
**In re amendment of
Wis. Stat. §§ 885.50, 885.52,
885.54, 885.56, 885.58, and 885.60,
relating to the use of
videoconferencing technology.**

**PETITION
20-09A**

For the reasons set forth in the accompanying supporting memorandum, the Videoconferencing Subcommittee of the Planning and Policy Advisory Committee (PPAC) respectfully submits this amended petition asking the court to amend Wis. Stat. §§ 885.50, 885.52, 885.54, 885.56, 885.58, and 885.60, regarding the use of videoconferencing technology. This petition is made pursuant to the court's rulemaking authority under Wis. Stat. § 751.12 and its administrative authority over all courts conferred by Article VII, § 3 of the Wisconsin Constitution.

TEXT OF PROPOSED CHANGES

SECTION 1. Section 885.50 (3) of the statutes is amended to read:

885.50 (3) In declaring this intent, the Supreme Court further finds that improper use of videoconferencing technology, or use in situations in which the technical and operational standards set forth in this subchapter are not met, can result in abridgement of fundamental rights of litigants, ~~crime~~ victims, and the public, unfair shifting of costs, and loss of the fairness, dignity, solemnity, and decorum of court proceedings that is essential to the proper administration of justice.

SECTION 2. Section 885.52 (2) of the statutes is amended to read:

885.52 (2) "Participants" includes litigants, counsel, witnesses while on the stand, victims as defined in article I, sec. 9m (1) of the Wisconsin constitution or s. 950.02 (4), judges, and essential court staff, but excludes other interested persons and the public at large.

SECTION 3. Section 885.54 (1) (a) of the statutes is amended to read:

885.54 (1) (a) Participants shall be able to see, hear, and communicate ~~with each other.~~

SECTION 4. Section 885.54 (1) (c) of the statutes is amended to read:

885.54 (1) (c) Video and sound quality shall be adequate to allow participants to observe the demeanor and non-verbal communications of other participants and to clearly hear what is taking place in the courtroom ~~to the same extent as if they were present in the courtroom~~ in a manner as similar as practicable to being present in the courtroom.

SECTION 5. Section 885.54 (1) (d) of the statutes is amended to read:

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

SECTION 6. Section 885.54 (1) (e) of the statutes is amended to read:

885.54 (1) (e) ~~In matters set out in par. (g), counsel for a defendant or respondent shall have the option 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. If requested by litigants or counsel, parties shall have the ability to communicate privately and confidentially with counsel.~~

SECTION 7. Section 885.54 (1) (f) of the statutes is amended to read:

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

SECTION 8. Section 885.54 (1) (g) of the statutes is repealed:

~~885.54 (1) (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 are able to communicate privately during the entire proceeding.~~

SECTION 9. Section 885.54 (1) (h) of the statutes is amended to read:

885.54 (1) (h) The proceeding at the location from which the judge is presiding shall be visible and audible to the jury and the public, including ~~crime~~ victims, ~~to the same extent as the proceeding would be if not conducted by videoconferencing~~ in a manner as similar as practicable to being present in the courtroom.

SECTION 10. Section 885.54 (2) of the statutes is amended to read:

885.54 (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).

SECTION 11. Section 885.54 (3) of the statutes is created to read:

885.54 (3) The court shall provide written instructions to parties and counsel on how to appear by videoconference.

SECTION 12. SECTION 885.56 (1) (b) of the statutes is amended to read:

885.56 (1) (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.

SECTION 13. Section 885.58 (1) of the statutes is amended to read:

885.58 (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. If jury members sworn to hear a trial appear by videoconferencing, they must remain in the physical presence of a bailiff throughout the entire proceeding at the location where court is being held.

SECTION 14. Section 885.58 (2) (a) of the statutes is amended to read:

885.58 (2) (a) ~~A~~ Unless otherwise provided by court order, 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 30 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 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.~~

SECTION 15. Section 885.60 (1) of the statutes is amended to read:

885.60 (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. If jury members sworn to hear a trial appear by videoconferencing, they must remain in the physical presence of a bailiff throughout the entire proceeding at the location where court is being held.

SECTION 16. Section 885.60 (2) (a) of the statutes is amended to read:

885.60 (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.

SECTION 17. Section 885.60 (2) (b) of the statutes is amended to read:

885.60 (2) (b) ~~A~~ Unless otherwise provided by court order, a proponent of a witness via videoconferencing technology at any evidentiary hearing, trial, or fact-finding hearing 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.

SECTION 18. Section 885.60 (2) (c) of the statutes is repealed:

~~885.60 (2) (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 under the criteria set forth in s. 885.56.~~

SECTION 19. 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.~~

SECTION 20. Section 885.60 (3) (a) of the statutes is created to read:

885.60 (3) (a) Use of videoconferencing technology in any criminal case or matter under chs. 48, 51, 55, 938, or 980 shall comply with applicable constitutional requirements and be consistent with the legal rights of the defendants, respondents, and victims.

SECTION 21. Section 885.60 (3) (b) of the statutes is created to read:

885.60 (3) (b) Subject to sub. (3) (c), the court must determine an objection to the use of videoconferencing by considering the criteria set forth in s. 885.56, the constitutional rights of defendants, respondents, and victims, and any other applicable state and federal legal requirements.

SECTION 22. Section 885.60 (3) (c) of the statutes is created to read:

885.60 (3) (c) If an objection to any witness appearing by videoconferencing technology is made by the defendant or respondent in any proceeding where the defendant or respondent is entitled to be physically present in the courtroom under sub. (1), the court may allow the witness to appear by videoconferencing technology if the court finds all of the following are true:

1. The witness is unavailable to be physically present in the courtroom for the proceeding.
2. The witness's unavailability is due to an emergency or another compelling reason;
3. The use of videoconferencing technology for the witnesses' appearance will allow for full and effective examination and cross-examination of the witness by all parties and the court.
4. The witness is alone in a private area while testifying.
5. The criteria in s. 885.56 (1) favor permitting the witness to appear by videoconferencing technology.

SECTION 23. Comment to Section 885.60 of the statutes is created to read:

Comment, 2021: 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*, 2012 WI 93, 343 Wis. 2d 43, 817 N.W.2d 848, and see *State v. Anderson*, 2017 WI App 17, 374 Wis. 2d 372, 896 N.W.2d 364.

Use of videoconferencing technology in criminal proceedings and proceedings under chapters 48, 51, 55, 938, and 980 requires careful consideration. It is anticipated that use of videoconferencing technology in an evidentiary hearing or trial would be rare but may be permissible under certain circumstances.

Respectfully submitted this ____ day of January 2022.

Hon. John P. Anderson
Bayfield County Circuit Court