



# Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Patience D. Roggensack  
Chief Justice

16 East State Capitol  
Telephone 608-266-6828  
Fax 608-267-0980

Hon. Randy R. Koschnick  
Director of State Courts

March 15, 2021

Wisconsin Supreme Court  
110 E. Main Street, Suite 440  
Madison, WI 53703

Re: Rule Petition 20-09 Relating to the Location of Court and the Use of Videoconferencing Technology – Petitioner’s Responses to Comments

Honorable Justices of the Wisconsin Supreme Court:

I am responding to the comments submitted on Rule Petition 20-09 through March 1, 2021. Since the petition was filed, it has received significant support from commenting parties, including circuit court judges, law enforcement, and victim advocate groups. Based on the comments received, it is clear that expanded use of videoconferencing technology has brought about increased access and elimination of barriers for victims to participate in the criminal justice system, efficiencies for law enforcement and the courts, and improved representation for defendants in rural counties.

The opposition to the petition primarily argues that the proposed amendments do not adequately protect a defendant’s right to confront witnesses and right to be present under Wis. Stat. § 971.04.

Concerns have been raised related to the proposed elimination of Wis. Stat. § 885.60(2)(d),<sup>1</sup> and how that will affect the defendant’s rights. Wis. Stat. § 885.60(2)(a) will continue to ensure the defendant’s right to be physically present in the courtroom at all trials, sentencing, or dispositional hearings. The only proposed change to subsection (2)(a) will require an affirmative waiver from the defendant to not be physically present, consistent with current case law. Additionally, the defendant’s ability to object to the remote appearance by a witness is preserved in Wis. Stat. § 885.60(2)(b).

The proposed amendments simply change the procedure and will allow the court discretion to weigh various factors in determining whether to sustain the defendant’s objection related to the

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<sup>1</sup> Since filing the petition, the need for technical correction has been pointed out. Section 25 of the Rule Petition includes the correct number and subsection of the statute at issue but quotes the incorrect language. Section 25 of the Rule Petition should read:

**Section 25.** Section 885.60 (2) (d) of the statutes is repealed:

~~885.60 (2) (d) If an objection is made by the defendant or respondent in a matter listed in sub. (1), regarding any proceeding where he or she is entitled to be physically present in the courtroom, the court shall sustain the objection. For all other proceedings in a matter listed in sub. (1), the court shall determine the objection in the exercise of its discretion under the criteria set forth in s. 885.56.~~

use of videoconferencing at a particular proceeding or for a particular witness. Currently, under Wis. Stat. § 885.60(2)(d), if a defendant objects to the use of videoconferencing technology where the defendant is entitled to be physically present in the courtroom, the court must sustain that objection. Again, the proposed amendments do not diminish the defendant's right to confront witnesses or be present; rather, the proposed changes provide the court with more discretion to determine what the most appropriate form of testimony is in a given case based on a number of considerations that the judge is in the best decision to weigh.

Similarly, the proposed amendments to Wis. Stat. § 971.04 also do not diminish a defendant's right to be present. For example, this court has previously used its rulemaking authority to address a defendant's presence at arraignments in creating Wis. Stat. § 967.08(2)(d), which provides that an arraignment under Wis. Stat. § 971.05 may be conducted by telephone or live audiovisual means.

The opposition to the petition also maintains that videoconferencing technology does not preserve the fairness, dignity, solemnity, or decorum of in-person court proceedings. Wis. Stat. § 885.50, created in 2008, highlights the importance of maintaining and preserving the fairness, dignity, solemnity, and decorum of court proceedings held using videoconferencing. Judges retain the authority and responsibility to maintain control over their courtroom, whether in-person or virtual.

A few objections note that the proposed amendments go further than prior changes adopted by this court. All statutes related to pleading, practice, and procedure may be modified by this court. This is a shared authority with the legislature, and this court is best suited to make the proposed amendments that directly affect courts' abilities to function properly and efficiently.

Finally, it is worth noting that even those who wrote in opposition to the petition generally acknowledge the value of videoconferencing technology. Stakeholders across the state have provided numerous examples of how this technology has significantly increased access to justice for many individuals who previously had a difficult time appearing in court. These benefits have been realized because of the court system's dedication to keep the courts functioning during this past year, and the proposed amendments will create an environment where these improvements will continue to benefit litigants into the future.

Respectfully submitted,

Randy R. Koschnick  
Director of State Courts