

IN THE CRIMINAL COURT OF HAMILTON COUNTY, TENNESSEE

IN RE: COVID-19 PANDEMIC

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) DOCKET No. ADM 2020-1
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ORDER AND PROTOCOLS FOR IMPLEMENTING
TENNESSEE SUPREME COURT'S LIMITED SUSPENSION ORDER

This matter came before the Hamilton County Criminal Court upon its own motion to formally establish protocols for implementing the Order of the Tennessee Supreme Court entered on March 13, 2020.

By way of background, on March 13, 2020, and in response to the COVID-19 pandemic, the Tennessee Supreme Court entered an order suspending “in-person” court proceedings (“**Limited Suspension Order**”).¹ As part of this Limited Suspension Order, the Supreme Court ordered that “[a]ll in-person proceedings in all state and local courts in Tennessee, including but not limited to municipal, juvenile, general sessions, trial, and appellate courts, are suspended from the close of business on Friday, March 13, 2020 through Tuesday, March 31, 2020[.]” (“**Suspension Period**”).²

The Limited Suspension Order contained several exceptions to the suspension of “in-person” proceedings, including that trial courts may conduct “in-person” court proceedings when “necessary to protect constitutional rights of criminal defendants, including bond-related matters and plea agreements for incarcerated individuals[.]”³ However, trial courts are “urged to limit in-person courtroom contact as much as possible by utilizing available technologies, including alternative means of filing, teleconferencing, email, and video conferencing.”⁴ That said, the Supreme Court has been clear that its order “is intended to be interpreted broadly for protection of the public from risks associated with COVID-19.”⁵

¹ See *In Re: COVID-19 Pandemic*, No. ADM2020-00428 (Tenn. March 13, 2020) (Order Suspending In-Person Court Proceedings).

² See *In Re: COVID-19 Pandemic*, No. ADM2020-00428, at 1 (Tenn. March 13, 2020) (Order Suspending In-Person Court Proceedings).

³ See *In Re: COVID-19 Pandemic*, No. ADM2020-00428, at 1 (Tenn. March 13, 2020) (Order Suspending In-Person Court Proceedings).

⁴ See *In Re: COVID-19 Pandemic*, No. ADM2020-00428, at 2 (Tenn. March 13, 2020) (Order Suspending In-Person Court Proceedings).

⁵ See *In Re: COVID-19 Pandemic*, No. ADM2020-00428, at 3 (Tenn. March 13, 2020) (Order Suspending In-Person Court Proceedings).

Following its receipt of the Limited Suspension Order, the judges of the Hamilton County Criminal Court met immediately to finalize protocols previously considered to address the pandemic. Having now received authority from the Tennessee Supreme Court through its Limited Suspension Order, as well as authority from the Presiding Judge of the Eleventh Judicial District of Tennessee, the Criminal Court hereby enters the following Order:

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I. COURTS TO REMAIN OPEN

Consistent with constitutional requirements and the directives of the Supreme Court, the Hamilton County Criminal Court remains open and is prepared to address business brought before it. The Court will address the need to have “in-person” proceedings in accordance with the Limited Suspension Order and the needs of each individual case.

II. PLACING MATTERS ON THE DOCKET FOR RESOLUTION

A. SUA SPONTE EXAMINATION OF DOCKETS

The Court will not convene each day and await for matters to be presented. Rather, the Court will examine its dockets in advance and identify the following types of matters:

- matters that can be resolved without holding “in-person” proceedings; or
- matters that are subject to an exception to the Limited Suspension Order.

For matters so identified, the Court will schedule these proceedings specially on its docket. For all other matters, the Court will reschedule the proceedings to occur after the Suspension Period.

B. PARTIES’ “REQUEST FOR PROCEEDINGS”

As to matters not noticed by the Court, the Court invites notice from any affected party that an issue is present which may require resolution or action by the Court. Parties are encouraged to submit to the Court a “Request for Proceedings” to address other matters.

Where a party wishes to submit a Request for Proceedings, the Court asks that the Request be submitted in one of the following ways:

- submit an informal request to the particular division of court through the Court’s website: <https://criminalcourt2.org/request>; or
- file a formal motion seeking an “in-person” proceeding with the Criminal Court Clerk’s office.

III. COURT ACTION UPON RECEIPT OF A “REQUEST FOR PROCEEDINGS”

A. RESOLUTION *WITHOUT* “IN-PERSON” PROCEEDINGS

Upon receiving a Request for Proceedings, the Court will first determine whether the matter can be addressed without convening “in-person” proceedings. If the matter can be so addressed, the Court will schedule a time to address the issue in that manner.

1. Types of Proceedings Contemplated

At present, the Court contemplates that the following proceedings can be held without convening “in-person” proceedings using existing technology, and it would invite Requests for Proceedings on these issues. By way of example, and not of limitation, the Court contemplates that custodial arraignments and agreed probation violations, for example, may be held without convening “in-person” proceedings.

The Court also will hold remote hearings on pleas where all appropriate completed paperwork, including the *signed* plea agreement and *signed* probation and restitution orders, are provided to the Court.

2. Agreed Orders or Contested Matters Submitted on Papers

The Court also invites Requests for Proceedings on matters where agreed orders can be presented. Parties are also encouraged, where appropriate and subject to consent of all parties, to submit contested matters to the Court upon motion, with an agreed request for ruling and joint waiver of argument.

The Court will also take under advisement petitions for relief filed by a surety that identifies with particularity the grounds for the relief requested, with leave to reconsider in a hearing if the surety is aggrieved.

3. Technology Note

The Court is currently working with Hamilton County Information Technology Department to implement web conferencing solutions that will allow multiple participants and avoid the need for any (or minimal) physical courtroom appearance by any person other than the judge, bench clerk, and official court reporter. Once these solutions are implemented, it may be possible to hold contested hearings with all parties attending via videoconference.

Where these hearings occur, the Court requests that the parties submit pre-marked exhibits to the Court in advance of the scheduled hearing.

B. RESOLUTION BY “IN-PERSON” PROCEEDINGS

As to matters requiring a resolution by convening an “in-person” proceeding:

1. Determination of Whether an Exception Exists to the Limited Suspension Order

If a matter cannot be held except through “in-person” proceedings, the Court will determine whether the matter is subject to an exception to the Supreme Court’s Limited Suspension Order.

At present, but subject to reconsideration, the Court believes that one principal exception may apply to the criminal courts: “Proceedings necessary to protect constitutional rights of criminal defendants, including bond-related matters and plea agreements for incarcerated individuals.”

2. For Matters Not Subject to Exception

If a proposed “in-person” proceeding *is not* subject to an exception to the Limited Suspension Order, the Court will *not* convene the “in-person” proceeding. Instead, the Court will schedule the requested “in-person” proceeding to occur after the Suspension Period.

3. For Matters Subject to Exception

If the “in-person” proceeding *is* subject to an exception to the Limited Suspension Order and cannot be addressed remotely, the Court will schedule a special time to convene and address the matter.

a. Conditions to Convening

As a condition to convening “in-person” proceedings, the Court will require the following:

- **Plea Proceedings:** The Court respectfully requires that a final agreement exist and that, prior to transporting and convening, all paperwork has been reviewed, signed, and completed. Although issues are expected to arise, the Court will not generally convene proceedings so that the parties can complete negotiations.
- **Evidentiary Hearings:** The Court respectfully requires

- that the parties need a judicial resolution of the issue, meaning that the parties have reached an impasse and that a judicial decision is actually desired and necessary; and
- that all witnesses will be present at the designated time and will be prepared to testify.

b. Court to Address Only Noticed Matters

Upon convening on a scheduled proceeding, the Court will address only the immediately noticed matter, and it will not otherwise remain in session to generally await other unscheduled matters. In other words, the process is to “gavel in” to start the scheduled proceedings and to “gavel out” immediately upon the conclusion of the instant proceeding or at the conclusion of all specifically scheduled business.

C. PERSONS PERMITTED TO APPEAR DURING “IN-PERSON” PROCEEDINGS

1. Generally

Subject to the safety protocols identified below, the Court will permit only the following persons to be present in the courtroom during any “in-person” proceeding:

- the immediate parties to the action and their counsel;
- persons allowed to attend by virtue of Tenn. Const. art. 1, § 35(c);
- permitted media as approved below; and
- personnel essential to the functioning of the Court.

2. Media Requests

Members of the media may attend any “in-person” court proceeding upon approval by the Criminal Court or the Supreme Court, consistent with Tennessee Supreme Court Rule 30. All requests by the media to attend any court proceeding should also be directed to Barbara Peck, who is the Communications Director for the Administrative Office of the Courts, at barbara.peck@tncourts.gov or 615-440-2555.

Upon being notified that the media has sought permission to attend from this Court or from the Supreme Court, the Court will defer all proceedings to permit such an inquiry to occur. *Cf.* Tenn. Sup. Ct. R. 30(d)(2) (“Media requesting coverage shall be allowed to present proof, either at the evidentiary hearing or by affidavit.”).

All media personnel receiving approval from this Court or the Supreme Court to attend “in-person” proceedings will be permitted to attend under the Court’s safety protocols.

D. SAFETY PROTOCOLS USED DURING “IN-PERSON” HEARINGS

During these limited “in-person” proceedings, the Court will adhere to the following public-safety protocols:

1. Advanced Screening of All Persons Entering Courtroom

In conjunction with the Sheriff and the staff at the detention facilities, defendants will be screened prior to transport to ensure that symptoms are not currently present or manifesting, and to ensure that other risk factors are not present. Each defendant shall be affirmatively asked to report on the information below, and no person shall be transported that answers affirmatively to any category of information.

More specifically, and effective immediately and until further notice, no person, including counsel, parties, courtroom staff, and media, who fall into one of the listed categories below shall enter any Criminal Court courtroom, jury assembly room, or judicial corridor:

- Persons who have exhibited health conditions in the previous (twenty-four) 24 hours involving fever of over 100.4, cough, shortness of breath, persistent chest pain, or bluish lips or face.
- Persons who have travelled to any of the following countries or areas within the last 30 days: China, South Korea, Japan, Europe or Iran. This list may be updated as further guidance is received.
- Persons who reside or have had close contact with someone who has travelled to one of the countries listed above within the last 30 days.
- Persons who have been asked to self-quarantine by any doctor, hospital or health agency.
- Persons who have been diagnosed with, or have had contact with, anyone who has been diagnosed with COVID-19 within the last 14 days.

The Court recognizes that this is not a perfect solution given the incubation period for COVID-19, but the Court takes these measures in an attempt to identify and avoid risks that may be detectable.

2. Sanitation of Facilities

The internal detention facilities will be sanitized prior to their use and at regular intervals during the day when in use. Each courtroom will be sanitized at regular intervals during the day and at the conclusion of proceedings. Sanitization measures include wiping of surfaces with disposable wipes and disinfectant.

3. Use of Social Distancing in the Courtroom

The Court will also instruct on and enforce appropriate social distancing in the courtroom. In part, the Court will require that a custodial defendant be 6 feet away from counsel, and likely seated on the front row outside of the jury box, absent a need to communicate more closely in person.

4. Availability of Personal Protective Equipment

The Court will also include reminders as to proper coughing and sneezing, and it shall require the use of hand sanitizer, tissues, and no-touch trash receptacles. Courtroom deputies coming into physical contact with an accused or other persons shall also use gloves.

IV. ADMINISTRATIVE TASKS

As to routine scheduling and administrative tasks:

A. SCHEDULING OF CASES

Where a division of court has entered orders scheduling various proceedings, the Court will enter orders scheduling matters, *sua sponte*, on new cases appearing on the discussion dockets. The Court may also enter, *sua sponte*, orders setting plea deadlines on cases where the matter is ready to set for plea.

B. EXTENSION OF CURRENT DEADLINES

In accordance with the Limited Suspension Order, the Court will extend all previously established deadlines that will expire between now and April 6, 2020. The length of the extension may depend on the individual needs of the case and the parties.

C. MODIFICATION OF ORDERS

The Court believes that these administrative tasks can be accomplished without convening the Court or its personnel, and it anticipates that these measures will help keep the dockets moving. However, these orders will also be subject to modification if other exigencies require or the parties are unduly burdened by the dates selected.

V. OTHER OPERATIONS

As to other matters related to the operations of other entities affiliated with the Criminal Court:

A. GRAND JURY OPERATIONS

Following direction by the Supreme Court issued after specific inquiry, the Court has suspended the operations of the Hamilton County grand juries until April 1, 2020. The Court has notified the forepersons of the regular and concurrent grand juries of the suspension of operations.

B. RECOVERY COURT OPERATIONS

Subject to modification, the Recovery Courts are in limited operations in compliance with the Supreme Court's Limited Suspension Order. More specifically:

- "In-person" courtroom status conferences and "in-person" team staffing are presently suspended in accordance with the Supreme Court's Limited Suspension Order.
- The Recovery Courts shall institute protocols for continued, but remote, case management. Where substance use testing is maintained, the Recovery Court shall institute staggered testing schedules during the period of suspension.
- The Recovery Courts shall also suspend requirements on attending group meetings, and shall defer to treatment and mental health partners as to counseling, substance use treatment, intensive outpatient treatment, or aftercare meetings.
- The Recovery Courts shall not require participants to participate in community group meetings during the Suspension Period.
- On-site Recovery Court personnel shall be reduced to the director and case managers as needed for essential operations. All other personnel have been instructed not to report to the courthouse during the Suspension Period, but shall perform work remotely where able to do so.

VI. MODIFICATION OF PROCEDURES

The protocols identified herein are subject to modification by the Supreme Court, the Criminal Court, or the Presiding Judge of the Eleventh Judicial District of Tennessee.

It is so ordered.


Enter, this the 18th day of March, 2020.



BARRY A. STEELMAN, Judge



TOM GREENHOLTZ, Judge



DON W. POOLE, Judge