

**COVID-19 MINIMUM STANDARD HEALTH PROTOCOLS
FOR IN-PERSON COURT PROCEEDINGS IN BREWSTER,
CULBERSON, HUDSPETH, JEFF DAVIS, AND PRESIDIO COUNTIES**

Recognizing the need to ensure the health and safety of litigants, attorneys, visitors, court staff, judges, and other individuals entering buildings where proceedings are conducted by the district, county, and justice courts of Brewster, Culberson, Hudspeth, Jeff Davis, and Presidio Counties, the undersigned Local Administrative District Judge hereby implements the following minimum standard health protocols and protective measures, as directed by and pursuant to the COVID-19 Emergency Orders issued by the Supreme Court of Texas and Texas Court of Criminal Appeals, and the guidance of the Texas Office of Court Administration:

Although courts are no longer required to hold all hearings remotely, the Supreme Court of Texas encourages all courts to use reasonable efforts to hold hearings remotely whenever possible. All courts subject to this Protocol are encouraged to hold proceedings remotely when doing so is necessary to protect the health and safety of court participants, or will expand access to justice.

Courts may in their discretion hold all civil proceedings, non-evidentiary criminal proceedings, and evidentiary criminal proceedings in cases where incarceration is not a potential punishment, *either remotely or in-person*, or a combination thereof. Courts must hold evidentiary criminal proceedings in cases where incarceration is a potential punishment *in-person*, unless appropriate waivers and consent are given on the record by the defense.

The requirements of this Protocol must be followed for all in-person court proceedings.

In-Person Proceedings. On any day that an in-person court proceeding is held, the judge presiding over the court proceeding *may* – and *must* if they deem it necessary to avoid risk to court staff, parties, attorneys, jurors, and the public – do the following:

1. Require courthouse security to ask all persons attempting to enter the courthouse building whether:
 - a. they are experiencing any symptoms of cold, flu or COVID-19, including cough, shortness of breath or difficulty breathing, chills, repeated shaking with fever, muscle pain, headache, fatigue, sore throat, loss of taste or smell, diarrhea, vomiting, or myalgias, or have experienced such symptoms within the prior 10 days;
 - b. whether they have been diagnosed with a probable or confirmed case of COVID-19 within the prior 10 days; and
 - c. whether they have within 14 days been in close contact with a person who has a probable or confirmed active case of COVID-19 or is displaying typical cold, flu, or COVID-19 symptoms;
2. Require courthouse security to test the body temperature of each person attempting to enter the building;
3. Refuse in-person admittance to the courthouse or courtroom to any person who:
 - a. admits any of the factors in paragraph 1a or 1b, above;

- b. appears to be suffering from any such symptoms described in 1a, above;
 - c. refuses to answer the questions posed to them;
 - d. has a measured body temperature above 100.5 F; or
 - e. refuses to comply with any directive to properly wear a mask over their nose and mouth; and
4. Require exhibits be submitted electronically when possible, to minimize the physical exchange of documents among participants and the judge.
5. Notwithstanding the foregoing, if a judge elects to have courthouse security conduct health screenings as described in paragraph 3 above, courthouse security shall admit persons who violate *only* paragraph 1c above if they are fully vaccinated against COVID-19. The Court or courthouse security may inquire as to vaccination status of any person. Refusal to answer is grounds for requiring masking of the person or exclusion of the person from the courthouse.
6. If a court participant is excluded under paragraph 3 above, courthouse security shall immediately notify the judge presiding, so that appropriate accommodations can be made, such as rescheduling the hearing, permitting the person to participate remotely, or allowing the person to participate from a secure and sterile location as described in paragraph 7 below.
7. Each court building shall make available a room in which a court participant may appear virtually in a court proceeding if (i) they are excluded under paragraph 3 above, (ii) they are excused from in-person participation upon request for good cause as provided below, (iii) they are technologically unable to appear remotely, or (iv) they are subject to a subpoena, writ, show cause order, or Order to Appear for a remote proceeding. The room shall be furnished with the equipment needed for remote participation.

Courthouse Occupancy. Courts should avoid high volume dockets settings (also known as “cattle-call dockets”). Multiple courts should to the extent possible avoid holding in-person proceedings in the same court building at the same time.

Masking and Hygiene are Permitted.

1. Courts may at the discretion of the judge presiding over court proceeding require persons to wear approved masks properly over their nose and mouth at all times, but are discouraged from requiring fully vaccinated people to do so. Courthouse security shall immediately remove from the courthouse all persons who fail or refuse to comply with any masking requirement.
2. Courts must allow persons who wish to wear masks or face shields in the courthouse to do so, but may require masks and face shields to be removed while a person is testifying or addressing the Court.
3. Hand sanitizer dispensers or sanitary wipes shall be placed at visible and conspicuous places in the courtroom and throughout the courthouse. Courthouse cleaning staff shall ensure that the sanitizer dispensers are filled at all times.

Social Distancing is Permitted and Encouraged. Courts must facilitate public and press access to view court proceedings as required by law, either in person or electronically. For in-person proceedings, courts must permit audience seating to the extent possible under this Protocol, and

may require social distancing as deemed appropriate and necessary for the safety of court participants. Courts shall designate a seating area in which social distancing is required, for persons who wish to do so.

Objections to Nature of In-Person Proceedings.

Courts must give persons summoned to or scheduled for in-person proceedings – including lawyers, litigants, witnesses and court reporters – the opportunity to object and show good cause for why they should be permitted to appear virtually rather than physically at the courthouse. Orders setting hearing and docket notices must inform summoned participants that they have this right, and provide a method and deadline for submitting a written objection. If on consideration of the objection, the court finds good cause to excuse the person from in-person participation, the court must either allow the person to appear remotely or convert to a fully virtual hearing. This provision does not apply to jurors or witnesses in evidentiary criminal hearings for cases in which incarceration is a possible result.

Jury Proceedings. Fully remote civil jury trials may take place at any time, at the discretion of the judge presiding over the case, so long as the court ensures that all potential remote jurors have access to adequate technology to participate remotely. Lawyers and parties may be compelled over objection to participate in a fully remote civil jury trial or criminal jury trial in which incarceration is not a possible sentence. Remote jury trials in criminal cases where incarceration is a possible sentence are prohibited unless the prosecution and the defense agree to the remote proceeding and the defense enters necessary waivers, in open court.

Courts may hold in-person jury trials at any time, in conformity with this Protocol, and must do each of the following:

1. coordinate with other courts, through the district court coordinator, to avoid conflicting or overlapping jury proceedings;
2. ensure that no court participants (including potential jurors) have tested positive for COVID-19 within the previous 10 days, had symptoms of COVID-19 within the previous 10 days, or if they are unvaccinated, had recent known exposure to COVID-19 within the previous 14 days;
3. include with the jury summons information on the precautions that have been taken to protect the health and safety of prospective jurors, and a COVID-19 questionnaire that elicits information about their exposure or particular vulnerability to COVID-19;
4. excuse or reschedule prospective jurors who request to be excused and provide information confirming their recent or current COVID-19 infection or unvaccinated exposure, or their particular vulnerability to COVID-19; and
5. consider on the record any objection or motion related to proceeding with an in-person jury trial at least seven days before the jury proceeding is set to commence, or as soon as practicable if the objection or motion is made or filed within seven days of commencement of the jury proceeding.

This Protocol applies only on days that a court proceeding is to take place in a court building. On days that no court proceeding is being held, protective measures are at the discretion of the respective county judge.

This protocol is subject to change at any time.

Date: May 28, 2021.



HON. ROY B. FERGUSON
Local Administrative District Judge