

Model Implementation Plan for New First Appearances Required by S.L. 2021-138

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This model implementation plan is designed to help stakeholders comply with [S.L. 2021-138](#). That law requires first appearances for all in-custody defendants within 72 hours after the defendant is taken into custody or at the first regular session of district court in the county, whichever occurs first. The new law becomes effective December 1, 2021 and applies to criminal processes served on or after that date.

Although first appearances have been required for in-custody defendants charged with felonies, S.L. 2021-138 extends that requirement to in-custody defendants charged with misdemeanors and shortens the time within which the first appearance must be held, from 96 to 72 hours. While some North Carolina jurisdictions have been holding first appearances for in-custody defendants charged with misdemeanors for some time, that is not true for all jurisdictions, particularly rural ones where district court is held less frequently than in more urban districts. This model implementation plan is designed to support local stakeholders as they comply with the requirements of S.L. 2021-138, particularly those in districts that have never held first appearances for in-custody misdemeanor defendants. In the past, the Lab has supported stakeholders' efforts to implement expanded first appearance proceedings. I developed this model implementation plan based on the jurisdiction-specific implementation plans we helped stakeholders develop in those projects. It is however a model. Adapt or modify it as appropriate, based on local needs and/or conditions. This model assumes that appearances will be conducted by a district court judge. Please send suggestions to: smithj@sog.unc.edu.

Task	Sub-task	Person(s) responsible	Due Date	Notes
Decide whether proceedings will be conducted in-person, remote and/or hybrid		Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		1. Hybrid proceedings could involve e.g., judge and counsel in courtroom & defendant in jail
	For remote/hybrid proceedings, decide on meeting platform to be used	Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		
	For remote/hybrid proceedings, coordinate with jail re: place for defendant to participate	Senior Resident Superior Court Judge; Chief District Court Judge; Sheriff/jail administrator		1. Location should allow for confidential communications with counsel (see below) 2. Location should allow for access to interpreter services, as needed (see below)
	For remote/hybrid proceedings, address equipment needs in courtroom & in all remote locations, including the jail	Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		

	For remote/hybrid proceedings, establish procedures to ensure that defendant can communicate confidentially with counsel throughout the proceeding	Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; Sheriff/jail administrator		1. Consider supervision at the jail in assessing this issue
	For remote/hybrid proceedings, establish protocols for defendant's access to interpreter services, as needed	Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; Sheriff/jail administrator		1. See NC AOC guidance on telephonic interpreter services
Decide on timing issues		Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		
	Decide on frequency of proceedings	Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		1. Statute requires proceedings to be held within 72 hours, but some jurisdictions do them within 48 or 24 hours
	Decide on time of day for the proceedings	Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		1. An afternoon proceeding (e.g., 2 pm) allows time for counsel to meet with clients (see below) & review criminal history records (see below). It also affords the jail time to coordinate & provide transportation
	Decide on start date for the proceedings	Senior Resident Superior Court Judge; Chief District Court Judge; DA; Chief PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		1. Statute is effective December 1, 2021

Establish procedures regarding representation by counsel		Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; DA		<ol style="list-style-type: none"> 1. Statute provides that the first appearance is not a critical stage but some bail litigation has required representation by counsel, providing counsel at first appearance is recommended by best practices, and doing so may promote efficient case management 2. If the jurisdiction is served by a PD's office, discuss with that office staffing of first appearances 3. If no PD office, explore funding for appointed/contract counsel & necessary protocols 4. Address protocol for how representation will be handled for defendants arrested after a FTA or on an OFA and who already have counsel in the case 5. Develop procedures for handing cases over to trial counsel
	Establish procedures for defender's office/counsel to access defendants before proceeding	Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; Sheriff/jail administrator		<ol style="list-style-type: none"> 1. If meetings will occur at the jail, work with the jail to establish time for & access procedures
	Establish procedures for DA's office to provide counsel with access to criminal records prior to proceeding	Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; DA		<ol style="list-style-type: none"> 1. Options include, among others, email access, location in DA's office where reports are made available 2. Set a time for access to avoid wasted trips
Prepare assignment plan for ADAs to cover the proceeding		DA		
Establish procedures for jail to provide a list of people who require proceedings to the Clerk's office		Senior Resident Superior Court Judge; Chief District Court Judge; Sheriff/jail administrator; Clerk		<ol style="list-style-type: none"> 1. Set a time for the delivery of list 2. Identify personnel in Clerk's office to receive the list & provide Sheriff/jail administrator with their contact information
	Establish procedures to document in Jail Management System those who have had/require a proceeding	Sheriff/jail administrator		

	Establish procedures for court system to confirm that all in-custody defendants are being timely afforded a first appearance	Senior Resident Superior Court Judge; Chief District Court Judge; PD or if none, defense counsel representative; DA; Sheriff/jail administrator		
Establish procedures for Clerk's office to prepare & distribute the calendar		Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		
	Identify personnel in Clerk's office who will prepare the calendar	Clerk		
	Establish procedures for distribution of calendar	Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		<ol style="list-style-type: none"> 1. Address method (e.g., paper copies, email) 2. Address timing 3. Identify necessary recipients & provide Clerk's office with their contact information
	Decide whether add-ons will be allowed & if so, develop appropriate procedures	Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		
Establish procedures for other relevant actors (e.g., pretrial services) to provide required information (e.g., pretrial services reports) to judge, DA & defense counsel		Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk; Other information provider		
Establish procedures for transportation of defendants to/from courtroom (live proceedings) or to/from appropriate room at jail (remote/hybrid proceedings)		Sheriff/jail administrator		
Establish procedures for setting next court date		Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk		

Develop a post-implementation check in plan		Senior Resident Superior Court Judge; Chief District Court Judge; DA; PD or if none, defense counsel representative; Clerk; Sheriff/jail administrator		<ol style="list-style-type: none"> 1. The purpose of the check-ins is to provide an opportunity to address unforeseen issues and/or improvements to the implementation plan 2. Address how often (e.g., weekly, monthly) 3. Address who should participate 4. Address how it will occur (e.g., in-person, telephone)
Vet complete proposed implementation plan with all stakeholders		Senior Resident Superior Court Judge; Chief District Court Judge		
Document & distribute procedures for conducting first appearances		Senior Resident Superior Court Judge; Chief District Court Judge		<ol style="list-style-type: none"> 1. One option is by administrative order
Execute post-implementation check ins, per check in plan (see above)		Senior Resident Superior Court Judge; Chief District Court Judge		

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