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**Research on Videoconferencing at Post-Arrest Release
Hearings:
Phase I Final Report
Executive Summary**

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Dr. Seri Irazola served as the project director from the project's start date (November 2013) until September 2014. In this role, she oversaw the earlier phases of the project, led two workgroup meetings, created instruments, conducted a site visit, and worked on initial report planning and drafting.

Expert Workgroup Members

A special thank you is extended to the expert workgroup members who not only participated in three meetings to share their insight, but who also provided the researchers, Federal partners, and additional meeting stakeholders with material, ongoing information, and suggestions for this report. Following is a list of the expert workgroup members:

- Samuel Benedict**, Regional Attorney Manager, Wisconsin State Public Defender
- Kevin Bowling**, Court Administrator/Attorney Referee, Ottawa County, Michigan
- Chief Justice Ronald D. Castille**, Supreme Court of Pennsylvania
- Thomas Clarke**, Vice President of Research and Technology, National Center for State Courts
- Amelia Cramer**, Chief Deputy Pima County Attorney, Pima County Attorney's Office
- Honorable Jonathan P. Hein**, Common Pleas Court, Darke County, Ohio
- John W. Johnson**, Captain, Miami-Dade Corrections and Rehabilitation
- Carol Mitchell**, Court Access Specialist, Arizona Administrative Office of the Courts
- Steven Siegel**, Director of Special Programs Unit, Denver District Attorney's Office
- Randy Whitman**, Case Manager, Maine Pretrial Services, Inc.

Executive Summary

Introduction

As local governments contend with growing budget constraints and expanding criminal justice costs, they are increasingly turning to technological solutions and alternatives in an effort to mitigate criminal justice expenditures, maintain efficiency, and promote public safety. The use of videoconferencing technology in criminal justice settings has served as a powerful asset to criminal justice stakeholders; however, there is still much to learn regarding the mechanics of these systems and their broader implications. Recognizing the complex challenges and nuances of implementing such technology, as well as the diverse interests at stake, the National Institute of Justice (NIJ) funded the Research on Videoconferencing at Post-Arrest Release Hearings project (NIJ Videoconferencing Project). The project is jointly supported by NIJ's Office of Research and Evaluation, and the Office of Science and Technology. NIJ seeks to identify protocols that improve practices and maximize return on investment using videoconferencing to expedite judicial decision-making concerning whether to release a defendant from custody and the appropriate conditions of release, including bail. The current study compiles information on current and past videoconferencing applications through interviews, observations, and input from a panel of experts in the field of videoconferencing to identify key concerns and protocols for implementation.

Background and Understanding

Over the past three decades, the jail inmate population in the United States has grown steadily (Minton, 2011; 2013; all references are available on page 6). In recent years, the use of videoconferencing technology has become increasingly common in the legal system (Diamond, Bowman, Wong, & Patton, 2010). Videoconferencing is the interactive use of technology to transmit audio, visual, and other data so that two or more parties can communicate with one another (Supreme Court of Wisconsin, 2005). Videoconferencing has the potential to: reduce security issues and costs associated with transporting inmates from jail to court; alleviate jail overcrowding and reduce the number of pretrial inmates housed in local jails that do not pose a threat to public safety; provide a useful tool for rural jurisdictions that may otherwise struggle to meet time standards for pretrial release hearings; increase defendant, public, and court staff security; and improve overall efficiency of legal proceedings (Forsythe, 1999; Mahoney, Beaudin, Carver III, Ryan, & Hoffman 2001; Supreme Court of Wisconsin, 2005; Wiggins, 2004).

POTENTIAL ISSUES IN VIDEOCONFERENCE USE FOR ARRAIGNMENT HEARINGS

While such programs have helped some jurisdictions to increase efficiencies in the courtroom and can potentially broadly impact local criminal justice systems, there is also recognition that implementation of this technology is dependent on many considerations and potential drawbacks that must be taken into account. Prominent arguments against the use of videoconferencing in criminal proceedings discuss violations of defendants' constitutional rights and restrictions on the Sixth Amendment right to counsel (Diamond et al., 2010). Both substantive and procedural due process concerns also arise due to the

remote and sometimes perceived impersonal nature of video proceedings (e.g., the defendant's physical presence in the courtroom is critical for making judgments of his or her credibility and competence—United States v. Algere, 2005; Diamond et al., 2010). Other concerns include lack of access or experience with the technology, discomfort with using the technology, system errors that can impede communication, and poor visual or audio quality which may limit communication between defendants and defense counsel (Bellone, 2013). Finally, increased speed of processing of defendants through videoconferencing must be balanced with constitutional and statutory rights of victims to be notified and participate in the criminal justice process. The legal and technological challenges and concerns raised about videoconferencing technology demonstrate the need to better understand the mechanics of this technology, how it actually works in practice, and its broader implications for local criminal justice systems.

Design and Methodology¹

The NIJ Videoconferencing Project, to be conducted in three phases, was initiated by NIJ to address five main research questions:

1. What are the working standards for conducting and recording videoconferences, archiving and making files accessible, and addressing issues associated with video court transcripts?
2. How do the defendant, victim/witness, jail, and court respond to the videoconferencing protocol?
3. How are processes (access to counsel and court interpreters), short-term outcomes (release decision), and long-term outcomes (failure to appear) affected?
4. What is the impact in terms of jail days, court hearing continuations, failure to appear unit follow-ups, law enforcement warrant service, and so forth?
5. What are the cost implications of implementation and maintenance?

Phase I of the study included compilation of information on past and current videoconferencing applications through interviews and court/jail observations to identify key concerns and challenges for videoconferencing protocols. Phase II of the NIJ Videoconferencing Project will include implementation and assessment studies in two pilot sites. Based on field experience and through qualitative and quantitative data collection and analysis, the videoconferencing protocol will be modified. Phase III will include an evaluation of the final protocol and will include a cost-efficiency study over an extended period of time. The current report reflects the work conducted in Phase I of this project, carried out by ICF through four tasks. First, ICF assisted NIJ in establishing and coordinating the expert workgroup, as well as the planning and facilitation of three expert

¹ It should be noted that the review of planning, implementation, and implications of videoconferencing was limited to adult, criminal pretrial release hearings for the purposes of developing protocol to expedite hearings for defendants held pretrial.

workgroup meetings. Second, ICF developed interview and observational site visit protocols and submitted these protocols for institutional review board (IRB) approval. Third, ICF worked with NIJ to identify and select site visit jurisdictions, schedule observational site visits, and conduct site visits in two videoconferencing settings. Fourth, ICF prepared the final report and executive summary for Phase I of the project.

Expert Workgroup Meetings

NIJ convened three expert workgroup meetings throughout Phase I of this project. The expert workgroup included a range of experts in implementation, planning, and management of videoconferencing. Expert workgroup meetings included: presentations by participants on specific videoconferencing systems, policies, and practices; review and discussion of Phase I site visit protocols; review of observations from the first videoconferencing site visit; review and feedback on the final report outline; discussion on videoconferencing implementation issues and solutions; and discussion about Phases II and III of the NIJ's Videoconferencing Project.

Data Collection Instruments

ICF created the site visit interview and observation instruments. Instruments were reviewed by NIJ and the expert workgroup and were approved by ICF's IRB and NIJ's Human Subjects Protection Officer. These instruments included interview protocols for court personnel, defendants, defense attorneys, and other stakeholders. Interviews gathered a range of information including: duration of the videoconferencing program; the context of program implementation (e.g., eligible cases and populations for videoconferencing); program funding and resources; system planning and governance; program implementation policies (e.g., data security and storage, disaster or emergency plans); and experiences and perceptions of the videoconferencing experience (e.g., quality of the process, suggestions for improvement). The researchers used a structured observation protocol to gather information on aspects of the videoconference such as video and audio quality, videoconference setup, and challenges experienced.

Site Visits

ICF visited two sites that conduct pretrial release hearings through videoconferencing with the purpose of observing the technology in action and understanding the collaboration between various agencies in criminal justice to organize videoconferencing hearings. Researchers observed and collected information from both sides of the videoconference (i.e., in the court and in the jail) to observe ease of communication, technology setup, and any challenges with the remote hearing. Researchers also interviewed individuals who engaged with the videoconferencing technology to describe their experiences and the benefits and challenges of these hearings.

Synthesis of Data and Final Report

Following the site visits and expert workgroup meetings, ICF synthesized information from previous project activities and prepared the final project deliverables. NIJ and the expert workgroup reviewed and provided feedback on report outline prior to drafting. Final

deliverables for this project consisted of a final project report with findings from Phase I of the project, as well as this executive summary.

Findings

Findings include a synthesis of information presented by experts in videoconferencing with a wide range of experiences and viewpoints on the technology. The expert workgroup, including participants from the courtroom and jail side of a videoconference, came to the project with varied perspectives. In particular, three experts presented their experiences and expertise on videoconferencing. One expert spoke from the perspective of the court during pretrial release hearings; another spoke from the perspective of the jail; and the final presentation focused on the technology implemented in courts.

Key themes related to videoconferencing implementation—considerations and potential challenges—emerged through expert workgroup meetings, site visit observations, and interviews with videoconferencing participants from detention and courtroom settings. The following provides a summary of key considerations for implementation and planning videoconferencing identified through Phase I activities.

- **Videoconferencing implementation and planning** (e.g., sources of funding; collaboration among key stakeholders; sustainability planning; governance and administration roles and responsibilities; system maintenance; offsetting costs with other technology uses)
- **Training and staff needs** (e.g., cross-training of individuals to minimize disruption due to staff turnover; dedicated staff; judicial leadership and buy-in)
- **Security considerations** (e.g., password protection and encryption of data; physical security and storage of videoconferencing equipment)
- **Decorum** (e.g., traditional versus videoconferencing environments and procedures; ability to maintain eye contact and communicate clearly; ability for defendant to fully participate and understand the nature of the proceedings)
- **Audio and video equipment** (e.g., clarity, quality, views, and controls of technology; bandwidth of videoconferencing system)
- **Accommodating court and jail procedures and restrictions** (e.g., safety procedures for moving inmates to and from videoconferencing rooms)
- **Inclusion of victims as a part of the videoconferencing process for post-arrest release** (e.g., whether to include victim notifications at post-arrest stages of court procedures)
- **Defendant's rights and accommodating special needs** (e.g., interpreter services for both spoken and sign languages, accommodating persons in

hospitals; ability of defendant to understand proceedings and ask questions of defense counsel while communicating remotely; privacy considerations)

- **Court document imaging and sharing** (e.g., availability and capacity to share document imaging in videoconferencing settings)
- **Storing, archiving, and use of videoconferencing data** (e.g., whether data should be included as part of official court record)

Discussion and Implications

This project marks an important first step toward developing a well-informed and balanced understanding of the current state of practice in the field for conducting pretrial release hearings through video technology. Many stakeholders have noted both the promise and shortcomings of videoconferencing technology in the courtroom; however, there is a lack of research-based guidance on how these limitations can be overcome to receive the full benefit of technology integration in criminal justice proceedings. This project sets the stage for future study phases and a more rigorous investigation of the impacts of videoconferencing technology in pretrial release hearings. Key areas for greater investigation and consideration include the following:

- Technological considerations such as software and transmission capacity; video and audio capacity (e.g., quality and clarity of images and sound); physical setup of technology; storage and security of videoconferencing equipment; ability of court and detention settings to address and mitigate challenges with technology; and intended use of videoconferencing data (e.g., recording, storage, legal uses)
- Preimplementation considerations such as costs of planning, implementing, and sustaining videoconferencing in post-arrest settings; understanding and measuring cost offsets; implications for improved public safety; capacity in rural versus urban areas; populations to be served through the technology; protection of civil liberties; and inclusion of victims in post-arrest videoconferencing
- Program implementation concerns such as collaboration and cross-system buy-in; governance and administrative rules and policies; and staffing and training needs

Conclusions

Phase I of the project, outlined in this report, marks an important first step toward developing a well-informed understanding of the needs, challenges, requirements, and practices for conducting pretrial release hearings through video technology. Phase I findings set the stage for future study phases and more formative (Phase II) and rigorous (Phase III) investigation of both the implementation and impact of videoconferencing technology in release hearings on system and individual outcomes, including the impact of videoconferencing on system costs. Potential benefits to the use of videoconferencing are substantial. They include decreased staff/personnel time (to travel to and from detention and court settings), decreased transportation costs (for moving inmates from

detention to court settings), off-sets in costs with alternative uses for videoconferencing equipment costs, increased security of inmates and detention and court staff, decreased medical costs (due to reduced exposure to other inmates in close confines of transport), reduced offsite meal costs, and increased overall efficiency of procedural hearings. Phase I, however, has also identified specific areas where challenges in implementation may arise. The current report illustrates key areas for consideration for further research on videoconferencing at post-arrest release hearings.

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