



COMMONWEALTH of VIRGINIA

Keith N. Hurley
Chief Judge
Thomas L. Vaughn
Judge
James J. O'Connell, III
Judge
Pamela O'Berry
Judge
Matthew D. Nelson
Judge

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April 15, 2020

To: All Parties

From: Chief Judge  Keith N. Hurley

Date: April 15, 2020

Re: Electronic audio-visual and telephonic communication

Pursuant to notice dated April 10, 2010 from the Chief Justice of the Supreme Court to all Judges and Clerks, and effective immediately:

“To the extent authorized by law and with the consent of all parties, attorneys and witnesses, a court may, in the exercise of its sound discretion, conduct any civil or criminal matter by two-way electronic audio-visual communication system using a secure communication platform such as Polycom or WebEx, or by telephone.”

Please note that the use of technology is subject to its availability and subject to the restrictions in place by the “Order Extending Declaration of Judicial Emergency in Response to Covid-19 Emergency.”

Attached you will find statutes relating to the use of technology provided in the “Pandemic Influenza Bench Book for Virginia’s Court System,” Revised July 2017. This is intended as guidance, not advice. You should check for any updates to those statutes. Also note that 19.2-3.1 allows for the use of two-way electronic video and audio communication “prior to trial” only.

To request a hearing contact Robin Jarrett, the Judges’ Secretary at rjarrett@vacourts.gov

See attached Code Sections regarding use of technology.

- **Va. Code § 37.2-1109. Use of electronic communication.** “Petitions and orders for emergency custody and temporary detention pursuant to Va. Code § 37.2-1103 or § 37.2-1104 may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.” “A judge or special justice may conduct proceedings pursuant to this chapter [Judicial Authorization of Treatment] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.

2. Hearings

a. Quarantine and Isolation

- **Va. Code § 17.1-503. Rules of practice and procedure; rules not to preclude judges from hearing certain cases.** “In its rules of practice and procedure for the circuit courts, the Supreme Court shall include rules relating to court decisions on any order of quarantine or isolation issued by the State Health Commissioner . . . that shall ensure, to the extent possible, that such hearings are held in a manner that will protect the health and safety of individuals subject to any such order of quarantine or isolation, court personnel, counsels, witnesses, and the general public.”
- **Va. Code § 32.1-48.010. Appeal of any order of quarantine.** “The court shall conduct the hearing on an appeal of an order of isolation in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503.”
- **Va. Code § 32.1-48.013. Appeal of any order of isolation.** “The court shall conduct the hearing on an appeal of an order of isolation in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503.”

b. Civil

- **Va. Code § 16.1-93.1. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a general district court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § 16.1-276.3. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a juvenile and domestic relations district court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § 17.1-513.2. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.** This section allows a circuit court to conduct any civil proceeding, in which a party or witness is incarcerated or when otherwise authorized by the court, using telephonic communication or electronic audio and video communication system to provide for the appearance of any parties and witnesses.
- **Va. Code § 20-88.59. Special rules of evidence and procedure.** This section provides that “[i]n a proceeding under this chapter, a tribunal of the Commonwealth shall permit a party or witness residing outside the Commonwealth to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of the Commonwealth shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.”
- **Va. Code § 20-146.10. Taking testimony in another state.** “A court of this Commonwealth may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state.”
- **Va. Code § 63.2-1523. Use of videotaped statements of complaining witnesses as evidence.** “In any civil proceeding involving alleged abuse or neglect of a child pursuant to this chapter or pursuant to Va. Code §§ 16.1-241, 16.1-251, 16.1-252, 16.1-253, 16.1-283 or § 20-107.2, a

recording of a statement of the alleged victim of the offense, made prior to the proceeding, may be admissible as evidence" if certain requirements are met and certain determinations are made.

c. Criminal

- **Va. Code § 19.2-3.1. Personal appearance by two-way electronic video and audio communication; standards.** This section provides standards for and permits use of a two-way electronic video and audio communication system for appearances before a magistrate, intake officer or, prior to trial, before a judge to determine bail and appointment of counsel. Documents transmitted by facsimile or other electronic method will have the same force and effect as the originals.
- **Va. Code § 19.2-82. Procedure upon arrest without warrant.** As used in this section, the term "brought before a magistrate or other issuing authority having jurisdiction" shall include any two-way electronic video and audio communication meeting the requirements of Va. Code § 19.2-3.1. Any documents filed may be transmitted by facsimile.

d. Detention

- **Va. Code § 16.1-250. Procedure for detention hearing.** For a detention hearing, the appearance of the child, the attorney for the Commonwealth, the attorney for the child and the parent may be by two-way electronic video and audio communication. Any documents filed may be transmitted by facsimile.
- **Va. Code § 16.1-255. Limitation on issuance of detention orders for juveniles; appearance by juvenile.** This section provides that a child may appear before an intake officer using two-way electronic and audio communication. Any documents filed may be transmitted by facsimile.
- **Va. Code § 16.1-260. Intake; petition; investigation.** This section provides that a child may appear before an intake officer by means of two-way electronic video and audio communication. Any documents filed may be transmitted by facsimile, and may be served and returned with the same effect as an original.
- **Va. Code § 16.1-285.2. Release and review hearing for serious offender.** This section provides that a child may appear for a hearing using two-way electronic and video communication. Any documents filed may be transmitted by facsimile.

e. Emergency Protective Orders

- **Va. Code § 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.** The section allows law enforcement to request an EPO or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.
- **Va. Code § 19.2-152.8. Emergency protective orders authorized.** The section allows law enforcement to request an EPO or an extension of an EPO orally, in person or by electronic means, and allows the judge or magistrate to issue an oral emergency protective order.

f. Mental Health

- **Va. Code § 16.1-342. Involuntary commitment; clinical evaluation.** “The evaluator, if not physically present at the hearing, shall be available whenever possible for questioning during the hearing through a two-way electronic video and audio or telephonic communication system.”
- **Va. Code § 16.1-344. Involuntary commitment; hearing.** Upon objection to the evaluator’s report, the evaluator shall attend the hearing in person or by electronic means. An employee or designee of the community services board who arranged for the evaluation shall participate in the hearing through a two-way electronic video and audio or telephonic communication system, if physical attendance is not practicable.
- **Va. Code § 16.1-345.1. Use of electronic communication.** “Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signature.” “A judge may conduct proceedings pursuant to this article [Psychiatric Inpatient Treatment of Minors Act] using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses.” A witness’ testimony may be received using a telephonic communication system.