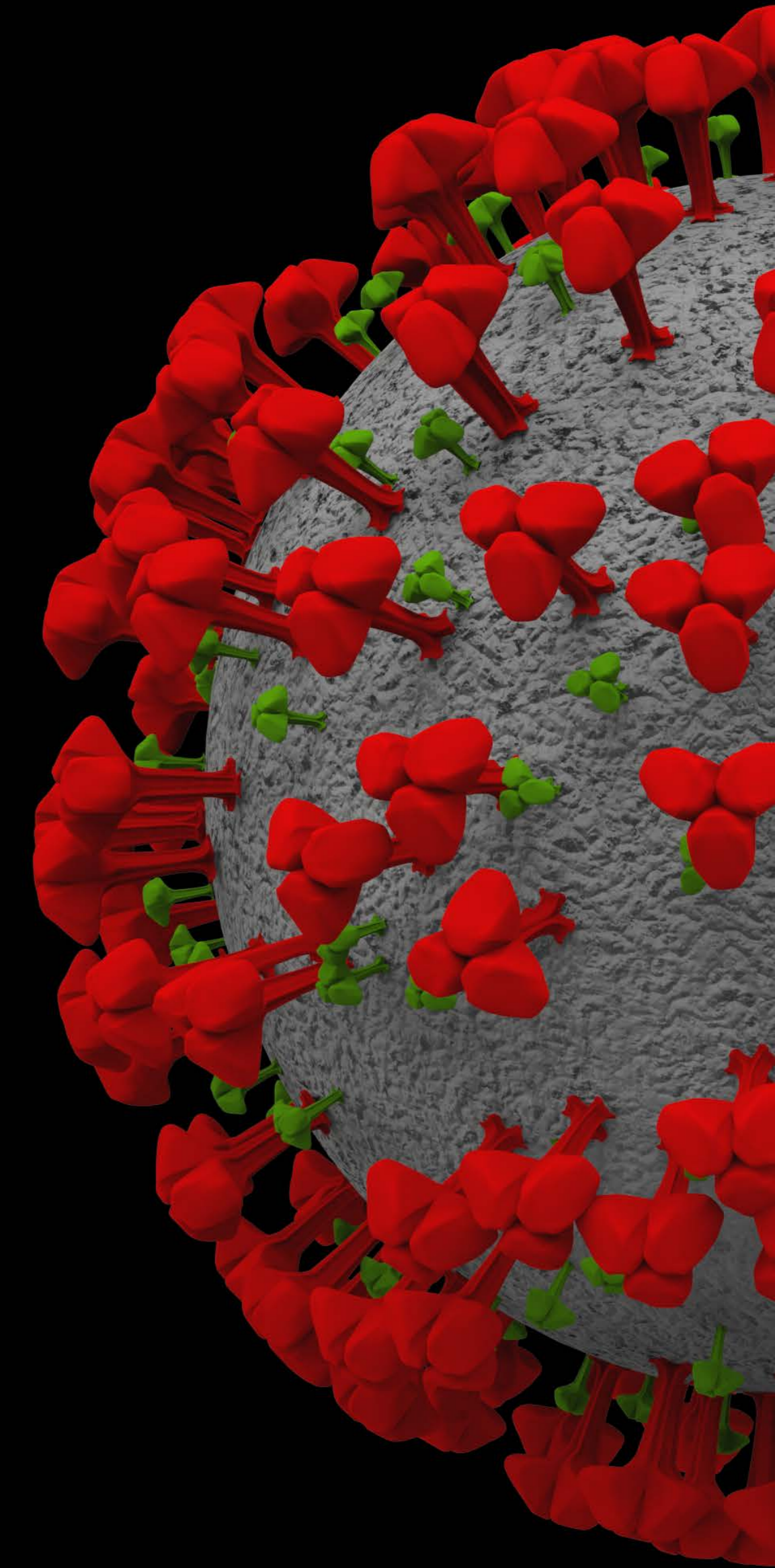
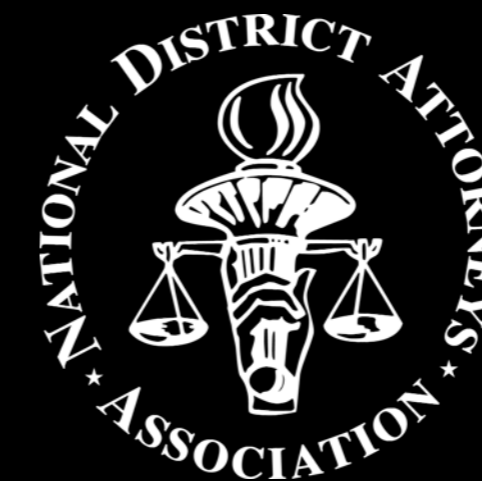




CNA
ANALYSIS & SOLUTIONS



COVID-19

RESPONSE FOR PROSECUTORS AND COURTS
SPEEDY TRIAL AND CASE BACKLOG CONCERNS

Introduction

As court systems re-open following closures due to the COVID-19 pandemic, prosecutors from across the nation are presented with new challenges to maintain defendants' constitutional rights to a fair and speedy trial. 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 speedy trial obligations and case backlogs, 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 15 practitioners. The diverse participants represented large, suburban, and rural jurisdictions.

The following summarizes highlights from these discussions and provides specifics on what agencies are experiencing within their jurisdictions.

[CLICK HERE TO CONTINUE](#)

NAVIGATING THE DOCUMENT

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

KEY TAKEAWAYS

This button will take you
back to the Key Takeaways

MORE INFORMATION

This button will take you to
back to the subtopic main
page

CLICK HERE TO CONTINUE



KEY TAKEAWAYS

COURT REOPENINGS

SPEEDY TRIAL OBLIGATIONS

PLEA BARGAINS

VICTIMS OF CRIME

USING PUBLIC SPACES FOR COURT

LACK OF JURORS, JUDGES, AND COURTROOMS

MASKS IN COURT

COURT REOPENINGS

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

Some jurisdictions are conducting remote hearings regularly, including juvenile cases, pre-trial conferences, and commitment hearings. In various jurisdictions, defense counsel has been requesting that evidentiary hearings with witnesses be conducted in-person.

Jury trials are set to resume at various times throughout the jurisdictions. A few jurisdictions indicated that they were also lowering or eliminating bail to reduce the number of incarcerated defendants. To learn more, click on the jurisdictions below.

[Indiana Courts](#)

[Hennepin County](#)

[BACK TO KEY TAKEAWAYS](#)

COURT REOPENINGS

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



The Indiana Supreme Court has issued an order suspending jury trials until July 1.

[BACK TO KEY TAKEAWAYS](#)

[MORE INFORMATION](#)

COURT REOPENINGS

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



MINNESOTA
JUDICIAL BRANCH

Hennepin County, Minnesota

Jury trials in Hennepin County, Minnesota, were scheduled to begin during the first week of June (jury trials are limited to individuals who are incarcerated and can take place only in the four largest courtrooms).

[BACK TO KEY TAKEAWAYS](#)

SPEEDY TRIAL OBLIGATIONS

Speedy trial obligations are being tolled either statutorily or via an emergency order in many jurisdictions.

Many states have issued emergency orders tolling speedy trial obligations. A district attorney's office in Texas indicated that they have not received guidance on tolling speedy trial times (however, they have received guidance on how to handle delays in indictments). A prosecutor from Tennessee noted that even though their State Supreme Court tolled speedy trial times until July, defendants have asked for dismissals.

One participant noted that even with tolls of speedy trial times, prosecutors should remain concerned about making a record for appeal because defendants are being held too long, and it would be unsurprising to see convictions being vacated on appeal. Participants also expressed concern over defendants remaining in custody for extended periods with no clear guidance.

Although a few jurisdictions indicated that defense attorneys have made verbal objections concerning speedy trial time, none of the participants indicated that they had responded to written motions to dismiss based on speedy trial times. To learn more, click on the jurisdictions below.

[Virginia Circuit Courts](#)

[Indiana Courts](#)

[Boulder County](#)

[BACK TO KEY TAKEAWAYS](#)

SPEEDY TRIAL OBLIGATIONS

Even though courts are beginning to hear more cases, prosecutors are concerned that without clear guidance for jury trials, this will have little impact on meeting speedy trial obligations.

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. Participants were skeptical about their ability to conduct voir dire remotely and whether seating juries virtually meets the defendants' constitutional rights.

In addition to the lack of jurors, trial space will also be scarce; this will impact whether cases can be resolved via trial. One participant noted that they were concerned that defense attorneys would continue to request juries, knowing that they were unavailable, to run out the speedy trial clock.

SPEEDY TRIAL OBLIGATIONS

Speedy trial obligations are being tolled either statutorily or via an emergency order in many jurisdictions.



Virginia Circuit Courts

In Virginia, circuit courts are issuing orders tolling speedy trial times and, even though the State Supreme Court tolled the statutory speedy trial time, they did not expound on the overall constitutionality of these actions.

[BACK TO KEY TAKEAWAYS](#)

[MORE INFORMATION](#)

SPEEDY TRIAL OBLIGATIONS

Speedy trial obligations are being tolled either statutorily or via an emergency order in many jurisdictions.



In Boulder County, Colorado, a prosecutor noted that defense attorneys continue to file objections based on speedy trial times, and the current state statute does not include a good cause continuance for prosecutors. Therefore, prosecutors are filing motions to continue based on the availability of witnesses or evidence (even with a three-month ban on jury trials).

[BACK TO KEY TAKEAWAYS](#)

[MORE INFORMATION](#)

SPEEDY TRIAL OBLIGATIONS

Speedy trial obligations are being tolled either statutorily or via an emergency order in many jurisdictions.



Indiana Courts

In Indiana, judges filed Administrative Emergency Rule 17 Orders, and there is currently no clear guidance regarding how to calculate speedy trial time.

[BACK TO KEY TAKEAWAYS](#)

PLEA BARGAINS

Some prosecutors' offices are offering plea bargains in as many cases as possible, including cases in which plea bargains are not typically offered.

Some prosecutors' officers are attempting to close as many cases as possible through **plea bargaining** and are offering **lenient plea bargains for non-violent misdemeanors**.

- At least one jurisdiction noted that defense attorneys have also been asking for lesser sentences for low-level felonies, but this is still uncommon.
- Another individual indicated that their office is trying **to plea out all cases except violent felonies** and that many of these guilty pleas are taking place on Zoom.
- However, at least one individual noted that they did not feel comfortable reducing plea offers too much because it sets a **bad precedent** that the office will continue to be lenient post-pandemic.

VICTIMS OF CRIMES

Participants expressed concern for victims of crimes who are not being heard because of restrictions related to COVID-19.

Many participants expressed **concerns for victims** who are not being heard.

- Specifically, participants were concerned about **child victims, victims of domestic violence, and victims of sexual abuse.**
- Although some jurisdictions are seeing a **backlog of these types of cases**, a few participants noted the drastic decrease in child abuse cases and expressed concerns that this was due to the **lack of mandatory reports.**
- Another participant raised concerns over **child victims** being forced to testify in a room full of unknown individuals wearing masks and how this could be traumatizing for young victims.

USING PUBLIC SPACES FOR COURT

Participants expressed interest in converting unused public or private spaces into temporary courtrooms.

During one focus group, the participants expressed interest in **converting public or private spaces into temporary courtrooms.**

- These locations could provide relief both for jurisdictions with a limited number of courtrooms and jurisdictions where courtrooms tend to be too small for social distancing measures. **Potential venues included universities, schools, and movie theaters.**
- The focus group noted that these locations all have large spaces that could **easily enable social distancing** during either a trial or jury selection.
- The group was concerned about whether **proper security** could be ensured in these settings and acknowledged it would require strong collaboration with local law enforcement; however, the group agreed that this was an interesting idea.

LACK OF JURORS, JUDGES, AND COURTROOMS

A lack of jurors, judges, and courtrooms is making it difficult to address the growing backlog.

Participants continued to be concerned over the lack of jurors, the lack of available courtrooms, and the lack of judges necessary to appropriately address **the case backlog**.

- One participant indicated that they typically had resources for only one jury trial a month prior to the pandemic; now their office will likely have **to choose cases to prioritize** when jury trials resume.
- Another participant expressed concern about **choosing between trying** a homicide case or a sex crimes case.
- Another jurisdiction was concerned that the eventual **onslaught of hearings and trials could lead to prosecutor burn out** because the prosecutors in their office will likely be preparing and presenting multiple cases at one time.
- In addition to these concerns, one participant noted that prosecutors should be concerned about **court clerks being overworked** and **a lack of available funds** to pay overtime.

LACK OF JURORS, JUDGES, AND COURTROOMS

A lack of jurors, judges, and courtrooms is making it difficult to address the growing backlog.

Although some jurisdictions indicated that they have seen a **decrease in crime rates**, others have indicated an **uptick of specific types of crimes**.

- For example, one jurisdiction noted an increase in **violent juvenile crimes**, while another noted an increase of **drug-related cases**.
- Another jurisdiction expressed concern over **the backlog of traffic cases** that were not being heard.

Several participants indicated that their offices discussed either **asking retired judges to return to the bench or increasing visiting judges to reduce case backlogs**.

- As one jurisdiction in Missouri noted, all judges in their state are forced into retirement at 70; if these judges could be recalled, they could help alleviate the building backlog of cases.

MASKS IN COURT

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, and this would likely hinder the attorney's ability to **assess credibility**.



THANK YOU

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