

Phase II Reopening Statement

PHASE II OPERATIONS PLAN TO BEGIN ON JULY 20, 2020

I. BACKGROUND

For the past 16 weeks, the Court of Common Pleas of Montgomery County has tailored its operations in response to the impact of the Covid-19 Pandemic.

Under the original Emergency Operations Plan, the Court remained operational addressing emergency matters using minimal staff and a limited footprint. In early June, the Phase I Operations Plan was put into place resuming proceedings across all divisions utilizing advance communications methods and limited court appearances. The Court adopted many strategies and efficiencies, some of which we believe will carry forward post-pandemic.

As the Commonwealth of Pennsylvania resumes business operations, travel and social interaction, The Court recognizes its obligation to expand the scope of our operations. However, recognizing the recent increase in infection rates in those areas that have opened, we have chosen to adopt a more cautious and gradual approach. We will balance our commitment to safety and our duty to provide full access to the Courts. We

also reaffirm our commitment to remain creative and flexible as community health conditions change.

The pandemic has caused an increase in unresolved matters. This is not a surprise. However, the Court is committed to undertake new strategies and to increase our efforts to reduce our backlogs. This is already evidenced by the reduction in the outstanding matters in our Juvenile, Orphans and Family Court Divisions. There are some things that are not within our control. As of this date, there is no projection as to when jury trials might resume. In the interim, we will focus our attention on those matters which bring about final resolution and those matters that involve the constitutional and civil rights of our citizens.

II. SAFETY PROTOCOL

The Phase II Operations Plan will involve more hearings being held within Montgomery County Courthouse and other court facilities.

The Court will continue to enforce the safety protocol put into place at the onset of Phase I Operations. This protocol involves the mandatory wearing of masks and social distancing within court facilities. It also involves the implementation and installation of safety equipment. For more specific information, please review the safety protocol materials on the Court's

website. This information is also available on the Montgomery Bar Association website.

III. AREAS AFFECTED BY PHASE II OPERATIONS

The Phase II Operations Plan will affect cases in the Civil, Criminal and Family Divisions as well as some operations in our MDJ Courts. For specific details see the updated protocols posted on the Court's website.

IV. AREAS NOT AFFECTED BY PHASE II OPERATIONS

The Phase II Operations Plan calls for no changes to be made in our Juvenile Division and Orphans Court Division. Cases within those divisions will continue to be addressed in accordance with the Phase I protocol, available on the Court's website, as well as the website of the Montgomery Bar Association.

V. FAMILY DIVISION

One of the most significant changes brought about in Phase II will occur in the Family Division. Family court hearings in custody, custody contempt and special relief will now take place within the Montgomery County Courthouse. Previously, these hearings were being conducted using advanced communication technology. This change is necessitated by the Court's need to more efficiently deal with the large volume of

cases currently awaiting a hearing. It is important that the Court provide stability for those children who are affected by the uncertainty caused by custody litigation. The Court will be taking appropriate caution by balancing the scheduling of these cases and imposing safety protocol for individuals both within the Courthouse and within the actual courtroom. Cases scheduled for Triage will still be conducted using advanced communication technology on the Zoom platform.

There will also be changes with respect to support matters, some of which have already been put into place. Beginning on July 13, the Office of Domestic Relations (DRO) will begin holding enforcement proceedings remotely utilizing telephone conferences. Support Master hearings will begin on or about August 3, 2020, with scheduling notices being issued during mid-July. These hearings will be conducted utilizing advanced communication technology. As of this date, the Court intends to use the Zoom platform, although the Court is working through details regarding the compatibility of that platform with our recording system. These hearings would be scheduled at specific times. Finally, in the area of support, the Court is investigating the possibility of utilizing video conferencing for support conferences, rather than telephone as currently in place.

The Court will be reducing the number of Judges addressing protection from abuse matters. Currently, three Judges have been assigned to address the backlog of those cases. Each of the Judges hears those cases five days per week. Beginning in Phase II, one Judge will be assigned, working five days per week. The remaining Judges will be reassigned to handle custody, contempt and special relief matters.

All other aspects of the Phase I Plan will remain in effect. It is strongly suggested that attorneys and litigants review the specific protocols listed on the Court's website, as well as the website of the Montgomery Bar Association.

VI. CRIMINAL DIVISION

The changes being made in Phase II relating to the Criminal Division reinforce the Courts commitment to the protection of the public and the civil rights of individuals accused of committing criminal offenses. For obvious reasons, criminal jury trials are currently not practical and, perhaps not possible. Nevertheless, the Court believes the implementation of the following protocols will assist in addressing outstanding matters.

Beginning on July 20, 2020 the Court will begin to conduct Gagnon hearings. These hearings will address outstanding violations of probation and parole in a manner different than

they were addressed pre-pandemic. Two Judges have been assigned to hear Gagnon cases over the course of four days per week. The cases will be held within the Montgomery County Courthouse provided, however, that defendants who are incarcerated will appear by video. Defendants on the street will appear in person, as will counsel. The cases will be scheduled at staggered times and the Court's standard safety protocol will be in place. Due to the large volume of outstanding Gagnon hearings, the Court has prioritized the cases. See the specific protocol for details.

The Court is also creating an opportunity for counsel representing parties with outstanding criminal charges to conference those cases before Administrative Judge Thomas C. Branca. These conferences would take place in the Courthouse two days per week and must be scheduled by appointment. The defendant is not to appear at these conferences. If an agreement is reached, the case will be rescheduled in accordance with the Court's Plea Day protocol currently in place.

The Court will begin to hear summary criminal appeals in the Montgomery County Courthouse beginning on July 20, 2020. These cases will be scheduled on a staggered basis.

The Court has already begun to schedule arraignments where waivers have not been delivered. They occur in Courtroom 1 at the rate of 5 per hour on every Tuesday and Wednesday.

While there is no ability to conduct treatment court proceedings, the court will consider applications to treatment court beginning on July 20, 2020.

The specifics related to each of these programs and protocols are set forth on the Court's website, as well as the website of the Montgomery Bar Association. Attorneys are advised to familiarize themselves with the same.

VII. CIVIL DIVISION

In order to address the vast number of cases awaiting case management conferences, the Court will issue case managements Orders automatically without holding individual case management conferences. Deadlines will be extended for 90 days for arbitration level cases and 180 days for cases above arbitration levels, from the date of the case management Order. These orders will be issued on a staggered basis to preclude deadlines from all occurring at the same time. Please refer to the specific protocol on the Court's website and the website of the Montgomery Bar Association for further detail.

VIII. MDJ COURTS

There will be several changes in the operations of our MDJ Courts beginning on July 20, 2020.

As of that date all such courts, except courts in consolidated facilities, will be open every day during regular business hours. The courts may continue to limit the days and or times periods that they are open to the public. Courts will continue to schedule criminal matters on their assigned weekly criminal day and will begin to address all other matters on their non-criminal days. Our MDJ Courts will continue to utilize advanced communication technologies when possible. All safety protocol previously imposed under the Phase I Operations Plan will remain in place.

XI. FILING OFFICES

All provisions in the Phase I Operations Plan related to the filing offices will remain in effect during Phase II with one exception. Beginning on July 20, 2020, the Clerk of Courts will begin accepting payments for fines, costs and will also accept the posting of bail from individuals (but not commercial bail agencies). This last distinction is necessitated by the need to limit personnel within that filing office.

**MONTGOMERY COUNTY COURT OF COMMON PLEAS
FAMILY DIVISION**

PHASE II OPERATIONS PROTOCOL

1. Beginning July 20, 2020 and continuing until further notice, certain Montgomery County Family Division proceedings (as specified below) will now be conducted as in-person hearings, as opposed to Virtual Court Hearings.
2. All parties participating in hearings conducted in-person at the Montgomery County Courthouse shall be required to comply with all requirements of the 38th Judicial District – Montgomery County Safety Protocol, including wearing protective masks throughout the Courthouse including in common areas and in courtrooms, unless asked to remove a mask, in the discretion of the Judge during testimony. Appropriate social distancing will be required at all times.
3. **EMERGENCIES.** All temporary PFA petitions and Emergency Family Petitions will be referred to an Emergency Judge.
 - a. Temporary PFA petitions will be heard in a Courtroom with the applicant participating by a video connection from elsewhere in the Courthouse. Such hearings are **not** subject to the Protocol for Virtual Court Hearings.
 - b. Emergency Family petitions will be handled by a Family Hearing Judge, on the papers or through a telephone conference call. The Judge will attempt to dispose of the matter without further scheduling. If not resolved, the matter will be scheduled for further proceedings in due course.
4. **NON-EMERGENCY PETITIONS**
 - a. Non-emergency petitions in custody, special relief, or contempt (either divorce-related or custody-related), and those previously scheduled for a protracted hearing, where both parties are represented by counsel, will be scheduled for a virtual conference before a Triage Judge. Attorneys must ensure that their clients participate in the virtual conference. Attorneys and pro se individuals must further assure that while participating in the virtual conference any children subject to the litigation are not within hearing distance of the parties. Petitions where either or both parties are unrepresented may be scheduled for telephone conferences before a Triage Judge if a virtual conference is not feasible. Conferences before the Triage Judge will not be held on the record, except as may be necessary to memorialize an agreement.

- b. If an agreement is reached, it will be memorialized by order on that day. If an agreement is not reached during the conference, the Triage Judge will enter an Order scheduling the matter for a hearing before a Hearing Judge. Attorneys participating in a conference **must** be familiar with their clients' calendars for scheduling purposes. Hearings will be conducted in-person at the Courthouse. Any objection to an in-person hearing must be raised during the conference and the Triage Judge will rule immediately on that request.
- c. The Court will not postpone a hearing, once scheduled, except for an unforeseen emergency. Any request for a continuance must be submitted to the Triage Judge, not the Hearing Judge.
- d. If a matter is settled or resolved after the conference and before the scheduled hearing, counsel or the parties must **immediately** notify the Triage Judge.

5. **HEARINGS**

- a. Hearings will be conducted in-person at the Courthouse. Parties, witnesses and counsel shall all be present.
- b. If the Judge deems necessary, a child may be interviewed remotely. The custodial parent shall make certain that the child is available remotely at the time of the hearing.
- c. All parties must assure that the child being interviewed is given a private area, free of anyone listening, assuring their complete privacy, not being monitored or overheard.

6. **CUSTODY CONCILIATION**

- a. Conciliation shall be waived for all cases pending, which were filed prior to June 1, 2020.
- b. For petitions filed on or after June 1, 2020, custody conciliations will be conducted by telephone conference. The parties scheduled for conciliation will be responsible for putting contact phone numbers and emails on the cover sheet for themselves, the opposing party, and any attorneys involved. Attorneys must have their clients available to join by telephone, if needed.

7. **CHILDREN COME FIRST.** The Court’s parent education seminar has been made available electronically as of June 1, 2020. For more information please visit the Children Come First website at thechildrencomefirst.com

8. **MEDIATION.** Mediation is required for all cases filed on or after June 1, 2020. The mediation will be conducted by telephone or, at the mediator’s option, by informal video conference that shall not be subject to the Protocol for Virtual Court Hearings.

9. **SUPPORT EXCEPTIONS.** Exceptions to decisions of support masters will be scheduled for arguments via virtual conferencing on the zoom app. The arguments are non-record arguments and all briefing shall be provided as per the rule.

10. **PFA FINAL HEARINGS**
 - a. Final hearings on PFA petitions will be scheduled by Court Administration, to be conducted in-person in a Courtroom.

 - b. To limit the number of people in the Courthouse, volunteers from the Montgomery County Women’s Center (“Court Advocates”) may contact the parties prior to the scheduled hearing to seek an agreement. If an agreement is reached, the volunteer will send the agreed order with all applicable signatures on the final PFA form to the Judge before whom the hearing is **scheduled**, and the parties shall be excused from appearing.

 - c. If the Plaintiff fails to appear at the scheduled hearing without a valid excuse, the temporary PFA Order will be terminated. If the Defendant fails to appear without a valid excuse, the temporary Order will become final. In either case, the mere existence of the Covid-19 pandemic, without actual infection or exposure by a party, is not a valid excuse for failure to appear.

 - d. Any pending or new ICC hearings will also be scheduled before the PFA Judge and conducted in-person in the Courtroom.

11. **EQUITABLE DISTRIBUTION**
 - a. Equitable Distribution Hearing Officers will conduct initial conferences, discovery arguments, and settlement conferences by telephone.

- b. If a hearing is necessary, it will be conducted by a Virtual Non-Record Court Hearing, before the designated Master.

12. SUPPORT CONFERENCES AND ENFORCEMENT PROCEEDINGS

- a. Starting June 1, 2020, all DRO officers will be conducting remote support conferences via telephone. These conferences may also be conducted via video conferencing in the near future.
- b. Starting July 13, 2020, DRO will begin holding DRO enforcement proceedings remotely via telephone.
- c. Directions on how to navigate these conferences can be found at <https://www.montcopa.org/3517/Remote-Teleconference>
- d. To update representation information, provide new telephonic contact information, or ask general questions, send an email to attorneyliasonmontgomery@paces.com
- e. Continuances will only be granted with proof of a court conflict.

13. SUPPORT MASTER HEARINGS

- a. Support Master hearings will commence as of August 3, 2020. These hearings will be conducted remotely via advanced communication technology.
- b. It is anticipated that the Zoom platform will be utilized for these hearings, although arrangements for same have not yet been finalized. This Protocol will be updated prior to August 3, 2020.

14. OTHER

- a. All counsel and parties must be familiar with the Court's Suggested Guidelines for Persons Subject to Montgomery County Custody Orders During COVID-19, available at the Court's website at <https://www.montcopa.org/Archive.aspx?ADID=5139>
- b. The Court reserves the right to modify the foregoing procedures when the circumstances of an individual case so require.

GAGNON HEARING PROTOCOL

Introduction

Phase II Operations will begin to address outstanding matters involving alleged violations of probation and/or parole. Limitations exist due to concerns regarding operations and safety. We have attempted to overcome many of these limitations through the protocols described below which prioritize the types of cases and the methodologies to be utilized.

Judicial Assignment

Two Judges will be assigned to hear Gagnon cases during Phase II. All pending Gagnon cases will be randomly assigned to one of the two designated Judges, notwithstanding that the assigned Judge may not have originally imposed sentence. The Court recognizes that defendants have the right to appear before their designated back Judge and, hence the Court will be requesting that the defendant waive that right. Should the waiver be granted the Gagnon proceeding shall proceed before the designated Judge. The waiver shall apply only to the present violation and any future Gagnon proceeding shall be conducted before the Judge who initially imposed sentence.

Should the waiver not be granted, the defendant will not be compelled to appear before the designated Judge. The matter will be addressed at a later date, at such time as the Judge who imposed sentence is available. Those cases are not anticipated to be able to be accommodated during Phase II operations.

Priority of Scheduling

The court will prioritize the scheduling of Gagnons, as follows:

1. Case where the designated Judge is the Judge who originally imposed sentence.
2. Case where the allegations involve only technical violations. This includes case where the defendant is incarcerated at MCCF or any other facility with which our Court can establish video conference capability
3. Cases involving direct violations where the new case involves one or more unresolved misdemeanor offenses in Montgomery County.
4. Cases involving direct violations where the new case involves one or more unresolved felony offenses in Montgomery County.
5. All other direct or indirect violations.

Appearances

All matters will be held live in the Montgomery County Courthouse. However, incarcerated defendants shall appear only by video. No transport is permitted. While the Court has the authority under its Emergency Order to compel the defendant to appear by video, we will not enforce it. Should the defendant wish to appear in person, the matter will be continued to a future phase of operations when transport is permitted. Counsel are expected to appear in person. All witnesses, including a representative of the Adult Probation Department, are expected to appear by video.

Scheduling

Scheduling Orders shall be issued from the Chambers of the designated Judge. Requests for continuances should be made to the designated Judge. Rescheduling due to unavailability will be within the discretion of the designated Judge and shall be rescheduled before that judge. Rescheduling based on the Defendant asserting the right to appear before the sentencing Judge shall be held until that Judge is available in a future phase of operations.

Cases shall be scheduled at 15 minute intervals. Counsel should be cognizant of the Court's schedule and appear

promptly. Counsel representing un-incarcerated defendants shall advise their clients to appear promptly. The Court reserves the right to reschedule cases where attorneys or defendants do not appear on time. Upon receipt of the scheduling order counsel should confer. Defense counsel shall notify the Office of District Attorney and Court at least 3 business days before the scheduled date if the matter is to be contested. If it is anticipated that the matter is to be contested then the parties shall appear, as scheduled, ready to proceed - with necessary witnesses available by video.

Other

The designated Judge shall have the right to consider bail modification but only for cases that have been scheduled and where the Defendant has waived the right to appear before the Judge who imposed the original sentence.

All safety protocol related to appearances at the Courthouse shall remain in effect. Counsel should advise any un-incarcerated defendants of those requirements, which appear on the Court's website.

**MONTGOMERY COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION**

CRIMINAL CONFERENCE DAY PROTOCOL

1. OVERVIEW

- a. The purpose of this program is to provide a method for the Court to be available to conference pending criminal matters (previously scheduled on a PTC or COT list) to facilitate the disposition of the case. In developing this Protocol, the Court is fully cognizant of its Constitutional obligation to provide open access to courts and the importance of the same relating to criminal cases, in particular. We continue to balance these obligations with the need to provide for public safety;
- b. This program does not apply to disposition of motions, issues involving treatment courts or Gagnon cases.

2. PROCEDURE UPON REQUEST

- a. The Office of District Attorney (ODA) or defense counsel can make a request to meet with the Court to conference their case(s) by sending an email to Judge Branca's Chambers staff at ckramer@montcopa.org
- b. If either the ODA or defense counsel requests a case conference, the case shall be scheduled by Chambers for a conference on a specified date and time. In multiple defendant cases a request by the ODA or any defense counsel shall require attendance by all defense counsel.

3. SCHEDULING

- a. It is anticipated that conferences will be scheduled in two, half-day blocks per week (one total day per week of conferences – on Monday and Tuesday mornings). The Court shall advise all parties of the scheduled date and time, and shall maintain the daily schedule for Conference Days.

4. SCHEDULING NOTICES

- a. Scheduling notices will be provided in the form of an e-mail from Chambers to all counsel. There will be no docketed scheduling notice.
- b. It shall be defense counsel's obligation to notify his or her client of the date and time of the conference.

5. ATTENDANCE

- a. Defendants will **NOT** be present for the conference. The defendant should be available by phone, if necessary, to speak with defense counsel regarding any issues discussed at the conference.
- b. The attorney from the ODA, defense counsel and the Judge will participate in the courtroom, unless otherwise ordered by the Court.

6. DISPOSITIONS:

- a. If a plea disposition agreement is reached at the conference, the case will thereafter proceed as outlined in the Plea Day Protocol.

7. ADDITIONAL SAFETY PRECAUTIONS:

- a. All parties, counsel and participants shall comply in full with the Montgomery County Court of Common Pleas Safety Protocol. This includes temperature checks at the entrance and the obligation of all people coming into the building to wear facemasks. Attendance in the courtrooms will be limited and social distancing will be strictly enforced.
- b. The proceedings will be scheduled to allow for sufficient time for counsel to leave the building before the participants for the next scheduled proceeding will arrive. This time will also be sufficient to allow time for surfaces to be disinfected between proceedings.
- c. The ODA and Office of the Public Defender shall each designate a single attorney to attend court conferences each day to address these matters. This will avoid any possibility of multiple public defenders or multiple Assistant District Attorneys being present in the same courtroom on the same day. When necessary, an additional attorney may be permitted to participate remotely via Zoom.

**Montgomery County Court of Common Pleas
Civil Division**

Civil Case Management Conferences Temporary Protocol

1. Beginning July 1, 2020, and until further notice, Civil Case Management Orders will be issued **automatically** without holding individual Case Management Conferences on matters that are ripe for a Civil Case Management Conference.
2. The Orders will set deadlines extending for approximately 90 days (rather than the usual 60 days) for ‘Within Arbitration Limits’ cases and 180 days (rather than the usual 120 days) for ‘Beyond Arbitration Limits’ cases.
3. Civil Case Management Orders will be issued on a staggered basis depending upon when the case was ripe for a Civil Case Management Conference:
 - A. For Civil Case Management Conferences that would otherwise need to be rescheduled during the Judicial Emergency, and for matters added to the Civil Case Management Scheduling Inventory during March through June, a standard order will be issued on each case.
 - B. For Civil Case Management cases added to the Civil Case Management Scheduling Inventory after June, and until further notice when Civil Case Management Conferences resume, the orders will be updated to reflect 90 days and 180 days deadlines from the month that the order is issued.
 - C. To simplify and streamline the process, the Orders will be prepared by Court Administration and signed with the Court Administrator’s signature stamp.
4. Issuing a Civil Case Management Orders on cases in this posture will provide:
 - A. Clear direction for litigants on each case with generous deadlines to ensure that there is no excuse for noncompliance since due to the Judicial Emergency so much time will have elapsed from what would have been the original date of the Case Management Conference to the ultimate deadline dates provided on the Civil Case Management Order.
 - B. A consistent, clean and easy to understand docket for each case that a Civil Case Management Order is issued.
 - C. A mechanism to effectively manage the cases, distinguish the deadlines depending upon the whether the matter is ‘Within Arbitration Limits’ or ‘Beyond Arbitration Limits’ matter, and ultimately, place the case in the correct inventory at the appropriate time for scheduling.

MONTGOMERY COUNTY MAGISTERIAL DISTRICT COURTS

COVID-19 REOPENING PROTOCOL-PHASE II

Effective July 20, 2020

All safety procedures detailed in the original Re-opening Protocol will remain in place unless they are specifically addressed below.

- All court matters, including criminal status calls and waivers, will continue to be conducted via advanced communication technology (Scopia/Zoom) whenever possible.
- All courts, except courts in consolidated facilities, will be open every day during regular business hours.
- Court staffing may increase to their full complement provided that the practice of social distancing and the wearing of masks is complied with.
- All Courts may continue to limit the days and/or time periods that they are open to the public.
- Consolidated courts will continue to operate on the schedule outlined in the Phase I protocol and utilize the Order entered May 26, 2020 permitting said Courts to handle all matters for the other Courts in each multi-court facility when necessary.
- Professional cleaning of courts will occur once per week.
- Courts will continue to schedule criminal matters on their assigned weekly criminal day. The District Attorney and Public Defender will continue to staff their assigned courts on the weekly criminal day.
- All Courts are to address the backlog in all other matters on their non-criminal days.
- All Courts will continue to upload criminal complaints to Sharepoint where they will be accessible to the District Attorney and Public Defender.