IN THE
SUPREME COURT OF ILLINOIS

In re:	)	
Illinois Courts Response to	)	
COVID-19 Emergency/	)	M.R. 30370
Remote Proceedings in	)	
Criminal Matters	)	
	)	
	)	

Order

In the exercise of the general administrative and supervisory authority over the courts of Illinois conferred on this Court pursuant to Article VI, Section 16, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. VI, sec. 16) and in view of the outbreak of the novel coronarvirus (COVID-19);

IT IS HEREBY ORDERED, effective immediately and until further order of the Court, the Court's order of March 17, 2020, as modified by order of May 20, 2020, is further modified to provide that any criminal case proceedings determined to be conducted remotely (i.e., where the judge, defendant, witness, or any attorney is not physically present or is otherwise participating remotely, including by telephone, video conference, or other electronic means) shall be conducted consistent with the findings and procedures set forth herein.

Criminal proceedings in Illinois may be broken into four categories regarding the ability to undertake the proceedings remotely. The categories are as follows.

I. Proceedings that may be held remotely absent a waiver by the defendant.

A. The following proceedings may be held remotely absent a waiver by the defendant, even over the objection of the defendant, when certain judicial findings have been made pursuant to section 106D-1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/106D-1 (West 2018)):

(1) Initial appearance at which bail will be set;
(2) Waiver of a preliminary hearing;
(3) Arraignment on an information or indictment at which a plea of not guilty will be entered;
(4) Presentation of a jury waiver;
(5) Any nonsubstantive status hearing; and
(6) Any hearing conducted under the Sexually Violent Persons Commitment Act (725 ILCS 207/1 *et seq*.) at which no witness testimony will be taken.

II. Proceedings that may not be held remotely absent a waiver by the defendant.

A. The following proceedings may not be held remotely absent a waiver by the defendant that has

been accepted by the trial court:

(1) Legal hearings with counsel argument only;
(2) Negotiated pleas;
(3) Evidentiary hearings where evidence in any form is presented to the court;
(4) Sentencing hearings;
(5) Probation revocation hearings; and
(6) Arraignments or other proceedings at which a plea of guilty will be entered.
(7) Any hearing conducted under the Sexually Dangerous Persons Act (725 ILCS 205/0.01 *et seq*.).

B. In proceedings where waiver is allowed, the decision whether to waive shall belong to the defendant and not to defense counsel.

C. Defendant's waiver shall be in writing and shall include the items listed below in paragraph D, subparagraphs 1 through 6. Defendant shall be provided with the written waiver prior to the hearing.

D. Before a waiver of in-person proceeding is accepted by the trial court, it shall be the trial court's responsibility to ensure that the defendant's waiver is knowing and voluntary and has been discussed with counsel prior to the hearing. The trial court shall ensure that the record is clear that the defendant understands:

(1) That the defendant has a right to be physically present in the courtroom for every substantive proceeding;
(2) That remote appearance means the defendant, the court, and other participants will participate via video or telephonic conferencing platforms;
(3) That any remote appearance may be viewable by the public over the Internet or other method of streaming or broadcasting (if applicable);
(4) That the defendant and defense counsel may not be physically present together during the proceeding;
(5) That the legal effect of the remote appearance will be the same as an in-person appearance; and
(6) That the defendant has discussed the waiver with counsel.

E. Defendant's waiver shall be signed by the defendant. The defendant shall be provided a copy of the signed waiver.

F. After the trial court finds the defendant's waiver to be knowing and voluntary, the prosecution shall be given an opportunity to object and to state the grounds for that objection for the record. The prosecution's objection shall not be considered controlling. The decision to accept a defendant's waiver of in-person proceeding is exclusively within the discretion of the trial court, and the court shall put the reasons for its ruling on the record.

III. Proceedings that may be conducted remotely if the defendant consents in writing and the judge finds that doing so will not jeopardize the integrity of the trial process.

A. The following proceedings may be conducted remotely if the defendant consents in writing (as provided in paragraphs C through E of section II above) and the judge specifically finds that doing so will not jeopardize the integrity of the trial process:

(1) Bench Trial; or
(2) Stipulated Bench Trial.

B. Upon a finding as specified in paragraph A of this section, the judge shall enter an order finding as follows: (1) the defendant understands his or her right to be physically present in the courtroom for every substantive proceeding; (2) the defendant understands that remote appearance means the defendant, the court, and other participants will participate via video or telephonic conferencing platforms; (3) the defendant understands that any remote appearance may be viewable by the public over the Internet or other method of streaming or broadcasting (if applicable); (4) the defendant understands that defendant and defense counsel may not be physically present together during the proceeding; (5) the defendant understands the legal effect of the remote appearance will be the same as an in-person appearance; (6) the defendant has discussed waiver with counsel; (7) the video or telephonic conferencing platform being utilized is technically sound and its operation is understood by all parties to the extent necessary to ensure the integrity of the trial process; and (8) proceeding remotely will not otherwise jeopardize the integrity of the trial process.

IV. Proceedings that may not be held remotely.

A. Even when the defendant has consented as provided above, the court shall not allow a jury trial to be conducted remotely.

V. Application of the Rules

A. The foregoing rules do not apply in cases where the defendant's liberty is not at stake. In such cases, the question of whether a proceeding may be held remotely is exclusively within the discretion of the trial court, and no waiver or consent is required from either the State or the defendant.

B. Nothing in this order supersedes or abrogates any existing rule or statute designed to allow for the remote testimony of a particular witness in an otherwise in-person trial so long as the statutory and constitutional requirements for that witness's remote testimony are satisfied. Nothing in this order modifies or alters crime victims' rights under Article 1, Section 8.1, of the Illinois Constitution (Ill. Const. 1970, art. I, § 8.1). The Illinois Constitution grants to victims the right to be present in the same manner as the defendant. At trial, this shall be the right to be present in person. At other proceedings if the defendant appears remotely, then the victim shall be afforded the same opportunity to appear in the same manner.

Order entered by the Court.

SEAL OF THE SUPREME COURT
STATE OF ILLINOIS
AUG. 26, 1818

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 11th day of February, 2021.

Carolyn Taft Grosboll Clerk,
Supreme Court of the State of Illinois