

**The Judicial Branch of Arizona – Maricopa County – Criminal Department**  
**Socially-Distanced Trial Practices and Procedures**  
**(revised 7/27/2020)**

**Trial Assignments**

1. The Master Calendar / Assignment Calendar will resume on August 10, 2020. The “Trial Date will become the “Assignment Date,” when people appear in front of Master Calendar. The Master Calendar / Assignment Calendar will be a virtual hearing conducted on Teams/ FTR Virtual Justice Platform.
2. The Master Calendar / Assignment Calendar will be a purely administrative hearing, without any substantive decisions being made. As such, the Assignment Date hearing will involve attorneys only; defendants’ appearances will be waived.
3. The Master Calendar / Assignment Calendar will begin with a roll call, confirming all parties are ready for trial, identifying scheduling issues, and identifying a realistic trial date.
4. Cases ready for trial will be prioritized based on the criteria in Local Rule 2.2 (including but not limited to case age, in-custody status, nature of charge, victim position, availability of witnesses, etc.). To the extent the number of trials exceeds court capacity (e.g., available jurors, courtrooms, or judicial officers), matters may be reset on Master Calendar / Assignment Calendar, or sent back to the Case Management Judge.
5. Various dates will be set with the Trial Judge:
  - a. Trial Procedure Conference. Master Calendar / Assignment Calendar will set on the Trial Judge’s next in-person, in-court date.
  - b. Status Conference. Trial Judge will set a status conference the day before the Firm Trial Date to confirm the trial will go forward, confirming no COVID related issues.
  - c. Firm Trial Date. Master Calendar / Assignment Calendar will set within 1-2 weeks of the Trial Procedure Conference, based on the availability of jurors, judicial officers, and courtrooms.
  - d. The timeframes within which these hearings are set may be changed at Judge Fisk’s discretion.
6. Initially, all trials will be held in South Court Tower 5<sup>th</sup> – 8<sup>th</sup> Floors and CCB 402. Jury selection will be conducted in SCT 5A & 5B.

**Trial Procedure Conferences (TPCs)**

1. **TPC Mechanics.**
  - a. Hold initial TPC in-person, in the assigned trial court room, 1-2 weeks before trial. (If trial is not being held in trial judge’s courtroom, trial judge needs to coordinate with the division whose courtroom it is to schedule the TPC on a date that does not fall on the division’s “in-court” day.)
    - i. The trial judge should confirm that the trial date is a firm trial date and that the trial must proceed as scheduled. All witness interviews,

subpoenas, and other logistical preparations need to be done well in advance of trial start.

- ii. May need multiple TPCs before jury selection begins.
- iii. Minute entry setting TPCs should include language requiring the attorneys to verify at the TPC that they have read and are familiar with the current Arizona Supreme Court and Maricopa County Superior Court Admin Orders regarding COVID 19, as well as the Jury Advisory Committee Recommendations For Renewed Jury Operations dated May 15, 2020 and the Judicial Branch Criminal Department Socially-Distanced Trial Practices and Procedures.

## 2. **Subjects to Address at TPC.**

- a. Rule 16.3 + Joint Pretrial Statement:
  - i. Trial Length.
  - ii. Trial Schedule.
  - iii. Jury Panel Size.
  - iv. Special accommodations needed by parties, witnesses, jurors, victims, and others.
- b. COVID-Related Safety Practices
  - i. Courtroom Safety Measures.
  - ii. Physical Space / Movement Around Courtroom
- c. Jury Selection Process.
- d. Evidentiary Issues.
  - i. Equipment Needs
  - ii. Exhibits
    - 1. Exhibits will need to be provided to the clerk and marked in advance of trial, with as few exceptions as possible;
    - 2. Stipulations to exhibits can be placed on the record in advance of trial;
    - 3. Most objections to exhibits should be addressed prior to trial; if foundational issues require witness testimony to sort through the objections, the court can always defer a ruling until the witness offers the needed testimony.
- e. Other Trial Issues. Various issues are identified throughout this outline.

## 3. **Follow-up After TPC.**

- a. **Order jury.** Submit jury order ASAP; do not wait until day before trial.
- b. **Information to Judge Fisk.** Inform Judge Fisk of the anticipated trial length + schedule. Keep her update as trial changes as rooms are being assigned for future trials.

## **COVID-Related Safety Precautions and Procedures**

1. **Social Distancing.** Ensure the courtroom and juror spaces provide for at least six feet of spacing between every individual. See next section re Physical Space.
2. **Hand Sanitizer** (with greater than 60% ethanol or 70% isopropanol as active ingredients). Have hand sanitizer on tables in all juror spaces, tables and benches in the courtroom.
3. **Gloves.** In the courtroom for attorneys, witnesses, and jurors; in the jury deliberation room(s) for jurors to handle exhibits; for CA/JA to use when wiping down surfaces during breaks.
4. **Masks / Face Shields**
  - a. **Jurors.** Each juror provided with a disposable mask before boarding juror bus. Washable cloth masks provided to jurors once seated on a jury.
  - b. **Others.** Disposable masks kept in a safe place to provide to individuals as needed.
  - c. **Face Shields.** A single face shield is available from the court upon request by a juror.
5. **Disinfectants / Sanitization.**
  - a. Sanitizing wipes and/or cleaner + towels will be provided next to all jury room appliances such as microwaves, refrigerators, and water coolers.
  - b. Disinfectant solution to wipe down all surfaces in the courtroom and juror spaces at least once a day over breaks and/or the lunch hour. This includes door knobs/handles, light switches, table tops, podium, and all hard surfaces in the courtroom.
  - c. Use gloves when wiping down surfaces.
6. **Doorstops.** Plastic doorstops will be provided at all high-traffic doors, including in/out of courtroom, juror hallway(s), jury room(s). Doorstops are to be used when jurors are entering and exiting to prevent multiple touches.
7. **Signage.**
  - a. **Restrooms.** Please wash your hands with soap and water for at least 20 seconds
  - b. **Near Jury Room Appliances.** Please use the wipes to wipe down surfaces before and after using appliances.
  - c. **Near Courtroom Appliances.**
  - d. **Hallways, Courtroom and Juror Spaces.** Reminders re social distancing + wearing masks at all times.
  - e. **Additional Signs.** “jury deliberating” signs, elevator signs, and signs in the Jury Assembly Room.

## **Physical Space: Capacity, Positioning & Movement Around Courtroom**

### **1. Courtroom Capacity**

#### **a. Authorities.**

Courtroom capacity changes depending on the court operations “phase” as defined in in Administrative orders related Maricopa County Superior Court Administrative Orders and department protocols. See, e.g., AO 2020-114 (AZ), AO 2020-078, 079, 095 (Welty), [Modified Criminal Department Operations During COVID-19 Pandemic](#).

#### **b. Maximum Capacity.**

i. **Number of People.** Courtroom Assistant (CA) responsible for making sure count never exceeds capacity, absent permission of the Presiding Judge.

1. **Phase I:** 10-30 people, socially distanced.
2. **Phase II:** Maximum 50 people, socially distanced.

ii. **Social Distancing.**

1. **CDC:** Social distance = 6 feet apart, wearing masks
2. **Maricopa County Public Health** (Dr. Rebecca Sunenshine): 6 ft. measured nose-to-nose, esp. if facing same direction (vs. facing each other, face-to-face).

#### **c. Order of Priority for Persons in Courtroom.**

i. **Trial Participants** (10+ people).

1. **Critical Participants** (10+ people).

- a. Judge
- b. Defendant(s)
- c. DO
- d. One defense attorney per Defendant
- e. One State attorney
- f. Witness
- g. Victim(s) (further detail below)
- h. Court reporter
- i. CA (could leave as needed; participate via FTR in robing room)
- j. Clerk (could leave as needed; participate via FTR)
- k. Case Agent (could leave as needed; listen on bridge line).

2. **Victims** (0+ people).

- a. **A.R.S. § 13-4401(19).** "Victim" means a person against whom the criminal offense has been committed, or if the

person is killed or incapacitated, the person's spouse, parent, child, grandparent or sibling, or any other lawful representative of the person, except if that person is the accused. All next of kin are not statutory victims.

- b. **Right to be Present.** Per constitution and statute, victims must be allowed to be present when Defendant is present. If more than one victim, victims take priority over other non-critical participants (e.g., second attorney, legal support staff, additional court staff).
- c. **Jury Selection.** Most victims do not participate in jury selection. To the extent that they choose to, during some portions of jury selection, victims may have to temporarily observe from victim room (e.g., voir dire, marrying of two panels).
- d. **Use of Interactive Audiovisual System (IAS).** May need to cap number of victims based on room capacity; can offer victim room. If there multiple victims exceeding capacity of courtroom and/or victim room, discuss making arrangements to make trial available to victim(s) via IAS in another courtroom on campus. If victim objects to this procedure, the trial may need to be delayed.

### 3. Other Non-Critical Participants.

- a. Second attorney for each side only as allowed by room capacity + social distancing. Consider whether it is possible to make trial accessible to second attorney via IAS.
- b. Legal support staff only as allowed by room capacity + social distancing (e.g., paralegals, mitigation experts, etc.).
- ii. **Jurors** (10 – 17 jurors). *Additional discussion of number of jurors in Jury Selection section below.*

### iii. Non-Participants.

Only permitted in courtroom as allowed by AO2020-114 and Presiding Judge's AOs.

#### 1. Calculating # of Non-Participants:

- a. **Phase I:** 30 minus (# of minimum participants + # jurors) = # of non-participants allowed.
- b. **Phase II:** 50 minus (# of minimum participants + # jurors) = # of non-participants allowed.

2. **Bridge Line Notification:** Bridge line access code will be made available on Court's website at <https://www.superiorcourt.maricopa.gov/calendar/today/>.
3. **Live-Streaming.** The Court is exploring technology solutions that will allow trials to be live-streamed.

## 2. Positioning of People During Jury Selection / Trial

### a. Trial Participants

- i. **Courtroom Assistant (Bailiff):** Seated behind plexiglass @ bailiff station; wearing mask.
- ii. **Judge:** On bench; will need to move depending on what's occurring. May need to hold bench mic and socially distance during bench conferences by pushing chair back. Wearing mask or face shield, as JO deems appropriate.
- iii. **Clerk:** In courtroom, at clerk station, 6 ft from judge, wearing mask.
- iv. **Court Reporter:** In courtroom, at court reporter desk; closer than 6 feet to witness, but separated from witness by plexiglass divider; wearing mask.
- v. **Witness:** In courtroom, on witness stand with plexiglass divider. Judge should advise witnesses that they may remove their masks while testifying if they choose to do so.
- vi. **Detention Officer:** In courtroom; seated 6 ft from Defendant + CA; wearing mask.
- vii. **Defendant:** In courtroom, at one end of defense counsel table, wearing mask.
- viii. **Defense Counsel:** In courtroom, at opposite end of counsel table, wearing a mask or face shield at all times, except when judge grants permission to remove mask (*e.g.*, questioning witness, speaking to jury).
- ix. **State:** In courtroom, at one end of counsel table, wearing a mask or face shield at all times, except when judge grants permission to remove mask (*e.g.*, questioning witness, speaking to jury)..
- x. **Case Agent:** In courtroom, at opposite end of counsel table; wearing mask.
- xi. **Victim:** If in courtroom, seated on Defendant's side (NOT behind jury); alternatively, in victim room; wearing mask. Best practice to have any victim support person seated on the aisle to ensure that victim does not have to look in defendant's direction when looking at support person.

### b. Jurors.

- i. **During jury selection/trial**, socially distanced in jury box and gallery (prosecution side); wearing masks.
  - 1. **Counsel Table Monitors/Computers:** Jurors in gallery may be able to see monitors on counsel tables.
    - a. **Courtroom monitors:** Turn off unless/until an exhibit has been admitted so that jurors cannot see evidence.
    - b. **Counsel computers:** Shield screens from jurors' view.
  - 2. **Restraints:** Parties and court should discuss precautions to be taken so that jurors in gallery cannot see any restraints defendant may be wearing, including red light on Taser vest.
- ii. **On breaks**, in jury rooms (limited # of persons, determined by size; capacity posted on doorway; seating marked in jury room), hallway alongside courtroom (seat locations marked 6 feet apart, located in compliance with fire code), and/or designated SCT lobby space (separated by curtain; benches all facing same direction; socially distanced @ 6 feet apart; area supervised by safety monitor, as deemed appropriate by Court).
  - 1. **Extra Bathrooms:** So long as only one jury trial is occurring on the side of each floor in SCT, trial judge may make arrangements to allow jurors to occupy both jury rooms / use both jury bathrooms on a single side (e.g., SCT 6A & 6B; SCT 6C & 6D).
- iii. **During lunch**, jurors allowed to sit in lobby and designated room in JAR. Note that during lunch jurors will not have access to jury room(s), juror bathrooms, or juror hallway due to lack of monitoring.
- iv. **During jury deliberation**, in trial courtroom, with access to juror hallway, jury room, and juror bathrooms.

**c. Non-Participants**

- i. **Media.**
  - 1. May access bridge line to listen in.
  - 2. If/when allowed to attend in-person in courthouse may use media room, if available. Otherwise, as courtroom capacity allows, may be seated on Defendant's side (NOT behind jury), wearing masks.
- ii. **Other Observers.**
  - 1. May access bridge line to listen in.
  - 2. If/when allowed to attend in-person in courthouse and courtroom capacity allows, may be seated on Defendant's side (NOT behind jury), wearing masks.
- iii. **Live-Streaming.** Court is working on technology solution to allow non-participants to observe & listen to trials online via livestream.

### 3. Attorney Movement.

- a. **TPC:** Discuss and establish parameters for attorney movement.
- b. **Openings / Questioning Witnesses / Closings.**
  - i. Must stay near a microphone for benefit of jurors in gallery.
  - ii. Podium or Counsel table.
- c. **Bench Conferences.**
  - i. **TPC.** Court should discuss with counsel how it will handle all requests for in-trial bench conference.
  - ii. **Default = Bench Conferences Discouraged.**
    1. Likely not as many bench conferences as pre-COVID.
    2. Parties will be allowed to make a record during a break (when the jury is not in the courtroom).
  - iii. **Socially-Distanced Bench Conferences.**
    1. **Participants.** Judge + one attorney per side (attorney responsible for examination or cross); judge. Designated attorney will be allowed to confer with co-counsel during bench conference.
    2. **Procedure:** Multiple Microphones / Headphones. One attorney per side has mic + headphones; faces wall opposite jury. Judge uses judicial mic, pushes back from bench to ensure 6 feet distance.
    3. **Record.** The multiple microphones are fed in through the court-reporter's feed and bench conferences using this system will be on-the-record. Note, however, that case law does not require "the verbatim reporting of all bench conferences." See *State v. Berndt*, 138 Ariz. 41, 46, 672 P.2d 1311, 1316 (1983); see also *State v. Hargrave*, 225 Ariz. 1, 16, 234 P.3d 569, 584 (2010); *State v. Gohn*, No. 2 CA-CR 2017-0351, 2018 WL 4293234, at \*1–3 (Ariz. Ct. App. Sept. 7, 2018).
- d. **Approaching Witness.**
  - i. Must ask permission to approach. Will be exception vs. rule.
  - ii. Spend no more time than necessary near witness to hand exhibits, set up equipment, etc.
  - iii. See Evidentiary Issues section for additional issues.
- e. **Use of Elmo vs. Easel + Flip Pad.**
  - i. Difficult for jurors in gallery to see easel.
  - ii. Consider whether to write on paper on Elmo that can be made part of record upon motion/court approval.

### 4. Witness Movement

- a. **TPC:** Court will instruct attorneys on need to inform witnesses of limitations on movement, as well as other practices to protect all courtroom participants.
- b. **During Trial.**



- i. **Waiting Areas / Notification.** Witnesses should be instructed to wait in a designated location on a different floor. Parties should identify potential State/Defense interview rooms on other floors to designate for witness use during a trial. To avoid any contact with jurors, witnesses should be expressly instructed NOT to wait in the lobby outside of the trial courtroom. Parties should discuss in advance with witnesses how they will be notified that they are needed in the courtroom.
- ii. **Witness Demonstrations.**
  - 1. Parties should discuss with Court in advance whether there will be any demonstration.
  - 2. Court will determine whether to allow demonstrations on a case-by-case basis.
  - 3. Witness must be advised to maintain social distancing of 6 feet from all other persons in room during the demonstration.

**5. Juror Movement.**

- a. **Juror Notebook Cart.** CA will have a cart for jurors to place juror notebooks at end of each day. Carts will have labeled slots. Cart stored in locked jury room overnight. CA will establish procedures with jurors for explaining where they will pick up notebooks each day before entering courtroom.
- b. **Enter/Exit.** Jurors will enter/exit the courtroom through the jury hallway doorway.

## Jury Selection

### 1. Pre-Screening / Hardship Releases.

- a. **Authority.** For further explanation of the pre-screening process, please see *Jury Advisory Committee Recommendations for Renewed Jury Operations* (5/15/2020).
- b. **Online Questionnaire.** Jurors are encouraged to fill out an expanded on-line pre-screen questionnaire up to 10 days before their scheduled service date. The expanded questionnaire addresses **hardships** (care provider, COVID-19, employment, financial hardship, physical hardship), **trial length** (ability to serve 3 days – any length of trial), **technology** (access to space, device, and ability to watch/listen to proceedings), **request for release or postponement of service.** Questionnaire results are compiled into a spreadsheet for further review.
  - i. **Spreadsheet Data.** Jurors will be identified on the spreadsheet by their juror number only. The spreadsheet will not include juror responses on demographic questions (*e.g.*, gender, race, ethnicity, age, etc.), however a juror’s narrative responses may disclose some demographic information (*e.g.*, “I request to be excused from jury duty because I am over 65 with a medical condition.”).
  - ii. **Threshold Determination: Jury Commissioner.** Jury Commissioner (or designee) will make threshold determination of hardship release and/or postponement.
  - iii. **Second Review: Duty Judge.** Each day, spreadsheet with remaining requests for release will be provided to an assigned “duty judge,” who will determine whether juror has provided sufficient basis for granting hardship release and/or postponement.
  - iv. **Notification.** Those people who receive hardship release / postponement will be notified ASAP and will not be required to come to the courthouse.
- c. **Day-of-Service Screening.**
  - i. For those who either have not completed questionnaire hardship screening will be done by trial judge / lawyers in courtroom as part of voir dire.
- d. **Subject Matter Questionnaires.**
  - i. **Detailed Questionnaire.** The Court considered the use of a detailed on-line questionnaire, but it was determined this was not workable given Arizona statutes governing jury service. The time needed to review a detailed questionnaire would slow down the jury selection process for run-of-the-mill cases. They may still be appropriate for certain cases, as determined by the court and counsel during the TPC.
  - ii. **Single-Page Questionnaire.** The Criminal Department COVID-19 Task Force recommends use of a single-page questionnaire the day of jury selection. There was consensus that a single-page questionnaire might allow the parties identify to identify additional people who they may

agree to excuse for cause, further limiting then number of people who would need to be called up to the courtroom. Alternatively, the parties might identify in advance jurors they wanted to voir dire individually or in small groups. The Task Force is in the process of developing a proposed questionnaire.

**2. Panels.**

**a. Number of Jurors.**

- i. Per AO, Courtroom capacity is capped by the phase of court operations. Size of AM/PM panels will be limited by number of critical courtroom participants attending jury selection.
  - 1. **Phase I:** Estimating approximately 10 essential participants during jury selection, the largest a venire panel will be 20 jurors (AM/PM panels), with a total of 40 jurors / day.
  - 2. **Phase II:** Estimating approximately 10-15 essential participants during jury selection, the largest a venire panel will be 35 jurors or whatever seating capacity is (AM/PM panels), with a total of 70 jurors / day.
- ii. More complex cases will require multi-day jury selection.

**b. Timing.**

- i. 10:00 AM demi-panel (Phase I: ~20 jurors; Phase II: ~ 35 jurors)
- ii. 1:30 PM demi-panel (Phase I: ~20 jurors; Phase II: ~ 35 jurors).
- iii. When possible, marry AM/PM panels at end of first day.

**3. Jury selection.**

- a. **TPC: Method of Selection.** Court should discuss with counsel what method of jury selection will be used. One of the JAC recommendations was to use modified strike and replace.
- b. **Peremptory Strikes.** Per AO 2020-79, limited to 2 peremptory strikes/side through 12/31/2020.
- c. **Drawing the Line.**

Min # Jurors	Alternates	Defense Strikes	State Strikes	Draw Line
8	1	2	2	13
8	2	2	2	14
8	3	2	2	15
8	4	2	2	16
12	1	2	2	17
12	2	2	2	18
12	3	2	2	19
12	4	2	2	20
12	5	2	2	21

## Evidentiary Issues

### 1. Witness Notebooks.

- a. **TPC.** Discuss use of witness notebook with all exhibits parties anticipate using at trial (minus, of course, physical exhibits). Strongly emphasize to counsel the importance of stipulating to exhibits, or certain facts.
- b. **Number of Copies.** The attorneys, witnesses, judge must have the same notebook.
- c. **Tabs/Page Numbers.** Exhibits need to be separated by tabs and Bates stamped. Exhibit log will not necessarily specify exact description of exhibit.

### 2. Juror Notebooks.

- a. **TPC.** Discuss use of juror notebooks with counsel.
  - i. Strongly encourage counsel to use Elmo for exhibits, rather than including exhibits in jury notebooks.
  - ii. Discuss with counsel whether they will want jurors to have copies of exhibits in their notebooks. For example, do the parties want to include stipulated exhibits in juror notebook? If yes, give to the jurors with 3-hole punch when admitted.
- b. Will be an evolutionary process; if the court has granted a request by a party to publish an exhibit, the exhibit should be copied and the distributed to the jury for jurors to put into their notebooks. Consider using plastic sleeves for copies.

### 3. Use of Audio Recordings with Witness.

- a. **TPC.** Discuss procedures to be used.
- b. **Purpose.**
  - i. **Refresh Recollection:** Listeners will be witness, judge, examining attorney and opposing counsel. Examining attorney provides device to play the recording and earphones for witness. Judge and opposing counsel need to have own device and headphones to hear the recording. Examining attorney must make accurate record reflecting the recording played to the witness.
  - ii. **Impeachment:** Examining attorney is responsible for ensuring that the recording can be heard by the court, opposing counsel, the defendant, the jury, and court reporter (or FTR) and that the record accurately and adequately reflects the recording used for impeachment.
- c. **Equipment.**
  - i. Questioning party will need to provide. For example, if an attorney has recordings they need to play, attorney must provide the equipment necessary so recording can be played / heard by the appropriate listeners. Equipment would include device to play and headphones.

- ii. Ariz. R. Evid. Rule 611 requires the parties to review their pretrial testimony. Lawyers should be required to have their witnesses review such testimony and/r recorded statements in advance of trial. This should help reduce the amount of need for refreshing recollection.

**d. Transcripts.**

- i. If available, transcripts should be included in witness/ court trial notebooks.
- ii. If not available, confirm how both attorneys will hear the recording (if jury not excluded).

**4. In-Court Identification.**

- a. TPC.** The court should discuss with counsel how they will handle in-court witness identification of Defendant.

- i. Is this an issue if Defendant is wearing face shield vs. mask? Could Defendant wear a clear mask?
- ii. In-court identifications are a conventional part of trial but not a necessity. (Much less important to integrity of trial than, e.g., attorney-client communication or visibility of witnesses' faces.) With minimal planning State can establish identity of person sitting in court using a photograph. Defense could stipulate to an exhibit's foundation (Ex. 1 is a photograph of Defendant).

**5. Other Evidence Issues.**

- a. TPC:** Court and parties should discuss whether there will be evidence that the jury needs to touch or feel (i.e., weight, texture, etc.).
- i. Default to publishing evidence on the ELMO, not passing it around.
  - ii. Wait until a break and allow each juror to approach the item for inspection.
  - iii. Instruct that the jurors will be able to review the exhibit during deliberations.

## **Other Trial Logistics**

### **1. Masks / Face Shields / Plexiglass Dividers**

- a. Pursuant to Administrative Order, everyone wears a mask in the courtroom unless there are reasons deemed necessary by the judicial officer and the other requirements of the AO are met (appropriate social distancing or other protective measures).
- b. Trial courts have a consistent practice regarding any exceptions to mask use (e.g., when witness is testifying; when lawyer is questioning witness; when lawyer is addressing jury in openings and closings).

### **2. Communication Between Counsel and Defendant / Case Agent**

- a. The court will not mandate how counsel communicate with their client / case agent during trial, but the court should encourage parties to maintain social distance
  - i. “Close Contact” is defined as contact that is less than 6 feet for 15 minutes or more. Brief interactions may be necessary, but they should be minimized and kept short.
- b. Parties might consider passing notes. If this method is used, notes should be removed from the courtroom and not discarded in public trashcans.
- c. Counsel might wait until a break – or request a break, if necessary – to maintain social distance while talking to client / case agent.

### **3. Critical Participant Procedures**

- a. **TPC:** Court and counsel should discuss any special procedures that will be used with respect to all critical court participants:
  - i. Courtroom Assistant
  - ii. Clerk
  - iii. Court reporters
  - iv. Interpreters
  - v. DOs
  - vi. Facility animals
  - vii. Other issues for victims not otherwise addressed.

### **4. Juror Questions: Trial + Deliberations**

- a. **TPC:** The court should discuss with parties and the CA how jurors will submit questions during trial and deliberations, and then how the questions will be provided to counsel for review and comment.
  - i. Option 1. Bailiff uses basket and walks around, allowing jurors to drop questions into basket. Bailiff takes questions to State, who reviews them and hands them to defense. Defense carries questions to the bench. JO reviews questions and the parties discuss during a bench conference.

- b. **Deliberations:** Since jurors will be deliberating in trial courtroom, trial judge will need to identify a different location where court can review juror questions with parties (e.g., a different courtroom with FTR; GoToMeeting with court reporter and FTR; telephonic conference with court reporter).

## 5. Jury Instructions

- a. **TPC:** Discuss procedures for distributing jury instructions (preliminary, final instructions). For example, CA may place them on the juror chairs during a break.
- b. **Daily Advisement re COVID Reporting.** The *Protocol for In-Courthouse COVID-19 Exposure or Symptoms by a Participant in Arizona State Courts* contains a recommended daily advisement regarding COVID.
- c. **Initial Advisement.** The court may consider recommending to all trial participants that, for the duration of the trial, they protect the health of all participants and the integrity of the proceedings by following public health guidance. For the duration of the trial, all trial participants are encouraged to avoid behaviors that increase the risk of transmitting disease (e.g., leaving home for other than non-essential activities, failing to wear a mask outside of the home, failing to maintain social distancing, etc.)
- d. **Special Instructions.**
  - i. **Preliminary Instruction: JAC Report.** The Jury Advisory Committee created a sample jury instruction regarding social distancing that is intended to be used as a preliminary instruction.
  - ii. **Final Instructions.** Discuss with parties whether they want something included in the final instructions about deliberations.

## 6. Juror Deliberations.

- a. **Trial Courtroom.** Jurors will deliberate in trial courtroom. FTR cameras will be disabled. Signage will be placed on the doors.