



**SUPREME COURT JURY RESTART COMMITTEE:
REPORT ON RESUMPTION OF
CRIMINAL JURY TRIALS**

July 20, 2020

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INTRODUCTION

On May 13, 2020, the Long-Term Planning Committee, formed at the request of the Chief Justice, issued the Ramp-Up Report identifying issues and making recommendations concerning the expansion of Judiciary operations, which had been reduced, via Supreme Court Administrative Order 49, since mid-March due to the COVID-19 pandemic. The report provided a broad overview of the budgetary, personnel, and operational challenges facing the Judiciary as it planned to resume non-emergency operations. The Supreme Court adopted many of its recommendations, including a reduced daily court schedule and postponing the resumption of criminal jury trials until after September 1, 2020 and civil jury trial until at least January 1, 2021.

The report recognized the myriad challenges surrounding the resumption of jury work, including potential public reticence to serve as jurors, the need to ensure a safe environment for the trials, and the limited number of courthouses with adequate space to conduct jury trials. Recognizing both the importance of resuming jury trials and the challenges presented by doing so, the Supreme Court established another committee to consider the issues surrounding the resumption of jury trial in greater detail. Known as the Jury Restart Committee, the group is comprised of two Justices from the Long-Term Planning Committee, two trial judges, a Court Operations Manager, representatives of the State's Attorneys' and Public Defenders' offices, and a civil litigator selected by the Vermont Bar Association. Members are as follows:

Hon. Harold Eaton, Jr. *Co-Chair*
Associate Justice

Hon. Karen R. Carroll, *Co-Chair*
Associate Justice

Hon. Mary Teachout
Superior Court Judge

Hon. John Treadwell
Superior Court Judge

Rory Thibault, Esq.
Washington County State's Attorney

Mary Kay Lanthier, Esq.
Rutland County Public Defender

Susan Flynn, Esq.
Clark, Werner & Flynn, PC

Richard Perra, Esq.
Court Operations Manager, Windham Unit

The Jury Restart Committee (hereinafter the "Committee") divided itself into several sub-committees to study topic areas in greater detail and report back to the committee. These topic areas included procedural and general considerations necessary for resumption of jury trials; issues specific to the summoning of jurors; jury selection process; trial considerations; and recommendations requiring rule or statutory changes.

The Committee discussed the recommendations made by each sub-committee in detail, reaching consensus on issues wherever possible. This report reflects the recommendations adopted by the Committee, along with general guidance in certain areas where the Committee has not made more specific recommendations. Because civil jury trials will not be held until after January 1, 2021, and the circumstances of the pandemic may change drastically by then, these recommendations relate only to jury trials in the criminal division. The committee expects to reconvene before the resumption of civil jury trials to make further recommendations.

KEY TAKEAWAYS

The Committee emphasizes several broad points concerning the resumption of jury trials.

- First, this will be one of the most, if not *the* most difficult aspects of expanding judicial operations. This has already proven to be the case in other states and there is no reason to expect it will be any different here. Jury trials present special challenges in an environment where social distancing is necessary. The Judiciary continues to monitor and follow the guidance provided by the federal Centers for Disease Control and Prevention (CDC), Vermont Department of Health (VDH), and the Governor's Office in connection with these challenges. Even in the face of these public health challenges, the right to a jury trial is a bedrock principal of our system of justice. In order to serve these competing goals, we have recommended both short- and long-term changes in the conduct of jury trials to reflect the new realities posed by COVID-19. Nonetheless, the Committee recognizes that the path ahead will be challenging.
- Second, when jury work resumes, there will necessarily be many changes from the way things were previously done. Most evident among these is the amount of planning and coordination that will be necessary to safely conduct a jury trial. As has proven to be the case with other judicial hearings, jury selection and jury trials will certainly take longer, and perhaps much longer, than they did in the pre-COVID world.
- Third, it is not possible to anticipate all the challenges that will arise. This report provides insight into some of them and contemplates that on-the-ground experience will reveal additional issues to consider. Further, the Committee acknowledges that these experiences will also reveal the need to adjust recommendations that have already been made. Court staff, judges, lawyers, litigants, and the general public will need to be patient and flexible as we learn and improve our processes.
- Fourth, because of the extensive preparation required before the Judiciary even sends juror summonses, jury trials in the Criminal Division will not likely begin immediately on September 1, nor are they expected to begin at the same time across all units. Planning will take time and, as this report suggests, jury work cannot begin in a unit until that unit has a unit plan in place, potential jurors are educated about the safety measures in place, adequate plans for cleaning have been instituted, modifications to the physical layout or other accommodations to provide for social distancing have been made, and all air systems in courthouses have been determined to provide safe and adequate air handling. There is much work to be done on all of these fronts.

The co-chairs are grateful to Committee members for their diligent work in creating this report and to all those who dedicate their time and effort to make the Vermont Judiciary a continuing beacon of justice for everyone.

RECOMMENDATIONS

The Committee makes a series of recommendations in this report – 28 in total. They are intended to inform the actions of judges and court staff as it relates to the resumption of criminal

trials. The Committee also sees these recommendations as an important reference for lawyers and members of the public about the Judiciary’s plans to restart this critical element of Judiciary operations. The recommendations are organized into the following key areas:

- Physical Plant: Courthouses and Courtrooms
- Jury Summons and Pre-Jury Draws
- Jury Draws
- Jury Trials
- Unit Plans
- Statutory and Rule Changes

PHYSICAL PLANT: COURTHOUSES AND COURTROOMS

Recommendation 1: *Jury trials should be scheduled only in courthouses that can physically accommodate jury trials consistent with public health guidance.*

The Committee’s review of the layout and characteristics of courthouses throughout the state suggests that jury trials can be safely conducted in most, but not all, courthouses, but only with sufficient preparations identified below, and only if it is consistent with public health guidance in effect at the time. See Appendix A: Review of Courthouses and Courtrooms and their Suitability for Jury Trials for a preliminary projection of the counties in which jury trials can be held, and the number of jurors that can be accommodated, *as a matter of building space and social distancing*, without taking into account other necessary preparations described below or other statewide restrictions, which could change over time. Some courthouses cannot accommodate full 12-person juries, and some can do so only by displacing other court work. Six-person jury trials would be easier to accommodate in most courthouses if parties agree to fewer jurors so that fewer citizens would need to be summoned to appear personally in the courthouse.

Some courthouses have large courtrooms, but limited space in the building for other necessary purposes, such as rooms with enough space to serve as jury rooms with social distancing, or large enough to be conference rooms for attorneys and their clients. The availability of sufficient bathrooms to accommodate groups of jurors for voir dire, even if they come in staggered small groups, is another consideration.

Some courthouses could accommodate a jury trial only if done to the exclusion of other courthouse uses, so that priority cases such as juvenile and other criminal and emergency matters would need to be scheduled around trials or displaced to another courthouse.

A comprehensive list of courthouses and their suitability for jury trials is attached as Appendix A. This list is based on a preliminary review and should be more closely analyzed within each unit. A list of factors to consider in siting a jury trial is attached as Appendix B.¹

¹ The Committee did not gather information on non-courthouse facilities (e.g., town halls, auditoriums) that might be adapted for jury proceedings within a given county. The use of such alternative locales for criminal jury draw and trials may require substantial additional personnel to conduct security screenings or provide adequate supervision to an incarcerated defendant. There may also be costs and other logistical impediments (recording equipment, computer and internet access, holding cells/facilities, etc.) that would make utilization of such facilities

Recommendation 2: The use of courtrooms and space in courthouses should be reconfigured to accommodate social distancing requirements related to all jury activities.

Most courthouses will need to reconfigure seating arrangements of participants to meet social distancing standards. Traditional voir dire (50+ people in courtroom) is not possible in any courtroom or courthouse in the state. In all courtrooms, potential jurors will need to be spaced out 6 feet apart throughout the courtroom.

Recommendation 3: Protocols to mitigate health risks to jurors, litigants, and court staff should be in place before jurors are summoned to courthouses.

In addition to making physical adjustments, there are other preparations needed to ensure that a location is ready to accommodate a jury trial:

- **Cleaning.** Frequent, ongoing cleaning, done in the manner recommended by public health authorities, of courthouse spaces and surfaces is essential. Such practices are currently observed in some courthouses but seriously lacking in others. Concrete plans for adequate cleaning should be in place for a particular courthouse before summonses are sent for a trial. This will provide jurors with reasonable assurances as to the safety of the courthouse environment.
- **Safe air flow within the building.** Similarly, before jurors are summoned to a particular courthouse, its HVAC system should be evaluated and cleared for safety in order to avoid the spread of COVID-19 through building air circulation.² BGS has evaluated state-owned buildings and is taking steps to maximize air circulation in each building. The counties should arrange for an evaluation of their air handling as well.
- **Screening, spacing and masks.** Through Administrative Order and Administrative Directive, the Supreme Court and the Court Administrator, respectively, have issued guidance relating to screening, the use of face coverings, and social distancing. This guidance applies to potential jurors and those selected to serve as jurors. Accordingly, jurors should be screened for COVID risk at their entrance to the courthouse, maintain at least six feet apart from other people while awaiting screening and thereafter, and required to wear masks. For more details, see Recommendation #13

Recommendation 4: Courts should consider various factors before transferring venue to another county in order to hold a jury trial in an appropriate facility.

infeasible. The Committee recommends that the Court Administrator's Office issue guidance on the minimum requirements in terms of security, technology, and personnel to convene a trial outside of an established courthouse.

² For information about air flow and HVAC considerations, see:

- <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html> (last accessed July 16, 2020)
- <https://www.ashrae.org/technical-resources/resources> (last accessed July 16, 2020)
- <https://www.cidrap.umn.edu/news-perspective/2020/05/indoor-spread-covid-19-can-be-lessened-experts-say> (last accessed July 16, 2020)
- <https://www.sciencedirect.com/science/article/pii/S0160412020317876> (last accessed July 16, 2020)
- <https://www.washingtonpost.com/climate-environment/2020/06/26/coronavirus-indoor-air-schools-offices/> (last accessed July 16, 2020)

Courts possess significant discretion under V.R.Cr.P. 21(b) to change venue. The rule provides the court such discretion even over the objection of one or both parties. Courts should acknowledge that a change in venue may require prosecutors, defense counsel, and court personnel to travel and work away from their office.

Utilizing the jury pool of the county where a case is transferred may rapidly deplete the jury pool in smaller counties. This is an important consideration given that several of the most suitable court facilities are situated in less populated counties.

JURY SUMMONS AND PRE-JURY DRAW

Recommendation 5: The Judiciary should continue to draw names of potential jurors from its existing sources and should not at this time attempt to expand to additional sources.

The committee considered and rejected the idea of expanding the sources through which the Judiciary identifies potential jurors. Not only would increasing the number of sources for jury names provide the potential for securing more jurors, it would likely serve to provide a more diverse group of jurors. The reasons the committee ultimately did not recommend this course are set forth more fully below.

Title 4 V.S.A. § 952(a) provides that:

The Court Administrator...shall make rules regarding the qualifications, lists and selection of all jurors and prepare questionnaires for prospective jurors. Each Superior Court clerk shall, in conformity with the rules, prepare a list of jurors from residents of its unit. The rules shall be designed to assure that the list of jurors prepared by the Superior Court clerk shall be representative of the citizens of its unit in terms of age, sex, occupation, economic status, and geographical distribution.

Pursuant to § 953(b), the Court Administrator may:

Obtain the names, addresses, and dates of birth of persons which are contained in the records of the Department of Motor Vehicles, the Department of Labor, the Department of Taxes, the Department of Health, and the Department for Children and Families. The Court Administrator may also obtain the names of voters from the Secretary of State. After the names have been obtained the Court Administrator shall compile them and provide the names, addresses, and dates of birth to the clerk in a form that will not reveal the source of the names.

Thereafter, “[t]he clerk shall include the names provided by the Court Administrator in the list of potential jurors.” *Id.* The statute recognizes the need for adequate numbers of jurors (“There shall be continuous research for person qualified and liable for jury service, in order to obtain as many prospective jurors as necessary and in order to limit as many prospective jurors as necessary...”) § 953(c).

According to Stephanie Limoge from the Jury Administration Office, the Court Administrator’s Office originally used only voter registration lists as a source for juror names. For the last 30 or

so years, the Court Administrator's Office has also been using DMV driver's license lists and there does not seem to be an issue with the number of available jurors statewide. Ms. Limoge reports that, when the decision to add DMV as a source was made, she merely contacted DMV for a source of names. However, Judge David Suntag (Ret.) recalled that an effort was made to begin using lists from the sources described in § 953(b) above. However, this apparently failed because there was pushback from other state agencies, citing confidentiality concerns, even after it was made clear that only names and addresses were sought.

Ms. Limoge also reported that last year, the Judiciary paid \$10,000 to a contractor so that the voter registration and DMV records could be merged into one system, creating a master list for use with our software. A decision has been made to reload databases, if needed, every two years, so there is still one year left for use of the current database.

Considering the above, the Committee does not recommend pursuing additions to the lists of potential jurors at this time, but rather recommends that the Supreme Court consider expanding the jury pool in the future. We are undoubtedly at least several weeks away from the summoning of jurors and there are complicating factors, including costs associated with merging these lists into current lists and the fact the system already has a list that is in place for another year. Furthermore, we might risk protracted disputes with other agencies about the confidentiality of their lists, which would delay the Judiciary's plans to timely restart criminal jury trials. Finally, the number of available jurors statewide and in each county appears to be sufficient, even in the event jurors have to be excused due to pandemic-related issues.

Recommendation 6: The Judiciary should execute a public information campaign to educate the public about measures the Judiciary is taking to protect the safety of those entering courthouses.

Jury trial restart resources overwhelmingly recommend public outreach addressing the steps courts have taken to promote the safety of those entering courthouses. These resources also recommend that the Judiciary reach out to potential jurors, and the public generally, to highlight the steps that are being taken to protect them during jury service or when inside a court building for other reasons. To that end, the Judiciary should:

- Create a video recording of the Chief Justice, Court Administrator, or some other Judiciary official, outlining the steps the Judiciary is taking to ensure a safe environment for those entering court buildings, and the recording should be posted on the Judiciary webpage;
- To reach a larger audience, a similar official should publish an op-ed or commentary in local newspapers throughout the state describing same;
- An FAQ section regarding safety measures should be added to the Judiciary webpage, which will include the expectations for jurors when they arrive at the courthouse for jury duty; and

- Once courtrooms have been reconfigured for jury trials in a manner that is consistent with social distancing, the Judiciary Facebook page and Twitter feed should include pictures of such a courtroom, as well as links to other resources.

Recommendation 7: Jury summonses should include as much information as possible for prospective jurors including, in particular, information about safety measures.

The more information that the Judiciary can give jurors ahead of their service the better. To that end, information to be included in the summons packet provided to jurors should include, at a minimum, what the Judiciary, BGS, and the Assistant Judges, as stewards of county court buildings, are doing to minimize risk and protect jurors' safety while they are in Judiciary facilities and what the expectations are for jurors when/if they appear (screening protocols for entry into buildings, wearing masks, practicing social distancing, frequent hand washing, etc.). Jurors should also be informed about procedures at the courthouse so they understand what to expect upon arrival – for example, if they are to line up outside the summons packet should include that information—and then there should be clearly visible and understandable markings to ensure that jurors maintain six feet of separation.

Jurors should be notified that a request for deferment/excusal may be made and the directions for doing so. Any and all information provided should also be put on the Judiciary website.³

If a court is considering using video technology to conduct things such as remote preliminary voir dire or jury orientation, then further information regarding the platform used to do that, how the proceedings will be conducted and the technology requirements for using the platform should be provided to all potential jurors.

Recommendation 8: The Judiciary should take steps to identify and screen out jurors who have good cause to be excused before they get to the courthouse for a jury draw.

Through Administrative Order and Administrative Directive, the Judiciary is limiting access to Judiciary facilities to those who need to be there. Once jury trials resume this will obviously include jurors, who are performing a vital civic duty but are not voluntary participants in the process.

The Committee has identified two means of enabling the early identification and screening of jurors who have good cause to be excused or deferred. These are as follows:

First, the standard juror questionnaire should be revised, by either a committee of judges or the Criminal Division Oversight Committee, to include questions that may help limit the number of jurors with “cause” issues who appear at the courthouse. Case-specific supplemental questionnaires should do the same. This will enable the court and counsel to identify jurors who have conflicts, scheduling issues, health issues, or other potential grounds for excusal *before* the prospective juror comes to court. It is possible to make changes to the standard questionnaire. It does not make sense to have questionnaires specific to any single case or case type generated at the Jury Administration level however, given that doing so would require programming changes in Jury+ each time. Any such supplemental or more detailed questionnaires would need to be

³ The Jury Administration Office can add to or amend information contained in the summons packet provided to jurors, but there will be a time lag and increased printing costs and postage. Changes to juror questionnaires will require the Jury+ vendor to make software changes. The costs and timelines for doing this are unknown at this time.

sent out by the court where the jury is sitting. This is not problematic as courts have been doing this in certain cases for years. The difficulty may be in drafting standard questions for each case type.

Second, the use of video technology for remote preliminary voir dire in combination with the written jury questionnaire should be explored for its regular use. The purpose of this procedure would be to “weed out” those potential jurors who have obvious reasons why they cannot sit on a jury or on a particular jury, such as knowledge of the case or the parties, COVID-related concerns, or because of unavailability.

The federal court system’s Jury Subgroup issued recommendations for the restart of jury trials and grand jury proceedings. One of these recommendations is to prescreen jurors prior to appearance via questionnaires, with no mention of remote screening. Other jurisdictions are considering remote voir dire.

Recommendation 9: The Judiciary should develop guidelines relating to the remote handling of preliminary voir dire.

The Vermont Judiciary has come a long way securing equipment and implementing procedures for conducting remote hearings. By the time jury trials begin, it is hoped that every courthouse should be able to hold remote hearings with little difficulty. In addition, the Judiciary has secured COVID funding for equipment and staff to assist each court unit in its efforts to successfully conduct remote hearings and to troubleshoot when needed.

Of course, there are challenges associated with use of this technology. In particular, not all Vermonters have access to the required equipment or adequate internet access. In addition, although it is unlikely to arise in a preliminary voir dire (as opposed to the traditional voir dire), a question may be asked that requires a response which would trigger the need for individual voir dire. The Judiciary would need to plan for this eventuality; the solution may be as simple as requiring the juror to appear in-person at the next step in the process, or it may involve something like private questioning in a virtual “break-out room” if the technology being used supports such a thing.

If the Court and Court Administrator support the use of remote technology to conduct a preliminary voir dire for the purpose of reducing foot traffic in the courthouse, the following steps are recommended:

- Preliminary questionnaires sent to jurors should inquire whether the juror has access to adequate equipment, including the Internet, and a quiet place that lends itself to participation;
- A description of the devices that are compatible with the court’s systems should be included in the questionnaire to jurors and posted on our web page;
- Each unit should conduct an assessment of sites within its county (e.g., justice centers, libraries, etc.) where prospective jurors may go to access or use the equipment needed to support their participation, including the Internet.

- Information describing the process for participating remotely in certain juror activities should be placed prominently on the Judiciary’s web page;
- The Judiciary should appoint a committee to decide how best to conduct remote, preliminary voir dire consistent with currently available equipment; to identify any additional equipment that is required; to conduct local training of technology staff or assigned court staff prior to initiating this process; and to conduct a pilot project and test runs prior to implementation; and
- Units in in areas with limited broadband access may choose to conduct this preliminary voir dire in person or in combination with remote access.

Recommendation 10: Judges should follow standardized policies, developed by the Chief Superior Judge, granting excusal/deferral requests as a matter of course for at-risk individuals or individuals who may pose a risk and granting them liberally for other COVID-related reasons.

At some time after September 1, we will be requiring our citizens to report to a location outside their homes, sit in the same room with strangers, and assume that the safety measures we have put in place to protect them from contracting a serious virus are adequate. It is likely that many of these prospective jurors have rarely left their homes or had contact with anyone other than family members for months. Many of these individuals will be terrified at the prospect of doing so, and likely, will not be able to put this concern aside and focus on the task at hand. Other potential jurors will present with risk factors or family obligations that will not allow them to serve.

In this time of uncertainty, the Judiciary should have a consistent response to requests for excusal so as to instill confidence in the process. In particular, as a statewide policy, judges should defer service for jurors who request excusal for the following reasons:

- They are currently suffering COVID symptoms as defined by the CDC and VDH;
- They are at-risk for contracting the virus as defined by the CDC and VDH; or
- They have been exposed to a person with COVID within the last 14 days

Judges should liberally grant jury deferrals for jurors who request excusal for the following reasons:

- They have a fear of contracting COVID that would result in the juror being unable to fully engage in the trial process;
- They are home-schooling or caring for children who would normally be in a school setting;⁴

⁴ It is uncertain what the childcare situation will look like in September. If it is largely unavailable, jurors who lack childcare should also be excused automatically.

- They are caring for an adult family member; or
- They work with a high-risk population

Recommendation 11: The Chief Superior Judge, in consultation with trial court judges, should develop guidance for consistent responses to jurors who do not respond to the jury questionnaire or appear for jury draw.

It is to be expected that some people will choose not to respond to the initial juror questionnaire and/or not to appear in court as directed. Because of the largely nationwide cessation of jury trials during recent months, insufficient data exists to accurately predict a percentage of non-response or non-appearance by summoned jurors in light of COVID-19.⁵ It is reasonable to anticipate, however, that response rates will be lower and non-appearance and requests for excusal/deferral will be higher than before the pandemic.⁶ Historically, it was left to the discretion of judges at the local level as to how to respond in these instances. Given the heightened concerns in light of the COVID-19 pandemic, it is only fair to those potential jurors who do honor their responsibility for jury service that at least a minimum uniform consequence is incurred by those who ignore it. Under current circumstances a consistent state-wide response is also important. Accordingly, while the Committee makes no specific recommendation on what the consequence for non-response or non-appearance should be, it does recommend that the Chief Superior Judge, in consultation with the trial judges, adopt a uniform procedure to be followed in the trial courts in the case of knowing failure to respond to the juror summons or to appear for jury service. The procedure shall be consistent with the penalty provisions of Vermont Rules of Selection and Summoning of Jurors Rule 9 and 4 V.S.A. §§ 958 and 961.

JURY DRAWS

Recommendation 12: Judges should consider implementing negotiated plea cutoffs.

The court, counsel and parties must expect that on the day of draw, the case will be drawn or the State will dismiss the charge. Especially in criminal cases there must be no negotiations on the courthouse steps on the day of jury draw because such negotiations invariably result in delays in jury selection and therefore delays in getting the jury selected. Courts shall identify and have ready a backup case to be drawn so that if the lead case does not draw, summoned jurors will be utilized. The goal is to have jurors come to the courthouse only when necessary and to accomplish the necessary purpose as efficiently as possible once they have arrived. Staggered report times would likely allow the back-up case to proceed if the scheduled case was resolved on the day of jury selection.

⁵ See "Reestablishing Jury Pools in the COVID-19 Era," a June 4, 2020 webinar hosted by the National Center for State Courts, at <https://vimeo.com/426265829> (last accessed June 16, 2020).

⁶ See United States Courts, COVID-19 Judicial Task Force, Report of the Jury Subgroup: "Conducting Jury Trials and Convening Grand Juries During the Pandemic," June 4, 2020, at https://www.uscourts.gov/sites/default/files/combined_jury_trial_post_covid_doc_6.10.20.pdf (last accessed June 16, 2020).

Recommendation 13: Courts should structure jurors' arrival at the courthouse and screening to ensure social distancing.

Jurors should be summoned in a manner that prioritizes juror health and safety. Jurors have historically been summoned in (relatively) large numbers and waited at the juror entrance to be checked in. These practices are not consistent with Judiciary or VDH requirements and result in unnecessary congregation. The unit plans must address what courthouse entrance jurors should use and processes for ensuring social distancing by jurors while entering the building – such as through the presence and with the assistance of court security. Jurors must be screened at the entrance pursuant to A.O. 49, ¶ 7(b). Jurors that answer affirmatively to a screening question or refuse to answer them will be refused entrance to the courthouse. If temperature checks are to be implemented as part of screening, such checks should be implemented on a statewide basis. Jurors should not be required to sign in – the security screeners should check off the names of jurors that have appeared on the summons. All jurors must wear a mask upon entering the courthouse and at all times while in the courthouse unless otherwise authorized by the Court Administrator. A.O. 49, ¶7(c). Jurors who arrive without a mask will be provided with one. Jurors who are unable to wear a mask for a medical reason will have their service deferred if this is a permanent condition

Upon completing screening, jurors should be directed to a space – whether a courtroom, a jury room or other space within the courthouse – where social distancing can be maintained. There must be sufficient court personnel present to ensure that jurors maintain social distancing during this process.

Each panel group of jurors should be excused and directed to leave the courthouse as soon as voir dire of that group is complete.

Consideration must be given as to how jurors will leave the building safely and how access to bathrooms will be managed. It is expected that jurors will not leave and return to the courthouse during voir dire.

Recommendation 14: Courts should adjust their jury selection processes to ensure social distancing.

No more jurors may be summoned at one time than the courthouse can properly manage consistent with social distancing. Thus, there may be substantial variation among courthouses as to the number of jurors who can appear in one panel for jury selection – some courtrooms may be able to accommodate significantly more than 25 persons, while remaining subject to occupancy standards established by VDH guidance and while maintaining social distancing. Each unit plan for resumption of jury trials must identify the maximum number of potential jurors that may be present in the specified courthouse while maintaining social distancing or otherwise complying with VDH guidance.

Courts should consider using multiple courtrooms for voir dire and/or staggered report times for each group.⁷ Thus, for example, in a courthouse with two courtrooms capable of safely seating 20 jurors, 20 potential jurors could report at 8:30 and be placed in courtroom 1 for orientation and voir dire, a second group of 20 could report at 10:30 and be placed in courtroom 2. A third group of 20 could report at 1:30 and be placed in courtroom 1 after the courtroom is cleaned. Even with just one courtroom, the court may schedule a series of small groups for voir dire in staggered sessions (e.g., 8:30 am, 10:30 am, 1:00 pm).

Challenges for cause should be addressed with each group and peremptory challenges only addressed once a sufficient pool of qualified jurors is obtained. Once a sufficient pool of qualified jurors has been obtained, any subsequent groups scheduled to appear that day should not appear.

All participants must understand that jury selection will take longer, and in some cases substantially longer, than was the case prior to the pandemic.

Recommendation 15: In scheduling jury draws, courts shall implement a “one case per day” jury draw plan, with an available back-up, and increase their reliance on “pick-and go” processes.

With respect to counsel and parties to the trial, especially incarcerated defendants, each unit shall implement a “one case per day” jury draw rule, with an available backup case to draw as opposed to multiple scheduled cases. This will avoid the possibility of multiple incarcerated criminal defendants from different facilities coming into contact with one another, limiting the cross-exposure of counsel and court personnel involved in different matters, and providing the opportunity to “rest” facilities overnight and to clean them before introducing new personnel or parties.

In the context of criminal trials, courts should consider splitting the total juror venire into smaller groups and setting aside multiple dates certain during a month to proceed under the “pick and go” process. For example, drawing a jury and immediately proceeding to trial will minimize the risk of jurors or parties unknowingly coming into contact with individuals suffering from COVID-19 between jury selection and the trial itself, and though not strictly “sequestration” the effect may be similar from a health standpoint. Picking only one jury per day will also minimize the total number of jurors that need to report for any given draw, e.g. a total pool of 150 jurors could be split into three subgroups of 50 that report on the first, second, and third Mondays of a given month – allowing for three jury trials to proceed in such month, and never having all jurors appear together as a consolidated group.

Recommendation 16: Courts must take particular care to avoid inadvertent disclosure of a defendant’s custodial status.

Particular care must be taken when conducting voir dire with in-custody defendants. The level of security required should be determined by the custodian – whether a Sheriff or the Department of

⁷ See, e.g., United States District Court, District of Nebraska, Ad Hoc Committee to Recommence Jury Trials – Report (June 1, 2020), at <https://www.ned.uscourts.gov/news/ad-hoc-committee-recommence-jury-trials-report> (last accessed June 16, 2020).

Corrections. Courts must consider what steps are necessary to ensure that a defendant's custodial status is not inadvertently disclosed.⁸ If leg shackles are required then there must be screening in place to ensure that this cannot be observed by jurors. The court should consider that jurors will be seated around the courtroom and may have a clearer view of a defendant than is typically the case. Courts must also consider that the presence of additional security personnel may mean that fewer jurors can be in the panel group consistent with social distancing requirements and room capacity limits.

Recommendation 17: Courts should plan for more intensive staffing than usual for jury draws (and jury trials).

Managing jury activities in a manner that is consistent with necessary safety precautions will call for significant additional demands on court staff, including pretrial planning as well as management of the jury during voir dire and trial. Staff will also need to maintain other court work. Some courts are thinly staffed, even if the space is suitable, and could need assistance from staff in other courts. All persons coming to the courthouse need to go through screening before they can enter a courthouse, which will require not only security staff but court staff as well (some persons can likely be excused for cause without entering the courthouse for voir dire). The enforcement of social distancing requirements for jurors awaiting entry into the courthouse will need management during screening, including outdoors, even if jurors are scheduled to arrive in staggered groups. This could be particularly difficult in winter.

Recommendation 18: Courts should adapt juror orientation programs to ensure access, consistency of message, and social distancing.

Orientation poses a challenge since, in many courthouses, it is highly unlikely that an entire panel will be able to be present together at one time. Remote/video orientation may be a possibility in some areas of the state. However, the digital divide – the gap that exists between those who have reliable access to information and communications technology and those who do not – poses further challenges. There are counties with limited access to broadband and limited cell service. Courts should employ alternatives to traditional jury orientation for routine matters; for example, use of an orientation video at the courthouse could help ensure that all jurors in a panel receive the same orientation about non-case-specific information. The Court Administrator's Office, in consultation with the Chief Superior Judge, could make this video and see that it is made available for viewing by potential jurors on-line. Separate videos for civil and criminal panels may be required. It is important that if jurors are separated in panels, they receive a consistent orientation.

Recommendation 19: Courts should maintain contact with jurors selected to serve.

The use of staggered panels may result in jurors leaving the courthouse unaware of whether they will actually serve as a juror. To guard against this, the court must establish a process for informing them whether they have been selected or excused. It is imperative that the court have efficient and effective methods of communicating with jurors who have participated in voir dire.

⁸ Ad Hoc Committee, id.

In selecting a particular procedure, courts must consider that persons should only report to the courthouse if it is necessary for them to do so.

Recommendation 20: Courts should ask parties whether they agree to a jury of less than twelve.

As set forth in the recommendations that follow, the Committee does not advocate mandating smaller jury sizes. However, parties may agree to juries of less than twelve, which would mitigate some of the challenges of social distancing in the context of a jury draw. Thus, in all cases the trial judge should ask the parties whether they will agree to a jury of less than 12.

JURY TRIALS

Recommendation 21: Each unit's plan for resuming jury trials must address the full range of jury activities.

Plans for resuming jury trials must provide for a safe, organized, and orderly process. Accordingly, plans must address the following:

- Juror screening and courthouse entry. The plan must explicitly address how jurors will enter the courthouse and be screened. This information should be provided to jurors at the time they are informed that they have been selected to serve on a petit jury.
- Providing adequate space for jurors outside the courtroom during a trial. The plan must identify a space in the courthouse that the jury may use as a jury room during trial. The space must be configured to ensure that jurors maintain social distancing. Courts should provide lunch for jurors during trial and require jurors to remain at the courthouse during each day of trial.
- Establishing courtroom procedures during trial to ensure adequate social distancing and health and safety requirements are met. The plan must note the capacity of the courtroom in light of social distancing and address how the parties, court, court personnel and witnesses will enter and leave the courtroom. These must include processes for in-custody defendants. The plan should address how counsel will communicate among themselves and with clients in a manner that is consistent with social distancing guidelines. The plan must also address bench conferences, though the Committee notes that due to social distancing requirements bench conferences are to be discouraged.
- Witnesses and evidence. Witness stands must have plexiglass screens on three sides, must be cleaned after each witness exits the stand, and must be placed at least six feet from any person in the courtroom. The witness stand must be in a location where all parties and jurors can clearly observe the witness. Units should not use courtrooms for jury trials that cannot provide either adequate isolation for the witness stand or adequate sight lines to the witness stand for parties and jurors. To the extent possible, documents and exhibits should be managed electronically. Technology should be used to limit the need for physical objects to be handed from one person to another. Similarly, technology should be used to publish exhibits to the jury.

- Public access. Court procedures must account for the public’s right of access to court proceedings. To the extent possible, all jury trials should be livestreamed.
- Juror deliberations. The plan must address jury deliberations including where deliberations will occur and, if deliberations are to occur in the courtroom, procedures to ensure the confidentiality of deliberations.

Recommendation 22: Courts should ensure that all issues related to remote appearances and use of technology or other issues implicating statutory or constitutional rights are fully addressed at the pre-trial conference.

Recommendation 23: The Court should consider establishing pilot projects in the long run, for the use of virtual courtrooms.

The Committee recommends that the Judiciary consider establishing pilot projects for use in the long run of virtual courtrooms. Research and Information Services has indicated that there are no technological barriers to conducting trials with jurors in a remote location.⁹ Courts should review existing spaces to determine whether virtual courtrooms could be set up in each courthouse in the unit.

UNIT PLANS

Recommendation 24: Each unit must develop a Unit Plan for resuming jury trials which must be approved by the Chief Superior Court Judge and Chief of Trial Court Operations. No juror summonses should be issued until a unit has developed a Unit Plan.

Each unit must develop a Unit Plan for resuming jury trials. The plan must address the issues raised in the recommendations above, including the following:

- Designation of the courtrooms or other available spaces to be used for jury draws and trials. The plan must note the modifications to seating or configuration that are necessary to conduct jury trials in those spaces. If no spaces are available, the plan should identify the nearest unit(s) with adequate jury trial space.
- Movement in courtroom spaces while ensuring social distancing. The plan must address how the parties, court, court personnel and witnesses will enter and leave the courtroom. These must include processes for in-custody defendants. The plan should address how counsel will communicate amongst themselves and with clients in a manner that is consistent with social distancing requirements. The plan must also address bench conferences, though the Committee notes that due to social distancing requirements bench conferences are to be discouraged.
- Space for jurors outside the courtroom. The plan must identify a space in the courthouse that the jury may use as a jury room during trial. The space must be configured to ensure that jurors maintain social distancing.

⁹ See “Utah State Courts – Virtual Jury Presentation with Judge Comments v1.5,” (June 8, 2020) at <https://youtu.be/Zvsqf8qeaVU> (last accessed June 16, 2020).

- Jury summoning and selection. The size of the jury panels to be summoned, and the method of jury selection to be used to ensure social distancing. The use of multiple courtrooms and staggered arrival times should be considered.
- Scheduling protocols. The plans must indicate whether the court will draw more than one jury in a day, and whether and how back-up cases will be scheduled.
- Juror screening and entering the courthouse. The plan must address in a detailed fashion how jurors will enter the courthouse and be screened, including how social distancing measures will be enforced during periods jurors are waiting to be screened.
- Cleaning protocols. The plan must address the cleaning protocols that will be followed in connection with the resumption of jury operations. The plan must also specify who will be responsible for the cleaning.
- Air circulation. The plan should confirm that air flow within the space has been maximized and is that HVAC systems have been deemed sufficient to address COVID-related air quality concerns associated with Judiciary operations.
- Enforcement of social distancing requirements. The plan must include details on who will be responsible for enforcing social distancing requirements and how it will be done.
- Juror communications. The plan must include information to be included in the jury summons packet addressing the matters noted above.
- Provisions for remote jury activity. The plan must address whether the unit has the capacity to conduct remote, preliminary voir dire and if so, the plan for employment.
- Juror orientation. The plan must indicate how juror orientation will be conducted.
- Custodial defendants. The plan must include measures to ensure that jurors don't inadvertently learn of an inmate's custodial status.
- Trial processes: The plan must address the matters set forth in recommendation #21.

Unit plans must address how people— whether parties, attorneys, jurors, the public, media, court officers or court staff – will comply with social distancing guidance for public settings established by the VDH.¹⁰

All procedures for jury selection and trial should be reviewed with counsel in advance of jury selection.

¹⁰ See “Supreme Court Long-Term Planning Committee: Ramp-Up Report,” May 13, 2020, at <https://www.vermontjudiciary.org/about-vermont-judiciary/blueprint-expansion-court-operations> (last accessed July 17, 2020).

The Committee recommends that proposed unit plans be reviewed at a Bench/Bar conference before adoption. Each plan must be submitted to and approved by the Chief Superior Judge and the Chief of Trial Court Operations or their designee, who may wish to consult with a representative of the Vermont Department of Health or other public health expert in reviewing the plans. Unit plans should also identify the highest priority cases for jury trials. Criminal cases needing trials urgently (e.g., trials involving detainees held without bail who are overdue for trial) should be reviewed on a statewide basis and priority given to these cases in determining trial location and scheduling trials. The Chief Trial Judge and trial judges sitting in the criminal divisions of each unit can determine priority cases.

In creating its plan, each unit should prioritize its own cases and create a scheduling plan. If a unit cannot accommodate the jury trial needs of any of its cases that unit, together with the Chief Superior Judge and Chief of Trial Court Operations, should coordinate with other units to seek an alternate venue. Judges and court staff should immediately begin holding pretrial and settlement conferences for criminal cases to plan for the courthouse/trial needs of each case so that the Unit Plan can be adopted and a planned schedule of cases can be laid out without delay. Some cases may be tried within the county; others tried locally only if there are agreements to reduced jurors or the number of peremptory challenges; others may need venue change planning.

STATUTORY AND RULE CHANGES

Recommendation 25: *Although courts should invite parties to agree to fewer than twelve jurors, the Committee does not recommend a mandatory reduction in jury size. The Committee was unable to reach a consensus on a recommendation to implement juries of less than 12 for misdemeanor offenses. The Committee recommends that the Court ask the Legislature to examine striking the right to a jury trial for fish and game offenses and traffic ticket appeals.*

No Vermont statute expressly provides for 12 person juries in criminal cases. V.R.Cr.P. 23(a) requires a 12-person jury absent a written waiver signed by both parties and approved by the court. V.R.Cr.P. 23(b). The Vermont Supreme Court has noted that “[o]n several occasions, this Court, while passing on related issues, has noted that defendants have a constitutional right to be tried by a common-law jury of twelve....” *State v. Machia*, 155 Vt. 182, 194 (1990). Any stipulation to a jury of less than 12 should be accompanied by a colloquy with the defendant.

To reduce the number of people in the courtroom and the number of jurors that must be summoned, judges should enquire as to whether the parties would agree to a jury of less than twelve. Having in mind the oft-stated common law requirement of a jury of 12 but noting that juries of less than 12 are used in a number of jurisdictions, the Committee does not make a specific recommendation regarding smaller juries but, as stated above, recommends that the Supreme Court ask the Legislature to examine striking the right to a jury trial for fish and game offenses and traffic ticket appeals.

Recommendation 26: *The Committee recommends that the Court immediately request the Criminal Rules Committee to consider, at least on a temporary basis, whether peremptory challenges should be limited.*

V.R.Cr.P. 24(c)(3) provides that both parties shall have six peremptory challenges. Similarly, pursuant to 12 V.S.A. § 1941 “upon the trial of a cause in any court, each party, including the State, may peremptorily challenge six jurors and any further number for cause.” The Court has noted that challenges are:

an essential element of his right to a jury trial. That a respondent must be accorded such an opportunity is undoubted. Without it, he is not given the full benefit of his constitutional right. A liberal, though not unlimited (*State v. Bosworth*, 86 Vt. 71, 83 A. 657), opportunity to examine the jurors drawn, to test and consider their respective qualifications, to assert and exercise the right of challenge given him by the statute, is, no doubt, essential to the full enjoyment of a respondent's right to a jury trial. *State v. Mercier*, 98 Vt. 368, 127 A. 715, 716 (1925).

The rule and statute mean that a panel of 24 qualified jurors may be needed to ensure that a jury of 12 is picked. Reducing the number of peremptory challenges would reduce the necessary pool of qualified jurors. For example, a panel of 16 qualified jurors would be sufficient for a jury of 12 if each party had two peremptory challenges.

A number of states provide for fewer challenges. New Hampshire provides for three each for all non-capital offenses other than 1st degree murder. Maine provides four for all offenses other than Class B or C and life imprisonment cases.

While it would require amending both the statute and the rule, reducing peremptory challenges would significantly reduce the size of the necessary jury pool and the need for larger courtrooms. Additionally, peremptory challenges have been subject to criticism. See, e.g., *Miller-El v. Dretke*, 545 U.S. 231, 266–73 (2005) (Breyer, J. concurring). Justice Breyer quoted Justice Marshall’s concurrence in *Batson v. Kentucky*, 476 U.S. 79 (1986) where he noted that “the only way to ‘end the racial discrimination that peremptories inject into the jury-selection process,’ he concluded, was to ‘eliminat[e] peremptory challenges entirely.’” *Miller-El*, 545 U.S. at 266–67 (quoting *Batson*, 476 U.S. at 102–103). There is no federal constitutional right to peremptory challenges.

The Committee recommends that the Court immediately request the Criminal Rules Committee to consider, at least on a temporary basis, whether peremptory challenges should be limited. As an example, a structure where six peremptory challenges would remain available for life felonies, four for other felonies and two for misdemeanors would allow for reduced sizes of jury pools for less serious offenses, enhance opportunities for social distancing and still provide the parties with the opportunity to ensure a fair and unbiased petit jury. The rules committee should also consider whether to re-adopt a “pass is not a strike” rule as a counterbalance to reducing the number of peremptory challenges.

While the practitioner members of the Committee did not receive positive feedback for this recommendation among their respective peer groups, it was recognized that adoption of these measures may reduce the number of jurors required to appear in order to empanel a jury, and thus, eliminate prospective venue issues by permitting a broader set of courtrooms throughout the state to be utilized.

The Committee recommends that if the Court supports reduction of preemptory challenges and a request is made to the legislature to amend 12 V.S.A. § 1941, that the reduction of preemptory challenges be temporary and tied either the duration of Supreme Court Administrative Order 49 and other executive or Judiciary emergency declaration or directive. However, parties may agree on a voluntary basis to reduce the number of preemptory challenges in a specific case.

Recommendation 27: The Court should adopt an emergency rule authorizing judges to conduct preliminary voir dire questioning of jurors, while allowing counsel and self-represented litigants to follow up with questions concerning matters such as bias.

V.R.Cr.P. 24(a)(3) provides the attorneys with primary responsibility for conducting voir dire. Attorney-led rather than judge-led voir dire has traditionally been the practice in Vermont.¹¹ The ABA Standards for Criminal Justice do not follow this practice. These standards provide as follows:

- (a) Questioning of jurors should be conducted initially by the court, and should be sufficient, at a minimum, to determine the jurors' legal qualifications to serve.
- (b) following initial questioning by the court, counsel for each side should have the opportunity, under the supervision of the court and subject to reasonable time limits, to question jurors directly, both individually and as a panel.¹²

The Commentary notes as follows:

whether the attorneys should directly question jurors, is however, more controversial. Section (b) provides that the attorneys, as well as the judge, should have the right to question prospective jurors directly, although under the supervision of the trial judge. Voir dire procedures vary in state courts with thirteen states permitting voir dire questions to be asked by the judge alone and twenty states giving counsel the right to primary questioning of the jurors; other states leave examination to the judge and counsel, with the judge beginning the questioning and counsel having the right to question jurors directly at the conclusion of the judge's examination.

...

These standards reflect the conclusion that voir dire by the judge, augmented by attorney-conducted questioning, is significantly fairer to the parties and more likely to lead to the empaneling of an unbiased jury than is voir dire conducted by the judge alone. A simple, perfunctory examination by a judge does not "reveal preconceptions or unconscious bias," that bias characterized by the "inability to recognize itself."¹³

¹¹ See V.R.C.P. 47 – Reporter's Notes, and V.R.Cr.P. 24 – Reporter's Notes.

¹² ABA Standards for Criminal Justice – Discovery and Trial by Jury (3d. ed. 1996). See Standard 15-2.4.

¹³ Id., at 157; 160.

If, as expected, voir dire will be conducted with the panel broken into smaller groups, the trial judge should play a more significant role in voir dire. Consistent initial questioning of each panel group should help ensure that an adequate record exists for each party to exercise challenges. V.R.Cr.P. 24(a)(3) should be amended to reflect the language in Standard 15-2.4 (a) and (b), with initial questioning conducted by the judge and follow-up questioning by counsel. The Committee recommends the court adopt an emergency rule to this effect for the duration of the emergency.

Recommendation 28: The Judiciary should advocate for an increase in statutory juror fees and request an increase in its legislative appropriation to cover the cost.

Juror pay is established by 32 V.S.A. § 1511. Currently the per diem rate for juror fees is \$30 per day, on request, unless otherwise compensated by their employer. Reimbursement for travel is allowed upon request and with a showing of hardship. The \$30 rate for jurors' fees was established in 1977. It has not been raised in the ensuing 43 years.

While jury service is a civic duty, the importance of jurors to a well-functioning judicial system is underscored by the current pandemic. The existing juror fee and expense reimbursement allowance is out of date and woefully inadequate. The Committee recommends the Judiciary advocate for an amendment to 32 V.S.A. § 1511, to update the per diem fee allowance and expense reimbursement for jurors, and to eliminate the disallowance of the juror fee if the juror is otherwise compensated by the employer.

APPENDICES

APPENDIX A: REVIEW OF COURTHOUSES AND COURTROOMS AND THEIR SUITABILITY FOR JURY TRIALS PENDING SPECIFIC EVALUATION IN UNIT PLANS

Courthouse Information by County

Addison

- Could accommodate 6-person jury
- Courtroom not large, but additional spaces are available throughout building
- Could do voir dire virtually by isolating prospective jurors in separate rooms with laptops
- Staffing ability will be compromised by Odyssey rollout starting 9/1/20
- Limited juror pool for out-of-county cases due to population

Bennington

- Criminal/Family Courthouse
 - Could accommodate jury trials if problems below solved
 - Courtroom is sufficient with adjustments (max of 20 people)
 - Jury room not big enough but second courtroom could be used for jury room
 - One conference room is large enough for attorney client conferencing
 - Inadequate cleaning has been a serious problem
 - Understaffing is a problem, especially with the Odyssey rollout starting 9/1/20
 - Good bathroom access

- Separate courthouse available for other courtroom needs during trials
- County Courthouse
 - Spaces are small; not suitable for jury work

Caledonia

- Can accommodate jury trials; the courtroom is large and other spaces are adequate
- Holding cell facilities are good
- The cleaning issue needs review and clarification
- Managing voir dire could be difficult; many questionnaires are not returned

Chittenden

- Costello Courthouse
 - The building has adequate architectural features
 - Staffing ability will be compromised by Odyssey rollout starting 9/1/20
- County Courthouse
 - Could accommodate 6 person juries, not 12
 - Jury room not large enough, but second courtroom available for jury room
 - Attorney conference rooms are large enough for 2 people
 - Air flow is a serious concern; need HVAC evaluation; windows do not open
 - Staffing ability will be compromised by Odyssey rollout starting 9/1/20
 - Insufficient cleaning
 - Press and public access may be limited during voir dire and trials

Essex

- Too small to conduct jury trials and maintain compliance with social distancing requirements; insufficient space for all necessary uses

Franklin

- Lake Street Courthouse: poor prospects for 12-person juries
 - 2 courtrooms, but poor acoustics and sight lines to witness box
 - Good holding cells
 - Holding cells and conference rooms tight; conference by laptop possible
 - No jury deliberation room available for more than 6 jurors
 - Staffing insufficient for jury management
 - Current cleaning level insufficient
 - Questionable whether press and public access could be accommodated
 - 6-person juries could probably be accommodated
- County Courthouse
 - Courtroom is large enough for jury trial
 - Building could possibly accommodate up to 6-person jury
 - No holding cell; no elevator; steep staircase in public view
 - No room sufficiently large for more than 6-person jury room

- Air circulation is poor in areas of in-person density; risk of infection spread
- Poor bathroom access
- Cleaning is inadequate
- Sequestration of witnesses difficult due to space limitations

Grand Isle

- Too small to conduct jury trials and maintain compliance with social distancing requirements; insufficient space for all necessary uses

Lamoille

- Space reasonable for jury trials; 25 people fit in courtroom
- Good PA system in courtroom
- Second courtroom available for jury room
- Inadequate cleaning (only occurs once a day now)
- Problem of access to bathrooms; none on 2nd floor
- Holding cell available
- Limited juror pool for out-of-county cases due to population

Orange

- Can accommodate jury trials if other court uses are scheduled around them or moved
- Courtroom is large (jury box and grand jury box); other spaces in building are available
- Jurors waiting to enter courthouse would have to wait in cars
- Limited juror pool for out-of-county cases due to population
- Holding cell at local sheriff's office
- Excellent cleaning occurring on ongoing basis throughout the day

Orleans

- State building
 - Cramped space; poor acoustics; not suitable for jury trials
- County Courthouse
 - Large courtroom with good acoustics
 - 2 sufficient attorney conference rooms
 - No elevator; steep staircase, only a stair climber
 - Bathrooms inadequate
 - Holding cell available next door in State building
 - Unable to assure adequate cleaning at this time
 - Staffing is thin
 - Unknown effect of air conditioning on air flow

Rutland

- Criminal/Family Courthouse
 - Could accommodate jury trials (20 people possible in large courtroom)

- Limited access for public and press if full jury with alternates
- Second courtroom usable for jury room
- Holding cell available
- Only one room large enough for conferencing with social distancing
- Second courthouse available for displaced court needs
- Candidate for pilot trial using virtual technology
- Livestreaming possible
- Staffing ability will be compromised by Odyssey rollout starting 9/1/20
- County courthouse
 - Large courtroom
 - Other spaces probably too small for jurors or use as conference rooms

Washington

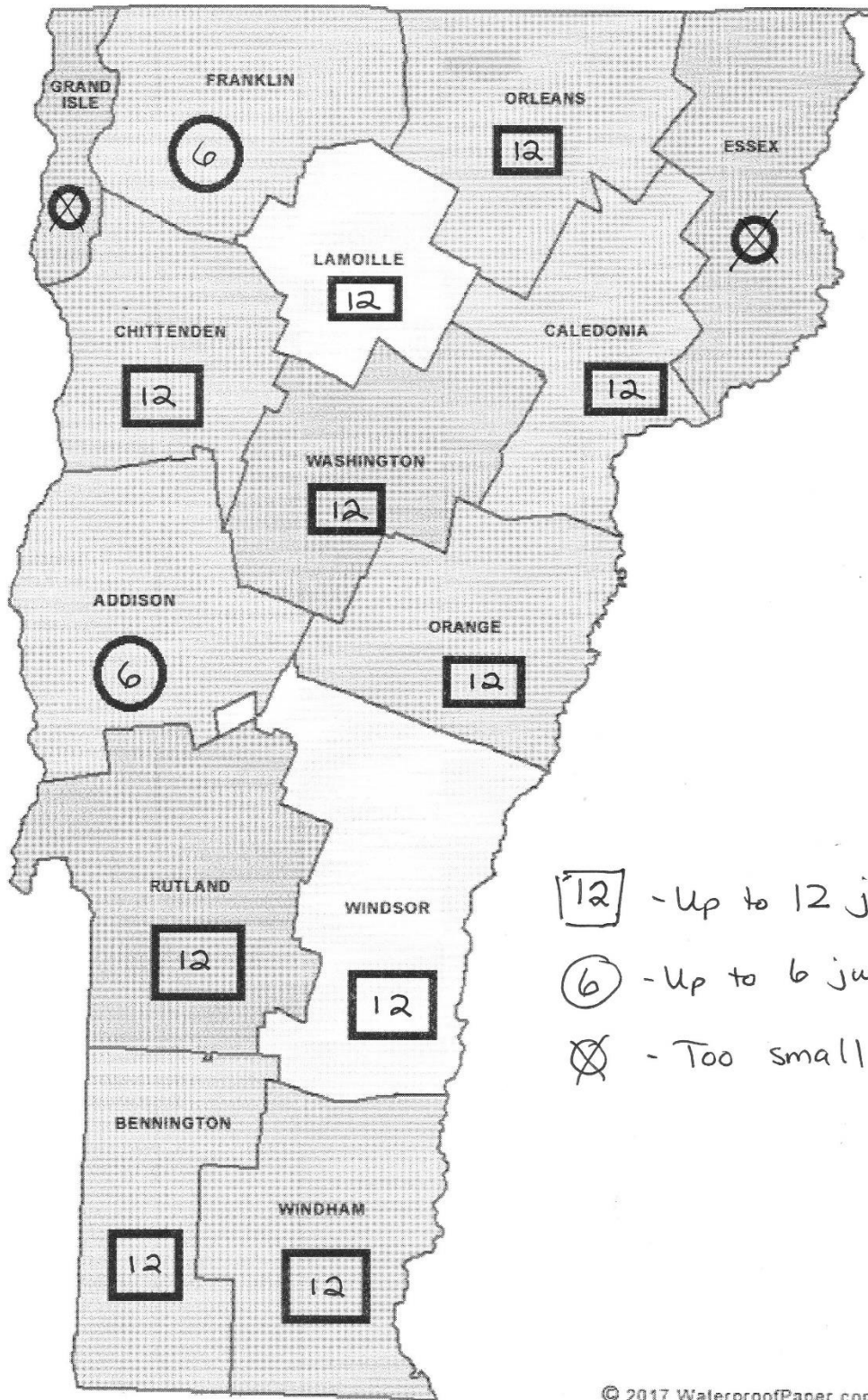
- Courthouse in Barre
 - Space reasonable for full jury trials
 - Second courtroom available for voir dire and jury room
 - Holding facility available
 - One large conference room available; States Attorney's office is in same building
 - Problem to be solved: cleaning is unresolved ongoing issue
 - Adequate bathrooms are available, assuming cleaning issue is resolved
 - Livestreaming possible if personnel available to run it
- County Courthouse in Montpelier
 - Large courtroom that could accommodate jury trial including press/public
 - Sufficient spaces for attorney/client conferences
 - Jury room could fit 14—barely (tight); no alternative space
 - No holding cell; poor ability to bring in defendant in custody unseen by jury
 - Inadequate cleaning protocols (only cleaned once at night)

Windham

- Courthouse in Brattleboro
 - Two large courtrooms, each of which may seat enough for 12-person jury
 - Second courtroom could be used for jury room
 - Some conference rooms could be used compatible with social distancing
 - Can accommodate jury trials with rescheduling of other court uses
 - Holding cell available
 - Candidate for pilot using virtual technology
 - Livestreaming is a possibility from third courtroom
- Courthouse in Newfane
 - Available for family/other work from Brattleboro

Windsor

- Courthouse in White River Junction
 - Two courtrooms, each of which could accommodate jury trials
 - Large room available for jury room
 - Two holding cells
 - Attorney rooms can accommodate conferences with social distancing
 - Limited access for press and public but live streaming possible
 - Candidate for pilot using virtual technology
 - Good staff support available
- Courthouse in Woodstock
 - Large courtroom; second courtroom suitable for jury room
 - Available for family/other work from White River Junction during criminal trials



- 12 - Up to 12 jurors
- 6 - Up to 6 jurors
- X - Too small

Factors considered in evaluating courthouses:

- Size of courtroom; ability to accommodate socially distanced jurors
- Adequate sightlines from where jurors would sit to witness box
- Availability of holding cell
- Availability of conference rooms/other spaces large enough for social distancing
- Ability to accommodate meaningful attorney/client relationship
- Ability to modify the seating and configuration of the courtroom & other spaces
- Sufficient spaces for jurors waiting for voir dire, even if staggered
- Sufficient spaces for jury room(s) with social distancing (breaks, deliberations)
- Risk related to air circulation system in the courtroom/courthouse
- Ability to accommodate necessary movement (e.g., elevators/stairs w/o crowding)
- Sufficient rest rooms
- Ability to do sufficient cleaning of all common spaces
- Sufficient court staff for jury management while maintaining other work
- Press access
- Public access (including ability to livestream)
- Viability of accommodating 6-person jury if not 12
- Viability of accommodating a trial conducted by virtual means
- Other