



# United States District Court District of Hawaii

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Adopted August 6, 2020

## **PLAN FOR RESUMPTION OF JURY TRIALS IN THE DISTRICT OF HAWAII**



Jury trials are the bedrock of our justice system in both criminal and civil cases. Conducting a jury trial during the current COVID-19 pandemic must be done in a manner to address and minimize the risks to all participants and spectators, including jurors, attorneys, witnesses, parties, members of the public, the press, and court employees. This Plan for Resumption of Jury Trials (“the Plan”) sets forth guidelines on how to hold a jury trial during the pandemic. This Plan has been reviewed and found to be “consistent with guidance provided by Hawaii Department of Health and the Centers for Disease Control and Prevent” by the State of Hawaii Department of Health.

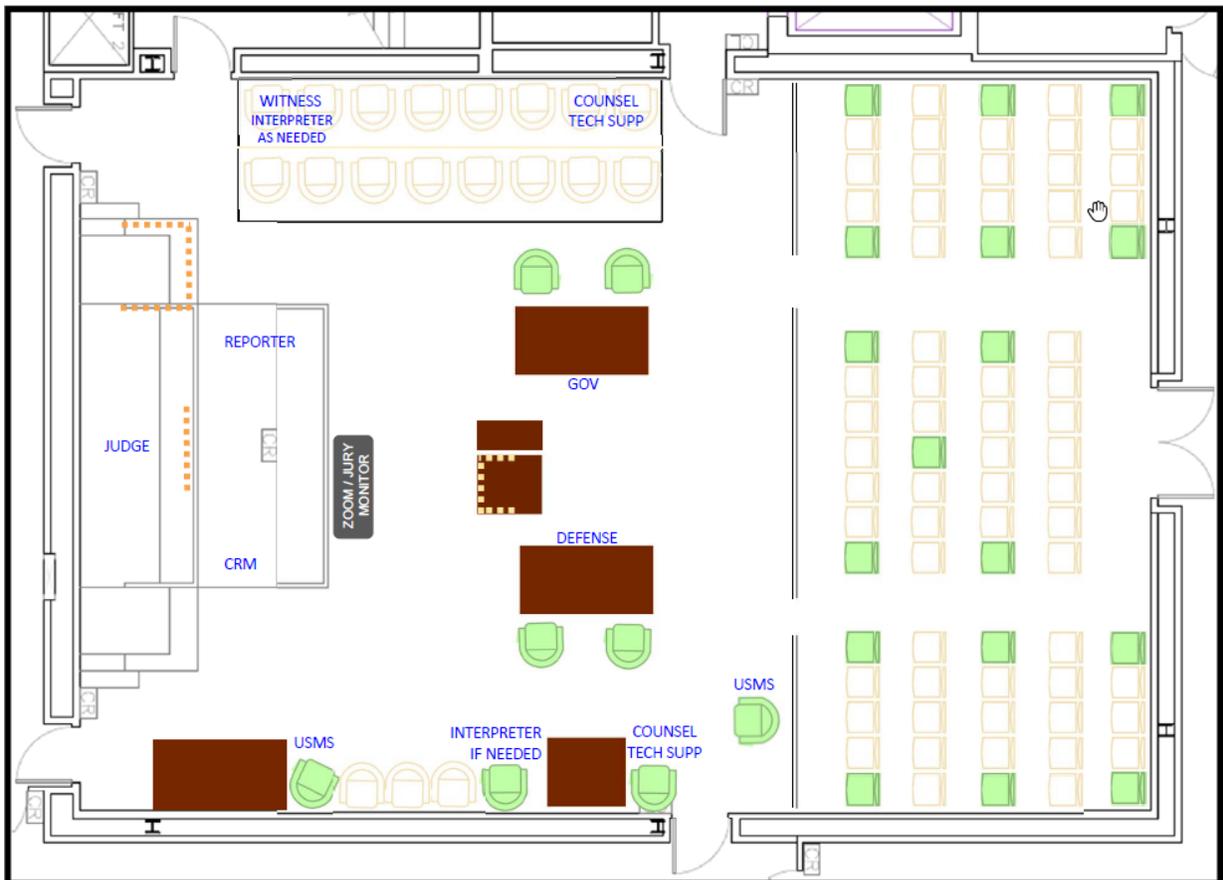
Please note, the Plan will likely be changed as the court and counsel learn from initial trials, and as we learn more about COVID-19. Individual presiding judges, in consultation with counsel, are free to deviate from the Plan given a judge’s preference in a particular case. Finally, if anyone has any suggestions to improve the Plan, please send an email to [COVID19@hid.uscourts.gov](mailto:COVID19@hid.uscourts.gov). The Plan begins by setting forth some general mitigation measures that will apply in the courthouse at all times (including during a jury trial), and then addresses specific parts of a jury trial.

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# I. GENERAL MITIGATION MEASURES

- A. With limited exceptions, everyone in public areas of the courthouse, including the courtrooms, will be required to wear a facemask covering both the mouth and nose. Facemasks will be made available to anyone entering the courthouse without one. Testifying witnesses, attorneys addressing the court or jury, and judges addressing attorneys/parties/jurors will be required to wear a facemask, face shield, or speak from behind a plexiglass barrier.
  
- B. With limited exceptions (as specifically approved by the court or presiding judge) everyone in the courthouse will be required to maintain a 6-foot social distancing. For jury trials, courtroom seating will permit the 6-foot social distancing, with jurors sitting in the gallery portion of the courtroom. The following is an example of a fourth floor courtroom seating chart for a criminal case.



- C. Hand sanitizer or sanitizing wipes will be made available throughout the courthouse, including near the elevators on all floors, at the entrance to courtrooms in use, and at the juror check-in areas.
- D. The court has retained an entity to provide enhanced cleaning services. Courthouse public spaces are sanitized regularly by technicians using an electrostatic device. The solution used, which is on EPA's List N (Disinfectants for Use Against SARS-CoV-2 (COVID-19)), is applied to high touch surfaces including, but not limited to, door handles, public seating, elevators, and public restrooms.

## II. JURY SELECTION

### A. PRE-TRIAL CONTACT WITH POTENTIAL JURORS:

1. Approx. 7 weeks prior to jury selection: court and counsel are to review a proposed juror questionnaire. The questionnaire addresses COVID-19 related questions, and many questions often asked during voir dire. Because the answers to the questionnaire will contain medical information, the answers will be sealed.
2. Approx. 6 weeks prior to jury selection: court and counsel will finalize the juror questionnaire.
3. Approx. 5 weeks prior to jury selection: court will mail questionnaires with instructions and letter from court explaining court's COVID-19 mitigation measures. Jurors will be instructed to complete the questionnaire either:
  - Electronically via eJuror (on court's website); or
  - By filling out the paper form and returning in provided postage paid envelope.
4. Approx. 4 weeks prior to jury selection: Postmark deadline for jurors to return questionnaire.

5. Approx. 2-3 weeks prior to jury selection: court and counsel will review juror questionnaires, and the court will rule on requests to be excused.
6. Approx. 3 days prior to jury selection: Jury staff contacts remaining jurors (who have not been excused) to determine if, in the prior 14 days, any of them have been diagnosed with COVID-19, have experienced any symptoms consistent with COVID-19, have been in contact with anyone who has been diagnosed with COVID-19, or have travelled outside the State of Hawaii in the 14-day period prior to the start of trial.
7. Approx. 2 business days prior to jury selection: Day 1 jurors will be contacted via text and will be notified to report on Day 1 at an assigned time.
  - Jurors will be instructed to report to the courthouse in groups of 15-17. The arrival times for the 15-17 jurors will be slightly staggered. Holding jury selection in groups, and staggering arrival times, will permit social distancing during jury selection and avoid congestion at the courthouse entrance and during juror check-in.
  - The presiding judge, with input from counsel, will determine how many groups of 15-17 jurors to report per day. For example, 15-17 jurors could be instructed to report in the morning and another 15-17 in the afternoon (for a total of 30-34 per day), or the report times could vary to permit more juror groups to report on the same day.
  - Jurors will be given options for transportation, including parking and taxi/Uber/Lyft.
  - Repeat procedure for each additional day of jury selection, if needed.

## B. REPORTING TO THE COURTHOUSE:

1. The following measures will be implemented at the entry pavilion and first floor lobby elevator:
  - The US Marshals Service will require 6-foot social distancing for anyone entering the security pavilion of the courthouse, with stanchions and floor decals in place.
  - Once through security, Court Security Officers (“CSOs”) will direct jurors to the first-floor elevator lobby and instruct them to proceed directly to the fourth floor. Social distancing floor decals will be placed on the first-floor lobby, and CSOs will insure that social distancing is maintained for those waiting for an elevator.
  - Generally, two individuals will be permitted per elevator, and social distancing floor decals will be placed inside the elevators. Up to four individuals are permitted in an elevator, if needed to keep the lobby area clear.
  
2. Large signs will convey courthouse entry requirements:
  - Mask or other facial covering must be worn while in courthouse:
    - If someone shows up without a mask, a CSO will provide that person with one;
    - If someone (other than a child too young to wear a mask or someone who cannot do so for medical reasons) refuses to wear a mask while in the courthouse, the CSOs will not allow the person to enter the courthouse or will escort the person out of the courthouse.
  - Any individuals will be denied entry to the courthouse if, in the prior 14 days, that person was diagnosed with COVID-19, was in contact with someone diagnosed with COVID-19, or has experienced specific COVID-19 symptoms. Persons required to be in quarantine by the State of Hawaii will likewise be denied entry to the courthouse. Other restrictions

on courthouse entry apply and can be found in the court's most recent Temporary General Order Regarding District of Hawaii Response to COVID-19 Emergency.

C. JUROR CHECK-IN AND ORIENTATION:

1. Jurors will proceed to the first floor jury lounge for check-in.
2. Once all 15-17 jurors have arrived, jury staff will start the orientation process, including showing the jury video and a COVID-19 mitigation video.
3. Jurors will then be directed to Kanawai for the start of jury selection.
4. Upon arrival in Kanawai, jurors will be directed to take an assigned seat, with each occupied seat at least 6-feet away from another assigned seat. Assigned seats will be clearly marked.
5. Spectators/guests/media/members of the public will be permitted to observe voir dire (and the rest of trial) by video in an overflow courtroom.

D. VOIR DIRE

1. The overall voir dire process in the Plan is intended to avoid juror sidebar and allow the entire process to take place with social distancing.
2. Group Voir Dire
  - The judge will conduct the general voir dire of all 15-17, covering only further hardship excuses and matters not raised in the questionnaire. No sidebar will be held during the group voir dire.
  - Kanawai will be set up with “shotgun” microphones such that jurors can speak from a distance of approximately 3 feet away.
  - Judge will excuse jurors for cause after group voir dire.

### 3. Individual Voir Dire

- If not excused for cause, the remaining jurors will move to Kuponono.
- Jurors will be called back to Kanawai one at a time for individual voir dire.
- Additional court staff will be present to have jurors brought from one courtroom to the other.
- Before each juror is called into Kanawai for individual voir dire, counsel must inform the court of specific questionnaire answers that counsel wants the court to explore with that particular juror. As an alternative, the court may require counsel to provide this information to the court in the week preceding jury selection.
- Court will conduct individual voir dire (and, as necessary, permit attorney follow-up or attorney voir dire).
- At the end of each individual voir dire, counsel must pass the juror or move to strike for cause.
- When done, the jurors will check-out at a fourth floor hallway table and those passed for cause will be instructed that they will be notified when to return.
- Jurors will depart courthouse.

### 4. Peremptory Challenges:

- After a sufficient number of jurors have been passed for cause, the parties will exercise peremptory challenges without the jurors present.

### 5. Empaneled jury:

- For each juror selected, court staff will provide an individual bag with pens, notepad, and hand sanitizer/wipes. At the end of the day, the juror can place the items back in the bag and leave it under their chair.

### III. TRIAL

#### A. HOURS

- Trial will be held 8:30am to 1:30pm with two breaks. During breaks, the jury will be taken to another fourth floor courtroom which will permit jurors to maintain 6-foot distancing.

#### B. COURTROOM SET-UP FOR TRIAL

- Counsel tables will be rotated to face each other (parallel to the jury box):



- Parties and counsel seated at each counsel table will maintain 6-foot separation from each other.
- There are two microphones mounted on the lectern. The left lectern microphone will be designated for use by Defense. The right microphone will be designated for use by Plaintiff/Prosecution.
- Water will no longer be provided by the court; counsel and parties should bring their own water to the courtroom.
- Jurors will be in assigned seats in the gallery with social distancing.

## C. OPENING AND CLOSING ARGUMENTS

- The lectern will be turned to face jurors seated in gallery.
- The attorney will face the jury, with his/her back to judge.
- The attorney will be required to wear a face mask or a face shield.
- A camera will display views of attorneys, which the jurors and judge will be able to see on their display, similar to the picture below.



## D. WITNESS EXAMINATION

### 1. Witness and Attorney:

- Attorneys will face the witness stand.
- Attorneys will be required to wear a face mask or face shield.
- The witness will not wear a face mask or face shield while testifying. Plexiglass will be placed around the witness stand to protect others in the courtroom, including the judge and courtroom manager.
- Disposable gloves, hand sanitizer and wipes will be placed next to the witness stand. After a witness' testimony is complete, the court will ask the witness to remove the plastic cover on the microphone and to wipe down the desk surface of the witness stand and witness chair (armrests, seat cushion, and backrest).

- The next witness to testify will place a new cover over their microphone prior to testifying.
- If a witness is unable or unwilling to perform any of the above tasks, the courtroom manager shall do so.
- If a case requires the need for a witness to attempt to identify a defendant in a criminal case, all those present in the courtroom will be asked to briefly remove any face covering.

## 2. Jurors' View

- On each individual iPad, jurors will see a split-screen showing witness on one side of screen and attorney on the other side.



## 3. Remote Testimony

- In the event a witness must testify remotely via video conference, the witness will have the ability to join the video and see the same view being shown to the jurors on their iPads.
- A separate device/display will be placed on the witness stand facing the gallery. This will display the witness as if the witness was on the witness stand. This will allow the parties, attorneys, and jurors to see the witness's face while testifying.

## E. PARTIES AND THEIR COUNSEL

### 1. For Criminal Defendants:

- A communication system will be set up for a defendant and

counsel to communicate. The simplest system would permit some sort of chat on an iPad or laptop. For actual discussions, the court has purchased an encrypted listening assisted device system (*see*, listentech.com).

2. For Civil Litigants:

- The same communication system can be set up for civil litigants, if needed.

F. EXHIBITS

- Paper exhibits, unless oversized, must be presented digitally, although counsel will be permitted to use the Elmo. Jurors will use iPads for evidence presentation. Counsel will not be permitted to approach the witness stand unless absolutely necessary and with permission of the court.
- Counsel must prepare a separate binder for each witness called to testify, for both direct and cross-examination. This binder must contain every exhibit or document that counsel anticipates using in the examination of that witness. Any exceptions would have to be cleared with the presiding judge. Cross-examination binders need not be provided to the court or opposing counsel in advance of the start of the cross.
- If either side uses an assistant to aid with evidence display, and to allow all to maintain social distancing, IT will provide an HDMI extension cable that will run from counsel table to either:
  - For defense counsel assistant, the chair up against the wall.
  - For plaintiff/prosecution assistance, the jury box.

G. DISPLAY OF EVIDENCE

- Jurors will see evidence displayed on the full screen of their iPad.

- Each juror’s iPad will be mounted on a stand far enough away from juror so that it isn’t a tripping hazard, yet close enough for the juror to see.



## H. SIDEBAR

- If needed, sidebars will be conducted using the court’s encrypted listen-talk devices with deployment of white noise in the background. Counsel can approach the area of the sidebar, but maintain 6-foot social distancing.
- As an alternative, sidebars could be held in a nearby conference room using the same encrypted listen-talk devices.

## I. VIEW OF THE “JUROR BOX”

- The camera on each juror’s iPad will be turned on so that the juror’s face is viewable.
- A large monitor will be placed in front of the lower bench that will display the faces of each juror (as captured by the camera on their respective iPads) in grid layout:



- This monitor will allow the presenting attorney to see the jurors' faces while they are questioning a witness or addressing the court (with their back to the jurors sitting in the gallery).
- All courtroom AV monitors will display the same view described above unless evidence is being displayed.
- The existing large gallery monitors will be removed from the courtroom to allow jurors, attorneys, and judge full line of sight.

#### J. PUBLIC VIEWING / OVERFLOW ROOM

- An “overflow courtroom” will be set up for every trial and made available to anyone who would like to observe trial.
  - Those seated in the “overflow courtroom” will be able to see and hear the trial via large monitors in the gallery and at counsel tables in the overflow courtroom.
  - Those seated in overflow courtroom will have the same

view as that displayed on the jurors' iPads and trial courtroom displays.

- Should a Defendant's family member request to be present in the trial courtroom (and not the overflow courtroom), defense counsel must notify the court at least three days in advance of trial. Every effort will be made to accommodate such a request, taking into consideration security concerns and social distancing guidelines.

K. INTERPRETERS (IF NEEDED)

1. For the Defendant: the interpreter would sit behind the defense counsel table but socially distanced using the court's assisted listening device.
2. For the witness: the interpreter would sit in the jury box seat closest to the witness stand.
3. For a witness testifying remotely: a regular telephone call will connect the interpreter and remote witness.

#### IV. JURY DELIBERATIONS

- The jury will deliberate in Kanawai, with the door windows darkened. The court will arrange chairs in the well of the court, at least 6 feet apart, so that the jurors can face each other during deliberations as illustrated in the chart below. The court will require counsel, to the extent possible, to provide to the court all admitted exhibits in digital format. The jurors will have the ability to view the admitted exhibits electronically while deliberating.

