

AMENDED
FAIRFAX CIRCUIT COURT PLAN FOR RESUMING JURY TRIALS

Submitted on behalf of the Court by
Chief Judge Bruce D. White and Chief Judge-Elect Penney S. Azcarate
Submitted: June 1, 2021

A. Introduction

On September 17, 2020, the Supreme Court of Virginia approved the Fairfax Circuit Court's plan for the resumption of jury trials in the Nineteenth Judicial Circuit. On January 27, 2021, the Supreme Court of Virginia approved an addendum to our plan in order to resume civil jury trials in the Fairfax Historic Courthouse.

Since approval, we have successfully implemented the approved plans. We have scheduled two criminal jury trials each week, in accordance with the plan, with first priority given to incarcerated defendants.¹ Chief Judge White also recently presided over our first civil jury trial in the Historic Courthouse.

We now propose an amendment to our approved plans in order to significantly expand the number of criminal and civil jury trials we are able to conduct. As always, our highest priority is to protect the safety of the community and all courthouse personnel. We submit this proposed amendment for several reasons:

First, our Fairfax community is in a far safer posture with respect to Covid-19 than it was when we submitted our initial plan. For example, the statistics submitted in our initial plan, which was current as of September 14, 2020, indicated that in Fairfax County, the total number of new cases was 58 for that day². The 7-Day Moving Average for the Northern Region was 216.0³. In contrast, as of May 28, 2021, the total number of new Fairfax County cases for this day is 17⁴ and the 7-Day Moving Average for the Northern Region is 59⁵. The 7-day moving average percent positivity has also declined significantly in Fairfax County. On September 15, 2020, the number was 6%⁶. As of May 24, 2021, the number is 1.2%⁷. The Sheriff's Office has advised us that, as of May 26, 2021, there were no employees

¹ Not all the scheduled jury trials have taken place. A number of the cases resulted in guilty pleas shortly before trial, or were continued for various reasons.

² See Page 6, fn. 4 of the revised plan, submitted September 15, 2020.

³ See Page 7, fn. 6 of the revised plan, submitted September 15, 2020.

⁴ <https://www.fairfaxcounty.gov/covid19/case-information> (accessed: 5/28/21).

⁵ <https://www.vdh.virginia.gov/coronavirus/key-measures/#northern> (accessed: 5/28/21).

⁶ <https://www.vdh.virginia.gov/coronavirus/key-measures/pandemic-metrics/locality-metrics/> (accessed: 5/28/21).

⁷ Id.

quarantined by order of the Health Department and no Covid positive inmates on quarantine.

Equally significant is the high percentage of Fairfax Health District adults who have been vaccinated. As of May 28, 2021, 74.7% of people 18 years and older have received at least one Covid-19 vaccine dose and 59.6% of people 18 years and older are fully vaccinated.⁸

Second, we continue to have a substantial number of incarcerated defendants awaiting jury trials. At present, there are 87 incarcerated defendants awaiting jury trials, and a far larger number of non-incarcerated defendants awaiting jury trials. With respect to civil jury trials, we are currently scheduling these trials in the latter half of 2022 and, in some cases, 2023. Because each jury trial requires three courtrooms, we proposed to the Supreme Court (and were approved) to conduct two jury trials a week. A principal purpose in submitting this amended plan is to substantially increase the number of jury trials we conduct each week.

Third, we have worked closely with the Fairfax Health Department and, in particular, with Dr. Benjamin Schwartz, Director of the Division of Epidemiology & Population Health, and his colleagues, to develop a revised plan that will enhance our jury trial capacity while preserving the key ingredients necessary for maintaining the safety of community members and courthouse personnel.

B. Proposed Modifications to the Jury Plan

Under our current approved plan, three courtrooms are committed for each jury trial. One courtroom is used for the trial itself. A second courtroom is used for jury recesses and deliberations. A third courtroom is used for observers to watch a closed-circuit feed of the trial. We propose to modify our plan to use just one courtroom per trial. This proposal has several components:

- Jurors will no longer sit in the gallery but, rather, will be placed back in the jury box. We will maintain six-foot social distancing by placing the jurors in a staggered and diagonal seating pattern with four jurors in the back row, four jurors in the front row, and four jurors in an additional row of seats that will be placed in front of the jury box. We will use a similar staggered and diagonal seating pattern in civil jury trials and misdemeanor jury trials but will not need to have the additional row of seats given the smaller size of these juries.
- We will dispense with automatically selecting two alternates for each jury trial. We no longer believe it necessary. However, in protracted cases where we would have previously selected alternates, we will continue to do so. The courtrooms that we will use for criminal jury trials can accommodate the two additional jurors with appropriate social distancing.

⁸ <https://www.fairfaxcounty.gov/health/novel-coronavirus/vaccine/data> (accessed: 5/28/21)

- We will install plexiglass in the following locations in each of our courtrooms: (1) between each juror in the jury box; (2) in front of each row of jury box seats; (3) between each seat at the two-person attorney/client tables; (4) in front of the court clerk and between the court clerk and the judge; (5) in front of the judge; and (6) on the sides of the witness box.
- Attached to this proposal are photographs of two courtrooms that have recently been modified with the plexiglass in order to permit the Fairfax Health Department to assess the safety of the proposed modifications. The larger courtroom is 4J, which is one of the courtrooms presently authorized for the conduct of jury trials. The smaller courtroom is 5G.⁹
- Jury selection will take place in the courtroom, with prospective jurors placed in the jury box or in the additional row in front of the jury box, as well as in the front rows of the gallery.
- Courtroom observers will be permitted in the courtroom, since the gallery will no longer be used by jurors during the trial, except during *voir dire*.
- During jury recesses prior to deliberations, the jurors will recess in two jury rooms in order to permit the jurors to maintain social distancing. During deliberations, the jury will deliberate in the same courtroom where the trial was conducted. Should it be necessary for the attorneys to confer with the Court during jury deliberations, the conference will either be conducted in another available courtroom or the jury will be excused from the courtroom and return to the jury assembly rooms.
- Felony criminal juries will only be conducted in the three largest courtrooms that are presently approved for the conduct of jury trials: 4J, 5J and 5E. All other courtrooms will be used only for civil and misdemeanor jury trials.

Since the amended plan contemplates using one courtroom per trial, we will be able to significantly expand the number of jury trials we conduct each week, which will result in additional jurors being present in the courthouse on most days. If we are unable to accommodate the increased number of prospective jurors in our two large jury assembly rooms, we will direct jurors to wait in a socially distant manner outside the courtrooms to which they are assigned.

Within each courtroom that has previously been modified for the conduct of jury trials, the tables and podium will be turned back to face the front of the courtroom rather than the gallery. Attorneys will be permitted to use the podium to question witnesses, who will now testify exclusively from the witness box.

⁹ After evaluating the two courtrooms, the Fairfax Health Department indicated by email that it approved of our plan to utilize a single courtroom for trials. The Health Department recommended placement of plexiglass in front of the additional row of jurors that will be added for criminal jury trials in 4J, 5J and 5E and we will adopt that recommendation. The Health Department also emphasized the need to maintain social distancing.

We contemplate no changes to our current jury plan with respect to:

- Cleaning protocols, air filtration, and PPE requirements;
- Social distancing requirements;
- Entrance screening and deferral of prospective jurors for Covid-related reasons, and the use of thermal imaging devices at courthouse entrances to determine if a visitor, prospective juror or courthouse employee has a fever;
- Pre-assignment of trials and the use of pre-trial conferences to review with counsel and parties Covid-related trial protocols;
- Pre-marking of exhibits to minimize handling;
- Trial breaks for cleaning purposes;
- Handling of exhibits by jurors during deliberations;
- Accessibility and cleaning of bathrooms for jurors;
- Providing each juror a set of instructions;
- Plan of action in the event of an emergent Covid-19 case.

Finally, we anticipate that masking protocols in the approved jury plans will be modified in accordance with the 22nd Order Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency, issued by the Supreme Court of Virginia on May 26, 2021.

COURTROOM 4J



(PLEXIGLASS IN FRONT OF JUDGE'S BENCH, CLERK'S STATION, AND WITNESS BOX)



(PLEXIGLASS IN BETWEEN SEATS AT COUNSEL TABLES)

COURTROOM 4J (CONTINUED)



(PLEXIGLASS IN FRONT OF JURY BOX ROWS AND BETWEEN JUROR SEATS)

COURTROOM 5G



(PLEXIGLASS IN FRONT OF JUDGE'S BENCH, CLERK'S STATION, AND WITNESS BOX)



(PLEXIGLASS IN FRONT OF JURY BOX ROWS AND BETWEEN JUROR SEATS)

COURTROOM 5G (CONTINUED)



(PLEXIGLASS IN BETWEEN SEATS AT COUNSEL TABLES)