

Jeremy Thiesfeldt

STATE REPRESENTATIVE • 52nd ASSEMBLY DISTRICT

Assembly Bill 199

Conducting Juvenile Proceedings by Telephone or Audiovisual & Appearance at any Criminal Proceeding by Telephone or Audiovisual

Good morning, Chairman Spiros and honored members of the Committee. I'm here to testify on Assembly Bill 199, a bill that specifies that juvenile proceedings may be conducted by telephone or live audiovisual means if available. The bill also expands the circumstances in which telephone or audiovisual means may be used in criminal proceedings, by allowing a court to permit any criminal proceeding to be conducted by such means upon the request of either party.

In today's COVID-19 world, we have seen some of the benefits and even sometimes the necessities of switching from in-person meetings to telephone and video. The same is true with our court proceedings. Other states are already allowing for this, and there can be many benefits for both sides to use telephone and video for court proceedings.

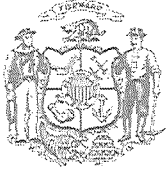
There is an amendment to the bill that was introduced and passed in the full Senate and we have now introduced that same amendment in the Assembly. The amendment was worked on in consultation with the State Public Defenders Office and, according to Legislative Council, the amendment states that, for juvenile proceedings, the court may conduct any hearing by telephone or live audiovisual means upon its own motion, or the motion of the juvenile or the prosecutor. However, if the juvenile or prosecutor objects to the use of telephone or live audiovisual means for a critical stage of the proceedings, the court must sustain the objection. For all other objections to the use of telephone or live audiovisual means, the court must consider certain current law factors related to the use of videoconferencing technology when determining whether to sustain or overrule the objection.

Similarly, with respect to criminal proceedings, the amendment authorizes a court to permit any criminal proceeding to be conducted by telephone or live audiovisual means if both parties consent to do so. Specifically, the amendment allows a court to conduct proceedings by telephone or live audiovisual means, if available, upon its own motion or the motion of any party, but requires a court to sustain any objection to the use of telephone or live audiovisual means for a critical stage of the proceedings. For any other objections to the use of telephone or live audiovisual means, the court must consider certain current-law factors related to the use of videoconferencing technology when determining whether to sustain or overrule the objection.

This bill already made its way through the Senate. It passed the Senate Committee on a unanimous 7-0 vote, and it passed the full Senate on a bipartisan voice vote.

The State Public Defenders Office and the Wisconsin District Attorneys Association strongly support this bill as amended, and I urge your support as well. Thank you.

Serving the communities of Fond du Lac, Oakfield, Byron, Empire, Taycheedah, and the western half of Calumet township



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*Testimony before the Assembly Committee on Criminal Justice and Public Safety
State Senator André Jacque
August 25, 2021*

Chairman Spiros and Committee Members,

Thank you for holding this hearing on Assembly Bill 199.

AB 199 updates current law relating to juvenile and adult criminal case proceedings to allow for the use of remote telephonic and live audiovisual interaction. While the need for these changes has certainly been on full display due to changes to court operations during the COVID-19 pandemic, it is important to note that several states had already adopted more expansive use of technological advances for court appearances on a permanent basis without requiring an emergency order, and we have received support from many stakeholders within Wisconsin's court system for incorporating available communications technology infrastructure to enhance court operations.

In addition to the effect of reducing transportation costs and other efficiencies, this legislation will also allow for defendants to enter pleas, accept plea deals, receive sentencing, deal with interstate detainer proceedings, and allow individuals to enter treatment more quickly. For example, juveniles who wish to make admissions and enter a treatment facility are currently precluded from doing so electronically, and have been personally appearing in empty courtrooms in some cases. They should also be allowed to do so by telephonic or audiovisual means.

This proposal is supported by the Wisconsin District Attorneys Association.

Thank you for your consideration of Assembly Bill 199.



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Assembly Committee on Criminal Justice and Public Safety
Assembly Bill 199
Wednesday, August 25, 2021

Good morning Mr. Chair & Members,

The State Public Defender (SPD) would like to thank the authors, Representative Thiesfeldt and Senator Jacque, for their work on Assembly Bill (AB) 199 and particularly the amendment.

Following the public hearing on the companion bill in the Senate, the authors expressed a willingness to work on an amendment to address concerns that were raised at the hearing. What is now Assembly Amendment 1 to AB 199 has taken into account those concerns and has broad support from the SPD and others. Senate Bill 219 received a unanimous vote in committee and on the floor with the amendment.

Ensuring that the defendant has the ability to request an in-person court appearance at critical stages of the proceeding was the primary concern for the SPD. The amendment takes that into account by allowing for videoconferencing at all court proceedings, but giving defendants the ability to request an in-person hearing at critical stages of the case. This balances constitutional rights of the defendant with the efficiency that videoconferencing can bring at certain more ministerial hearings.

Again, we appreciate the ability to work with the authors on this amendment and SPD supports the bill as amended.

If you have any questions, please feel free to contact Adam Plotkin, Legislative Liaison at 608-264-8572 or plotkina@opd.wi.gov.



TO: Chair Spiros, Vice-Chair Horlacher, and Honorable Members of the Assembly
Committee on Criminal Justice and Public Safety

FROM: Amanda Merkwae, Legislative Advisor

DATE: August 25, 2021

SUBJECT: 2021 Assembly Bill 199

The Department of Children and Families (DCF) is the state agency responsible for oversight of the community-based youth justice system. The vision of Wisconsin's youth justice system includes a focus on prevention, diversion, and the provision of accountability and services to youth and families in the system. This vision is guided by **DCF's commitment to ensuring all youth have the tools to thrive in adulthood.**

When a child under age 17 is involved in the formal court process under the Juvenile Justice Code (Chapter 938), it is critical that the youth is able to understand what is happening during court hearings, able to build positive relationships with system actors and service providers, and able to have a voice in proceedings that impact their lives and liberty interests. DCF reviewed Assembly Bill 199 with these considerations in mind and will be testifying for information.

As it relates to proceedings under Chapter 938, AB-199 would permit any party to participate in a plea hearing by telephone or live audiovisual means in which a juvenile intends to admit to the facts of a delinquency petition. Further, AB-199 would specify that proceedings under Chapter 938 may be conducted by telephone or live audiovisual means unless good cause to the contrary is shown, and that any action taken by the court or any party in such a proceeding has the same effect as if made in court.

As demonstrated by courts across the state that operationalized phone and Zoom hearings throughout the COVID-19 pandemic, virtual options in some circumstances can contribute to greater equity and efficiency in the court process. For example, the ability for youth and parents or caregivers to participate in some hearings by phone or live audiovisual means can mitigate challenges related to court scheduling, transportation costs, unnecessary school and employment absences, and child care issues.

In assessing the appropriateness of continuing this practice moving forward, it is important to **illustrate what the experience of navigating the court process is like for youth both in-person and virtually**. Often, even aspects of in-person hearings in delinquency and JIPS cases can be difficult for youth to meaningfully participate in and understand. Decades of neuroscience research, recognized by the U.S. Supreme Court, highlight the profound difference between youth and adults regarding emotional regulation, impulsivity, foresight and planning, anticipation of outcomes, problem-solving, and reading and oral comprehension skills.

When youth appear in court, they may struggle to differentiate between the differing roles held by each of the adults in the courtroom, grasp the purpose of each stage of the proceedings, or appreciate the significance of their decision to waive a particular right. Effective assistance of counsel requires the ability for confidential and privileged attorney-client communication to occur and—for youth in particular—the ability for ongoing attorney-client communication to occur throughout the duration of a court hearing. At in-person hearings, Further, significant aspects of rapport building between a youth, judge, and other system actors take place before, during, and after an in-person hearing. This can have a significant impact on a youth's understanding and trust in the system and the goals of that system. A youth's in-person interactions with the court also help to preserve the fairness and solemnity of the court process.

Youth in delinquency proceedings are entitled to due process protections under the Fourteenth Amendment, including the constitutional right to be physically present at hearings in which their presence would contribute to the fairness of the proceeding. Virtual hearings have several limitations that can present concerns related to due process and constitutionally effective assistance of counsel for youth. Even if a youth and their attorney are both in the same Zoom courtroom, there can be a constructive denial of counsel if the attorney cannot provide timely and confidential consultation to the youth. For example, in a trial or other evidentiary hearing held virtually, a youth is unable to confidentially and simultaneously communicate with their attorney while a witness is testifying on direct or cross examination.

DCF supports the proposed statutory change in Section 1 of the bill to allow a virtual hearing option in a circumstance where a youth intends to admit the facts of the delinquency petition. This change may allow youth to expediently proceed to the disposition phase in a case to allow for the transition to a particular dispositional placement or for treatment services to begin.

Ultimately, the department appreciates the additional flexibility this proposal will provide to youth, families, and other parties engaged in the court process. In light of the unique challenges that virtual hearings can present for youth and the fundamental rights and liberty interests at stake in many proceedings under Chapter 938, the department would recommend that this committee adopt Assembly Amendment 1 to AB-199. This amendment clarifies that if a youth (or prosecutor) objects to the use of telephone or live audiovisual means for a critical stage of the proceedings, that a court shall sustain that objection, preserving a youth's choice for an in-person hearing.

Thank you for the opportunity to testify about this legislation.