

Chief Judge, Twelfth Judicial District  
**12<sup>th</sup> JUDICIAL DISTRICT-  
COVID-19 PLAN/ORDER  
REGARDING RESUMING  
JURY TRIALS-EFFECTIVE  
SEPTEMBER 1, 2020**



**CHIEF JUDGE  
ADMINISTRATIVE ORDER  
2020-08**

This order supplements the Court's Administrative Order 2020-03, 2020-05 and 2020-06 as it relates to jury trials. Except as modified here, Administrative Order 2020-03, 2020-05 and 2020-06 remains in full force and effect.

### **JURY TRIALS**

The right to a jury trial in criminal cases is fundamental and guaranteed by the United States and Colorado constitutions, and it is of paramount importance to the judges in this district to resume jury trials in criminal, dependency and neglect adjudicatory("D&N"), and civil cases, but only when jury trials can safely resume. Due to serious public health issues related to the COVID-19 pandemic, jury trials throughout the state of Colorado have been suspended by the order of Colorado Supreme Court Chief Justice Nathan B. Coats dated April 16, 2020, and as extended by the Chief Justice's orders of May 5, 2020 and June 15, 2020, precluding any person from being summoned to state courts to assemble for jury service to begin any time prior to August 3, 2020, subject to waiver by Chief Justice Coats. The suspension of jury trials since March 2020 has always been intended as a temporary suspension.

On July 24, 2020, Chief Justice Coats issued Updated Order Regarding COVID-19 and Operations of State Courts removing the requirement that Chief Judges obtain a waiver from him to resume conducting jury trials after August 2, 2020, provided the Chief Judge of the district determines that a jury pool can safely be assembled consistent with applicable executive orders and health directives.

The judges of the 12<sup>th</sup> Judicial District have met regularly since March 2020 to discuss plans to safely resume jury trials. We have considered information from the Centers for Disease Control and Prevention ("CDC") and the Colorado Department of Public Health and Environment ("CDPHE"); information presented to the Chief Judges Council by Dr. Eric France, Chief Medical Officer with CDPHE and members of the CDPHE team; information and support provided by the various county health directors and executive orders issued by Colorado Governor Jared Polis.

It is proper to begin the resumption of jury trials in the 12th Judicial District but to do so with caution, with respect for the risks associated with the COVID-19 pandemic, and cognizant of the current local and state data and trends regarding COVID-19. Jury trials will be governed by this order and associated plan and will be updated or amended from time to time. Through this order and a strategic plan for each courthouse location, the district can satisfy the Chief Justice's order that a jury pool "can be safely assembled consistent with applicable executive orders and health directives."

The jury plan is adopted by the entry of this order. The plan includes the use of health criteria as a threshold to begin jury trials. According to the CDPHE website, as of August 31, 2020 in the state of Colorado there were 57,223 cases of COVID-19, 7,010 people have been hospitalized, and 1,843 people have died due to COVID-19. In the San Luis Valley, there have been 524 positive cases and 13 deaths. Data kept separately by San Luis Valley Emergency Operations at <https://www.slvemergency.org/slv-covid-19/> reflects 524 positive cases (with 10 active confirmed cases as of August 31, 2020) and 13 deaths. It also reflects a two-week positivity rate of 5.13%

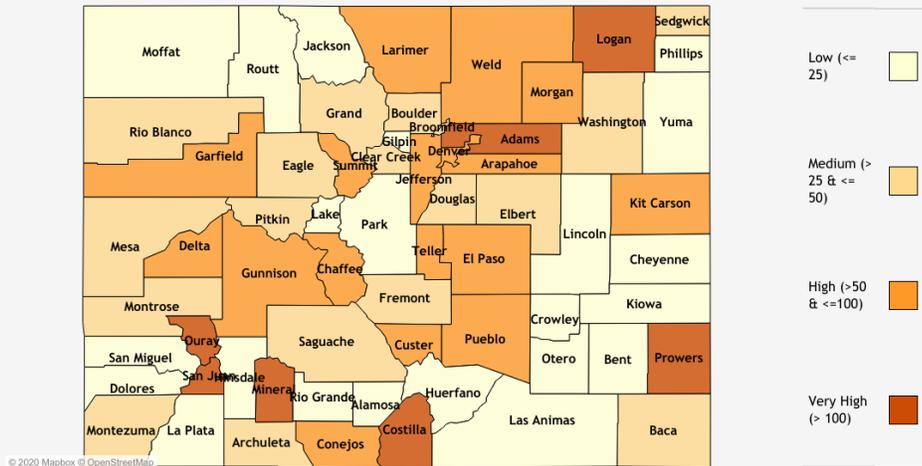
I have also considered the COVID-19 outbreak data maintained by the CDPHE, which is tracked weekly from information gathered at the following locations:

- Health care settings, including long-term care facilities, assisted living facilities, independent living facilities/senior communities that offer health care, inpatient rehab facilities, and long-term acute care hospitals.
- Correctional settings, including state prisons, county and city jails, community corrections, detention settings, work release facilities.
- In other settings, including factories, workplaces with crowded work conditions, camps, schools, child care centers, and independent living facilities/senior communities that do not offer health care.

The CDPHE also prepares statewide tables of two-week cumulative incident rates and current epidemic curve. These tables are updated daily and can be viewed through the CDPHE website at <https://covid19.colorado.gov/data/incidence-epidemic-curve>. The various counties in the San Luis Valley show anywhere from a "very high", "high", "medium" to a "low" incidence rate; more importantly the Current Epidemic Curve shows that the San Luis Valley has been in a "sustained decline" for the most recent two-week period (August 16, 2020 – August 30, 2020), as shown on the tables below.

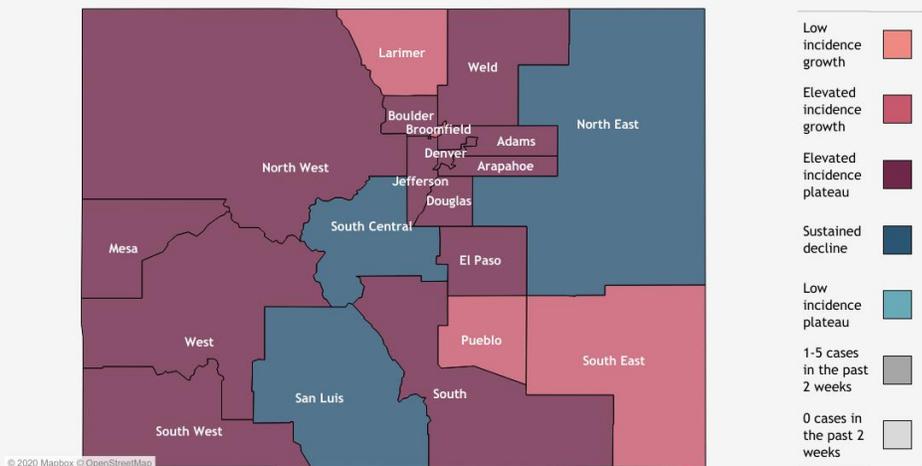
## Two-Week Cumulative Incidence Rate

The **Two-Week Cumulative Incidence Rate** includes new cases reported in the past two weeks Aug 16, 2020 - Aug 29, 2020 per 100,000 people. The rate describes recent incidence of COVID-19 infection to capture the potential burden of currently ill people who may be infectious and/or accessing healthcare.

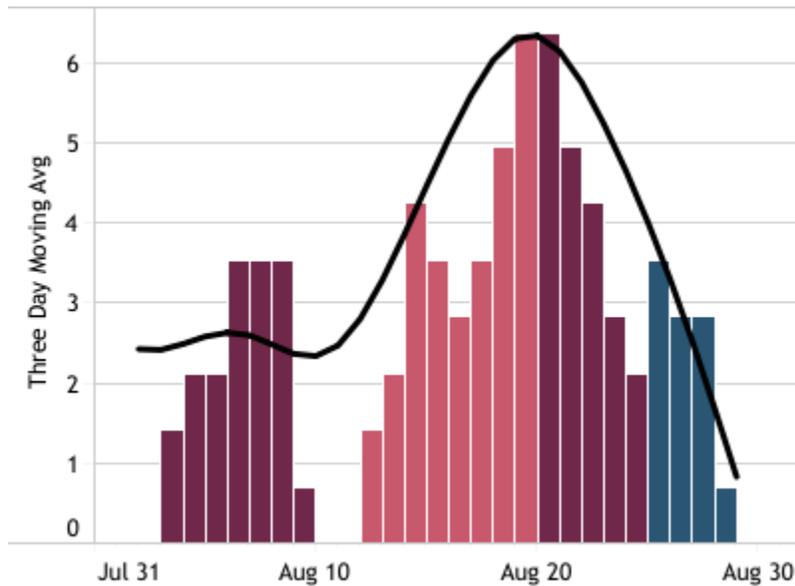


## Current Epidemic Curve

The **Current Epidemic Curve** status for each region provides a detailed view into the burden of illness in each region, and the trajectory of new illness. Regions are categorized according to the total number of new cases in the past 2 weeks Aug 16, 2020 - Aug 29, 2020 and the current day's change in daily case counts. Regions with elevated incidence have had more than 10 new cases per 100,000 in the past two weeks.



## San Luis Valley Sustained Decline (As of August 31, 2020)



Given the current circumstance of sustained decline in the San Luis Valley, it does appear to be safer and more appropriate to commence jury trials. With the current circumstances and with the assistance and direction of public health in each county, I am satisfied that jury trials can proceed and that jury panels “can be safely assembled consistent with applicable executive orders and health directives.” The 12<sup>th</sup> Judicial District can safely assemble, select, and empanel jurors in each county of the district.

### **Prioritization of Trials**

One trial may be conducted in each county of the district per week. As required by order of the Chief Justice of the Colorado Supreme Court, a jury cannot be summoned, and a jury trial cannot proceed without the approval of the Chief Judge. Since more cases are in need of a jury trial than can safely go forward at this time, the determination of which trials can go forward will be determined by the Chief Judge in consultation with members of the Bench. Judges should consider input of the attorneys and parties to the case when establishing priority.

Criminal jury trials will have priority. Adjudicatory jury trials in D&N cases will have the second priority and civil trials will be the final priority. When more than one case is set for trial in a particular courthouse, below are some of the appropriate factors that will be considered to select a case to go forward:

- The nature of the cases, including community safety issues and, in the case of criminal offenses, the age of the case, speedy trial considerations, the level of offense(s) charged, whether any of the charges involve the Victim’s Rights Amendment, as well as potential penalties in each case;

- Custodial status of a defendant;
- Any other relevant factual or legal circumstance existing in the respective cases;
- The public interest in completing one case prior to another.

If more than one trial is scheduled for a particular week in the same county, a priority list establishing the order in which each case will be tried shall be provided to the jury commissioner by the close of business on the Wednesday prior to the trial week. The jury commissioner will share this determination with the appropriate parties by the close of business on the Thursday prior to the trial week.

### **County Courthouse Locations**

The 12<sup>th</sup> Judicial District is made up of six counties. Because of courthouse size limitations and the need for proper social distancing required to comply with current health regulations, it is necessary to hold jury trials “off-site” in a number of counties in the district.

#### **Alamosa:**

- Courtroom A will be used for Jury Assembly and for all trial proceedings; this includes the jury assembly and selection process, all trial proceedings, and jury deliberations (For county court/civil/D&N jury trials, jurors will deliberate in Jury Room B); (Courtroom A-13 Jurors maximum)
- Courtroom B will be used for additional assembly of county/civil/D&N and district court jurors (WebEx will be streaming); (Courtroom B-20 Jurors maximum)
- Courtroom C will be used for additional assembly of district court jurors (WebEx will be streaming); (Courtroom C-20 Jurors maximum).

#### **Conejos (Off-site Antonito Fire Station-Antonito, Colorado):**

- Jury selection for all trials will be held at the Antonito Fire Station; (Approx. 30 Jurors maximum)
- Once a jury is empaneled in all county/civil and D&N jury trials(6 person), the trial will be moved back to the Conejos County Courthouse;
- District court jury trials will be held in their entirety at the Antonito Fire Station.

#### **Costilla (Off-site Centennial School-San Luis, Colorado):**

- All jury related proceedings for all jury trials will be held at the Centennial School;
- The main gymnasium will be used for Jury Assembly and for all trial proceedings; this includes jury assembly and selection process as well as all other trial proceedings; (40 Juror maximum)
- Jury deliberations will be held in the Auxiliary gymnasium.

**Mineral:**

- No trials currently scheduled.

**Rio Grande:**

- District Court Courtroom will be used for Jury Assembly and for all trial proceedings; this includes jury assembly and selection process, all trial proceedings, and jury deliberations (For county court/civil/D&N jury trials jurors will deliberate in Jury Room); (25 Jurors maximum)
- County Court Courtroom will be used for additional assembly for county/civil/D&N and district court jury trials (WebEx will be streaming); (25 Jurors maximum)

**Saguache (Off-site Saguache Community Center-Saguache, Colorado):**

- Jury selection for all trials will be held at the Saguache Community Center; (Approx. 30 Jurors maximum)
- Once a jury is empaneled in county/civil and D&N jury trials(6 person), the trial will be moved back to the Saguache County Courthouse;
- District court jury trials will be held in their entirety at the Saguache Community Center.

\*Because of space limitations at off-site locations and the need to comply with issues of maximum occupancy in an off-site location, voir dire may have to be conducted in waves.\*

At each location, all check-in and COVID-19 health screening of potential jurors will take place outside of the building. All jurors must meet all health requirements indicating that they do not have any COVID-19 symptoms before they will be allowed into a jury trial location. If a juror does not meet health screening guidelines prior to entry into a building, they will be excused and provided a new date to report for jury service. The jury commissioner is authorized to release said juror and should provide his/her name to the judge and counsel and the reason for dismissal.

All locations will be set up in a manner to assure proper social distancing and required mask wearing will be enforced. Each judge presiding over a jury trial is responsible to assure that all participants properly comply with all existing public health guidelines and existing orders.

**Trial Procedures**

Once the jury is selected, jurors will be oriented to the protocol for accessing the bathroom, going outside, etc. They will be provided a writing utensil and an individual jury notebook/writing pad, which will stay either in a designated place in the courtroom or with the

juror during the trial. When the trial convenes, the jurors will sit at six-foot distances throughout the courtroom. The permissible locations to sit will be marked.

Pursuant to existing Mask Orders, prospective jurors, attorneys, witnesses, and court personnel must wear their facial covering at all times, unless an exemption exists, or the person is otherwise granted permission by the Court to temporarily lower their facial covering.

Maintenance personnel will disinfect daily all areas that the jurors, potential jurors, witnesses, and litigants will be occupying in the courtroom/courthouse/building. The bailiff shall sanitize any area that may seat multiple individuals, including juror chairs during voir dire and the witness box. Each courtroom will be equipped with necessary personal protective equipment including hand sanitizer, disinfecting wipes, disinfecting spray, disposable masks and gloves, and disinfected pens.

Prior to coming to court each day of a multi-day jury trial, the jury, attorneys and their staff, parties, witnesses, and court personnel shall self-screen to determine whether they have any symptoms of COVID-19. Any person involved in the trial experiencing one or more symptoms of COVID-19 shall not report to court. Instead, such person shall contact and inform the Court, bailiff, or appropriate attorney that they did not pass their self-screening protocol. Such person need not disclose their specific symptom(s) and the person that such individual has contacted shall not ask them to do so.

When publishing exhibits, instead of handing exhibits directly to the jury, the standard practice shall be to have such exhibit displayed using existing courtroom technology, including digital display of exhibits through laptops to a television screen. Additionally, hard copies of the exhibits and media must be tendered to the Court or uploaded as required by Chief Judge Administrative Order. The presiding judge shall direct counsel how to display any exhibits that cannot be displayed electronically. It shall be the responsibility of trial counsel to test out courtroom technology prior to the day of trial.

Juror questions will not be permitted. Bench conferences will be conducted either by email, by departing to a nearby room, or by excusing the jury where practical.

Public seating will be limited for jury selection and for the actual jury trial. Any available public seating will be on a first come, first seated basis; there will be no saving of seats allowed. Because of limited public courtroom seating WebEx audio and video connections will be made available to the public. To the extent practicable, a WebEx viewing room may be made available at a courthouse subject to proper social distancing and compliance with existing public health orders.

The provisions of Administrative Order 2020-08 shall apply to all civil, D&N, and criminal jury trials held in the 12th Judicial District, and any judge requesting that any provision of the order be modified or waived for a specific trial shall seek approval of the Chief Judge.

I reserve the right to modify, revise, or vacate this order at any time to meet the health and safety needs of the public. This order is effective September 1, 2020.

Dated this 1<sup>st</sup> day of September 2020.

BY THE COURT:

A handwritten signature in black ink, appearing to be 'M. Gonzales', written over a horizontal line.

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Michael A. Gonzales  
Chief Judge, 12<sup>th</sup> Judicial District