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# Wisconsin Legislative Council

## ACT MEMO

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### 2021 Wisconsin Act 141 [2021 Senate Bill 219]

### Conducting Court Proceedings by Telephone or Audiovisual Means

2021 Wisconsin Act 141 expands the circumstances in which court proceedings may be conducted using telephone or audiovisual (AV) means under the Juvenile Justice Code and the state Criminal Code.

## CRIMINAL PROCEEDINGS

State law generally permits the use of videoconferencing technology in any pre-trial, trial, or post-trial proceeding, but a court must sustain any objection against the use of videoconferencing in a proceeding for which a defendant is entitled to be physically present, such as trials and sentencing hearings. Prior law also authorized specific types of proceedings that occur within criminal cases to be conducted by telephone or live AV means at either party's request, unless good cause to the contrary is shown.

The act authorizes a court to conduct any proceeding in a criminal case by telephone or live AV means if both parties consent to do so. Specifically, the act allows a court to conduct proceedings by telephone or live AV means upon its own motion or the motion of any party. However, if any party objects to the use of telephone or live AV means for a critical stage<sup>1</sup> of the proceedings, the court must sustain the objection. For any other objections to the use of telephone or live AV means, the court must consider the criteria in s. 885.56, Stats., relating to the use of videoconferencing technology, when determining whether to sustain or overrule the objection.

## JUVENILE PROCEEDINGS

Under prior law, the Juvenile Justice Code authorized any party to participate in a plea hearing by telephone or live AV means, except a juvenile who intends to admit the facts of a delinquency petition. Prior law also authorized, upon request, use of telephone or live AV means for admitting testimony on the record at specific types of hearings, such as dispositional hearings or hearings on changes in placement or other revisions to a dispositional order, unless a party shows good cause to the contrary.

The act expands the authority to use telephone or live AV means in juvenile proceedings, by allowing the juvenile court to conduct any hearing by telephone or live AV 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 AV means for a critical stage of the proceedings, the court must sustain the objection. Similar to criminal proceedings, for all other objections to the use of telephone or live AV means, the court must consider the criteria in s. 885.56, Stats., relating to the use of videoconferencing technology, when determining whether to sustain or overrule the objection.

**Effective date:** March 6, 2022.

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<sup>1</sup> The Wisconsin Supreme Court has held that a defendant has “the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.” [*State v. Alexander*, 2013 WI 70 ¶22 (quoting *Kentucky v. Stincer*, 482 U.S. 730, 745 (1987)).]