks and summer interns will begin to report soon, and they are unsure how to **conduct training safely**. Currently, they are planning a combination of virtual and live trainings, but they recognize that the live trainings make some individuals uncomfortable.

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# SAFETY POLICIES

Prosecutors' offices around the country have put policies in place to keep their employees safe.



## Los Angeles District Attorney's Office

The Los Angeles District Attorney's Office is also concerned about **anxiety levels** among their employees. They recently increased their peer support levels by proactively reaching out to employees, and many staff members indicated that they were feeling **anxious about potential budget cuts, layoffs, and possible furloughs**. Moving forward, they intend to **increase the levels of peer support** to ensure the wellness of their employees.

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# COURT CLEANLINESS

Although participants generally felt safe within their office space, they expressed concern over the cleanliness of the courts.

Participants noted that they have more control over health safety standards within their office spaces; they cannot control the health safety standards of their local courthouses. Some courthouses are older or smaller depending on the jurisdiction, and some participants expressed concern over not knowing the cleaning procedures of their courthouses.

**St. Louis, Missouri**

**Hennepin County, Minnesota**

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# COURT CLEANLINESS

Although participants generally felt safe within their office space, they expressed concern over the cleanliness of the courts.



## St. Louis, Missouri

In St. Louis, Missouri, the courthouses are older and have many touch points (i.e., they do not have automatic doors or motion-activated sinks). Currently, it is unclear who is responsible for sanitizing these touch points within the courthouse or the courtrooms.

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# COURT CLEANLINESS

Although participants generally felt safe within their office space, they expressed concern over the cleanliness of the courts.

In **Hennepin County, Minnesota**, a statewide judicial council mandated that each judge **develop a plan to keep parties and visitors safe** within their courtrooms. Some courtrooms plan to use **Plexiglas** around the witness stands and counsel tables. Most courtrooms are increasing the presence of **hand sanitizer and social distancing signage**. Although courtrooms are limiting the number of individuals allowed within each courtroom, the hallways are narrow and each floor has multiple courtrooms, which makes **complying with social distancing requirements** difficult. The Minnesota Judicial Branch consulted with the Minnesota Department of Health to issue **guidance** on maintaining the health safety of court staff and visitors. Despite having these recommendations in place, some members of the bench are **pushing to resume normal calendars** without allowing for social distancing within their courtrooms and without plans to maintain the health safety of those in the courtroom.

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## Minnesota Judicial Branch COVID-19 Preparedness Plan May 15, 2020

Under the Supreme Court Order No. ADM 20-8001 (May 15, 2020), the Minnesota Judicial Branch is to begin a gradual transition from remote work with limited in-person proceedings to increased capacity in all court locations. This plan outlines the health and safety parameters that every court facility must put in place before beginning to expand in-person operations. The branch's top priority is protecting the health and safety of our judicial officers and staff, along with the health and safety of court users.

Guidance is provided from the Minnesota Department of Health (MDH) and the Centers for Disease Control and Prevention (CDC) and is subject to change given the rapidly changing nature of the pandemic.

As the branch prepares itself to expand in-person operations, it is important that staff and judicial officers continue to heed the advice of public health officials:

1. Cover your cough. If you have a cough, stay home or go home if a cough develops.
2. Frequently wash hands with soap and water for 20 seconds; use hand sanitizer with a minimum of 60% alcohol when soap and water are not available.
3. Stay home when sick. [Symptoms of Coronavirus](#). If you have symptoms compatible with COVID-19, stay home for the amount of time listed on the CDC's website.
4. Avoid touching your face.
5. All staff and visitors are strongly encouraged to wear a face covering. [When to Wear a Face Covering](#)
6. Disinfect frequently used items and surfaces as much as possible. [Cleaning and Disinfecting Your Facility](#)

It is required that the following health and safety measures be instituted as part of each court facility's transition checklist.

### Social Distancing

Social distancing means maintaining distance of at least 6 feet (360 degrees) from others at all times. Guidance on social distancing in courtroom settings is clarified later in this document. Court facilities must use social distancing during this transition period, and it must be maintained.

### Social Distancing Exposure Control Measures:

1. Implement flexible worksites. Chief Judges, District Administrators, and the State Court Administrator will identify and prioritize judicial officers and staff returning to court facilities on a business need basis with the objective of minimal onsite staffing and continued teleworking until further order of the Chief Justice.
2. Implement flexible and/or limited work hours (e.g., stagger shifts for those needing to come into the office).
3. Increase physical space between staff at the worksite.
4. Decrease social contacts in the workplace.

# SOCIAL DISTANCING IN COURTS

Participants expressed concern that maintaining social distancing within courthouses may not be possible.

Participants also expressed concern that even when cleanliness guidelines are in place, maintaining social distancing is not always possible. Courtrooms vary in size; some larger courtrooms allow for proper social distancing, but many smaller courtrooms limit the ability of parties to remain six feet apart. For example, tables for counsel are typically closer to each other; even if the prosecuting and defense attorneys maintain physical distance from the judge, they may not be able to maintain physical distance from each other. Participants also expressed concerns over narrow hallways and waiting rooms, small elevators, and shared bathrooms. One jurisdiction indicated that even though they are having weekly meetings with the judiciary, they feel that their health safety concerns are not being taken seriously by their local judges.

**Boulder County, Colorado**

**Champaign County, Illinois**

**Audrain County, Missouri**

**Kittitas County, Washington**

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# SOCIAL DISTANCING IN COURTS

Participants expressed concern that maintaining social distancing within courthouses may not be possible.



## Boulder County, Colorado

In Boulder County, Colorado, the District Attorney's Office proposed a number of ways to improve social distancing within the courthouse for in-person dockets. They have:

- Proposed requesting phone numbers and having individuals wait in their cars until they are called.
- Planned to use two courtrooms for each jury trial: one for the actual trial and one for the public. Jurors will sit in the audience section, and when bench conferences are requested, these will take place in the second courtroom.

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# SOCIAL DISTANCING IN COURTS

Participants expressed concern that maintaining social distancing within courthouses may not be possible.



## Audrain County, Missouri

In Audrain County, Missouri, the **courtroom is small**; thus, the only individuals present in a courtroom are the judge, the court clerk, the defense attorney, and the prosecuting attorney. The defendant appears via video. The prosecuting attorney suggested **borrowing voting booths** to place in their courtrooms. However, even with these measures in place, the prosecuting attorney acknowledged that they have **serious concerns** about how to proceed because of the **lack of physical space**, and they have considered **extending court hours** (to limit the number of people) and relying more heavily on technology.

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# SOCIAL DISTANCING IN COURTS

Participants expressed concern that maintaining social distancing within courthouses may not be possible.



## Champaign County, Illinois

In Champaign County, Illinois, the courthouse has **capacity requirements**, and security is required to maintain a count of how many individuals are in the courthouse. However, only three courtrooms are large enough to **accommodate social distancing** for trials. Additionally, the court is currently allowing arraignments to be held only virtually—all other **matters pertaining to criminal cases must be held in person**. Because no mechanism exists to receive an Order of Protection virtually, the State's Attorney's Office is trying to determine when they can ask victims if they have tested positive for COVID-19. To maintain social distancing, the Champaign County courthouses have **constructed outdoor waiting tents** allowing individuals to wait outside the courthouse.

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# SOCIAL DISTANCING IN COURTS

Participants expressed concern that maintaining social distancing within courthouses may not be possible.



## Kittitas County, Washington

The courthouse in Kittitas County, Washington, has **only one very large courtroom**. Some judges in the smaller courtrooms are encouraging telephonic appearances. In one small courtroom, the judge **staggers hearings** so that only a few people are in the courtroom and all hearings end five minutes before the next hearing begins. All parties are encouraged to **sanitize their tables and chairs**. Additionally, **Plexiglas shields** have been installed to protect the court clerks. The court also **published standards** for appearing in court, which are available on its [website](#).

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# JURY TRIALS

Participants were unsure how jury trials could proceed in a constitutional manner.

Even in courthouses and jurisdictions with clearly articulated health safety standards, participants raised concerns over **jurors feeling safe** enough to report for jury duty and whether certain groups of individuals (i.e., individuals over the age of 65 or parents of young children) would be **excluded from the jury pool**. This led to concerns over whether jury trials could proceed in a **constitutional manner**. If jurors do not report for jury duty, trials may not have juries that represent the local communities. To combat these concerns, the St. Louis Circuit Attorney's Office is considering **sending surveys to jurors** to determine what measures need to be taken to ensure they feel safe to report for jury duty.

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# JURY TRIALS

Participants were unsure how jury trials could proceed in a constitutional manner.



## Indiana

In Indiana, the **use of remote jury selection is currently permissible** throughout the state; however, the Indiana Prosecuting Attorneys Council does not encourage the use of remote proceedings for jury selection, and the Executive Director indicated that **most prosecutors in the state are not comfortable** with remote jury selection.

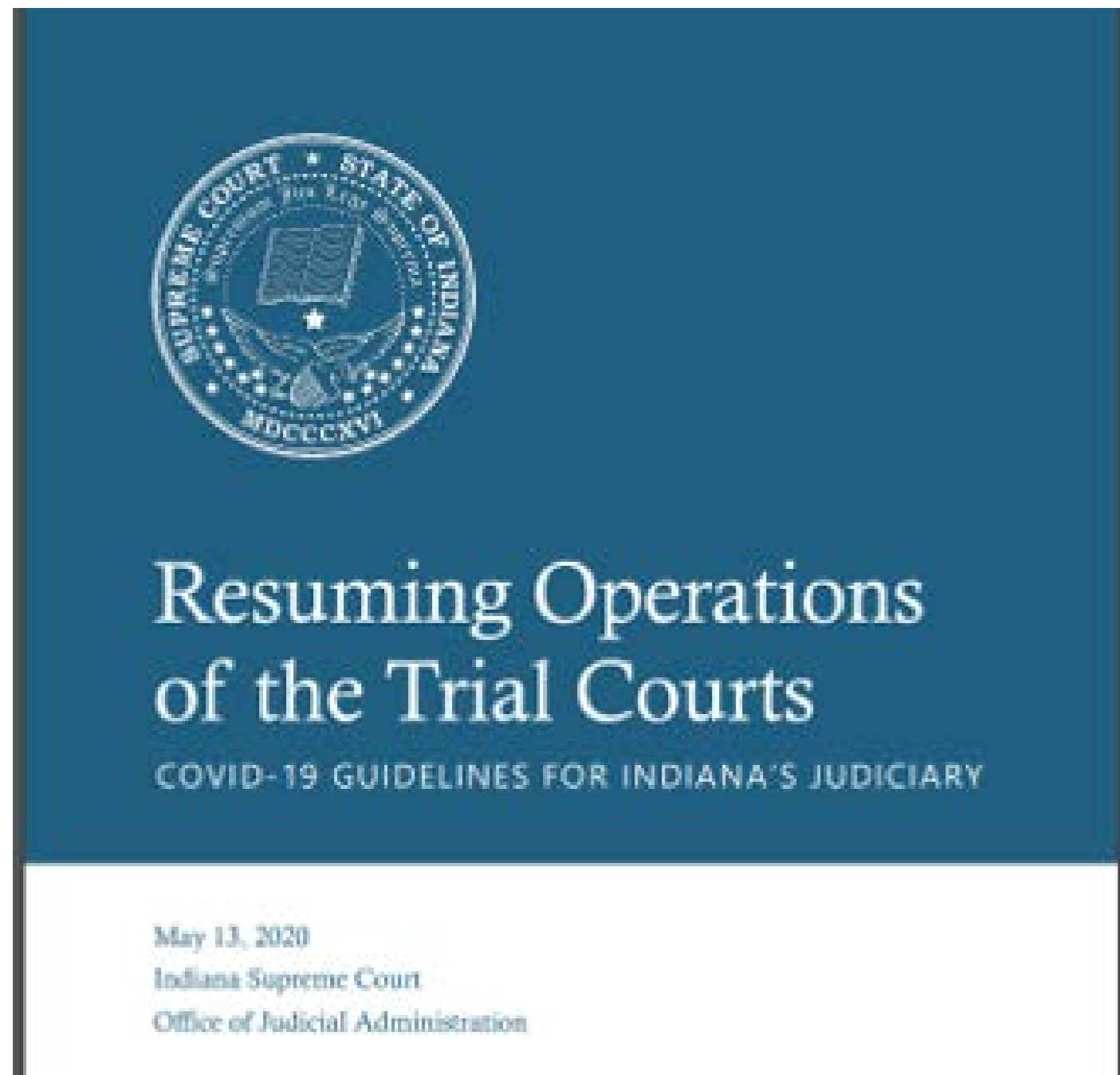
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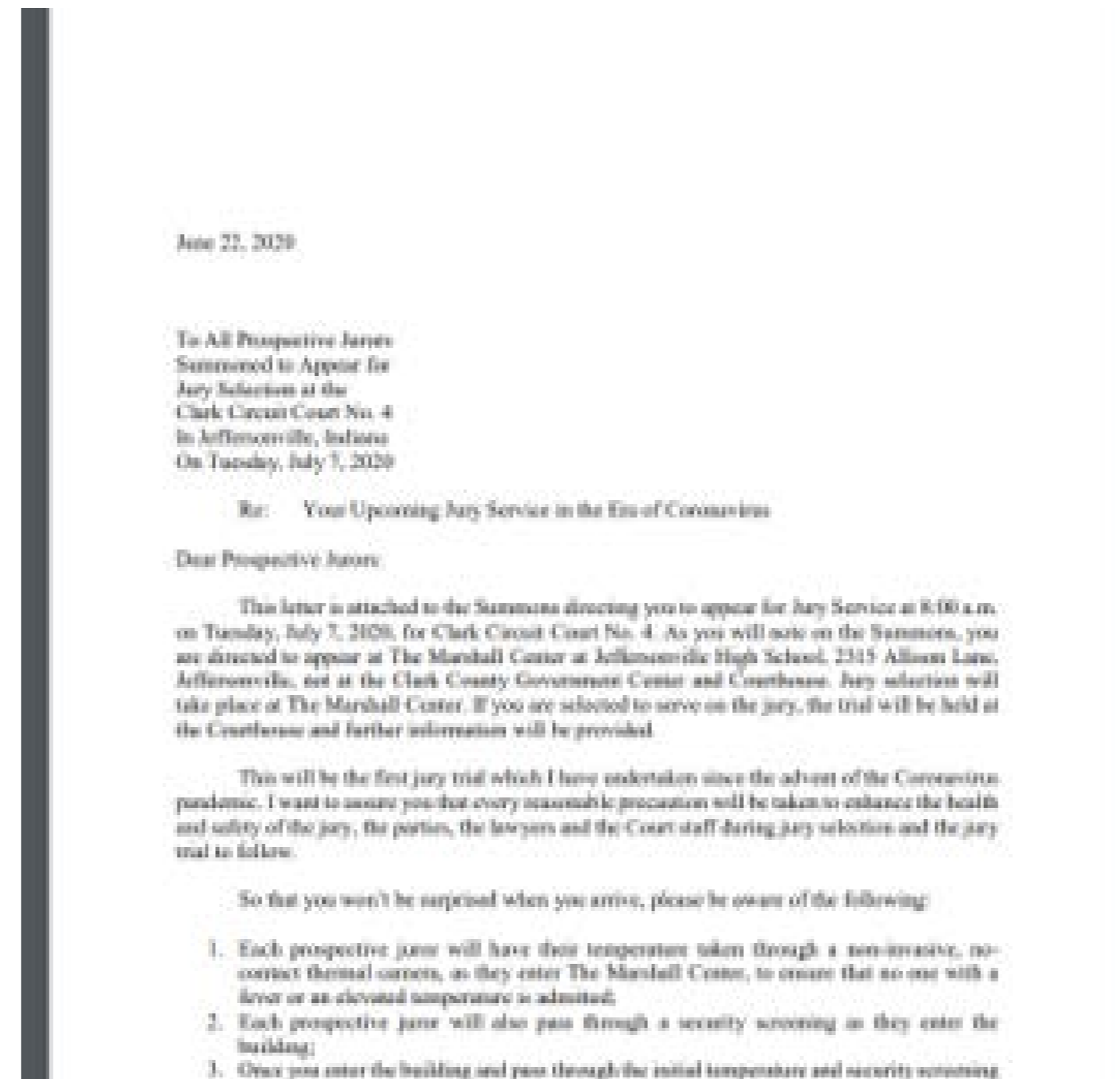
# JURY TRIALS

The Indiana Supreme Court Office of Judicial Administration resources.



## GUIDELINES

For resuming operations for trial courts



## Letters

For all prospective jurors



## Questionnaire

For all prospective jurors

# JURY TRIALS

Participants were unsure how jury trials could proceed in a constitutional manner.

Participants also noted that many courts have issued **emergency orders tolling speedy trial time**; however, they remained concerned about the **constitutionality** of these orders. For example, in Kittitas County, Washington, the State Supreme Court tolled speedy trial times. However, the County Prosecutor's Office remains concerned about speedy trial challenges for cases, especially when the **defendant remains in custody**.

# MASK WEARING IN COURTS

Participants raised concerns over jurors and witnesses wearing masks in court.

Although masks are recommended when appropriate social distancing cannot be maintained, many participants expressed concerns over victims and jurors wearing masks. A mask **blocks a large portion of an individual's face**, hindering the attorneys' abilities to **assess credibility**. One participant also noted that victims and witnesses, especially children, may not **feel comfortable** entering a room filled with individuals wearing masks to testify.

To combat some of these concerns, some jurisdictions, such as the Northwest District Attorney's Office, are allowing hearings to take place via **Zoom**. However, addressing a witness's credibility via Zoom remains problematic because the witness's entire body is typically not visible to allow prosecutors to **assess body language**. Additionally, it cannot always be ensured that a witness is **alone and not being unduly influenced**.

# OUTSTANDING NEEDS

Despite the great strides that have been made to protect the health safety of prosecutors and court staff, issues still need to be resolved.

Participants indicated that some health safety issues still need to be resolved throughout their jurisdictions. In addition to the Key Takeaways addressed here, participants remained concerned about the **lack of clear guidance** in some states. Participants expressed a desire for guidance from a national-level organization to reference when specific courts or specific judges are **not taking health safety concerns seriously**. Participants also expressed concerns regarding **ever-changing guidelines** and the impact that this can have on prosecutors. For example, some states have changed their health safety plans multiple times, and by the time a prosecutor's office has adopted a plan, new plans are announced. This can lead to confusion and frustration about keeping up and maintaining instructed guidelines.

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**THANK YOU**

<https://ndaa.org/covid-19/>