

FOURTH JUDICIAL CIRCUIT
ADMINISTRATIVE ORDER #3
RE: COVID-19 PANDEMIC RESPONSE

April 20, 2020

Pursuant to the March 13, 2020 South Dakota Supreme Court Order Declaring Judicial Emergency, as well as applicable provisions of SDCL 16-2-21, in dealing with the COVID-19 Pandemic, the Honorable Michael W. Day, Presiding Judge of the Fourth Judicial Circuit, enters the following administrative order, **IT IS HEREBY ORDERED:**

1. Citizens who need to conduct business at the county clerk of court, for matters not requiring a court appearance, should first utilize options available online and by mail. Many commonly requested forms for divorce, temporary protection orders, small claims, and criminal cases are available online at <https://ujslawhelp.sd.gov/>. If your trip to the courthouse is to pay a fine, online payment options are available. A list of clerk of court numbers can be found at <https://ujc.sd.gov>.
2. The following persons are not allowed into the courtroom, jury room, or offices of the clerk of court, court services, judges, or administrative staff unless authorized by the Court:
 - a. Anyone who has been diagnosed with COVID-19 or who has been within 10 feet of any other person diagnosed with COVID-19 within the previous fourteen-day period.
 - b. Anyone with a fever over 100.4°F. Persons may be required to submit to a temperature check before admittance.
 - c. Anyone with a cough or shortness of breath.
 - d. Children aged 10 and under unless a witness or party to the proceeding.
 - e. Anyone who has traveled to or lives with someone who has traveled to another country within the previous fourteen-day period.

The Court may require that any person submit to screening, including but not limited to a temperature check, to determine whether the person falls into any of these categories.

3. Court Security, Court personnel, or those designated as screeners may question any person entering the Courthouse for symptoms of illness or exposure criteria and all persons entering the Courthouse are further subject to having their temperature taken.

4. If determined necessary by the Presiding Judge, all members of the public must wear a protective facial covering such as a mask, scarf, bandana, or other cloth which

covers the nose and mouth during the time that such individuals are present in the Courthouse.

5. Most court proceedings are open to spectators. However, persons not directly involved in the proceeding as a party, witness, or victim are encouraged to stay away from the courthouse to minimize the number of people gathering and potentially spreading COVID-19.

6. Persons within the following categories are at higher risk of complications from COVID-19:

- (1) Over 60 years of age;
- (2) Underlying conditions including heart disease, lung disease or diabetes;
- (3) Weakened immune systems; or
- (4) Pregnancy.

If a high-risk individual is a plaintiff, defendant, lawyer or witness in a case currently scheduled for trial or hearing, the court shall give due consideration to any request for continuance. Additionally, the court may authorize alternative methods of appearance.

7. Defendants in custody will be given priority in scheduling for all trials and hearings, and those within the high-risk categories referenced in paragraph 4 shall be given highest priority. An in-custody defendant shall appear via ITV whenever possible to minimize potential transmission of COVID-19 into the jail. In the event an in-custody defendant cannot appear via ITV, steps shall be taken to minimize the defendant's time in the courtroom and potential contact with other individuals.

8. The Court will conduct hearings via ITV or phone whenever possible, or continue jury trials as necessary, to minimize the number of persons required to gather in the courtroom and court offices.

9. Pursuant to South Dakota Supreme Court Order issued March 13, 2020, the 180 day rule is suspended effective March 13, 2020, until further order of the South Dakota Supreme Court.

10. Potential jurors falling into the high-risk categories listed in paragraph 4 may request to be excused from jury duty via letter to the clerk of court. The clerks of court are authorized to grant such requests.

11. Judges and court staff shall adopt in court practices and schedules to encourage social distancing and smaller groups of participants and spectators.

12. All courtrooms, court offices, and adjacent areas shall be regularly cleaned and disinfected.

13. If the presiding judge deems it necessary to cancel court or close court offices because of an increased threat from COVID-19, notice will be provided through the UJS notification system. Individuals may sign up for notifications at <https://ujnotifications.sd.gov/Register.aspx>

14. No deposition shall be conducted in any jury room or courtroom in the Fourth Circuit

until further order of the Court.

15. No weddings shall be performed by any authorized Fourth Circuit employee and no weddings shall be performed in the Courthouses of the Fourth Circuit.

16. Any mandatory sanction required pursuant to the Application of Supervisory Responses (ASR) established by SDCL § 23A-48-7 and SDCL § 23A-48-9, may be deferred in the discretion of the Court Services Officer in consultation with the deputy or chief court services officer. In consultation and with approval from the chief or deputy chief court services officer, in person contact requirements with probationers may be waived or modified.

17. Whenever SDCL 15-5A permits a hearing to be conducted by ITV, with the permission of the judge hearing the case, parties and/or counsel are permitted to appear by telephone.

18. If law enforcement testing is not available to perform any HOPE or 24/7 probation testing in any Fourth Circuit county, court services may perform periodic testing of the probationer in lieu of the HOPE probation or 24/7 testing.

19. Judges and court staff shall adopt in court practices and schedules to encourage social distancing and smaller groups of participants and spectators.

20. All jury trials scheduled for the months of April, May and through June 25 shall be postponed.

21. If 24/7 testing becomes unavailable in any county in which it was available when a driving permit or bond was issued, any driving permit that has been issued pursuant to SDCL 32-23-23 or other law, or any bond which has been set with 24/7 as a condition, is subject to being continued, modified, or revoked by the issuing judge as that judge determines appropriate based upon the circumstances of the individual case.

22. Felony Court Arraignments may be held via sworn affidavit of the Defendant. The affidavit must contain language acknowledging that the Defendant fully understands all his or her constitutional and statutory rights, the charge or charges in the information or indictment, has received or reviewed a copy of the information or indictment, including the elements of the charge or charges, the potential maximum penalties for each charge, including any mandatory minimum sentence(s), as well as the pleas available to him or her, and the plea to be entered. Only not guilty and not guilty by reason of insanity pleas may be entered by affidavit of the Defendant.

23. Defendant's personal appearance in court is waived for all hearings in which no substantive action is taken, including status or scheduling hearings, as well as standard non-evidentiary motion hearing. Motions for continuance, and standard non-evidentiary motions may be submitted to and ruled on by the Court without the personal presence of the Defendant or Defendant's counsel, at the Court's discretion, through email to the court in lieu of hearing.

24. All efforts will be made to schedule with no more than five individual case hearings during any 15 minute session hearing block.

25. Continuances shall be liberally granted.

26. At all hearings, other than trials, the Defendant and any necessary witnesses may appear by ITV or by telephonic or other electronic means. If a Defendant objects to a witness appearing via ITV, by telephonic or other electronic means, the court may grant a continuance to when the emergency order of the Supreme Court is no longer applicable.

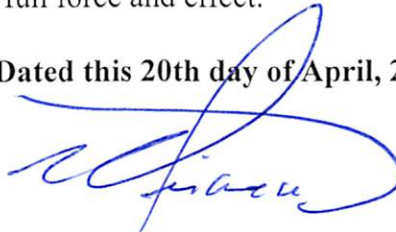
27. Counsel for the Defendant may appear at all hearings in which the only charge is a misdemeanor without a written waiver from the Defendant in the court file, except for a change of plea and/or a sentencing for Class One misdemeanors.

28. Plea and sentencing by waiver and affidavit is expressly encouraged.

29. Although some counties are restricting or limiting in person contact of the public with county employees, public access to the court system within the courthouse shall continue to be provided, unless otherwise authorized by the Presiding Judge of the Circuit, or his designee.

30. These policies shall be effective on the date below and remain in effect until modified or repealed by the presiding judge. The provisions of the Administrative Orders dated March 16, 2020 **and March 23, 2020 remain** in full force and effect.

Dated this 20th day of April, 2020.



Michael W. Day
Presiding Judge
Fourth Judicial Circuit