

May 18, 2020

EXPANDING JUVENILE COURT PROCEEDINGS

1. GENERAL COURTROOM MANAGEMENT

These practices are informed by public health guidance and should apply to all juvenile court proceedings. Districts should work with state and local partners to comply with any emergency directives that may be in place.

A. Limiting the Number of People in a Courtroom

- i. It will be necessary to limit the number of people in a courtroom for the next several months. Guidelines for crowd sizes are likely to evolve based on state and local data but maintaining 6-foot social distancing should be the standard that guides practice.
- ii. Consider entering an administrative order pursuant to N.C.G.S. 7A-146, N.C.G.S. 7B-801 (applicable to A/N/D proceedings), and N.C.G.S. 7B-2402 (applicable to delinquency proceedings) for closing juvenile courtrooms and restricting access to persons essential to the proceeding. Essential persons include parties, party attorneys, Rule 17 GALs, the juvenile's attorney advocate, a juvenile court counselor, and essential witnesses. GAL program supervisors and volunteers may be, but are not necessarily, essential to the proceeding.
- iii. Consider establishing a satellite area in which non-essential persons can view or participate in the hearing remotely or otherwise making accommodations for remote participation. Non-essential persons might include social worker supervisors, foster parents and family caregivers, extended family members, therapists, service providers, the GAL volunteer and staff member, and the like.

B. Maintaining Social Distancing Standards

- i. Tape or otherwise mark seating areas to establish 6-foot intervals for hearing participants.
- ii. Arrange seating at counsel tables to create distance between attorney, GAL (when appointed), and party.
- iii. Encourage the use of masks for parties, attorneys or court staff.
- iv. Establish local practices for the safe exchange of documents which may include electronic sharing or physical practices that reduce interpersonal contact (for example a document exchange station). The AOC Technology Services Division

may be able to assist with setting up secure platforms for remote document exchange.

C. Cleaning and Sanitizing

- i. Sanitizing practices are a critical component of maintaining a safe space for court business.
- ii. Work with county managers to clean and sanitize courtrooms and public areas during afternoon recess and at the end of the day.
- iii. Work with county managers to provide either cleaning services or supplies to keep in courtrooms.
- iv. Plan to sanitize used surfaces between each use.

D. Creating Safe Waiting Areas

- i. Consider utilizing large jury courtrooms not in use as a waiting area for parties whose cases have not yet been called.
- ii. Work with the Sheriff's Office to assign deputies to areas outside of courtrooms to enforce social distancing measures among persons waiting for hearings to be called.

2. REMOTE HEARINGS GENERALLY

A. Utilizing Remote Platforms for Hearings

Districts are encouraged to use remote hearing platforms as expansively as possible. Remote proceedings should be conducted in a manner that protects any existing constitutional rights of those persons involved in the proceeding and the integrity of the judicial process. Safeguards such as functioning remote technology that provides audio and video access to all participants, opportunity for private consultation with counsel, and knowing and voluntary waiver of any existing rights to presence and confrontation should be used to protect the rights of persons involved in the proceeding.

B. Handling Evidence in Remote Hearings.

- i. Any exchange of exhibits must be done in a secure manner. This could include email encryption or a secure platform for file exchange.
- ii. Confidential files must not be presented electronically in a manner in which individuals who are not entitled to access can see the confidential materials. Any participant who is not authorized to view the confidential material should be ejected from the meeting prior to sharing confidential information.
- iii. Establish a process that ensures that confidential exhibits are provided to the clerk in a secure and confidential manner. This could include use of a secure dropbox or a secure email location.

3. CONTESTED HEARINGS

- A. Limit the number of people in the courtroom to those deemed necessary or essential to the proceedings.
- B. Consider designating a separate waiting area for witnesses where social distancing can be maintained.
- C. Pretrial or pre-adjudication hearings are required in abuse, neglect, dependency and termination of parental rights actions. N.C.G.S. 7B-800.1; 7B-1108. Consider conducting the pretrial or pre-adjudicatory hearing remotely to (i) address whether the issues for hearing can be narrowed, (ii) accept consents and/or stipulations; and (3) determine how to manage the contested hearing. There is nothing in the Juvenile Code that prohibits the use of a pretrial conference in a delinquency or undisciplined action where similar issues may be considered. Because the Juvenile Code for both abuse, neglect, dependency and delinquency/undisciplined actions does not prohibit the holding of a pre-trial conference before any dispositional hearing scheduled in a juvenile proceeding, consider holding remote pre-trial conferences for dispositional hearings when they are known to be contested.

4. CALENDARING STRATEGIES

- A. When calendaring cases for June and the subsequent 90 days, plan to schedule contested hearings and trials that will involve significant witness testimony. Districts should anticipate that modifications to operations will continue for several months or longer. Delaying complicated cases until things are “back to normal” is not practical given the current public health guidance.
- B. Implement time-certain calendaring practices so that each hearing is scheduled for a specific time during the designated court session. For example, hearing A is scheduled at 9AM, hearing B is scheduled at 9:45AM, hearing C is scheduled at 10:15AM and so forth. Consider alternating between remote and live hearings to reduce fatigue from remote hearings, reduce prolonged contact, reduce traffic, and facilitate cleaning and sanitizing.
- C. Work with the department of social services, guardian ad litem, parent attorneys, and the clerk to identify cases that should be characterized as priority A/N/D/cases that should be scheduled immediately. This might include adjudications, initial permanency planning hearings, emergency motions on issues that have arisen during the period of modified operations, and termination of parental rights trials. See Appendix 1 for statutory timelines applying to courts.
- D. Work with the prosecutor, juvenile defense bar, office of the juvenile court counselor, and the clerk to identify cases that should be characterized as priority delinquency cases that should be scheduled immediately. This might include matters in which statutory timelines for first appearances and probable cause

hearings have already been extended through emergency orders and cases in which the juvenile is being held in secure custody. See Appendix 2 for statutory timelines applying to courts.

5. ABUSE AND NEGLECT PROCEEDINGS

A. Special Remote Hearing Considerations

- i. Establish a presumption that hearings will be held remotely with the right of each party to object. Factors for the court to consider include (1) each party's meaningful access to and participation in the proceeding through the remote technology used; (2) the nature of the proceeding; (3) the complexity of the evidence; (4) the number of witnesses; and (5) any other factors that are raised on a case-by-case basis.

- ii. In those hearings that are not noticed by the court for a remote format, parties can make motions to allow any of the parties, witnesses, and lawyers to participate remotely. Consider establishing a process for early submission of "motions for remote participation" and issuing a ruling prior to the scheduled hearing. Factors for the court to consider include whether (1) parties consent to the remote participation of other participants in the proceeding, (2) a party waives their own in-person participation, (3) a party or a witness is outside of North Carolina such that N.C.G.S. 50A-111 criteria authorizing alternative participation under the UCCJEA are satisfied, (4) due process is protected, (5) parties have access to appropriate technology to allow for their meaningful participation, and (6) any other criteria the court determines is relevant. An order should address relevant factors. See Appendix 3 (discussing due process and a parent's participation) and Appendix 4a (identifying internet and technology resources) and 4b (the federal Dear Child Welfare Directors letter regarding providing technology).

B. Consent Orders and Stipulations Resolving A/N/D Issues

- i. Whenever possible, encourage parties to enter stipulations of fact and/or consent orders to minimize the number of contested issues for hearing. If parties reach a proposed consent agreement for remote presentation to the court, the court must follow the procedures set forth in N.C.G.S. 7B-801(b1). This requires that (1) all parties or their respective attorneys who are authorized to consent are present; (2) the juvenile is represented by counsel (note that this means a GAL must be appointed in a dependency only case); and (3) the court makes sufficient findings of fact. If stipulations are presented to the court, the procedures of G.S. 7B-807 must be followed – either (1) the court receives the written stipulations of fact, which must be signed by each party

stipulating to those facts or (2) the stipulated facts are read into the record and each party stipulating to those facts makes an oral statement of agreement.

C. Hearings with Limited Evidence and Party Involvement

- i. Consider implementing remote hearing protocols for hearings with limited evidence, including: Post TPR Review Hearings and Voluntary Placement Agreement Hearings.
- ii. Consider implementing remote hearing protocols for review hearings on cases in which parents have not participated.
- iii. Disposition hearings in A/N/D actions are not governed by the Rules of Evidence. Instead, the criteria for the admission of evidence focuses on evidence that is relevant, reliable, and necessary to determine the needs of the juvenile and most appropriate disposition. N.C.G.S. 7B-901(c); 7B-906.1(c). The court of appeals has repeatedly held that there must be some sworn oral testimony taken at these hearings, ensuring there is competent evidence to support findings of fact and conclusions of law in the court's dispositional order. *See, e.g., In re S.P.*, 833 S.E.2d 638 (N.C. Ct. App. 2019).
- iv. Ensure there is a way for sworn testimony, either remotely or in-person, to be heard at every dispositional hearing.

D. Accommodating High Risk Hearing Participants

- i. GAL Volunteers are often older people who may be characterized at higher risk for serious COVID-19 illness.
 1. *Consider implementing protocols that allow electronic submission of volunteer reports.*
 2. *Consider implementing protocols to allow volunteers to participate in the hearing remotely either from a GAL supervisor office or their homes.*
- ii. Consider establishing a process for substitution of counsel or a Rule 17 GAL in situations where a parent attorney or Rule 17 GAL is high risk and unable to perform necessary duties outside of court and for in-court proceedings.

6. DELINQUENCY PROCEEDINGS

A. Special Remote Hearing Considerations

- i. Remote hearings should be limited to circumstances in which remote hearings (1) are authorized by the Juvenile Code (only delinquency hearings on the need for continued custody pursuant to G.S. 7B-1906(h)) or an Emergency Directive of the Chief Justice of the NC Supreme Court or (2) where the parties consent to a remote hearing and there are limited evidentiary issues that do not require substantial testimony.

- ii. Consider continuing the practice of remote detention hearings. A waiver is not necessary for a remote detention hearing because the Juvenile Code authorizes conducting detention hearings by audio and video transmission which allows the court and the juvenile to see and hear each other. Exclusively use Webex as the remote platform for these proceedings. Juveniles are isolated for 14 days after every departure from the detention center.
- iii. Consider implementing the use of remote hearing protocols for adjudications or motion for review (MFR) hearings where the juvenile is entering an admission.
- iv. Consider implementing the use of remote hearing protocols for juveniles in custody whose length of detention would be unnecessarily extended. This may be appropriate when: 1) the juvenile will tender an admission and 2) the juvenile is likely to receive a Level 3 commitment or is likely to be released as part of the disposition and when 1) the juvenile is alleged to have committed an A-G felony at age 16 or 17 and; 2) the hearing is a return indictment hearing.
- v. The use of remote platforms for contested hearings at which significant rights are at stake is not advised.

B. Waiver of Personal Appearance for Juveniles and Parents, Guardians, and Custodians

- i. Obtain a written waiver of in-person participation from the juvenile and the juvenile's parent, guardian, or custodian. It is especially important to engage in a colloquy with a juvenile, who is the respondent in a delinquency proceeding, regarding waiver of in-person participation and the right to confront and cross examine witnesses given the court's affirmative duty to protect the constitutional rights of juveniles under the Juvenile Code. A sample colloquy and juvenile waiver form are provided for this purpose. See Appendices 5 (juvenile waiver form) and 6 (sample colloquy).
- ii. When a juvenile is confined in a juvenile detention facility, the juvenile's attorney or a custodian of the detention facility (i.e., a person located at the facility with the juvenile) should assist the juvenile with completion of the waiver form. Upon completion of the remote proceeding, the juvenile's attorney or detention center staff should forward the juvenile's signed waiver to the clerk of superior court's office for execution by the presiding judge.
- iii. Parents (or guardians or custodians) are also parties in delinquency and undisciplined proceedings. As such, parents (and guardians or custodians) should also complete a waiver of in-person participation. See Appendix 7 (parent waiver form). If the juvenile's parent has access to a computer and printer, the parent (or guardian or custodian) can access the parent waiver form online (if the form is adopted) and deliver it to the clerk of court's office following the remote hearing. For parents who do not have access to a computer and printer, the juvenile's attorney or the juvenile court counselor

should assist the parent (or guardian or custodian) in obtaining a waiver form and should also assist the parent (or guardian or custodian) in forwarding the signed waiver to the clerk of superior court's office following the remote hearing for execution by the presiding judge. Districts should also consider allowing parents to call the clerk's office to request a copy of the waiver form by mail.

- iv. As a last resort, if the court is unable to obtain a written waiver from the juvenile's parent, guardian, or custodian, the court can consider recording the parent's voluntary and knowing waiver of in-person appearance through the audio video transmission.

APPENDICES

Appendix 1: Statutory Timelines of Abuse, Neglect, Dependency and Termination of Parental Rights Actions

Appendix 2: Statutory Timelines of Delinquency Actions

Appendix 3: Due Process Considerations for Parent Participation in A/N/D and TPR Cases

Appendix 4a: Technology Options

Appendix 4b: Dear Child Welfare Leaders letter by the U.S. DHHS Administration for Children and Families (April 17, 2020)

Appendix 5: Juvenile Waiver of Personal Appearance form

Appendix 6: Colloquy for Juvenile Proceedings Conducted by Audio and Video Transmission

Appendix 7: Parent Waiver of Personal Appearance form

Appendix 8: NC Child Welfare Court Suggested Practices, During COVID-19 Pandemic, **Updated** May 5, 2020 (N.C. Administrative Office of the Courts Juvenile Court Improvement Program)

Appendix 9: Conducting Effective Remote Hearings in Child Welfare Cases (Capacity Building Center for State Courts)

Appendix 10: Pandemic 2020 Court Practice Toolkit (April 2020 by the N.C. Guardian ad Litem Program)