



Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated **JUNE 25, 2019**, which reads as follows:*

A.M. No. 19-05-05-SC

**“RE: PROPOSED GUIDELINES ON THE USE OF
VIDEOCONFERENCING TECHNOLOGY FOR THE REMOTE
APPEARANCE OR TESTIMONY OF CERTAIN PERSONS
DEPRIVED OF LIBERTY IN JAILS AND NATIONAL
PENITENTIARIES”**

RESOLUTION

WHEREAS, the in-court appearance of persons deprived of liberty (PDLs) considered to be high-risk or afflicted with highly contagious diseases has posed serious risks to the safety, security, lives, and health of not only the accused and those charged with transporting them between the jail and court, but of judges, court personnel, and the general public as well;

WHEREAS, the inability to travel to and physically appear in court of those PDLs afflicted with serious or grave medical conditions results in either the postponement of the proceedings or missed opportunities to be present and confront the witnesses against them;

WHEREAS, as a policy, PDLs committed in national penitentiaries are not allowed to be brought outside said penal institutions to appear or attend proceedings before any court,¹ resulting in either the waiver of their right to be present at any stage of trial, or the archival of the criminal case and suspension of the proceedings “until the Court shall have adopted the appropriate rules governing the continuation of proceedings where the accused refuses to waive his (or her) right to be present;”²

¹ November 19, 2013 Resolution in A.M. No. 13-11-07-SC.

² November 10, 2015 Resolution in A.M. No. 15-08-07-SC (*Re: Administrative Matter for Agenda Requesting the Transfer of Venue of Pending Case/s Wherein the Accused is Currently Detained at the National Penitentiary by Virtue of a Conviction in Another Case*).

WHEREAS, given the above, there is a need to provide measures to enable PDLs to appear and testify in court without having to leave the jail or national penitentiary;

WHEREAS, the use of videoconferencing technology has been widely accepted for the remote appearance or testimony of the parties in court proceedings, including PDLs;

WHEREAS, the Supreme Court has been employing modern technology, *e.g.*, using live-link television testimony in criminal cases where the witness or the victim is a child³ and the presentation of testimonial evidence through electronic means in both civil and criminal cases;⁴

WHEREAS, allowing the remote appearance or testimony of PDLs through videoconferencing will eliminate the risks posed by the in-court appearance of those considered to be high-risk or afflicted with highly contagious diseases, guarantee their rights to be present and confront witnesses against them, and ensure the continuity of proceedings in criminal cases;

WHEREAS, the Supreme Court *En Banc* has tasked Associate Justice Diosdado M. Peralta to draft the guidelines on the use of videoconferencing technology for the remote appearance and testimony in criminal cases;

WHEREAS, a Special Committee has been organized to draft the same guidelines, with Justice Diosdado M. Peralta as Chairperson, Court Administrator Jose Midas P. Marquez as Member, Associate Justice Alexander G. Gesmundo as Resource Person, Atty. Camille Sue Mae L. Ting and Atty. Ralph Jerome D. Salvador as Members of the Secretariat, and with the assistance of other legal staff from the Office of Justice Peralta and the Office of the Court Administrator;

WHEREAS, acting on the recommendation of Associate Justice Diosdado M. Peralta, as the Chairperson of the Special Committee, and in order to guarantee and preserve the constitutional rights of the accused in these proceedings, the Court resolves to **APPROVE** the following **Guidelines on the Use of Videoconferencing Technology for the Remote Appearance and Testimony of Certain Persons Deprived of Liberty in Jails and National Penitentiaries:**

³ November 21, 2000 Resolution in A.M. No. 004-07-SC (*Rule on Examination of a Child Witness*).

⁴ July 17, 2001 and September 24, 2002 Resolutions in A.M. No. 01-7-01-SC (*Rules on Electronic Evidence*).

**GUIDELINES ON THE USE OF VIDEOCONFERENCING
TECHNOLOGY FOR THE REMOTE APPEARANCE AND
TESTIMONY OF CERTAIN PERSONS DEPRIVED OF LIBERTY IN
JAILS AND NATIONAL PENITENTIARIES**

I. General Provisions

1. The rights of the accused to be present and defend in person at every stage of the proceedings, to testify as a witness in his or her own behalf, and to confront and cross-examine the witnesses against him or her at trial, are deemed satisfied when such appearance and testimony are made remotely through videoconferencing under these Guidelines.⁵
2. The remote appearance and testimony of an accused in a videoconference proceeding shall closely resemble his or her otherwise in-person courtroom testimony and experience.⁶
3. The dignity and solemnity in a videoconference proceeding shall be the same as those of an in-court proceeding. The remote location shall be viewed as an extension of the courtroom.⁷
4. The confidentiality of attorney-client communications shall always be preserved. The accused and his or her counsel shall be provided with a private means of communication at all times.⁸

II. Coverage and Applicability

These Guidelines shall cover the remote appearance and testimony in court proceedings of the following:

1. A person deprived of liberty (*PDL*) detained in a district, city, or provincial jail who -
 - a. is considered under these guidelines to be a high-risk or seriously-ill;

⁵ Based on 3A, New South Wales Evidence (Audio and Visual Links Act) 1998 No. 105, available at <https://www.legislation.nsw.gov.au/#/view/act/1998/105/full> (last accessed March 29, 2019).

⁶ Based on Ariz. R. Crim. P. 1.5

⁷ *Id.*

⁸ Based on G.A. Unif. Super. Ct. 9.2.

- b. voluntarily consents to appear remotely in court proceedings via videoconferencing, regardless of the crime he or she is charged with.
2. A national inmate committed in a national penitentiary by virtue of a previous conviction whose appearance or attendance is required in other judicial proceedings, whether as an accused or a witness, *provided* that in the case of an accused national inmate, he or she did not waive his or her right to be present at any stage of the trial.

These guidelines shall apply to all newly-filed and pending criminal cases, where applicable.

III. Definition of Terms

1. Criminal proceedings – refer to all stages of active and pending criminal proceedings, including but not limited to, arraignment, pre-trial, bail hearing, trial proper, and promulgation of judgment.
2. High-risk PDL – refers to a PDL who is:
 - a. charged with violation/s of the Human Security Act (R.A. 9372), or any other law penalizing terrorism and terrorism-related offenses;
 - b. charged with violation/s of the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and other Crimes Against Humanity (R.A. 9851); or
 - c. upon *ex parte* motion of the jail warden and subsequent determination by the court, considered a “high-value target” because of the considerable threat he or she poses to the security of the jail facilities, the court, or the community, the risk of escape or attempted escape, and other safety and welfare considerations in transporting him or her to and from the jail and courtroom. This includes, but is not limited to, suspected members of terrorist groups, both local and foreign, drug and other organized crime syndicates, etc.
3. National inmate⁹ – refers to a PDL sentenced by a court to a prison term exceeding three (3) years and committed in a national penitentiary.¹⁰

⁹ Sec. 3(t), Rule III, Revised Implementing Rules and Regulations (IRR) of Republic Act No. 10575, otherwise known as “*The Bureau of Corrections Act of 2013*.”

¹⁰ Item I, Resolution dated November 19, 2013 in A.M. No. 13-11-07-SC.

4. Person Deprived of Liberty (PDL) – refers to a detainee, inmate, or prisoner.¹¹
5. Seriously-ill PDL – refers to a PDL diagnosed with a serious or grave medical condition which would prevent him or her from being transported to the court for in-person hearing or trial, or a highly contagious disease, as duly certified by a court-approved physician.
6. Videoconferencing- refers to the use of video, audio, and data transmission devices to allow parties in different physical locations to simultaneously communicate by seeing and hearing each other.¹²

IV. Proceedings

1. *Remote appearance or testimony.* – Unless he or she waives his or her right to be present in court, a PDL considered to be high-risk or seriously-ill, or a national inmate, whose appearance or attendance is necessary in a judicial proceeding, whether as an accused or witness shall, upon order of the court, remotely appear or testify in court *via* videoconferencing.

Any other PDL, regardless of the crime charged, who voluntarily consents to remotely appear or testify in court *via* videoconferencing may do so upon proper motion to the court.

2. *High-risk PDL; procedure.* –

- a. In the case of a high-risk PDL under Item III, No. 2(a) and (b) of these guidelines, the court shall *motu proprio* require him or her to appear or testify remotely *via* videoconferencing at all times. Such requirement shall be stated in the commitment order setting the date and time of his or her arraignment and pre-trial.

During the arraignment and pre-trial *via* videoconferencing, the court shall ask the PDL whether he or she is waiving his or her right to be present at any stage of the trial. Should the PDL refuse to waive this right, the court shall require him or her to appear or

¹¹ Based on Sec. 3(u), Rule III, Revised IRR of R.A. No. 10575. The word “prisoner” was replaced with the new and neutral phrase “person deprived of liberty” found under Article 10, International Covenant on Civil and Political Rights” to prevent labeling, branding or shaming by the use of other derogatory words.

¹² See Bridging the Distance: Implementing Videoconferencing in Wisconsin, Wisconsin Supreme Court Planning and Policy Advisory Committee, Videoconferencing Subcommittee (August 2017), available at <https://www.wicourts.gov/courts/committees/docs/ppacvidconf.pdf> (last accessed February 5, 2019); Best Practices for Using Video Teleconferencing for Hearings and Related Proceedings, Center for Legal and Court Technology (2014), available at https://www.acus.gov/sites/default/files/documents/Draft_Best%2520Practices%2520Video%2520Hearings_10-09-14_1.pdf (last accessed February 5, 2019).

testify remotely *via* videoconferencing and set the dates and time of trial *via* videoconferencing in the arraignment and pre-trial order.¹³

For cases already pending upon the effectivity of these Guidelines, the court, during the next scheduled trial date, shall ask the PDL whether he or she is waiving his or her right to be present at any of the succeeding stages of trial. If the PDL refuses to waive this right, the court shall issue an Order requiring him or her to appear or testify remotely *via* videoconferencing for the rest of the proceedings. If the videoconferencing facility is unavailable during the hearing dates already set, the court shall set new dates and time of trial *via* videoconferencing in the same order.

b. In the case of a high-risk PDL defined under Item III, No. 2 (c) of these guidelines, the jail warden shall move *ex parte* for the court to consider the PDL as a high value target, stating the grounds therefor, and require him or her to appear or testify in court remotely *via* videoconferencing. The court shall resolve the motion within five (5) calendar days from receipt thereof.

Should the motion be filed and granted before arraignment and pre-trial have taken place, the date and time of arraignment and pre-trial *via* videoconferencing shall be indicated by the court in its Order granting the motion. During the arraignment and pre-trial, the court shall ask the PDL whether he or she is waiving his or her right to be present at any stage of the trial. Should the PDL refuse to waive this right, the court shall require him or her to appear or testify remotely *via* videoconferencing and set the dates and time of trial *via* videoconferencing in the arraignment and pre-trial order.

If the motion is filed and granted after arraignment and pre-trial have taken place, the court, during the next scheduled trial date, shall ask the PDL whether he or she is waiving his or her right to be present at any of the succeeding stages of trial. If the PDL refuses to waive this right, he or she shall appear or testify remotely *via* videoconferencing. If the videoconferencing facility is unavailable during the hearing dates already set, the court shall set new dates and time of trial *via* videoconferencing.

c. Objections to, or motions for reconsideration of the Order of the court requiring a high-risk PDL to appear or testify remotely *via* videoconferencing, shall be resolved by the court immediately after giving the adverse party an opportunity to comment on the

¹³ Required under the April 25, 2017 Resolution in A.M. No. 15-06-10-SC, otherwise known as the *Revised Guidelines for Continuous Trial of Criminal Cases*.

objection or motion. In no case shall the Order resolving the objection or motion for reconsideration be issued more than five (5) calendar days from the date the objection was raised or motion for reconsideration was received by the court.

d. Should the testimony of a high-risk PDL as a witness on behalf of another be necessary in a judicial proceeding, the concerned party shall move *ex parte* for the remote testimony of the PDL in court *via* videoconferencing. The court shall resolve the motion within five (5) calendar days from receipt thereof and set the dates and time of hearing *via* videoconferencing in the same order.

3. *Seriously-ill PDL; procedure.* – The jail warden shall move *ex parte* for the court to consider the PDL as seriously-ill, attaching thereto the certification of a court-approved physician, and require the PDL to appear or testify in court remotely *via* videoconferencing. The court shall resolve the motion within five (5) calendar days from receipt thereof.

Should the motion be filed and granted before arraignment and pre-trial have taken place, the date and time of arraignment and pre-trial *via* videoconferencing shall be indicated by the court in its order granting the motion. During the arraignment and pre-trial, the court shall ask the PDL whether he or she is waiving his or her right to be present at any stage of the trial. Should the PDL refuse to waive this right, the court shall require him or her to appear or testify remotely *via* videoconferencing and set the dates and time of trial *via* videoconferencing in the arraignment and pre-trial order.

If the motion is filed and granted after arraignment and pre-trial have taken place, the court, during the next scheduled trial date, shall ask the PDL whether he or she is waiving his or her right to be present at any of the succeeding stages of trial. If the PDL refuses to waive this right, he or she shall appear or testify remotely *via* videoconferencing. If the videoconferencing facility is unavailable during the hearing dates already set, the court shall set new dates and time of trial *via* videoconferencing.

Objections to, or motions for reconsideration of the Order of the court requiring a seriously-ill PDL to appear or testify remotely *via* videoconferencing, shall be resolved by the court immediately after giving the adverse party an opportunity to comment on the objection or motion. In no case shall the order resolving the objection or motion for reconsideration be issued more than five (5) calendar days from the date the objection was raised or motion for reconsideration was received by the court.

Should the testimony of a seriously-ill PDL as a witness on behalf of another be necessary in a judicial proceeding, the concerned party shall move *ex parte* for the remote testimony of the PDL in court *via* videoconferencing. The court shall resolve the motion within five (5) calendar days from receipt thereof and set the dates and time of hearing *via* videoconferencing in the same Order.

4. *Voluntary consent by PDL; procedure.* – A PDL, regardless of the crime charged against him or her, who wishes to appear or testify remotely *via* videoconferencing, shall file a motion in court requesting permission to do so. The court shall resolve the motion within five (5) calendar days from receipt thereof.

If the motion is filed and granted after arraignment and pre-trial have taken place, and the videoconferencing facility is unavailable during the hearing dates set in the arraignment and pre-trial order, the court shall set the new dates and time of trial *via* videoconferencing during the next scheduled trial date.

5. *National inmate; procedure.* – Upon proper manifestation to the court that the accused in a criminal case is a national inmate the court shall issue an order setting the date and time of arraignment and pre-trial *via* videoconferencing. During the arraignment and pre-trial, the court shall ask the national inmate whether he or she is waiving his or her right to be present at any stage of the trial. Should the national inmate refuse to waive this right, the court shall require him or her to appear or testify remotely *via* videoconferencing and set the dates and time of trial *via* videoconferencing in the arraignment and pre-trial order.

Should the testimony of a national inmate as a witness on behalf of another be necessary in a judicial proceeding, the concerned party shall move *ex parte* for the remote testimony of the PDL in court *via* videoconferencing.

6. *Preparatory arrangements for videoconferencing.* – The concerned personnel of the court and the jail shall always conduct a videoconference test in advance of the proceedings to resolve any technical problem and ensure a proper and clear audio-video connection between the court and the jail.¹⁴

The jail warden shall ensure that the PDL is ready and available at the videoconference room of the jail at least thirty (30) minutes before the scheduled time. No other recording device shall be

¹⁴ Based on the Video Conferencing Guidelines Issued by the Hight Court of Delhi, available at http://www.nja.nic.in/CJ-CM_Resolution/Delhi_HC/Video%20Conferencing%20Guidelines%20issued%20by%20DHC.PDF

permitted inside the videoconference room and entry thereto shall be regulated.¹⁵

7. *Indication in the case record.* - All remote court appearances or testimony done *via* videoconferencing shall be indicated in the court record.¹⁶
8. *Location of the defense counsel; facilities for private communication.* - At the option of the PDL, which shall be made on record at the start of the proceeding, the defense counsel may be physically present with him or her at the jail or physically present in court. In either instance, the PDL and his or her counsel shall be provided with facilities or means to privately communicate with each other throughout the entire videoconference proceeding.¹⁷
9. *Party speaking always within view and range.* - The court shall ensure that any person testifying or speaking to the court from a remote location is within camera view and microphone range at all times so that he or she can be seen and heard by those physically present in the courtroom. Likewise, the same shall be ensured for those speaking or testifying physically in the courtroom so that he or she can be seen and heard by those appearing remotely from another location.¹⁸
10. *Interpreters.* - During proceedings where foreign, local dialect, or sign language interpreters are utilized, the court shall ensure and monitor that the interpreter can clearly see and hear those persons who are testifying or speaking. The interpreter may interrupt the proceedings if the language becomes inaudible¹⁹ or the video unclear.
11. *Facilities for documents and object evidence.* - There shall be means by which documents can be electronically transmitted between the courtroom and the jail.²⁰ Documents provided to a PDL who physically appears in court shall similarly be made available to one who remotely appears in court. A copy of the Information should be provided the PDL in advance of the videoconference proceeding.

Object evidence must be clearly observable by all parties.

¹⁵ *Id.*

¹⁶ Based on Rule 18.01, Oconto County Circuit Court Rules (Wisconsin).

¹⁷ Based on (former) Rule 1.6, Arizona Rule of Criminal Procedure, Best Practices for Videoconferencing.

¹⁸ *Id.*

¹⁹ *Id.* at Sec. 16.

²⁰ Based on 885.54, Wisconsin Statute.

12. *Discontinuation of videoconference proceeding.* - The court, in its discretion, may suspend the videoconference proceeding when there are technical issues which would affect its fairness or if matters should arise warranting the PDL's physical appearance in the courtroom.²¹
13. *Transcript of videoconference proceeding.* - The videoconference proceeding shall be transcribed by the stenographer, or other recorder authorized for the purpose, who shall certify as to the correctness of the transcript. The transcript should indicate that the proceeding was done *via* videoconferencing.²²
14. *Recording and storage of videoconference proceeding.* - The proceeding shall be recorded by the court and form part of the record of the case. An encrypted master copy shall be retained by the court as part of the case records, while a backup copy shall be stored in a safe location. Parties may be allowed to view the master copy of the recording upon application with and approval of the court.²³

V. Technical and Operational Standards

1. *Minimum requirements for videoconferencing technology.* - Technology for court and jail facilities must be of such quality as to allow participants to observe the demeanor and non-verbal communications of other participants, clearly see and hear what is taking place in the courtroom to the same extent as if they were present in the courtroom,²⁴ and converse with each other simultaneously.²⁵ The PDL and his or her counsel appearing remotely from the jail should be able to see clearly the facial expressions of the judge, the witnesses, and all other persons who are testifying or speaking, and vice-versa.

Video cameras, microphones, and high definition monitors that are sufficient in specifications, size, number, and placement, shall be used for this purpose.²⁶

- a. *Video cameras in the courtroom.* - Video cameras must be placed and positioned in such a way so as to cover the same image the PDL at the remote location would see if he or she were physically present in the courtroom. The court shall

²¹ *Id.*

²² Based on Sec. 2, Rule 10, Rules on Electronic Evidence.

²³ *Id.*

²⁴ Based on 885.54, Wisconsin Statute (Technical and Operational Standards).

²⁵ Based on Rule 1.6, Arizona Rule of Criminal Procedure, Best Practices for Videoconferencing.

²⁶ *Id.*

ensure that the line of sight of all video cameras are clear of any obstacles.

- b. *Video cameras in the detention center.* – Video cameras must face the PDL and his or her counsel, if the latter is physically present with the accused in the jail. Their placement should allow eye-to-eye contact between the PDL and the concerned party in the courtroom. The court shall, at all times, have the ability to move the video camera in the detention center and zoom in on any particular feature of the PDL, upon the direction of the judge.
 - c. *Microphones in the courtroom.* - Each speaking location in the courtroom shall have a microphone. These shall be connected to an audio processing device that provides echo-cancellation and improves sound quality.
 - d. *Audio system and speakers in the courtroom.* – An audio system must be connected to the videoconferencing equipment. Audio speakers should be directly connected to the audio system to reduce latency and improve sound quality. There shall be sufficient audio speaker coverage to enable all those participants in the courtroom to clearly hear the PDL and/or his or her counsel appearing remotely from another location.
 - e. *Video monitors.* - Video monitors or screens must be in high definition and large enough for everyone to clearly see the video image, which should be as close to life size as possible.
 - f. *Means for viewing or hearing physical or documentary evidence, exhibits, and documents.* - All parties must be able to see, hear, and otherwise observe any physical or documentary evidence or exhibits presented during the proceedings, either by video, email, visualizer or other method.²⁷
2. *Room, lighting, acoustics, furniture and décor.* - The Office of the Court Administrator, the Bureau of Jail Management and Penology, the Bureau of Corrections, or the local government units, as the case may be, shall ensure that the room, lighting, acoustics, and furniture design and décor of the courtroom and videoconferencing room at the jail are optimal and appropriate for videoconferencing purposes.
3. *Support and maintenance personnel.* – There shall be dedicated personnel both in the court and in the jail to operate, maintain,

²⁷

Based on Rule 15.2, Georgia Uniform Rules of the Municipal Court

troubleshoot and repair the videoconferencing equipment and manage the network.

4. *Technical Training.* – Judges and concerned court personnel shall undergo training on these Guidelines, the basic principles of videoconferencing, and simple operation of the videoconferencing equipment to ensure familiarity with the Guidelines and technology.

VI. Pilot Testing

These Guidelines shall be pilot tested for a period of not more than two (2) years between the following:

1. Davao City Hall of Justice and the Davao City Jail;
2. Davao City Hall of Justice and the Special Intensive Care Area (SICA), Camp Bagong Diwa, Bicutan; and
3. Davao City Hall of Justice and the New Bilibid Prison, Muntinlupa City.

Thereafter, the Office of the Court Administrator shall submit a report on this project.

VII. Posting

These Guidelines shall be posted at all floors of the Davao City Hall of Justice, and offices of the concerned penal facilities and the Integrated Bar of the Philippines and other Bar associations.

VIII. Effectivity

These Guidelines shall take effect on 1 September 2019 following its publication in two (2) newspapers of general circulation.

June 25, 2019.

(Original Signed)
LUCAS P. BERSAMIN
Chief Justice



June 25, 2019

(Original Signed)
ANTONIO T. CARPIO
Associate Justice

(Original Signed)
DIOSDADO M. PERALTA
Associate Justice

(Original Signed)
MARIANO C. DEL CASTILLO
Associate Justice

(Original Signed)
ESTELA M. PERLAS-BERNABE
Associate Justice

(Original Signed)
MARVIC M.V.F. LEONEN
Associate Justice

(On wellness leave)
FRANCIS H. JARDELEZA
Associate Justice

(Original Signed)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(Original Signed)
ANDRES B. REYES, JR.
Associate Justice

(Original Signed)
ALEXANDER G. GESMUNDO
Associate Justice

(Original Signed)
JOSE C. REYES, JR.
Associate Justice

(Original Signed)
RAMON PAUL L. HERNANDO
Associate Justice


(Original Signed)
ROSMARI D. CARANDANG
Associate Justice

(Original Signed)
AMY C. LAZARO-JAVIER
Associate Justice

(Original Signed)
HENRI JEAN PAUL B. INTING
Associate Justice

(adv10)

Very truly yours,


EDGAR O. ARICHETA
Clerk of Court 