

Continued Guidance During COVID-19

Minnesota's Children's Justice Initiative (CJI) Advisory Committee members recognize the impact the COVID-19 pandemic has in presenting sustaining and unique challenges for courts and local child welfare agencies to ensure children involved with the court system achieve timely permanency, following the Minnesota Department of Health [Stay Safe Minnesota](#) recommendations for individuals, families, businesses, and organizations.

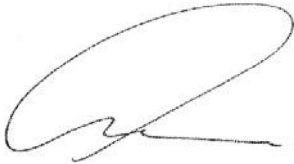
The attached CJI guidance was developed as an update to the May 2020 issuance to provide assurance that Minnesota meets requirements for achieving timely permanency for children, while attempting to reduce the impact of the Covid-19 pandemic. Its mission is to ensure that abused and neglected children involved in the child protection system have safe, stable, permanent families, and improved well-being.

This guidance provides assistance with implementing laws regarding the best interests of children, suggesting judicial procedures that protect children. It also provides instruction for the continued duties of child welfare agencies to meet reasonable and active efforts, ensuring that substantive and due process rights of children, their parents, and other parties are protected.

Thank you for your continued commitment to our most vulnerable Minnesotans during these serious and challenging times. Your dedication to providing excellent work is recognized and greatly appreciated.

If you have questions or comments regarding the attached guidance, please contact Children's Justice Initiative staff at CJI@courts.state.mn.us.

Best Regards,



Justice Anne McKeig
CJI Advisory Committee Co-Chair
MN Supreme Court



Jamie Sorenson
CJI Advisory Committee Co-Chair
MN Department of Human Services

Stay Updated

The most up to date information regarding the activities of our collaboration related to COVID-19 is located below and each offers the opportunity to sign up for ongoing email updates:

MN Judicial Branch: <http://mncourts.gov/Emergency.aspx>

MN DHS: <https://mn.gov/dhs/>

MN DHS Bulletins: <https://mn.gov/dhs/general-public/publications-forms-resources/bulletins/>

MN Executive Orders: <https://mn.gov/governor/news/executiveorders.jsp>

1. In-Person Hearings, Remote Hearings, and Written Submissions

("Remote hearing" means either (1) video conference or (2) phone.)

Considerations:

- All CHIPS and permanency hearings and trials can be held remotely at the discretion of the court. The court should consider the ability of the parties, participants and attorneys to appear remotely.
- All admit/deny hearings, IDH hearings, permanency progress review hearings, and post-permanency review hearings should be held remotely, rather than by paper submission, whenever possible.
- Judges can use their discretion to hold in-person hearings and trials, if the courthouse has met the requirements of the [Judicial Branch Preparedness Plan](#).

CJI Recommendation:

- CJI supports the use of remote video conferencing to continue to hold as many hearings and trials as possible.
- In all cases, the Minnesota Judicial Branch COVID 19 Preparedness Plan must be followed. In the event that neither in-person nor remote video conferencing is available, or at the discretion of the judge, remote phone hearings or written submission are an acceptable alternative.
- The CJI supports the increased use of remote hearing technologies as a way to provide access to justice, ensure the safety of children, and demonstrate a commitment to the permanency timelines.

2. Service of the CHIPS Summons and Petition in Time for Zoom EPC Hearings

Considerations:

It is critical for the summons and petition to be served at or before the EPC hearing to ensure that parents and other parties and participants and their attorneys are able to discuss the factual allegations and the active/reasonable efforts made by the social services agency to prevent removal. It's also critical so the court can make the required findings after appropriate discussion on the record.

CJI Recommendation:

- In an effort to ensure that everyone has a copy of the petition in time for the EPC hearing, for counties using remote phone or video conference technology CJI recommends that parents and other parties and participants should be provided with the summons and petition by email or eFS.
- In addition, as soon as practicable parents should also be served personally with the summons and petition by the Sheriff as required under the Rules of Juvenile Protection Procedure.

3. Taking Admissions During Remote Phone Hearings

Considerations:

[Juv. Prot. Rule 11.02](#) provides that "by agreement of the parties, or in exceptional circumstances upon motion of a party or the county attorney or on the court's own initiative, the court may hold hearings and take testimony by telephone or interactive video." The rule doesn't address "how" to take an admission over the phone when the judge is not able to see the person admitting. This has resulted in questions such as how will the judge know:

- if the person speaking was actually the parent and not someone else posing as the parent, and
- whether that parent was being coerced into making an admission by someone else who might be in the room with him/her.

CJI Recommendation:

- While CJI recommends taking admissions either in-person or by video conference, if a phone admission is the only option then it is recommended that the judge should allow the person to admit the petition over the phone.
- One option for ensuring that the correct person is admitting without coercion is for the parent's attorney to file a signed trial rights waiver to go along with verbal admission made over the phone. The trial rights waiver could be filed either before the hearing or within a deadline set by the court following the verbal admission. The parent's attorney should try to either meet with their client or mail/email the trial rights waiver to their client, have the client sign the waiver in front of a notary, and then return it to the attorney who should file it with the court. Social services agency are often willing to assist with transportation to meet with attorneys, provide phone numbers, email addresses, etc., to make some of these things happen.
- Another option for ensuring the correct person is admitting is for the judge to use the information the parent provided on application for an attorney to confirm that the person on the phone is that parent. The judge could ask the parent the names and dates of birth of the child(ren), the parent's address, and the last four digits of the social security number.
- In addition, [Rule 47.03, subd. 2](#), allows the parent's attorney to enter with personal appearance of the parent a written admission by the parent of the factual allegations and the statutory grounds set forth in the petition, made under oath. It is recommended that all of the information set forth in Rule 47.03, subd. 3, should be included in any written admission.

4. Parent/Child/Sibling Visitation/Family Time

Considerations:

- Consistent parent/child contact and sibling visitation throughout placement mitigates trauma, facilitates attachment, and positively impacts reunification rates.
- The child welfare agency continues to have a duty to develop and implement a plan for parental visitation of and contact with the child that promotes the parent and child relationship unless the court finds that visitation would endanger the child's physical or emotional well-being. See Minn. Stat. §§ 260C.178, and 260C.219.
- All children have the right to participate in regular face-to-face visits with their siblings in foster care and, whenever possible, with the child's siblings who are not in foster care. See Minn. Stat. §§ 260C.008 and 260C.178.

CJI Recommendation:

- CJI continues to support ongoing parent/child visitation and family time. The agency will assess for availability of personal protective equipment (PPE) so that in person visits can begin as soon as practicable. The agency will consider virtual visits on a case-by-case basis to determine frequency, duration and conditions of visitation. The agency will determine what technology options are safe, available and appropriate in each situation. The agency will attempt to eliminate barriers for families to the tools they need for this time together and consult with peers throughout the state to learn about practices in other jurisdictions.
- The Stay at Home order ended May 18, and one result is the ability for parent/child and sibling visitation to expand. Examples include outdoor visits at parks or other recreation sites, or having other family members supervise visits, if supervised visits are court ordered.

5) Ensuring Availability of Attorneys at Remote EPC Hearings

Considerations:

- It is important for parents, legal custodians, and Indian custodians to be represented by legal counsel at the EPC hearing where under Juv. Prot. Rule 42 the following critical issues must be addressed:
 - Whether the petition establishes a prima facie showing that a child protection matter exists;
 - Whether the child or others would be endangered, or the child's health, safety, or welfare would be endangered, if the child is released to the care of the parent;
 - Whether the social services agency made reasonable efforts (or active efforts in the case of an Indian child) to prevent removal of the child from the care of the parent(s); and
 - Whether there are available services that would allow the child to return to the care of the parent.
- Without an attorney, most parents won't even know that these topics will be addressed, let alone be able to respond adequately to them.
- Under [Minn. Stat. § 260C.163, subd. 3\(c\)](#), the court is required to appoint legal counsel for parents and legal custodians, regardless of party or participant status, if the person is financially unable to pay for counsel and if the court feels appointment is appropriate (court discretion).
- In [ICWA](#) cases (any case where there is reason to know the child has Native American heritage, even if the tribe has not yet responded), the parents, legal custodians, and Indian custodian are entitled to court appointed counsel if they are indigent (no court discretion).
- Under [Minn. Stat. § 260C.163, subd. 3\(b\)](#), ("McKenna's Law") the court must appoint legal counsel for any child age 10+ who desires counsel and cannot afford it.

CJI Recommendation:

- Attorneys should be available at the EPC Hearing so they can be appointed to represent parents, legal custodians, and Indian custodians (and children age 10+).
- In an effort to have attorneys available at the EPC Hearing, Court administration staff should either:
 - include a copy of the application for appointment of counsel along with the remote hearing notices mailed to parents, legal custodians, and Indian custodians; or
 - include information referring to an application for appointment of counsel, such as the [MJB public website](#), to allow them to fill out and submit a public defender application as early as possible so an attorney can be appointed and available at the hearing.
- The CJI Team members should work together to ensure attorneys are available at the EPC Hearing for children age 10+, and the appropriate [Social Services Notice to Child of Rights to Lawyer and to Go to Court](#) and [Child Age 10 or Older Request for Lawyer or Waiver of Court-Appointed Lawyer](#) forms are available pursuant to [McKenna's Law](#) are being used.

6. Other Important Decisions and Resources

Use of Fingerprint-Based Background Studies for Foster Care, Adoption, and TPLPCs

Closure of facilities during the pandemic made it difficult to obtain fingerprints. As a result, effective April 6, 2020, the Commissioner of Human Services (DHS) issued statutory modifications waiving the requirement for "Adam Walsh" fingerprint-based background studies for all applicants for foster care, adoption, and transfer of permanent legal and physical custody to a relative (TPLPC) and allowing the use of "emergency" background studies. Under the "emergency" background study process, fingerprints are not used, which means criminal records and maltreatment reports from other states are not checked and, instead, only Minnesota-based criminal and child maltreatment records are checked using only the person's name to check the records.

On July 27, the use of Adam Walsh fingerprint-based background studies resumed for [adoption home studies](#), including background studies. All paperwork received on or after July 27 for an adoption background study is being processed as a fully compliant fingerprint-based background study. Adoption background study paperwork received prior to July 27 is being processed as an “emergency” background study, which is sufficient to place a child in an adoptive home but not sufficient to finalize an adoption for children under the guardianship of the Commissioner, which means a new or updated background study must be submitted.

Effective October 21, the use of Adam Walsh fingerprint-based background studies, including checks of Minnesota and out-of-state criminal and maltreatment records, will again be required for all new applicants for **foster care and TPLPC**. DHS will not accept new submissions of emergency background study applications after October 20, 2020. Emergency studies will continue to be valid until 60 days after the end of the peacetime emergency. All applicants who received an “emergency” background study will need to submit a new fingerprint-based background study. Adoptions and TPLPCs may be finalized once the fully-compliant fingerprint-based background study results are filed with the court.

CJI recommends that orders finalizing adoptions and TPLPCs should not be issued if only the results of an “emergency” background study are filed with the court because:

- For adoptions, DHS staff cannot approve Adoption Placement Agreements (APAs) for children under guardianship of the commissioner when “emergency” background studies were used to place children with prospective adoptive families.
- For TPLPCs, DHS staff cannot establish eligibility for Northstar Adoption Assistance when emergency background studies were used.

See additional details on the [DHS background study website](#).

Caseworker Monthly Visits with Children

Federal and state policy temporarily changed to allow videoconference contact between caseworkers and children in out-of-home care. For children remaining in the familial home, videoconferencing and telephone conferencing are permissible. [Bulletin 20-68-11](#) Monthly Caseworker Visits Modified to Permit Videoconferencing. While some face-to-face contact is beginning to occur, this waiver is valid throughout the Peacetime Emergency, currently in effect until November 12, 2020.

GAL Visits with Children

Beginning June 8, 2020, the Guardian ad Litem Program began a methodical return to in-person visits. They have developed a thorough list of considerations that will allow for a graduated return to face-to-face contact while managing the safety measures needed to reduce the spread of COVID-19.

CJI Team Meetings

Remote phone or video conference CJI Team meetings are encouraged. CJI meetings provide a good opportunity to discuss practice and policy changes related to COVID-19 to ensure stakeholders are aware and informed.

CJI Judges and Team Secretaries are encouraged to schedule a remote CJI meeting in the next 60 days to address any concerns or complications as a result of increased in-person hearings and further planning for remote CHIPS and permanency hearings and trials.