



MEMORANDUM

TO: Interested Parties

FROM: Mark D. O'Connell, Executive Director, Wisconsin Counties Association

DATE: March 19, 2020

SUBJECT: Wisconsin County Courtroom Closures

As we see the continued spread of the COVID-19 virus throughout the state, we have seen our state and local public health officials mandate stricter measures on public gatherings. Just yesterday, DHS prohibited gatherings of 10 or more people through DHS Emergency Order #5. Although county facilities are exempt from the DHS Order, many counties are considering whether to close some or all county departments and facilities. Questions have arisen surrounding whether a county has the statutory authority to close its departments and facilities to the public. Our general counsel previously provided guidance on a county's emergency powers, which can be found here:

https://www.wicounties.org/blastlibrary/docs/Memo_re_Public_Health_Emergency_Powers_-_FINAL.pdf

It is important to note, however, that not all county facilities are subject to the same rules and analysis when it comes to closing the facility to the public. According to our Constitution and statutes, courtrooms are an area of shared authority between counties and the judicial branch. Litigants and the public have a recognized right to access to the courts that cannot be infringed. At the same time, the right of access may be subject to reasonable restrictions in emergency situations such as that confronting us in the COVID-19 pandemic.

We recently discussed courtroom closure concerns and procedures with Judge Randy Koschnick, the Director of State Courts. We all agreed that if a county is considering limiting access to courts during this time of emergency that county administration and the chief judge should work together on solutions that preserve a defendant, other litigant and the public's rights, while at the same time reduce opportunities for virus exposure and transmission. For example, limiting hours of operation, posting and enforcing social distancing protocols and postponing non-emergency court appearances are all available as potential solutions. When limiting hours of operation, there are typically set calendars

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for certain routine court appearances such as setting bail. Using those set times as the limited hours of public access to the courts seems reasonable. In the end, each county will have a different set of considerations based upon not only the physical attributes of the courtroom(s) in relation to the county facilities, but also based upon the court's calendars.

If you have questions surrounding closure issues or concerns, please do not hesitate to contact the Association. Judge Koschnick has been a tremendous resource for the Association and its members and has indicated a desire to help resolve any further issues that may arise.