



LIVESTREAM BENCH CARD

PROCEDURE FOR LIMITING PUBLIC ACCESS VIA LIVESTREAM¹

1. The hearing should convene publicly in open court with the livestream activated.²
2. If a request to limit public access to the hearing is urged by counsel or a self-represented litigant, it must be on the record prior to the admission of the extremely sensitive or confidential evidence.
 - a. The movant must describe the evidence in question and clearly identify the overriding interest that will be prejudiced if the evidence is publicly presented.
 - b. The court should obtain the agreement or objection to the request of all counsel and self-represented litigants on the record.
3. A court may also initiate the limitation of the public access via livestream sua sponte; however, courts should exercise caution in doing so over the objection of one or both parties.
4. The court must find that the evidence is of such a nature that the protection of the evidence or witness overcomes the presumption of public presentation.
5. The court must entertain and consider all reasonable alternatives to terminating the livestream, and discuss those options on the record, such as:
 - a. Reducing testimony to affidavit in lieu of live testimony;
 - b. Interrupting video stream and temporarily permitting only audio streaming;
 - c. Prohibiting screen sharing of the exhibits on livestream;
 - d. Testimony in chambers or in-chambers interview of a child in lieu thereof; and
 - e. Temporary interruption of the livestream.
6. If the court does not interrupt or terminate the livestream and instead employs a lesser restriction, the court should find and state that a “substantial reason” for the measure exists, state that no less restrictive means would suffice, and should make additional findings under paragraph 7, below.
7. If the court decides to interrupt or terminate the livestream, the Court should make the following findings, and recite them on the record:
 - a. The overriding interest at stake;
 - b. The specific testimony or evidence found to be of extreme sensitivity or entitled to confidentiality that justifies closure;
 - c. That public access shall be interrupted or terminated, and
 - d. That no less restrictive means would suffice.
8. All portions of the hearing that do not independently meet this threshold should occur with the livestream activated.

Note: Courts that choose to stop the livestream through Zoom should be aware that the stream is approximately 20 seconds delayed. If a court terminates the livestream, it cuts it off immediately and may result in the last 20 seconds of the public portion of the hearing from being broadcast. **Therefore, courts should pause court proceedings and wait to terminate the livestream for approximately 20 seconds.**

¹ See “Background and Legal Standards – Public Right to Access to Remote Hearings During COVID-19 Pandemic” for additional information.

² Certain proceedings may have statutory protections that limit the public’s access to those hearings. Nothing in this guidance or the current disaster is meant to change those protections (e.g. Tex. Fam. Code § 54.08).