

JURY MANAGEMENT ADVISORY COMMITTEE

Report and Recommendations

to the Justices of the Supreme Judicial Court on Phase 3 of the Resumption of Jury Trials in the Context of the COVID-19 Pandemic

Submitted August 31, 2021

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INTRODUCTION

Pursuant to the Supreme Judicial Court's (SJC) Sixth Updated Order Regarding Court Operations under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic dated April 15, 2021, effective May 1, 2021 (Sixth Order), the Massachusetts Trial Court began Phase 3 of the resumption of jury trials on May 3, 2021. Pursuant to the SJC's Seventh Updated Order Regarding Court Operations under the Exigent Circumstances Created by the COVID-19 (Coronavirus) Pandemic dated July 1, 2021, effective July 12, 2021 (Seventh Order), Phase 3 ended on July 9, 2021.

As of July 12, 2021, no further COVID-19-related limitations or restrictions are imposed on how jury trials are conducted, except public access procedures set forth by the SJC's Fourth Order Regarding Public Access to State Courthouses & Court Facilities, dated July 1, 2021, effective July 12, 2021 (Fourth Access Order). Pursuant to the Seventh Order, jurors have been summoned to appear beginning September 7, 2021 in all Trial Court locations previously conducting jury trials prior to the COVID-19 pandemic.

The JMAC offers this report as a summary of the jury trials conducted and procedures utilized during Phase 3. The JMAC also offers an additional recommendation in advance of the resumption of jury trials across all Trial Court locations on September 7, 2021.

OVERVIEW OF PHASE 3 JURY TRIAL DATA

Number of Jury Trials. One hundred fifty-five jury trials were impaneled in Massachusetts state courts during Phase 3, as follows: six in Juvenile Court, 19 in the Boston

Municipal Court (“BMC”), 69 in the District Court, and 61 in the Superior Court. All cases were tried to a verdict, except four criminal cases: one each in the BMC and District Court that resulted in mistrials, and two in the Superior Court: a hung jury and a *nolle prosequi*. In addition, two Superior Court civil cases settled during trial. Most of the cases impaneled a six-person jury with alternates, although there were 36 cases with 12-person juries plus alternates: one youthful offender case, one Superior Court Sexually Dangerous Person case, and 34 Superior Court criminal cases. Most cases impaneled across all departments involved criminal matters, but 25 cases in the Superior Court were civil matters. All criminal defendants in the Superior Court trials were in custody, except one. The jury trials of criminal defendants in custody also were prioritized in the Boston Municipal Court, District Court, and Juvenile Court.

Expanded Courthouse Locations. In Phase 3, the Trial Court approved eleven additional courthouse locations to host jury trials. These additional locations were the Dorchester and Roxbury Divisions of the Boston Municipal Court, as well as the Brockton Trial Court, the Taunton Trial Court, the Fenton Judicial Center, and the following District Courts: Fitchburg, Third District Court sitting at Medford, Marlborough, Holyoke, Newburyport, and the New Bedford District Court sitting at the New Bedford Probate and Family Court (starting on August 2), bringing to total number of courthouses hosting jury trials to 25.

Jury Trials in Non-Courthouse Locations. The Trial Court utilized non-courthouse locations during Phase 3 to service counties without access to a courthouse approved by the Trial Court to host jury trials. Lombardo’s meeting venue in Randolph served as a non-courthouse location for Norfolk County. Eight District Court jury trials and one Juvenile Court jury trial were held at Lombardo’s during Phase 3, and one Superior Court case was impaneled and then settled. The Springfield Superior and District Courts relocated jury trials to converted space at

the Eastfield Mall in Springfield, where eleven Superior Court cases and one District Court case were impaneled (in addition to two District Court cases that were impaneled and tried at the Ireland Courthouse, by special arrangement). Three District Court cases, one Juvenile Court case, and six Superior Court cases were impaneled at the Cape Codder Resort in Barnstable, while two Juvenile Court cases were tried at the Holiday Inn in Pittsfield. In addition, by agreement with the Federal court, the Suffolk Superior Court was able to try seven jury trials at the Moakley Courthouse in the Seaport District of Boston.

Juror Cancellation. The JMAC's previous report to the SJC on Phase 2 provided data on the cancellation of summoned jurors. During Phase 3, the Trial Court increased the use of summoned jurors. While approximately 80% of summoned jurors were cancelled during Phase 2, in Phase 3 that number dropped to 52.5% of summoned jurors being cancelled prior to appearance in court, meaning the courts made greater use of the people summoned for jury service in Phase 3. From the resumption of jury trials in January 2021 through the end of Phase 3, a total of 47,446 people summoned for jury service were cancelled prior to appearance for jury duty.

Jury Pool Composition. The release of the 2020 federal census data this month allowed the OJC to compare the demographics of persons who appeared for jury service during Phase 3 against the most current state population data. Some demographic classifications exceeded the relevant Federal benchmarks (e.g., Black/African American, White), while the "Other" category (44% of whom selected two or more races on the demographic survey) was lower than the percentage of "Other" reported in the 2020 decennial census. *See* Appendix 1, Phase 3 Juror Demographics. For example, 8.4% of the people who appeared for jury service in Phase 3 self-identified as Black/African American (compared to 6.8% of the Massachusetts population);

77.5% as White (compared to 71.3%); and 8.5% self-identified as “Other,” defined as two or more races, or races/ethnicities not specifically identified in the Federal census (compared to 13.8% of the population). In addition, 8.3% self-identified as Hispanic or Latino (compared to 11% of the population), and 5.3% identified as Asian (compared to 7.6% of the population). Hispanic and Asian jurors, however, historically have appeared for jury service in lower percentages than the census benchmarks, because a higher percentage of these two groups are not qualified for jury service due to lack of citizenship and/or lack of facility with the English language, both of which are statutory requirements for service. G.L. c. 234A, § 4.

Judicial Feedback. Throughout Phase 3, many trial judges continued to complete judicial questionnaires to provide important and useful feedback to the JMAC on issues relative to COVID-19 and the resumption of jury trials. Judges from 13 different Trial Court locations provided feedback to the JMAC. The categories for COVID-19-related feedback were the following: overall compliance with risk reduction protocols, juror movement within the courthouse, juror impanelment procedure, courtroom and courthouse cleaning, courtroom set-up, juror lunch, COVID-19-specific trial procedures, public access, model *voir dire* and jury instructions, and juror deliberations. Juror movement within the courthouse received the highest average score of 9.6 out of 10. The positive feedback was largely attributed to the staffing levels and efforts of the court officers. All scores were relatively high, but the lowest average score of 8.9 was in the category of model *voir dire* and jury instructions. Judges noted that they took time to explain courthouse COVID-19 precautions to the jurors, and that COVID-19-related concerns did not appear to have a noticeable impact on the jury selection process. A more detailed accounting of the judicial questionnaires is included in Appendix 3, Phase 3 Jury Trial COVID-19 Judicial Questionnaire Results.

RESTORATION OF JURY TRIALS

Pursuant to the SJC's Seventh Order, the restoration of the right to trial by jury in all courthouse locations that previously hosted jury trials prior to the COVID-19 pandemic is underway.

Juror Summonses for September 7, 2021. The Office of Jury Commissioner (OJC) has summoned jurors to appear in all courthouses that hosted jurors prior to the pandemic, on all previously allocated days of the week, beginning September 7, 2021. The September 7, 2021 start date was selected because of the statutory requirement, pursuant to G.L. c. 234A, § 19, that the OJC must provide summonses to jurors at least twelve weeks prior to the date of service. Sixty jury pools will be available in September 2021.

Reopening Courthouses to Jurors. The Trial Court Administrator has approved all courthouses that hosted jurors before the pandemic to receive jurors beginning on September 7, 2021, after confirming compliance with current health and safety directives from the CDC and the Massachusetts Department of Public Health. The Trial Court Facilities Department has added MERV-13-rated air filters to the air handling system of courthouses lacking the higher level of air filtration but equipped to support it. Air purifiers with HEPA filters have been installed in courtrooms, jury pool rooms, and jury deliberation rooms. The Trial Court Facilities Department has been working with departmental Chief Justices, Regional Administrative Justices, and First Justices to confirm receipt and placement of air purifiers in advance of September 7, 2021.

Case Backlog. The Trial Court has evaluated the criminal case backlog created by the suspension of jury trials during COVID-19. *See Appendix 4, Trial Court Case Backlog Data.*

Between March 2020 and June 30, 2021, approximately 7,200 criminal cases were estimated to be trial-ready, across all Trial Court departments. The District Court accounts for 77.5% of the cases, the Boston Municipal Court accounts for 14.5%, the Superior Court accounts for 7.4%, and the Juvenile Court accounts for 0.6%. Worcester (18.4%), Suffolk (17.8%) and Essex (17.3%) Counties account for the greatest share of trial-ready cases.

Trial Court departmental Chief Justices, Regional Administrative Judges, and First Justices have identified trial-ready cases and have worked together to develop systems to prioritize and schedule cases for jury trial.

OJC Communication with Jurors. The OJC interactive Massachusetts Juror Service website is used by 60-65% of summoned jurors to respond to their jury summonses. Pursuant to the SJC's Fourth Access Order and the health and safety protocols established by the Trial Court, the COVID-19 screening questions were removed from the Massachusetts Juror Service website. In response to the SJC's Seventh Order, effective July 12, 2021, the OJC removed the information video on jury service during COVID-19, "What to Expect When You Are Summoned for Jury Service," from its public website. Considering the current surge of COVID-19 infections, the OJC is investigating updating and reposting the informational video, to provide the most current information to prospective jurors over the OJC websites. The OJC is also considering posting the Trial Court policy mandating employee vaccination or weekly testing, for the information of prospective jurors.

Jurors who appeared through the end of August received communications from the OJC about the relevant COVID-19 courthouse protocols in place at the time, including masking, social distancing, occupancy limits, and COVID-19 health assessments. Jurors appearing from September 7, 2021 onward are receiving the standard, pre-pandemic juror communications. The

exception is information on health self-assessments: jurors for whom the OJC has email addresses¹ receive an email the night before their service with information on their court appearance, including a health self-assessment. The health assessment instructs jurors not to appear if they are experiencing COVID-19 symptoms or awaiting test results, or if they have been exposed or diagnosed recently. A Reminder Notice is mailed to all summoned jurors two weeks prior to their service, and the OJC has added language to this Notice instructing jurors to contact the OJC if they have COVID-19 symptoms or concerns, and not to appear if they have symptoms or are awaiting test results.

The OJC is prepared, if necessary, to send additional communications to jurors summoned in September 2021 and beyond concerning mask use and other Trial Court policies. Feedback from jurors during Phases 1-3, however, indicated many felt they received too much pre-service information from the OJC. If this feedback changes, or jurors express confusion or concern about COVID-19 issues, the OJC will revert to providing summoned jurors with relevant COVID-19 protocol information.

RECOMMENDATION

The JMAC advocates access to jury trials during the COVID-19 pandemic. The reinstatement of jury trials for all Trial Court locations that previously held jury trials before the pandemic is essential to providing such access. In addition to the importance of preserving the Constitutional right to a trial by jury, the clearance rate data (Appendix 4) and the Phase 3 jury trial impanelment statistics (Appendix 2) demonstrate that the option of a jury trial is a crucial

¹ The OJC has email addresses for approximately 60% of summoned jurors.

caseload management tool. Mask use prioritizes the health and safety of trial participants and may mitigate the risk of mistrial due to COVID-19 infection or exposure.

The JMAC recommends uniform adherence to the Trial Court mask policy, as published in the Trial Court Operations Update of July 26, 2021. This policy mandates mask use during jury trials, with certain exceptions.

“Judges who have been fully vaccinated may remove their masks while speaking and may allow mask removal as follows:

1. Counsel while speaking, provided that counsel has been fully vaccinated;
2. Witnesses while testifying, including jurors during individual *voir dire*;
3. During jury empanelment, counsel, a party, or witness, briefly and without speaking, for the purpose of permitting potential jurors to determine if they may have a disqualifying relationship with the person; and
4. A criminal defendant or juvenile, if identification is a live issue at trial and jurors’ view of that person is necessary to enable jurors to resolve that issue.

Except as set forth above all persons must wear masks at all times during jury trial and evidentiary hearings.” (Emphasis added.)

The Trial Court policy mandates that jurors remain masked while sitting in the jury box and during deliberations, regardless of vaccination status. In the context of the current COVID-19 infection rates, the Trial Court policy requires the protection of a mask for members of the public summoned to appear to serve as jurors, permitting removal when jurors are testifying during *voir dire*. Uniform adherence to this policy in all Trial Court Departments advances the objective of continuing access to jury trials.

APPENDICES

Appendix 1 – Juror Demographic Comparisons

Appendix 2 – Phase 3 Impanelments

Appendix 3 – Phase 3 Jury Trial COVID-19 Judicial Questionnaire Results

Appendix 4 – Trial Court Case Backlog Data

Appendix 1



Office of Jury Commissioner
for the Commonwealth

Statewide

Demographic Survey - Calendar Year 2019, All COVID-19, and Phase 3 Trial Jurors

Demographic Category	Federal Census 2020		Trial/Grand Jurors Who Appeared for Juror Service: CY19		Trial/Grand Jurors Who Appeared for Juror Service: COVID-19 3/16/20-7/9/21		Trial Jurors Who Appeared for Juror Service: Phase 3 5/01/21-7/9/21	
	Population	%	Population	%	Population	%	Population	%
Black/African American	357,018	6.8%	13,699	6.6%	1,099	8.1%	646	8.4%
White	3,724,037	71.3%	170,381	81.7%	10,667	78.3%	5,948	77.5%
Native Hawaiian/Pacific Islander	1,794	0.0%	190	0.1%	10	0.1%	6	0.1%
Asian*	399,103	7.6%	7,993	3.8%	676	5.0%	404	5.3%
American Indian/Alaskan Native	16,407	0.3%	323	0.2%	22	0.2%	13	0.2%
Other	721,219	13.8%	15,896	7.6%	1,151	8.4%	653	8.5%
TOTALS	5,219,578	100.0%	208,482	100.0%	13,625	100.0%	7,670	100.0%

Demographic Category	Federal Census 2020		Trial/Grand Jurors Who Appeared for Juror Service: CY19		Trial/Grand Jurors Who Appeared for Juror Service: COVID-19 3/16/20-7/9/21		Trial Jurors Who Appeared for Juror Service: Phase 3 5/01/21-7/9/21	
	Population	%	Population	%	Population	%	Population	%
Yes, Hispanic/Latino*	621,508	11.0%	13,987	6.7%	13,987	6.7%	642	8.3%
No, Not Hispanic/Latino	5,042,215	89.0%	192,159	92.1%	192,159	92.1%	6,959	90.3%
No Response His./Lat.	0	0.0%	2,505	1.2%	2,505	1.2%	105	1.4%

*The census figures include persons who are not qualified to serve as jurors due to lack of citizenship or ability to speak or understand English as required by G. L.234A, s. 4. This may account for an apparent underrepresentation of Asian and Hispanic/Latino compared to the Federal census population.

Appendix 2

PHASE 3 IMPANELMENTS

Location	Date	Court Dept.	Civil/Criminal	Case Type
Eastfield Mall (Hampden)	5/3/2021	Superior	Criminal	Rape
Suffolk	5/3/2021	Superior	Criminal	Gun
Brooke	5/3/2021	BMC	Criminal	OUI
Middlesex/Woburn	5/3/2021	Superior	Civil	Other Negligence
Brooke	5/4/2021	Juvenile	Criminal	Delinquency
Plymouth	5/4/2021	District	Criminal	OUI
Suffolk	5/5/2021	Superior	Criminal	Gun
Brooke	5/5/2021	BMC	Criminal	Drug
Middlesex/Woburn	5/5/2021	Superior	Civil	MV Negligence
Lombardo's (Norfolk County)	5/6/2021	District	Criminal	OUI
Springfield	5/6/2021	District	Criminal	OUI
Cape Codder (Barnstable)	5/6/2021	District	Criminal	OUI
Salem	5/6/2021	District	Criminal	Witness Intimidation
Lowell	5/6/2021	District	Criminal	Assault
Fall River	5/10/2021	Superior	Criminal	Accessory After
Salem	5/10/2021	Superior	Criminal	Rape of Child
Eastfield Mall (Hampden)	5/10/2021	Superior	Criminal	Murder
Suffolk	5/10/2021	Superior	Criminal	Assault
Brooke	5/10/2021	BMC	Criminal	OUI
Middlesex/Woburn	5/10/2021	Superior	Criminal	Rape
Holiday Inn (Berkshire)	5/11/2021	Juvenile	Criminal	Delinquency
Plymouth	5/11/2021	District	Criminal	OUI
Brooke	5/11/2021	BMC	Criminal	Non-OUI MV
Brooke	5/12/2021	BMC	Criminal	Assault
Eastfield Mall (Hampden)	5/12/2021	Superior	Criminal	Gun
Middlesex/Woburn	5/12/2021	Superior	Civil	Specific Performance of a Contract
Suffolk	5/13/2021	Superior	Criminal	Rape of Child
Springfield	5/13/2021	District	Criminal	Assault
Middlesex/Woburn	5/17/2021	Superior	Criminal	Assault
Lowell	5/17/2021	District	Criminal	OUI
Plymouth	5/17/2021	Superior	Civil	Malpractice-Medical
Cape Codder (Barnstable)	5/17/2021	Superior	Civil	Other Negligence
Plymouth	5/18/2021	District	Criminal	OUI
Cape Codder (Barnstable)	5/18/2021	Superior	Criminal	Drug
Eastfield Mall (Hampden)	5/18/2021	Superior	Criminal	Armed Robbery
Middlesex/Woburn	5/19/2021	Superior	Civil	Employment Discrimination
Middlesex/Woburn	5/24/2021	Superior	Criminal	Assault
Salem	5/24/2021	Superior	Criminal	Rape of Child
Suffolk	5/24/2021	Superior	Criminal	Rape of Child

Appendix 2 (Cont'd.)

Location	Date	Court Dept.	Civil/Criminal	Case Type
Cape Codder (Barnstable)	5/24/2021	District	Criminal	OUI
Plymouth	5/24/2021	Superior	Civil	MV Negligence
Greenfield	5/24/2021	Superior	Civil	SDP
Plymouth	5/25/2021	District	Criminal	OUI
Eastfield Mall (Hampden)	5/25/2021	Superior	Civil	Tort v. Comm. or Munic., etc.
Cape Codder (Barnstable)	5/25/2021	Superior	Civil	Liability of Shareholders, Directors etc.
Middlesex/Woburn	5/25/2021	Superior	Civil	Specific Performance of a Contract
Brooke	5/26/2021	BMC	Criminal	Assault
Lowell	5/26/2021	District	Criminal	Assault
Middlesex/Woburn	6/1/2021	Superior	Criminal	Gun
Eastfield Mall (Hampden)	6/1/2021	Superior	Criminal	Rape of Child
Brooke	6/1/2021	District	Criminal	Assault
Lowell	6/1/2021	Superior	Civil	Tort v. Comm. or Munic., etc.
Middlesex/Woburn	6/1/2021	Superior	Civil	Product Liability
Lowell	6/2/2021	District	Criminal	OUI
Dorchester	6/2/2021	BMC	Criminal	Assault
Suffolk	6/3/2021	Superior	Criminal	Assault
Brockton	6/7/2021	Juvenile	Criminal	Delinquency
Lombardo's (Norfolk)	6/7/2021	Juvenile	Criminal	Delinquency
Salem	6/7/2021	Superior	Criminal	Murder
Salem	6/7/2021	District	Criminal	OUI
Lombardo's (Norfolk)	6/8/2021	District	Criminal	OUI
Middlesex/Woburn	6/8/2021	Superior	Criminal	Rape
Lowell	6/8/2021	Superior	Civil	MV Negligence
Salem	6/9/2021	District	Criminal	Indecent A & B
Worcester	6/9/2021	District	Criminal	OUI
Salem	6/9/2021	District	Criminal	Assault
Eastfield Mall (Hampden)	6/9/2021	Superior	Criminal	Assault
Dorchester	6/9/2021	BMC	Criminal	Gun
Brooke	6/10/2021	BMC	Criminal	Assault
Middlesex/Woburn	6/14/2021	Superior	Civil	Sale or Lease of Real Estate
Worcester	6/14/2021	Superior	Criminal	Assault
Holiday Inn (Berkshire)	6/14/2021	Juvenile	Criminal	Youthful Offender
Worcester	6/14/2021	District	Criminal	OUI
Lowell	6/14/2021	District	Criminal	OUI
Eastfield Mall (Hampden)	6/14/2021	Superior	Criminal	Murder
Plymouth	6/14/2021	Superior	Criminal	Drug
Newburyport	6/14/2021	District	Criminal	OUI
Fall River	6/14/2021	Superior	Criminal	Assault

Appendix 2 (Cont'd.)

Location	Date	Court Dept.	Civil/Criminal	Case Type
3rd District/Medford	6/14/2021	District	Criminal	Assault
Salem	6/14/2021	District	Criminal	Assault
Northampton	6/14/2021	Superior	Civil	Tort v. Comm. or Munic., etc.
Lowell	6/14/2021	Superior	Civil	Other Negligence
Cape Codder (Barnstable)	6/14/2021	Superior	Civil	MV Negligence
Lombardo's (Lombardo's)	6/14/2021	Superior	Civil	Slip and Fall
3rd District/Medford	6/15/2021	District	Criminal	Assault
Lombardo's (Lombardo's)	6/15/2021	District	Criminal	OUI
Fitchburg	6/15/2021	District	Criminal	Viol. Prev. Order
Lawrence	6/15/2021	District	Criminal	Gun
Worcester	6/15/2021	District	Criminal	OUI
Lowell	6/15/2021	Superior	Civil	Other Negligence
Brockton	6/16/2021	District	Criminal	OUI
Lowell	6/16/2021	District	Criminal	OUI
Dorchester	6/16/2021	BMC	Criminal	OUI
Lawrence	6/16/2021	District	Criminal	OUI
Fall River	6/16/2021	District	Criminal	Assault
Eastfield Mall (Hampden)	6/17/2021	Superior	Criminal	Rape
Roxbury	6/17/2021	BMC	Criminal	Assault
Lombardo's (Norfolk)	6/17/2021	District	Criminal	OUI
Lombardo's (Norfolk)	6/17/2021	District	Criminal	OUI
Brooke	6/21/2021	BMC	Criminal	OUI
Salem	6/21/2021	District	Criminal	OUI
Greenfield	6/21/2021	Superior	Criminal	Rape of Child
Salem	6/21/2021	District	Criminal	Assault
Salem	6/21/2021	Superior	Criminal	Rape
Taunton	6/21/2021	District	Criminal	OUI
Newburyport	6/21/2021	District	Criminal	Viol. Prev. Order
Cape Codder (Barnstable)	6/21/2021	District	Criminal	OUI
Lowell	6/21/2021	District	Criminal	OUI
3rd District/Medford	6/21/2021	District	Criminal	Trespassing
Middlesex/Woburn	6/21/2021	Superior	Civil	MV Negligence
Lowell	6/21/2021	Superior	Civil	Slip and Fall
Cape Codder (Barnstable)	6/22/2021	Juvenile	Criminal	Delinquency
Salem	6/22/2021	District	Criminal	Assault
Fall River	6/22/2021	Superior	Criminal	Assault
Worcester	6/22/2021	District	Criminal	OUI
3rd District/Medford	6/22/2021	District	Criminal	Viol. Prev. Order
Dorchester	6/22/2021	BMC	Criminal	Drug

Appendix 2 (Cont'd.)

Location	Date	Court Dept.	Civil/Criminal	Case Type
Taunton	6/22/2021	District	Criminal	OUI
Lowell	6/22/2021	District	Criminal	OUI
Plymouth	6/22/2021	District	Criminal	OUI
Newburyport	6/22/2021	District	Criminal	OUI
Middlesex/Woburn	6/22/2021	Superior	Civil	MV Negligence
Cape Codder (Barnstable)	6/22/2021	Superior	Civil	Slip and Fall
Middlesex/Woburn	6/22/2021	Superior	Civil	Goods Sold and Delivered
Brockton	6/23/2021	District	Criminal	OUI
Lowell	6/23/2021	District	Criminal	OUI
Eastfield Mall (Hampden)	6/23/2021	Superior	Criminal	Assault
Lowell	6/23/2021	District	Criminal	OUI
Cape Codder (Barnstable)	6/23/2021	Superior	Criminal	Drug
Salem	6/23/2021	District	Criminal	Assault
Dorchester	6/23/2021	BMC	Criminal	Gun
Brooke	6/23/2021	BMC	Criminal	OUI
Plymouth	6/23/2021	District	Criminal	OUI
Brooke	6/24/2021	BMC	Criminal	Drug
Eastfield Mall (Hampden)	6/24/2021	Superior	Criminal	Assault
Roxbury	6/24/2021	BMC	Criminal	Witness Intimidation
Lombardo's (Norfolk)	6/24/2021	District	Criminal	OUI
Lombardo's (Norfolk)	6/24/2021	District	Criminal	OUI
Lowell	6/28/2021	District	Criminal	OUI
Marlborough	6/28/2021	District	Criminal	OUI
Fitchburg	6/28/2021	District	Criminal	Viol. Prev. Order
Salem	6/28/2021	District	Criminal	Assault
Salem	6/28/2021	Superior	Criminal	Assault
Plymouth	6/28/2021	Superior	Criminal	Gun
Newburyport	6/28/2021	District	Criminal	Assault
Suffolk	6/28/2021	Superior	Criminal	Gun
Lombardo's (Norfolk)	6/29/2021	District	Criminal	OUI
Worcester	6/29/2021	District	Criminal	OUI
Dorchester	6/29/2021	BMC	Criminal	Assault
Roxbury	6/29/2021	BMC	Criminal	Armed Robbery
Plymouth	6/29/2021	District	Criminal	Assault
Plymouth	6/30/2021	District	Criminal	OUI
Brockton	6/30/2021	District	Criminal	OUI
Lowell	6/30/2021	District	Criminal	Assault
Eastfield Mall (Hampden)	6/30/2021	District	Criminal	Indecent A & B



Phase 3 Jury Trial COVID-19 Judicial Questionnaire Results

Jury Management Advisory Committee, August 2021

QUESTIONNAIRE FEEDBACK RESULTS

The following data includes feedback from the following:

Barnstable Superior Court
Brockton Superior Court
Brockton Trial Court
Cape Codder Resort (Barnstable County)
Eastfield Mall (Hampden County)
Edward C. Brooke Courthouse
Fall River Justice Center
John Joseph Moakley US Courthouse (Suffolk Superior)
Lombardo's Offsite Location (Norfolk County)
Lowell Justice Center
Middlesex Superior Court
Plymouth Trial Court
Springfield District Court

1. Overall Compliance with Risk Reduction Protocols

Average Score: 9.5 High Score: 10 Low Score: 8

Noteworthy Remarks:

Brockton Superior Court - A virtual trial was held, in which the only participants in the courtroom were the judge, clerk, court monitor, and court officer. All other participants, including the jury, were situated remotely. Risk of COVID-19 exposure was minimized by this procedure.

2. Juror Movement within the Courthouse

Average Score: 9.6 High Score: 10 Low Score: 8

Noteworthy Remarks:

Fall River Justice Center - Jurors maintained 6 feet of physical distance while moving around the courthouse, with limited exceptions. Court officers were able to remind jurors successfully of distance protocols to remedy those instances. Five court officers assisted with impanelment, and the remainder of the trial was staffed by at least three court officers each day. There was no impact on the other sessions.

3. Juror Impanelment Procedure

Average Score: 9.4

High Score: 10

Low Score: 4

Noteworthy Remarks:

Fall River Justice Center - A staggered procedure for the jurors' arrival resulted in a significant delay waiting for the second group of jurors to be available.

4. Courtroom and Courthouse Cleaning

Average Score: 9.4

High Score: 10

Low Score: 5

Noteworthy Remarks:

Middlesex Superior Court - Court staff cleaned the witness box between witnesses. This was effective, efficient, and did not delay the proceedings at all. The jurors commented to the judge after the trial that they thought the cleaning protocols were "great."

Middlesex Superior Court - During the judge's post-verdict conversation with the jurors, multiple jurors, without prompting, volunteered that they thought the protocols in place for the trial were "excellent" and "perfect" in addressing virus-related safety without compromising the efficiency of the trial process. In debriefing COVID-19 protocols with the attorneys, they too described the COVID-19-related trial procedures as "seamless" and thought that they were effective and appropriate.

5. Courtroom Set-Up

Average Score: 9.3

High Score: 10

Low Score: 7

Noteworthy Remarks:

John Joseph Moakley US Courthouse (Suffolk Superior) - Furniture arrangements enforced social distancing for jurors and attorneys, including during opening and closing. Attorneys could see jurors when questioning witnesses. Jurors reported being very comfortable with the separation between jurors in the courtroom set aside for their deliberations.

Middlesex Superior Court - It would have been helpful to have a plexiglass enclosure around the podium for the attorneys so they could have removed their masks when addressing the jury.

6. Juror Lunch

Average Score: 9.5

High Score: 10

Low Score: 6

Noteworthy Remarks:

John Joseph Moakley US Courthouse (Suffolk Superior) - The jurors reported that at least once sandwiches were delivered that were not individually wrapped. They felt uncomfortable with that in light of COVID-19.

7. COVID-19 Specific Trial Procedures

Average Score: 9.4

High Score: 10

Low Score: 7

Noteworthy Remarks:

John Joseph Moakley US Courthouse (Suffolk Superior) - WhisperTech devices worked well for sidebar conferences. The defense counsel and defendant were seated next to each other and chose to communicate directly (while masked). Counsel needed to approach witness occasionally, but mostly remained at counsel table.

John Joseph Moakley US Courthouse (Suffolk Superior) - Sidebar conferences were conducted in a room behind the courtroom. The monitor recorded the side bar conferences with a portable FTR device. The doors to the courtroom remained open during the side bar conferences.

8. Public Access

Average Score: 9.2

High Score: 10

Low Score: 5

Noteworthy Remarks:

John Joseph Moakley US Courthouse (Suffolk Superior) – Public access in person was limited to one or two members of the public. Four court officers were present in the courtroom for a non-custody case. Zoom was used successfully to allow public access during trial. At one point only one Zoom camera was functional, but the audio feed was intact. Upwards of 20 people were present via public access on Zoom. The federal court’s Zoom allows display of the item on the document display to those viewing remotely.

John Joseph Moakley US Courthouse (Suffolk Superior) - During the trial, public access was not achievable in the courtroom due to occupancy limits, but the courtroom overflow space accommodated a capacity of 16. Because the trial was a sexual assault case, it was not broadcast on Zoom.

9. Model Voir Dire and Jury Instructions, if Available

Average Score: 8.9

High Score: 10

Low Score: 2

Noteworthy Remarks:

John Joseph Moakley US Courthouse (Suffolk Superior) – The judge spent a lot of time describing COVID-19 protocols during the jury greeting, and in the initial instructions to the jurors after they were sworn. The model was helpful with this. In individual voir dire the judge asked each juror if, in light of the COVID-19 precautions described, they would be able to give the case their full attention. COVID-19 was not raised as an issue for any jurors.

10. Jury Deliberations

Average Score: 9.5

High Score: 10

Low Score: 6

Noteworthy Remarks:

Lowell Justice Center - The jury deliberated in a large conference room. Each juror was assigned a seat, providing 6 feet of physical distance. There was a table in the room where exhibits could be placed for individual inspection (there were none in this trial). The foreperson was advised to place the completed verdict slip on the table so each juror could inspect it prior to returning to the courtroom to deliver the verdict.

Details and impressions about the conduct of the trial and the experience of the participants:

Noteworthy Remarks:

Fall River Justice Center – The judge spoke with the jurors after the verdict. Some jurors thought the protocols were too much, and others thought the protocols were just right. The judge instructed the jurors that they should bring it to the court's attention if they could not hear. Although no jurors raised this issue during the trial, after the trial the jurors commented that mask use made it difficult to hear the lawyers during questioning. All fourteen jurors said that they would have felt comfortable if the lawyers had been permitted to take their masks off while questioning the witnesses.

The judge's impression is that while there was little difficulty impaneling jurors, it remains difficult to bring cases to jury trial. Defendants are not willing to go to trial if the lawyers must be masked. Some lawyers have objected to the jurors being masked, but there are many cases that could proceed to trial if the lawyers could remove their masks while questioning the witnesses. Using masks during jury trials has made it very difficult at times to hear the speaker. The use of plexiglass and physical distancing may impede the ability to hear when speakers are masked.

Brockton Superior Court - Although participants felt uncertainty starting the process for a virtual jury trial, and a few unexpected glitches presented, the collective experience was very positive. Counsel for both sides made very favorable comments about the process. They seemed to agree that a virtual trial might not work for more complex or highly technical cases, but in this matter, it proved surprisingly effective. The jurors also reported having a very positive experience, and they were unanimous in their conclusion that they would prefer a virtual trial over an in-court proceeding, even in a post-pandemic world. They liked the safety of not having to go to the courthouse at this time, but also appreciated avoiding the inconvenience of traffic, parking, etc. They felt they could participate effectively while in the comfort of their own homes, and had no problems in complying with the court's order to keep a quiet place that was free of interruptions.

Overall Questionnaire Results At-A-Glance (Averaged by Courthouse)

Question	Court												Average
	Barnstable	Brockton	Cape Codder	BMC	Fall River	Hampden	Lowell	Middlesex	Lombardos	Plymouth	Salem	Moakley (Suffok S)	
1. Overall Compliance w/Risk Reduction Protocols	10	10	9	9.5	9	10	9.5	9	10	9.3	9.5	9.2	9.5
2. Juror Movement within the Courthouse	10	10	8	10	9	10	10	10	10	9.3	9.5	9.3	9.6
3. Juror Impanelemnt Procedure	10	8.5	9	9.5	9	10	10	10	10	9.5	9.5	8.2	9.4
4. Courtroom and Courthouse Cleaning	10	9	9	10	9	10	9.5	10	10	9.0	9.5	7.3	9.4
5. Courtroom Set-Up	10	10	9	9	9	10	9.5	8.5	8.7	8.8	9	9.8	9.3
6. Juror Lunch	10	10	9	10	9	10	10	10	10	9.5	9	7.5	9.5
7. COVID-19 Specific Trial Procedures	10	10	9	9.5	9	10	9.5	10	9.3	9.3	9	8.5	9.4
8. Public Access	10	7.5	-	10	9	10	8	10	10	9.5	8	8.7	9.2
9. Model Voir Dire and Jury Instructions	8	10	9	10	9	9	9	6.5	10	7.0	9.5	9.4	8.9
10. Jury Deliberations	10	10	9	10	9	10	10	8	10	9.5	9.5	9.3	9.5
Overall Court Score	98	94.7	89	97.5	90	99	96.5	92	97.8	90.3	92	87.8	93.7
No. of Surveys Recv'd	1	2	1	2	1	1	2	2	3	4	2	6	

“-“ indicates no response received.

Appendix 4

Trial Court Case Backlog Data

The following charts and data were derived from a presentation on Trial Court Case Backlogs prepared by the Division of Research and Planning (DRAP) earlier this year. DRAP was able to update some of the data for inclusion in this JMAC report, but some of the data is not available in current form. Please note the different time periods covered by each of the following sections and charts, as noted below:

New Case Filings:

FY19 - FY21

Criminal Cases Trial-Ready:

As of June 2021

Clearance Rate:

April 2020 – July 2021

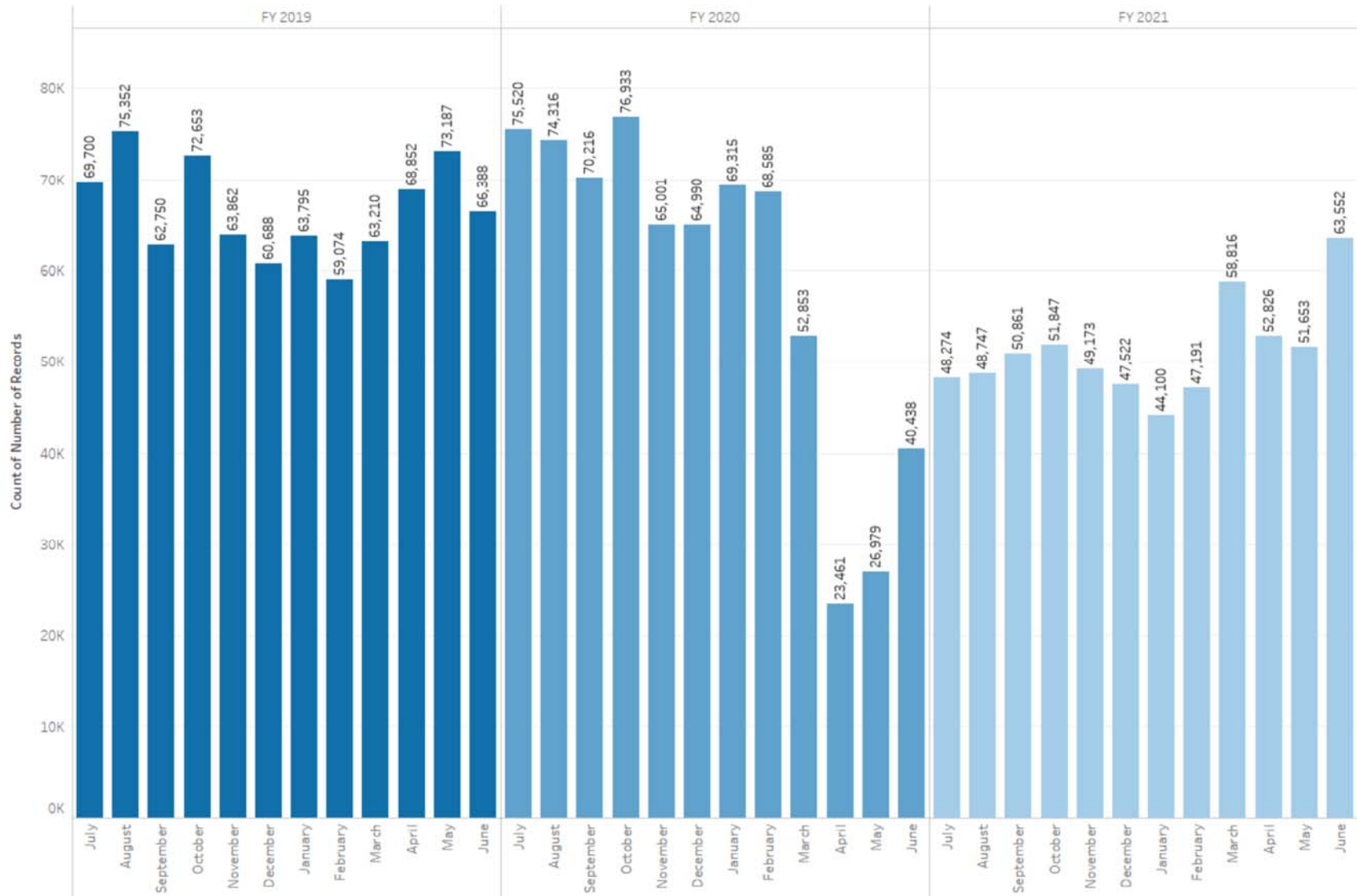
Growth in Pending Cases

and Growth in Pending Criminal Case: April 2020 – March 2021

New Case Filings

In FY2020, the Trial Court received 708,607 new case filings. In FY2021, the Trial Court received 614,562 new case filings, a difference of 94,045 cases or -13.3%. Case filings are now beginning to return to pre-COVID-19 levels.

Case Filings from FY2019 through FY2021



Criminal Cases Trial-Ready

- Approximately 7,235 criminal cases are estimated to be trial-ready.
- District Court accounts for 77.5% of trial-ready cases;
- Boston Municipal Court accounts for 14.5% of trial-ready cases;
- Superior Court accounts for 7.4% of trial-ready cases; and
- Juvenile Court accounts for 0.6% of trial-ready cases.
- Worcester (18.4%), Suffolk(17.8%), and Essex (17.3%) Counties account for the greatest share of trial-ready cases.

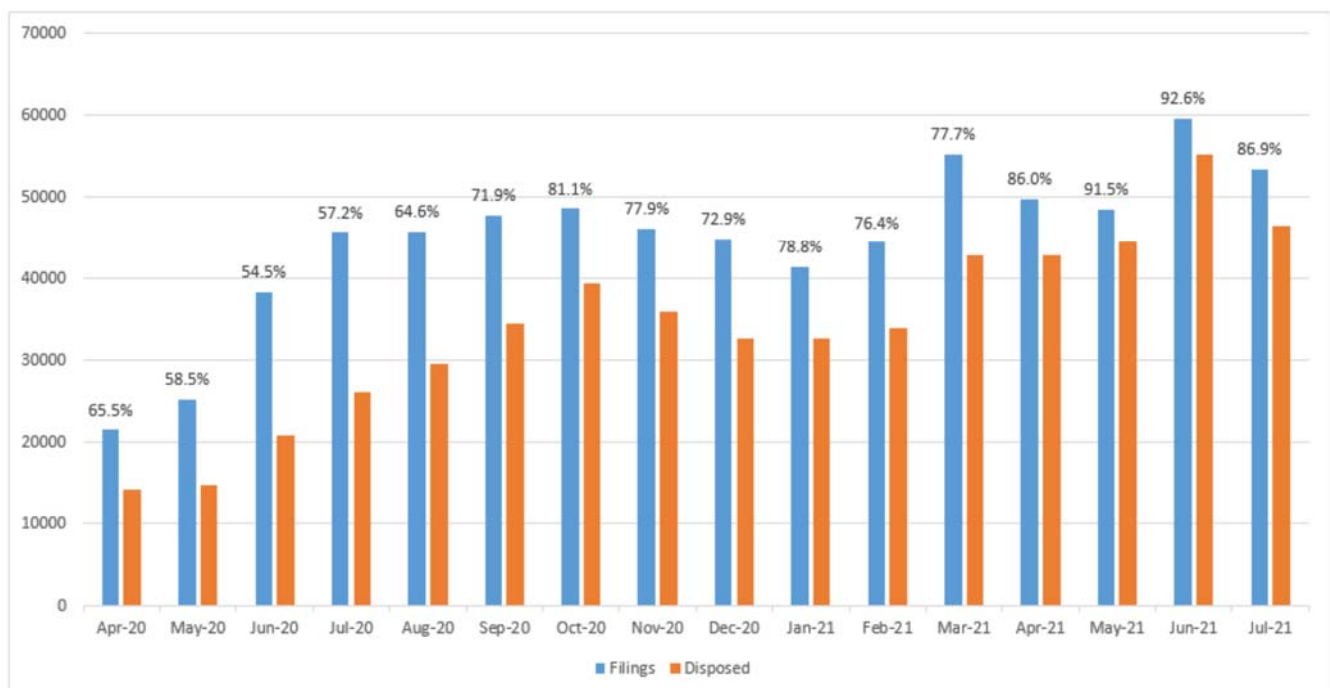
Estimate of Cases Ready for Trial by Department as of June 2021

Department	BARNSTABLE	BERKSHIRE	BRISTOL	DUKES	ESSEX	FRANKLIN	HAMPDEN	HAMPSHIRE	MIDDLESEX	NANTUCKET	NORFOLK	PLYMOUTH	SUFFOLK	WORCESTER	Grand Total
District Court	223	316	450	33	1,209	89	153	44	829	34	296	596	69	1,263	5,604
Boston Municipal Court													1,046		1,046
Superior Court	14	74	24		40	8	19	27	16		46	30	169	70	537
Juvenile Court			8		1		11		13		3	6	6		48
Total	237	390	482	33	1,250	97	183	71	858	34	345	632	1,290	1,333	7,235

Clearance Rate

- The clearance rate has been slowly returning to last year's levels, increasing from a low of 54.5% in June 2020, to a high of 92.6% in June 2021.
- The clearance rate has remained above 72% for each month since October 2020.

Filings, Dispositions, and Clearance Rate April 2020 to July 2021



Growth in Pending Cases

- From April 2020 to March 2021, the Trial Court's pending caseload grew by nearly twice as many cases as it did over the previous 12-month period.
 - From April 2020 to March 2021, the Trial Court's pending caseload grew by 147,612 cases. Over the previous 12 months, the pending caseload grew by 83,701 cases.
- Currently (March 2021 average), the Trial Court's pending caseload is growing by approximately 12,000 cases per month. From April through March 2019, the pending caseload grew by an average of 7,000 cases per month.
- Non-Criminal cases account for approximately 2/3's of the current monthly growth in pending caseload.

Growth in *Criminal* Pending Cases

- From April 2020 through March 2021, the Trial Court received 115,161 new case filings and disposed of 65,827 cases.
 - The clearance rate was 57.2%, a drop of 31.5% when compared to the 12-month period (88.7%).
- The clearance rate has increased from its low of 17.9% in April 2020, to a high of 73.6% in March 2021. The clearance rate has remained above 73% for each month since January 2021.
- Currently (March 2021 average), the Trial Court's pending caseload is growing by approximately 4,100 criminal cases per month.