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Nevada Court Improvement Program
Remote Hearing Study

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Introduction

In early 2020, the novel Coronavirus (COVID-19) created a global pandemic and affected everyday life across the world. In the United States, states had discretion regarding how they addressed the pandemic. Many, including Nevada, instituted a quarantine, shutting down all non-essential business and requiring people to stay home whenever possible. This affected the court's standard practice as they began trying to find ways to continue to hold child abuse and neglect hearings. After the shutdown, many courts used teleconferencing to hold their hearings, but these efforts soon evolved into using virtual platforms such as Zoom or BlueJeans video conferencing. Holding virtual hearings has led to many questions about the effectiveness of this mode of hearing and how different (or similar) it might be to in-person practice. The Nevada Court Improvement Program (CIP) contracted with researchers to explore this issue.

Method

The CIP contacted judges from the 11 judicial districts and asked for volunteers to participate in the study. Judges were asked to send recordings of 10 in-person hearings (prior to COVID-19) and 10 virtual or remote hearings (held after COVID -19 restrictions) to the researchers for review. The goal was to review hearings of the same type to explore how they might be different or similar. The hearings were reviewed and coded using a structured court observation instrument. Data were analyzed to compare cases pre-COVID to post-COVID. The data were analyzed across multiple sites to determine differences. In addition, a survey was created and sent to all the Community Improvement Council teams to examine perceptions of quality legal representation. The survey included some items on the challenges due to COVID. Survey data were analyzed to supplement court observation findings. Although practice varies across the sites, all the data were analyzed in the aggregate (across all sites). This allowed for tests of statistical significance that would not be possible with smaller sample sizes per site. Statistical significance is a way for researchers to quantify their confidence that the relationship found between two variables is not caused by chance alone. If there is a statistically significant difference between remote and in-person hearings, it will be reported as such. This will indicate that there is likely something different between remote and in-person for the item.

Court observation. A court observation tool was designed for the study that included quality court hearing indicators such as presence of parties, judicial engagement strategies, discussion items, and findings. The tool tracked who was present in the hearing and which engagement strategies judges used (e.g., spoke directly to the party, asked if the party had questions, gave an opportunity to be heard) for mothers, fathers, and youth who were present at the hearing. The tool identified multiple items that could be discussed at the hearing (based

on best practice standards of discussion items) and tracked how much discussion of each item occurred on a 4-point scale ranging from 0=no discussion to 3=substantive discussion. In addition, the tool tracked whether findings were made verbally on the record and whether the next hearing date was set on the record. The tool included some additional items related to remote hearing practice, including how the parties were present (in-person, telephone, or video), whether there was a technology delay (and how long the delay was if it was there), whether there was discussion of COVID challenges, and whether the judge talked about the technology in the hearing.

Survey. The survey asked systems stakeholders about current practice under COVID. It inquired whether remote hearings were being held, what platform was being used for virtual hearings, whether hearings were being rescheduled or canceled due to the pandemic, and what other specific challenges the site was facing in their role related to COVID-19. The survey also inquired whether attorneys and caseworkers were meeting with their clients virtually and whether this amount of contact was different than normal.

Sample

The final sample for the survey consisted of 42 stakeholders from seven judicial districts. The final sample for the court observation data collection consisted of 123 hearings from 5 judicial districts. This includes 58 remote hearings and 65 in-person hearings.

Findings

Study findings are organized by data collection activity (survey first, then court observation) and then around dimensions of hearing quality and reported in terms of differences between remote hearings and in-person hearings. For the each of these findings we report whether there is a statistically significant difference. If the report does not indicate a statistically significant difference, then hearings are considered similar on that item (even if the numbers look a little different).

Survey Findings

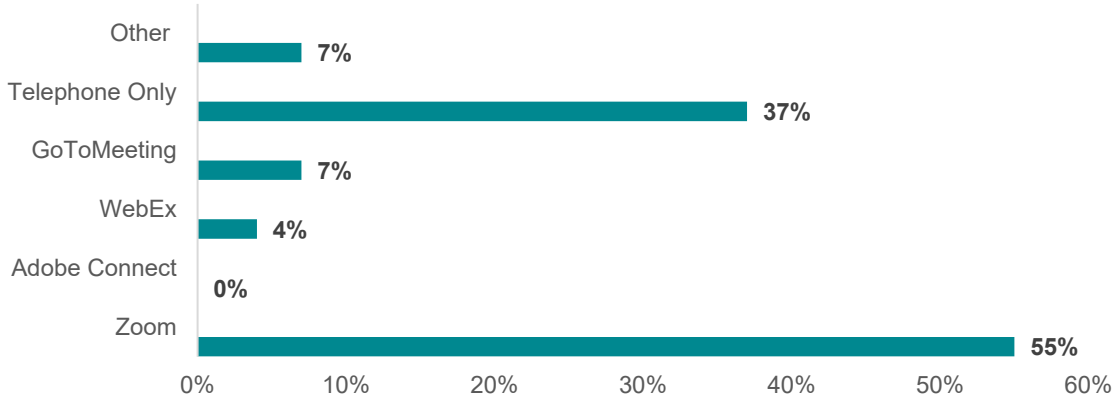
The survey asked a series of questions about COVID practice. The survey was administered in April of 2020 and remained open through the summer. As such, some of this practice may have changed. In early days following COVID, many courts used teleconferencing and that has evolved to other online virtual platforms.

Use of Virtual Hearings

Respondents were asked whether their jurisdiction is conducting virtual hearings. All respondents who gave an answer to the question (n=27) said yes, virtual court hearings were

being conducted. When asked what platform courts were using, the majority at 55% said Zoom. Figure 1 illustrates responses. Keep in mind that there were only responses from seven of the 11 jurisdictions (64% of judicial districts).

Figure 1: Platform Used for Virtual Hearings (n=27)



Canceling Hearings

Stakeholders were asked if they were cancelling or rescheduling hearings in their jurisdiction. Fifty-two percent of respondents indicated 'yes' they were cancelling hearings while 48% indicated that they were not cancelling or rescheduling any hearings. Respondents indicated that "non-essential" hearings were more likely to be canceled or re-scheduled, such as review hearings. However, some respondents noted that TPR hearings were being postponed. In some jurisdictions, such as the 2nd JD, while hearings were initially re-scheduled or postponed, all hearings have now been re-set and are being held virtually.

COVID Challenges

Respondents were asked "What other specific challenges are you (or your office or court) facing, in your role in child abuse and neglect cases, since COVID-19 restrictions?" There were several responses which were iterated across jurisdictions or by multiple stakeholders. These included:

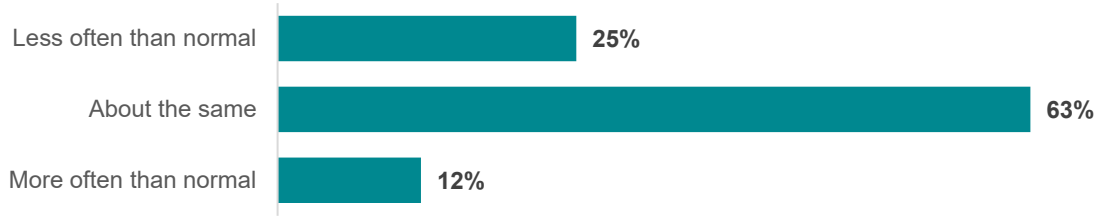
- Visitation (4)
- Lack of collaboration/communication between the agency and court on procedure (4)
- Impacts on permanency timelines, especially for TPR cases (3)
- Ability to meet with parents and children (3)
- Services/resource availability (3)
- Equal access to technology needed for hearings (2)
- Quality of hearings due to technology issues (2)

In addition, other challenges arose such as challenges with the court's docketing when only docketing a week ahead or when continuances are occurring.

Attorney and Caseworker Contact with Parents Post COVID-19

Attorneys and caseworkers were asked if they are still able to meet with clients. The majority (81%) of attorneys and caseworkers reported that they meet with parents virtually, and that this contact was "about the same as normal" compared to pre COVID-19 practice. Figure 2 illustrates responses from attorneys and caseworkers about amount of contact.

Figure 2: How often attorneys and caseworkers make contact with parents post COVID-19 compared to normal practice (n=16)



Court Observation Findings

Length of Hearings

The length of hearings was calculated by subtracting the start time from the end time. If the hearing included a recess, this was also subtracted from the total to create a total length of hearing in minutes. Remote hearings were significantly longer than in-person hearings. Remote hearings averaged 32 minutes compared to 23 minutes for in-person hearings (about 9 minutes longer, on average).

Table 1. Length of Hearing (in Minutes) by Hearing Type and Mode

	In-person	Remote
72 Hour/ Protective Capacity	31	34
Adjudication	35	15
Disposition	29	70
Review	27	39
Permanency	18	23

Technology Delays

Technology delays were identified during structured court observation. These delays included any delays for a person having trouble connecting to the virtual space, trouble accessing their computer, or struggling with being heard during the hearing. Remote hearings had technology delays in 21% of hearings (n=12) compared to 3% of in-person hearings (n=2). The average delay was 2 minutes, with a range from less than 1 minute to 5 minutes. A third of the delays lasted less than one minute and an additional third lasted approximately two minutes.

Discussion

Discussion was explored in terms of breadth of discussion items. Breadth is calculated by examining the total number of items discussed in a hearing divided by the total number of applicable items that should be discussed at a hearing (derived from National Council of Juvenile and Family Court Judge's Resource Guidelines and Enhanced Resource Guidelines for best practices in child abuse and neglect hearings (1995 and 2016) and prior hearing quality research efforts). Breadth can range from 0 to 100%. There was a statistically significant difference in breadth of discussion in the hearings, with remote hearings discussing 50% of applicable items and in-person hearings discussing 43% of applicable items (on average).

Depth of discussion was also coded. Depth was coded on 4-point scale ranging from 0 (no discussion) to 3 (Substantive discussion). The majority of discussion topics were statistically similar between in-person and remote hearings. However, a few items differed. Child placement and barriers to permanency were discussed in more depth in remote hearings compared to in-person hearings, while parents' rights/process/permanency timeframes and relative resources were discussed in more depth in in-person hearings. A list of all discussion items and their depth is reported in Appendix A.

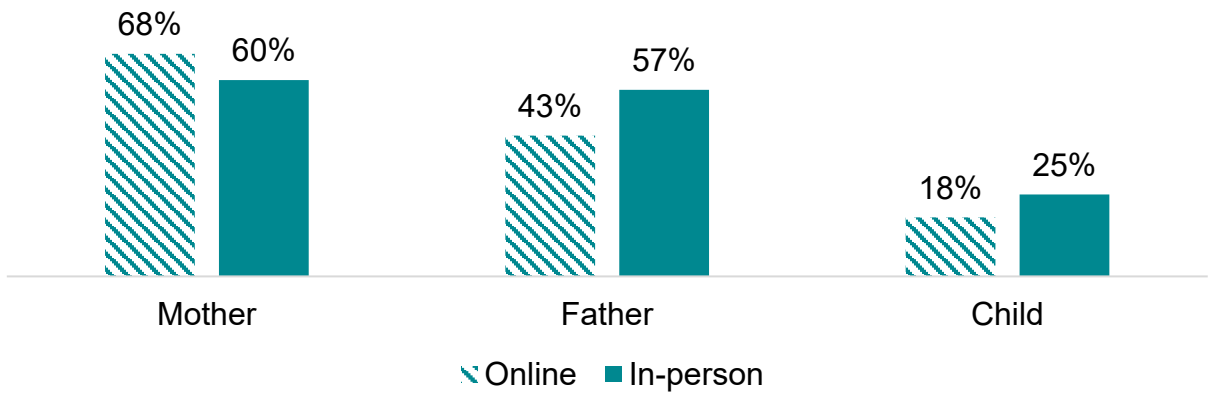
In addition to standard items, court observation also examined how often discussions of challenges due to COVID-19 were part of the conversation. In 69% of remote hearings, there was no discussion of challenges due to COVID-19, which means it was only discussed in 31% of cases. In addition, the observations considered whether there was ever a question to the parents or youth about technology challenges. In only 1 hearing did the judge talk about technology challenges with the parents or youth.

Presence of Parties

The court observation study examined how often parties are present in the hearings. A comparison between in-person and remote hearings showed no statistically significant differences in parties' appearance at the hearings. Relative caretakers were present in 23% of hearings, other relatives were present in 12% of hearings, and foster parents were present

in 19% of hearings. Foster parents were more likely to be present in remote hearings (29%) compared to in-person hearings (11%). Figure 3 illustrates the percentage of time parents and youth were present in each hearing type.

Figure 3: Presence of Parties



The study also explored how the parties participated in the remote hearings. Youth were most likely to participate by video (70% of hearings), typically with their foster placement, while parents were more likely to participate by telephone, including 59% for mothers and 61% by telephone for fathers.

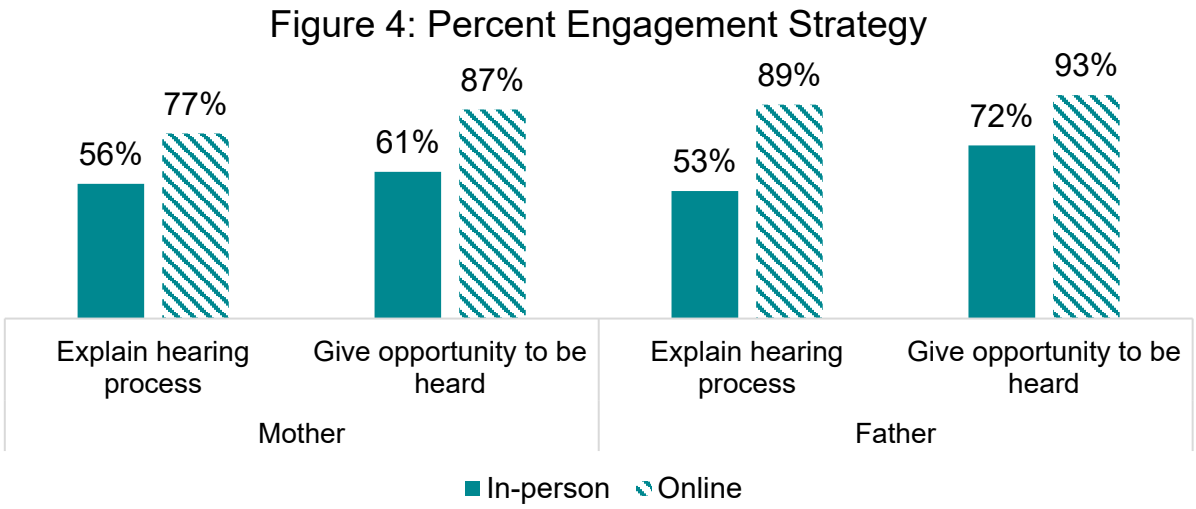
Engagement

The court observation instrument tracked judicial engagement of parties (parents and youth) across seven engagement strategies. The seven engagement strategies are presented below with the percentage of hearings where this practice was observed.

- Explained the hearing purpose/process (67%)
- Spoke directly to the person (97%)
- Addressed the person by name (81%)
- Asked if they have questions (50%)
- Identified the next steps (44%)
- Asked if person understood the next steps (19%)
- Gave person an opportunity to be heard (74%)

Judges in Nevada exhibited high levels of engagement across most of the strategies. Judges had similar patterns of engagement regardless of whether the hearing was in person or

remote. However, there were two differences that emerged. For explaining the hearing process and giving an opportunity to be heard, there was a statistically significant difference between hearing mode. These practices occurred more often in remote or online hearings. Figure 4 illustrates the percentage of hearings where the judge engaged in a specific strategy for remote compared to in-person hearings.



Findings on The Record

Finally, the court observation instrument explored whether judges made findings verbally on the record. There were no differences in findings on the record between remote hearings and in-person hearings. Judges made an ICWA finding (e.g., ICWA does/does not apply) in 25% of cases, a contrary to welfare finding in 32% of hearings, and a reasonable efforts finding in 74% of hearings. The judge also set the next hearing date in 95% of the hearings observed.

Summary

This study was designed to explore differences in court practice when courts had to transition from in-person hearings to remote or virtual hearings in early 2020. The courts in Nevada have long been focused on holding high-quality hearings. This is apparent in their data that already demonstrates high levels of engagement, parties who are commonly present at court, and judges how make verbal findings on the record. In theory, holding a hearing remotely should not impact the quality of the hearings, as engagement and discussion should be similar. Nevada's in-person and remote hearings were very similar in terms of presence, discussion, engagement, and findings on the record. However, a few differences were noted. There was actually more breadth of discussion in remote hearings than in in-person hearings and there was an increase in two engagement strategies, including explaining the hearing process and

giving parents and opportunity to be heard. These may have been efforts to ensure that remote hearings were engaging of parents in the new format.

Discussion and Considerations

Results of the study revealed some overall implications and ideas for consideration in future remote hearing efforts. The authors include their personal observations during the study in this discussion, as well as, where appropriate, considerations from national discussions of remote hearings as appropriate. Some lessons learned from the study include:

- **One platform works better than many.** Some of the hearings observed used a combination of in-person, virtual, and teleconference methods. This made it hard for all parties to hear and actively participate in the process.
- **Virtual platforms seem to work better than teleconferencing.** The hearings that used Zoom or a similar platform seemed to work better than just teleconferencing. This allowed parties to see each other, use a chat function when necessary, and made it easier for all parties to hear and understand each other.
- **Judges engage people in remote hearings in similar ways.** It is unclear whether the engagement of families in remote hearings is as effective as in-person hearings, but judges were able to successfully integrate similar engagement strategies for remote hearings. This indicates that they may be just as effective in engaging parties.
- **There may be equity and access issues for parents and youth to actively and effectively participate.** Stakeholders identified this as an issue. Parents involved in the child welfare system are likely to include a variety of family challenges including homelessness and lack of employment. They may not have access to the internet, computers or smart phones that would make it easy for them to access the court hearings and participate in the same way as professionals. The results of the study showed that most parents participate via phone instead of computer video.

Ideas for Improving/Enhancing the Remote Hearing Process

- **Consider whether an introduction to technology could be helpful.** In other states, judges use an opening script for remote hearings which includes important information about how to participate. This includes when to mute their phones/computers, how to ensure they have a voice, how to use the chat function, how to use the camera, etc. Judges (or court clerks) introduce the technology at the beginning of the call and ask if anyone has questions. This could reduce technology delays later.

- **Consider using breakout rooms for attorneys to meet with clients.** As most attorneys are not in the same space as their clients and parents may not have multiple sources of technology to be able to both zoom and text, they may not be able to confer with clients during hearings. One option could be to let parents and attorneys know that

there is an option if they need it to meet in a breakout room and use this feature to give parents time and space to confer with their attorneys.

- **Identify opportunities to share documents.** For the courts that do not have electronic filing, consider how the virtual platform could be used to share documents. This could be through the chat (either with a link to a secure site, link to a shared space, or a full upload of the actual document). It was also observed that some participants shared their screen to share evidence during a hearing.

- **Identify the challenges to parents being on camera (or able to participate broadly) and work to remedy them.** The parents primarily appeared telephonically. This could be because parents do not have equal access to technology or do not have the resources to have stable internet or computers. Consider whether this is something that the agency could work with the family to ensure. In other sites, parents have met with their attorney or worker and participated together (6-feet apart) at a conference space to ensure the parent could see what was occurring in the hearing. Having parents on camera, particularly if they are being sworn in to testify, seems like a good way to better engage parents in the process.

- **Consider virtual platforms as an extra opportunity to see the youth.** Some other sites have noted that this creates an ideal opportunity to see the youth as many youth are going to school virtually or may be at their foster parents house during the hearing. This gives an opportunity to involve the youth in a hearing and see how they are doing. Youth should have access to technology if they are school age.

- **Consider ways to enhance engagement.** Engagement can look really similar to in-person hearings. From the engagement list above, there were some strategies that are used less often in hearings. Consider ways to increase engagement, such as asking if parents have any questions, identifying the next steps and making sure parents understand the next steps. In a recent study on remote hearings, the researchers found that the most common ways to engage parents virtually were to (1) validate the emotional content of the hearing (e.g., "I understand how hard this must be fore you"), (2) use plain language (e.g., no acronyms), and (3) assure the participants they were heard (e.g., "I understand that you feel…").

Considerations for **next steps**, drawn from the findings in this study:

1. **Consider collecting data from parents on their experience in this process and whether they prefer remote to in-person hearings.** The hearings do not look that different and parent's participation is not significantly different. As such, it is important to determine whether parents perceive this as a good way to participate in their hearings. This may be a good opportunity to reach parents with transportation issues or those who fear coming to court. Remote participation could increase parent's attendance in the long run. However, it is important to learn from the parents and determine not only whether

they feel like this is effective but also what the challenges are that they have with access.

2. **Consider training to all judges on platforms, use of technology, and ways to engage remotely.** The judges use different platforms and may not have a good understanding of all the ways that each platform can be used to make the hearings more efficient. Consider whether a training or series of short, web-based trainings might be effective to teach the judges (and other court staff) more about using the platform to the best of its ability. Nationally, courts use virtual spaces for breakout sessions, document sharing, and other forms of engagement. Learning more about these options may help the courts to enhance the remote experience for all of those involved.

3. **Consider providing technical assistance to each site to uniquely identify and address their technology challenges.** Only 45% of jurisdictions participated in the study. It is unclear how the other judges are handling their hearings, but the survey findings indicate they are using different platforms and may have other challenges. Consider working with the sites to maximize the use of technology.

4. **Consider a follow-up study that focuses on relating remote practice to outcomes.** The hearing quality research shows a link between hearing practice and case outcomes. Following these cases into the future could demonstrate whether remote hearings are just as effective when it comes to outcomes for children and families.

Appendix A: List of Hearing Discussion Items, How Often They are Discussed, and Depth of Discussion

	Remote Percent Discussed	In-Person Percent Discussed	Remote Depth	In-person Depth
ALL HEARINGS				
Child placement	95%	86%	1.77	1.34
Educational needs/placement	26%	26%	0.49	0.54
Child physical health	45%	40%	0.81	0.66
Child mental health/development	40%	26%	0.74	0.49
Child other well-being	60%	59%	1.00	1.00
Specific safety concerns	41%	32%	0.69	0.68
Visitation	62%	54%	1.33	1.12
Agency's reasonable efforts	69%	63%	1.34	1.12
Maintaining permanency connections	10%	9%	0.16	0.13
Conditions for return	17%	20%	0.33	0.45
Preventing child from returning home today?	21%	21%	0.29	0.43
Challenges due to COVID	31%	--	0.66	–
72 Hour/Protective Custody Hearings				
Parents rights/process/perm timeframes	94%	95%	1.82	2.47
Review of petition/allegations	82%	84%	2.00	2.00
Paternity	47%	37%	0.82	0.53
Relative resources	63%	91%	1.05	1.73
Safety planning	58%	42%	0.95	0.89
Adjudication/ Disposition Hearings				
Allegations	56%	75%	1.00	2.00
Legal basis for continued court intervention*	44%	67%	0.44	2.33
Rights/voluntariness*	44%	75%	0.78	2.25
Case plan/services for child	20%	17%	0.40	0.33
Case plan/services for mother	60%	50%	1.40	1.00
Case plan/services for father	60%	17%	1.00	0.50
Case benchmarks/deadlines	30%	33%	0.30	0.67
Review / Permanency Hearings				
Permanency goal	96%	85%	1.89	1.62
Concurrent planning	39%	47%	0.79	0.65
Progress/compliance re: case plan	86%	70%	1.93	1.55
Adequacy of case plan/modifications	57%	42%	0.96	0.70
Timeframes for achieving final permanency	86%	68%	1.32	0.97
Barriers to achieving final permanency	75%	62%	1.57	1.00
Concrete steps to achieve permanency	86%	80%	1.86	1.51

** Denotes small sample size so comparisons should not be made*