

**STATE OF VERMONT
VERMONT SUPREME COURT
JANUARY TERM, 2022**

Order Promulgating Amendment to Administrative Order No. 49

Pursuant to the Vermont Constitution, Chapter II, § 30 and Administrative Order No. 48, it is hereby ordered:

1. That ¶ 3(a) of Administrative Order No. 49 be amended to read as follows (new matter underlined; deleted matter struck through):

3. Jury Trials:

- a. Superior Courts may schedule and hold individual jury trials in criminal proceedings and civil proceedings after January 1, 2021, only with ~~the authorization of a unit plan approved by the Chief Superior Judge and the Chief of Trial Court Operations Court Administrator.~~ Factors to be considered by the superior judge in holding authorizing a proposed jury draw and trial include: the current course of the COVID-19 pandemic; the current recommendations of public health experts; whether the unit has adopted a plan that addresses ventilation and air flow of the courthouse has been deemed sufficient; whether and the building allows for socially distanced seating and movement of all participants and jurors through the course of a jury draw and trial to the extent required to reasonably protect public health; the availability of staff and other resources to support court proceedings; the potential disruption to proceedings due to COVID-19 infections in jurors or participants or the need for jurors or participants to isolate due to close contact with an infected person; any other circumstances particular to the case to be tried; and the rights and interests of the litigants.
- b. Notwithstanding the limit in V.R.Cr.P. 24(d)(1), the trial court may impanel as many alternate jurors as reasonably required to accommodate disruptions that may occur during jury draw or trial if jurors become infected or are notified they are a close contact with an infected person.
- b c. In the interest of justice, the Chief Superior Judge is authorized to transfer a civil or criminal proceeding to another unit (transferee unit) for purpose of a jury trial. In exercising this authority, the Chief Superior Judge should consider whether any building in the unit where the case was filed (or to which it was previously transferred) (transferring unit) is, or is expected to be, available for jury trials; how many other cases are trial-ready in the transferring unit, and their relative priority; how many other cases are trial-ready in the transferee unit, and their relative priority; and any other factors pertinent to the determination.
- e d. Notwithstanding V.R.C.P. 79.2(d)(5), prospective and seated jurors may use devices authorized by the court for purposes of remote jury trials.

Explanatory Note—January 14, 2022 Amendment

Paragraph 3(a) is amended to clarify that the trial courts retain discretion to hold jury trials as long as safety measures are in place. This decision is consistent with current guidance received from the Vermont Judiciary’s infectious disease expert that in-person jury draws and trials are safe so long as the particular courthouse has been approved for in-person jury trials and all participants observe social distancing and wear masks. Entry and conduct in judiciary buildings remain subject to the Court Administrator’s directive regarding health screening and safety protocols. <https://www.vermontjudiciary.org/sites/default/files/documents/Administrative%20Directive%20PG-13%20Amended%20Sept%201%202021.pdf>.

Paragraph 3(b) is added to allow the trial court to impanel as many alternate jurors as reasonably required notwithstanding V.R.Cr.P. 24(d)(1), which directs that no more than four jurors be impaneled to sit as alternate jurors. This ensures there are sufficient alternate jurors in case there is any disruption caused by the excusal of seated jurors due to COVID-19 infection, illness, or isolation.

Prior paragraphs 3(b) and (c) are now (c) and (d).

2. That this amendment is effective immediately, and the order extends until March 1, 2022, unless extended by order of this Court.
3. That the Chief Justice is authorized to report this order to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Done in Chambers at Montpelier, Vermont this 14th day of January 2022.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice