

## IN THE SUPREME COURT OF PENNSYLVANIA

Docket No. 21 EM 2020

***In Re: Philadelphia Municipal Court's Request Pursuant to Pa.R.J.A. 1952(B)(2)(m) and (s) for an Emergency Order Authorizing the President Judge of the Philadelphia Municipal Court to Suspend the Operation of Pa.Rs.Crim.P. 600 and 1013 and any rule restricting the Use of Advanced Communication Technology***

Patrick F. Dugan, President Judge of the Philadelphia Municipal Court, hereby requests the Supreme Court to enter an emergency order authorizing the President Judge of the Philadelphia Municipal Court to continue to suspend the operation of Pa.Rules.Crim.P. 600 and 1013 and any rule restricting the use of Advanced Communication Technology, and represents as follows:

1. By order dated August 27, 2021, the Supreme Court authorized "The President Judge of the Philadelphia Municipal Court [] to suspend Rule of Criminal Procedure 600, Rule of Criminal Procedure 1013, as well as rules that restrict the use of advanced communication technology (ACT) in court proceedings, subject to state and federal constitutional limitations, through October 1, 2021." This order was partly based on the First Judicial District's extraordinary steps, from the onset of the pandemic, to ensure that criminal proceedings were held as safely and timely as possible as noted below.
  - a. The Philadelphia Municipal Court maintained ongoing contact and interaction with its justice partners which include the Defender Association, the District Attorney's Office, the private Bar, the Sheriff's Office, the Philadelphia Police Department, the City of Philadelphia's Managing Director's Office and the Department of Public Property (as well as its building management subcontractor) and the Philadelphia Department of Prisons. Safety concerns related to COVID-19 required modifications to court procedures and case scheduling, with increased video hearings and, eventually, a limited number of in-person proceedings scheduled hourly throughout the day.
  - b. The Philadelphia Municipal Court's criminal division NEVER closed. However, in light of the restrictions brought upon by the pandemic, the Municipal Court pivoted from in-person proceedings to conducting as many proceedings as possible through the use of Advanced Communication Technology (ACT). This pivot required the FJD and stakeholders to create and acclimate to a new way of scheduling and holding hearings in a pandemic.
    - From the onset of the pandemic, preliminary arraignment court continued to operate 24/7. While arrests initially slowed, there was a steady increase to criminal filings, particularly for violent crimes. From March 20, 2020 through

July 2021, Municipal Court conducted over 34,000 preliminary arraignments for new felony and misdemeanor cases.

- The FJD used ACT to conduct emergent motion hearings remotely for approximately 1,000 custody inmates. Commencing March 20, 2020, the presiding judge and court staff were present in the courtroom, with defendants confined in the Philadelphia Prison System and attorneys participating remotely from various locations.
  - Early Bail Review, Crash Court and Bench Warrant Court remained operational since emergency closures were implemented in March 2020. From January through August 23, 2021, ACT allowed the court to process over 6,000 hearings with the presiding judge and court staff present in the courtroom from the onset of the pandemic. As an alternative to conducting in-person proceedings, the continued use of ACT is necessary for the referenced court lists with defendants confined in local custody. This measure allows Municipal Court to continue limiting the number of people in the courtroom, thereby preventing the spread of COVID-19. Presiding judges and court staff will continue to be present in the courtroom, and attorneys may opt to participant via video. Time schedules have been secured with the Philadelphia Department of Prisons for incarcerated defendant participation.
  - On August 31, 2020, Municipal Court reopened for in-person hearings starting with homicides and non-fatal shooting preliminary hearings. By September 8, 2020, 7 of our 13 courtrooms were operating in-person, and by November 2020, 16 courtrooms were safely reopened in the Stout Center for Criminal Justice, along with a new courtroom in the Philadelphia Department of Prison's Detention Center (March 2021). Courtrooms proceedings were a mix of in-person only and ACT proceedings. Status listings in courtrooms commenced in May 2020. Additional rooms opened with a focus on the adjudication of pretrial, felony custody matters. From August through December 2020, we scheduled approximately 4,400 felony preliminary hearings. Municipal Court scheduled an additional 32,805 felony preliminary hearings January through August 2021.
  - In the last half of 2020, 21,750 cases were scheduled for status via ACT including bail motions. While increasing the number of cases scheduled before judges, in compliance with CDC guidelines for public health safety measures, we organized off site locations for the remote testimony of police and civilian witnesses to further decrease the number of people coming into the main courthouse building.
2. Since that Order was entered, the late summer surge in COVID-19 cases has yet to subside. According to the Philadelphia Department of Health, the 7-day case average is approximately 267 new cases per day as of September 27, 2021. This number is still exponentially higher than the averages in late June and early July, which were less than 50 per day.

3. The First Judicial District has seen a rise in the number of positive cases among employees which mirrors in the increase in the general population over the same time span. This increase has occurred despite the continuation of mandatory mask wearing regardless of vaccination status at all court facilities. The First Judicial District has recently implemented a vaccine mandate requiring all First Judicial District employees to be fully vaccinated by November 15, 2021, unless an exception is granted for religious or medical reasons.
4. In light of the recent substantial and high rates of community transmission levels as noted above, the Philadelphia Municipal Court requests the Court to further extend the suspension of Rules of Criminal Procedure 600 and 1013, as well as any procedural rules related to the use of advanced communication technology (ACT) in order to dispose of its current inventory and new cases.
  - a. Although Municipal Court judges assigned to criminal matters are working from the Courthouse, and most proceedings are currently being conducted in-person, we continue to maintain the option to conduct preliminary hearings and other Municipal Court hearings and trials remotely. The Philadelphia Department of Prisons is experiencing conditions, which have now been exacerbated by increasing COVID-19 cases and the accompanying need to quarantine prisoners who have tested positive or are suspected positive cases. Currently, approximately 2033 of the Department's prisoner population are quarantined pursuant to the prison's medical protocols. This number represents an increase of 500% since August 20, 2021. All quarantined inmates are unavailable for court.
  - b. Due to the above circumstances, both transporting defendants in custody for in-person proceedings and conducting trials and other in-person proceedings present a potential threat to prison and court staff, witnesses, parties, and counsel by exposing all such individuals to multiple prolonged enclosed contacts with defendants who may have been exposed to COVID-19 and others who are not members of the same household. In March 2021, with the use of ACT, Municipal Court opened a Courtroom at the Detention Center to alleviate the Sheriff's transportation limitations at the Stout Center. To date, we have scheduled over 1500 custody felony preliminary hearings to the Detention Center Courtroom.
  - c. Because in-person court proceedings for any COVID-19 positive or suspected positive defendant cannot be held and must be continued, placing further strain on the court's efficiency and its ability to timely dispose of the increased inventory as provided in Pa.R.Crim.P. 600 and 1013, the Court's authorization to suspend the application of Rules 600 and 1013 will continue to assist the Philadelphia Municipal Court to manage criminal matters in a manner that both maximized the safety of all participants and moved cases toward trial as soon as practicable without undue concern that the timeframes set forth by said rule would be compromised.

Therefore, due to the factors noted above, the undersigned respectfully requests that the

Court enter an order authorizing the undersigned to continue to temporarily suspend, as necessary, the operation of Pa.R.Crim.P. 600, 1013 and any rule restricting the use of Advanced Communication Technology through November 15, 2021 or for such other time as the Court deems appropriate.

Date: September 30, 2021

*/s/ Patrick F. Dugan*

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Honorable Patrick F. Dugan  
President Judge, Philadelphia Municipal Court