



ISSUE BRIEF

TRANSFORMING CHILD WELFARE SYSTEMS

What do we know about virtual court hearings?

Parents involved with the child welfare system experience a world of uncertainty under the best of circumstances, not knowing if and when their child will be returned to them. Cancelled or irregular parent-child visits, stalled case plans, and delayed permanency hearings¹ exacerbate this uncertainty. The COVID-19 crisis has made this a reality for even more families: 39 states and territories have [issued a statewide order](#) to suspend in-person hearings, and the remaining states are giving localities the option to do the same.

Children cannot wait to achieve the permanency they deserve. Delayed hearings create backlogs and overwhelm dockets, and, as a result, children currently may remain in foster care for months or years longer than otherwise necessary. **Any court hearing that progresses the case toward permanency is essential to that child and family.**

This brief summarizes key considerations — potential benefits and potential concerns — for courts moving to virtual hearings. The information is chiefly anecdotal, and has been gleaned from various presentations and conversations with child welfare leaders, court advocates, judges, and other stakeholders.² While prior research on remote hearings in criminal court is included, **child welfare is still lacking meaningful and sustained input and feedback from parents and children about their personal experiences with virtual court hearings** to determine if, how, or when they might be used after the pandemic. More thorough



What do we know about virtual court hearings?

research and evaluation is needed to better understand the effectiveness of virtual court hearings and their impact on children and families.

For additional resources, please see [Where can child welfare leaders learn more about virtual court hearings?](#)

Essential hearings

There are numerous reasons that court hearings should continue during a pandemic, including:

Child well-being: Foster care is intended to be temporary, time-limited out-of-home care until a child can safely return home to the birth family or, if that is not possible, until the child is placed in another permanent home. We know that [separation from parents can be traumatic](#) for a child and have lasting effects into adulthood. Brain science shows us that children — young children especially — need nurturing, stable relationships during their formative years to set the foundation for their future. The longer children remain in care, the more likely they are to experience [negative social and emotional outcomes](#).

Parental rights: There are strict federal and state guidelines that mandate when child welfare hearings must occur, and parents have a right to hearings that occur within these timeframes. Judicial oversight is required to ensure parental rights to due process and access to justice, and avoid prolonging the inherent trauma and stress that children and families involved in the child welfare system experience. In addition, the Adoption and Safe Families Act 12-month reunification timeline proceeds while court hearings are on hold, making it more difficult for parents and children to reunify within that timeline.

Racial equity: The COVID-19 crisis is [disproportionately impacting communities of color](#), leaving families in those communities more vulnerable than ever and shining a light on racial inequities that have always existed. In addition, families of color are overrepresented in the child welfare system,³ and disparities are particularly pronounced for Black/African American and American

Indian/Alaska Native children.⁴ If court hearings continue to be delayed, Black/African American, American Indian, and Latinx children and families will be disproportionately impacted.

Virtual permanency hearings

Adhering to stay-at-home orders, some courts are identifying innovative ways to continue hearings when it is not safe to do so in person. During COVID-19, virtual hearings have surfaced as a viable strategy to ensure that due process rights of children and families are protected, safety and permanency remains a priority, and dockets do not become backlogged. Some courts have rapidly adapted to conducting all hearings virtually, while others are transitioning over time. In some jurisdictions, it is the judge's discretion whether to conduct hearings virtually. While there is still inconsistency across the country, the majority of states have been shifting to virtual hearings, and there is reason to believe this crisis could push courts to accept — perhaps even embrace — virtual hearings in some instances once courthouses reopen.

Potential benefits

Some benefits of virtual court hearings reported by stakeholders include:

Time and cost savings: Virtual hearings are more convenient and therefore increase attendance, often move the docket along faster, and are less costly than in-person courts. Some parents have reported they appreciate not having to take time off work or find transportation and child care in order to participate. Caseworkers and attorneys no longer need to spend their days at the courthouse waiting for cases to be heard or drive long distances to court, saving both money and time, and reducing their workload burden. Caseworkers and attorneys are reporting that they have more time to prepare for court hearings and to check in with children and families than they did before the pandemic.

What do we know about virtual court hearings?

Increased family participation: Remote hearings have made it easier for birth parents, resource parents, children, caseworkers, and other key stakeholders to engage in hearings. For example, a judge shared that a family member from Africa appeared at an adoption hearing that occurred virtually, something that could never happen at a courtroom hearing. Some virtual platforms also offer simultaneous translation (including sign language and closed captions) during the hearings, making it easier for non-English speaking or hearing-impaired participants to participate.

The video platform may be less intimidating than a courtroom setting, and reduces the power dynamics inherent in a courtroom. Some parents have reported that they feel more comfortable in their own home and appreciate being an equal participant in the virtual hearing given that everyone occupies the same amount of screen space. As a result of these factors, parent and child participation has significantly increased in some jurisdictions.

Greater teaming: Collaboration has greatly increased across parties in some courtrooms. Opposing legal parties have reported that they are collaborating far more, using a problem solving mindset and being less adversarial. Some stakeholders have reported a decrease in contested hearings and an increase in negotiations and mediated outcomes as a result. In other instances, court teams are gathering the day before court hearings to review and prepare for them, contacting children and families in advance and supporting their participation in hearings.

Professional development opportunities:

Supervisors, managers, and other leaders are also able to provide more on-demand coaching and support to

their staff. They report being able to observe new staff attorneys and caseworkers in hearings and coach them on how to improve their performance. In addition, child welfare leadership has the opportunity to learn firsthand about how staff are managing hearings, something that would have been difficult before the crisis.

Key considerations

While there may be a number of benefits to consider, there are also many issues worth further research and evaluation before virtual hearings become embedded in court practice. The following considerations have been expressed by stakeholders and identified in various research articles:

Security: Proper training and adequate investments in technology can help to mitigate potential security concerns. For example, some courts in the U.S. have addressed the need for attorneys and clients to have confidential conversations by selecting a virtual platform that enables privacy. In addition, some judges have expressed concern about not knowing who is in the room during a virtual hearing, which can be partially mitigated by proper training and adherence to defined procedures.

Parent engagement: While there are obvious benefits to reducing the time spent in court waiting for hearings to begin, the waiting period can be a time when caseworkers and attorneys have an opportunity to speak privately with children and families. This opportunity is lost in the virtual environment. In addition, the first hearing is where parent partners often approach parents who are newly involved with the child protection agency and accompany them to the hearing as emotional support. In virtual hearings,

The length of this pandemic is a lifetime for a child.

— CHIEF JUSTICE DEBRA STEPHENS,
WASHINGTON STATE SUPREME COURT

What do we know about virtual court hearings?

parents are generally alone in their home. Without these in-person connections, or options for securing this support virtually, parents may feel even more isolated and disengaged.

Equitable access to technology: While the trend is improving, considerable disparities still exist between demographic groups on access to technology and internet connectivity. According to the National Telecommunications and Information Administration's 2018 [survey](#), African American and Hispanic families had much lower access to the internet than White and Asian families. Communities of color were also less likely to have access to high-speed internet. Since parents involved with the child protection agency often experience poverty and are more likely to be families of color, access to technology can be a barrier and exacerbate issues of equity. Some courts and child protection agencies are providing devices for families to access a virtual platform, but that policy varies widely.

Increase in judicial bias: Law scholars and criminal justice activists have questioned the fairness of virtual hearings. Studies⁵ note that some aspects of video presence may affect the believability of an individual. [Numerous articles](#) cite the effect of video on a person's credibility, with a lack of eye contact and

other non-verbal cues frequently leading to a lack of trust building. Literature from other fields,⁶ particularly communications and social psychology, suggests that videoconferencing may negatively impact how defendants are perceived and represented in court, and how they experience the justice system.

Surveillance: Another potential concern is the fact that judges can see directly into parents' homes during hearings and make decisions based on what they observe, rather than the objective facts of the case as presented. This potentially impinges on parental rights to a fair hearing.

Right to have one's day in court: While some parents have expressed that virtual hearings are less intimidating and more accessible, others have shared that they prefer in-person hearings, as those equate more to "having their day in court." Specifically, fathers not invited to the video hearing have voiced their concern for their right to participate.

Effective collaboration between child protection agencies and courts

Many courts around the country are still only conducting emergency removal hearings virtually, and waiting to hold other hearings when courthouses



What do we know about virtual court hearings?

reopen. Child protection agency leaders can advocate for permanency hearings through a variety of channels. Some states have engaged with neutral, collaborative children's advocacy groups to help support their advocacy for continued hearings. Other states have asked judges who have implemented virtual hearings to reach out to judicial peers who may be hesitant, speak to the benefits, and provide tips for how to address barriers. For example, judges are inviting peers to watch virtual hearings so they can experience the benefits themselves, as well as sharing resources and tools to assist in implementation.

Adapting to virtual hearings in response to the pandemic has provided an unprecedented opportunity to rapidly redesign the court process, and it is likely that virtual hearings will continue in some fashion post-COVID-19. While more research and evaluation is needed, virtual court hearings have the potential to ensure that cases are moving toward permanency. Courts can use what has been learned to determine when virtual hearings should continue once courthouses begin to reopen, while also addressing the issues and considerations that have emerged during this time.

- 1 In this brief, permanency hearings refers to any hearings that progress a case toward reunification or placement in another permanent home.
- 2 Information in this brief is based on the National Center for State Courts' virtual hearing webinar series, Casey Family Programs presentations, and interviews with child welfare agency and court staff in Missouri, New Jersey, and the Tulalip Tribal Court in Washington state.
- 3 Harris, M. S., & Hackett, W. (2008). Decision points in child welfare: An action research model to address disproportionality. *Children and Youth Services Review*, 30(2), 199-215.
- 4 Between FY 2010-FY 2017, the percentage of Black/African American children entering foster care decreased nationally; however, Black/African American children are still represented in foster care at about 1.6 times their rate in the general population. For more information, see: <https://www.childwelfare.gov/pubPDFs/foster.pdf>
- 5 Diamond, S. S., Bowman, L. E., Wong, M., & Patton, M. M. (2010). Efficiency and cost: The impact of video-conferenced hearings on bail decisions. *Journal of Criminal Law & Criminology*, 100(3), 869-902.; Orcutt, H. Goodman, G.S., Tobey, A. E. & Thomas, S. (2001). Detecting deception in children's testimony: Factfinders' abilities to reach the truth in open court and closed circuit trials. *Law and Human Behavior*, 25 (4), 330-372. Goodman, G. S., Tobey, A.E., Batterman-Faunce, J.M., Orcutt, H., Thomas, S., Shapiro, C., & Sachsenmaier T. (1998). Face to face confrontation: Effects of closed-circuit technology on children's eyewitness testimony and jurors' decisions. *Law and Human Behavior*, 22(2), 165-203.
- 6 Murphy, K. (2020, April 29). Why Zoom is terrible. The New York Times. <https://www.nytimes.com/2020/04/29/sunday-review/zoom-video-conference.html>; Poulin, A. B. (2003). Criminal justice and videoconferencing technology: the remote defendant. *Tulane Law Review*, 78, 1089.

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