



CIVIL PROTECTION ORDER PROCESS

Improving Safety and
Privacy in Civil Protection
Order Cases:

In-Person and Virtual Court Considerations



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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

Improving Safety and Privacy in Civil Protection Order Cases: In-Person and Virtual Court Considerations



Many litigants seek court-ordered safety measures to prevent and mitigate violence and abuse in their lives. While courts implement general safety measures to address public health concerns, special considerations may be needed to ensure safety and privacy for litigants in abuse cases. Further, offenders in abuse cases may use court proceedings to continue to harass or locate victims, coerce or intimidate them from participating in other proceedings, or burden their financial resources and support. To ensure safe and meaningful access to the courts for victims of abuse, the court system should be responsive to the unique safety concerns abuse cases present.

- When possible, exercise leadership to create uniform safety and privacy policies and practices to provide guidance for other courts in the same jurisdiction and consistency for litigants.
- Provide information or warnings about the use of computers or other devices and email addresses used for court communication for litigants that suspect they may be being monitored by or share access with the adverse party.
 - Example: The Superior Court in DeKalb County, Georgia’s Protective Order webpage includes the language, “Please be advised that your safety may be compromised if someone else has access to your email account” followed by contact information for local domestic violence advocacy programs.¹
 - Litigants that suspect the adverse party is monitoring their emails or devices may create new emails on safe devices for communication with the court, attorneys, and advocates, to seek housing or other important services. Emails sent by the court to multiple parties should use the blind carbon copy (bcc) function to protect safe contact information.²
- If allowed by state and local statutes and rules, make sure to clearly provide information on filing using confidential addresses and other information. Make

¹ Superior Court of DeKalb County, [Protective Orders](#), (last visited June 11, 2021).

² United Kingdom Family Justice Council, [Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings](#) (Nov. 2020).

sure to include how a litigant can request such information be kept confidentially with the court and how to fill out court forms to protect unintended disclosure of the confidential information.

- Update existing materials to include any considerations for remote filing or remote hearing procedures.
- Disseminate widely information on how to access the courts and community services available to assist self-represented litigants. Information should be regularly updated, in plain language, and available in languages commonly spoken in the community.
- Consider safe options for the court, self-help centers, and law libraries to continue to provide assistance to self-represented litigants, such as remote services, drop boxes, moving resources to the lobby of the courthouse, or scheduling assistance by appointment to limit exposure.³
 - Examples: Institute for the Advancement of the American Legal System, [Pandemic Positives: Extending the Reach of Courts and Legal Services](#) (Oct. 2020).
- Consider allowing litigants to choose the safest option for participating in a hearing.
 - Be flexible and consider what options would be appropriate for the type of hearing to be conducted.
 - Consider community broadband issues and work with stakeholders and community partners to offer secure locations with internet access for litigants that lack access to reliable broadband or devices.
 - Examples of remote hearing options:
 - Appear remotely from any location by video or telephonically;
 - Appear remotely from designated community locations (e.g. library, victim services/advocacy office, attorney's office, help center, family justice center);
 - Appear remotely from another part of the courthouse;

³ Supreme Court of Illinois, [Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic](#), 5, (last visited June 11, 2021).

- Hybrid of the above options and in-person (some litigants or witnesses appear remotely while others appear in the courtroom).
 - Example of court standards for remote court access, including requirements specific to child protection, delinquency, and civil protection order proceedings: [Michigan Trial Court Standards for Courtroom Technology \(April 2020\)](#)
 - Example of guidelines for resuming judicial branch operations: [Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic](#).
- Whether abuse proceedings are held remotely, in-person, or a hybrid of the two, make sure that adverse parties are not left alone together.
 - For remote abuse proceedings, make sure court personnel are in the room before admitting both parties.
 - For in-person abuse proceedings, provide separate waiting areas for adverse parties. Allow victims to leave the courtroom first to safely exit the courthouse.
- Whether abuse proceedings are held remotely, in-person, or a hybrid of the two, avoid setting multiple proceedings at the same time, such as “cattle call” dockets.⁴
 - Use of such dockets in remote proceedings can increase the “digital divide” by unnecessarily using up litigant’s access to data usage/phone minutes, battery power for devices, or impeding their use of community technology resources.
 - Use of such dockets in-person can cause litigants to spend large amounts of time in the courthouse and can increase the difficulty of maintaining social distancing and other protective measures.
 - Examples of Strategies from the Supreme Court of Illinois:
 - Limit the number of cases on each call and stagger the call times;

⁴ Supreme Court of Illinois, [Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic](#), (last visited June 11, 2021).

- Hold court outside of normal hours upon the agreement of all participants;
 - Change schedules for more efficient assignment of cases (certain types of cases heard on certain days or in particular courtrooms).⁵
 - Use of such dockets can also create difficulties for litigants and witnesses that must take time off work, find child care, and pay attorney fees and parking costs.
- For in-person and hybrid proceedings, provide clear information to participants about any public safety procedures in place inside the courthouse, such as if masks will be required to be worn at all times, any social distancing requirements, if water is available in the courthouse or if participants can bring their own, and availability of hand sanitizer or hand washing stations.
 - Examples:
 - Colorado 8th Judicial District, Larimer County, CO, Courtroom 5A Information Regarding Appearances by Phone/Video or In-Person, In Court with COVID Safety Restrictions.⁶
 - Florida 11th Judicial Circuit, Miami-Dade County, FL, [Domestic Violence Division Zoom Hearing Notice and Instructions for Virtual Civil Injunction Hearings](#).
 - Illinois Supreme Court, [Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic](#).
- For hybrid proceedings, make sure to consider whether litigants will need to bring their own devices into the courthouse to view evidence submitted electronically or to participants in cross examination or other interactions directly with witnesses appearing remotely.
 - For in-person and hybrid proceedings, consider providing a process for how to electronically exchange evidence and other documents that would otherwise be provided in hard copy.⁷

⁵ Id.

⁶ For a copy of these instructions, see the Appendix section of [Court Toolkit: Reflections on Systems Resilience and Reforms: A Focus on Cases Involving Abuse](#).

⁷ Supreme Court of Illinois, [Supreme Court Guidelines for Resuming Illinois Judicial Branch Operations during the COVID-19 Pandemic](#), 4, (last visited June 11, 2021).

- Example: Colorado 8th Judicial District, Larimer County, CO, Courtroom 5A Information Regarding Appearances by Phone/Video or In-person, In Court with COVID Safety Restrictions.
- Make sure that only designated court personnel have the ability to record remote proceedings.
 - If the same personnel are also in charge of helping litigants with privacy settings, make sure confidential information is not included in the recording or live streaming.
- Regularly evaluate the platforms used by the court to conduct remote hearings.
 - Consider whether the platform meets the needs of the court and litigants, what user data the platforms collect and how they use it, and what safety and privacy features or precautions the platforms offer to safeguard user information.
- Make sure the software for remote hearings platforms is up-to-date to ensure the use of all available privacy features.⁸
- Provide timely information to litigants to help them and their attorney or advocate assess if their remote location is safe and allows for privacy during the hearing.
 - Include this information with any instructional materials provided to litigants about remote or hybrid hearings and about in-person safety measures being taken by the court.
 - Include contact information for the court clerk or other personnel that litigants can contact about safety and privacy concerns and how to address them.
 - Consider offering preliminary calls between court staff and parties before their remote hearing to problem solve any special needs around technology, accommodations for disabilities, interpretation needs, and any privacy and safety concerns.⁹

⁸ Office of Attorney General Maura Healey, [AG's Office Issues Tips for Safe Video Conferencing During COVID-19 Pandemic](#) (April 10, 2020).

⁹ California Commission on Access to Justice, [Remote Hearings and Access to Justice during COVID-19 and Beyond](#), 10 (May 18, 2020).

- Ask at the beginning of the hearing if litigants have any unmet needs regarding interpretation, ADA accommodations,¹⁰ or safety and privacy concerns.¹¹ Advise litigants to inform the court should any of these issues arise during the hearing.¹²
- Make sure to also consider accommodations for those that are more vulnerable to public health risks, such as elder and vulnerable adults or immunocompromised individuals.
- If the desired accommodations cannot be met, the court should inform litigants of the decision and explain what risk reduction measures will be taken.¹³
- Examples:
 - King County Superior Court, King County, WA, [King County COVID-19: Remote Protection Order Filing Process](#).
 - Colorado 8th Judicial District, Larimer County, CO, Courtroom 5A Information Regarding Appearances by Phone/Video or In-person, In Court with COVID Safety Restrictions.
 - Florida 11th Judicial Circuit, Miami-Dade County, FL, Eleventh Judicial Circuit Domestic Violence Division Coronavirus COVID-19 Access to the Courtroom Procedures.
- If there are concerns about witness intimidation or inappropriate influence, have court personnel ask parties independently and in private to show their surroundings before starting the hearing to ensure they are alone.
 - Asking witnesses/litigants to do so in open court could allow an abuser or others to glean information about the safe location the witness/litigant is appearing from.
- Use platform room functions, such as breakout rooms, which will allow for confidential attorney-client communications during the hearing process or

¹⁰ See [Michigan Court's Remote Hearings and Accommodations under the ADA](#), (last visited June 11, 2021).

¹¹ California Commission on Access to Justice, [Remote Hearings and Access to Justice during COVID-19 and Beyond](#), 17 (May 18, 2020).

¹² Texas Access to Justice Commission, [Best Practices for Courts in Zoom Hearings Involving Self Represented Litigants](#), (last visited June 11, 2021).

¹³ United Kingdom Family Justice Council, [Safety from Domestic Abuse and Special Measures in Remote and Hybrid Hearings](#) (Nov. 2020).

allow attorneys and clients to use a separate messaging or communication platform.¹⁴ Make sure these communications are not being recorded or otherwise saved by the court.

- Warn participants about the use of chat boxes and unintended disclosure of privileges or confidential communication.¹⁵
- Keep in mind how any side-channel such as a private chat function for hearing participants can also be used for witness tampering/intimidation.¹⁶
- Depending on state and local rules, allow victims/litigants to access advocates during the remote proceedings in the same way as allowed in court with use of private communication at appropriate times.
 - If in-person proceedings are being held and the courthouse has limitations on who can enter, make sure to allow victim advocates to accompany litigants. This can especially be important if the litigant is self-represented.
- In order to prevent unintentional submission of personal identifying information that should not be made public, provide self-represented litigants information on allowable redaction for submitted evidence (such as social security numbers, current addresses, or other victim contact information).¹⁷ This is especially important in hearings being streamed online.
- For proceedings such as civil protection orders that require personal service of process, consider what options may be available to effectuate service in a manner that is safe for the process server/law enforcement and the party to be served.
 - Make sure return of service is provided to the court in a timely manner.
 - Provide notification of service to petitioners so that they can better plan for their safety afterward.

¹⁴ California Commission on Access to Justice, [Remote Hearings and Access to Justice during COVID-19 and Beyond](#), 7 (May 18, 2020); Commission to Reimagine the Future of New York’s Courts, [Improving and Streamlining the Presentation of Evidence: Court Hearings](#) 10 (April 2021).

¹⁵ Cathy Krebs, [Privacy and Confidentiality Tips for Virtual Hearings](#), American Bar Association (July 1, 2020).

¹⁶ California Commission on Access to Justice, [Remote Hearings and Access to Justice during COVID-19 and Beyond](#), 7 (May 18, 2020).

¹⁷ Joint Technology Committee, [JTC Quick Response Bulletin: Managing Evidence for Virtual Hearings, National Center for State Courts](#), 3-4 (June 2020).

- Example of Service of Final Order During Remote Hearing: [Illinois Supreme Court Issues Pandemic-Related Orders for Remote Jury Trials and Protective Orders](#) (Oct. 27, 2020) and In re: [Illinois Courts Response to COVID-19 Emergency/Remote Service of Process or Personal Service of Protective Orders](#), M.R. 30370 (Oct. 27, 2020).
- Example of Alternative Service: King County Washington Office of the Prosecuting Attorney, [Guidance for Law Enforcement Service of Civil Protection Orders and Criminal No Contact Orders Under COVID-19](#) (Mar. 25th, 2020) and Service By Electronic Means, Civil Protection Orders, 2021 Wash. Sess. Laws, Ch. 215, § 18 (S.S.H.B. 1320), (codified as Wash. Rev. Code § 7.105.150 (2021)).
- Review local and state open court rules regarding cases involving abuse or minors.
 - Do not provide the general public with participant log-in information and passwords. Instead, consider separate streaming or recording options that allow the public to observe but not engage with hearing participants.
 - Consider whether there are options to close or partially close hearings if litigants have safety and privacy concerns regarding live streaming of hearings or particular evidence/testimony (such as testimony of a minor, intimate images, or similar sensitive information).
 - Consider what testimony or exhibits may be excluded from live streaming of hearings or if the streaming of hearings may be audio only.
 - Consider whether access to view remote hearings in the courthouse is sufficient to provide equitable access to the public.
 - Disable public chat functions related to any live streaming.
 - Make sure to inform public viewers that hearings are not to be recorded and publicly shared, that viewers are to treat live streams of hearings as if they were physically present in the courtroom, and what the consequences of violating these rules are.
 - Include written warnings or watermarks for streaming or recordings.
 - Consider implementing a policy to take down any video recording after a proceeding so that it is not continuously available online to the general

public. Official records should be maintained by the court and available for public access through the court's normal request procedures.

- Examples:
 - [Michigan Limiting Access to Family Division Proceedings Benchcard](#)
 - [Texas Livestream Benchcard Procedure for Limiting Access via Livestream](#)

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