New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

Richard J. Hughes Justice Complex • P.O. Box 037 • Trenton, NJ 08625-0037 njcourts.gov • Tel: 609-376-3000 • Fax: 609-376-3002

TO: **Assignment Judges**
Criminal Presiding Judges
Megan's Law Judges

Directive # 16-20

FROM: **Glenn A. Grant, J.A.D.**

SUBJ: **Guidance for Megan's Law Proceedings During the COVID-19 Pandemic**

DATE: **May 18, 2020**

In response to the ongoing COVID-19 public health emergency, the New Jersey Judiciary is implementing all possible measures to apply social distancing in current court operations, consistent with the recommendations of the New Jersey Department of Health and the Centers for Disease Control. To that end, the Judiciary has transitioned to a court system in which many matters are proceeding via video or telephone during the COVID-19 coronavirus pandemic. Because this need may continue for many months based on current information, Megan's Law proceedings should be conducted remotely by video or telephone for public safety and notification to the public about sex offenders. Therefore, I am issuing the attached guidance for judges to consider when deciding which Megan's Law proceedings can be handled remotely by video or telephone during this COVID-19 crisis.

In making this determination, Megan's Law judges and designated court staff should work with their Megan's Law prosecutors and public defenders to review all cases pending judicial review. Private counsel should also be consulted, as matters with defense counsel for the most part should be able to proceed remotely by video or telephone. However, cases with expert testimony may need to be adjourned on a case-by-case basis at the court's discretion. Where the registrant can only participate remotely by phone, the court should obtain the consent of the parties before conducting the hearing. Cases with registrants who do not have access to telephones, computers, or other electronic devices will need to be adjourned at this time. Alternatively, defense counsel may indicate that the matter can proceed because the registrant has waived the right to be present.

For pro se matters, court staff will need to work with the prosecutor's office to obtain the registrant's contact information to send the notices for the scheduled court date. Depending on local practices, the prosecutor's office may be responsible for providing this information. In those counties, court staff should confirm that notices were sent by the prosecutor's office, and whether there was a response by the registrant.

Additionally, court staff are responsible for providing the parties with the information on the technology that will be used for the remote proceeding (the link and the instructions to participate remotely via video or phone). The preferred technology for these proceedings is Microsoft Teams.

Any questions regarding Directive #16-20 may be directed to Assistant Director Sue Callaghan (Criminal Practice Division) via email at sue.callaghan@njcourts.gov or by phone at 609-815-2900 ext. 55300.

Attachment (Guidance for Megan's Law Proceedings)

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Veronica Allende, Director, DCJ
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Special Assistants to the Administrative Director
Deputy Attorney General Emily Anderson
Deputy Public Defender Fletcher Duddy
Criminal Division Managers and Assistants
Maria Pogue, Chief

Guidance for Megan's Law Proceedings During the COVID-19 Crisis
(Promulgated by Directive #16-20)

The Judiciary has transitioned to a court system in which many matters are proceeding via video or telephone in response to the ongoing COVID-19 coronavirus pandemic. Because this need may continue for many months based on current information, Megan's Law proceedings should be conducted remotely by video or telephone for public safety and notification to the public about sex offenders. Accordingly, the following guidance is being issued for judges to consider when determining what Megan's Law matters can proceed remotely during the pendency of the COVID-19 public health emergency.

Review of Pending Cases

Megan's Law judges and staff should work closely with their Megan's Law prosecutors and public defenders to review all cases pending judicial review.[1] Private defense counsel should also be consulted as to their pending cases. Megan's Law matters that do not have defense counsel should also be included in this review. For example, the public defender may have handled the registrant's previous tier determination and may be amenable to contacting the registrant to inquire about representation by their office. In such instances, the registrant should be advised to contact the appropriate Criminal Division contact number posted on the Judiciary's webpage to request an indigency determination.

- Identify the cases that have defense counsel as these matters can be conducted with the parties and registrant participating remotely via video or telephone, whether the initial tier determination, a relocation proceeding, or a Megan's Law motion.
- Cases with expert testimony may need to be adjourned on a case-by-case basis at the court's discretion.
- If the registrant does not have access to participate remotely by video and will be participating via phone, the court should obtain the consent of the parties before conducting the hearing.
- Cases for registrants who do not have access to telephones, computers, or other electronic devices will need to be adjourned at this time.
- Alternatively, defense counsel may indicate that the matter can proceed because the registrant has waived the right to be present.

[1] Tier 1 (low risk of re-offense) classifications, which do not include notification outside law enforcement agencies, are administratively closed by the prosecutor without judicial review.

In General

- Any confidential evidence being submitted for purposes of the hearing should be submitted by secure means.
- Depending on the type of matter, court staff will need to coordinate the Megan's Law calendar both in advance and on the day of the hearing to confirm the parties' availability on the scheduled court date.
- It is the responsibility of court staff to provide the hearing information (the link and the instructions to participate remotely via video or phone) to the parties. The preferred technology for these hearings is Microsoft Teams.

Pro Se Cases

For pro se matters, court staff must work with the prosecutor's office to obtain the registrant's contact information (home address, phone number, and email address, if applicable).[2] Court staff should send the notices for the scheduled court date to the registrant by regular mail or email using the option for a return receipt and notification that the email was read.[3] Depending on local practices, the prosecutor's office may be responsible for sending these notices and not court staff. In those counties, court staff should confirm that notices were sent by the prosecutor's office, and whether there was a response by the registrant.

Prior to the Hearing for a Pro Se Registrant

- If there is no response by the registrant, court staff should follow up with a phone call to the registrant at least two weeks before the scheduled hearing date and inquire if the registrant would like an indigency determination.
- Court staff should confirm the home address, phone number, and email address, if applicable, and the method for sending the hearing information (mail, text, or email). The option for a return receipt and notification that the email was read should be used if an email is sent to the registrant.
- Court staff should not inquire whether the registrant will object or participate at the proceeding. However, if the registrant indicates that he/she is not contesting the matter via email, that email should be retained in the court's file. If the registrant indicates verbally that he/she is not contesting the matter, court staff should record that in some manner, for example, a note in the file. An email to that effect should also be sent to the prosecutor's office.

---

[2] The telephone and email address are included as part of the annual registration process so prosecutors can obtain this information or can get updated information from parole officers for registrants on PSL/CSL.

[3] The prosecutor's initial tier classification and scope of notification package is personally served on the registrant by the prosecutors' office. The court is not responsible for sending that information.

- Subsequently, court staff should provide the hearing information and instructions on how to participate remotely via video or phone, regardless as to whether there was any indication that the registrant was not participating. This step is to address instances where there is a change in the registrant's position, since the registrant cannot simply appear at the courthouse on the day of court.

Hearing for a Pro Se Registrant

- If the registrant does appear via video or phone, the court should review on the record the registrant's desire to proceed pro se.
- If the registrant does not appear at the court proceeding and the registrant indicated that he or she was not contesting the matter, or there is confirmation that the registrant received the notice on the scheduled court date, for example the mail was not returned or staff spoke to the registrant, the court may consider proceeding with the matter as a default case.