



APPENDIX D



COVID-19 PROPOSED HEARING PRIORITIES FULL DETAIL OF WORKING GROUP RESPONSES

May 2020

Below are the full detailed responses of constituent working groups regarding a proposed prioritization of hearing types following the resumption of limited court operations on June 1, 2020. Items listed in these full submissions were deemed “high, medium or low” on the Excel summary in Appendix C based on a determination of importance, with consideration given to what is realistic and safe with respect to timing. The Excel summary in Appendix C also includes draft recommendations from the Chambers of Chief Justice Beasley.

District Court Judges

District Criminal Court

Note: The group recommends a meeting of key stakeholders to plan expansion of court operations in each district: the chief district court judge, the district attorney, the clerk of superior court, the sheriff, representative(s) of the private defense bar, and the public defender, where applicable.

Stakeholders should make decisions based on local needs and priorities, considering the following factors and case classifications:

1. Cases involving defendants in custody, including pleas, bond hearings, and other pretrial matters
2. Cases involving individual victims
3. Class A1 and 1 misdemeanors
4. Cases with statutory time requirements for hearing:
 - a. DWI cases involving vehicle seizure (G.S. 20-28.3(m))
 - b. Probable cause hearings (G.S. 15A-606)
 - c. Probation violation preliminary hearings (G.S. 15A-1345(c))
5. Chapter 20 cases with high importance to public safety
 - a. Misdemeanor death by vehicle (G.S. 20-141.4)
 - b. Driving while impaired (G.S. 20-138.1)
 - c. Passing stopped school bus (G.S. 20-217)
6. Case age
7. Civil matters arising out of criminal cases
 - a. Vehicle seizures (G.S. 20-28.3)
 - b. Limited driving privileges (G.S. 20-20.1; G.S. 20-179.3)
 - c. District Court review of pretrial civil license revocations (G.S. 20-16.5(g))
8. Procedures to allow district attorney or defense to add on cases in the interests of justice



Regarding administrative traffic court:

- The group does not deem it feasible to process large numbers of traffic cases in district courts in the near future
- Local circumstances may allow attorneys to process cases with the district attorney by appointment, or by other means that allow for social distancing
- Virtual hearings, appearance by waiver, and other online procedures should be adopted as appropriate to local districts, and communicated to the bar and public

Domestic Court Priorities

Note: Depending on how domestic cases are heard in your district or county, it may be possible to equally prioritize multiple case types in separate courts and/or at separate sessions. In Gaston County we have separate sessions and courts for IV-D Child Support and 50B cases as not to mingle them with other temporary domestic courts. According to Judge Gavin, Randolph County does the same.

1. 50b cases
2. Temporary Custody
3. Temporary Child Support
4. Contempt related to child custody/visitation or child support
5. Post Separation Support
6. Interim Distribution
7. Divorce from Bed and Board
8. Permanent Hearings on Equitable Distribution, Alimony, Child Custody and Child Support

----Although not listed--- Any matters that can be heard without contest and with minimal parties being present should be mixed in with the priority cases. Such as Divorces (encourage summary judgment), motions to withdraw, consent orders etc.....

District Civil Court Priorities

Summary Ejectments

District Juvenile Court Priorities

See the recommendations later in Appendix D at the end of this summary.





Conference of District Attorneys

Phase 1 – “High”

Phase 1 (tentatively through May 8)		
Statewide	Courthouse-wide	Inside the DA's Office
Stay At Home order remains in place, people can leave home for commercial activity	Superior Court Hearings: continue to only have PV first appearances, bond hearings, & in-custody pleas	Continue to work in shifts; staff may elect to work on unassigned days and must sign in (vulnerable employees continue working from home)
Those retailers and services will need to implement social distancing, cleaning, and other protocols	Superior Court Admin: require defense attorneys to file updates (similar to the homicide calendar)	Employees with shared work spaces must alternate day in, must sanitize surfaces on way out
Gatherings limited to no more than 10 people	Grand Jury: sporadic as scheduled by Senior Resident Superior Court Judge	Only individual permitted in their work space/office; document exchange occurs in common areas
Parks can open subject to gathering limits	Felony District Court: continue to only handle in-custody cases	Face coverings required when not in individual offices
Face coverings recommended in public	Regular District Court: continue to handle in-custody defendants and any other case by waiver where sentence does not result in incarceration	Restrict access to the DA's Office to only employees and use outside space for meetings/WebEx
Restrictions remain in place for nursing homes and other congregateliving settings	Traffic Court: continue to promote, only handle i-plea & ECAD	
Encourage continued teleworking	Temperature monitoring and facemask distribution by nurse at entrance	





Phase 2 – “Medium”

Phase 2 (at least 2-3 weeks after Phase 1)		
Statewide	Courthouse-wide	Inside the DA's Office
Stay At Home order with strong encouragement for vulnerable populations to continue staying at home	Superior Court Hearings: add bench trials, hearings w/ witnesses to PV first appearances, bond hearings, & in-custody pleas	Phase in staff to supplement staggered teams to meet increased work demands
Allow limited opening of restaurants, bars, and other businesses that can follow strict safety protocols (reduced capacity)	Superior Court Admin: out-of-custody pleas & hearings resume; 30 minute plea times & number of people in the courtroom continues to be limited	Have a minimum of two teams that never meet or work together simultaneously
Allow gathering at houses of worship and entertainment venues at reduced capacity	Grand Jury: begins to resume normal schedule	Employees with shared work spaces must alternate day in, must sanitize surfaces on way out
Increase in number of people allowed at gatherings	Felony District Court: adds out-of-custody, but limit on number	Only individual permitted in their work space/office; document exchange occurs in common areas
Open public playgrounds	Regular District Court: same as FDC	Face coverings required when not in individual offices
Restrictions remain in place for nursing homes and other congregate living settings	Traffic Court: continue to promote, only handle i-plea & ECAD	Restrict access to the DA's Office to only employees and use outside space for meetings/WebEx

Phase 3 – “Low

Phase 3 (at least 4-6 weeks after Phase 2)		
Statewide	Courthouse-wide	Inside the DA's Office
Lessen restrictions for vulnerable populations with encouragement to continue practicing physical distancing	Superior Court Hearings: jury trials (with new physical distancing rules) resume	Either everyone back in the office (with new physical distancing for vulnerable) OR half-and-half (depending on expert recs)
Allow increased capacity at restaurants, bars, other businesses, houses of worship, and entertainment venues	Writs from DAC resume	
Further increase the number of people allowed at gatherings	GJ, Felony & Regular DC continue, but w/ continued distancing	
Continue rigorous restrictions on nursing homes and other congregate care settings	Traffic Court: public come in at staggered times, attorneys at their own times	





Regarding the Resumption of Jury Trials

The Chief Justice shall permit District Attorneys to calendar cases for jury trials beginning August 3, 2020.

The Governor has currently implemented Phase I of re-opening North Carolina. If positive projections continue, he will implement Phase II of re-opening May 22nd. He has indicated that our state may stay in Phase II for two to four weeks. If we enter into Phase III by the third week of June, then state operations will have been fully open at least 5 weeks by the time jury trials are allowed to resume August 3rd. This period of time, from June 1st to August 3rd, should give District Attorneys, Judges, Defense Counsel and Clerks enough time to prepare for any jury trials that are set.

District Attorneys should set such cases that are ready to proceed with consultation from all parties. Certain case types should not be exempted on a statewide basis because individual districts vary greatly in their readiness to proceed and it is a local decision which cases to calendar based upon input from the parties involved. Any cases can be continued as determined by a Superior Court Judge that the case comes before in the district.

While our environment could change at any time and adjustments might need to be made or timelines adjusted, it is in the interest of justice that a date certain be set so that parties can being to appropriately prepare.

Association of Court Managers

District Court Criminal

A. Criminal

a. Admin	Medium
b. Misdemeanor	Medium
c. DWI	Medium
d. Traffic/Infractions/Disposition	Medium
e. First Appearances	High
f. Felony Probable Cause	High
g. Bond Forfeiture	Low
h. Expunction	Low
i. Drug Treatment	High
j. DWI Treatment	High
k. Veterans Court	High
l. Domestic Violence Bond Hearings	High
m. Probation Violation	High
n. H&I Felonies	Low
o. Citizen-initiated Complaints	Medium
p. Pleas	High





District Court Civil

B. Civil	
a. General Civil	
i. Magistrates/Small Claims (ejectments)	High
ii. Jury	Low
iii. Nonjury	Medium
iv. Motions	Medium
v. Minor Settlements	High
vi. Tax Delinquency	Low
b. Arbitration	Low
c. Domestic	
i. Divorce	Medium
ii. Custody	High
1. Ex Parte Temporary Custody	High
2. Temporary Custody	High
iii. Child Support	Medium
iv. Post Separation Support/Alimony	Medium
v. Equitable Distribution	Medium
d. Domestic Violence	High
i. Ex Parte Temporary hearing	High
ii. Permanent hearing	High
iii. No-Contact	High
1. Ex Parte Temporary hearing	High
2. Permanent hearing	High
e. Child Support	Medium
i. Establishment	Medium
ii. Enforcement	Medium
iii. Motions	Low
f. Juvenile	High
i. Abused, Neglected, Dependency	High
1. Non-secure Custody Petitions	High
2. Compliance petitions	High
3. Obstruction Petitions	High
4. Adj/Disp/Reviews	High
ii. Delinquency/Undisciplined	High
1. First Appearances	High
2. Secured Custody Petitions	High
3. Adj/Disp/Reviews	High
iii. Non-secured Custody	High
iv. Emancipation	Medium
v. Termination of Parental Rights	Medium
vi. Judicial Waivers	High
g. Involuntary Commitment hearings	High





Superior Court Criminal

(CRIMINAL)

PRIORITY	COURT TYPE <i>*Statutory priority noted below the type, if applicable</i>
High	A. Administrative Sessions
Low	B. Misdemeanor Appeals
High	C. First Appearances
High	D. PVs – In-custody/Jail cases
Medium	E. PVs – Not in custody
High	F. PV Arrest Review <i>* PV preliminary review must occur within 7 days of arrest for P.C.</i>
High	G. Pleas – In-Custody/Jail cases
Medium High	H. Pleas – Not in custody
Medium High	I. Jury Trials
Low Medium	J. Non-Jury Trials
Medium High	K. Motions
High	L. Grand Jury
Low Medium	M. Innocence Commission Referred Cases
Low	N. Sex Offender Registry Hearings
Medium	O. Bond Modifications
High	P. Review and Issuance of Search Warrants
High	Q. Review and Issuance of LEO Orders (phone orders)
Medium	R. Motions for Appropriate Relief (or related Evidentiary Hearings)
High	S. Writs of Habeas Corpus
Medium	T. Specialty Courts (drug court/90-96 hearings, Veterans Treatment Court, etc.)





Superior Court Civil

KEY

NCBC = North Carolina Business Court

BCR = Business Court Rules

(CIVIL)

<u>Priority</u>	<u>Hearing Type</u>
	<i>*Statutory priority noted below the type, if applicable</i>
Medium High	A. Jury Trials
Medium High	B. Non-Jury Trials
High	C. Settlement Approvals
High	D. Motions (split between dispositive, emergency, contempt, TROs, etc.) BCR 9.3 Case Management Conferences BCR 10.9 Discovery Disputes NCBC Status Conferences
Low High	E. Petitions for Release of Law Enforcement Agency Recording <i>* Statutory priority under N.C.G.S. 132-1.4A(f): petitions filed pursuant to this subsection shall be set down for hearing as soon as practicable and shall be accorded priority by the court.</i>
High Medium	F. Appeals from the Clerk (i.e. Foreclosure, Incompetency)
High	G. Will Caveats
High Low	H. Facial Constitutional Challenges to acts of the General Assembly (i.e. 3JP cases)
Medium	I. Administrative Sessions
Medium High	J. Swearing-In of New Attorneys and Judges
Medium	K. Administrative Appeals
High	L. Judicial Review of State Board Decisions (i.e. appeal of State Board of Elections decision)
Low	M. Gun Permit Denial Appeals





Juvenile and Family Matters

(FAMILY COURT/JUVENILE COURT)

** = Indicative of High Priority

CUSTODY**

- Ex Parte – Emergency
- Temporary
- Permanent

DOMESTIC VIOLENCE**

- Ex Parte
- Return Hearing

CHILD SUPPORT

- Temporary
- Permanent

POST-SEPARATION SUPPORT

INTERIM DISTRIBUTION (TRO)

TEMPORARY RESTRAINING ORDERS

CONTEMPT

- First Appearance
- Hearing

EQUITABLE DISTRIBUTION and ALIMONY

- Initial Status Conference
- Final Pre-Trial Conference
- Trial

INVOLUNTARY COMMITMENTS

JUVENILE

- Abuse/Neglect/Dependency**
 - First Appearances
- Non-Secure Custody Hearings
- Delinquency





Members of the Family Law Bar

1. Domestic Violence Chapter 50B matters [high]
2. Emergency Custody Hearings [high]
3. Contempt Hearings [high]
4. Temporary child support, support modification and PSS hearings [high]
5. 50-20 i1 motions for interim distributions, and hearings for injunctions[high]
6. Temporary Custody hearings [high]
7. Concluding trials in progress [high: As compared with starting new trials these matters should have priority]
8. Unopposed motions, absolute divorces, motions to withdraw and consent orders [medium: because these are easy and do not need an in-person hearing]
9. Trials for alimony, initial custody determinations and equitable distribution [low: because these trials will require more time and typically more witnesses and exhibits. We anticipate that these may need to be triaged to determine if they should be referred for an out of court evidentiary hearing to resolve of one, some or all issues]

Phase 1

June 1, 2020 until such time as the courts acquire safety infrastructure, modification of rules and statutes and protocols for new procedures. These phases may not be specifically defined at this point. Family lawyers have identified their priorities in terms of issues we believe District Courts should deal with first because they are the most urgent for our clients. Here is how we suggest they can be heard. Note: The attorney fee issue should be included in all matters in which the statute provides for attorney fees.

1. Domestic Violence Chapter 50B matters [high]
These cases are already being addressed virtually in many districts at least upon initiation. Plaintiffs go to a safe place, electronically transmit their claims to the court and the court conducts a virtual ex parte hearing to determine how to rule on the motion for a protective order. This technology and the infrastructure is not available statewide, but it is certainly proven to work.

This is not a criminal proceeding. In addition to social distancing there is a safety issue for alleged victims that supports conducting the evidentiary hearings for these matters remotely. This would require a portal for pro-se defendants. In cases where attorneys represent parties, if social distancing is possible those cases can be handled in court. These would be the highest priority cases in view of family lawyers. Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff.
2. Emergency Custody Hearings
There is a very limited basis for a court to order a change in the status quo prior to the service of a complaint for custody. These ex parte orders are required to return for hearing promptly. Until the infrastructure and requisite rules changes are in place for virtual evidentiary hearings, these matters will require in person judicial attention in court with appropriate safety measures.





Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff. These are the second highest priority issues for family lawyers.

3. Contempt Hearings

Show cause orders may be issued upon submission of verified pleadings alone or with a remote ex parte conference using the telephone or video conferencing infrastructure in place already. The procedures applicable to criminal trial proceedings will apply to contempt hearings since there is both a civil and criminal remedy available. Family lawyers are experiencing widespread frustration among our clients. Litigants are violating court orders with impunity as they do not expect judicial intervention. Unless the courts make enforcement of orders a priority, there is a risk of widespread failure to comply. Not only is this bad for our clients who depend on compliance but is a threat to the rule of law. The fair administration of justice fundamentally depends upon the equitable enforcement of the court's orders. For this reason, family lawyers prioritize hearings upon the issue of enforcement of court orders above all other matters aside from the emergency matters set out above. Hearings should be scheduled for specific time slots and parties and attorneys should not enter the court until they are contacted by the clerk or bailiff.

4. Temporary child support, support modification and PSS hearings

These issues have not been addressed in most if not all courts since March 13. All hearings pending at that time and all new filings are waiting for disposition. Based on our relatively recent experience with economic upheaval in 2008, the experience in other countries in the wake of COVID-19 and just plain common sense, it is reasonable to expect not only an increase in dissolution of marriages and separation of parents with children as a result of the stress caused by this social and economic disruption. We can also expect a substantial increase in pro-se filings. The courts have the present statutory authority to render orders for post separation support based upon affidavits without a hearing. There is no authority for the court to render orders establishing or modifying child support or setting or modifying alimony without an evidentiary hearing.

Family lawyers believe these issues to be an important priority. The economic fallout of this pandemic has been swift and devastating. The unemployment rate is 14% nationwide. Many economists predict unemployment will meet or exceed the jobless rate in the great depression before year end. The pandemic creates serious household disruption for families with children. There will be significant demand for both modification and establishment of financial orders. Families, especially children will be harmed if the courts cannot meet this demand.

Generally, these issues may be resolved with relatively few documents and could be done remotely. There are already model procedures for remote hearings planned for use in Guilford County and perhaps other districts. Most if not all districts are equipped with laptops and licenses for WebEx. Many judges use Zoom. We need a template for a protocol for conducting these hearings remotely, authority for judge to order remote hearings and staggered scheduling





to reduce the need for use of courthouse facilities. When remote hearings are not possible, the courts should use in court time for these matters in the next order of priority.

5. 50-20 i1 motions for interim distributions, and hearings for injunctions

Under the present circumstances one party may have control of assets that should be shared, or liabilities should be apportioned pending the final equitable distribution. The court has the authority to make orders for interim distribution based upon information presented in chambers. These issues may be handled using telephone or videoconferencing by requiring the submission of written materials using e-mail.

The delay in equitable distribution cases makes it more important than usual for courts to impose orders to prevent the waste, disappearance or conversion of property subject to distribution. The court can enter a temporary order ex parte however absent agreement an evidentiary hearing is required for injunctive relief pending an order for equitable distribution. The court can conduct these hearings remotely. If this is not possible, the family law bar asks the court to use court time to resolve these issues in the next order of priority.

6. Temporary Custody hearings

Absent allegations of substantial risk of bodily injury, sexual abuse or abduction, the court may only order a change in the status quo for a child with notice and an evidentiary hearing. Until the infrastructure is available for these hearings to be conducted remotely, the court will need to use in person court time to resolve these issues. These issues involve discerning the best interests of children. Family lawyers expect that the social and economic turmoil caused by the pandemic places children at relatively higher risk presently. We believe these issues deserve priority for court time.

7. Unopposed motions, absolute divorces, motions to withdraw and consent orders

These tasks are not priorities. However, they are squarely within what the courts can do now and in Phase 1. Consent orders require no notice. Motions including motions for summary judgement for divorce, unopposed motions and motions to withdraw only require notice. These properly noticed motions may be resolved without a hearing. Pursuant to N.C.G.S. 50-10(e) the Clerk of Court may enter a decree of absolute divorce without a hearing.

8. Other non-evidentiary motions

These motions can be resolved based on briefs and affidavits in the discretion of the court if authorized by an appropriate rule.

9. Concluding trials in progress

If the courts have time to meet all of their other responsibilities and the priority matters listed above, the family law bar recommends that the first trials scheduled in phase one be the trials started before March 13 and interrupted as a result of the pandemic. Requiring the litigants in these cases to wait in line behind those cases scheduled for hearing after them and potentially cases filed after trials were started is both unfair to the litigants and inefficient for the court.





10. Family law case triage

Phase 1 is a perfect time for judges to sort and manage cases. There are sample protocols available for dividing cases into ones that are simple to resolve, need some technical assistance or require substantial judicial intervention. It is easy for courts to arrange for lawyers to meet with the court by phone or teleconference to identify issues that the court can resolve without evidence, to identify bottleneck issues that may be referred or to discuss and decide if all or part of a case should be referred and to establish deadlines. The court has authority under Rule 53 to refer some matters. That authority could be expanded by rule to permit the court to keep cases moving toward resolution without requiring people to come to the courthouse.

11. The Chief Justice uses her emergency rulemaking authority to:

- a. Prescribe rules for remote evidentiary hearings;
- b. Authorize trial courts to mandate that hearings be held remotely;
- c. Authorize courts to refer issues of equitable distribution, alimony and child custody to referees/arbitrators; and
- d. Seek such statutory revisions as needed to authorize the continuation of these practices after the emergency.

Phase 2

During phase 2, the courts will need to constantly adjust and rebalance resources to meet priority tasks. Judges and personnel may have to deviate from their routines to deal with spikes in criminal, traffic, probation violations, IV-D child support and eviction appeals as well as dealing with short staffed support in the Clerk's office and Sheriff's Department. Across the state the courts will need to repair, replace or create new infrastructure to support a different and hopefully better way to dispose of family law matters. This will likely include but not be limited to the following:

- Acquisition of hardware and software needed to conduct remote proceedings
- Constantly evaluating technological advances and gauging public acceptance of technology
- Development of rules and protocols to govern remote evidentiary hearings
- Training for the judges, court personnel, attorneys and the public about new technology and procedures
- Developing more user-friendly public interface methods that replace face to face meetings (chat, phone, e-mail, web postings, instructional videos...)
- Working with public health officials to further modify physical facilities to accommodate social distancing, people working remotely, logistics, reallocation of space, signage and myriad other unanticipated issues
- Securing permanent rule and statute modifications needed to ramp up new processes and continue them beyond the state of emergency
- Prioritizing and allocating scarce resources to immediate, intermediate and long-term responses to the pandemic
- Mobilizing and organizing the stakeholders into a productive collaborative mutually supportive group working to make the district courts more responsive, equitable and accessible than before.





- Developing a metric to evaluate what is tried, what succeeds and what fails around the state and sharing that information.
- Helping each other deal with the stress this is causing and the inevitable letdown we will feel when the adrenaline disappears.

During phase 2 some courts may be able to safely accommodate more face to face proceedings. Courts that initiated innovative practices should share the results so those successful processes and modifications can be tweaked and put into play in similar environments. Hopefully, the innovation forced upon us by the pandemic will create the space, time and inclination to go further to improve courts with innovation.

Family lawyers favored making matters other than new trials the immediate priority in Phase I. In Phase 2 the objective is to provide trial judges the tools they need to deal with the anticipated spike in new family law cases particularly new pro-se cases. In the family law arena, courts spend their largest blocks of time on high conflict custody cases, alimony cases, equitable distribution cases and at times cases involving both equitable distribution and alimony. The court must manage multiple witnesses, sequencing of experts, and the sometimes-disruptive schedules of witnesses, parties and attorneys. These types of trials often take days, sometimes weeks to complete particularly when judges are required to deal with other issues during the trial. After the evidence is presented and arguments are concluded, the judge must review the evidence and formulate an order, publish the order, deal with comments and enter the order.

In order to devote adequate time to these trials, courts resort to either modifying their rotation, seeking a special judge or conducting hearings piecemeal over months. It is reasonable to suppose that the resources needed for the pandemic will make it even more difficult for courts to deal with these cases. The courts will need special judges and retired judges to help deal with spikes in routine matters. So, these resources may not be available for complex cases. Moreover, there may not be space available for the trial even if there is a judge.

Family lawyers propose that the Chief Justice expand the reference rules and make other rulemaking changes needed to permit courts to mandate that parties litigate all or some of their issues before a referee/arbitrator. If they cannot agree, then the court should have the authority to appoint one. This will not be an option in every case, but it certainly will be in many cases. Upon the return of the reference, the court can determine whether to accept the referee's reasoned ruling or not. If the court accepts it, then the issue is resolved at the trial court level. The court may provide for an interim allocation of property to finance the reference if that is necessary. The Chief Justice should ask the legislature to change any statutes that prevent this innovation from continuing past the pandemic.

During Phase 2 we anticipate that there may be innovations to be tried that may involve more planning and maybe pilot projects before they are ready to adopt. We anticipate that particular districts may need specific programs tailored to their needs. Family law attorneys need to participate in the design and execution of those programs. During Phase 2 we expect to see a great deal more remote calendar





calls, scheduling conferences, staggered motion hearings, remote evidentiary hearings and trials as judges, attorneys and the public become accustomed to the new way of doing things.

Phase 3

We may find ourselves bouncing back and forth between phases. Phase 3 should include changes in buildings, technology and workforce to accommodate the innovations that will be institutionalized. More important, the fear of change that is inherent in the customs and processes that link the courts of today with the first courts will relax a bit and allow the judicial branch to hold fast to the principles of fairness, equal access, and unbiased justice while embracing innovation. In the Family Law arena, the courts should explore:

- Online dispute resolution for IV-D child support cases (Michigan model)
- Making family support services such as parenting coordinators, parenting educators and guardians ad litem available state-wide for Chapter 50 custody matters

Superior Court Judges

The Superior Court Work Group endorses the work of the Court Managers Work Group as a tool that can be provided to local judges for their use in the exercise of individual discretion in identifying priorities for local Case Management.

As an additional tool for local Superior Court Judges, this group is drafting a checklist of general considerations, taking into account special concerns relating to COVID-19, that may be used by local judges in crafting local policies and practice for Case Management during this expansion period.

We recognize that increased demand during coming months for courtroom space, coupled with scheduling demands placed upon lawyers, will create an increased number of scheduling conflicts. We consider that the issue of scheduling conflicts is addressed adequately by Rule 3.1 of the General Rules of Practice: Guidelines for Resolving Scheduling Conflicts. Specific note is given to the fact that under Rule 3.1, priority is granted with respect to the nature of the proceeding rather than the trial division in which the case is pending. The Rule further provides that nothing in those guidelines is intended to prevent courts from voluntarily yielding a favorable scheduling position, and judges of all courts are urged to communicate with each other in an effort to lessen the impact of conflicts and continuances on all courts.



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 4: Juvenile Waiver of Personal Appearance form

Appendix 5: Colloquy for Juvenile Proceedings Conducted by Audio and Video Transmission

Appendix 6: Parent Waiver of Personal Appearance form

Additional Resources

[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)

[Conducting Effective Remote Hearings in Child Welfare Cases](#) (Capacity Building Center for State Courts)

[Pandemic 2020 Court Practice Toolkit](#) (April 2020 by the N.C. Guardian ad Litem Program)

Timelines of Juvenile Abuse, Neglect, Dependency, and TPR Proceedings

Interference with DSS Assessment	7B-303(c)	Hearing to be held not less than 5 days after service of the petition and summons on the respondent
	7B-303(d)	If ex parte order granted at filing of petition, hearing shall be held within 10 days after entry of ex parte order to determine whether good cause for continuation of the order or entry of different order
Responsible Individual List Judicial Review	7B-323(b)	Calendar for hearing within 45 days from date petition for judicial review is filed at a session of district court hearing juvenile matters or if there is no such session at the next session of juvenile court
	7B-323(d)	Within 30 days after completion of hearing, the court shall enter an order
Initial Nonsecure Custody Order Authorized by Person with Delegated Authority in an Administrative Order	7B-502; 506(a)	Hearing to determine need for nonsecure custody shall be conducted on the day of the next regularly scheduled session of the court in the city or county where the order was entered if the session is scheduled before 7 calendar days of the entry of the initial nonsecure custody order
Continued Nonsecure Custody Order	7B-506(a)	If a nonsecure custody order was entered, a hearing on the need for continued nonsecure custody must be held within 7 calendar days of the entry of the initial nonsecure custody order; this may be continued up to 10 business days with the consent of the parent, guardian, custodian, or caretaker and the juvenile’s GAL if one has been appointed. This hearing is often referred to as “the 7-day hearing.”
	7B-506(d)	Order must be entered within 30 days of completion of the hearing
	7B-506(e)	If continued nonsecure custody is ordered at “7-day hearing,” a subsequent hearing must be held within 7 business days of the “7-day hearing” and at intervals of no more than 30 days thereafter. These subsequent hearings may be waived.
Adjudication	7B-801(c)	Hearing must be held no later than 60 days from the filing of the petition unless a continuance is granted based on the limited reasons in G.S. 7B-803.
	7B-807(b)	Order shall be entered no later than 30 days after completion of the

		hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Initial Disposition	7B-901(a)	Hearing shall take place immediately following the adjudicatory hearing and concluded within 30 days of the completion of the adjudicatory hearing.
	7B-905(a)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Review Hearing	7B-905(b); -906.1(a)	A review hearing must be held within 90 days from the date of the initial dispositional hearing (unless a permanency planning hearing was required after the initial dispositional order ceased reunification efforts, G.S. 7B-901(d)). A second review hearing must be scheduled within 6 months after the 90-day review hearing.
	7B-906.1(h)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Permanency Planning Hearing	7B-906.1(a), -901(d)	Within 12 months of the date of the initial order removing custody (this includes the initial nonsecure custody order) or If court ordered (1) reasonable efforts to reunify are not required at the initial disposition hearing or (2) reunification efforts would be clearly inconsistent or contrary to the child’s health and safety at a review hearing, within 30 days of that order. Permanency Planning hearings must be held at least every 6 months

		thereafter unless waived under G.S. 7B-906.1(k) or (n).
	7B-906.1(h)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Visitation Change by DSS	7B-905.1(b)	If child is in DSS custody and DSS temporarily suspends all or part of a the court-ordered visitation plan, DSS must expeditiously file a motion for review and request that a hearing be scheduled within 30 days.
Last Permanency Planning Hearing Because Child Aging Out	7B-912(b)	At least 90 days before teen turns 18, the court shall inquire as to whether the juvenile has a copy of his/her birth certificate, social security card, health insurance information, driver's license or other identification card, and any educational or medical records the teen requests. And, the court shall determine the person/entity who will assist the teen in obtaining those documents before the teen's 18 th birthday.
Voluntary Foster Care for Young Adults (Foster Care 18-21)	7B-910.1	Within 90 days of when the voluntary foster care 18-21 agreement was executed
TPR: Preliminary Hearing on Unknown Parent	7B-1105	Within 10 days of filing the petition (or if there is no court in that county in the 10-day period, at the next term)
TPR Adjudicatory Hearing	7B-1109(a), (d)	No later than 90 days from date of filing petition; continuances may only be granted beyond 90 days in extraordinary circumstances
	7B-1109(e); -1110(a)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Selection of adoptive parents	7B-1112.1	After the child's GAL or foster parent files a motion for judicial review of the adoption selection, hearing to be scheduled for hearing on the next juvenile calendar.
Post-TPR Placement Review	7B-908(b)	Conducted no later than 6 months from the date of the TPR hearing

		where parental rights have been terminated after a petition or motion has been filed by a guardian, DSS or child-placing agency with custody through a court order or by virtue of a relinquishment, the child’s GAL, or a person the child has continuously resided with for two years immediately preceding the filing of the petition <u>and</u> a county department or child-placing agency has custody of the juvenile, and every 6 months thereafter until the child is adopted
	7B-908(e)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.
Post-Relinquishment Reviews	7B-909(c)	Within 30 days of petition or motion for a post-relinquishment review has been filed unless the court orders otherwise and every six months until the child is adopted.
Reinstatement of Parental Rights	7B-1114(e), (h), (j)	A preliminary hearing shall be scheduled within 60 days of the filing of the motion at a session of the court scheduled for hearing juvenile matters. If the court does not dismiss the motion but orders reinstatement as part of the juvenile’s permanent plan, the court shall conduct interim hearings every 6 months until the motion is granted or dismissed (these hearings may be combined with hearings under 7B-908. The motion must be granted or dismissed within 12 months of its filing unless the court specifies a different time frame.
	7B-1114(l)	Order shall be entered no later than 30 days after completion of the hearing; if this does not occur, clerk must schedule a hearing at first session of juvenile court following the 30 day period to determine and explain the reason for delay and obtain any needed clarification of the contents of the order. The order shall be entered within 10 days of that subsequent hearing.

Delinquency Timelines

- First appearance (required for any juvenile alleged to have committed a felony) within 10 days of filing of the petition
- Probable cause hearing
 - For all felonies alleged to have been committed by a juvenile at ages 13 – 15 and for any matter in which the most serious charge is an H or an I felony alleged to have been committed at age 16 or 17, a probable cause hearing is required within 15 days of the first appearance. This timeline can be continued for good cause.
 - For all matters in which the most serious charge is a Class A – Class G felony alleged to have been committed at age 16 or 17, a probable cause hearing is required within 90 days of the first appearance. This timeline can be continued for good cause.
- Hearings on secure or nonsecure custody
 - Initial hearing on secure custody must be held within 5 calendar days of entry into secure custody
 - Initial hearing on nonsecure custody must be held within 7 calendar days of entry into nonsecure custody
 - If the first custody order was issued by a court counselor under delegated authority pursuant to an administrative order, the initial hearing on secure or nonsecure custody must be held on the day of the next regularly scheduled session of district court if the session precedes the applicable 5- or 7-day requirement.
 - Ongoing hearings on the need for continued secure custody must be held every 10 calendar days for most juveniles
 - Ongoing hearings on the need for continued secure custody must be held every 30 calendar days for juveniles who are alleged to have committed Class A – Class G felonies at age 16 or 17. The juvenile can request and the court can grant, for good cause, a 10-day interval.
 - Ongoing hearings on the need for continued nonsecure custody must be held every 30 calendar days

EXCERPT From Chapter 2 of Abuse, Neglect, Dependency and Termination of Parental Rights Proceedings in North Carolina (2019 ed.) (UNC Sch. of Government)

B. Notice and Opportunity to Be Heard

1. **Entitled to due process.** As a party to the juvenile proceeding, a parent is entitled to procedural due process, including proper service of process, notice of proceedings, and fair procedures. *See Santosky v. Kramer*, 455 U.S. 745 (1982) (holding that a state must provide respondents with fundamentally fair procedures when it moves to destroy weakened familial bonds); *see also In re H.D.F.* 197 N.C. App. 480 (2009) (reversing a neglect adjudication when the required notice of key events in the proceeding was not given to the *pro se* respondent parent). “Due process of law formulates a flexible concept, to insure fundamental fairness in judicial or administrative proceedings which may adversely affect the protected rights of an individual.” *In re S.G.V.S.*, 811 S.E.2d 718, 721 (N.C. Ct. App. 2018) (quoting case not cited here).

When one parent is served in an abuse, neglect, or dependency case, the other parent’s due process rights are not necessarily violated if he or she is not served before the adjudication and disposition hearings. *In re Poole*, 151 N.C. App. 472 (2002) (in case where mother was served with summons, discussing due process rights of father who was not served and to whom no summons was issued and deciding his rights were adequately protected in light of state’s interest in the welfare of children, the child’s right to be protected, the father’s ability to seek review of the court’s order, and the potential for the child’s return to his care), *rev’d per curiam for reasons stated in the dissent*, 357 N.C. 151 (2003).

2. **Participation in hearings.** Parents have a right to participate in proceedings in a meaningful way. The summons in an abuse, neglect, or dependency case requires the parent to appear for a hearing at a specified time and place. G.S. 7B-406(a). In a termination of parental rights (TPR) case, the summons or notice includes notice that the parents may attend the hearing. G.S. 7B-1106(b)(6); 7B-1106.1(b)(6). The court of appeals has held that a parent does not have an absolute right to be present at a hearing but “the magnitude of ‘the private interests affected by the [termination] proceeding, clearly weighs in favor of a parent’s presence at the hearing.’ ” *In re S.G.V.S.*, 811 S.E.2d at 721 (N.C. Ct. App. 2018) (reversing and remanding for new hearing; holding the magnitude of the interests at stake in a TPR hearing and the trial court’s denial of mother’s continuance request because mother was previously scheduled to appear in a criminal action in another county at the same time as later scheduled TPR hearing involved a misapprehension of law and substantial miscarriage of justice).

(a) **Incarcerated parent.** When a parent is incarcerated, the parent’s attendance may be impossible or require special steps. On application of a party or the attorney for a party who wants the parent to attend or testify, the court may issue a writ to have the parent brought before the court. The closest statutory authority for such a writ, G.S. 17-41, provides for a writ of habeas corpus ad testificandum. Although an application for the writ must state that the person’s testimony is believed to be “material and necessary,” the same procedure is used when a parent wants to attend but does not plan to testify or has already testified. The court may issue the writ only for someone who is in a facility in North

Carolina. If the parent is in a federal facility in this state, the person seeking the parent's attendance should contact that facility directly to determine whether the parent can be brought to court if a writ is issued. A North Carolina court has no authority to effect the attendance of someone who is incarcerated in another state, but parties may explore with an out-of-state facility the possibility of having the incarcerated party participate remotely.

The court's consideration of whether to issue a writ of habeas corpus ad testificandum or take other steps to facilitate a parent's participation in a hearing requires application of the balancing test articulated by the U.S. Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976). In determining whether due process requires a particular procedure, the court must weigh three factors: (1) the private interests at stake, (2) the risk of deprivation posed by the use (or absence) of the procedure, and (3) the state's interest in providing (or not providing) the procedure. *Mathews*, 424 U.S. at 335. North Carolina courts have applied the test in several juvenile cases. See, e.g., *In re K.D.L.*, 176 N.C. App. 261 (2006) (upholding trial court's denial of incarcerated father's motion to have his deposition taken); *In re Quevedo*, 106 N.C. App. 574 (1992) (holding that father's due process rights were not violated when court denied his motion for transportation to hearing and allowed hearing to proceed in his absence); *In re Murphy*, 105 N.C. App. 651 (holding that the court did not violate the parent's statutory or due process rights by denying a motion for transportation from a correctional facility to the termination hearing), *aff'd per curiam*, 332 N.C. 663 (1992).

Even when the parent does not attend the hearing, other steps to ensure protection of the parent's rights may be appropriate. In *In re Quevedo*, the court said:

We note that the use of depositions is allowed in civil cases where a witness is unable to attend because of age, illness, infirmity or imprisonment. N.C. Gen. Stat. § 1A-1, Rule 32(a)(4). Therefore, when an incarcerated parent is denied transportation to the hearing in contested termination cases, the better practice is for the court, when so moved, to provide the funds necessary for the deposing of the incarcerated parent. The parent's deposition, combined with representation by counsel at the hearing, will ordinarily provide sufficient participation by the incarcerated parent so as to reduce the risk of error attributable to his absence to a level consistent with due process.

106 N.C. App. at 582.

AOC Form:

AOC-G-112, [Application and Writ of Habeas Corpus ad Testificandum](#) (June 2012).

Resources:

See the Office of Indigent Defense Services (IDS), Office of Parent Defender, chart, ["Participation in Abuse, Neglect, Dependency, and Termination of Parental Rights Proceeding by Incarcerated Parents."](#)

For the North Carolina Department of Public Safety Policy and Procedures related to inmate access to the courts and to their attorneys, see [Chapter G, Section .0200 “Court Related Procedures”](#) (Jan. 16, 2018).

- (b) **Exclusion from courtroom.** Use of the *Mathews v. Eldridge* due process test is not limited to applications for writs to be brought to a hearing. It is also used when parents have been excluded from the proceeding. *See, e.g., In re J.B.*, 172 N.C. App. 1 (2005) (holding that mother could be excluded from the courtroom during the child’s testimony); *In re Faircloth*, 153 N.C. App. 565 (2002) (upholding removal of disruptive parent from termination hearing, without providing means for him to testify, based on strong governmental interest and low risk of error).
- (c) **Testimony of parties or witnesses in other states.** All abuse, neglect, dependency, and TPR proceedings are subject to the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), G.S. Chapter 50A. G.S. 50A-511 addresses taking the testimony of parties or witnesses in another state and provides:
- (a) In addition to other procedures available to a party, a party to a child-custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this State for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.
- (b) A court of this State may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this State shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
- (c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

_____ County

In The General Court Of Justice
District Court Division

NOTE: Use this form for a juvenile delinquency proceeding being conducted by audio and video transmission pursuant to Emergency Directive 3 in the Order of May 1, 2020, by the Chief Justice. This form need not be used for a proceeding for which the General Statutes expressly authorize audio and video transmission: continued secure and nonsecure custody hearings, G.S. 7B-1906(h).

IN THE MATTER OF

**WAIVER OF PERSONAL APPEARANCE AND
CONSENT TO AUDIO-VIDEO PROCEEDING
(JUVENILE DELINQUENCY)**

 Order of the Chief Justice of the Supreme Court of North Carolina
1 May 2020

Name Of Juvenile			
Juvenile's Date of Birth	Age	Date Of Proceeding	
Location Of Juvenile		Offense(s)	G.S. No.
Parent/Guardian/Custodian	Location Of Parent/Guardian/Custodian	Nature Of Proceeding (e.g., motion for review, adjudicatory hearing, disposition hearing)	
Parent/Guardian/Custodian	Location Of Parent/Guardian/Custodian	Attorney For Juvenile	Location Of Attorney
Attorney For State	Location Of State's Attorney	Juvenile Court Counselor	Location Of Juvenile Court Counselor

NOTE TO CUSTODIAN/COUNSEL: Complete all fields above for the case(s) for which this remote audio-video proceeding is conducted **before** the juvenile's execution of the waiver below. Sign the waiver as witness below after juvenile has executed the waiver. Upon completion of the proceeding, deliver this waiver along with any other documents resulting from the audio-video proceeding to the clerk's office for execution by the presiding official.

ACKNOWLEDGMENT OF RIGHTS AND WAIVER

As the undersigned juvenile in this action, I freely and voluntarily declare that:

- I have been advised of my right to appear in a courtroom and be personally present for the proceeding described above;
- I have been advised that I am not required to waive my right to be present, and if I do not waive that right, my case will not be unreasonably delayed;
- I have been advised that I have the right to appear in juvenile court for the purpose of confronting and questioning any witnesses who may testify in this proceeding;
- I have been given the ability to speak privately with my attorney and understand that I will be able to speak with my attorney privately during this proceeding;
- I have had the opportunity to speak to my attorney about this right to personally appear in juvenile court; and
- I fully understand and appreciate the consequences of my decision to waive the right to appear personally in juvenile court for the proceeding described above.

I therefore freely, voluntarily, and knowingly waive my right to be present in the courtroom for this proceeding, including for the purpose of confronting and questioning any witnesses who may testify, and I consent to participate in this proceeding by audio and video transmission.

Date	Signature Of Juvenile		
Name Of Witness	Signature Of Witness	<input type="checkbox"/> Counsel for Juvenile <input type="checkbox"/> Other (specify) _____	

CERTIFICATE OF DISTRICT COURT JUDGE

I certify that the above named juvenile was advised on the *Date Of Proceeding* above of the right to appear in a courtroom and be personally present for the proceeding described above; that he/she was advised that his/her case would not be unreasonably delayed if that right was not waived; that he/she was advised of the right to appear in juvenile court for the purpose of confronting and questioning any witnesses who may testify; that he/she understands and appreciates the consequences of his/her decision to waive the right to personal appearance; and that the juvenile voluntarily, knowingly and intelligently waived the right to personal appearance and consented to conduct the proceeding described above by audio and video transmission.

Location Of District Court Judge During Proceeding Described Above

Date	Name Of District Court Judge (type or print)	Signature Of District Court Judge
------	--	-----------------------------------

NOTE TO PRESIDING OFFICIAL: Upon verification of the information above that identifies the case(s) and proceeding conducted by audio and video transmission, complete this signature section and file with the clerk of superior court for the county in which the case(s) is pending.

Colloquy for Juvenile Proceedings Conducted by Audio and Video Transmission

NOTE TO PRESIDING OFFICIAL: *This colloquy is to be used in proceedings conducted by audio and video transmission pursuant to the Chief Justice's May 1, 2020, order authorizing remote proceedings. Note that Part 2, the juvenile's waiver of the right to personal appearance, and Part 3, the parent/guardian/custodian's waiver of the right to personal appearance, are not necessary in order to conduct statutorily authorized audio and video transmission proceedings under G.S. 7B-1906(h) (continued secure or nonsecure custody).*

Part 1 - Establish that Audio and Video Transmission is Functioning for All Parties and Juvenile Court Counselor

[Juvenile], please state your name for the record.

[Juvenile], please tell me where you are located at this time.

[Juvenile], are you able to see and hear me?

[Juvenile], is your parent/guardian/custodian with you?

If the answer to the previous question is no, ask the following question:

[Juvenile], are you able to see and hear your parent/guardian/custodian through the audio and video transmission?

[Parent/Guardian/Custodian], please state your name for the record.

[Parent/Guardian/Custodian], please tell me where you are located at this time.

[Parent/Guardian/Custodian], are you able to see and hear me?

[Parent/Guardian/Custodian], are you able to see and hear your child?

**Repeat the above questions for each parent/guardian/custodian present during the proceeding*

[Juvenile Court Counselor], please state your name for the record.

[Juvenile Court Counselor], please tell me where you are located at this time.

[Juvenile Court Counselor], are you able to see and hear me?

[Juvenile Court Counselor], are you able to see and hear the juvenile?

[Juvenile Court Counselor], are you able to see and hear the juvenile's parent/guardian/custodian?

[Juvenile], are you able to see and hear the juvenile court counselor?

[Parent/Guardian/Custodian], are you able to see and hear the juvenile court counselor?

NOTE TO PRESIDING OFFICIAL: *The next several questions are designed to ensure that the juvenile's counsel is present, that counsel has an opportunity to consult with the juvenile privately, that counsel can hear and see all parties before proceeding, and that the juvenile is satisfied with the attorney's help in the case and can see and hear his or her attorney. They also ensure that the Attorney for the State is present and that the Attorney for the State can be seen and heard by all parties to the proceeding.*

[Juvenile], is your attorney present with you?

If the answer to the previous question is no, ask the following question:

[Juvenile], are you able to see and hear your attorney through the audio and video transmission?

[Juvenile], have you had an opportunity to talk to your attorney in private?

[Juvenile] Are you satisfied with your attorney's help in this case?

[Juvenile] Do you understand that you can ask to speak privately with your attorney any time during this proceeding?

[Defense counsel], please state your name for the record.

[Defense counsel], where are you located at this time?

[Defense counsel], are you able to see and hear me?

[Defense counsel], are you able to see and hear *[the juvenile]*?

[Defense counsel], are you able to see and hear the juvenile's parent/guardian/custodian?

[Defense counsel], are you able to see and hear the juvenile court counselor?

[Defense counsel], have you had an opportunity to talk to your client, *[the juvenile]*, in private?

[Defense counsel], are you able to speak privately with your client while participating in this audio and video proceeding?

[Parent/Guardian/Custodian], are you able to see and hear defense counsel?

[Juvenile Court Counselor], are you able to see and hear defense counsel?

[Attorney for the State], where are you located at this time?

[Attorney for the State], are you able to see and hear me?

[Attorney for the State], are you able to see and hear the juvenile?

[Attorney for the State], are you able to see and hear the juvenile's parent/guardian/custodian?

[Attorney for the State], are you able to see and hear defense counsel?

[Attorney for the State], are you able to see and hear the juvenile court counselor?

[Defense counsel], are you able to see and hear [*the attorney for the State*]?

[Juvenile], are you able to see and hear [*the attorney for the State*]?

[Parent/Guardian/Custodian], are you able to see and hear [*the attorney for the State*]?

[Juvenile Court Counselor], are you able to see and hear [*the attorney for the State*]?

[To all parties], if you have any problem hearing or seeing at any time during this proceeding, let me know immediately.

[To all parties], if at any time a technological problem occurs, please let me know immediately and the hearing will be stopped and the difficulty corrected.

NOTE TO PRESIDING OFFICIAL: *This portion of the colloquy should follow the advisement of a juvenile's right to counsel and the right to privately confer with counsel during the proceeding.*

If you determine that the juvenile is able to see and hear you, see and hear counsel, confidentially communicate with counsel, see and hear the attorney for the State, see and hear the juvenile's parent, guardian, or custodian, and see and hear the juvenile court counselor, you should make appropriate findings on the record regarding the method by which the proceeding is conducted, the location of the juvenile, counsel, parent, guardian, or custodian, juvenile court counselor, and the judge, and the ability of each party to see, hear and speak with one another. Sample language follows:

Let the record show that this [*specify type of proceeding*] is being conducted by remote audio-video technology. [*Juvenile*] is participating from [*his/her*] location at [*insert name of detention facility or other remote location*]. [*Parent/Guardian/Custodian*] is participating from [*his/her*] location at [*insert location of Parent/Guardian/Custodian.*] [*Defense counsel*] is participating from [*his/her*] location at [*insert location of attorney*]. [*Attorney for the State*] is participating from [*his/her*] location at [*insert location of Attorney for the State.*] [*Juvenile Court Counselor*] is participating from [*his/her*] location at [*insert location of Juvenile Court Counselor.*] The court is participating from [*insert location of judge*]. This court is satisfied that [*juvenile*], [*juvenile's parent/guardian/custodian*], [*defense counsel*], [*attorney for the State*], [*juvenile court counselor*], and this court can see, hear, and speak with each other and that the juvenile is able to communicate privately with counsel. This court therefore finds that the audio-video technology is working properly and that the juvenile has received and is receiving the assistance of counsel.

Part 2 - Establish Valid Waiver of Juvenile's Right to In-Person Appearance in Court

Before proceeding, I want to advise you about the rights you will be giving up if you agree to have this proceeding conducted through audio and video transmission.

You have the right to appear in a courtroom and be personally present for this proceeding. That includes the right to appear in juvenile court where you can confront witnesses who may testify in this proceeding and ask them questions.

You are not required to waive the right to be present. If you do not agree to having this proceeding by audio and video transmission you will be afforded the right to appear in person in juvenile court for this proceeding without unreasonable delay.

[Juvenile], do you understand those rights?

[Juvenile], are you satisfied with having this proceeding today by means of this audio and video transmission instead of being personally present?

[Juvenile], do you waive your right to be personally present for this proceeding and consent to conduct it by means of this audio and video transmission?

[Juvenile], do you waive your right to appear in court to confront and question witnesses who testify at this proceeding?

[Juvenile], do you consent to conducting any such confrontation and questioning by means of this audio and video transmission?

[Juvenile], is there anything about this proceeding or the rights you are waiving that you do not understand or that you would like to discuss with your attorney?

[Juvenile and defense counsel], if you need to confer privately at any time during this proceeding, please let me know, and you will be given the opportunity to do so.

¹[Attorney for the State], do you consent to holding this proceeding by audio and video transmission?

Part 3 - Establish Valid Waiver of Parent/Guardian/Custodian's Right to In-Person Appearance in Court

[Parent/Guardian/Custodian] As a party to this proceeding, you have the right to appear in a courtroom and be personally present for this proceeding. That includes the right to appear in juvenile court with your child.

¹ Note that Emergency Directive 3 of the Chief Justice's May 1, 2020 order provides that consent of the parties is not required to conduct a proceeding by remote audio and video transmission; however, a party may, for good cause, object to the proceeding being held by audio and video transmission. Therefore, the court may want to ask this question to allow the record to reflect whether any parties objected to the proceeding.

You are not required to waive the right to be present. If you do not agree to having this proceeding by audio and video transmission you will be afforded the right to appear in person in juvenile court for this proceeding without unreasonable delay.

[Parent/Guardian/Custodian], do you understand those rights?

[Parent/Guardian/Custodian], are you satisfied with having this proceeding today by means of this audio and video transmission instead of being personally present?

[Parent/Guardian/Custodian], do you waive your right to be personally present for this proceeding and consent to conduct it by means of this audio and video transmission?

NOTE TO PRESIDING OFFICIAL: *If you are satisfied that the juvenile and the juvenile's parent, guardian, or custodian have made a knowing, voluntary, and intelligent waiver of the right to personal presence and that the juvenile has made a knowing, voluntary, and intelligent waiver of the right to confront witnesses, enter appropriate findings on the record. A sample statement follows:*

Let the record show that [Juvenile] has consented to [his or her] participation in this proceeding by way of audio and video technology. [Juvenile] has waived any right to be physically present and to personally confront witnesses in this proceeding. [Juvenile's Parent/Guardian/Custodian] has waived any right to be physically present. [Attorney for the State] also has consented, on behalf of the State, to conduct this proceeding by audio and video transmission.

Instruct the juvenile to execute the copy of the form, Waiver of Personal Appearance and Consent to Audio-Video Proceeding, presented by the custodian or counsel co-located with the juvenile. Once executed, direct the custodian or counsel to sign the waiver form as a witness to the juvenile's execution and then deliver the form to the clerk's office for your subsequent execution of the court's certification on that same form.

_____ County

In The General Court Of Justice
District Court Division

NOTE: Use this form to record a parent's waiver of personal appearance in a juvenile delinquency proceeding being conducted by audio and video transmission pursuant to Emergency Directive 3 in the Order of May 1, 2020, by the Chief Justice. This form need not be used for a proceeding for which the General Statutes expressly authorize audio and video transmission: continued secure and nonsecure custody hearings, G.S. 7B-1906(h).

IN THE MATTER OF

**PARENT'S WAIVER OF PERSONAL
APPEARANCE AND CONSENT TO
AUDIO-VIDEO PROCEEDING
(JUVENILE DELINQUENCY)**

 Order of the Chief Justice of the Supreme Court of North Carolina
1 May 2020

Name Of Juvenile			
Juvenile's Date Of Birth	Age	Date Of Proceeding	
Parent/Guardian/Custodian	Location Of Parent/Guardian/Custodian	Attorney For Juvenile	Location Of Attorney
Attorney For State	Location Of State's Attorney	Juvenile Court Counselor	Location Of Juvenile Court Counselor

NOTE TO PARENT: A separate waiver form must be completed and signed by each parent, guardian, or custodian of the juvenile named in this action. Complete all fields above for the case(s) for which this remote audio-video proceeding is conducted **before** completing the execution of the waiver below. Upon completion of the proceeding, deliver this waiver to the clerk's office for execution by the presiding judge.

ACKNOWLEDGMENT OF RIGHTS AND WAIVER

As the undersigned parent, guardian, or custodian of the juvenile named in this action, I freely and voluntarily declare that:

- I have been advised of my right to appear in a courtroom with my child, the juvenile named in this action, and be personally present for the proceeding described above;
- I have been advised that I am not required to waive my right to be present, and if I do not waive that right, the juvenile's case will not be unreasonably delayed; and
- I fully understand and appreciate the consequences of my decision to waive the right to appear personally in juvenile court for the proceeding described above.

I therefore freely, voluntarily, and knowingly waive my right to be present in the courtroom for this proceeding, and I consent to participate in this proceeding by audio and video transmission.

Date	Signature Of Parent/Guardian/Custodian		
Name Of Witness	Signature Of Witness	<input type="checkbox"/> Counsel for Juvenile <input type="checkbox"/> Juvenile Court Counselor <input type="checkbox"/> Other (specify) _____	

CERTIFICATE OF DISTRICT COURT JUDGE

I certify that the above named parent, guardian, or custodian of the juvenile named in this action was advised on the *Date Of Proceeding* above of the right to appear in a courtroom and be personally present for the proceeding described above; that he/she was advised that the juvenile's case would not be unreasonably delayed if that right was not waived; that he/she understands and appreciates the consequences of his/her decision to waive the right to personal appearance; and that the parent(s), guardian(s), or custodian(s) of the juvenile named in this action voluntarily, knowingly and intelligently waived the right to personal appearance and consented to conduct the proceeding described above by audio and video transmission.

Location Of District Court Judge During Proceeding Described Above

Date	Name Of District Court Judge (type or print)	Signature Of District Court Judge
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NOTE TO PRESIDING JUDGE: Upon verification of the information above that identifies the case(s) and proceeding conducted by audio and video transmission, complete this signature section and file with the clerk of superior court for the county in which the case(s) is pending.