

**TRIAL COURT REVISED
POLICY FOR VIDEOCONFERENCING**

Revised November 2019

PURPOSE

To establish uniform procedures for the use of videoconferencing throughout the Trial Court in light of the consistent and regular use of videoconferencing across the Commonwealth. Implementation and use of videoconferencing will reduce costs, address safety concerns and delays associated with transportation of prisoners and detainees as well as provide cost savings and access to justice in cases where experts and witnesses are located out of county or state, thereby, improving the efficiency of case management through technology. Use of videoconferencing where an individual is in custody will be done consistent with the due process principles set forth in this policy.

POLICY

Videoconferencing of court events in the Trial Court may be implemented in any Department of the Trial Court and in connection with such matters as each Trial Court Department Chief Justice may prescribe.

A Departmental Chief Justice may identify court events by standing order which shall be applicable throughout the department. Departmental standing orders may establish a presumption that certain types of events will be conducted by videoconferencing, and may identify other types of events that shall be conducted by videoconferencing only by individual court order, or by agreement of parties.

It is hereby ordered that the following procedures shall apply with respect to videoconferencing of court events in the Trial Court.

PROPER OPERATION OF VIDEOCONFERENCING EQUIPMENT

In order to promote the orderly use of videoconferencing equipment and to ensure proper operation of the equipment at all times, a primary video conferencing coordinator and backup shall be designated wherever Trial Court videoconferencing is to be used. In multi-department buildings, each Department or Superior Court shall designate a coordinator and back-up. All coordinators will be properly trained by the Judicial Information Services Department of the Trial Court (hereinafter JISD) on the use of videoconferencing equipment and on troubleshooting any issues that may arise. The JISD Help Desk shall provide assistance to all coordinators, and shall provide assistance whenever a report of any malfunction of videoconferencing is received.

Any court division, department or Superior Court using videoconferencing equipment for court events shall confirm its proper operation prior to and during the court event. The identified liaison for the Department-Division or the Superior Court using the equipment shall confirm to the Judge and Clerk Magistrate that the equipment is functional. The

court must confirm that all parties are able to see and hear each of the participants to the court event and that the event is being properly recorded as an audio event on the courtroom recording system. If a party is participating in a proceeding by video, and the proceeding is such that the party has a legal right to participate and has not waived that right, at any time that the judge learns that the equipment is not operating properly, the judge will suspend the event until such time as the judge ascertains that proper functioning as been restored, or will reschedule the event for a time when all parties will be able to participate. If the equipment cannot be restored within a reasonable time, the court may offer the option of resuming the event by telephone, and by the courtroom speaker phone or should reschedule the event for a time when all of the participants are available. The rescheduled hearing shall be conducted as soon as is practicable.

In addition to working to ensure the proper operation of videoconferencing equipment located in the courthouse, JISD shall work with any off-site custodial facility or other external entity participating in videoconferencing of court events to ensure the proper operation of that equipment and its connection to the videoconferencing equipment in the courthouse.

CONSULTATION WITH ATTORNEY IN CRIMINAL PROCEEDINGS WHERE DEFENDANT IS IN CUSTODY

The use of videoconferencing for criminal court events when a party is in custody requires that the court and the jail or other facility with custody of the party provide the party with an adequate opportunity to consult privately with counsel before, during and after the proceeding. Specifically, where practicable, the following procedures shall apply:

1. Courts and facilities shall provide adequate communication resources. Courts shall provide a reasonable opportunity in the courthouse for counsel to communicate with defendant (by telephone or other means) located in a jail or other off-site custodial facility for the purpose of having private communications with the client.
2. The jail or other off-site custodial facility must provide the party with the ability to communicate privately with his or her attorney prior to the commencement of the court event, or at any other time as required by the court.
3. Consultations of this nature are not intended as a substitute for any prior or subsequent required in-person visitation between the party and his or her counsel.
4. Nothing in this policy shall prohibit counsel from joining his or her client at the jail or custodial facility and appearing in court by videoconference.

EVIDENTIARY PROCEEDINGS BY VIDEOCONFERENCING

Departmental standing orders may permit testimony by videoconferencing in specified types of evidentiary proceedings consistent with the legal rights of the parties. Factors pertinent to determinations of whether videoconferencing will be permitted in particular proceedings or types of proceedings include (a) the nature of a proceeding, including whether it is civil or criminal; (b) any agreement of the parties or waiver of any right to physical presence; (c) any efforts to procure the physical presence of a party or witness, and the cost of physical presence in relation to the importance of the testimony in civil cases; (d) any security or health risks of physical presence, in relation to any corresponding risks at the remote site; and (e) any other factors affecting convenience to and safety of the parties and the public.