

2019 HOUSE JUDICIARY

HB 1147

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1147
1/14/2019
30732

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to the location of a proceeding before a municipal judge and the use of reliable electronic means.

Minutes:

1, 2,3

Chairman K. Koppelman: Opened the hearing on HB 1147.

Rep. Lefor: Introduced the bill. (Attachment #1) It attempts to bring municipal courts into Went over the bill. (:40-5:30)

Chairman K. Koppelman: By suggesting a possible amendment for a mileage limit you are not advocating adjudicating cases yacht in the Caribbean electronically?

Rep. Hanson: Supreme Court rules say a case could be heard by telephone or through the IT system. We have about 45 IT systems that are maintained by the state and a few by the county. Would they use a state owned IT system versus a telephone or would they purchase it?

Rep. Lefor: I don't have the answer to that. The judges don't have confidence in doing it this way without statutory rules.

Paul Hamers: Municipal Judge of Gackle and Napoleon. Executive Board member of the ND Municipal Judges Association. (Attachment #2) (7:04-8:15)

Rep. Rick Becker: A defendant and his attorney might not be aware of this.

Paul Hamers: In our executive board meeting we discussed this. We felt that the clause of the proposal that required agreement by all parties would be that protection. Similar of how a municipal judge might disclose his knowledge of one of the individuals appearing before him. If everyone agrees to the use of the electronic media, then it would be used. If there is one party that does not agree then we would do it the traditional face to face with him.

Rep. Jones: I assume the may portion in the bill covers this.

Paul Hamers: Always air on the side of the defendant and those whose reputation is at stake.

Chairman K. Koppelman: What is the requirement for municipal judges. They are typically attorney's in our larger communities. In the smaller communities is that not the case?

Paul Hamers: That is true. Cities with a jurisdiction of under 5,000 may have a non-bar member be their judge. I have been at this for nine years. I have a master degree and well versed in a lot of things but I am not a member of the bar.

Stephanie Dassinger, Deputy Director and attorney for the ND League of Cities: Went over testimony. (Attachment #3) I think there is cost saving potential for our smaller cities to be able to share judges and save on travel costs. We would support this bill.

Chairman K. Koppelman: Are there any requirements of residency for municipal judges?

Stephanie Dassinger: If the city has a population of 5,000 there is a residency requirement. The cities with a population under that can chose to impose a regulation that the judge must live within the city, but it is not required by century code.

Opposition: None

Hearing closed.

Do Pass Motion Made by Representative Satrom: Seconded by Rep. Magrum

Discussion:

Roll Call Vote: 13 Yes 0 No 1 Absent Carrier: Rep. Roers Jones

Chairman K. Koppelman: There was an amendment suggested for a mileage limit. What are the wishes of the committee?

Rep. Rick Becker: Can they administratively set their own mileage limit?

Stephanie Dassinger: I don't think it is necessary. I don't foresee the judges abusing that. It is an option to allow that protection.

Rep. Magrum: I think that is the intent of this bill is if people are far away and have to appear in court, they can handle it over the internet so I don't know if you would want a mileage on that.

Rep. McWilliams: Would this open up the possibility of judge shopping?

Chairman K. Koppelman: It would be where the judge and witnesses would be located.

Closed.

Date: 1-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
HB 1147

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By SATrom Seconded By MAGrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo	✓	
Vice Chairman Karls	ADT		Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 13 No 0
Absent 1
Floor Assignment Rep. Roers Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1147: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1147 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1147

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1147
3/5/2019
#33190 (16:20)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 40-18 of the North Dakota Century Code, relating to the location of a proceeding before a municipal judge and the use of reliable electronic means.

Minutes:

3 Attachments

Chair Larson opens the hearing on HB 1147. Senator Osland was absent.

Mike Lefor, District 37 Representative, testifies in favor (see attachment #1)

Senator Myrdal: I notice that in subsection 2, any of the parties may object to it. Does that objection apply to subsection 3 as far as doing it electronically?

Representative Lefor: Yes. That is my recollection as to how this process would work is if for any reasons inconvenient for anyone, it won't be held that way.

(4:50) Stephanie Dassinger, Deputy Director and attorney for the ND League of Cities, testifies in favor (see attachment #2)

Senator Myrdal: Does subsection 3 fall under the authority of subsection 2? If a participant doesn't want it electronically, do they have that right?

Dassinger: I don't think the way it's written, it falls under subsection 1. I didn't have the opportunity to look up what rule 52 actually says, but I would suspect there are safeguard provisions in there for a defendant or another party that's uncomfortable with the electronic hearing process.

Senator Bakke: Do each of the municipal judges have access to electronic devices to do this? Does it have to be visual or can it simply be a conference call?

Dassinger: The language is contemporaneous audio or audiovisual so it could be a conference call if that's a reliable method. You're not looking at using this for a trial; it's more for setting bond and those initial appearances. Anything where there is going to be evidence presented in an actual trial, that will have to be done in person.

Vice Chairman Dwyer: To Senator Myrdal's question, I think we would have to change a few words if we were going to require a party to agree to electronic hearings because 2 just talks about venue.

Dassinger: I agree that subsection 1 as far as objecting doesn't govern subsection 3 here. It does require that it be held in accordance with rule 52 of the ND supreme court. I want to double check that to see if that has a safety provision in it, and if so that would apply.

Senator Bakke: Would we need to put something in here to say that it can't be done in the case of a trial? I know most of us would assume they would know that, but I don't want to leave that assumption hanging out there.

Chair Larson: Our intern has provided us with Rule 52 (**see attachment #3**)

(10:35) Joseph Jensen, UND Law Intern, neutral party

Jensen: This is a copy of rule 52 that was mentioned in the bill and testimony. As far as I can see, it does not have that kind of safety provision where you can object to it, but you do need prior approval to conduct it by the electronic means, so the parties would have some sort of protection there.

Senator Bakke: Do we need something in the bill that says that this electronic means cannot be used in the case of a trial?

Vice Chairman Dwyer: I think we need a moment to review rule 52.

Senator Myrdal: On rule 52 section 2 under B, it says "a party wishing to use reliable electronic means must obtain prior approval from the court after providing notice" so it's the other way around, it's one of the parties doing it, but if the judge says we're doing it by electronic means, that's what we need to find out. I want to make sure that the parties are agreeable to that, that we have a provision for that.

Senator Luick: That's what it says, that both parties have to be in agreement.

Representative Lefor: I worked with legislative counsel in drafting this, and working with the municipal judges, that was part of this. That's why it refers to rule 52 meaning that if any party objects, they can't move forward with it. That's the intent of this bill.

Dassinger: Our goal is for the municipal courts to be treated precisely like the supreme and other courts. They've had this rule for quite some time, and to my knowledge there hasn't been issues with it. I think all of the district and municipal judges I've worked with, if someone

has a problem with an electronic hearing, they would accommodate it and do it in person. They certainly don't want to see an appeal based on the fact that they didn't comply with the requests to hold it electronically. We would be resistant to adding something that's different from what's already in the supreme court rule. If the supreme court sees issues, they have a process to change the rules, so if it becomes a court-wide issue, they have the ability to change that.

Senator Luick: Where did we end up on the trial issue that Senator Bakke had brought up earlier? Is that something that needs to be incorporated into here?

Dassinger: It's not something that will happen because you're presenting evidence, and I can't imagine a judge taking evidence that way. You might have a witness call in and testify electronically, but I don't know how it would work to have a judge, the attorneys and the defendant not in the same room for a hearing.

Chair Larson closes the hearing on HB 1147.

Chair Larson: We'll come back to this later today.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1147
3/5/2019
#33242 (2:50)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 40-18 of the North Dakota Century Code, relating to the location of a proceeding before a municipal judge and the use of reliable electronic means.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1147. Senator Osland was absent.

Stephanie Dassinger, ND League of Cities

Dassinger: On rule 52 section 4 it lists what type of proceedings can be used by electronic means, and trial does not appear in that list. Also there are a number of procedural protections for defendants for criminal proceedings if an electronic type proceeding is being looked at. I think you're covered under rule 52.

Chair Larson: Rule 52 is mentioned right in there.

Dassinger: Yes.

Senator Myrdal: Motions for a Do Pass.

Vice Chairman Dwyer: Seconds.

A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Senator Luick will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1147: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1147 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

HB 1147

#1
HB 1147
1-24-19
pg 1

Good Morning, Chairman Koppelman and members of the House Judiciary Committee, my name is Mike Lefor and I serve District 37 - Dickinson in the North Dakota House. HB 1147 attempts to bring Municipal Courts in the state into the electronic age.

Subdivisions 1 and 2 of the bill relate to a municipal judge holding hearings in locations outside the city where he or she is a municipal judge. This is more of a concern for small city courts. Some judges would like to hold hearings and see people who are near the jail, for example the county courthouse, for security reasons. This would require the city to have an agreement with the county or other city whose facilities are being used. There has been some informal discussion regarding having distance limitations, we would be amendable having limitations placed on this.

There are also situations where a judge is the municipal judge of a smaller city, but also the judge of a larger city, likely where the defense attorneys and prosecuting attorneys are also located. The bill would make it clear that judge could hold a hearing in the larger city, which would certainly be more convenient for the judge, prosecuting attorney and defense attorney.

Additionally, there are a number of judges who are the municipal judge in more than one smaller city. This would allow the judge to hold a hearing for a case arising out of the ordinances of one city in any of the other cities which he or she serves, when the situation warrants it. This has potential cost saving benefits for cities because it would enhance cities' ability to share municipal judges and travel costs.

The bill provides that a judge cannot change the location of proceedings if any party objects. This provides protection for individuals who want to appear but do not live in the community where the violation occurred and might lose time from their job versus a ten minute hearing electronically.

We suspect the Supreme Court might want to limit to this authority to move the hearing. My understanding is the league of cities is working with the judges to determine what that distance might be. They will follow me and will be better able to address that issue.

In subsection three, it adds specific language in the Century Code that municipal judges can use electronic means for hearings. Municipal judges are typically not full time. They all have scheduled court days, but court issues can arise at any time. This may include persons being held in jail on new charges who must be seen by a judge, prosecuting attorneys who need a warrant, defense attorneys might need the judge to take some action or the clerk of court needing the judge to address some issue. All of these can be accomplished by electronic means.

The Supreme Court has rules allowing hearings to be held through electronic means, however, municipal judges are also created and regulated by statute, the judges are not comfortable with relying purely on Supreme Court rules for allowing them to hold proceedings by electronic means, they would like to have it clarified in statute.

#1
HB1147
1-17-19
pg 2

Basically, this bill brings Municipal Courts into the twenty first century and allows them to function as many courts throughout the country have done for many, many years. I would respectfully request a do pass recommendation from this committee and I would be happy to answer any questions.

Chairman and Members
North Dakota House Judiciary Committee

#2
HB 1147
1-14-19
Pg 1

January 14, 2019

Chairman,
Ref: HB 1147

I am Paul Hamers, the Municipal Judge for the cities of Gackle and Napoleon. I am an Executive Board member of the North Dakota Municipal Judges Association and appear before you today on behalf of the association.

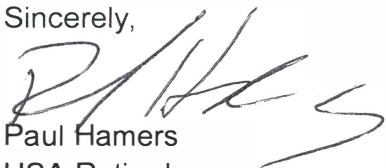
Municipal judges often serve multiple communities spread out over several miles and sometimes several counties. HB 1147 would allow conducting court business through the use of electronic means. This is not to say that all court business would be conducted over the internet or through skype, but in select cases it would be officially recognized as an acceptable method for parties to have their cases adjudicated in a timely manner.

Judges already hold court proceedings, arraignments in particular, through the use of closed circuit television. The courts are currently authorized to utilize linguistic interpreters via telephone and internet. On occasion the courts consult with expert witnesses utilizing various means of telecommunications.

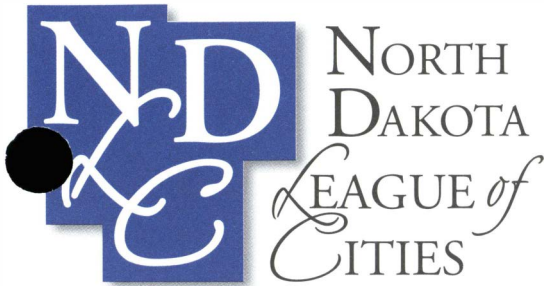
HB 1147 is intended to be an extension of the court's ability to adjudicate cases expediently when the circumstances of time and distance interfere with all parties coming together for a traditional court appearance. HB 1147 is not intended to authorize a permanent "internet based" municipal court system.

Please feel free to contact me directly by cellphone 701-400-0085, or email paul.hamers@napoleon.k12.nd.us.

Sincerely,



Paul Hamers
USA Retired
Municipal Judge



3
HB 1147
1-14-19
Pg 1

January 14, 2019

House Judiciary Committee
HB 1147

Chairman Koppelman and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities. The League has also been working alongside the Municipal Judges Association on this bill.

I appear before you today to express the League's support of HB 1147 due to the efficiency and cost-saving potential it provides to cities and municipal courts.

Subsections 1 and 2 of the bill allow a municipal judge to move a hearing to a more convenient location. Several of the medium to small cities that I work with do not have an attorney living in the city anymore. As a result, those cities look to attorneys in larger cities to fill their city legal positions, such as of the municipal court judge and city prosecuting attorney. Often, the defense attorney also lives in the larger city. Many of the municipal court judges also serve multiple cities.

This change would allow the court hearings for several cities be held in the same city, saving on travel time and travel costs. We have heard some concerns about placing a limitation on the distance where hearings can be moved. The League be open to an amendment that puts a cap on the distance that the hearing can be moved.

Subsection 3 of the bill specifically allows municipal court judges to hold hearings through electronic means. North Dakota Supreme Court rules already allow courts to hold hearings electronically but since municipal courts are created by statute, the judges have expressed the desire of having the assurance of it being in Century Code. The ability to hold hearings utilizing the use of electronics is vital to the ability for municipal courts to conduct business.

For these reasons, the League urges the committee to vote DO PASS on HB 1147.

Thank you for your time and consideration.

Good Morning, Chair Larson and members of the Senate Judiciary Committee, my name is Mike Lefor and I serve District 37 - Dickinson in the North Dakota House. HB 1147 attempts to bring Municipal Courts in the state into the electronic age.

Subdivisions 1 and 2 of the bill relate to a municipal judge holding hearings in locations outside the city where he or she is a municipal judge. This is more of a concern for small city courts. Some judges would like to hold hearings and see people who are near the jail, for example the county courthouse, for security reasons. This would require the city to have an agreement with the county or other city whose facilities are being used. There has been some informal discussion regarding having distance limitations, we would be amendable having limitations placed on this.

There are also situations where a judge is the municipal judge of a smaller city, but also the judge of a larger city, likely where the defense attorneys and prosecuting attorneys are also located. The bill would make it clear that judge could hold a hearing in the larger city, which would certainly be more convenient for the judge, prosecuting attorney and defense attorney.

Additionally, there are a number of judges who are the municipal judge in more than one smaller city. This would allow the judge to hold a hearing for a case arising out of the ordinances of one city in any of the other cities which he or she serves, when the situation warrants it. This has potential cost saving benefits for cities because it would enhance cities' ability to share municipal judges and travel costs.

The bill provides that a judge cannot change the location of proceedings if any party objects. This provides protection for individuals who want to appear but do not live in the community where the violation occurred and might lose time from their job versus a ten minute hearing electronically.

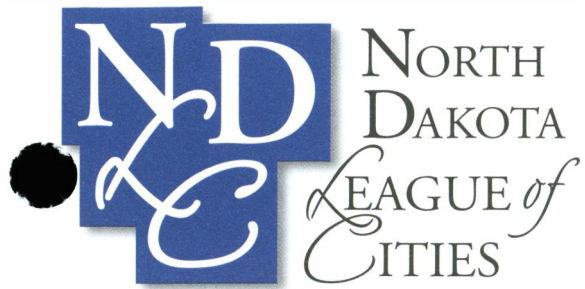
We suspect the Supreme Court might want to limit to this authority to move the hearing. My understanding is the league of cities is working with the judges to determine what that distance might be. They will follow me and will be better able to address that issue.

In subsection three, it adds specific language in the Century Code that municipal judges can use electronic means for hearings. Municipal judges are typically not full time. They all have scheduled court days, but court issues can arise at any time. This may include persons being held in jail on new charges who must be seen by a judge, prosecuting attorneys who need a warrant, defense attorneys might need the judge to take some action or the clerk of court needing the judge to address some issue. All of these can be accomplished by electronic means.

The Supreme Court has rules allowing hearings to be held through electronic means, however, municipal judges are also created and regulated by statute, the judges are not comfortable with relying purely on Supreme Court rules for allowing them to hold proceedings by electronic means, they would like to have it clarified in statute.

#1
HB 1147
3.5.19

Basically, this bill brings Municipal Courts into the twenty first century and allows them to function as many courts throughout the country have done for many, many years. I would respectfully request a do pass recommendation from this committee and I would be happy to answer any questions.



#2
HB 1147
3.5.19

March 5, 2019

Senate Judiciary Committee
HB 1147

Chair Larson and members of the committee, for the record I am Stephanie Dassinger, deputy director and attorney for the North Dakota League of Cities. The League has also been working alongside the Municipal Judges Association on this bill.

I appear before you today to express the League's support of HB 1147 due to the efficiency and cost-saving potential it provides to cities and municipal courts.

Subsections 1 and 2 of the bill allow a municipal judge to move a hearing to a more convenient location. Several of the medium to small cities that I work with do not have an attorney living in the city anymore. As a result, those cities look to attorneys in larger cities to fill their city legal positions, such as of the municipal court judge and city prosecuting attorney. Often, the defense attorney also lives in the larger city. Many of the municipal court judges also serve multiple cities.

This change would allow the court hearings for several cities be held in the same city, saving on travel time and travel costs. Subsection 2 also prevents moving the court proceeding if any party to the proceeding objects to the move.

Subsection 3 of the bill specifically allows municipal court judges to hold hearings through electronic means. North Dakota Supreme Court rules already allow courts to hold hearings electronically but since municipal courts are created by statute, the judges have expressed the desire of having the assurance of it being in Century Code. The ability to hold hearings utilizing the use of electronics is vital to the ability for municipal courts to conduct business.

For these reasons, the League urges the committee to vote DO PASS on HB 1147.

Thank you for your time and consideration.



STATE OF NORTH DAKOTA
COURTS

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#3
HB 1147
3.5.19
Pg. 1

Administrative Rule 52 - CONTEMPORANEOUS TRANSMISSION BY RELIABLE ELECTRONIC MEANS

Effective Date: 3/1/2019

Section 1. Purpose and Definition.

This rule provides a framework for the use of contemporaneous audio or audiovisual transmission by reliable electronic means in North Dakota's district and municipal courts. This rule is intended to enhance the current level of judicial services available within the North Dakota court system through the use of reliable electronic means and not in any way to reduce the current level of judicial services.

Section 2. In General.

- (A) Subject to the limitations in Sections 3, 4 and 5, a district or municipal court may conduct a proceeding by reliable electronic means on its own motion or on a party's motion.
- (B) A party wishing to use reliable electronic means must obtain prior approval from the court after providing notice to other parties.
- (C) Parties must coordinate approved reliable electronic means proceedings with the court to facilitate scheduling and ensure equipment compatibility.
- (D) Each site where reliable electronic means are used in a court proceeding must provide equipment or facilities for confidential attorney-client communication.
- (E) A method for electronic transmission of documents must be available at each site where reliable electronic means are used in a court proceeding for use in conjunction with the proceeding.

Section 3. Civil Action.

In a civil action, a district or municipal court may conduct a hearing, conference, or other proceeding, or take testimony, by reliable electronic means.

Section 4. Criminal Action.

- (A) In a criminal action, a district or municipal court may conduct a hearing, conference, or other proceeding by reliable electronic means, except as otherwise provided in Section 4 (B).
- (B) Exceptions.
 - (1) A defendant may not plead guilty nor be sentenced by reliable electronic means unless the parties consent.
 - (2) A witness may not testify by reliable electronic means unless the defendant knowingly and voluntarily waives the right to have the witness testify in person.
 - (3) An attorney for a defendant must be present at the site where the defendant is located unless the attorney's participation by reliable electronic means from another location is approved by the court with the consent of the defendant. In a guilty plea proceeding, the court may not allow the defendant's attorney to participate from a site separate from the defendant unless:
 - (a) the court makes a finding on the record that the attorney's participation from the separate site is necessary;
 - (b) the court confirms on the record that the defendant has knowingly and voluntarily consented to the attorney's participation from a separate site; and
 - (c) the court allows confidential attorney-client communication, if requested.

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HB 1147
3-5-19
pg. 2

Section 5. Revocation of Probation Proceedings for Out of State Offenders.

(A) When a petition for revocation of probation has been issued for a probationer who is in another state and who has been sentenced by a court having jurisdiction in the other state to a period of incarceration, a North Dakota district court may conduct the revocation of probation hearing by reliable electronic means. Before a district court may conduct a revocation of probation hearing by reliable electronic means for a probationer serving a sentence of incarceration in another state, the district court shall:

- (1) confirm on the record that the probationer has knowingly and voluntarily consented to a revocation of probation hearing by reliable electronic means; and
- (2) confirm on the record that the probationer has knowingly and voluntarily consented to the probationer's attorney's representation from a site separate from the probationer; and
- (3) allow the probationer opportunity for confidential attorney-client representation.

(B) If the district court orders probation be revoked, the district court shall state on the record whether the period of incarceration imposed by the other state fully or partially satisfies the sentence imposed by the district court.

Section 6. Mental Health Proceeding.

(A) In a mental health proceeding, a district court may conduct a proceeding by reliable electronic means and allow the following persons to appear or present testimony:

- (1) the respondent or patient;
- (2) a witness;
- (3) legal counsel for a party.

(B) Notice, Objection, and Waiver.

(1) Notice. Before holding any mental health proceeding by reliable electronic means, the court must give notice to the petitioner and the respondent. The notice must:

- (a) advise the parties of their right to object to the use of reliable electronic means;
- (b) inform the respondent that the proceedings may be recorded on video and that, if there is an appeal, the video recording may be made part of the appendix on appeal and is part of the record on appeal.

(2) Objection.

- (a) Reliable electronic means may not be used in a mental health proceeding if any party objects. The respondent must be given the opportunity to consult with an attorney about the right to object to the use of reliable electronic means.
- (b) If the respondent fails to make an objection or fails to make a timely objection to the use of reliable electronic means, the court may nevertheless continue the proceeding for good cause.
- (c) If the proceeding is continued, the respondent will continue to be held at the facility where the respondent was receiving treatment or, at the choice of the treatment provider in a less restrictive setting, until a face-to-face hearing can be completed.
- (d) A face-to-face hearing must be scheduled to occur within four days, exclusive of weekends and holidays, of the date the objection was made, unless good cause is shown for holding it at a later time.

(3) Waiver. Upon mutual consent of the parties, and with the approval of the court, notice requirements in a mental health proceeding may be waived to allow for the conduct of proceedings without prior notice or with notice that does not conform to Section 5 (B) (1).

Explanatory Note ▼

Version History ▼