

# VIDEO ARRAIGNMENT: AFTER THE PANDEMIC

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**CITIZENS'  
ECONOMY  
&  
EFFICIENCY  
COMMISSION**  
LOS ANGELES COUNTY  
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The Commission's mission is to examine any function of County government at the request of the Board of Supervisors, on its own initiative, or as suggested by others, and to submit recommendations to the Board which will improve local government economy, efficiency, and effectiveness.

# Video Arraignment: After the Pandemic

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## **Executive Summary**

Despite numerous attempts and countless number of hours coordinating meetings and efforts with justice partners over the past developing remote policies, ironing out logistical issues, overcoming cultural inertia, and advocating for video technology, it wasn't until the public health crisis that forced all the justice partners to work together and held courts remotely so the legal system can continue to function.

The Covid-19 pandemic has led to an enormous increase in using technology in the courtroom. While at first this was a temporary solution in response to a health crisis, now, as the rate of infections and hospitalizations are trending down, signaling an eventual return to more normalcy, using videoconferencing technology has also become increasingly common for conducting both administrative and civil proceedings, as well as selected procedural misdemeanor hearings and appearances.

While video conferencing technology has been a valuable tool during the Covid-19 pandemic, and the use of videoconferencing technology in criminal justice settings continues to offer the potential to serve as a cost-effective alternative to the physical transportation of inmates to court for arraignment, 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 of broad stakeholders, the Commission embarked on a report to highlight the successes of conducting a virtual court and to identify lingering challenges that policymakers have to contend with should video arraignment become a permanent option of our justice system

This final report is organized into five sections. The Introductory section provides a glimpse into the role of technology during the health crisis. The Background and Goals section includes a historical overview of video conferencing in Los Angeles County. The Data Gathering section lists the main sources used for this study. The Findings and Recommendations section outlines the study's discoveries and suggestions for actions. The four recommendations are:

1. Recommendation 1: That the courts consider expanding the use videoconferencing for non-criminal cases.
2. Recommendation 2a: That the courts consider videoconferencing for some procedural criminal hearings.
3. Recommendation 2b: That the courts consider avoiding videoconferencing in substantive criminal hearings.
4. Recommendation 3: That the Board considers providing budgetary support to participating agencies as they build the infrastructure needed to efficiently reinstitute video arraignment for criminal cases.
5. Recommendation 4: That the Board considers funding further research and collect the necessary data for making informed policy decisions.

Finally, the Conclusion and Limitation section provides the study summary and conclusions, including project limitations.

The findings and recommendations from this final report in the video arraignment series mark an important first step toward developing a more rigorous investigation of the needs, challenges, requirements, practices, implementation, and impact of videoconferencing technology on system and individual outcomes.

Although a lot more must be done before coming to a full understanding of the risks and costs associated with a video arraignment program, the Commission hopes that this report will provide guidance for criminal justice practitioners and policymakers with information about using videoconferencing technology and whether technology integration is feasible for their jurisdiction and practical considerations for planning more video technology use.

## **Introduction**

Technological advancement has been a vital solution for courts in the Covid-19 crisis, letting the courts function remotely using audio-visual hardware, software platforms, secure systems for sharing documents and evidence, and electronic signatures. However, the fact that the public health calamity has forced both the private and public sectors to adapt digital practices on a large scale within a short period, many businesses are also continuing or testing new ways to expand the use of remote technology

Although expensive and complex, all 600 courtrooms in the Los Angeles Superior Court system were equipped with the digital capability to function as hybrid courts. But the use of remote technology and its possible expansion, also raises critical questions about how litigants' rights and their access to justice may be affected, either positively or negatively.

While the available research on video proceedings in the justice system is limited, a few existing research studies recommended that government take caution in expanding the use of these practices without further research on their potential effects.

## **Background and Goals**

In November 2004, the Commission published its first study titled "Video Arraignment and its Potential for Use in the County Criminal Justice System," in support of using video technology as a cost-effective alternative to the physical transportation of inmates to court for arraignment. After a protracted campaign touting the potential benefits of lower costs associated with transportation and staff in a virtual court, on August 20, 2010, the County explored video arraignment as an option for misdemeanor arraignments in a pilot program through the collaborative effort between the Sheriff's Department, District Attorney (DA), Public Defender (PD), Alternative Public Defender (APD), Los Angeles Police Department (LAPD), City Attorney, and the Superior Court in a Memorandum of Understanding (MOU).

During the pilot project, participating agencies outlined the processing requirements to ensure staff could perform their duties frictionless and timely. However, in the 12-month experimental

program, only 307 arraignments were held via video out of 12,397 arraignments, for an average of 1.2 video hearings per day. The limited volume of cases identified for video arraignment was largely attributed to LAPD withdrawing from the pilot program with closing LAPD's Parker Center. Due to the low quantity of video arraignment cases, the cost-benefit analysis used to evaluate the pilot program in terms of cost savings was not achieved. The participating partners conceded that while the initial phase was useful for familiarization with the process and technology, a higher volume of cases would be needed to achieve significant cost savings without loss of existing justice effectiveness. Subsequently, the pilot program was discontinued.

Even with the dissolution of the pilot study, the Commission continued to believe that technological solutions could result in efficiencies from lower criminal justice spending, and that video arraignment is not only a viable option to offset the substantial capital and staff expenses associated with the traditional methods of transporting inmates to courts, but it also has the added benefit of enhancing safety for County staff involved in the transportation process. To alleviate the concerns raised by stakeholders from the pilot study, on June 3, 2019, the Commission submitted a new study titled "Video Arraignment 2.0: Streaming Justice" and requested the Board to provide budgetary subsidies to all participating departments to build out the proper level of staffing and infrastructure required for a more efficient virtual court system. While the justice partners were still deliberating and negotiating the best approach to start a video option in the courts, the Covid-19 contagion quickly accelerated Los Angeles County courts' transition to a video arraignment program.

This sudden rise of technology created the impression that using technology for communication is a new and efficient phenomenon in the world of criminal justice. However, in reality, traditional views on the importance of face-to-face communication in court still prevailed, and post-Covid implementation of technological development has been rather slow and piecemeal. But the fact that the health crisis forced the justice systems to adapt their practices using digital technology so extensively within such a short timeframe means that technology will not disappear from courthouses when the pandemic is gone.

With courthouses in County of Los Angeles now reopened, the Commission is not aware of any groups or county taskforces charged with assessing the potential effects of the digitalization of criminal justice, especially from the viewpoint of how the county can integrate digital technology with our conventional face-to-face courtroom settings. Therefore, the aim of this report on the final video arraignment series is to highlight some of the successes and of video arraignment and provide policymakers and court personnel a broad overview of the challenges of videoconferencing in Los Angeles County courts.

## **Data Gathering**

To fulfill the taskforce's goals, the Commission's Task Force interviewed a few experts including a high-ranked court administrators and a retired public defender. Both qualified professionals understood the background on the history of video conferencing programs with a keen understanding of technology in the context of court operations. The interviewees provided their perceptions of the videoconferencing experience which included suggestions for improvement. Additionally, a few researched empirical articles from library databases and academic journals were used to supplement the knowledge gaps in the topic.

## **Findings and Recommendations**

### **Finding 1: Videoconferencing is effective in civil cases as shown by the substantially higher rate of appearances.**

Video proceedings can reduce the time and mitigate expenses associated with traveling, transportation, childcare, and other day-to-day costs that individuals incur when they go to court.

### **Recommendation 1: That the courts consider expanding the use of videoconferencing for non-criminal cases.**

Videoconferencing may be less damaging and more useful for certain types of civil and family law proceedings that might not require a physical presence in courthouses. For example, it might be worth considering virtual conferences for some mediation or arbitration cases. When determining whether a hearing should take place remotely, some additional factors should be considered :



- The nature of the hearing (i.e., complexity of cases; the existence of impairments or other factors that could negatively affect the defendant’s ability to participate effectively.).
- The availability and quality of equipment and systems.

**Finding 2: Videoconferencing poses disparate challenges in the criminal justice system.**

Remote conferencing is best use for preliminary hearings, arraignments, settlement negotiations, scheduling conferences, and arguments on legal motions. For defendants who were released for future court dates, the system also experienced a higher rate of court appearances via videoconferencing. However, for more complex criminal cases which often have a stronger human component, with eyes not only on the defendant but also on victims and witnesses, video conferencing appears to not only affect the participation of the defendant but also the effectiveness of legal counsel. There is the potential that separating the lawyer from the defendant will undeniably impede the possibilities of confidential lawyer-client communication during the trial. On the other hand, much work is still to be done since very limited amount of research is available on this topic. More in-depth research will provide us with the necessary insight and knowledge to help us make informed decisions on making remote arraignment a permanent feature of our justice systems.

**Recommendation 2a: That the courts consider videoconferencing for some procedural criminal hearings.**

It’s worth distinguishing between hearings which impact substantive rights (i.e., first appearance, bails, evidence, sentencing, trials) and those which are purely procedural (scheduling, pleas, compliance with judicial orders). The former should rarely be conducted remotely, while the latter have less impact on rights and can potentially free courts to conduct in-person business more safely and efficiently. For example, some procedural matters which are handled almost entirely by lawyers (i.e., scheduling, serving motions, settling discovery disputes), courts could consider waiving the requirement for defendants to appear, so the attorney can represent them (in-person or remotely) if the client cannot be present. Determining which hearings to hold remotely also presents an opportunity for considering how and why in-person appearances are required, scheduled, and excused. For instance, while considering if bail hearings should be held remotely, there may be new opportunities to incorporate bail or pretrial reforms.

**Recommendation 2b: That the courts consider avoiding videoconferencing in substantive criminal hearings.**

Because of the incredibly high stakes in criminal trials, courts need to consider the potential interference of videoconferencing on justice outcomes. Even in extreme and unusual circumstances under the pandemic, there should be a strong push for court proceedings to be conducted in person, using social distancing measures where necessary.

**Finding 3: The PD, APD, and DA all expressed their concerns that a dual system raises infrastructure expenses significantly by having to provide staffing in the jails and the courts and puts a financial stress to the department.**

Early expert workgroup members agreed that collaboration across systems is essential to ensuring smooth videoconferencing processes. This cooperation is also necessary early on to designate responsibilities across criminal justice agencies and identify funding sources. However, it was not clear how the potential savings would be fairly distributed to participating organizations to offset costs due to additional staffing and training.

**Recommendation 3: That the Board considers providing budgetary support to participating agencies as they build the infrastructure needed to efficiently reinstitute video arraignment for criminal cases.**

It is important for each jurisdiction to identify the needs and sources of funding to have the proper infrastructure to support remote hearings. While earlier commission reports reasoned that potential benefits to using videoconferencing are substantial, there are also substantive increases in costs for most organizations where challenges in implementation may arise. All jurisdictions have their own sets of procedures, rules, and requirements for videoconferencing implementation. While substantial savings maybe realized from decreased staff time to travel to and from detention and court settings, and reduced transportation costs of moving inmates from detention to court settings, for some organizations involved, a dual system would result in significant costs in staffing.

**Finding 4: The PD and APD expressed serious concerns that the use of technology in the courtroom impedes an effective defense and makes attorney-client communications and relationships more difficult before and during proceedings.**

The empirical research for and against video arraignment are both inconclusive and inadequate. For example, some research studies offered critical arguments against using videoconferencing in criminal proceedings. Such arguments emphasized that the defendant's constitutional rights might be violated. Other studies argued that the overall, online proceedings can save time and resources for participants in criminal cases and can provide broader access to the courts for the public.

However, this indeterminate development raises the important question on the potential effects of the digitalization of criminal justice—especially from the viewpoint of the right to a fair trial. The PD's and APD's perspective also elevate potential equity concerns about the broad use of video proceedings particularly for marginalized communities.

**Recommendation 4: That the Board considers funding further research and collect the data necessary for making informed policy decisions.**

With disruption comes opportunity for reform. As the courts are forced to adapt to new circumstances, there are opportunities for wider reform of outdated requirements, policies, and practices. It is imperative that a new digital layer is not simply grafted onto the existing procedures and systems. New rules and policies must be created alongside the new digital tools. The perceived time and cost savings need to be accurately calculated and weighed against the potential impact on fairness and justice outcomes. The following information should be collected now in each jurisdiction to permit quality analysis of the impact of remote proceedings:

- Data on the number, types and categories of cases heard, and length of proceedings;
- Data on the number of adjournments related specifically to hearings being conducted remotely;
- Impact on justice outcomes, including rates of pre-trial detention, conviction, sentences, and guilty pleas, including demographic information to understand if certain groups are disproportionately affected;

- Experience of defendants, including vulnerable defendants with visual or auditory impairments, cognitive differences, and mental health challenges; and
- Experience with videoconferencing of lawyers, judges (jurors), prosecutors and other trial participants such as victims and witnesses.

## **Conclusions and Limitations**

Throughout the research process, the Commission recognized there are weaknesses and limitations to our study, mainly, due to the lack of quantitative data to support a true cost-benefit analysis for achieving an effective video arraignment program.

By reexamining video arraignments in Los Angeles County, the Commission found a disruption of normative expectations by public defenders and alternate public defenders. Such latent consequences suggest these perceptions affect the policy implications of effectively introducing video technologies in the courtrooms. These concerns underscore the need for more research and evaluation as courts experiment with remote systems and the need for courts to analyze outcomes in a diverse range of cases and consult with a wide array of stakeholders when developing policies for video proceedings.

The Commission recommends that the validity of these opinions needs to be adequately tested before any long-term decisions can be made on the content and scope of virtual criminal justice. Caution is needed to ensure that the technology is used with extreme sensitivity to overall justice goals, including recognizing that there are cases that may not be appropriate for video appearances, such as those involving lengthy proceedings.

Nevertheless, the Commission believes that the qualitative benefits identified, and information presented in this study will provide insights into understanding the benefits of using video arraignment as an alternative for conducting arraignments in the County's court system.