

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

ORDER

IN RE: REOPENING)
PROCEEDINGS DURING THE) ADMINISTRATIVE ORDER 2021-05
COVID-19 PANDEMIC)

This Administrative Order is a continuation of the Administrative Orders issued by this Court since the start of the COVID-19 pandemic in Kansas last March 2020. As stated in these Orders and reiterated here, the Judicial Conference of the United States (JCUS), the World Health Organization, the Center for Disease Control, and the Kansas Department of Health and Environment (KDHE), among others, have declared emergency conditions during this pandemic.

On February 26, 2021, the President published formal notice in the Federal Register extending the existing declaration of national emergency concerning the COVID-19 pandemic. Because the national emergency has been extended and the JCUS’s finding of emergency conditions also remains in effect, the authorization for the expanded use of video and telephone conferencing under the CARES Act remains available to courts still affected by the pandemic.

The national and state rates of COVID-19 infections and deaths have risen and fallen over the last 12 months. In March 2020, when the severity of the pandemic was unclear and infection rates were rising, this Court postponed in person civil and criminal hearings and trials to the extent possible. As the number of infections declined, the Court allowed in person hearings and jury trials. Several trials were held in the district with precautions being taken to try to ensure a safe environment for all participants. However, in the fall, the Court determined that it was necessary to once again restrict in person hearings and trials because of the increase in infections. That restriction is set to expire on March 31, 2021.

The Court has been monitoring the rates of COVID-19 infections and deaths. According to KDHE statistics, the current rate of 2.8% is lower than at any point since the pandemic began. Based upon falling infection and death rates across the nation and in Kansas, the Court once again believes that it can safely conduct in person hearings and trials. Nevertheless, as was demonstrated in the fall, the infection rates can increase significantly if proper precautions are not taken.

To aid the reopening, the Court appointed a group of judges from the District of Kansas to examine practices for a safe environment during jury trials. The Court is reviewing those recommendations and will be discussing them with trial counsel in advance of any trial. Certain safety measures such as social distancing, masks and extra cleaning will still be required. The presiding judge will also consider possible reconfiguration of courtrooms, alternative jury selection arrangements, limited seating in the courtrooms, different methods for conducting bench conferences, and examining other trial practices.

NOW, THEREFORE, the Court hereby makes the following Order:

This Court finds that emergency conditions continue to exist throughout this district, as found by the President and JCUS under the CARES Act;

1. This Court continues to authorize the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, in the criminal procedures specifically enumerated in section 15002(b)(1) of the CARES Act, to wit:
 - a. Detention hearings under section 3142 of title 18, United States Code;
 - b. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
 - c. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
 - d. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
 - e. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
 - f. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
 - g. Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
 - h. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
 - i. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and
 - j. Proceedings under chapter 403 of title 18, United States Code (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Under section 15002(b)(4) of the CARES Act, the judge may use this authorization only upon the consent of the defendant, or the juvenile, after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or telephone conference.

2. This Court also continues to authorize the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, in the criminal procedures specifically enumerated in section 15002(b)(2)(A) of the CARES Act, to wit: felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure. Under section 15002(b)(2)(A) of the CARES Act, the district judge in a particular case must find for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. Further, under section 15002(b)(2) of the CARES Act, the judge may use this authorization only upon the consent of the defendant, or the juvenile, after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or telephone conference.

3. In consultation with the Clerk of Court, the Chief Judge will continue to monitor and review the relevant data to determine if the Court is adequately preserving the public health and safety in the functioning of the justice system. This Administrative Order may be amended or superseded to reflect the current conditions.
4. Giving due consideration to public health and safety, the nature of the hearing, the interest of those involved, the protective measures in place in the courthouse and courtroom, and the general interests of justice, the presiding judge has the discretion to conduct courtroom hearings in civil and criminal cases.
5. In conducting the courtroom hearings, this Court will take reasonable protective measures to ensure the safety and health of parties, attorneys, Court personnel, and other courtroom participants, including (as appropriate) but not limited to: providing sanitizers and wipes, requiring social distancing, requiring wearing of masks or face shields when doing so does not impede communication and, when practical, sanitizing of exposed areas between hearings. The presiding judge has the discretion to determine what reasonable measures should be taken, giving due consideration to the health and safety of all persons in the courtroom and the recommendations of the Facility Security Committee and the Court Security Committee.
6. Pursuant to the CARES Act and the Recovery Guidelines, the presiding judge has the discretion and is encouraged to use video and teleconferencing in criminal and civil hearings.

The Chief Judge has reviewed the CARES Act authorizations granted in this and previous Administrative Orders and pursuant to section 15002(b)(3) of the CARES Act, the aforementioned authorizations are extended until the earlier of: (1) the date the Chief Judge determines the authorization is no longer warranted, (2) the date on which emergency authority granted by the JCUS is terminated, (3) the date authorization has been terminated pursuant to section 15002(b)(5) of the CARES Act, or (4) June 24, 2021. If this authorization has not been terminated before June 24, 2021, this Court will review this authorization and determine whether to extend it, in a frequency not to exceed 90 days.

SO ORDERED this 26th day of March 2021.

s/ Julie A. Robinson
JULIE A. ROBINSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT