

Emergency Directives Renewed and Legislation Proposed to Permanently Authorize Remote Proceedings

Chief Justice Paul Newby issued an [order](#) on Friday, effective today, extending emergency directives currently in place for an additional thirty days to in light of the ongoing COVID-19 pandemic. Tomorrow marks a full year of altered court operations, as the [first set of COVID-19 emergency directives](#) became effective Monday, March 16, 2020.



The preamble. Chief Justice Newby stated that his ongoing evaluation of the pandemic might result in the expiration or modification of emergency directives, the issuance of new directives, or both. His current plan is to extend the emergency directives that are currently in place until the public health threat posed by the COVID-19 pandemic has subsided. The Chief Justice reiterated his commitment to the [state constitutional requirement](#) that courts be open and that justice be administered without favor, denial, or delay.

The directives. The order, entered March 12 and effective March 15, 2021, extends Emergency Directives 2, 3, 5, 8, 11, 12, 14, 15, and 21 for 30 days. All of the directives were renewed without any substantive modification.

Emergency Directive 2. This directive requires the posting of notices at court facilities directing that any person who has likely been exposed to COVID-19 should not enter the courthouse.

Emergency Directive 3. This directive authorizes judicial officials to conduct proceedings that

include remote audio and video transmissions. Remote proceedings must safeguard a defendant's constitutional rights to confrontation and to presence, maintain required confidentiality, be recorded when required, and allow parties to communicate fully and confidentially with their attorneys.

Emergency Directive 5. This directive permits verification of pleadings and other documents by affirmation of the subscriber.

Emergency Directive 8. This directive provides that magistrates must continue to perform marriage ceremonies in suitable locations approved by the chief district court judge. The chief district court judge may restrict the hours and times at which marriage ceremonies are conducted.

Emergency Directive 11. This directive requires each senior resident superior court judge to serve as or designate a COVID-19 Coordinator for each facility in his or her district. The COVID-19 Coordinator must ensure that relevant safety protocols and mandates are followed in court facilities.

Emergency Directive 12. This directive requires each senior resident superior court judge to ensure that certain public health protocols (including the marking of six-foot intervals, the establishing of maximum occupancy, and the cleaning of public areas) are followed for each facility in his or her district.

Emergency Directive 14. This directive permits clerks to require that filings be submitted using a secure drop box and that access to public records be provided by appointment.

Emergency Directive 15. This directive encourages attorneys and litigants to submit filings by mail and provides that documents delivered by U.S. mail are deemed timely filed if received within five business days of the due date. The extension of filing deadlines does not apply to filings in proceedings for forfeiture of bail bonds.

Emergency Directive 21. This directive requires all persons in a court facility to wear a face covering while they are in common areas and when they are or may be within six feet of another person. A face shield may be used in addition to, but not as a substitute for, a face covering.

The face-covering requirement does not apply to persons who:

- cannot wear a face covering for health or safety reasons,
- are actively eating or drinking,
- are communicating with someone who is hearing-impaired in a way that requires the mouth to be visible,
- are temporarily removing their face covering to secure medical services or for identification purposes,
- who are complying with a directive from law enforcement or courthouse personnel, or

- are under five years old.

A judicial official presiding over a trial or proceeding may order a juror answering questions during voir dire, an affiant, or a testifying witness to remove his or her face covering so that the person's facial expressions may be observed. A juror's, affiant's, or witness's face covering may only be removed for this purpose while the person is speaking and only if he or she is at least six feet away from any other person.

A presiding judge also may, upon a showing of good cause and after considering all appropriate health concerns, exempt a defendant in a criminal case from the face covering requirement during the defendant's jury trial.

Expiration. The Emergency Directives in the current order expire on April 11, 2021.

A comprehensive chart. My colleague, Meredith Smith, has been maintaining a reference chart (available [here](#)) that is helpful in keeping track of the directives.

Statutory changes proposed. As previously mentioned, courts have operated for a year under pandemic-related protocols. One of the primary ways in which courts have carried out essential operations during the curtailment of face-to-face proceedings has been to conduct virtual hearings. In many circumstances, those types of hearings were not specifically authorized by statute. Instead, they were authorized by Emergency Directive 3, which, as noted above, continues to be in place, but only because there is an ongoing pandemic. Court officials have identified benefits associated with remote proceedings, including savings in costs and time, that could improve court operations in non-pandemic circumstances. A bill introduced in the State Senate last week would enshrine in statute judicial officials' authority to conduct proceedings by audio and video transmission.

[Senate Bill 255](#) (2021 AOC Legislative Changes) (hereinafter SB 255) would enact new G.S. 7A-49.6, which would permit judicial officials to "conduct proceedings of all types using audio and video transmission." Judicial officials would be required to safeguard the constitutional rights of persons involved in the proceeding and preserve the integrity of the judicial process. The following specific requirements would apply:

- Each party must be able to communicate fully and confidentially with his or her attorney.
- A witness may testify remotely in a jury proceeding only upon a finding of good cause.
- If the right to confront witnesses is implicated in a criminal or juvenile delinquency proceeding, the defendant or juvenile must make a knowing, intelligent, and voluntary waiver of the right or the court must find that the use of audio and video transmission is necessary to further an important State interest and will not materially prejudice the defendant's or juvenile respondent's rights.
- A party may object to a remote proceeding. If the presiding official finds good cause, the

- proceeding may not be held by audio and video transmission.
- Remote proceedings must comply with federal and State laws governing confidential information.
 - If the proceeding is public, then the presiding official must facilitate access by the public and media that is akin to the access that would have been available for an in-person proceeding.
 - If the proceeding must be recorded, then the audio and video transmission must be recorded.
 - Remote proceedings must be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

SB 255 would remove the prohibitions against remote hearings currently codified in [G.S. 50B-2](#) and [G.S. 50C-7](#).

We will monitor the bill's progression and will apprise readers of enacted legislation affecting the courts.