

The order also allows for criminal jury trials to commence on July 20, 2020. This order was entered on June 26, 2020 by Chief Judge Daniel Guerin and made effective immediately. (See attached People's Exhibit A).

4. As a result of the pandemic, the People request the following procedures be implemented during the jury trial of this matter:
 - a. That the Court inquire into any health concerns, health fears, vulnerability to coronavirus, and family exposure concerns of each juror. This will allow the parties to ensure that jurors will be able to pay attention to evidence and arguments, not hold any bias against either party, and remain safe and healthy. That this line of inquiry be done individually outside presence of other jurors or via special questionnaire tendered by the Court.
 - b. That the parties be allowed two alternate jurors (whether the defendant proceeds by way of six or twelve jurors) to reduce the likelihood of a mistrial if safety or health concerns arise with jurors. The Illinois Supreme Court allows for the selection of alternate jurors. *Ill. S. Ct. R 434*.
 - c. That the jurors be instructed if they cannot hear evidence or testimony being presented due to either a mask being worn, plexiglass installations, or for any other reason, they communicate such to Your Honor immediately upon realization of the impediment. Jurors shall be instructed to indicate by way of raising a hand, or by other means which the court may find appropriate.
 - d. That the jurors not wear masks during voir dire. This will allow for the parties not only hear what the jurors are saying, but also observe their reactions and demeanor to questions posed to them. The Illinois Supreme Court in *People v. Mitchell* held that one purpose of voir dire is to observe demeanor of prospective jurors. *People v. Mitchell*, 152 Ill.2d 274, 296 (1992). The *Mitchell* Court found that where the trial court did not disagree with the People's reason for excusing a juror for "somewhat pained" facial expressions, the decision to strike the juror for that and other reasons was not racially motivated. *Id.* at 288.
 - e. That each juror be provided a printed copy of the jury instructions during deliberations to reduce the number of people that handle the instructions. Only one set of each form of verdict should be provided to the jurors in an envelope labeled "Foreperson" along with the Foreperson's copy of the instructions. The Foreperson would be the only juror to handle the envelope until deliberations are completed and the final verdict form is signed.
 - f. That the attorneys not be required to wear masks during jury trial proceedings. It is imperative that the jury be able to hear and understand all

evidence that is being introduced. If attorneys are required to wear masks, this could inhibit the jurors, the Court, and the defendant, from being able to adequately hear the evidence. If the Court enters this order, the People request that a distance of six feet be marked from the jury box to ensure the attorneys can maintain social distancing from the jurors.

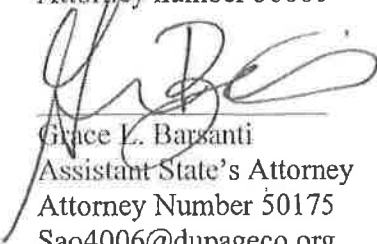
- g. That any sidebars involving the parties and the Court be held outside the presence of the jury where social distancing can be maintained.
 - h. That the defendant be admonished that if he has difficulty communicating with his counsel during the proceedings due to masks or social distancing, he request a recess be held so that he can effectively communicate. Defendants must be able to communicate to counsel, and thus be present, at critical stages of trial. *People v. Spears*, 169 Ill.App.3d 470, 482-83 (1988 1st Dist.).
 - i. That during any in-court identification of the defendant by any witness, each person in the courtroom, other than jurors, be instructed to remove any mask which they may wearing. If the defendant were the sole person to remove his mask, the identification would be unduly suggestive. And if the defendant were not ordered to remove his mask, the witness would only be able to see half of the defendant's face while making an identification.
 - j. That while testifying, witnesses shall not wear masks. The defendant has the right to confront witnesses and a mask could hinder that ability to do so effectively. The Confrontation Clause generally requires face-to-face confrontation. *People v. Lofton*, 194 Ill.2d 40, 59 (2003). Further, the right to confront witnesses involves not only the right to hear the witness, but also view them as they testify. *Id.* at 60. In *Lofton*, the Court held that a trial court's use of podiums to prevent a child witness from seeing the defendant, and vice versa, violated the defendant's right to confrontation. *Id.* at 62. Similarly, in the case before your honor, if a witness was allowed to wear a mask while testifying it would prohibit the defendant from being able to fully view the witness.
5. If this Court grants any of the People's proposals contained within above paragraphs 4(a)-4(k), the People respectfully request that this Court address the potential jurors that they shall not hold any bias against either party for any COVID-19 precautions or rulings.

WHEREFORE, the People respectfully pray this Honorable Court grant the State's Motion in Limine: Addressing COVID-19 Pandemic Precautions.

RESPECTFULLY SUBMITTED

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STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
DU PAGE COUNTY, ILLINOIS

IN THE MATTER OF COURT OPERATIONS)
UNDER THE EXIGENT CIRCUMSTANCES CREATED) Administrative Order 20-19
BY THE CORONAVIRUS (COVID-19)) (1st Amendment)

WHEREAS, due to the frequently changing circumstances involved with the COVID-19 pandemic, measures must continue to be implemented and updated to both protect the health and safety of all those working inside the courthouse and the public, and to ensure the fair and efficient access to justice; and,

~~WHEREAS~~, Governor JB Pritzker has announced that effective May 1, 2020 he intends to extend the Stay at Home Executive Order 2020-10 (as modified) through May 30, 2020 and has provided a pre-filing copy of said Executive Order to the media and public; and,

~~WHEREAS~~, the above-referenced Executive Order recognizes that the Centers for Disease Control and Prevention (CDC) now recommends wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain; and,

~~WHEREAS~~, the above-referenced Executive Order provides, in pertinent part:

- 1) ~~Wearing a face covering in public places or when working. Any individual who is over age 2 and able to medically tolerate a face covering (a mask or cloth face covering) shall be required to cover their nose and mouth with a face covering when in a public place and unable to maintain a six-foot social distance. Face coverings are required in public indoor spaces such as stores.~~

Executive Order 20-10 Section 1, Paragraph 1

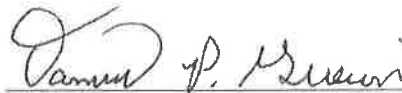
NOW, THEREFORE, IT IS HEREBY ORDERED THAT effective May 1, 2020 July 15, 2020, all attorneys and other members of the general public persons able to medically tolerate a face covering shall be required to wear one when located within the indoor public spaces of the DuPage County Courthouse. All persons inside a courtroom, including courtroom personnel, shall wear a face covering. A judge retains the authority and discretion to allow any person inside a courtroom to remove a face covering.

All ~~attorneys and other members of the general public~~ persons entering the public spaces of the courthouse are expected to have their own face-covering. Courthouse security personnel will have a limited supply of face-coverings. Any person who is unable to obtain a face-covering and needs access to the DuPage County Courthouse for the following reasons will be provided with a face-covering:

- a) Emergency matters.
- b) Petitions and hearings on:
 - Emergency and plenary orders of protection
 - Stalking no-contact orders
 - Civil no-contact orders
 - Firearm restraining orders
- c) Other matters at the discretion of courthouse security personnel.

This Administrative Order remains in effect until further order of the Court. The Court will continue to review and adjust the Order as necessary.

ENTER:



Daniel P. Guerin
Chief Judge

Dated: July 15, 2020
Wheaton, Illinois