

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY  
COMMONWEALTH OF PENNSYLVANIA  
CRIMINAL DIVISION - LAW**

**IN RE: ADMINISTRATIVE ORDER 2020-42    No.: C-48-AD-203-2020**  
**Pa.R.J.A. 1952 – JUDICIAL EMERGENCY**

**ADMINISTRATIVE ORDER**

**AND NOW**, this 29<sup>th</sup> day of December, 2020, pursuant to (1) the Pennsylvania Supreme Court's Order dated May 27, 2020 authorizing the President Judge of a Judicial District to declare a judicial emergency; (2) this Court's Declaration of a judicial emergency in the Third Judicial District from January 1, 2021 through June 30, 2021; and (3) Pennsylvania Rule of Judicial Administration 1952, in order to balance the public's compelling interest in securing access to judicial services and the mandate of Pennsylvania Rule of Judicial Administration 1952(B)(2) to "take necessary action to provide for the . . . safety of court personnel, court users and the public . . . ," it is hereby **ORDERED** as follows:

**I.     Pennsylvania Rule of Criminal Procedure 600**

Pennsylvania Rule of Criminal Procedure 600(c) is suspended from January 1, 2021 through February 28, 2021, and the period from January 1, 2021 through February 28, 2021 shall be excluded from the time calculation

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under Rule 600(c). All criminal cases which are continued because of the judicial emergency shall be considered to be continued by the Court.

Therefore, any continuance due to the judicial emergency shall constitute excludable time for purposes of the application of Rule of Criminal Procedure 600. See Pa.R.Crim.P. 600(C)(1) ("[P]eriods of delay at any stage of the proceedings caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation."); Pa.R.Crim.P. 600 cmt. ("Delay in the time for trial that is attributable to the judiciary may be excluded from the computation of time."); *Commonwealth v. Mills*, 162 A.2d 323, 325 (Pa. 2017) (dictum) ("[W]here a trial-ready prosecutor must wait several months due to a court calendar, the time should be treated as 'delay' for which the Commonwealth is not accountable."); *Commonwealth v. Bradford*, 46 A.3d 693, 705 (Pa. 2012) (finding that the Commonwealth did not violate Rule 600 where the delay was caused by the Magisterial District Judge's failure to forward the file to the Court of Common Pleas as required by Pa.R.Crim.P. 547(B), resulting in the Court's failure to generate a docket number and, in turn, failure to trigger the District Attorney's internal tracking system; "[T]he Commonwealth exercised due diligence and the delay resulted from judicial delay beyond the Commonwealth's control.").

## **II. Audio-visual communication**

1. With the exception of criminal and civil jury trials, once a case is assigned to a Judge of the Court of Common Pleas for disposition, the assigned judge may conduct the trial, hearing or conference **either** in-person or via two-way simultaneous audio-visual communication by using Polycom video conferencing, or Skype for Business video conferencing, or Zoom. Jury trials may only be conducted in-person. Members of the press may view the proceedings by using the Polycom RealPresence app for Android or Apple devices, or by using Skype for Business video conferencing, or by using Zoom.
2. As set forth below in Section V(1), because of the importance of social distancing requirements, courtroom capacity and staggered seating limitations will be strictly enforced in each courtroom. In order to facilitate these courtroom capacity and staggered seating limitations, all Formal Arraignments, the Call of the Criminal list, Summary Appeals, and ARD Court shall be conducted via two-way simultaneous audio-visual communication with the presiding judge appearing in Courtroom 1 and the parties and attorneys staggered in all available courtrooms which shall be presided over by all available judges who have not been pre-assigned to another matter by an Order issued by the President Judge. All guilty pleas

assigned from these proceedings shall be conducted by the judge assigned to each courtroom. In the event the assigned judge decides to conduct the proceeding via two-way simultaneous audio-visual communication pursuant to Section II(1) above, the judge's staff shall be responsible for scheduling the proceeding by using Polycom, Skype for Business, or Zoom video conferencing.

3. Magisterial District Judges may conduct preliminary hearings of incarcerated defendants **either** in-person or via two-way simultaneous audio-visual communication with the Magisterial District Court by using Polycom video conferencing, or Skype for Business video conferencing, or Zoom. Members of the press may view the proceedings by using the Polycom RealPresence app for Android or Apple devices, or by using Skype for Business video conferencing, or by using Zoom.
4. Settlement masters, custody masters, divorce masters, and domestic relations conference officers may conduct conferences **either** in-person or by telephone, or via two-way simultaneous audio-visual communication by using Polycom video conferencing, Skype for Business video conferencing, or Zoom.
5. Hearings pursuant to the Mental Health Procedures Act, 50 P.S. § 7101, may be conducted **either** in-person or by telephone, or via two-way simultaneous audio-visual communication by using

Polycom video conferencing, or Skype for Business video conferencing, or Zoom.

### **III. Non-Jury trials**

1. In lieu of a civil non-jury call on January 20, 2021, attorneys and parties shall send an email to the Office of Court Administration (jgreene@nccpa.org) by January 15, 2021, stating whether the matter is ready for trial and the approximate length of such trial. If the required email is not received by January 15, 2021, the matter will be stricken from the trial list.
2. In lieu of a civil non-jury call on February 17, 2021, attorneys and parties shall send an email to the Office of Court Administration (jgreene@nccpa.org) by February 12, 2021, stating whether the matter is ready for trial and the approximate length of such trial. If the required email is not received by February 12, 2021, the matter will be stricken from the trial list.
3. In lieu of a civil non-jury call on April 21, 2021, attorneys and parties shall send an email to the Office of Court Administration (jgreene@nccpa.org) by April 16, 2021, stating whether the matter is ready for trial and the approximate length of such trial. If the required email is not received by April 16, 2021, the matter will be stricken from the trial list.

4. In lieu of a civil non-jury call on May 5, 2021, attorneys and parties shall send an email to the Office of Court Administration (jgreene@nccpa.org) by April 30, 2021, stating whether the matter is ready for trial and the approximate length of such trial.

If the required email is not received by April 30, 2021, the matter will be stricken from the trial list.

5. In lieu of a civil non-jury call on June 23, 2021, attorneys and parties shall send an email to the Office of Court Administration (jgreene@nccpa.org) by June 18, 2021, stating whether the matter is ready for trial and the approximate length of such trial.

If the required email is not received by June 18, 2021, the matter will be stricken from the trial list.

#### **IV. Miscellaneous Court**

1. In lieu of a call of the list for miscellaneous hearings for January 6, 2021, January 13, 2021, January 20, 2021, February 3, 2021, February 10, 2021, February 17, 2021, March 3, 2021, March 10, 2021, March 17, 2021, March 24, 2021, March 31, 2021, April 7, 2021, April 14, 2021, April 21, 2021, May 5, 2021, May 19, 2021, May 26, 2021, June 9, 2021, June 16, 2021, and June 23, 2021, the President Judge will pre-assign the cases to judges. At the scheduled time of the hearing, attorneys and parties shall report directly to the assigned judge's courtroom or, if approved by the

assigned judge, the attorneys and parties shall participate via two-way simultaneous audio-visual communication.

**V. CDC Guidelines/Masks**

1. Because of the importance of social distancing requirements and the need to maintain six feet of distance between individuals in all courtrooms, including all Magisterial District Courts, signs shall be posted at the entry of each courtroom (a) indicating the maximum number of occupants; and (b) directing individuals to sit only in the designated seating areas. Court Officers shall be responsible for monitoring and strictly enforcing the courtroom capacity and staggered seating limitations in each courtroom. Each Magisterial District Judge shall be responsible for monitoring and strictly enforcing the courtroom capacity and staggered seating limitations at his/her Magisterial District Court.
2. Signs shall be posted in all courtrooms directing individuals to maintain minimum social distancing requirements.
3. All court employees who are under the supervision and authority of the President Judge, and all individuals who enter any courtroom or court facility under the supervision and authority of the President Judge, including all Magisterial District Courts, the Office of Court Administration, the Domestic Relations Building, the Juvenile Justice Center, and the offices of Adult Probation and Pretrial Services,

shall wear a mask which covers the mouth and nose, irrespective of physical distance from other individuals.<sup>1</sup> Judges and Magisterial District Judges shall responsible for monitoring and strictly enforcing the mask mandate in all courtrooms.

4. The Secretary's order requires all individuals, age two or older, to wear a face covering when indoors or in an enclosed space, where another person or persons who are not members of the individual's household are present in the same space, irrespective of physical distance. *See generally* Secretary of the Pennsylvania Department of Health, Updated Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings, Nov. 18, 2020 (discussing new face mask guidance) (attached hereto as Exhibit A). The order provides no exceptions for government buildings, including courthouses and courtrooms. *See id.* The masks shall be made and worn in accordance with CDC guidelines found at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>. Notwithstanding the

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<sup>1</sup> Pursuant to the Secretary's November 19, 2020 order, the only applicable exception to this requirement for court employees is if an employee is "working alone." Under the order, a person is "working alone" if they are isolated from interaction with other people with little or no expectation of in-person interruption. This includes:

- "a person alone inside an office with four walls and a door;
- a person alone inside a cubicle with three walls and a door or entryway, with walls high enough to block the breathing zone of all people walking by, *and* whose activity will not require anyone to come inside the cubicle."

Secretary of the Pennsylvania Department of Health, Updated Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings, Nov. 18, 2020 (emphasis added).

foregoing, masks shall not be required for individuals who cannot wear a mask due to a medical condition (including children under the age of two).

5. The following individuals are prohibited from entering any courtroom or court facility under the supervision and authority of the President Judge, including all Magisterial District Courts, the Office of Court Administration, the Domestic Relations Building, the Juvenile Justice Center, and the offices of Adult Probation and Pretrial Services:

- Have been directed to quarantine, isolate or self-monitor at home for the coronavirus by any doctor, hospital or health agency; or
- Have been diagnosed with, or have had close contact with anyone diagnosed with, COVID-19; or
- Have flu-like symptoms; or
- Are not wearing a mask in accordance with Section V(3) above.

This Order is effective from January 1, 2021 at 8:30 a.m. through June 30, 2021 at 4:30 p.m.

**BY THE COURT:**

  
**MICHAEL J. KOURY, JR.**  
**PRESIDENT JUDGE**

# Exhibit A

UPDATED ORDER OF THE SECRETARY OF THE PENNSYLVANIA DEPARTMENT OF HEALTH  
REQUIRING UNIVERSAL FACE COVERINGS

The 2019 novel coronavirus (COVID-19) is a contagious disease that is spreading rapidly from person to person in the world, the United States, and this Commonwealth. COVID-19 can be transmitted from any person who is infected, even if they have no symptoms. Additionally, exposure is possible by touching a surface or object that has the virus on it and then touching one's mouth, nose, or eyes. Symptoms of COVID-19 may include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea. Older adults and people who have serious chronic medical conditions are at a higher risk for serious illness. Illness in children and young adults has become more common as the face of the pandemic continues to change. After a brief respite in the summer months, case counts and the number of hospitalizations have been rising throughout the Commonwealth, surrounding states, and the world. As of November 16, 2020, there have been 269,613 cases and 9,325 deaths in this Commonwealth caused by the still present and ongoing pandemic. The Commonwealth and the nation are seeing the highest number of reported cases since the pandemic was declared in January.

Earlier in the pandemic, I issued an Order directing life-sustaining businesses to institute mitigation measures to protect the safety of employees and customers: *Order of the Secretary of the Pennsylvania Department of Health Directing Public Health Safety Measures for Businesses Permitted to Maintain In-person Operations*, dated April 15, 2020. The Department of Health (Department) has also issued guidance to health care providers in the form of Health Alerts (HANs) regarding isolation and quarantine, intended to allow for the continuation of life-sustaining health care services in the midst of the pandemic. With the measured reopening of the Commonwealth, the *Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That Are Not Life Sustaining*, dated March 19, 2020, as amended, and my *Order Regarding the Closure of all Businesses That Are Not Life Sustaining*, dated March 19, 2020, as amended, have been suspended.

Despite the mitigation efforts that were implemented in the spring and successfully saved lives, the pandemic continues to spread, and taking action to prevent that spread while continuing to allow for necessary resumption of economic and social activity requires the Commonwealth to take steps to ensure that participation in those activities contributes as little danger as possible to the people of the Commonwealth.

COVID-19 is a threat to the public's health, for which the Secretary of Health may order general control measures, including, but not limited to, closure, isolation, and quarantine. This authority is granted to the Secretary of Health pursuant to Pennsylvania law. See section 5 of the Disease Prevention and Control Law, 35 P.S. § 521.5; sections 2102(a) and 2106 of the Administrative Code of 1929, 71 P.S. §§ 532(a), and 536; and the Department of Health's regulations at 28 Pa. Code §§ 27.60-27.68 (relating to disease control measures; isolation;

quarantine; movement of persons subject to isolation or quarantine; and release from isolation and quarantine). Particularly, the Department of Health has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. See 35 P.S. § 521.5; 71 P.S. §§ 532(a), and 1403(a); 28 Pa. Code § 27.60.

Under circumstances where social distancing, mask wearing, isolation, and quarantine are the first line of defense against the disease's spread, and where large and small gatherings are spreading disease<sup>1</sup>, the experiences of the Commonwealth (and its and the country's health experts), and recommendations of the CDC regarding travel and gatherings with persons not habitually together lead me to issue this new Order with new disease control measures regarding universal face coverings. Given the method by which the virus spreads, universal face coverings, even when not clinical-level masks, have been an effective mitigation strategy to prevent and control the spread of disease. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html#recent-studies>. Experience demonstrates that when used in public settings, face coverings reduce the spread of COVID-19 in the Commonwealth. This Order is a critical measure to prevent the spread of COVID-19 while minimizing the impact on physical and economic well-being.

Accordingly, on this day, November 17, 2020, in order to prevent and control the spread of disease, I hereby order:

#### Section 1: Definitions

**"Alternative to a face covering"** may include a plastic face shield that covers the nose and mouth, extends below the chin and to the ears, and leaves no exposed gap between the forehead and the shield's headpiece. The Centers for Disease Control and Prevention (CDC) has advised there is currently not enough evidence to determine how much protection a face shield provides to individuals around the person wearing the face shield, because of gaps where

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<sup>1</sup> Christie Aschwanden, "How 'Superspreading' Events Drive Most COVID-19 Spread," *Scientific American*, <https://www.scientificamerican.com/article/how-superspreading-events-drive-most-covid-19-spread1/> (June 23, 2020); Carl Zimmer, "One Meeting In Boston Seeded Tens of Thousands of Infections, Study Finds," *New York Times*, <https://www.nytimes.com/2020/08/26/health/covid-19-superspreaders-boston.html> (Aug. 26, 2020); Jacqueline Howard, *et al.*, "Covid-19 superspreading event in Boston may have led to 20,000 cases, researcher says," *CNN*, <https://www.cnn.com/2020/08/25/health/covid-19-superspreading-boston-study/index.html> (Aug. 25, 2020); Travis Anderson, "7 coronavirus-related deaths now connected to Maine wedding," *The Boston Globe*, <https://www.bostonglobe.com/2020/09/15/nation/coronavirus-death-toll-linked-maine-wedding-grows-five/>; Lea Hamner, *et al.*, "High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice—Skagit County, Washington, March 2020," *CDC*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm> (May 15, 2020); *Washington Post*, [https://www.washingtonpost.com/politics/a-funeral-sparked-a-covid-19-outbreak-and-led-to-many-more-funerals/2020/04/03/546fa0cc-74e6-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/a-funeral-sparked-a-covid-19-outbreak-and-led-to-many-more-funerals/2020/04/03/546fa0cc-74e6-11ea-87da-77a8136c1a6d_story.html) (April 4, 2020); Laxminarayan, *et al.*, "Epidemiology and transmission dynamics of COVID-19 in two Indian states," *Science*, <https://science.sciencemag.org/content/early/2020/09/29/science.abd7672> (September 30, 2020).

respiratory droplets may escape. The CDC does state, however, that face shields may still be an option in situations where wearing a cloth face covering is not otherwise feasible.

**"Face covering"** means covering of the nose and mouth with material that is secured to the head with ties, straps, or loops over the ears or is wrapped around the lower face. A "face covering" can be made of a variety of synthetic or natural fabrics, including cotton, silk, or linen. A "face covering" may be factory-made, sewn by hand, or be improvised from household items, including, but not limited to, scarfs, bandanas, t-shirts, sweatshirts, or towels. While procedural and surgical masks intended for health care providers and first responders, such as N95 respirators, meet those requirements, these specialized masks should be reserved for appropriate occupational and health care personnel.

**"Physical distancing"** means the practice of staying at least six feet away from others. Social distancing is the term that was used earlier in the pandemic as many people stayed home to help prevent the spread of COVID-19. Now, the term physical distancing is used to stress the importance of maintaining physical space when in public areas.

**"School entity"** means a public K-12 school, a brick and mortar and cyber charter school, a private or parochial school, a career and technical center (CTCs), and an intermediate unit (IU); educational programming for students in non-educational placements in residential settings (e.g., boarding schools), residential facilities, detention centers, and hospital settings; a PA Pre-K Counts program, Head Start Program and Preschool Early Intervention program; a Private Academic Nursery School and locally funded prekindergarten activities; and a post-secondary institution.

**"Sustained physical distance"** means the practice of staying at least six feet away from others to avoid becoming a close contact. On October 21, 2020, the Centers for Disease Control and Prevention (CDC) updated its definition of close contact to "someone who was within six feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period." The guidance goes on to note that there are additional factors to consider when defining "close contact." DOH recommends using 15 consecutive minutes of exposure at a distance of six feet or less as an operational definition for "close contact." However, there are circumstances when someone should be considered a close contact of a case after being within six feet for fewer than 15 consecutive minutes. Additional factors that should be considered when assessing close contacts include but are not limited to: close proximity to an infected person, infected person exhibiting symptoms, and environmental conditions like crowds or inadequate ventilation.

**"Working alone"** means when a person is isolated from interaction with other people with little or no expectation of in-person interruption. Examples include:

- A lone worker inside the enclosed cab of a crane or construction equipment.
- A person by themselves inside an office with four walls and a door.

- A lone worker inside a cubicle with 3 walls and a door or entryway, with walls high enough to block the breathing zone of all people walking by, and the worker's activity will not require anyone to come inside of the worker's workspace.
- An employee who is alone in an agricultural field or other open area with no anticipated contact with others.

## Section 2: Face Coverings Required

Except as provided in Section 3, every individual, age two and older, in the Commonwealth of Pennsylvania shall wear a face covering when:

- Indoors or in an enclosed space, where another person or persons who are not members of the individual's household are present in the same space, irrespective of physical distance.
- Outdoors with others who are not members of a person's household and unable to maintain sustained physical distance.
- As permitted in my Order Directing Mitigation Measures, dated July 15, 2020, as amended, for participation in an indoor or outdoor event, gathering, or group setting where another person or persons, who are not members of the individual's household are present.
- Participating in indoor physical activity in a gym, fitness center or group fitness classes, where another person or persons who are not members of the individual's household are present in the same space, irrespective of physical distance.
- Waiting in a public area for, riding on, driving or operating public transportation or paratransit or while in a taxi, private car service or ride-sharing vehicle, irrespective of physical distance.
- Obtaining services for themselves or another person or a pet from the health care sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank.
- When working in any space where food is prepared, packaged for sale, or prepared for distribution to others.
- Certain facilities—including hospitals, shelters, long-term care facilities, residential treatment facilities, and correctional facilities—may also require visitors and residents, patients, or inmates to wear face coverings even when in a living unit.

## Section 3: Exceptions to Covering Requirement

The following are exceptions to the face covering requirements in Section 2. All alternatives to wearing a face covering, including the use of a face shield, should be exhausted before an individual is excepted from this Order.

- A. If wearing a face covering while working would create an unsafe condition in which to operate equipment or execute a task as determined by local, state, or federal regulators or workplace safety guidelines.
- B. If wearing a face covering would either cause a medical condition, or exacerbate an existing one, including respiratory issues that impede breathing, a mental health condition or a disability.
- C. When necessary to confirm the individual's identity.
- D. While obtaining a service that requires the temporary removal of the face covering, such as dental services.
- E. When working alone and isolated from interaction with other people with little or no expectation of in-person interaction.
- F. If an individual is communicating or seeking to communicate with someone who is hearing-impaired or has another disability, where the ability to see the mouth is essential for communication.

#### Section 4. Business and School Entity Obligations

##### A. A business or a school entity must:

- 1. Require that all people, including their employees, customers, teachers, students and visitors, wear a face covering and take reasonable steps to enforce the requirement.
- 2. Mitigate or eliminate employee, teacher, student, visitor, and customer exposure to people who cannot wear or refuse to wear a face covering.
- 3. Post prominent signs that are visible to all people—including employees, teachers, students, customers, and visitors—stating that face coverings are required by the Order of the Secretary of Health.
- 4. Provide reasonable accommodations to people, including their employees, teachers, students, customers, and visitors, who state they have a medical condition, mental health condition, or disability that makes it unreasonable for the person to maintain a face covering.
  - a. Businesses may decline service to individuals who are not wearing a face covering or claiming to have a condition preventing them from wearing a face covering or an alternative to a face covering, so long as they attempt to provide a reasonable accommodation.
  - b. Accommodations could include an alternative to a face covering, such as use of a face shield or providing service options that do not require a customer to enter the business. This may include offering curbside pick-up, delivery, or other innovative solutions.

##### C. A business or a school entity should not:

- 1. Enforce face covering requirements when it is unsafe to do so.

2. Restrain, assault, use force, or physically remove employees, teachers, students, customers or other individuals who refuse to comply with this Order when it would not otherwise be legal to do so.
3. Violate other laws, including state and federal anti-discrimination laws.

Section 5. Effect on other Orders of the Secretary of Health

My Order Requiring Universal Face Coverings, dated July 15, 2020, is hereby rescinded and superseded by this Order.

My Order Directing Mitigation Measures, dated July 15, 2020, as amended, is hereby further amended as follows:

Section 3(E): Venues must require attendees to comply with 6-foot physical distancing requirements, to wear masks or face coverings in compliance with my *Updated Order of the Secretary of the Pennsylvania Department of Health Requiring Universal Face Coverings*, dated November 17, 2020 and implement other mitigation practices such as timed entry, multiple entry and exit points, multiple restrooms and hygiene stations. Venues and event planners can review the CDC Events and Gatherings Readiness and Planning Tool for additional information regarding mitigation practices.

The remainder of the Order Directing Mitigation Measures of July 15, 2020 as amended, remains unchanged.

Section 6. Effective Date and Enforcement Date

This Order is effective on and enforcement will begin on November 18, 2020, 12:01 a.m.



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Rachel L. Levine, MD

Secretary