



# NC CHILD WELFARE COURT SUGGESTED PRACTICES DURING COVID-19 PANDEMIC

April 20, 2020

Chief Justice Beasley has issued six orders in response to the emerging public health threat posed by the COVID-19 outbreak: orders dated [13 March 2020](#) (effective March 16, 2020), [19 March 2020](#), [27 March 2020](#), [2 April 2020](#), [13 April 2020](#), and [16 April 2020](#). Additionally, the U.S. Department of Health and Human Services, Administration for Children and Families' Children's Bureau issued guidance regarding several child welfare issues in a letter dated [27 March 2020](#). This federal guidance requires specific types of abuse/neglect/dependency (A/N/D) hearings to be heard to comply with title IV-E of the Social Security Act for federal funding purposes.

In the wake of these announcements, the NC Administrative Office of the Courts (NCAOC) Juvenile Court Improvement Program (CIP) staff collaborated with partners from Indigent Defense Services, the Guardian ad Litem Program, the NC Department of Health and Human Services, and the School of Government to prepare the following guidance and suggested practices in NC A/N/D proceedings. We encourage judicial officials and child welfare stakeholders in each county and/or judicial district to collaborate and develop their own written protocols and appropriate use of administrative orders and to meet regularly to address new developments.

## **A/N/D Petitions**

At this time, the filing of A/N/D petitions cannot be done electronically. Each county and/or judicial district will need to review its procedures to meet social distancing requirements. [Emergency Directive 5](#) of the 2 April 2020 Order of the Chief Justice permits the petition to be filed with an affirmation by the petitioner, eliminating the need for the signature to be notarized or sworn to before a person authorized to administer oaths.

Each named respondent in an A/N/D petition must be served by Rule 4 service. Where Rule 5 service is required, parties should be encouraged to consent to service by email pursuant to [Emergency Directive 6](#) of the 2 April 2020 Order of the Chief Justice.

## **Nonsecure Custody Orders and Hearings**

Each county and/or judicial district will need to ensure that its procedures for the issuance of initial nonsecure custody orders minimizes in-person contact. If the agency filing the petition is also requesting a nonsecure custody order, the petitioner should request the nonsecure custody order be issued telephonically even if the clerk's office is open, pursuant to G.S. 7B-508. If nonsecure custody is granted, the order should note the judge that gave telephonic approval and the name and title of the person receiving telephonic approval and the hour and the date of the approval.





In those districts where there is an administrative order that permits an individual other than a judge to issue the initial nonsecure custody order when the clerk's office is closed, G.S. 7B-506(a) requires that a hearing on the need for continued nonsecure custody be held on the next regularly scheduled day of district court. To obviate the need for an immediate hearing, we recommend that each chief district court judge consider suspending any such administrative order. Instead, during this period of pandemic conditions, we recommend that a designated judge or judges be on-call to authorize nonsecure custody, when needed.

First and subsequent hearings on the need for continued nonsecure custody must be held in accordance with G.S. 7B-506 and are permitted by [Emergency Directive 1](#) of the 2 April 2020 Order of the Chief Justice. The hearings may be held in person or remotely. If held remotely, all mandates of [Emergency Directive 3](#) in the 2 April 2020 Order of the Chief Justice must be met. Nonsecure custody orders are not required by statute to be recorded but instead may be ordered to be recorded by the court. See G.S. 7B-806.

Although not required, when technology allows, we recommend nonsecure custody hearings be recorded. At a minimum, participant responses to the court's inquiry at the commencement of the proceeding about whether a participant knows or has reason to know whether the child is an Indian child should be part of the record. See 25 C.F.R. 23.107(a).

At the first hearing for continued nonsecure custody, the court should attempt to minimize the need for future hearings on nonsecure custody by addressing all relevant issues, including but not limited to: IV-E requirements, placement, parent-child time (e.g., visitation), sibling time, medical consent if the child needs treatment that is more than routine or emergency treatment, and paternity. Courts should address the way that both parent and sibling visitation should take place, whether in-person or virtual, transportation of the juvenile, parameters around social distancing, acceptable locations, supervision, etc.

### **Other Hearings**

[Emergency Directive 1](#) of the 2 April 2020 Order of the Chief Justice allows courts to conduct hearings that: “will be conducted remotely”; are “necessary to preserve the right to due process of law”; are “necessary for the purpose of obtaining emergency relief”; or that can be “conducted under conditions that protect the health and safety of all participants.”

Each county and/or judicial district should create rules to prioritize cases to be heard while catastrophic conditions exist due to the pandemic and after the emergency has ended. See Rule 3.1 “Guidelines for Resolving Scheduling Conflicts” of the General Rules of Practice for the Superior and District Courts. The following should be considered:





- Whenever possible, all parties are encouraged to enter consent orders regarding changes in visitation. If the parties reach a consent, the agreement should be reduced to writing and presented to the judge for entry on a consent order that complies with the procedures set forth in G.S. 7B-801(b1). If DSS and the parents or other affected respondents and the juvenile can reach an agreement regarding visitation, but entry of a consent order is not possible, the parties should reduce their agreement to writing and said agreement should be signed by the parties, or at a minimum, be agreed upon via email. To comply with G.S. 7B-905.1(b), when DSS temporarily suspends all or part of a visitation plan, it must file a motion. Changes to the schedule, including converting visits to electronic form, constitute a suspension of part of the visitation plan. In cases where there is disagreement about changes to visitation, respondent counsel or the juvenile’s GAL should file a responsive pleading delineating the reasons for the objection to the suspension or change of visitation. All parties are encouraged to file responsive pleadings.
- G.S. 7B-912(b) requires a court to make findings at least 90 days before a juvenile attains 18 years of age that the juvenile will not age out of foster care without copies of necessary documents such as the juvenile's birth certificate and Social Security card. This is the last hearing over which the court will have jurisdiction, as jurisdiction in the A/N/D action automatically terminates upon the juvenile’s 18<sup>th</sup> birthday under G.S. 7B-201(a).
- While adjudications are to be held within 60 days of the filing of the A/N/D petition and G.S. 7B-803 permits the hearing to be continued in “extraordinary circumstances when necessary for the proper administration of justice,” maintaining a juvenile out of the home of the parent without an adjudication of abuse, neglect or dependency is an infringement on the parent’s right to due process and may result in delaying permanence for the children involved.
- The judicial determination of whether the agency has made reasonable efforts to finalize the permanent plan must be made within 12 months of the child entering foster care. If not made in a timely manner, the agency may not claim title IV-E funds for the juvenile.
- The use of consent orders to the extent possible should be encouraged during this time. Parties should refer to [Chapter 6.5 of the UNC School of Government publication “Abuse, Neglect, Dependency and Termination of Parental Rights”](#) by Sara DePasquale for ensuring consent orders are done correctly. The entire publication is available on the Juvenile Court Improvement Program (CIP) section of [nccourts.gov](http://nccourts.gov) and the School of Government website for free. Please remember that all parties must consent to the order and/or be represented by counsel who has authority to enter into a consent order. The parties cannot enter into consent orders for dependency only cases where the GAL program or a GAL attorney advocate is not appointed. Each county and/or judicial district should develop rules to address the following:





1. **How the matter will be brought before the court.** Currently, e-filing is not available for A/N/D actions.
2. **Service of filed pleadings.** The attorneys practicing in A/N/D cases (agency attorneys, Guardian ad litem attorney advocates, the parent bar, and attorneys representing non-parent respondents) should be encouraged to consent to service of all filed pleadings by email pursuant to [Emergency Directive 6](#) of the 2 April 2020 Order of the Chief Justice. Accommodations for pro se litigants must be addressed. If the parties agree to accept service via email, it is best practice to have the receiving attorney acknowledge by email that he/she has received the service of the document.
3. **How notice of the hearing will be given.** For review and permanency planning hearings under G.S. 7B-906.1 “the clerk shall give 15 days' notice of the hearing and its purpose.” An administrative order delegating responsibility for these notices to the agencies may be appropriate since they are the ones with the contact information. Likewise, any party filing a motion pursuant to G.S. 7B-1000 should be responsible for ensuring all parties are notified of the hearing.
4. **How the hearing will occur (i.e. remotely or in person).** Remote hearings must comply with the mandates of [Emergency Directive 3](#) in the 2 April 2020 Order of the Chief Justice.
5. **What methods are permissible for how the attorneys, juveniles, the guardian ad litem volunteer, the parents, and other parties or witnesses may participate.** Cisco WebEx is the only remote technology platform that is supported by NCAOC. A WebEx meeting must be scheduled by the juvenile clerk as the keeper of juvenile files, since these hearings are recorded, and the recording will be saved to the account of the meeting scheduler. Information about internet providers who are offering free services to low-income families and households with students and a list of free Wi-Fi hotspots in the community should be made available to all respondents. If a party, attorney, or witness cannot access the video element, telephonic participation should be considered. The court, via the clerk, will initiate the remote hearing at the appropriate time.
6. **How exhibits will be shared and admitted.** Courts may want to consider local rules or directives to address the sharing of court reports, records, and other exhibits between the parties prior to the scheduled remote hearings, considering confidentiality and security. Local rules or directives may also be helpful to facilitate an organized remote hearing, provide a point of contact, and require a central repository for documents or exhibits anticipated for the remote hearing. The court may consider designating a point person such as the juvenile clerk or family court coordinator to receive the documents or exhibits prior to the remote hearing and designate timeframes for submission of documents or exhibits to the point person. Per a 27 March 2020 email correspondence from NCAOC’s Chief Business Officer to clerks of superior court, clerks can request special public facing email addresses





on a county level or on a division level to restrict access to the email inbox as directed by the clerk of superior court in that county. For example, the email *Wake\_Juvenile@nccourts.org* could be created so that the juvenile clerk in Wake County had a designated email inbox for juvenile documents to be submitted to the court. This may be helpful to courts to allow parties to provide exhibits for remote court proceedings electronically, considering any confidentiality and security concerns, and to restrict access to the appropriate clerks. Provisions must also be made for the proffering of documents during the hearing that were not distributed within the usual timeframes. Judicial officials should refer to the Acceptable Use Policy and the NCAOC's Chief Information Security Officer for any security risk and privacy concerns associated with transmission or storage of confidential documents as judicial districts develop their rules and protocols.

7. **How the hearing will be recorded if required by G.S. 7B-806.** WebEx has the capability to record the proceeding.

The need for A/N/D attorneys, judges, court managers, and clerks of superior court to meet, organize, and work collaboratively is vital. Judicial leadership and participation in these meetings are critical. Jurisdictions will need to meet periodically during this time to address all the issues that will continue to arise.

### **Important Considerations**

A detailed technical guide regarding WebEx meetings is being created by NCAOC staff. It will outline how to create or access your WebEx meeting account and utilize the application for remote hearings. The instructions are universal in nature to reach the largest court audience possible. However, local court staff conducting remote child welfare hearings should pay close attention to the sections on how to create a separate recording for each hearing (stopping a recording vs. pausing a recording). Ensuring that each remote hearing is recorded and saved as a separate, properly named file, will allow for easier retrieval and identification of the file for a specific hearing should the need for a transcript arise.

This document will be updated if significant changes are made to any orders or memos from Governor Roy Cooper, Chief Justice Cheri Beasley, or NCAOC Director McKinley Wooten, Jr. If you have any questions about this guidance document, child welfare court proceedings during the pandemic, or what assistance the CIP can offer, please feel free to contact Kiesha D. Crawford at (919) 890-1281 or [Kiesha.D.Crawford@nccourts.org](mailto:Kiesha.D.Crawford@nccourts.org).

