

Child Welfare: Addressing Backlog and New Filings

A Pandemic Resource from NCSC

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Expected Impacts of the Pandemic on Child Welfare

The number of new filings in dependency cases dropped in most jurisdictions with the onset of the pandemic. However, an influx of cases is expected when children return to school and daycare and are in contact with mandated reporters. The latter generates the most initial referrals to child welfare agencies. Many families are stressed by social isolation, unemployment, and food insecurity, creating conditions that may increase the risk of abuse or neglect.

Additionally, courts may have a backlog of postponed hearings in existing cases. Courts must consider children’s sense of time and need for permanency, in addition to statutory requirements, in prioritizing dockets.

Proven Case Management Methods

In the face of public crisis, applying the core tenets of caseflow management as described in the Children, Family, and Elders Overview will frame the task of preventing and addressing backlog. Caseflow management is especially important in child welfare cases in which the court’s decisions so significantly impact the safety, permanency, and well-being of children.

- To manage cases when operations are affected by the pandemic, the court should consider the need for a special case management order, such as the [Los Angeles Juvenile Division COVID-19 Policy](#).
- Early on in the pandemic, the Children’s Bureau of the U.S. Department of Health and Human Services issued [a letter to court leaders](#) containing reminders of continuing statutory requirements for hearings and findings in child welfare cases and creative recommendations for meeting them.
- Consider requesting a status report from the CASA or guardian ad litem in each case.
- Case management must continue through the life of the case to ensure timely permanency for the child. Although many courts suspended adoption and guardianship hearings as “non-essential” at the beginning of the pandemic, courts are

increasingly adding them to the remote hearing “menu.” One advantage of conducting remote adoption hearings is that many friends and extended family that might not be able to travel to an in-person court hearing can join the celebration virtually. The Los Angeles Superior Court developed a [protocol to process uncontested adoptions](#) without any court appearance necessary.

- The Washington state AOC released a compendium of considerations for efficaciously [resuming dependency factfinding and termination of parental rights trials](#) (both remote and in-person).

Special Considerations for Virtual Hearings in Child Welfare Cases

Remote hearings will be a significant mode of operation for most courts even as courthouses begin to reopen due to the continued need for social distancing. Anecdotally, many courts have found unexpected benefits to remote hearings in dependency cases, including higher appearance rates, easier calendaring of time-certain hearings, and more participation by youth. An element of case management in many courts may be deciding which cases are best heard remotely for the indefinite future.

- The federal Capacity Building Center for Courts (which provides technical assistance to Court Improvement Programs) issued recommendations for [Conducting Effective Remote Hearings in Child Welfare Cases](#), including tips for clerks, attorneys, and parties, as well as judges.
- The ABA Children's Rights Litigation Committee posted [Confidentiality and Privacy Tips for Virtual Hearings](#) that cover specific features of the major remote hearing platforms.
- Access to equipment and/or the internet may be a barrier to participation for some families and children. Some courts provide private access to remote hearings in the courthouse for those who need it. Also, the Children's Bureau has issued [guidance to child welfare agencies](#) outlining permissible use of federal funds to purchase cell phones and other equipment for parents and youth in the child welfare system.
- Some courts in Washington State are conducting “hybrid hearings” in which some parties and attorneys can appear in open court with proper social distancing. The witnesses appear remotely, via virtual technology. The attorneys can also sign into the hearing so that they can see the witnesses and others on the virtual platform, muting their speakers and microphones to reduce feedback. A large television monitor mounted on the courtroom wall can display all the parties, including the testifying witnesses. In this way, parents get the benefit of an in-person trial and the number of people is small enough to have proper social distancing while protecting the parties, attorneys, the court, family and friends.

Dependency Mediation/ADR

Dependency mediation has been a vital dispute resolution tool in many courts for decades, and it is one of the most well-studied dependency court programs. Although the pandemic

may seem like a strange time to consider instituting a new ADR program, even remote mediation sessions may resolve issues outside of court and preserve judicial time for the neediest cases.

- In Pulaski County, AR, mediators have been conducting sessions remotely. The child welfare agency has provided tablets to parents who need them, which can be used for remote family time with their children as well as participating in the mediation. The mediation sessions have engaged parents, and the tablets have allowed parents in residential treatment to participate in mediation, court hearings, and family time remotely.

Parenting time/Visitation

In most states, the court plays a [vital role in establishing and overseeing visitation](#) between children in care and their parents and siblings. The frequency, duration, and quality of family time is often the most important factor in promoting reunification, the case planning goal of the vast majority of foster care cases before the courts. Child welfare agencies, attorneys, caregivers, and courts must creatively adapt to maximize family time under pandemic conditions.

- The Child Welfare Information Gateway issued a list [of Virtual Visitation Resources](#) with a variety of tips for effective remote parenting time. For many families, shorter, more frequent virtual visitation sessions are most effective.
- As previously noted, federal funding may be available to support the purchase of equipment and internet service to facilitate virtual family time. It may also enable families to participate in remote hearings and virtual ADR as well.
- Children may have trouble staying focused on a remote visit with parents or siblings for an extended time. Allowing shorter, more frequent interactions may be beneficial for children.
- Creative approaches to achieving safe, in-person visitation should be considered, such as meeting outdoors while observing social distancing, as necessary. The Washington State Court Improvement Training Academy developed [a helpful web page of guidance and resources](#) on maintaining momentum in child welfare cases, including a variety of approaches to parenting time.

Additional Resources

These child welfare legal sites have collected numerous resources related to court operations in child welfare cases during the pandemic:

- [The National Association of Counsel for Children COVID-19 Resource Hub](#)
- [The National Council of Juvenile and Family Court Judges COVID-19 Resources and Updates Page](#)