



MARICOPA COUNTY SUPERIOR COURT: CRIMINAL DEPARTMENT

Modified Criminal Department Operation during COVID-19 Pandemic


The Criminal Department of Maricopa County Superior Court has modified appearance policies to reduce the potential of exposure to COVID-19 to staff, the Court, to lawyers, parties and members of the public. Effective Monday, August 3, 2020, the following amended policies will be implemented. **NOTE: This document has been updated to reflect Maricopa County Superior Court Administrative Order 2020-078, which is effective June 1, 2020, Maricopa County Superior Court Administrative Order 2020-098, which is effective July 1, 2020, and Maricopa County Superior Court Administrative Order 2020-115, which is effective August 3, 2020.**

1 Court Calendars

- a. **Courtrooms / In-Person Hearing Days.** Beginning June 1, judicial officers generally will return to their pre-COVID courtrooms. In the interest of limiting foot traffic in the courthouses, each division on the floor of a courthouse will only hold in-person hearings two days per week, with the times for Friday hearings being coordinated among divisions on a floor.
- b. **Morning Calendar.** Morning calendar will be held at time-certain settings and will generally run Monday – Thursday from 8:30 AM – noon. As a judicial officer deems necessary, a division’s morning calendar may extend into the afternoon.
- c. **Afternoon Calendar.** In the afternoons, divisions will hold additional hearings (preferably virtual hearings) and cover certain duty calendars (e.g., Preliminary Hearings).

2 Virtual Appearances.

- a. **Virtual Appearances Preferred.** AO 2020-078, AO 2020-098, and 2020-115 mandate that the Court continue to hold certain hearings via audio and video appearances. By default, proceedings will be conducted via audio and video appearances unless an in-person hearing is both authorized by AO 2020-078, AO 2020-098, and AO 2020-115 and deemed necessary by the assigned judicial officer due to constitutional and statutory requirements. Absent a court order to the contrary or a finding that an individual’s in-person appearance is necessary to meet core constitutional requirements, any participant in a hearing will be allowed to appear virtually.
- b. **In-Custody Defendants.** Absent extraordinary circumstances, in-custody defendants will continue to be transported for all appearance hearings. The Court continues to work with custodial facilities to identify technology and spaces that will allow in-custody Defendants to appear by telephone or IAS.


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- c. **Rule 1.5: Interactive Audiovisual Systems (IAS).** Rule 1.5 of the Arizona Rules of Criminal Procedure governs the use of Interactive Audiovisual Systems (IAS) when the appearance of a defendant or counsel is required in a criminal proceeding. The effect of Arizona Supreme Court Administrative Order 2020-79 is to suspend this rule. Nevertheless, to the maximum extent possible, the Criminal Department will make best efforts to comply with the requirements of Rule 1.5 when using IAS, including the requirement that IAS be used so the court and all parties can view and converse with each other simultaneously. Counsel should appear with their webcams enabled.
 - d. **Location of Persons Appearing Virtually.** Any person making a virtual appearance must be in a room or area that provides proper decorum for the proceeding, free of extraneous activity and sounds during the proceeding. A person should not appear virtually at a hearing while operating a moving vehicle.

3 In-Person Hearings

- a. **Masks Required.** All persons entering a courtroom are required to wear a mask or face covering at all times unless the judicial officer has authorized the temporary removal of a mask or face covering for purposes of witness testimony, defendant identification, making an appropriate record, or other reasons deemed necessary by the judicial officer, provided that appropriate social distancing or other protective measures are followed.
- b. **Bench Conferences.** Please do not ask for bench conferences at this time. The court is exploring potential technology solutions to allow the parties to confer with the court on the record while maintaining proper social distancing. Meanwhile, if either party has something it wants to relay to the Court, please consider placing it in writing.
- c. **Attendance / Seating / Spectators.** Pursuant to Administrative Order 2020-078, attendance at any in-person event is limited to parties, witnesses, victims, sheriff's deputies, detention officers, law enforcement officers and lawyers. Social distancing will be observed, and the Court may enforce public health guidance by prohibiting people from sitting in specified seats to maintain appropriate distance between people. To the extent that the number of persons in the room may exceed CDC guidance, the Court will grant priority to victims. The Court encourages the State and/or victims' advocates to alert victims they may appear by telephone or IAS. The Court further encourages the parties to give the Court as much advance notice as possible if they expect a particular hearing will be well attended so that the Court can attempt to locate a larger courtroom in which to hold the hearing and/or reset the hearing to a future date.


4 Proceeding-Specific Appearance Policies

- a. **Initial Appearances (IA).** All Initial Appearances will proceed by audio or video appearance.
- b. **Preliminary Hearings.** All Early Disposition Court ("EDC") in custody status conferences will proceed in-person; all out of custody EDC status conferences will proceed by audio or video appearance. All Preliminary hearings will proceed in-person unless otherwise ordered by the court. Efforts should be taken to minimize the number of individuals called to testify at a preliminary hearing.

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- c. **Bail Hearings.** All release hearings for defendants held non-bailable will proceed in-person unless otherwise ordered by the court.
 - d. **Arraignments.** As of the date of Administrative Order 2020-043, Rule 14 of the Arizona Rules of Criminal Procedure does not apply to superior court cases in this county. Arraignments will be held for indicted defendants either by audio or video appearance or in person, as directed by the court. For defendants charged by information, arraignments will be held directly after the finding of probable cause.

e. **Pretrial Conferences (IPTCs, CPTCs, CCMCs, FTMCs) and Status Conferences**

- 1 **Non-Appearance Hearings.** Absent Court order to the contrary, pretrial conferences and status conferences are converted to non-appearance hearings at which none of the parties is required to appear.
- 2 **FTMCs.** Final Trial Management Conferences will be held in person for in custody defendants and by audio or video appearance for out of custody defendants. The parties should carefully review minute entries and follow all orders regarding FTMCs.
- 3 **Written Statements.** In lieu of personal appearances at pretrial and status conferences, the parties and/or counsel are ordered to confer either verbally or in writing for the purpose of preparing and filing the written statements by close of business three business days prior to the hearing date. The Court will make Word templates of each of these statements available on-line at www.superiorcourt.maricopa.gov/communications-office/covid-19/. Failure to timely file the required statement may result in the Court setting an Order to Show Cause Hearing for failure to comply with the Court's orders. To the extent that any written statement might contain sensitive information that a party would typically provide at a bench conference and would prefer not to have filed into the Court's docket, that sensitive information may be provided in a separate Sensitive Information document with a Motion to File Under Seal and a Proposed Form of Order. Please remember not to e-file the Sensitive Information document. The Court will liberally grant motions to seal sensitive information for the duration of the COVID-19 crisis. The parties must provide a courtesy copy of the Motion to File Under Seal and Proposed Form of Order to the case management judge's division, and provide the original of the Sensitive Information document to the case management judge's division. The parties must also file an original of the Motion to File Under Seal and Proposed Form of Order with the Clerk of Court (i.e., e-filing).
 - a. **Initial Pretrial Conference (IPTC).** The parties shall file a *Joint Initial Pretrial Conference Statement*, providing confirmation that the parties have complied with Rules 15.1 and 15.2.
 - b. **Comprehensive Pretrial Conference (CPTC).** The parties shall file a *Joint Comprehensive Pretrial Conference Statement*, providing the information required in the Court's minute entry order setting the CPTC.


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- c. **Scheduling Conference for Complex Case.** The parties shall file a *Joint Case Management Plan*, providing the information required in the Complex Case Designation and Case Management Order and Administrative Order No. 2010-090.
 - d. **Complex Case Management Conference (CCMC).** The parties shall file a *Joint Case Management Report*, providing the information required in the Court's minute entry order designating the matter as complex and Administrative Order No. 2010-090.
 - e. **Status Conference.** Each party shall file a separate *Status Conference Report* addressing the specific issues for which the Status Conference was set.

4 **Converting a Non-Appearance Hearing to an Appearance Hearing.** For good cause, a party may request to convert any of pretrial or status conference to a virtual (telephonic or IAS) appearance hearing by notifying the case management division no less than 3 business days prior to the hearing date. The Court retains discretion to deny any request for an appearance hearing, as the Court deems appropriate. The court will determine the method of appearance, by telephone or by IAS. Any party seeking to appear virtually must follow the court's instructions and orders for the virtual appearance. If an appearance hearing is granted, the case management division will set it as a TIME CERTAIN hearing.

5 **Presence of Defendants.** If a pretrial or status conference is converted to a virtual appearance hearing, a Defendant's presence may be waived. Defense counsel must confirm the Defendant does not object if a Defendant's presence is waived. Any request to continue and/or exclude time needs to confirm a Defendant's position regarding exclusion of time under Rule 8.2.

6 **Motions to Continue.** Any party requesting a continuance of any pretrial or status conference and/or trial date must file a written Motion to Continue. To the extent that a party seeks to continue the trial date, the motion should include the Defendant's position on excluding time from the Rule 8.2 time limitations. Any time the pretrial conference and/or trial dates are continued or changed, defense counsel must file a declaration confirming that the Defendant has been made aware of all future court dates (regardless of whether Defendant is in or out of custody). The division will take into account any input from victims.

f. **Evidentiary Hearings.** Evidentiary hearings for in custody defendants will proceed in-person. For out of custody defendants, evidentiary hearings will be presumptively done through audio or video appearance but may be held in-person or as a combination of audio or video and in-person at the discretion of the judge conducting the hearing. Evidentiary hearings will be scheduled on a time-certain basis.



g. **Settlement Conferences.** Out-of-custody settlement conferences may be held as virtual (telephonic or IAS) hearings; in custody settlement conferences may be held either virtually or in-person. A settlement conference will be scheduled only upon meeting the following criteria:

(a) a plea has been extended and communicated to the defendant (or a plea has been extended by the defendant if the State has declined to make a plea offer); (b) the parties have negotiated in good faith and reached an impasse; (c) the prosecutor who attends the settlement conference has the authority to settle the case, including the authority to make changes to the plea agreement; (d) the court's intervention is needed for some identified, tangible reason (i.e., asking the judge to "explain the ranges" is not sufficient).

In every case, the parties must submit a joint statement to the judicial officer who they are asking to conduct the settlement conference avowing that the criteria have been met, and indicating why the court's intervention is required. In custody in-person settlement conferences must be conducted with all social distancing requirements observed, and with the minimum number of participants physically in the courtroom. The parties are free to conduct a jail tablet settlement conference if they all agree.

Settlement on Demand is suspended.

h. **Changes of Plea.** In custody changes of plea will proceed in-person, absent agreement of the parties and approval of the court. By stipulation of the parties and with approval of the court, any division may conduct an in custody virtual change of plea using IAS. All parties will need to appear with webcam enabled. All out of custody changes of plea will proceed by audio or video appearance, unless the plea will result in an out of custody defendant being taken into custody pursuant to Rule 7.2, Ariz.R.Crim.P. All changes of plea will be scheduled on a time-certain basis. Plea on Demand is available for virtual changes of plea for out-of-custody defendants whose plea does not require the defendant to be taken into custody pursuant to Rule 7.2(b).

i. **Sentencings.** Sentencings will proceed in-person, absent agreement of the parties and approval of the court. Sentencings will be scheduled on a time-certain basis.

j. **Probation Violation Hearings.** All probation violation hearings and probation disposition hearings will proceed with defendant present in-person, unless otherwise ordered by the court. Probation violation hearings and probation disposition hearings will be scheduled on a time-certain basis.

k. **Fugitive from Justice Hearings.** All fugitive from justice hearings will proceed with defendant present in-person unless otherwise ordered by the court.



- l. Rule 11 Evidentiary Hearings.** Rule 11 evidentiary hearings will proceed in-person, or by audio or video appearance, or as a combination thereof, as directed by the court (this includes Sell hearings). All Rule 11 non-evidentiary matters will be handled as virtual (telephonic or IAS) hearings or as non-appearance hearings.

 - m. Probation Specialty Courts.** The following court calendars are suspended: Mental Health Court, Veterans' Court, Domestic Violence Court, Drug Court, post-sentencing DUI Court (Commissioner Guyton's calendar), Spanish DUI Court, Restitution Court, and JTOP. Petitions to revoke filed in these cases will generally be heard in Probation Violation Court

 - n. Jury and Bench Trials.** Jury trials will resume as of August 3, 2020

 - o. Grand Jury.** Grand jury operations will resume as of August 3, 2020.

 - p. Bond Forfeiture Hearings.** Bond forfeiture hearings will proceed in-person for in custody defendants. Bond forfeiture hearings for out of custody defendants will proceed as audio or video appearances. All bond forfeiture hearings will be scheduled as time-certain hearings.
- 5 Requests for Emergency Hearing.** All other requests for an in-person hearing in any criminal case not authorized above must be made by motion with the caption "Request for Emergency Hearing" and must be emailed to the assigned judicial division with a copy emailed to crimalemergencies@jbazmc.maricopa.gov. Requests for hearings must explain why an emergency hearing is required. If the judicial officer wishes to conduct an in-person hearing, he or she will seek the approval of the Criminal Presiding Judge before proceeding.

Thank you for your attention to the above. This is a period of uncertainty and the Criminal Department cares very much for the lawyers, parties, families, victims and staff and wants to ensure safety to the extent possible. Even if you are permitted to enter the courthouse pursuant to Administrative Order 2020-078, please **DO NOT** enter the courthouse if you have any symptoms or anyone in your immediate household has symptoms. The Court will work with persons who have symptoms to reschedule hearings or to allow them to appear virtually. Along with the mandatory wearing of masks or face coverings, please also use common-sense practices to protect all participants in court hearings such as social distancing of at least 6 feet, no handshakes, use of personal hand sanitizer, etc.

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