

## With Enactment of SB 255, COVID-19 Emergency Directives Come to an End

Earlier today, Chief Justice Paul Newby [rescinded](#) the two remaining COVID-19 Emergency Directives. The Chief Justice determined that the enactment of [S.L. 2021-47](#) (Senate Bill 255) on Friday rendered unnecessary Emergency Directive 3, which authorized judicial officials to conduct proceedings that include remote audio and video transmissions and Emergency Directive 5, which permitted verification of pleadings and other documents by affirmation of the subscriber.



**Statutory authorization for remote proceedings.** S.L. 2021-47 enacts new G.S. 7A-49.6, which permits judicial officials to conduct proceedings of “all types” using audio and video transmission in which the parties, the presiding official, and any other participants can see and hear each other. There are several requirements for these types of remote proceedings, including the following:

- Each represented party to a remote proceeding must be able to communicate fully and confidentially with his or her attorney.
- When the right to confront witnesses or the right to presence is implicated in criminal or juvenile delinquency proceedings, the court may not proceed by audio and video transmission unless the court has obtained knowing, intelligent, and voluntary waiver of the defendant or juvenile respondent’s rights or unless another provision of law permits the proceeding.
- Remote proceedings must comply with any applicable federal and State laws governing the confidentiality and security of confidential information.
- If the proceeding is open to the public, the presiding official must facilitate access to the

proceeding by the public and media as nearly as practicable to the access that would be available if the proceeding were to be conducted in person.

- If the proceeding is required to be recorded, then the remote proceeding must be recorded.
- Remote proceedings must be conducted using videoconferencing applications approved by the Administrative Office of the Courts.

New G.S. 7A-49.6 became effective upon its enactment on Friday, June 18, 2021, and applies to proceedings occurring on or after that date.

**Search warrants.** G.S. 15A-245(a) was amended in 2005 to allow officers to testify in support of search warrants by videoconference if the senior resident superior court judge and chief district court judge obtained approval of the Administrative Office of the Courts. Before the COVID-19 pandemic and its accompanying emergency directives, my impression is that this authority was seldom used. But after in-person court proceedings were interrupted last year and the authority to conduct remote proceedings was broadened by emergency directive, more judicial officials began to hear remote testimony in support of search warrant applications.

S.L. 2021-47 amends the laws governing the application for and issuance of search warrants in two important ways. First, it amends G.S. 15A-101.1(2), which had excluded search warrants from the types of documents that could exist in electronic form. This is significant because it allows a judicial official to affix an electronic signature to a search warrant, thereby removing the need for the official to physically sign a paper original. Second, the new session law removes the provisions of G.S. 15A-245(a)(3) that allowed law enforcement officers to testify by videoconference if approved. As rewritten, oral testimony under oath or affirmation in support of a search warrant (by an officer or another witness) may be received pursuant to the remote proceedings generally authorized under new G.S. 7A-49.6.

Similar amendments to G.S. 15A-304(d) permit oral testimony under oath or affirmation in support of a warrant for arrest to be received pursuant to the remote proceedings generally authorized under new G.S. 7A-49.6.

These changes also were effective Friday, June 18, 2021, for proceedings on or after that date.

**Other procedural changes.** Several other provisions of the criminal procedure act, including the statutes governing first appearance, arraignment and the setting of conditions of pretrial release, were amended to remove the pre-existing authorization for remote proceedings, rendering the covered proceedings subject to the general rule in new G.S. 7A-49.6. Following these changes, even first appearances in capital cases may be held remotely. Again, these changes were effective upon enactment for proceedings held on or after that date.

**Verification of pleadings.** S.L. 2021-47 also enacted new G.S. 7A-98, which permits unsworn written declarations, signed and dated under penalty of perjury, to be submitted in support of

matters that are electronically filed. Exceptions apply for certain declarations, including those made in support of oral testimony, oaths of office, self-proved wills and codicils, and certain real property transactions. New G.S. 7A-98 is effective December 1, 2021.

**There is more.** As the omnibus bill containing changes related to the administrative of justice, S.L. 2021-47 contains a host of other provisions worthy of digesting, including new G.S. 7A-171.3, which directs the Administrative Office of the Courts to prescribe rules of conduct for magistrates. We will address additional provisions in future blog posts and other publications.

For now, let's celebrate the completion of my colleague Meredith Smith's [comprehensive chart](#) for emergency directives. May she never, ever have to create another.