

Courts Suspending Jury Trials as COVID-19 Cases Surge

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About two dozen U.S. district courts have posted orders that suspend jury trials or grand jury proceedings, and scale back other courthouse activities in response to a sharp nationwide rise in coronavirus (COVID-19) cases. The surge in new court orders in recent weeks marks a significant pause in efforts by federal courts to resume full operations.

Although courts have safely conducted jury trials during the pandemic, and many of the nation's 94 districts are still scheduling jury trials, several judges said that spikes in new diagnoses and hospitalizations have made the convening of juries an unacceptable risk. Some said they expect conditions to worsen as winter hits.

"In order to resume jury trials, we will need to see the key health markers, as measured by the Colorado Department of Health, go down to acceptable levels," said Chief Judge Philip A. Brimmer, of the District of Colorado. "I am concerned that the markers will stay high for several months, despite recent efforts by the governor and metro-area mayors to put in place new restrictions."

The orders issued in recent weeks affect courts in most regions of the country, but they are especially pronounced in cold-weather areas in the North, Midwest, and Plains states. Orders suspending jury trials or grand jury sessions have been posted since mid-October on 25 district court websites, while an additional dozen courts have continued suspensions that were already in effect.

On Nov. 5, the District of Colorado suspended all jury and in-person bench trials, as well as all grand jury sessions, until at least Jan. 8. An order signed by Brimmer cited "positivity rates, the number of hospitalizations, and cumulative incidences per 100,000 people."

In addition to health data, some orders cited growing difficulties in getting jurors to hear cases. "Citizens' increasing inability and reluctance to serve on juries is understandable," said a Nov. 6 order signed by Chief Judge D.P. Marshall, Jr., of the Eastern District of Arkansas, "but it creates the possibility that our juries will not reflect a fair cross section of the Eastern District."

In [late April \(/node/18559/\)](#), barely a month after many courts had closed their buildings to public visitors due to rising COVID-19 cases, the Judiciary issued a "gating" strategy to guide courts in a gradual reopening. The document encouraged courts to tie their decisions to a range of local COVID-19 data, which at the time were stabilizing and even improving in many states.

From the start, however, the gating mechanism was designed to move in two directions, also guiding courts on how to scale back or close in-person functions if local health data worsened. As new records in daily cases affect most parts of the country at the same time, court leaders have anticipated and responded to the changing landscape.

"We were going through the positive stages of recovery, beginning jury trials in August and so forth, but there was another conversation going on all the time," said Chief Judge James K. Bredar, of the District of Maryland. "We prepared a rollback template before we needed it and thought through the kinds of issues that we might face and need to deal with."

Bredar ordered his court to suspend all in-person court proceedings from Nov. 16 through the end of the month. While the current order only covers two weeks, the court is evaluating whether to suspend in-person proceedings for a longer period.

"Our epidemiologist has taught me that in the context of COVID-19, it's not just the raw numbers that matter. It's the slopes of the curves," Bredar said. "Unfortunately, our numbers are up, and the slope of the curve is not good, whether it's hospitalizations, test positivity, even deaths."

The districts posting recent orders are: [Alaska \(https://www.akd.uscourts.gov/sites/akd/files/20-37_MGO_%20Suspending_GJ_November_2020.pdf\)](#); [Arizona \(https://www.azd.uscourts.gov/sites/default/files/general-orders/20-39.pdf\)](#); [Eastern District of Arkansas \(https://www.are.uscourts.gov/sites/are/files/AdminOrderEight%20110620.pdf\)](#); [Colorado \(http://www.cod.uscourts.gov/Portals/0/Documents/Orders/GO_2020-19_Court_Operations.pdf\)](#); [Northern \(https://www.ilnd.uscourts.gov/_assets/_documents/Eighth%20Amended%20General%20Order%2020-0012_FINAL.pdf\)](#); [Central \(https://www.ilcd.uscourts.gov/sites/ilcd/files/Seventh%20Amended%20General%20Order%20-redacted.pdf\)](#) and [Southern Districts of Illinois \(https://www.ilsd.uscourts.gov/Forms/AdminOrder266FifthAmendment.pdf\)](#); [Northern \(https://www.innd.uscourts.gov/sites/innd/files/2020-32.pdf\)](#) and [Southern Districts of Indiana \(https://www.insd.uscourts.gov/sites/insd/files/2020.11.12%20General%20Order%20-Suspending%20Jury%20Trials.pdf\)](#); [Kansas \(http://www.ksd.uscourts.gov/wp-content/uploads/2020/11/Administrative-Order-2020-12.pdf\)](#); [Eastern \(http://www.kyed.uscourts.gov/kyed_GOs/gen20-21.pdf\)](#) and [Western Districts of Kentucky \(https://www.kywd.uscourts.gov/sites/kywd/files/general-ordes/General_Order_2020-23-Fifth-Supp-Order-Re-Court-Operations.pdf\)](#); [Maine \(https://www.med.uscourts.gov/opt/sites/default/files/COVID_General_Order_2020-15.pdf\)](#); [Maryland \(https://www.mdd.uscourts.gov/sites/mdd/files/2020-20.pdf\)](#); [Minnesota \(https://www.mnd.uscourts.gov/sites/mnd/files/2020-1104_COVID19-General-Order-No20.pdf\)](#); [Western District of Missouri \(https://www.mow.uscourts.gov/sites/mow/files/GO-COVID19-20201113.pdf\)](#); [Nebraska \(https://www.ned.uscourts.gov/internetDocs/pom/orders/GO_2020-14.pdf\)](#); [Nevada \(https://www.nvd.uscourts.gov/wp-content/uploads/2020/11/Third-Amended-General-Order-2020-03-FINAL.pdf\)](#); [Northern District of Oklahoma \(https://www.oknd.uscourts.gov/docs/eb572591-8f8e-414c-9c8f-37501947ac5f/20go35.pdf\)](#); [Western District of Pennsylvania \(https://www.pawd.uscourts.gov/sites/pawd/files/Admin_Order_2%2020-MC-394_Oct30.pdf\)](#); [Western District of Texas \(https://www.txwd.uscourts.gov/wp-content/uploads/2020/03/NinthSuppCovidOrder101420.pdf\)](#); [Utah \(https://www.utd.uscourts.gov/sites/utd/files/General%20Order%2020-030.pdf\)](#); [Eastern District of Virginia \(https://www.vaed.uscourts.gov/sites/vaed/files/Gen%20Order%202020-22%20-%20-%20Temporary%20Suspension%20of%20Jury%20Trials.pdf\)](#); [Eastern District of Washington \(https://www.waed.uscourts.gov/sites/default/files/general-ordes/GO%2020-101-12.pdf\)](#); and [Western District of Wisconsin \(https://www.wiwd.uscourts.gov/sites/default/files/Admin_Order_367_1.pdf\)](#).

In addition, the Northern District of New York has postponed jury trials until Jan. 19 without issuing a court order, after discussions among judges, the Federal Public Defender, and the U.S. attorney's office. And the District of Idaho has lowered its courtroom capacity from 50 to 10.

"We have seen a large uptick in cases after each major event, and with Thanksgiving, Christmas, and New Year's coming, it was thought more prudent to suspend jury trials," said John M. Domurad, clerk of court of the Northern District of New York. "We are actively encouraging doing other proceedings remotely."

A few courts have moved in the opposite direction, recently resuming jury trials based on local conditions. And many districts have maintained jury trials throughout the COVID-19 emergency.

"Our court has held nine jury trials and we have had no issues, and no one has gotten sick," said Chief Judge L. Scott Coogler, of the Northern District of Alabama. "But like courts everywhere, we are seeing the increase in COVID-19 cases, and we are being more cautious."