7-1

Proposal by Jude Conway for a new rule allowing for the presence of a detained child at certain detention hearings by means of an interactive audio visual device.

STATE OF CONNECTICUT
SUPERIOR COURT
FOR JUVENILE MATTERS

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CHAMBERS OF
BERNADETTE CONWAY
CHIEF ADMINISTRATIVE JUDGE FOR JUVENILE

February 25, 2019

Justice Andrew J. McDonald
Chairman, Rules Committee of the Superior Court
Supreme Court
231 Capitol Avenue
Hartford, CT 06106

Dear Justice McDonald,

Attached hereto for consideration of the Rules Committee is a new Practice Book Rule, ***Where* Presence of a Detained Child May Be by Means of an Interactive Audiovisual Device.** The purpose of the rule is to enable a detained child to appear and participate by means of an interactive audiovisual device at certain detention hearings. The consent of a detained child and his or her attorney is required for such use of an interactive audiovisual device. The use of videoconferencing in this manner would have several benefits, including: minimizing the disruption to a detained child's education and treatment and the more effective use of CTU resources.

I respectfully request that you place this proposed rule on the next Rules Committee agenda. I have also enclosed two research documents that may be of assistance. Please let me know if you require any further information or assistance prior to the meeting.

Respectfully,

Bernadette Conway

Bernadette Conway
Chief Administrative Judge for Juvenile Matters

cc: Hon. Patrick L. Carroll, Chief Court Administrator
Hon. Elizabeth Bozzuto, Deputy Chief Court Administrator
Director, Legal Services, Joseph DelCiampo

(NEW) Sec. 30-12. Where Presence of A Detained Child May Be by Means of an Interactive Audiovisual Device

(a) The appearance of a detained child for the proceedings set forth in subsection (b) of this section may, with the consent of the detained child and counsel for the detained child and in the discretion of the judicial authority on motion of a party or on its own motion, be made by means of an interactive audiovisual device. Such interactive audiovisual device must operate so that such detained child and his or her attorney, if any, and the judicial authority if the proceeding is in court, can see and communicate with each other simultaneously. In addition, a procedure by which such detained child and his or her attorney can confer in private must be provided. Nothing contained in this section shall be construed to establish a right for any person to be heard or to appear by means of an interactive audiovisual device or to require the judicial branch to pay for such person's appearance by means of an interactive audiovisual device.

(b) With the consent of a detained child and counsel for a detained child, a detained child may appear and participate by means of an interactive audiovisual device in detention hearings held in accordance with Sections 30-10 and 30-11.

(c) Unless otherwise required by law or unless otherwise ordered by the judicial authority, prior to a detention hearing in which a detained child appears by means of an interactive audiovisual device, copies of all documents which may be offered at the detention hearing shall be provided to all counsel.

COMMENTARY: To provide for a detained child to appear by means of an interactive audiovisual device at detention hearings held in accordance with Sections 30-10 and 30-11.

STATE OF CONNECTICUT
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January 4, 2019

MEMO TO: Detention Review Hearing Workgroup

SUBJECT: The Use of Videoconferencing for Detention Review Hearings

Background

On December 14, 2018, Deborah Fuller convened a meeting to discuss the possibility of using interactive audiovisual devices (videoconferencing) for detention review hearings that are required to occur every seven days[1]. Judge Conway, Krista Hess, Cynthia Cunningham, and Cathy Foley-Geib also attended the meeting. The use of videoconferencing would have several benefits, including: minimizing the disruption to a child's education and treatment and the more effective use of CTU resources. During the meeting, Judge Conway requested that Legal Services research whether: (1) other states use videoconferencing for similar hearings, and (2) there are any constitutional impediments to using videoconferencing for such hearings in Connecticut. This memorandum is in response to Judge Conway's second request.

The Alternatives to Court Appearances Committee chaired by Judge Solomon was responsible for, among other things to: "(i) increase the efficiency of case management and court practices and (ii) expand the use of telephonic and video technology for court appearances.[2]" Legal Services Attorneys conducted much of the research for the Committee in connection with its final 2009 report and the Practice Book rules that followed. Again in 2014, Legal Services provided research in connection with revisions to the criminal Practice Book Section 44-10A, Where Presence of Defendant May Be By Means of an Interactive Audiovisual Device. This research is central to the short answer that follows.

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1 46b-133(j); see also PB Sections 30-10 and 30-11

2 Transmittal letters from Judge Solomon to Justice Zarella dated February 7, 2010 and April 13, 2010, and supporting research and attached as Exhibit A. Legal Services researched and found minimal updates to the attached ALR article and no new cases specific to juvenile delinquency matters.

Short Answer

Even if a Detention Review Hearing is considered a critical stage of a delinquency proceeding, any due process considerations and the right to effective assistance of counsel would be satisfied if the child, his/her parent or guardian, and counsel consent to the court's exercise of discretion to hold the hearing by videoconference and the procedural safeguards set forth in Section 35a-22(a) are guaranteed. Consideration may be given to proposing a new Practice Book rule substantially in the form of draft Section 30-12 (the Draft Rule; attached as Exhibit B).

Discussion

Although Judge Conway has not proposed using videoconferencing for the initial detention review hearing required by Section 30-8 ('the Initial Hearing'), the Initial Hearing is analogous to an arraignment in criminal court. The considerable amount of research and legal analysis that supports the use of videoconferencing for arraignments is, therefore, instructive. Effective January 1, 2017, arraignments were added to the list of proceedings for which a defendant may be present by videoconference in Section 44-10(A)(a)(7) (the Arraignment Subsection)[3]. Attorney Lori Petruzzelli's legal research

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3 **Sec. 44-10A. –Where Presence of Defendant May Be by Means of an Interactive Audiovisual Device**

(a) Unless otherwise ordered by the judicial authority, and in the discretion of the judicial authority, a defendant may be present by means of an interactive audiovisual device for the following proceedings:

(1) Hearings concerning indigency pursuant to General Statutes § 52-259b;

(2) Hearings concerning asset forfeiture, unless the testimony of witnesses is required;

(3) Hearings regarding seized property, unless the testimony of witnesses is required;

(4) With the defendant's consent, bail modification hearings pursuant to Section 38-14;

(5) Sentence review hearings pursuant to General Statutes § 51-195;

(6) Proceedings under General Statutes § 54-56d (k) if the evaluation under General Statutes § 54-56d (j) concludes that the defendant is not competent but is restorable and neither the state nor the defendant intends to contest that conclusion;

(7) Arraignments, provided that counsel for the defendant has been given the opportunity to meet with the defendant prior to the arraignment;

(8) A disposition conference held in the judicial district court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference;

(9) With the consent of counsel a disposition conference held in the geographical area court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference;

(10) The first scheduled court appearance of the defendant in the judicial district court following the transfer of the case from the geographical area court;

(11) Hearings regarding motions to correct an illegal sentence; and

(12) Hearings regarding motions for sentence modification.

(b) Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided.

(c) Unless otherwise required by law or ordered by the judicial authority, prior to any proceeding in which a person appears by means of an interactive audiovisual device, copies of all documents which may be offered at the proceeding shall be provided to all counsel and self-represented parties in advance of the proceeding.

and analysis prior to the adoption of the Arraignment Subsection is relevant to the current inquiry concerning Detention Review Hearings. (See Memorandum from Attorney Lori Petruzzelli to Attorney Martin Libbin, October 31, 2014, Videoconferencing for Arraignments. Attached as Exhibit C). In response to the question: "Are there any constitutional limitations on conducting arraignments via videoconference?" Attorney Petruzzelli concluded:

> Because an arraignment is a critical stage of criminal proceedings against a defendant, due process considerations and the right to effective assistance of counsel may be impacted by video conferenced arraignments. Nonetheless, these considerations should be satisfied if a defendant waives his or her right to appear physically at an arraignment and if the videoconferencing is the functional equivalent of a live, in person arraignment.

As an additional constitutional safeguard, Attorney Petruzzelli recommended that, similar to other proceedings governed by Section 44-10A, a defendant consent to the use of videoconferencing for arraignments. At the public hearing prior to adoption of the Arraignment Subsection, Chief Public Defender, Attorney Susan Storey, testified against the proposal because: "the use of such equipment not only dehumanizes defendants but interferes with the constitutional right to counsel." (See Testimony of the Chief Public Defender, May 16, 2016. Attached as Exhibit C). In opposition to the proposal, Attorney Storey concluded by stating:

> An alternative to the proposal would be to require the consent of the defendant and his/her counsel prior to any exercise of discretion by the court. That would comport with the constitutional issue discussed and assist in the delivery of effective assistance of counsel. (Emphasis added).

Ultimately, the Judges of the Superior Court approved the arraignment subsection without the requirement that the defendant and counsel consent to the use of videoconferencing. The Judges did not find the constitutional concerns raised to be an impediment to the use of videoconferencing for arraignments.

While the Initial Hearing may be analogous to an arraignment, we have found no Connecticut Supreme or Appellate Court cases that hold that either it or a Detention Review Hearing is a critical stage of a delinquency proceeding. I discussed with Judge Conway, Jonathan Garow and Cathy Foley-Geib Detention Review Hearings required by Sections 30-10 and 30-11. Based on those conversations and review of the relevant Sections, I understand that these hearings are: (1) pro forma brief proceedings that frequently last one to three minutes; (2) to determine if a child remains in detention or is released on a suspended order of detention or to a different placement, (3) attended by the prosecutor, probation officer, parent/guardian, child's attorney, and the child. Further, both Jonathan and Cathy stated that a Detention Review Hearing are similar to bail modification hearings, because their purpose is to determine conditions of

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(d) Nothing contained in this section shall be construed to establish a right for any person to appear by means of an interactive audiovisual device. (Emphasis added).

confinement. The Draft Rule, like the bail modification subsection, 44-10A(a)(4), contains a consent requirement. Any due process concerns that may be raised are addressed by the inclusion of this requirement and the other safeguards included in the Draft Rule attached for your consideration.

Nancy A. Porter

EXHIBIT C

STATE OF CONNECTICUT
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October 31, 2014/Cite checked December, 2018

MEMO TO: Martin Libbin, Director, Legal Services

FROM: Lori Petruzzelli, Counsel, Legal Services

SUBJECT: Videoconferencing for Arraignments

ISSUE: Are there any constitutional limitations on conducting arraignments via videoconference?

SHORT ANSWER: Because an arraignment is a critical stage of criminal proceedings against a defendant, due process considerations and the right to effective assistance of counsel may be implicated by video conferenced arraignments. Nonetheless, these considerations should be satisfied if a defendant waives his or her right to appear physically at an arraignment and if the videoconferencing is the functional equivalent of a live, in-person arraignment.

CONSTITUTIONAL AND STATUTORY AUTHORITY:

The Fifth Amendment of the United States Constitution provides in relevant part that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law . . . ."

The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

The Fourteenth Amendment of the United States Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . ."

Article first, § 8 of the Connecticut Constitution, as amended, provides in relevant part: "In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him . . . and in all prosecutions by information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law. . . ."

General Statutes § 54-1b provides: "Any accused, when he is arraigned before the superior court, shall be advised by a judge that he has a right to counsel, that he has a right to refuse to make any statement and that any statement he makes may be introduced in evidence against him. Each such person shall be allowed a reasonable opportunity to consult counsel."

Practice Book § 44-7 provides: "The defendant has *the right to be present at the arraignment*, at the time of the plea, at evidentiary hearings, at the trial, and at the sentencing hearing, except as provided in Sections 44-7 through 44-10. Whenever present, the defendant shall be seated where he or she can effectively consult with counsel and can see and hear the proceedings. . . ." (Emphasis added.)

Practice Book § 44-10 provides: "(a) Unless otherwise ordered by the judicial authority, a defendant need not be present in the following situations:

"(1) In proceedings involving a corporation, a corporation being able to appear by counsel for all purposes; (2) In prosecutions for offenses punishable by a fine in which the defendant pleads guilty or nolo contendere and pays the fine by mail; (3) At any argument on a question of law or at any conference, except a disposition conference pursuant to Section 39-13; (4) In proceedings involving a reduction of a sentence under Sections 43-21 and 43-22; and (5) In proceedings in which the defendant otherwise waives his or her right to be present.

"(b) If ordered to be present by the judicial authority or if required to be present for a disposition conference pursuant to subsection (a) (3) of this section the presence of the defendant may, in the discretion of the judicial authority and, in the case of such a disposition conference, with the consent of the defendant, be made by means of an interactive audiovisual device. Such

audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided."

Practice Book § 44-10A (2017) provides in relevant part: "(a) Unless otherwise ordered by the judicial authority, and in the discretion of the judicial authority, a defendant may be present by means of an interactive audiovisual device for the following proceedings:

"(1) Hearings concerning indigency . . .

"(2) Hearings concerning asset forfeiture, unless the testimony of witnesses is required; .

"(3) Hearings regarding seized property, unless the testimony of witnesses is required;

"(4) With the defendant's consent, bail modification hearings . . .

"(5) Sentence review hearings . . .

"(6) [With the consent of counsel, p]Proceedings under General Statutes § 54-56d (k) if the evaluation under General Statutes § 54-56d (j) concludes that the defendant is not competent but is restorable and neither the state nor the defendant intends to contest that conclusion;

(7) Arraignments, provided that counsel for the defendant has been given the opportunity to meet with the defendant prior to the arraignment.

"[(7)] (8) A disposition conference held in the judicial district court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference; and

"[(8)] (9) With the consent of counsel, a disposition conference held in the geographical area court pursuant to the provisions of Sections 39-11 through 39-17 when it is not reasonably anticipated that an offer for the final disposition of the case will be accepted or rejected upon the conclusion of the conference.

"(b) Such audiovisual device must operate so that the defendant, his or her attorney, if any, and the judicial authority can see and communicate with each other simultaneously. In addition, a procedure by which the defendant and his or her attorney can confer in private must be provided. . . ."[1]

1 Brackets indicate deletions and underlining indicates new language.

DISCUSSION

A. Arraignment is a Critical Stage of Criminal Proceedings

Videoconferencing can provide "most, if not all, of the hallmarks of an in-court proceeding" while providing ample savings in time and money. M. Johnson & E. Wiggins, "Videoconferencing in Criminal Proceedings: Legal and Empirical Issues and Directions for Research," 28 Law & Policy 212 (April, 2006). It also provides the substantial benefit of "enhanced safety of the courtroom." Zak Hillam, "Pleading Guilty and Video Teleconference: Is a Defendant Constitutionally 'Present' when Pleading Guilty by Video Teleconference?" 7 J. High Tech. L. 41, *3 (2007). However, because "the benefits of videoconferencing inure primarily to the government"; Johnson & Wiggins, supra, 219; it is crucial to ensure that a defendant's constitutional rights are preserved when such technology is used.

Videoconferencing in a criminal case implicates a defendant's right to due process and representation by counsel.[2] Id., 212, 214. The right to be personally present and to have counsel at all critical stages is a "fundamental tenet of criminal jurisprudence." *State* v. *Bonner,* 290 Conn. 468, 491, 964 A.2d 73 (2009). The right to be present is rooted in the Confrontation Clause of the Sixth Amendment. However, that right is also protected by the Due Process Clause, even in situations where the defendant is not actually confronting witnesses; *People* v. *Stroud,* 208 Ill.2d 398, 408, 804 N.E.2d 510 (2004); such as an arraignment.

It has been long recognized that a criminal defendant has the right to be present at "all critical stages" in a criminal proceeding. *State* v. *Strich,* 99 Conn. App. 611, 622, 915 A.2d 891, cert. denied, 282 Conn. 907, 920 A.2d 310, cert. denied., 552 U.S. 901, 128 S. Ct. 225, 169 L. Ed. 2d 171, (2007). "In judging whether a particular segment of a criminal proceeding constitutes a critical stage of a defendant's prosecution, courts have evaluated the extent to which a fair and just hearing would be thwarted by [the defendant's] absence or whether his presence has a relation, reasonably substantial, to the [fullness] of his opportunity to defend against the charge." (Internal quotation marks omitted.) *State* v. *Bonner*, supra, 290 Conn. 491–92.

In *Gonzalez* v. *Commissioner of Correction*, 308 Conn. 463, 482–83, 68 A.3d 624, cert. denied, 571 U.S. 1045, 134 S. Ct. 639, 187 L. Ed. 2d 445 (2013), our Supreme Court held that an arraignment was a critical stage of criminal proceedings. In arriving at that conclusion, our

2 Most preliminary proceedings do not involve the confrontation of witnesses, but the issue may arise when a

Supreme Court explained that in more recent cases, the United States Supreme Court "has not limited only *certain* arraignments to be critical stages." (Emphasis added; internal quotation marks omitted.) Id., 479. Indeed, the United States Supreme Court has acknowledged that "[c]ritical stages include arraignments, postindictment interrogations, postindictment lineups, and the entry of a guilty plea. *Missouri* v. *Frye*, [566 U.S. 134, 132 S.Ct. 1399, 1405, 182 L.Ed.2d 379 (2012)]." (Internal quotation marks omitted.) *Gonzalez* v. *Commissioner of Correction*, supra, 479.

Our Supreme Court explained that at an arraignment a defendant "must plead certain defenses and make certain requests or the opportunity is lost." Id., 480. A defendant is also advised of the charges against him or her and enters a plea. Id., 481; see Practice Book § 37-7. General Statutes § 54-1b provides that a defendant must be advised of certain important constitutional rights at arraignment, such as "a right to counsel, that [the defendant] has a right to refuse to make any statement and that any statement he makes may be introduced in evidence against him. Each such person shall be allowed a reasonable opportunity to consult counsel."

Even at a critical stage in the proceedings, a defendant's absence is not a per se constitutional violation unless "the record demonstrates that defendant's absence caused the proceeding to be unfair or if his absence resulted in the denial of an underlying substantial right." (Internal quotation marks omitted.) *People* v. *Stroud*, supra, 208 Ill.2d 405. "To show a constitutional violation of the right to be present, there must be evidence that defendant's due process rights were violated by his absence from the courtroom, i.e., that defendant's physical absence from the proceedings caused the proceedings to be unfair or that his physical absence from the proceedings resulted in the denial of an underlying constitutional right." (Internal quotation marks omitted.) Id., 405–406.

Thus, in *State* v. *Strich*, supra, 99 Conn. App. 616, our Supreme Court held that the defendant's removal from the courtroom during closing arguments did not violate his constitutional rights. After the defendant engaged in an outburst during the trial, the court asked the defendant if he could commit to listening to the rest of the trial quietly. He declined. Id., 617. The defendant was subsequently removed from the courtroom and placed in a holding cell equipped with a speaker system, where he could hear the prosecutor's closing argument and the

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prosecutor presents witness evidence on a preliminary issue, such as flight risk. Johnson & Wiggins, supra, 217.

charge to the jury. Id., 619, 623. Although the defendant's fifth amendment due process right to participate in the proceedings against him were implicated; id., 622; the court held that those rights were respected "by affording [the defendant] the opportunity through a closed circuit hookup, to hear the remainder of the trial . . . ." Id., 623.

An Illinois Supreme Court case, *People* v. *Stroud,* is particularly instructive because it dealt with the constitutionality of the entry of a guilty plea at an arraignment via closed-circuit television. The Illinois Supreme Court recognized earlier state precedent that the waiver of a jury trial and entry of a not guilty plea via closed-circuit television did not violate due process. *People* v. *Stroud*, supra, 208 Ill.2d 406 (discussing *People* v. *Lindsey*, 201 Ill.2d 45, 772 N.E.2d 1268 [2002]). The court in *Stroud* held that the defendant's entry of a guilty plea via closed-circuit television was constitutionally permissible "only if the defendant waives the right to physical presence on the record after being advised of his right to be present." *People* v. *Stroud*, supra, 409.

The court reasoned that a guilty plea was a decisive moment in criminal proceedings because it directly results in the defendant's conviction. A guilty plea rebuts the presumption of innocence. It waives the defendant's right to a jury and to confront witnesses. Id., 406. Because of the critical nature of a guilty plea, the court in *Stroud* explained that the courtroom can play "a critical, albeit intangible, role in the proceedings . . . ." Id. 407. The courtroom is more than just a location. The courtroom setting provides "an important element in the constitutional conception of trial, contributing to a dignity essential to the integrity of the trial process." (Internal quotation marks omitted.) Id. The court observed that in a televised appearance there is the possibility that certain crucial aspects of the defendant's appearance may be lost or misinterpreted, such as facial expressions and voice inflection. Id. The ability to immediately contact counsel may also be impeded, as well as access to "unmediated contact" with counsel. Id. Because the defendant in *Stroud* did not specifically waive his right to be physically present at his arraignment, the court held that his due process rights were violated. Id., 409.

In *Commonwealth* v. *Ingram*, 46 S.W.3d 569, 572 (2001)[3], the Kentucky Supreme Court held that "a properly functioning video arraignment is the equivalent of in-court arraignment." The relevant rules of Kentucky Criminal Procedure provided that: "Arraignment shall be

3Abrogated on other grounds by *Commonwealth v. Cayman,* 455 S.W. 3d 916 (2015).

conducted in open court and shall consist of reading or stating to the defendant the substance of the charge and calling upon the defendant to plead in response to it. . . . [Criminal Rule 8.02] (1) The defendant shall be present at the arraignment, at every critical stage of the trial including the empaneling of the jury and the return of the verdict, and the imposition of the sentence. [Criminal Rule 8.28]." (Internal quotation marks omitted.) *Commonwealth* v. *Ingram*, supra, 570. The Kentucky Supreme Court explained that those rules were broad enough to accommodate the use of closed-circuit television for arraignments. The judge and defendant were able to see and hear one another, and the television monitor allowed members of the public to observe the proceedings in open court. Id., 570–71.

In *State* v. *Miller*, 143 N.M. 777, 182 P.3d 158 (2008), the Court of Appeals of New Mexico vacated a no contest plea entered during a video conferenced arraignment, where the defendant did not waive his rights to appear physically in person. In *Miller*, the applicable rules of criminal procedure provided that the court shall not accept a no contest or guilty plea "'without first, *by addressing the defendant personally in open court,* informing the defendant of and determining that the defendant understands' the nature of the charge, the mandatory minimum and maximum possible penalties, that the defendant has the right to plead not guilty, and that by pleading no contest or guilty, the defendant waives the right to a trial. . . . Rule 6-502 (C) provides that the magistrate court shall not accept a no contest or guilty plea 'without first, *by addressing the defendant personally in open court,* determining that the plea is voluntary.'" (Emphasis in original.) Id., 781. The New Mexico Rules of Criminal Procedure also provided that a magistrate may require the appearance of a defendant via an audiovisual device during arraignment provided that the judge and defendant were able to communicate and see each other and that the proceedings be conducted in open court. Id. The Court of Appeals concluded that when read together, the rules did not permit a defendant to enter a guilty or no contest plea by audiovisual device, unless the defendant waived the right to appear in person. Id., 782–83. A defendant's personal appearance was considered a procedural safeguard to ensure that the plea was entered voluntarily. Id., 783. The court further explained that "[w]aiver also balances judicial efficiency and the protection of important rights." Id.

B. Recommendations for Rules of Practice Allowing Arraignment by Audiovisual Device with Waiver

The court in *Stroud* recognized that there were three schools of thought: one allowed defendants to plead guilty by closed-circuit television, the second did not allow a guilty plea by closed-circuit television, and the third allowed such a plea after a specific waiver by the defendant of the right to be present. See *People* v. *Stroud*, supra, 208 Ill.2d 409; see also Fed. R. Crim. P. 10 (c) ("[v]ideo teleconferencing may be used to arraign a defendant if the defendant consents").

Several sister states already have provisions that allow for arraignments by audiovisual device with consent. For example, in Missouri, the statutes make a distinction depending on whether a guilty or not guilty plea is entered. Section 561.031 of the Missouri Revised Statutes provides in relevant part: "[T]o the contrary notwithstanding, when the physical appearance in person in court is required of any person, such personal appearance may be made by means of two-way audio-visual communication, including but not limited to closed circuit television or computerized video conferencing; provided that such audio-visual communication facilities provide two-way audio-visual communication between the court and the person . . . (3) Arraignment on an information or indictment where a plea of not guilty is entered; (4) Arraignment on an information or indictment where a plea of guilty is entered *upon waiver of any right such person might have to be physically present* . . . ." (Emphasis added.)

Texas also allows arraignments by audiovisual device, with consent. Section 27.18 of the Texas Code of Criminal Procedure provides in relevant part: "(a) Notwithstanding any provision of this code requiring that a plea or a waiver of a defendant's right be made in open court, a court may accept the plea or waiver by [broadcast by closed circuit video teleconferencing to the court] videoconference to the court if: (1) the defendant and the attorney representing the state *file with the court written consent to the use of [closed circuit video teleconferencing]videoconference*; (2) the [closed circuit video teleconferencing system] videoconference provides for a simultaneous, compressed full motion video, and interactive communication of image and sound between the judge, the attorney representing the state, the defendant, and the defendant's attorney; and (3) on request of the defendant, the defendant and the defendant's attorney are able to communicate privately without being recorded or heard by the judge or the attorney representing the state. . . ."

(Emphasis added.) The defendant and his or her attorney is also permitted to withdraw their consent at any time. Tex. Code Crim. Proc. Ann. Art. 27.18 (b), amended Sept. 1, 2017.[4]

California includes very detailed provisions, including the text of a written waiver. See Cal. Penal Code § 977, as amended by A.B. 2397 (2014). An initial arraignment is permitted via audiovisual device except for felonies where there is a grand jury indictment. Oral waiver is permitted for noncritical portions of the trial where no testimony is taken. See Cal. Penal Code § 977 (c) (2) (A), as amended by A.B. 2397 (2014).

In Connecticut, Practice Book § 44-10 (b) allows a defendant to appear at a disposition conference via audiovisual device with the consent of the defendant. Similarly, under Practice Book § 44-10A (a) (4) if a defendant consents, he or she may appear via audiovisual device for a bail modification hearing. With counsel's consent, a defendant may appear by audiovisual device for certain competency hearings; see Practice Book § 44-10A (a) (6); or certain disposition conferences. See Practice Book § 44-10A (a) (8). Under Practice Book § 44-10A (b), the audiovisual device must allow the defendant, his or her attorney and the judge to "see and communicate with each other simultaneously." Procedures must also be in place to allow the defendant to confer with his or her attorney privately. Practice Book § 44-10A (b). Because these rules of practice provide for waiver of the right to appear physically for certain proceedings, a defendant should be able to similarly waive the right to physically be present at an arraignment with informed consent. To accommodate this, Practice Book § 44-10A (a) could be amended by adding a subsection (9) stating: "with the defendant's consent, arraignments." If a statutory cite is preferred, the amendment could read "with the defendant's consent, arraignments pursuant to General Statutes § 54-1b." (Recommendation was not implemented compare w/(2017) P.B. 44-10A (7).)

It also appears that Practice Book § 44-7 would need to be amended. That section provides in relevant part that "[t]he defendant has the right to be present at the arraignment, at the time of the plea, at evidentiary hearings, at the trial, and at the sentencing hearing, except as provided in Sections 44-7 through 44-10." If an exception is added to Practice Book § 44-10A, then "44-10A" should be substituted for "44-10" in the first sentence of § 44-7. (Recommendation was not implemented compare w/(2017) P.B. 44-10A (7).)

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4 Brackets indicate deletions and underlining indicates new language.