
IN THE MATTER OF: Approval of operational plan for reopening Waupaca County Circuit Courts

Waupaca County recognizes the essential role the courts play in the operation of our society. The County also recognizes the impact that the COVID-19 Global Pandemic has upon society. The balancing of the need to provide effective services, while assuring the safety of the users of our courts and its employees is difficult.

While the Waupaca County Courthouse has remained open throughout the pandemic, significant limitations of operations as "normal" have occurred.

In response to the pandemic, the Wisconsin Supreme Court issued two administrative orders effecting the State Circuit Courts. The first order suspended most in-person hearings. The second order suspended all jury trials.

The Chief Justice created a COVID-19 Task Force to make recommendations for counties to allow the courts to reopen permitting in-person proceedings and eventually jury trials. The Task Force has provided guidelines which each county's stakeholders committee can utilize in its process of developing a plan to reopen.

Recognizing the need to protect the health and safety of our citizens, users of the courthouse, and our employees, the County, through its stakeholders committee, believes that continuing to limit the number of persons in the courtrooms/courthouse is necessary. Therefore, the courts will continue to encourage the use of technologies permitting hearings to be held remotely and to limit the scheduling of proceedings.

The County will implement the following protective measures as part of a 3-phase approach for return to full in-person court operations:

1. All judges will use all reasonable efforts to conduct proceedings remotely.
2. The stakeholders committee will monitor the operating plan and adjust it as necessary.

3. Judges will begin setting non-essential in-person proceedings no sooner than July 6, 2020.
4. Judges and court staff who can perform essential functions of their jobs remotely will continue to do so, whenever possible.
5. In the courtroom, judges and court staff will be required to wear face coverings, to practice social distancing, and to practice appropriate hand hygiene recommendations at all times. The courtrooms shall be cleaned daily after the court session is completed.
6. Signs shall be posted at the entry of each courtroom that all individuals entering the courtroom are required to wear a face covering. If an individual does not have a suitable face covering, a disposable face mask will be provided by Waupaca County. All hearing notices will indicate face coverings are required and encourage the party to bring his or her own.
7. The trial court, on the record, may find it necessary for a witness not to wear a face covering during the witness's testimony in order for the judge or jury to weigh the witness's credibility.
8. Any member of the public refusing to wear appropriate face coverings may be excluded from the courtroom but information regarding access to court proceedings by remote means may be provided.
9. Signs will be posted at the entry to each courtroom of the need for social distancing and of the need for good hand sanitation. The signage will further provide not to enter the courtroom if feeling ill, but rather to call the phone numbers on the signage.
10. To reduce occupancy in the courts, large "cattle call" in-person returns, are discouraged.

The following scheduling procedures will be implemented:

A. Family Law Proceedings:

- 1.) At the time of the filing of a divorce, the Clerk of Courts will assign a date and time 90 days after filing for the parties to call the court for a telephone scheduling conference. At the telephone scheduling conference, the court will determine the status and issues and schedule accordingly, recognizing remote proceedings will be preferred.
- 2.) All Order to Show Cause hearings and motion hearings shall be given a date and time for a telephone hearing. No Order to Show Cause or Motion shall be initially set for an in-person hearing unless a judge determines at the time of filing the issue presented needs immediate action for protection of individuals.
- 3.) Stipulated Divorces shall be handled remotely.
- 4.) Initial Divorce Pretrials shall be handled remotely. The trial court shall use its discretion in subsequent scheduling.
- 5.) Child Support Proceedings shall be presumed to be handled remotely. Corporation Counsel shall coordinate with the court the handling of in-person proceedings.
- 6.) Temporary Order Hearings before the Family Court Commissioner shall, to the extent possible, be handled remotely.

B. Criminal Proceedings:

- 1.) All criminal proceedings commenced by summons shall contain the designated Intake Court phone number, 715-942-1966, with directions that the defendant call at the designated return date and time. The District Attorney's office will monitor the number of returns scheduled consistent with prior order.
- 2.) The trial court, when ordering booking as a condition of bond, will direct the defendant to call 715-256-4556 on the date of release to schedule a booking conference with the Sheriff's Department so that appropriate social distancing may be maintained.

- 3.) Status conferences for all represented defendants who are not in custody shall be handled remotely and will not be on the record, unless the trial judge orders otherwise. No pleas will be taken nor bond modifications addressed at a status conference. The State and defense counsel shall consult prior to the status conference and report to the trial court the nature of needed further proceedings and the appropriateness to handle remotely.
- 4.) If a restitution hearing is required, it shall be held in conjunction with the sentencing hearing.
- 5.) Defendants placed on probation shall be ordered to call Probation and Parole at 715-258-4620, on the date of sentencing, rather than being directed to report to the Offices of Probation and Parole in person.

C. Non-Criminal Traffic and Ordinances:

- 1.) The uniform traffic citation for all agencies will be modified as follows:

Waupaca County Circuit Court

811 Harding Street

Waupaca, WI 54981

All initial appearances will be by telephone. If you wish to appear, you must call 715-942-1966.

D. Small Claims:

- 1.) Return dates on non-eviction small claims should provide that a phone call or written answer is preferred over an actual appearance in-person.
- 2.) Return dates on eviction actions shall be via telephone with the Court Commissioner.

- 3.) Small claims pretrials shall be held via telephone. If the Court Commissioner deems a second pretrial with the possibility of an immediate trial is appropriate, the matter may be conducted as the Court Commissioner deems appropriate.
- 4.) The small claims clerk shall coordinate with the court's judicial assistant, the scheduling of trials to minimize the overlapping appearance of individuals.

11. Vulnerable Populations:

- A. Individuals who are over age 65 and individuals with serious underlying health conditions, such as high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune systems are compromised such as by chemotherapy for cancer or other conditions requiring such therapy are considered to be vulnerable populations.
- B. Each judge will include information on orders setting hearings, dockets notices, and in other communications notifying individuals who are in vulnerable populations of the ability to contact the court to identify themselves as a vulnerable individual and receive accommodations.
- C. Vulnerable populations who are scheduled for court will be accommodated on a case by case basis, including reasonable adjournments, if necessary.

12. Social Distancing:

- A. All persons not from the same household who are permitted in the court building will be required to maintain adequate social distancing of at least 6 feet.
- B. No more than two individuals not from the same household will be permitted in an elevator.
- C. Each restroom has been evaluated to determine the appropriate capacity to ensure social distancing and the maximum capacity has been posted on each restroom door.

- D. Public common areas, including breakrooms and snack rooms, have been closed to the public.
- E. The maximum number of persons permitted in the gallery of each courtroom has been determined and posted. The maximum capacity of the courtroom will be monitored and enforced by court staff.
- F. The gallery of the courtroom has been marked to identify appropriate social distancing in the seating. Seating is limited to every other row.
- G. In each courtroom, the counsel tables, witness stand, judge's bench, clerk, and court reporter, seating have been arranged in such a way so that there is social distancing of at least 6 feet between each space.
- H. The trial court may make, when necessary, exceptions to allow attorney and clients to deviate from social distancing protocols to consult with each other in the courtroom.

13. Hygiene:

- A. Hand sanitizer dispensers have been placed at the entrances to the building, outside of elevators on each floor, and outside of each courtroom.
- B. Disinfectant wipes or spray will be available in the courtroom, to clean counsel tables, chairs, benches and microphones.
- C. Flyers outlining appropriate hygiene, social distancing, or public safety have been posted in multiple locations on each floor of the court building.
- D. After each witness, the clerk will sanitize the witness stand.

14. General Courthouse Sanitation:

- A. The courthouse ventilation system has been programmed to bring in more outside air.

- B. Maintenance will wipe door handles and other frequent contact surfaces on a regular basis.
- C. Courthouse common areas shall be cleaned daily. Courtrooms and all other court related confined spaces shall be cleaned daily after the court session is completed.

Upon implementing the preceding protection measures 1 through 14, the Stakeholders have determined that a three-phased approach to full in-person court operations be adopted.

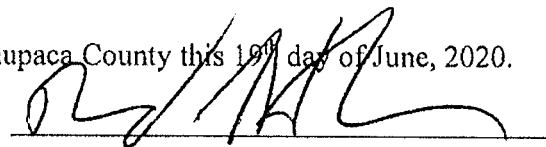
Following the entry into any phase, the presiding judge, along with the Health Officer, should review staffing, public health, and facility conditions every fourteen (14) days to determine whether a change in phase is warranted. Depending on local circumstances, such as a sudden increase in COVID-19 cases, it may be necessary to revert to a previous phase until such time as expanded operations are once again warranted.

Phase One: Resumption of limited in-person proceedings (beyond essential and mandatory proceedings). All courts should continue to favor remote appearances wherever possible and encourage the broad use of waivers of appearance. As soon as Safety Criteria for In-Person Appearances described above, are in place in the county, the circuit courts may again resume in-person appearances except for jury trials:

Phase Two: In-person processing of all cases, including jury trials. Before reinstating jury trials, the COVID-19 Circuit Court Operating Plan Addendum for Jury Trials must be adopted. All of the Safety Criteria for In-Person Appearances must continue to be utilized, in addition to any jury-specific safety precautions that should be instituted. It is still recommended that remote appearances be utilized to the greatest extent possible.

Phase Three: Resumption of all cases on an in-person basis with no restrictions. If a public health announcement is made determining that COVID-19 has been suppressed in the state, the processing of all cases may be resumed on an in-person basis without reliance upon the Safety Criteria for In-Person Appearances.

Approved by the stakeholders of Waupaca County this 19th day of June, 2020.



Raymond S. Huber, Presiding Judge

Approved
James Amador
6/30/20

WAUAPCA COUNTY CRIMINAL PROCEDURES

(Effective July 6, 2020)

The purpose of this document is to reduce to writing the new procedures implemented in Waupaca County related to criminal cases. These procedures are being implemented in response to the COVID-19 pandemic, the recent passage of Marsy's Law and as a general update to the way criminal cases are handled here in Waupaca County.

Admittedly, some of the changes detailed below will change over time as the courts' response to the pandemic changes. But some of the changes will remain beyond the pandemic. All users of the Waupaca County criminal justice should understand the information contained in this document have been agreed upon by all three branches. Any situation or circumstances not covered by this document will be handled on a case-by-case basis by the assigned judge.

The Waupaca County Judiciary disseminated a letter dated May 6th outlining how criminal intake will be handled forthwith. The procedure outlined in that letter will continue. The branch assigned to intake will not schedule hearings other than those outlined in the May 6th letter to assure the criminal intake calendar moves as smoothly as possible.

A new intake only phone number has been created by the judiciary, (715) 942-1966. A call to this number by anyone will automatically get the caller to the branch assigned to handle intake on that given day. This will be the case even if one branch is covering intake responsibilities for another branch.

Throughout the policy there will be many references to hearings being handled remotely. For purposes of this policy, remotely will include appearing via telephone, zoom, Shoretel and/or another manner that does not include in-person appearances. This policy is intended to be vague in this regard because the best practices on conducting hearings remains in a constant state of flux.

In an effort to avoid an ambiguity, any hearing conducted remotely will require the prosecutor and defense attorney to appear remotely not just the defendant, witness(es), etc.

Initial Appearances

Cases initiated via summons and complaint involving **defendants not in custody** will be held remotely. The District Attorney's Office will include language on the summons indicating the defendant is to call the intake line at the time of their scheduled hearing.

Cases initiated via summons and complaint involving **defendants in the Waupaca County Jail** for reasons beyond the case at hand (i.e., probation hold, child support, etc.) will be conducted remotely. The most likely manner in which the hearing will be held is via zoom with both audio and visual capabilities.

Cases initiated via summons and complaint involving **defendants incarcerated in facilities other than the Waupaca County Jail** (i.e., a neighboring jail, the Wisconsin State Prison System) will be handled remotely. Again, the most likely method is zoom with audio and visual capabilities.

Criminal traffic cases initiated by citation, the issuing officer will affix a label on the citation indicating the defendant shall appear at the initial appearance via telephone by calling the intake phone number. Attorneys appearing at these hearings will appear remotely. Additionally, the District Attorney's Office will make all reasonable efforts to file a summons and complaint in addition to the citation that allows enough time for their office to mail a copy of the summons and complaint to the defendant ahead of the initial appearance to assure the defendant receives a copy of the complaint prior to their court date.

Cases initiated via **arrest of the defendant** will be conducted remotely with zoom the most likely method utilized.

As it relates to setting bond, the following conditions will become standard conditions: (1) the defendant is to return a signed copy to the Clerk of Courts Office within 14 days; (2) the defendant is to contact the Waupaca County Jail, (715) 256-4545, within 72 hours to schedule an appointment to complete the booking process; and (3) if the defendant requests information for the State Public Defender's Office the defendant shall contact the Public Defender's Office for an evaluation prior to their next scheduled hearing.

Adjourned Initial Appearances

All adjourned initial appearances will be handled remotely. The method used will vary depending on the defendant's custodial status and the preferred method of the branch presiding over the hearing.

Further Proceedings

These hearings will be on-the-record, but held remotely. As is the current practice, the judiciary expects one of the three requests at these hearings: (1) the parties requesting the matter be scheduled for a Preliminary Hearing; (2) the defendant waiving his right to a preliminary hearing; or, (3) the parties requesting more time to continue working on the case prior to determining the need for a preliminary hearing.

Arraignment

These hearings will be on-the-record, but held remotely.

Status Conferences

The manner in which the judiciary will begin handling status conference is the most seismic shift in how criminal cases will be handled in the future. All status conferences will be

handled off-the-record between the parties and the Court's judicial assistant. The ability to go on-the-record at a scheduled status conference to resolve the case, address bond, etc. will no longer be allowed.

The parties can alert the judicial assistant what type of hearing needs to be scheduled next (another status conference, bond hearing, motion hearing, jury trial, etc.). The Court does not expect or anticipate defendants being a part of this off-the-record conversation. This off-the-record scheduling discussion can be held via telephone or, if the parties are already in the courthouse, may be done in person while maintaining social distance.

The biggest concern with this new policy deals with balancing the Court and State's interest in knowing the defendant and defense counsel are in regular contact versus the defense attorney's ethical responsibilities to not disclose information adverse to their client's interests. In the same vein, under this new policy the State needs to be given the opportunity to request a warrant, on the record, for a defendant who fails to appear. Obviously, this will no longer be an option at a status conference because these hearings will not be on the record.

To address the concerns outlined above, the following options will be available: (1) if the State has concerns regarding the defendant's contact with his/her attorney and the State has conveyed an offer to resolve the case the State may request the scheduling of a Plea Hearing; (2) the defense attorney may request the scheduling of a Plea Hearing; or, (3) the Court may schedule a Plea Hearing.

Bond Hearings

If the State or Defense wish to address bond the moving party must request the Court schedule a bond hearing. The judiciary is not requiring the filing of a bond motion by the moving party.

The default for these hearings is that they will be conducted on an in-person basis because if the defendant's bond is amended he/she will need to sign the new bond. Requests to handle the hearing remotely or for an interested person to appear remotely will be addressed on a case-by-case basis.

Motion Hearings

Non-evidentiary motion hearings will be handled remotely. The exact manner will be addressed on a case-by-case basis. The parties should inquire of the court at the time the hearing is scheduled to determine the way the hearing will be held.

Evidentiary hearings will be handled on an in-person basis. If either party wishes to appear remotely or have a witness appear remotely, those requests will be handled on a case-by-case basis.

Plea, Plea/Sentencing, Sentencing and Sentencing After Revocation Hearings

The default for these hearings will be in person. A request to conduct the hearing via remote means will be handled on a case-by-case basis.

Competency Hearings

The default for contested competency hearings is in-person. The default for stipulated competency hearings is remotely.

Any request to utilize remote means for a contested hearing will be addressed on a case-by-case basis.

DPA Review Hearings

All DPA review hearings will be conducted remotely.

Probation Review Hearings

All probation review hearings will be conducted remotely.

Warrants

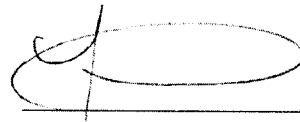
The temporary arrangement involving law enforcement officers contacting a judge prior to taking an individual with an open warrant into custody is no longer in effect. If the Waupaca County Jail, at the time of booking, has concerns about the individual's health the jail will contact a judge before admitting the defendant into the jail.

Furthermore, if the defendant would be transferred from a jail with a COVID-19 related outbreak to the Waupaca County Jail the jail may contact a judge before the transfer occurs.

Disclaimer

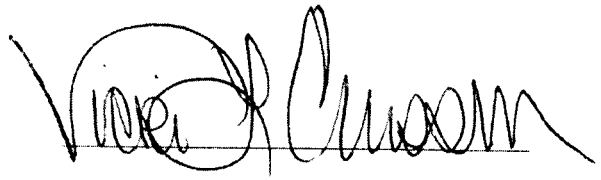
The procedures outlined in this document are those in which all three branches agree upon. Any issue not covered by this document will be handled on a case-by-case by the assigned branch.

Dated: 7-1-2020



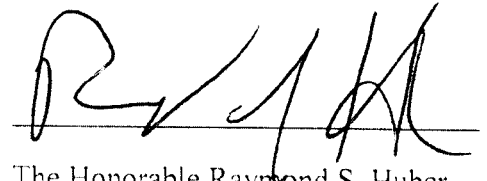
The Honorable Troy L. Nielsen
Circuit Court, Branch I

Dated: 07/01/2020



The Honorable Vicki L. Clussman
Circuit Court, Branch II

Dated: 7/1/2020



The Honorable Raymond S. Huber
Circuit Court, Branch III