



# INDIANA SUPREME COURT

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Indianapolis, Indiana 46204

Office of Judicial Administration

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## Court Operations During the State of Emergency March 30, 2020

Filing a petition under Admin. R. 17 is the proper procedure to change court operations in the event of an emergency. Standing orders related to court operations are impermissible, even in these circumstances, under Trial Rule 81.

Admin. R. 17 relief to alter procedures and toll timelines remains subject to applicable constitutional limitations. Courts are already permitted to use the current procedures available under Admin. Rule 14 on use of telephone and audiovisual telecommunications, which are also subject to constitutional limitations.

Below is a list of common questions related to Admin. R. 17 petitions and orders along with accompanying answers.

### 1. Can courts use teleconference or video conference for all hearings?

Not all hearings can be conducted remotely. Consistent with a party's constitutional and due process rights, absent a waiver, there are still criminal, mental health, and juvenile hearings that should be conducted in person to adhere to these legal protections.

### 2. Can courts be completely closed?

No. Article 1, Section 12 of the Indiana Constitution requires that "all courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law..." Trial Rule 72 requires that "trial courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process and of making and directing all interlocutory motions, orders, and rules."

Essential court functions must continue. Litigants still need access to the courts to address emergency matters in a timely fashion. Access includes filings. Filings must be accepted and processed.

Courts, in their discretion, can reduce staff resources while still being open and available to operate the courts. However, you will also need to collaborate with your Clerk and others to have staff to receive phone calls and return messages, receive filings and payments, and process other mail. Some of these functions may be done remotely. For example, most phones can be forwarded to a staff member's mobile phone. To minimize staff exposure, one person may be able to come in to scan and distribute mail or other items to the right persons.

The clerk's office can accept filings and payments by physical drop box, instead of in-person, if possible. Also, clerks may set up electronic payment processes.

MARY KAY HUDSON, EXECUTIVE DIRECTOR

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Please update your county court's website with any changes in procedure and notify your local bar association of the same consistent with the provisions of effective Admin. R. 17 orders.

More information can be found in the [Court Operations and Closures chapter](#) of the Trial Court Administration Manual.

**3. Can courts delegate release authority to sheriff? Can courts delegate release authority within specific parameters?**

Courts can review those currently held in jail to determine which individuals should be released. This review should be done in consultation with a team comprised of the State, a public defender, the county sheriff, and the county health department. Release decisions may look different depending on the legal status of the person in custody. For example, release decisions can involve pretrial release with or without conditions, agreements to modify sentences to probation, or agreements to order temporary release from the jail, with service of executed sentences to resume as thereafter ordered by the courts.

**4. Can courts authorize the monitoring of criminal defendants across state lines?**

The current circumstances do not permit circumventing any Interstate Compact rules governing the transfer and supervision of all felons, certain misdemeanors with 365 days or more on supervision, and juvenile runaways. The rules of the compact are applicable for both individuals being supervised here on behalf of other states as well as individuals being supervised in other states from Indiana. If you have questions or need assistance with compact eligible cases, please contact IOCS compact specialists.

**5. Can courts issue blanket rejections to Community Transition Program (CTP) notices?**

Courts must still follow the procedures outlined in Ind. Code § 11-10-11.5 et seq. in reviewing eligibility for CTP and responding to DOC on the eligibility of each individual case.

**6. Can courts provide advisements or recommendations to law enforcement agencies on arresting vs. summoning procedures?**

Courts should be cognizant of law enforcement policies related to these procedures, but the courts should not be advising or directing them on these matters. Sheriffs should reach out to their own legal counsel for guidance and consult with the prosecutor's office.

**7. Can courts issue blanket extensions to protection orders?**

Courts can exercise their ability to extend these orders consistent with the requirements of Trial Rule 65 and Ind. Code § 34-26-5-9.

**8. Can courts still issue emergency detention orders under Title 12 without requiring law enforcement to take the person into custody?**

Under Ind. Code § 12-26-5-2, the endorsement of the emergency detention application by a judicial officer authorizes law enforcement to transport the individual to a facility.

**9. Can courts provide directives related to employee work hours, wages, etc.?**

These matters should be addressed through normal dialogue with personnel and fiscal bodies as they are outside the scope of an Admin. R. 17 petition.