



CIVIL PROTECTION ORDERS PROCESS

Considerations for Safe and Effective Responses by

COURTS TO THE COVID-19 PANDEMIC



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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

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Considerations for Safe and Effective Responses by **COURTS TO THE COVID-19 PANDEMIC**

The public health emergency created by the COVID-19 pandemic has challenged courts and communities in unprecedented ways. Of particular concern are the sometimes insurmountable obstacles that many victims of domestic violence and their children encounter in attempting to escape the abuse and achieve safety through the legal system. Courts throughout the country have risen to the occasion, quickly developing and implementing processes for safe, remote access to civil protection orders (CPOs). Yet, the struggle to adapt to the new circumstances continues, and ensuring that victims can obtain protection orders that meet their safety and other needs remains a difficult and continually evolving challenge.

The guidance provided below is intended to assist judicial officers and courts as they design creative and effective solutions to the problems imposed by the COVID-19 emergency. In addition to describing how judicial officers can assume a leadership role in promoting a collaborative response to the pandemic, this document provides examples of concrete strategies that courts and communities can implement to maximize the accessibility and effectiveness of the CPO system despite the impediments. Where available, hyperlinks to specific examples of forms, policies, and other resources are included.

The National Council of Juvenile and Family Court Judges welcomes requests for technical assistance on the issues addressed in this document, as well as with other challenges courts and communities encounter related to their CPO process. For more information, please visit civilprotectionorders.org or email us at info@civilprotectionorders.org.

EXERCISE JUDICIAL LEADERSHIP

- Engage with community partners (through a coordinated community response team or other existing collaboration, ideally) to develop a response that maximizes safety and access for petitioners, while protecting respondents' due process rights.
 - o Collaborate with community partners during each phase: rapid response, development of remote access during lock down periods and during the transition to long-term changes and re-opening of courts.
 - o Use multiple communication strategies to disseminate consistent information, including regular telephone calls, listservs, and social media. Ensure that information is up-to-date as access to courts and services offered change.
 - o For in-person hearings at the courthouse, collaborate with stakeholders and community service providers to ensure plans to meet the social distancing requirements include considerations of any safety risks posed to litigants accessing the court system.
 - For example, requiring litigants to wait outside the courthouse until summoned may enable abusers to come into contact with or harass/abuse victims without security or supervision and using non domestic violence and trauma trained health screeners could re-traumatize victims.
 - o Consider continuing remote hearings where possible, even after re-opening of courts, when it would promote litigant safety, due process, and facilitate access.
 - Encourage service providers to coordinate and communicate available assistance to victims (e.g., offering services via telephone or videoconferencing).
 - o Collaborate with advocacy programs to provide remote access to assistance in preparation for, as well as during and after, remote hearings. Provide litigants with information about available services and hours, and encourage programs to do so as well. (For example, in Miami-Dade County the court has worked with the advocacy community to create a calendar of advocates on stand-by that the judicial assistant, bailiff, or case manager can reach during court hours to provide assistance to a victim before or after a remote hearing.)
 - Consider implementation of online platforms for guided completion of petitions and filing. (For example, in Washington State the [LegalAtoms](#) app enables petitioners to draft and file petition, as well as a platform to receive remote assistance from advocacy organizations.)
 - o Disseminate information about safe use of technology by advocates working with victims. (See the new and updated resource by the [National Network to End](#)

Domestic Violence.)

- Encourage participation from and engage the local bar; create the opportunity for them to provide feedback on the process.
- Convene discussions with criminal justice stakeholders (law enforcement, prosecution, probation, and defense bar) regarding expectations for service and enforcement of court orders.

PROVIDE CLEAR, UP-TO-DATE INFORMATION TO THE PUBLIC AND KEY STAKEHOLDERS

- Provide plain language information through multiple mechanisms, including court websites, social media, and through email communication. Information should be available in all languages commonly spoken in the community.
 - Examples: [Alaska](#); Miami-Dade County Domestic Violence Court, FL.¹
- Provide online training, webinars, and demonstrations for litigants, attorneys, and advocates on current procedures and use of the technology (Example: [Indiana](#)).
- Information disseminated should include current procedures and policies regarding:
 - How to obtain civil protection orders;
 - The status of ex parte orders that have not been subject to a final hearing, and include the scheduling of final hearings;
 - How to seek enforcement for CPOs;
 - How to seek modification of CPOs; and
 - Expectations regarding compliance with provisions of CPOs.
 - Examples of such informational materials may be found at: [Washington State](#); [King County, WA](#); [Massachusetts](#).
- Provide litigants with contact information for service providers who can assist with completing forms and remote filing (including advocacy, legal services, and assistance with language access).
- Collaborate with other stakeholders to establish remote locations for litigants to access the technology for remote hearings in venues such as libraries, advocacy organizations, and government properties.
- Assist litigants who may have limited cell phone data or minutes by disseminating information about potential sources of assistance. Examples:

¹ On file with the National Council of Juvenile and Family Court Judges. Available upon request from info@civilprotectionorders.org.

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- o [National Digital Inclusion Alliance list](#) of free and low cost broadband plans.
- o [CTIA Wireless Industry information](#) related to staying connected during the pandemic.
- Recognize the challenges faced by litigants in light of the public-health emergency by permitting continuation of cases as appropriate.
 - o Consider permitting at least one automatic continuation if both parties do not appear at a hearing; attempt to contact non-appearing parties by telephone to inform them of the new hearing date and time (also send notice to address on record).
- Consider developing, in collaboration with legal services and victim advocacy organizations, guidance for parents regarding co-parenting and compliance with orders during the COVID-19 emergency.
 - o Examples: [Alaska](#); [Maricopa County, AZ](#); [Michigan](#); [Montgomery County, PA](#).

PROVIDE FLEXIBLE ACCESS TO EX PARTE CPOS

- Allow in-person filing (in compliance with governing health and safety guidelines; for instance, using a drop-box at the courthouse), email filing, and e-filing.
- Provide clear warnings about safety risks associated with use of electronic filing and communication. (For example, from DeKalb County, GA: Instructions for temporary protection order filing include the following language: “Please be advised that your safety may be compromised if someone else has access to your email account.”)
- Educate service providers on how to use remote filing systems.
 - o Examples: [King County, WA](#); [Utah](#).
- Consider whether notarization and/or wet signature requirements may be waived or revised temporarily so that they do not impede litigants’ ability to file remotely or participate in litigation.
 - o If notarization and/or wet signatures are required for court filings, consider adopting rule changes/procedures to allow for electronic signatures and attach a penalty of perjury standard on all filings.

USE SAFE AND EFFECTIVE PRACTICES FOR REMOTE EX PARTE HEARINGS

- Maximize litigants’ access to remote hearings.
 - o Use multiple mechanisms, including telephonic, videoconferencing where available.
 - o When possible, permit litigants to appear from a location of their choosing (home,

temporary safe location, shelter, or advocacy organization office).

- o Choose a platform that is accessible for litigants; for instance, one that does not require a download or account to use, offers closed captioning/interpretation, and uses a privacy policy that maximizes privacy and confidentiality of user information.
- Caution petitioners about the safety risks of participating in the process if the abuser has access to the petitioner's cell phone or email. Provide referral to advocacy organizations that could assist with the process.
- Provide clear information to litigants regarding how to participate in video hearings safely and effectively.
 - o Explain that it would be best for children not to be present in the room in which the litigant is participating.
 - o Recognize that child-care options may be very limited, so judges should be flexible and patient regarding children during remote hearings.
 - o Provide for effective remote interpretation services during video or telephonic hearings. (Please see discussion below on effective video remote interpretation.)
 - Example of litigant information: [Coast to Coast Legal Aid of South Florida](#).

USE SAFE AND EFFECTIVE PRACTICES FOR REMOTE CIVIL PROTECTION ORDER EVIDENTIARY HEARINGS

(Note: Consider adopting these recommended practices for any remote hearings in civil protection order cases, including after courts re-open if such hearings continue to be offered.)

- Ask litigants about how best to meet their access needs and their concerns regarding the process used.
 - o Provide multiple options for participation in hearings: telephonic, video, and in court (with video or social distancing standards), etc.
 - o Note that even when courts return to full or partially in-person operations, these options may remain important, as a reduction in court traffic may be necessary for the foreseeable future and parties may benefit from the added flexibility.
 - o Provide information on whether the court will allow counsel to join the hearing with their client merged on counsel's phone line or appear from counsel's office.
 - o If a petition is on behalf of someone with diminished capacity, consider appointing a Guardian Ad Litem (GAL). A GAL may also be able to help them assess their technology needs and communicate those to the court.
- Provide mail and email notice of all hearings, with clear contact and log-in

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information. If possible, provide instructions on how to do a test run of the technology. Request recipients reply to emails to ensure they have received them.

- In case a litigant shows up at the courthouse for their virtual hearing, make sure a number for the clerk or other designated staff's office is displayed for the litigant to call and receive assistance.
- Develop an information sheet (e.g., "What to expect") for self-represented litigants explaining:
 - o Evidence policies and procedures (including information related to witnesses);
 - o Who talks when during hearings;
 - o What will happen next if the order is issued, denied, or a party does not appear;
 - o Whom to contact regarding accommodations needed (interpreters, lack of computer or telephone minutes, etc.); and
 - o Logistical information: How to log in or access help from local service providers; telephone number for the judge's, clerk's, or judicial assistant's office.
- Provide information to litigants regarding how they can participate safely in remote hearings.
 - o Suggest neutral surroundings, if possible, for video conferencing (for better visibility in hearings and less distraction, but also helpful to keep an abuser from gleaning any information from the victim's settings or location).
 - o Be flexible in considering steps taken by litigants to protect themselves while participating in remote video hearings; provide litigants, advocates, and attorneys an opportunity to inform the court of specific safety concerns in advance or during a hearing, so that the process can be adapted to include appropriate safeguards.
 - In some instances, a telephonic hearing may be an appropriate response to safety concerns.
- When determining docketing of cases and how to set up the waiting room for remote hearings, consider the effect of wait times on litigants who may have limited minutes, data, or battery power for devices, as well as limited time off from work and child care challenges.
- Use a scripted colloquy at the outset of the hearing to direct litigants not to speak to each other, harass, or attempt to intimidate the other party during the remote hearing, and note that the judge will be monitoring for misuse of the process.
- Utilize the security, privacy features, and host controls available on your chosen platform to maximize safety and establish control over proceedings.

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- o To insure phone numbers, email addresses, etc. are not displayed or used as a participant's identification during video hearings, consider inviting litigants and witnesses one at a time into separate breakout rooms. Court staff can assist them with changing their participant identification to their name and, if needed, take other steps to prevent disclosure of location or other information before they are placed into the hearing. Another option would be to bring them into the hearing, change their name, and then send them back to the waiting room until the hearing is ready to begin.
- o Redact personal identifying information from submitted exhibits.
- o Deactivate any chat functions between the litigants to ensure that they may not chat with each other during the hearing; disable any screen sharing functions except when intended to be utilized by the court.
- Pay close attention to dynamics during the hearing, including the influence of unseen individuals on litigant and witness testimony, including coaching by an individual off the video screen, possible intimidation of parties or witnesses in real-time during the hearing.
- Establish a process for litigants and their advocates or counsel to have confidential communication during hearings (for instance, using breakout rooms).
 - o Explain the process in advance and at the commencement of the hearing.
 - o Set aside the requisite time for communication to take place. Recognize that a remote hearing will take longer and account for potential technology problems.
- Inform parties of any procedures for entering exhibits (Dropbox; Google Drive; emailing of exhibits; etc.), as well as with whom exhibits should be shared and how (e.g., by email).
 - o Establish a procedure for display of exhibits during the hearing (who controls the display, who scrolls through documents, etc.).
 - o Allow for flexibility in case litigants do not or cannot provide evidence/exhibits in advance; adopt an alternative process for use during hearings (e.g., litigant can share screen and/or hold evidence up to the video camera).
- Establish a process for creating the requisite record for the proceeding (e.g., use of court reporters, recording of hearing according to court rules).
 - o Explore if recording the proceedings in the platform is a viable option for courts considering applicable court rules or other regulations even when there is a court reporter, in case the court reporter faces technological or other challenges.
 - o When needed, adopt a procedure for verbal description of exhibits to create the

necessary record.

- If public access to CPO hearings is mandated by law, take steps to address the safety and privacy concerns raised by remote hearings and electronic broadcasting.
 - o Consider what, if any, information can be redacted or shared privately only with hearing participants (children’s testimony, intimate images, and private contact information, etc.).
 - o Implement a policy to take down any video recording immediately after the hearing so that it is not accessible online to the general public for future viewing. Official records should be maintained by the court and available for public access through the court’s normal transcription request procedures.
 - o Through verbal and written warnings, inform viewers that they may not record the live stream, and the penalty for not complying with the court's order.
 - Explore options for watermarking of video or other methods of notifying viewers of the prohibition on recording.
 - o Never publicize the meeting identification number to prevent an unauthorized person from joining a remote hearing.
 - o Consider turning off the public comment or chat function on any streaming platform used.
- Conduct remote compliance review hearings in a safe and effective manner.
- Provide step-by-step instructions for court staff regarding all procedures for remote hearings:
 - o Examples: [Michigan](#); Miami-Dade County Domestic Violence Court, FL.²

AMEND ORDERS AND/OR PROVIDE SUPPLEMENTAL FORMS TO INCLUDE COVID-19 SPECIFIC INFORMATION

- Email address of court.
- Information regarding expiration of order and possibility of continuances.
 - o Options include:
 - Stating in the order that it will expire at the end of the next hearing and providing that hearing date in the order;
 - Stating in the order that the order expires a set number of days (e.g., 30 days) after the governing stay-at-home order is lifted;

² On file with the National Council of Juvenile and Family Court Judges. Available upon request from info@civilprotectionorders.org.

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- Wherever possible, use extensions to ensure that ex parte orders do not expire prior to when a final hearing may be held, which is critical for victim safety; consider automatic continuances until a final hearing is concluded and clarify that fact in the original order or a subsequent notice to the parties to prevent issues with notice to the respondent and subsequent enforcement issues; and
- If prohibited by law from extending ex parte orders, clarify the process for litigants (e.g., scheduling of a remote hearing) so that they know what to expect and have adequate notice.
- Contact information and internet link to obtain more information.
- Address in orders the current COVID-19 emergency effects on custody, visitation, and exchange provisions.
 - o How to enforce orders.
 - o Flexibility re: exchanges, etc.
 - o Admonition regarding use of emergency to violate the order and/or engage in power and control/coercive control tactics.
 - o Consider use of virtual visitation, but be aware of safety risks that may be posed (Womenslaw.org provides further information; [Inspire Action](#) provides several resources regarding supervised visitation and safe exchange during the pandemic).
 - Examples of court-provided information regarding custody and visitation issues: [King County, WA](#).
 - Examples of information provided by other stakeholders: [Philadelphia, PA](#); [Oregon](#).

PROVIDE COPIES OF ORDERS TO PETITIONERS BY MULTIPLE MEANS

- Email orders or other forms of electronic service, where available.
- Provide notice that the order has been issued via text.
- Safe provision of paper copies at courthouse.
- Mail certified copies.

FACILITATE EFFECTIVE SERVICE OF PROCESS

- Consider added flexibility regarding granting of extensions/continuances due to difficulty in serving orders during the pandemic.
- Ensure that petitioners are aware of the importance of providing accurate, up-to-date information regarding respondents' whereabouts.
- In consultation with law enforcement and prosecutors' offices, consider allowing

service by email, mail, or alternative means; obtain consent to serve in such a fashion by telephone or email (using contact information provided by petitioner) (Example: [King County, WA](#)).

- o For final orders after a hearing, consider obtaining the respondent's consent to service of the final order by email or mail.
- o Consider service as perfected if respondent participates in remote hearing without objection to notice.
- Ensure that all orders are entered into state and national registries/databases.

COMMUNICATE WITH PARTIES POST ISSUANCE OF ORDERS

- Send out notices regarding extension of ex parte order to both parties. Public notice through administrative or executive order is insufficient and often is not in plain language.
- Continue to ensure that all orders are entered into state and federal registries (the FBI's National Criminal Information Center's Protection Order File).

ESTABLISH AN EFFECTIVE POLICY REGARDING DELAYS CAUSED BY THE EMERGENCY

- Ex parte orders for which a final hearing will be delayed.
 - o Consider the court's options to extend such orders until a certain date (e.g., 90 days (Example: [California](#))), until a certain number of days past the termination of court closures to allow for a hearing to be scheduled, or indefinitely until a hearing can be scheduled.
 - o Ensure that both parties receive notice of any extensions. Post notice of extensions on court website and provide notice by mail at address on record.
 - o Post general information on the court website regarding extensions of orders during the COVID-19 emergency.
- Expiring final orders for which extension/new orders may be sought.
 - o Consider automatic extension of any orders set to expire (Example: [California](#) is providing up to a 90-day extension).
 - o Ensure that parties receive notice of any extensions. Post notice of extensions on court website and provide notice by mail at address on record.
 - o Post general information on the court website regarding extensions of orders during the COVID-19 emergency.

IMPLEMENT EFFECTIVE REMOTE INTERPRETATION PRACTICES

- Ensure language access in remote proceedings through effective interpretation practices.
- Provide information and/or referrals for litigants to culturally specific, community based organizations and other culturally responsive service providers for assistance.
- The National Center for State Courts has provided guidance for courts on the use of remote interpretation in court hearings ([Remote Interpreting Guide for Courts, Court Staff, and Justice Partners](#)).
 - o Note that the guidance does not specifically address the special considerations in domestic violence cases; information regarding interpretation in such cases is available from the [Asian Pacific Institute on Gender-Based Violence](#).

HELPFUL SOURCES OF INFORMATION

California Commission on Access to Justice, [Remote Hearings and Access to Justice During COVID-19 and Beyond](#).

Conference of Chief Justices, Conference of State Court Administrators, [Resolution 2, In Support of the Guiding Principles for Post-Pandemic Court Technology](#).

Michigan State Court Administrative Office, [Michigan Trial Courts Virtual Courtroom Standards and Guidelines](#).

National Center for State Courts, [Coronavirus and the Courts; Guiding Principles for Post-Pandemic Court Technology](#); [NCSC Tiny Chats](#) (including on procedural fairness in remote hearings, digital signatures, notarization, and digital notice).

National Council of Juvenile and Family Court Judges, [Statement Regarding Safe Courts and Access to Justice During COVID-19](#).

National Network to End Domestic Violence, [Tech Safety Response to the COVID-19 Pandemic](#).

Texas Access to Justice Commission, [Best Practices for Courts in Zoom Hearings Involving Self Represented Litigants](#).

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