
**In re amendment of SCR 70.19,
Wis. Stats. §§ 753.24, 753.26, 757.12,
757.14, 757.70, 807.14, 885.52, 885.54,
885.56, 885.58, 885.60, 967.09, and 971.04
relating to the location of court and the use of
videoconferencing technology.**

**SUPPORTING MEMORANDUM
20-**

The Director of State Courts respectfully petitions the court to amend Supreme Court Rule 70.19 and Wis. Stats. §§ 753.24, 753.26, 757.12, 757.14, 757.70, 807.14, 885.52, 885.54, 885.56, 885.58, 885.60, 967.09, and 971.04 to update and clarify the rules related to the location of court and use of videoconferencing technology within the court system.

I. Supreme Court Superintending Authority

The subject matter of the proposed rule changes falls within the power of the Wisconsin Supreme Court to regulate pleading, practice, and procedure in judicial proceedings in all courts.¹ The statutes that are the subject of this petition may be amended by court rule or by legislation. The rule that authorizes the court to amend these statutes makes no distinction between statutes that were created by court rule or enacted by the legislature, “*All* statutes relating to pleading, practice, and procedure may be modified or suspended by rules promulgated under this section.” (emphasis added).² This is a shared authority with the legislature, and the legislature retains authority as well to enact, modify, or repeal statutes or rules relating to court procedures and practice.³ Therefore, this court has the power to modify acts of the legislature if those acts relate to “pleading, practice, and procedure.”

¹ Wis. Stat. § 751.12(1).

² Wis. Stat. § 751.12(2).

³ Wis. Stat. § 751.12(4).

The rules at issue here, dealing with where and how court is held, are fundamental to the operation of the court system. The recommended procedural changes bring the rules in line with existing practice and do not abridge, enlarge, or modify the substantive rights of any litigant. They relate directly to the courts' procedures and practice and are purely administrative in function. The proposed changes promote the responsible use of videoconferencing technology, and with the improvements in this technology, all of the rights and protections afforded by an in-person appearance in the courtroom are similarly afforded when appearing from a remote location using videoconferencing technology. The rules impacted by this petition are related to how the courts conduct their business; the rules impact no substantive rights.

II. Zoom Task Force

On March 22, 2020, the Wisconsin Supreme Court temporarily suspended in-person proceedings,⁴ and the court system faced the challenge of how best to move forward in the midst of a pandemic. Consolidated Courts Automation Programs (CCAP) reviewed online meeting platforms that could be used to support remote court operations. CCAP leadership determined that Zoom was the best platform for the court system, primarily because it offered a user-friendly, widely-recognized program with a wide range of user tools and resources.

It became clear that remote meeting technology would continue to be used to some degree by the court system for years to come, even after the pandemic. In order to ensure that this technology is used appropriately and effectively, the Director of State Courts convened a Zoom Task Force ("Task Force") in June. The Task Force was multi-disciplinary and comprised of four

⁴ Many of the changes proposed by this petition have already been allowed by the court in its temporary orders: Sup. Ct. Order No. 20-02 (filed Mar. 31, 2020); In Re the Matter of Remote Hearings During the COVID-19 Pandemic (filed Mar. 22, 2020); In Re the Matter of Remote Hearings During the COVID-19 Pandemic – AMENDED (filed Apr. 15, 2020); and In Re the Matter of the Final Report of the Wisconsin Courts Covid-19 Task Force (filed May 22, 2020).

judges, an attorney from the State Public Defender’s Office, an Assistant District Attorney, a private attorney, one District Court Administrator, one Clerk of Circuit Court, one Register in Probate, Office of Court Operations staff, and CCAP staff.⁵ The Task Force met June through September 2020. In addition to reviewing current practices and recommending best practices for using videoconferencing technology, the Task Force explored potential statutory and administrative rule changes to allow for remote hearings to continue after the pandemic. This Petition sets forth the changes recommended by the Task Force to support continued use of videoconferencing technology.

III. Proposed Statutory and Rule Changes

Use of videoconferencing has many benefits, including increased efficiency and cost savings for government agencies, attorneys, litigants, and the public. Since the videoconferencing rules were implemented by this court in chapter 885 of the statutes in 2008,⁶ there have been many changes to technology and the way it is used. The COVID-19 pandemic has highlighted the need for providing clear guidance and flexibility in the use of technology.

The proposed rule changes are intended to promote the expanded use of videoconferencing technology in a responsible way, while continuing to preserve the fairness, dignity, solemnity, and decorum of court proceedings. Additionally, the proposed rule changes will continue to protect and, in some ways, enhance the rights of litigants, victims, media, and the public.

⁵ The Zoom Task Force members were: Hon. Maureen Boyle, Barron County Circuit Court (Chief Judge Dist. 10); Hon. Jennifer Dorow, Waukesha County Circuit Court (Chief Judge Dist. 3); Hon. Jason Rossell, Kenosha County Circuit Court (Chief Judge Dist. 2); Hon. Daniel Borowski, Sheboygan County Circuit Court; Deputy District Attorney Jeffrey J. Altenburg, Milwaukee County; State Public Defender Katherine Drury, Stevens Point; Attorney Jared M. Potter, , Stafford, Rosenbaum, LLC; Penny Carter, Clerk of Circuit Court, Forest County; Julie Kayartz, Register in Probate, Columbia County; Michael Neimon, District 3 Court Administrator; Hon. Randy Koschnick, Director of State Courts (Chair); Jean Bousquet, Chief Information Officer, Consolidated Courts Automation Programs (CCAP); Diane Fremgen, Deputy Director, Office of Court Operations; Beth Barroilhet, Circuit Court Legal Advisor, Office of Court Operations; Carmel Capati, Interpreter Program Manager, Office of Court Operations; Ann Olson, Policy Analyst, Office of Court Operations; Amber Peterson, Circuit Court Legal Advisor, Office of Court Operations.

⁶ Wis. Stat. §§ 885.60-64 were created by the court with Sup. Ct. Order No. 07-12, 2008 WI 37.

Videoconferencing technology provides court users with greater access to the courts given that users can more easily view and participate in court proceedings from remote locations. Parties, attorneys, the media, and the public encounter fewer challenges that can make coming to court difficult, such as transportation, work schedules, and child care. Appearing remotely may also alleviate some safety concerns of victims.

This petition proposes changes to one Supreme Court Rule and multiple statutes to update and clarify rules regarding court location and the use of videoconferencing technology, in order to provide clear authority to allow for alternatives to in-person proceedings. The proposed changes also update videoconferencing rules to reflect changes in technology; clarify the authority of the court and the chief judge related to the use of videoconferencing technology and the location of court; and ensure that rights of litigants and the public are protected.

This Memorandum sets forth each proposal in the Petition, with an explanation of the proposed changes. Unlike the Petition, which lists the rules that each section seeks to amend, in numerical order, this Memorandum groups the proposals into subject areas and discusses several sections under those groupings. There are four main parts: (A) Location of Court and Court Records; (B) Chapter 885 Videoconferencing Rules; (C) Chapters 807 and 967 Court Interpreters; and (D) Statutory Right of the Accused to be Present under s. 971.04(1), a statute which has been amended by this court as well as the legislature.⁷

⁷ Wis. Stat. § 971.04 was previously amended by the court with Sup. Ct. Order, 130 Wis. 2d xix (1986) and Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997).

A. LOCATION OF COURT AND COURT RECORDS [Proposed amendments to: SCR 70.19 and Wis. Stats. §§ 753.24, 753.26, 757.12, 757.14, and 757.70]

These address considerations related to location of court operations and the authority of the Chief Judge. It is proposed that an outdated section regarding the location of court records be repealed.

A1. SCR 70.19(3)(c) should be amended to give the Chief Judge authority over location of court.

Supreme Court Rule 70.19 outlines the duties of the chief judge. When court needs to be adjourned to another physical location or conducted remotely using videoconferencing technology, the Chief Judge should have clear authority related to establishing an alternate location. Further, the Chief Judge should maintain authority over the location of court operations to ensure that videoconferencing technology is not used improperly. These changes are set forth in the accompanying petition at page 1.

A2. Wis. Stat. § 753.24(2m) should be created to establish authority for holding court remotely using videoconferencing technology.

Wis. Stat. s. 753.24 sets forth where court is to be conducted. This proposed section establishes statutory authority to hold court when the judge and some or all of the participants appear from remote locations outside of the courthouse using videoconferencing technology. This section recognizes that use of videoconferencing technology will continue to increase into the future. The proposed comment cross-references the proposed amendment to SCR 70.19(3) to clarify the Chief Judge's authority in the establishment of the location for court operation, as stated in Part A1 of this Memorandum, above. It proposes creation of the following provision and accompanying comment:

753.24 Where court to be held.

(2m) Court may be held with the judge and any participants appearing from a remote location using telephone or videoconferencing technology subject to Wis. Stat. 885.50-64.

Comment, 2020: This does not hinder the ability of the chief judge to determine location pursuant to SCR 70.19(3).

A3. Wis. Stat. § 753.26 is outdated and should be repealed.

Court records are now maintained electronically and are the responsibility of the clerk, not the judge, as provided for in ss. 59.20(3)(a) and 753.30, which also address the location and accessibility of court records. Currently, Wis. Stat. s. 753.26 describes the physical location of a “county seat” as the location where court records are kept. To avoid redundancy and confusion, s. 753.26 should be repealed. The language in s. 753.26 is outdated and references the judge maintaining the books, papers, and records in his or her physical office. Additionally, this section currently makes an exception for certain branches of Rock County Circuit Court, which is no longer necessary. The referenced court branches were located in Beloit prior to 1999, but all Rock County branches are now located in Janesville.

~~**753.26—Office and records to be kept at county seat.** Except in branches Nos. 4, 5, and 7 of the circuit court for Rock County, every circuit judge in this state shall maintain in his or her office, at the county seat of the county in which the judge holds office, all of the books, papers, and records of the court. The office and the books, papers, and records of the circuit judge shall at all reasonable times be open to access and inspection by any person having any business with the books, papers, and records of the court, except as otherwise provided by law. Originals of judgments or orders made under circuit court jurisdiction of branches Nos. 4, 5, and 7 of the Rock County circuit court in Beloit, shall be kept at the county seat.~~

A4. Wis. Stat. § 757.12 should be amended to update location alternatives when court needs to be adjourned to another place and update how and to whom notice is provided.

Currently, s. 757.12 provides for adjournment to another place within the same county, “Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity. . . .” The language in 757.12 should be updated to expand the options for holding court

in another county, if necessary. The proposed amendment also reflects changes in how individuals obtain information.

A county may not have courtrooms or other buildings that are sufficiently large enough to allow for social distancing, for example. Allowing a court proceeding to take place in another county, where a suitable facility may be found, means that there will be fewer interruptions and delays in court proceedings, when events disrupt the normal course of business. Newspapers, to which class 1 notices apply,⁸ are no longer the primary sources of information, and the proposed amendments to the notice requirement contemplate providing notice in locations where individuals are most likely to see this information.

Additionally, the language of this section should be amended to provide that bench warrants will not be issued for failure to appear unless it can be established that the party received notice of order that court was adjourned to another location.⁹

757.12 Adjournment to another location ~~place~~. Whenever it is deemed unsafe or inexpedient, by reason of war, pestilence or other public calamity, ~~to hold any court at the time and place appointed therefor the justices or judges of the court may appoint any other place within the same county and any other time for holding court.~~ the judge may order court to be held at an alternate location, including in another county, on a temporary basis. Every such order shall be made in writing and shall be subject to chief judge approval. Notice of such orders shall be provided by email to the Director of State Courts Office, the State Bar of Wisconsin, and the local bar association. Any such orders shall be placed on the Wisconsin State Courts website, the county website, and the door of the courthouse if practicable. All court proceedings moved to another location shall have the same force and effect as if held at the original location. Bench warrants shall not be issued for failure to appear without a finding that the party received notice of the date, time and location of the proceeding. All proceedings in the court may be continued at adjourned times and places and be of the same force and effect as if the court had continued its sessions at the place it was held before the adjournment. Every such appointment shall be made by an order in writing, signed by the justices or judges making the appointment, and shall be published as a class 1 notice, under ch. 985, or in such other manner as is required in the order.

⁸ Class 1 notices require one insertion under Wis. Stat. § 985.07.

⁹ Discussions had by the Zoom Task Force determined this addition would afford protection to defendants who do not receive notice of the change in location of court.

A5. Wis. Stat. § 757.14 should be amended to update the language related to public sittings and clarify that the court may use videoconferencing technology to provide public access to court proceedings.

Much of the language in 757.14 pertaining to public access to court hearings is outdated and should be repealed. The proposed language allows an option for using videoconferencing technology to provide public access, including access to victims, as an alternative to attending court in person. Language is added to emphasize that this section applies when telephone or videoconferencing technology is used to conduct the proceeding. When videoconferencing technology is used, the proceeding can be livestreamed to provide public access, or the participants appearing from a remote location using videoconferencing technology can be projected on a screen in the courtroom, so the proceeding can be viewed by anyone attending the proceeding in-person.

757.14 Sittings, public. The sittings of every court shall be public and every citizen may freely attend the same, including proceedings held by telephone or videoconferencing technology, except if otherwise expressly provided by law. ~~on the examination of persons charged with crime; provided, that when in any court a cause of a scandalous or obscene nature is on trial the presiding judge or justice may exclude from the room where the court is sitting all minors not necessarily present as parties or witnesses. The court may utilize electronic means to allow the public the ability to hear and see all proceedings in a manner as similar as practicable to being present in the courtroom.~~

A6. Wis. Stat. § 757.70(2) should be amended for consistency.

In accordance with the proposed changes in s. 753.24, the references to location in s. 757.70 should also be updated and reference s. 753.24 for consistency.

757.70 Hearings before court commissioners.

[(1)]

(2) All hearings before a circuit or supplemental court commissioner shall be held in accordance with s. 753.24 ~~the county courthouse or other court facilities provided by law~~. This provision does not apply to nontestimonial proceedings, supplementary hearings on the present financial status of a debtor under s. 757.675 (2) (h) or depositions taken before a circuit or supplemental court commissioner.

B. CHAPTER 885 VIDEOCONFERENCING RULES

Chapter 885 videoconferencing rules, Wis. Stat. §§ 885.60-64, are court created rules. These revisions propose updates to technical requirements of videoconferencing technology and clarify the different considerations for criminal and civil proceedings when using videoconferencing technology.

B1. Wis. Stat § 885.52(2) should be amended to clarify the standards for witnesses.

The current definition of “participants” under s. 885.52(2) includes “witnesses while on the stand.” The term “participants” is used in ss. 885.54(a) and (b) to set standards. Pursuant to s. 885.54(a), participants shall be able to communicate with each other, and under s. 885.54(b), participants shall be able to observe physical evidence or exhibits.¹⁰ These requirements do not correctly reflect the role of a witness. The creation of a new subsection is proposed to provide for requirements as to witnesses in Part B2 of this Memorandum, below.

885.52 Definitions. In this subchapter:

[(1)]

(2) “Participants” includes litigants, counsel, ~~witnesses while on the stand,~~ judges, and essential court staff, but excludes other interested persons and the public at large.

[(3)]

B2. Wis. Stat. 885.54 should be amended for accuracy and to set clear standards for the use of videoconferencing technology.

Subsection (1)(c) is revised to clarify how individuals at remote locations can see the courtroom by viewing rather than scanning. Use of the term “scan” may cause confusion and be

¹⁰ The way this section is currently worded, it could imply that witnesses should have the ability to communicate with each other. The Zoom Task Force determined witnesses should be considered apart from other “participants” and would fit better in the proposed subsection (1)(i), as participation of witnesses may vary.

disruptive to the proceedings if a participant were to request a “scan.” Rather, the technology used should enable individuals at remote locations to simply view the courtroom.

Subsections (1)(e) and (1)(g) are proposed to be amended to allow different options for private communication between attorneys and their clients. Currently, these sections require counsel to be physically present in a correctional facility with their client or have a private phone line to communicate. Counsel sometimes is not permitted to be in correctional facilities or jails with their clients and having a separate phone line is not always possible. The proposed language allows for more options based on the available technology. For example, the “breakout” room feature used by Zoom facilitates private communication.

Subsection (1)(f) addresses how exhibits and documents are viewed during a remote hearing. Exhibits and documents may be shared during a remote hearing using a screen-sharing function. It is not necessarily required that such exhibits or documents be transmitted at that time. To avoid confusion, the statute should reference sharing rather than transmitting.¹¹

Subsection (1)(i) should be created to ensure technical standards are observed for crime victims and witnesses.

Subsection (2) should be revised to clarify that the court is responsible for ensuring that all technical requirements are met.

Subsection (3) should be created to ensure that parties are properly notified by the court as to how they will access the remote hearing. As noted in the proposed comment, the proposed subsection (3) requires that contact information relating to remote hearing information, such as

¹¹ Original exhibits are filed with the court prior to the proceeding. During the proceeding, the court official can access the exhibit and display it to the parties when referenced. This ensures that the exhibit viewed is the exhibit in the record.

passcodes, is kept confidential and not made public to prevent hackers or other members of the public from disrupting proceedings held using videoconferencing technology.¹²

Wis. Stat. 885.54 Technical and operational standards.

(1)

[(a)-(c)]

(d) Parties and counsel at remote locations shall be able, upon request, to have the courtroom cameras view ~~see~~ the courtroom so that remote participants may observe other persons present and activities taking place in the courtroom during the proceedings.

(e) In matters set out in par. (g), counsel for a defendant or respondent shall have the option to meet privately and confidentially and the ability to request recess to facilitate private, confidential communications. ~~to be physically present with the client at the remote location, and the facilities at the remote location shall be able to accommodate counsel's participation in the proceeding from such location. Parties and counsel at remote locations shall be able to mute the microphone system at that location so that there can be private, confidential communication between them.~~

(f) If applicable, there shall be a means by which documents can be shared ~~transmitted~~ between the courtroom and the remote location.

(g) In criminal matters, and in proceedings under chs. 48, 51, 55, 938, and 980, if not in each other's physical presence, ~~a separate private voice communication facility shall be available so that~~ the defendant or respondent and his or her attorney shall have the ability ~~are able to~~ communicate privately during the entire proceeding.

[(h)]

(i) Crime victims and witnesses shall be able to hear, see, and participate as necessary during the proceeding.

(2) ~~The moving party, including the circuit court,~~ shall ensure that the videoconferencing technology is ~~certify that the technical and operational standards at the court and the remote location are~~ in compliance with the requirements of sub. (1).

(3) The court shall provide written instructions to parties and counsel on how to appear by videoconference. Any instructions shall be maintained in a confidential manner, unless disclosure is permitted by the court.

Comment, 2020: A requirement to keep videoconferencing participation information confidential is intended to preserve the integrity of hearings and prevent disruptions from members of the public. Counties may decide how best to accomplish this.

¹² When videoconferencing technology is used, public access is provided by livestreaming the proceedings, or the participants appearing from a remote location using videoconferencing technology can be projected on a screen in the courtroom, so the proceeding can be viewed by anyone attending the proceeding in-person.

B3. Wis. Stat. § 885.56(1)(b) should be repealed.

This proposed revision repeals subsection (1)(b) of s. 885.56, which currently allows a witness to appear using videoconferencing technology only when the physical presence of witness cannot be procured after diligent effort. The court should be permitted to exercise its discretion to determine whether the presence of a witness is necessary and consider more factors than simply the inability to procure the physical presence witness. For example, the court also may consider travel time and cost when a witness would only need to be present in the courtroom for a very brief period of time. The court may determine that a witness such as this can appear from a remote location using videoconferencing technology, even if the witness has the ability to appear in person. The current language requires the default witness appearance to be in-person, which is incompatible with supporting the widespread use of videoconferencing technology. The remaining criteria in this section provide adequate protections for the litigants.

Wis. Stat. 885.56 Criteria for exercise of court's discretion.

(1)

[(a)]

~~(b) Whether the proponent of the use of videoconferencing technology has been unable, after a diligent effort, to procure the physical presence of a witness.~~

[(c)-(1)]

B4. Wis. Stat. § 885.58(2)(a) should be revised to shorten the time period for notices and objections to the use of videoconferencing in civil proceedings.

Language referencing “in any pre-trial, trial, or post-trial hearing” in subsection (1) is repealed so as to not limit the use of videoconferencing technology and to remove unnecessary words.

The time periods for notice of intended use of videoconferencing and objection to such use of videoconferencing in subsection (2) are revised. The current time limits are excessive for civil cases. This proposed change does not impact the court’s discretion.

885.58 Use in civil cases and special proceedings.

(1) Subject to the standards and criteria set forth in ss. 885.54 and 885.56 and to the limitations of sub. (2), a circuit court may, on its own motion or at the request of any party, in any civil case or special proceeding permit the use of videoconferencing technology in any ~~pre-trial, trial, or post-trial hearing proceeding~~.

(2) (a) A proponent of a witness via videoconferencing technology at any evidentiary hearing or trial shall file a notice of intention to present testimony by videoconference technology ~~1030~~ days prior to the scheduled start of the proceeding. Any other party may file an objection to the testimony of a witness by videoconferencing technology within ~~510~~ days of the filing of the notice of intention. If the time limits of the proceeding do not permit the time periods provided for in this paragraph, the court may in its discretion shorten the time to file notice of intention and objection.

[(b)]

B5. Wis. Stat. § 885.60 should be amended to clarify how and when the court may exercise its discretion as to the use of videoconferencing technology in criminal proceedings.

Language referencing “in any pre-trial, trial, or post-trial” in subsection (1) is repealed so as to not limit the use of videoconferencing technology and to remove unnecessary words.

Subsection (2)(a) is revised to reflect current case law that requires a defendant to affirmatively waive the right to be physically present, when applicable.

Subsection (2)(b) clarifies that the court may exercise its discretion, unlike under subsection (2)(a), when determining whether to permit the use of videoconferencing technology for the appearance of a witness. This is discussed in more detail in Part B3, above, related to s. 885.56(1)(b).

Minor changes are proposed to subsection (2)(c) for clarity and conciseness.

It is proposed that subsection (d) be repealed to avoid confusion and because it is no longer necessary with the other changes proposed in this section. An affirmative waiver of physical presence is required by the defendant or respondent in certain proceedings, as provided for in the proposed subsection (a), rather than simply the absence of an objection.

A new comment is proposed that directs the reader to the relevant statute and case law that addresses the defendant's right to be physically present.

Wis. Stat. 885.60 Use in criminal cases and proceedings under chapters 48, 51, 55, 938, and 980.

(1) Subject to the standards and criteria set forth in ss. 885.54 and 885.56 and to the limitations of sub. (2), a circuit court may, on its own motion or at the request of any party, in any criminal case or matter under chs. 48, 51, 55, 938, or 980, permit the use of videoconferencing technology in any ~~pre-trial, trial or fact-finding, or post-trial~~ proceeding.

(2) (a) Except as may otherwise be provided by law, a defendant in a criminal case and a respondent in a matter listed in sub. (1) is entitled to be physically present in the courtroom at all trials and sentencing or dispositional hearings, unless affirmatively waived by the defendant or respondent.

(b) A proponent of a witness via videoconferencing technology at any evidentiary hearing, trial, or fact-finding hearing in a matter listed in sub. (1) shall file a notice of intention to present testimony by videoconference technology 20 days prior to the scheduled start of the proceeding. Any other party may file an objection to the testimony of a witness by videoconference technology within 10 days of the filing of the notice of intention. If the time limits of the proceeding do not permit the time periods provided for in this paragraph, the court may in its discretion shorten the time to file notice of intention and objection, and shall determine the objection in the exercise of its discretion using the criteria set forth in s. 885.56.

(c) If an objection is made by the plaintiff or petitioner ~~in a matter listed in sub. (1)~~, the court shall determine the objection in the exercise of its discretion using under the criteria set forth in s. 885.56.

~~(d) 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.~~

[Comment, 2008]

Comment, 2020: For a list of criminal proceedings where the defendant has a right to be present, see s. 971.04 (1). When the defendant has the right to be physically present, videoconference appearance by the defendant may occur only when the defendant knowingly, intelligently, and voluntarily waives that right. The judge must engage in a colloquy with the defendant to ensure that this right is understood by the defendant and that the waiver is being made knowingly, intelligently, and voluntarily. See *State v. Soto*, 343 Wis. 2d 43 (2012), and see *State v. Anderson*, 374 Wis. 2d 372 (2017).

C. COURT INTERPRETERS [Chapters 807 and 967]¹³

The revisions in section C amend the statutes to expand the ability of interpreters to perform their duties via telephone or videoconferencing technology at civil and criminal trials, when appropriate. Improvements in technology allow for high-quality interpretation and communication with no meaningful difference from in-person interpretation. With difficulties finding interpreters for certain languages and travel costs, these revisions also improve efficiency and access.

C1. Wis. Stat. § 807.14 should be amended to expand options for interpreters in civil trials.

Amendments to s. 807.14 would allow interpreters to provide services via telephone or videoconferencing technology at all stages of a civil proceeding, including trials. These revisions will also allow the court on its own motion to permit the interpreter to appear by video or telephone. The term “live audiovisual means” is updated to “videoconferencing technology” to be consistent with other sections of the statutes.

807.14 Interpreters. ~~On request of any party, the~~ court may permit an interpreter to act in any civil proceeding ~~other than trial~~ by telephone or videoconferencing technology ~~live audiovisual means~~.

C2. Wis. Stat. § 967.09 should be amended to expand options for interpreters in criminal trials.

Amendments to s. 967.09 would allow interpreters to provide services via telephone or videoconferencing technology at all stages of a criminal proceeding, including trials. These revisions will also allow the court on its own motion to permit the interpreter to appear by video or telephone. The term “live audiovisual means” is updated to “videoconferencing technology” to be consistent with other sections of the statutes.

¹³ Wis. Stat. §§ 807.14 and 967.06 were created by the court with Sup. Ct. Order, 141 Wis. 2d xiii (1987).

967.09 Interpreters may serve by telephone or video. ~~On request of any party, the court may permit an interpreter to act in any criminal proceeding, other than trial, by telephone or videoconferencing technology live audiovisual means.~~

D. STATUTORY RIGHT OF THE ACCUSED TO BE PHYSICALLY PRESENT UNDER s. 971.01(1).

The proposed amendments in Part D would eliminate the defendant's statutory right to be physically present at an arraignment. Many arraignments occur immediately after preliminary hearings, where the accused has no right to be physically present. This change promotes efficiency and does not infringe upon the accused's constitutional right to be present. The Constitution does not require physical presence when such presence serves no purpose and a "fair and just" hearing is not thwarted by the defendant's absence.¹⁴

The court previously amended s. 971.04.¹⁵ This is a procedural change; the rule does not define a specific right, the right of the accused to be present under Art. I, sec. 7 of the Wisconsin Constitution and the sixth and fourteenth amendments of the United States Constitution. Rather, this rule prescribes the steps for enforcing that right, enumerating at which proceedings the accused has the right to be physically present based on the state and federal constitutions.

D1. Wis. Stat. § 971.04 should be amended so that physical presence of the defendant is not required at the arraignment.

Subsection (a), which establishes a statutory right for the defendant to be physically present at the arraignment, should be repealed. Clarifying language is also added to subsection (d).

¹⁴ See *State v. Alexander*, 2013 WI 70, ¶ 22, citing *Leroux v. State*, 58 Wis. 2d 671 (1973).

¹⁵ Sup. Ct. Order, 130 Wis. 2d xix (1986); Sup. Ct. Order No. 96-08.

Wis. Stat. 971.04 Defendant to be present.

(1)

~~(a) At the arraignment;~~

(b) At trial;

(c) During voir dire of the trial jury;

(d) At any evidentiary hearing other than a preliminary hearing;

[(e)-(h)]

IV. Conclusion

The court system needs to continue to adapt to meet the needs of the courts, participants, and the public in the face of changing circumstances and advancing technologies. The proposed rule changes help expand the options for appropriate use of videoconferencing technology. For the reasons set forth in this Memorandum, the Director of State Courts requests that the Supreme Court grant this petition, effective July 1, 2021.

Respectfully submitted this _____ day of December 2020.

Judge Randy R. Koschnick
Director of State Courts