

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN RE COVID-19 §
PRECAUTIONARY MEASURES §

ADMINISTRATIVE ORDER NO. 22
EXTENSION OF JUDICIAL EMERGENCY

On this 29th day of June 2021:

WHEREAS, under the Delaware Constitution, Article IV, § 13, the Chief Justice of the Delaware Supreme Court is the administrative head of all the courts in the State and has general administrative and supervisory powers over all the courts;

WHEREAS, under 10 *Del. C.* § 2004(a), the Chief Justice, in consultation with other members of the Supreme Court, has the authority to “declare a judicial emergency when the Chief Justice determines that there are emergency circumstances affecting 1 or more court facilities;”

WHEREAS, under 10 *Del. C.* § 2004(a), “emergency circumstances” includes “disease ... or other natural or manmade causes [affecting] the ability to access the courthouses, or the ability to staff courts;”

WHEREAS, under his authority set forth in 20 *Del. C.* ch. 31, Governor John C. Carney, on March 12, 2020, declared a State of Emergency for the State of Delaware due to the public health threat caused by COVID-19, and extended the State of Emergency on April 10, 2020, May 8, 2020, June 6, 2020, July 6, 2020, August 5, 2020, September 3, 2020, October 2, 2020, October 30, 2020, November 25, 2020, December 24, 2020, January 25, 2021, February 19, 2021, March 19, 2021, April 16, 2021, May 14, 2021, and June 13, 2021;

WHEREAS, under 10 *Del. C.* § 2004, the Chief Justice, in consultation with other members of the Supreme Court, declared a judicial emergency that went into effect on March 16, 2020 at 8:00 a.m., and extended the judicial emergency in orders dated April 14, 2020, May 14, 2020, June 5, 2020, July 6, 2020, August 5, 2020, September 4, 2020, October 2, 2020, November 2, 2020, December 2, 2020, December 30, 2020, January 28, 2021, March 3, 2021, March 31, 2021, April 30, 2021, and May 26, 2021;

WHEREAS, on May 26, 2020, the Courts Reopening Committee established by the Chief Justice submitted an interim report recommending a four-phase approach to reopening the courthouses to additional employees and the public;

WHEREAS, in an order dated June 5, 2020, the Chief Justice accepted the recommendations of the Courts Reopening Committee and the Justice of the Peace Court for reopening;

WHEREAS, the Courts Reopening Committee submitted to the Chief Justice, in August 2020, a plan for resuming jury trials (“Jury Management Plan”) attached as Exhibit 1 to an order dated September 4, 2020 (“Administrative Order No. 10”) and Exhibit 1 to an order dated April 30, 2021 (“Administrative Order No. 19”);

WHEREAS, on September 4, 2020, the Chief Justice accepted the Jury Management Plan, and, subject to further review if COVID-19 conditions deteriorated, determined that Phase 3 of the Reopening Plan, as set forth in Administrative Order No. 10, would commence on October 5, 2020;

WHEREAS, on October 5, 2020, Phase 3 of the Reopening Plan, as modified in Administrative Order No. 10 commenced;

WHEREAS, on November 16, 2020, in light of the deterioration of COVID-19 conditions in the State, the Chief Justice ordered the courts to postpone jury trials and transition back to Phase 2 of the Reopening Plan;

WHEREAS, in an order dated April 30, 2021, the Chief Justice directed that Phase 3 of the Reopening Plan, as modified in that order, would commence on June 1, 2021;

WHEREAS, in an order dated May 20, 2021 (“Administrative Order No. 20”), the Chief Justice modified the requirements for face masks or coverings in court facilities;

WHEREAS, in an order dated May 26, 2021, the Chief Justice extended the judicial emergency and modified Phase 3 of the Reopening Plan to authorize courts to increase judicial branch staffing to 100% on July 6, 2021;

WHEREAS, on June 15, 2021, the Governor announced that he would lift the State of Emergency for the State of Delaware on July 13, 2021;

WHEREAS, the Chief Justice, in consultation with the other members of the Supreme Court, the presiding judges, and health experts, has determined that the judicial emergency should be lifted on July 13, 2021, but that certain precautions to prevent the spread of COVID-19 should remain in effect.

NOW, THEREFORE, IT IS ORDERED that:

- (1) Under the authority of 10 *Del. C.* § 2004, the judicial emergency for all State courts and their facilities in Delaware is extended until 8:00 a.m. on July 13, 2021, and will expire on that date and time. As noted in the May 26, 2021 order, on July 6, 2021, the courts are authorized to increase judicial branch staffing to 100%.
- (2) Until the expiration of the judicial emergency on July 13, 2021, all courts in the State are authorized, to the greatest extent possible under 10 *Del. C.* § 2008, to continue to utilize audiovisual devices at their facilities and remotely to conduct proceedings (except for jury trials). After the expiration of the judicial emergency, courts are encouraged to continue using audiovisual devices to the extent consistent with constitutional and statutory requirements as well as court rules, procedures, and practices.
- (3) Until the expiration of the judicial emergency on July 13, 2021, all time requirements under the Speedy Trial Guidelines are tolled. The *Policy on Speedy Trial Guidelines—Administration of Criminal Litigation and the Policy on Speedy Trial Guidelines—Administration of First-Degree Murder Cases* are hereby amended as set forth in Exhibit 1 and Exhibit 2 to this order, respectively. After the judicial emergency expires, the trial courts shall comply with those guidelines, as amended.
- (4) Until the expiration of the judicial emergency on July 13, 2021, Administrative Order No. 3 regarding the suspension of any requirements for sworn declarations, verifications, certificates, statements, oaths, or affidavits in filings with the Supreme Court, the Court of Chancery, the Superior Court, the Family Court, the Court of Common Pleas, or the Justice of the Peace Court will remain in effect. Courts should examine their rules and procedures to determine whether the expanded use of unsworn declarations under 10 *Del. C.* § 3927 should continue, to the extent consistent with constitutional and statutory requirements, after expiration of the judicial emergency.

- (5) Until the expiration of the judicial emergency on July 13, 2021, each courthouse shall continue to provide a method, such as a dropbox or mailing address, for attorneys and the public to fill out and file paper documents if electronic filing is not available to them. For such cases, the courts shall continue to provide, when practical, an email address for attorneys and the public to email paper documents which will be considered filed with the court when received. Courts should examine their rules and procedures to determine whether these practices should continue, to the extent consistent with constitutional and statutory requirements, after expiration of the judicial emergency.
- (6) On July 1, 2021, Administrative Order No. 20 regarding mandatory use of face masks or coverings in State court facilities expires for those individuals who are fully vaccinated. Individuals who are not fully vaccinated or are immunocompromised must continue to wear face masks or coverings until further notice. All other COVID-19 precautions and social distancing requirements will remain in effect until further notice.
- (7) The Clerk of the Court is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE CHIEF JUSTICE:

/s/ Collins J. Seitz, Jr.
Chief Justice

**EXHIBIT 1 TO ADMINISTRATIVE ORDER
NO. 22**

APPENDIX D-2

POLICY ON SPEEDY TRIAL GUIDELINES

Administration of criminal litigation.

- (a) Superior Court. The following standards will govern proceedings in the Superior Court unless otherwise directed by the Supreme Court.
- (i) Time. At least 90% of all criminal cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 120 days from the date of indictment/information, 98% within 180 days, and 100% within one year. The following time periods shall not be included:
- (1) For all cases in which a *capias* was ordered, the time between the date the *capias* was issued and the date the *capias* was executed.
- (2) For all cases in which a presentence investigation has been ordered by the court, the time between the ordering of the presentence investigation and sentencing.
- (3) For all *nolle prosequis*, the time between the scheduled trial date and the filing of the *nolle prosequi*.
- (4) For all cases in which a mental examination has been ordered by the court, the time between the date of said order and the receipt by the court of the Examination/Evaluation Report.
- (5) For all cases in which a defendant has been evaluated as incompetent to stand trial, the time during which the defendant remains incompetent.
- (6) All murder in the first degree cases shall be subject to a separate disposition standard.
- (ii) Time when presentence report has been ordered. In all cases in which a presentence report has been ordered, the sentencing shall take place within sixty (60) days of the date of the plea or verdict.
- (iii) Compliance. On a monthly basis, the Superior Court Administrator shall compile a list of cases not in compliance with these standards and shall send a copy thereof to the Chief Justice by the middle of the following month. Cases so listed shall be given priority status on the criminal trial calendar, and cases where the defendant remains in a pretrial detention status shall be given priority over civil matters unless a judge of the Superior Court determines that specific circumstances dictate a departure from this general Rule.
- ~~(iii)~~(iv) For cases that were pending or indicted between March 16, 2020 and December 31, 2021, subparagraphs (i) and (iii) above shall not apply. The Superior Court may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic. On or before January 15, 2022, the Superior Court shall report to the Chief Justice the number of cases that were

pending or indicted between March 16, 2020 and December 31, 2020 and remained pending as of December 31, 2021; and on or before January 15, 2023, the Superior Court shall report to the Chief Justice the number of cases that were pending or indicted between March 16, 2020 and December 31, 2021 and remained pending as of December 31, 2022.

(b) Family Court. The following standards will govern proceedings in the Family Court unless otherwise directed by the Supreme Court.

(i) Time. 90% of all adult and juvenile criminal or delinquency cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 45 days after the filing of the information and 100% within 90 days after the filing of the information. The following time periods shall not be included:

(1) For all cases in which a *capias* was ordered, the time between the date the *capias* was issued and the date the *capias* was executed.

(2) For all cases in which a presentence investigation has been ordered by the court, the time between the ordering of the presentence investigation and sentencing.

(3) For all *nolle prosequis*, the time between the scheduled trial date and the filing of the *nolle prosequi*.

(4) For all cases in which a mental examination has been ordered by the court, the time between the date of said order and the receipt by the court of the Examination/Evaluation Report.

(5) For all cases in which a defendant has been evaluated as incompetent to stand trial, the time during which the defendant remains incompetent.

(ii) Time when presentence report has been ordered. In all cases in which a presentence report has been ordered, the sentencing shall take place within sixty (60) days of the date of the plea or verdict for non-incarcerated juveniles and adults and within thirty (30) days for incarcerated juveniles and adults.

(iii) Compliance. On a monthly basis, the Family Court Administrator shall compile a list of cases not in compliance with these standards and shall send a copy thereof to the Chief Justice by the middle of the following month. Cases so listed shall be given priority status over all other civil matters unless a judge of the Family Court determines that specific circumstances dictate a departure from this general Rule.

~~(iii)~~(iv) For cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021, subparagraphs (i) and (iii) above shall not apply. The Family Court may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic. On or before January 15, 2022, the Family Court shall report to the Chief Justice the number of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2020 and remained pending as of December 31, 2021; and on or before January 15, 2023, the Family Court shall report to the Chief Justice the number

of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021 and remained pending as of December 31, 2022.

(c) Court of Common Pleas. The following standards will govern proceedings in the Court of Common Pleas unless otherwise directed by the Supreme Court.

(i) Time. All criminal cases except those involving alleged violations of 21 *Del. C.* § 4177 shall be adjudicated as to guilt or innocence or otherwise disposed of within 90 days from the date of filing of the information. Cases involving alleged violations of 21 *Del. C.* § 4177 with non-incarcerated defendants shall be adjudicated as to guilt or innocence or otherwise disposed of within 150 days from the date of filing of the information. Cases for defendants detained as a result of an alleged violation of 21 *Del. C.* § 4177 should be adjudicated as to guilt or innocence or otherwise disposed of within 90 days from the date of filing of the information. The following time periods shall not be included:

- (1) For all cases in which a *capias* was ordered, the time between the date the *capias* was issued and the date the *capias* was executed.
- (2) For all cases in which a presentence investigation has been ordered by the court, the time between the ordering of the presentence investigation and sentencing.
- (3) For all *nolle prosequi*, the time between the scheduled trial date and the filing of the *nolle prosequi*.
- (4) For all cases in which a mental examination has been ordered by the court, the time between the date of said order and the receipt by the court of the Examination/Evaluation Report.
- (5) For all cases in which a defendant has been evaluated as incompetent to stand trial, the time during which the defendant remains incompetent.

(ii) Time when presentence report has been ordered. In all cases in which a presentence report has been ordered, the sentencing shall take place within thirty (30) days of the date of the plea or verdict.

(iii) Compliance. On a monthly basis, the Court of Common Pleas Administrator shall compile a list of cases not in compliance with these standards and shall send a copy thereof to the Chief Justice by the middle of the following month. Cases so listed shall be given priority status on the criminal trial calendar, and cases where the defendant remains in pretrial detention status shall be given priority over all civil matters unless a judge of the Court of Common Pleas determines that specific circumstances dictate a departure from this general Rule.

~~(iii)~~(iv) For cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021, subparagraphs (i) and (iii) above shall not apply. The Court of Common Pleas may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic. On or before January 15, 2022, the Court of Common Pleas shall report to the

Chief Justice the number of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2020 and remained pending as of December 31, 2021; and on or before January 15, 2023, the Court of Common Pleas shall report to the Chief Justice the number of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021 and remained pending as of December 31, 2022.

(d) Justice of the Peace Court. The following standards will govern proceedings in the Justice of the Peace Court unless otherwise directed by the Supreme Court.

(i) Time. All criminal cases shall be adjudicated as to guilt or innocence or otherwise disposed of within 90 days from the date of filing of the information. The following time periods shall not be included:

(1) For all cases in which a *capias* was ordered, the time between the date the *capias* was issued and the date the *capias* was executed.

(2) For all cases in which a presentence investigation has been ordered by the court, the time between the ordering of the presentence investigation and sentencing.

(3) For all *nolle prosequis*, the time between the scheduled trial date and the filing of the *nolle prosequi*.

(4) For all cases in which a mental examination has been ordered by the court, the time between the date of said order and the receipt by the court of the Examination/Evaluation Report.

(5) For all cases in which a defendant has been evaluated as incompetent to stand trial, the time during which the defendant remains incompetent.

(ii) Time when presentence report has been ordered. In all cases in which a presentence report has been ordered, the sentencing shall take place within thirty (30) days of the date of the plea or verdict.

(iii) Compliance. On a monthly basis, the Justice of the Peace Court Administrator shall compile a list of cases not in compliance with these standards and shall send a copy thereof to the Chief Justice by the middle of the following month. Cases so listed shall be given priority status on the criminal trial calendar, and cases where the defendant remains in pretrial detention status shall be given priority over all civil matters unless a judge of the Court of Common Pleas determines that specific circumstances dictate a departure from this general Rule.

~~(iii)~~(iv) For cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021, subparagraphs (i) and (iii) above shall not apply. The Justice of the Peace Court may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic. On or before January 15, 2022, the Justice of the Peace Court shall report to the Chief Justice the number of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2020 and remained pending as of December 31, 2021; and on or before January 15, 2023, the Justice of the Peace Court shall report

to the Chief Justice the number of cases that were pending or for which an information was filed between March 16, 2020 and December 31, 2021 and remained pending as of December 31, 2022.

- (e) Continuance. Each court shall adopt a set of standards providing that continuances shall be granted only for sufficient cause and for the shortest feasible time period.

EXHIBIT 2 TO ADMINISTRATIVE ORDER NO. 22

APPENDIX D-3

POLICY ON SPEEDY TRIAL GUIDELINES

Administration of ~~capital~~ first-degree murder cases.

- (a) Superior Court. The following standards will govern proceedings in the Superior Court unless otherwise directed by the Supreme Court.
- (i) Time. All cases must be tried and/or otherwise adjudicated within one year from the date of indictment.
 - (ii) Assignment of ~~capital~~ first-degree murder cases. Upon the return of an indictment for murder in the first degree, the President Judge of the Superior Court shall assign each case, in writing, to a judge of the Superior Court who thereafter will be responsible for ensuring compliance with this Directive.
 - (iii) Scheduling. Within thirty (30) days after the indictment, the assigned judge shall schedule an office conference with the prosecution and defense attorneys to plan disposition of the case in the Superior Court within the one-year period. The judge shall consider such pre-trial matters as motions and discovery, and shall establish a schedule to ensure adjudication of the case within the one-year period. A trial date shall be scheduled, and ~~capital~~ first-degree murder cases shall be given priority status on the criminal trial calendar.
 - (iv) Judicial Discretion. Because of their complexity, ~~capital~~ first-degree murder cases occasionally may present unique problems that preclude a trial or other disposition within the one-year period. A judge therefore may depart from these guidelines when the interest of justice requires. In so doing, however, the judge shall provide a written explanation to this Court within ten (10) days of any order that would preclude compliance with the one-year standard.
 - ~~(iv)~~(v) For cases that were pending or indicted between March 16, 2020 and December 31, 2021, subparagraphs (i), (iii), and (iv) above shall not apply. The Superior Court may prioritize such cases as it determines to be in the best interests of justice and of allowing for the prompt and efficient management of the caseload resulting from the COVID-19 pandemic. On or before January 15, 2022, the Superior Court shall report to the Chief Justice the number of first-degree murder cases that were pending or indicted between March 16, 2020 and December 31, 2020 and remained pending as of December 31, 2021; and on or before January 15, 2023, the Superior Court shall report to the Chief Justice the number of cases that were

[pending or indicted between March 16, 2020 and December 31, 2021 and remained pending as of December 31, 2022.](#)

~~(v)~~(vi) Record. The judge shall ensure that in every ~~capital~~[first-degree murder](#) case all pre-trial and trial proceedings in the Superior Court, including all conferences between the court and counsel, shall be recorded by a court reporter and shall be promptly transcribed as provided in the rules of court or upon request of either party or by direction of the judge. The following documents shall be promptly filed with the Prothonotary and made part of the record in each ~~capital~~[first-degree murder](#) case: (1) transcripts of all proceedings described in the first sentence of this standard; (2) a minute order or notation of such a proceeding that has taken place and been recorded but not yet transcribed; (3) all correspondence between the court and counsel; (4) all internal court correspondence that relates to the assignment of judicial officers; and (5) all case-specific administrative determinations, including scheduling directives.

~~(vi) — Rule 9. In every case in which a defendant is sentenced to death, the court reporter shall comply with this Court’s Rule 9(e)(iv) and deem preparation of the transcript a first priority.~~

~~(b) — Supreme Court. The following standards will govern proceedings in the Supreme Court unless otherwise directed by the Court.~~

~~(i) — Briefing schedule compliance. Compliance with briefing schedules in the Supreme Court will be strictly enforced and only in extraordinary circumstances will this Court grant extension totaling more than sixty (60) days.~~

~~(ii) — Oral Arguments. Oral arguments shall be scheduled within forty five (45) days after the prosecution’s answering brief and appendix have been served and filed.~~

~~(iii) — The Court will issue its decision within ninety (90) days after the case has been submitted for decision. The Court will determine motions for re-argument within thirty (30) days after their filing.~~

~~(c) — Post appeal proceedings.~~

~~(i) — If the Supreme Court issues a mandate affirming the imposition of a death sentence, the Superior Court judge to whom the case had been assigned shall re-sentence the defendant within ten (10) days following receipt of the mandate. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than ninety (90) days nor more than one hundred twenty (120) days from the date of re-sentencing to afford the defendant the opportunity to petition either the United States Supreme Court for a writ of certiorari or the Superior Court for post-conviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant’s written motion, a stay of execution to allow for~~

disposition of the petition for a writ of certiorari or a motion for post-conviction relief.

- ~~(ii) If the defendant seeks a writ of certiorari and the petition is dismissed or denied, the Superior Court judge shall re-sentence the defendant within ten (10) days after receipt of an order of dismissal or denial. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than thirty (30) days nor more than sixty (60) days from the date of dismissal or denial of the petition for a writ of certiorari to afford the defendant the opportunity to file an initial motion in the Superior Court for post-conviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant's written motion filed with the Rule 61 motion, a stay of execution to allow disposition of the Rule 61 motion.~~
- ~~(iii) If the United States Supreme Court grants a writ of certiorari, and subsequently affirms a defendant's conviction and sentence, or dismisses the writ as improvidently granted, the Superior Court judge shall re-sentence the defendant within ten (10) days after receipt of an order or opinion of affirmance or dismissal. In the absence of a waiver by the defendant, the execution date shall be scheduled not less than thirty (30) days nor more than sixty (60) days from the date of affirmance of a defendant's conviction and sentence or dismissal of the writ of certiorari to afford the defendant the opportunity to file an initial motion in the Superior Court for post-conviction relief pursuant to Superior Court Criminal Rule 61. The judge may issue, upon the defendant's written motion filed with the Rule 61 motion, a stay of execution to allow disposition of the Rule 61 motion.~~
- ~~(iv) All initial Rule 61 motions filed in capital cases shall be adjudicated within two hundred seventy (270) days of the denial of certiorari by the United States Supreme Court or, if certiorari was not sought, of the Delaware Supreme Court's mandate affirming the imposition of the death sentence.~~
- ~~(v) Within thirty (30) days after the filing of a Rule 61 motion seeking to vacate a death sentence, the judge shall schedule an office conference with the prosecution and defense attorneys to plan disposition of the Rule 61 motion within the two hundred seventy (270) day period. The judge shall consider the need for evidentiary hearings and briefing, and shall establish a schedule to ensure adjudication of the Rule 61 motion within the two hundred seventy (270) day period.~~
- ~~(vi) Circumstances occasionally may preclude disposition of an initial Rule 61 motion within the two hundred seventy (270) day period. A judge therefore may depart from these guidelines when the interests of justice require. In doing so, however, the judge shall provide a written explanation to the Supreme Court within ten (10) days of any order that would preclude compliance with the two~~

~~hundred seventy (270) day standard. The judge shall ensure that a record of all post conviction proceedings in the Superior Court be made and kept available for transcription by the court stenographer.~~

~~(vii) If the Superior Court denies the defendant's initial Rule 61 motion and the defendant appeals to the Delaware Supreme Court, the same procedures and time limit applicable to the defendant's direct appeal will apply to review of the denial of post conviction relief.~~

~~(viii) All subsequent Rule 61 motions shall be decided promptly, and in no event more than sixty (60) days after filing. A judge may depart from this guideline when the interests of justice require. In so doing, however, the judge shall provide a written explanation to the Supreme Court within ten (10) days of any order that would preclude compliance with the sixty (60) day standard. If the defendant was represented by counsel in a prior post conviction proceeding under Rule 61, the bars enumerated in Rule 61 shall be strictly enforced.~~

~~(ix) In every case in which the defendant appeals the Superior Court's denial of a subsequent Rule 61 motion, the briefing schedule established in Supreme Court Rule 15 shall be strictly enforced.~~

~~(x) Upon affirmance of a subsequent Rule 61 motion, the Superior Court judge shall re sentence the defendant within ten (10) days following receipt of the mandate. In the absence of a waiver by the defendant, the execution date shall be scheduled within thirty (30) days from the date of re sentencing.~~