

Study of Virtual Child Welfare Hearings Impressions from Judicial Interviews

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The COVID-19 pandemic required courts to quickly adapt their operations to mitigate the spread of the virus. For many child welfare courts, this meant launching virtual hearings and finding new ways for families, attorneys, and advocates to communicate safely with the court and with each other. The National Center for State Courts (NCSC) with funding from Annie E. Casey and Casey Family Programs is studying the experience of families and court professionals in virtual child welfare hearings to identify promising practices of effective and efficient virtual hearings.

As part of this effort, NCSC staff interviewed judges who oversee child welfare cases. The goals of the interviews were to learn about judges' experiences conducting virtual hearings, their opinions on the benefits and challenges of virtual hearings, and their perceptions of how families and court professionals navigated the transition. This document summarizes themes from those interviews. Participation in the study was voluntary, so themes are not generalizable to all child welfare courts; however, they do provide insight into the new territory of virtual child welfare hearings.

Judicial Interviews

NCSC staff interviewed 18 judicial officers in 5 states. Their years of experience hearing child welfare cases range from less than one year – meaning their experience as a jurist was mostly or entirely virtual, to 29 years. They represent both high volume urban courts and rural jurisdictions that often cover multiple counties. Some judges hear child welfare cases exclusively, and others hear additional juvenile case types, such as delinquency or specialty courts, or support a general docket of family, civil, and criminal cases.

Noticeable Increase in Parent Participation

Almost all of the judges interviewed believed that parents attended virtual hearings more frequently than in-person hearings. They attributed this increase in attendance to the convenience of not having to travel or find parking, not having to take time off from work, and to the less intimidating atmosphere of the virtual courtroom. One judge explained, "Car trouble was much more of a barrier [to attending hearings] than technology." Additionally, in several jurisdictions, incarcerated parents are able to participate in hearings more often due to increased remote connections to jails and prisons and elimination of transportation barriers. While it may be more convenient for a parent to participate virtually from home, work, or the community, some judges expressed concern about whether parents have the privacy needed to be fully present and engaged in the hearing.

Most of the judges in the study reported that young people appeared at hearings infrequently before the transition to virtual hearings, and that did not appear to change after the transition. A few judges noticed a slight increase in participation of young people in virtual hearings, particularly since they could take a few minutes away from class instead of missing most of the school day to attend court. Others observed fewer young people in hearings during the pandemic. Almost all judges remarked that young people who appeared virtually were familiar with the technology and few, if any, had problems with it.

Most Judges Prefer Video, But Few Require It

Most of the judges who participated in the study were presiding exclusively over virtual hearings using a web-based platform at the time of the interviews; however, some were also conducting hybrid hearings with parties appearing in-person in the courtroom while others appeared virtually. Almost all judges stated they prefer video participation; however, they varied widely in the extent to which they encouraged or required video participation. Some incorporated written instructions into their hearing notices, including guidelines for virtual courtroom etiquette. Although every judge interviewed participates in their own virtual hearings by video, a few said that some of their colleagues chose to keep their cameras off during virtual proceedings.

While every judge cited instances of parents lacking the equipment or internet connectivity necessary to join virtual hearings, reports of chronic technological issues were rare. Judges noted that it was common for some parties or attorneys to appear only by audio, either connecting to the platform with their camera turned off or calling in by phone, but the frequency of audio-only participation varied across jurisdictions. One judge estimated that 98% of parents participated by phone only, while other judges' estimates were much lower.

Virtual Hearings Support Time-Certain Scheduling

Many judges commented that the shift to virtual hearings forced them to schedule hearings to occur at specific times (time-certain calendaring) instead of setting all cases for one morning or afternoon time slot. This is especially true in jurisdictions that use a unique link for each hearing, rather than one link for all cases in a specified time period. Time-certain calendaring is a long-standing best practice recommendation for dependency courts that has been historically difficult for many courts to achieve. One judge noted, "We used to have 15 cases set at one time (in the courthouse)," but now [with virtual hearings] each hearing is set for a specific time and duration.

Differing Opinions on Expectations of Virtual Courtroom Behavior

Some of the traditionally formal aspects of courtrooms are difficult to translate to an online hearing, and several of the judges lamented the loss of decorum that accompanied the transition to virtual hearings. Specifically, some expressed the concern that the virtual environment dampens the gravity of the situation. Some judges developed guidelines for virtual courtroom decorum that are either announced at the beginning of hearings or sent to parties in writing with the hearing notice. One judge insisted, "This is just as if we were in the physical courtroom. All the same rules apply." Other judges were inclined to give leeway to participants, acknowledging the stress of the situation and relaxing some of the traditional aspects of courtroom appearances. A judge stated, "I had to weigh – is it more important to maintain formality, or for them to hear what I'm saying and stay engaged?"

Two Views of Virtual Testimony

Trials involving documentary evidence and witness testimony present logistical challenges in the virtual environment. Judges pointed out that it is more difficult to assess witness credibility, recognize witness coaching, or detect use of notes in virtual hearings than in-person. Others, however, found advantages to virtual trials, including the ability to see witnesses' faces up close on camera and observe how other participants react to testimony. One judge remarked, "On a personal level, I've noticed that I don't have a good poker face."

Virtual Hearings May Allow Court Professionals More Time for Casework

Most attorneys and caseworkers appear in court frequently, and judges observed that those who experienced technological issues at the beginning of the transition to virtual hearings were able to solve the issues relatively quickly. For others, the transition was relatively seamless. Judges noted that the

pandemic required caseworkers to become technologically savvy, because much of their work outside of the courtroom transitioned to remote, including arranging and supervising online family time and other virtual services for parents and children.

Several judges noted that virtual hearings benefited court professionals, such as attorneys, caseworkers, and court appointed special advocates (CASA), by reducing travel time and time spent in the courthouse waiting for hearings to begin. Judges observed that virtual hearings allowed attorneys to appear in courts in multiple counties on the same day, eliminating travel time for the attorney and alleviating some case scheduling challenges. Judges generally found that attorneys were as well or even better prepared for virtual hearings than for in-person hearings. Some observed that attorneys who used to wait until the day of hearing to confer with clients and other counsel in the courthouse were reaching out to clients and colleagues before the hearing date. Similarly, judges noted that caseworkers and CASA seemed to be as well or better prepared for virtual hearings than they had been for in-person hearings, despite the challenges of adapting their responsibilities of face-to-face visits and arranging services to social distancing requirements.

Opportunity to Include More Social Supports in Hearings

Eliminating travel and wait time has also allowed greater participation of individuals who support parents and children in child welfare cases. For example, several judges remarked that foster parents and kinship caregivers appear more frequently in virtual hearings than in-person hearings. Likewise, relatives and friends who may be of assistance to the family, but who live outside the jurisdiction or would have trouble getting to the courthouse, can now easily participate in hearings. This appeared to be especially helpful for things like adoption celebrations; one judge said that she can now tell the young person to “invite 500 people.” For some, virtual hearings also present the opportunity to easily include therapists, medical professionals, and other service providers who previously were unlikely or unable to spend several hours in the courthouse. One judge noted that these consultations with professionals have led to more in-depth discussion during review hearings.

Judges are Considering the Value of Virtual Hearings for the Future

For many judges interviewed, virtual hearings represent the “new normal.” They cannot see a future in which parties and attorneys are required to come to the courthouse for all child welfare hearings, even when it is safe to do so. As one judge summed up the transition to virtual court, “I think that it’s pushed us along the technology curve faster....and that’s probably a good thing. There are a lot of benefits that we are going to be able to glean from this. Anybody who has a challenge or barrier getting to court – this will help them.”

Some, however, look forward to resuming in-person hearings. To them, the formality of the courtroom reflects the serious nature of these cases, and they believe the important personal connection between the judge and families is difficult to achieve virtually. One judge's preliminary assessment: "I don't see the benefits [to virtual hearings]. These are life-changing events in the courthouse and to not treat that as an important event is not good for society."

Although the judges differed on the extent to which virtual hearing should continue, they were unanimous in wanting virtual hearings to be an option for at least some types of child welfare hearings after social distancing requirements are lifted. Moreover, all judicial officers were interested in feedback about virtual hearings from parents, youth, caregivers, and professionals and considering the input of stakeholders to inform future practice.

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