

POLICY DIRECTIVE 97-163 (6th Revision)

**TO: ALL JUSTICES OF THE PEACE
ALL JUSTICE OF THE PEACE CRIMINAL COURT LOCATIONS**

**FROM: ALAN G. DAVIS
CHIEF MAGISTRATE**

DATE: July 1, 2017

RE: Revised Statewide Videophone Case Processing Policy and Protocol

Attached is a Revised Statewide Videophone Case Processing Policy and Protocol, dated July 1, 2017. The protocol has been amended in a number of significant areas. The first is that police officers must provide a phone number where they can be reached when the judge is ready to proceed. If the judge is unable to reach the officer the request will be relegated to the end of the queue of pending cases.

The second change is to amend the exclusion of warrants exceeding 30 charges from being handled by videophone to include a combination of warrants for a single individual that exceed 30 charges.

The third item is to exclude search warrants where the probable cause affidavit exceeds five pages in length from Videophone Court consideration.

The final change is to encourage police agencies to provide at least a three-day notice of operations likely to significantly increase the number of Videophone warrant requests and/or presentations. This will allow the court to properly staff for the increased workload. The Court does not need to know the operational details of the upcoming activity.

These changes are necessary to ensure that the Statewide Videophone Court provides expeditious service to the police and corrections communities in the face of ever-expanding videophone availability to and usage by those agencies.

As it pertains to the other court locations using videophone, there are few impacts. Those court locations may see more warrants with a large number of charges. Those cases may be sworn to by the officer by videophone at the discretion of the sitting judge. However, due to space limitations on bond sheets presentments on those charges should take place at the physical court location. Currently the bond sheets only allow for three charges per page. This makes faxing a bond back to a police agency for defendant signature a costly and time-consuming process for both the court and the detaining agency. Until such time as the limitations on the number of charges on a bond sheet can be addressed the best practice in those instances is for the defendant to be brought forthwith for presentment.

These changes were distributed and discussed with police and corrections representatives during meetings held on June 6 and June 8, 2017. The changes take effect July 1, 2017.

AGD

cc: (UPDATE AS APPROPRIATE)

Honorable Leo E. Strine, Jr.

Honorable Jan R. Jurden.

Honorable Alex J. Smalls

Honorable Michael Newall

Amy A. Quinlan

Marianne Kennedy

Mark Hitch

Jill Malloy

Law Libraries: New Castle County, Kent County, Sussex County,

Widener University Delaware Law School

Police Chiefs' Council

All Delaware Police Agencies

Department of Corrections

Peggy Bell, DELJIS

Marian Bhate

Jeffrey Moya

PROTOCOL

July 1, 2017

JUSTICE OF THE PEACE COURT 2

THE STATEWIDE VIDEO COURT

MONDAYS-FRIDAYS

8:00 AM-11:00 PM

CALL 302-645-6284

FAX 302-645-8842

FOR ALL OTHER TIMES AND DAYS CONTACT A VIDEOPHONE JUSTICE OF THE PEACE COURT LOCATION IN YOUR COUNTY FIRST. IF THAT COURT IS BUSY, CONTACT ANY OTHER COURT IN ANY COUNTY.

FOR HOLIDAYS AND WEEKENDS USE THE 24-HOUR COURTS.

SEE ATTACHED REVISED PROTOCOL FOR ANY OTHER QUESTIONS

STATEWIDE VIDEOPHONE CASE PROCESSING POLICY AND PROTOCOL

July 1, 2017

Background

This protocol is a guide for videophone processing between the Justice of the Peace Court, police, corrections and others who use the videophone to conduct court proceedings without requiring the physical presence of the defendant/police officer in the Court. In implementing the policy and protocol, it is important to be mindful of the goals to ensure speedy and fair processing of those court proceedings which may be conducted through use of the videophone and to be flexible to accomplish those goals.

Justice of the Peace Court Criminal rule 4(g) provides, in pertinent part, that a Justice of the Peace may issue a warrant in conjunction with an audiovisual appearance. Criminal Rule 10(b)(2) provides that “[I]nitial appearances and arraignments may be conducted by audiovisual device in the same manner as if the appearance were in person” and that “Documents may be transmitted by electronically or electromagnetically transmitted facsimile process.”

Cases Eligible for Videophone Processing

A. Arraignment/Initial Presentments/Capias Returns/Warrants

1. General – The judge is strongly encouraged to use the videophone to conduct arraignments/initial presentments in eligible cases, unless exceptional circumstances exist in which the judge has the discretion to request that the defendant be physically brought to the court. Exceptional circumstances would include when it appears to the judge, through the defendant’s words or actions, that the defendant may not comprehend the nature of the proceeding or if there are specific

indications that the use of the videophone for this proceeding will affect the fairness of the proceeding.

2. Types of Cases

- a. All traffic offenses
- b. All criminal offenses, including misdemeanors and felonies.
- c. Capias returns
- d. Cases requiring the services of an interpreter should **not** be submitted to the video court.
- e. The statewide Video Court will handle any juvenile warrant application, however, in light of the time such matters take to process, the Statewide Video Court **WILL NOT** handle any juvenile arraignments. All juvenile arraignments should be brought forthwith to the nearest court location or conducted via videophone to that court location, if the presiding judge agrees to do so.
- f. If a new warrant is sworn to by Court 2 and Court 2 handles the arraignment and that person is found to be wanted on a capias from another court that is open and has a videophone, it is the judge's discretion to handle the capias or not. This does NOT apply to FTP capiases that are less than three years old; those will be handled by the videophone court.

3. Types of court actions, including:

- a. Not guilty pleas with the release of defendant on unsecured bonds.
- b. Not guilty pleas with the release or commitment of defendant on secured bonds.
- c. Generally, guilty pleas may not be taken over the videophone; instead, defendants who wish to plead guilty should usually be bonded out to appear at the court within the next week. However, a guilty plea for misdemeanors or traffic offenses under JP Court jurisdiction may be taken over the videophone **if** the defendant is represented by counsel, counsel is present at the proceeding, and

both the defendant and counsel consent to the taking of the guilty plea over the videophone.

B. Exceptions to eligible proceedings at Court 2 are:

1. Arraignment/initial presentments involving felony charges in the City of Wilmington. Those will be heard by JP Court locations in New Castle County, **NOT** by Court 2.
2. Arrest warrants or combination of warrants for a single individual that include more than **30 charges** and search warrants with probable cause affidavits **exceeding 5 pages** as they slow down the operation of the videophone court. Police may contact another Justice of the Peace Court either by videophone or personal appearance to swear to a lengthy warrant.
3. Capias returns for capiases issued by another JP Court. If that court is open and has a videophone, the procedure will be handled by that court Location.

Procedures for conducting videophone proceedings between the Justice of the Peace Court and police or other agencies

A. Court Contacts

1. **During the times the STATEWIDE VIDEOPHONE COURT is in operation:**
 - a. Since January 2, 2002, Justice of the Peace Court 2 has served as the Justice of the Peace Court's Statewide Videophone Court. It is currently open for videophone proceedings during the following days and times: **MONDAYS-FRIDAYS 8:00 AM-11:00 PM**
 - b. During those times, police and others should contact Court 2 (302-645-6284), Fax (302) 645-8842 to make arrangements for conducting eligible proceedings as described.
 - c. JP Court judges will process the requests in the order in which they are received.

- d. When ready to proceed the judge will call the police agency via the videophone. The officer is expected to be ready with the defendant. If the officer is not present the judge will make one attempt to reach the officer via telephone. Police must provide a fax cover sheet with a phone number at which the officer can be reached. For warrants submitted via LEISS the officer must submit a follow-up fax or call the court to provide that information. If the judge is unable to reach the officer, or no contact information has been provided, the request will be relegated to the back of the queue of pending proceedings.
- e. If Court 2 is unable to handle the proceeding in a reasonable time period it will contact another JP Court location and make arrangements for the proceeding to be conducted there.
 - 1) Courts contacted by Court 2 will make every effort to accommodate the Court's request to conduct the videophone proceeding. Videophone cases will be taken in the order that they are sent to the court, as if the police officer made a personal appearance with the defendant.
 - 2) Court 2 will advise the officer which Justice of the Peace Court to contact to conduct the videophone proceeding.
- f. Police will **NOT** contact a JP Court location other than Court 2 to conduct a videophone proceeding while Court 2 is open **UNLESS**:
 - 1) They have contacted Court 2 first and Court 2 has referred them to a particular Court location or
 - 2) The case is an exception as described in **Cases Eligible for Videophone Processing, B.** above.
- g. All Justice of the Peace locations with videophones (JP Courts 3, 4, 6, 7, 9, 10, 11 and 20) serve as backup videophone courts for the hours they are open (except state holidays) and as primary videophone courts during all other hours they are open.
- h. All Justice of the Peace locations can handle any eligible case from any county by videophone.
- i. Police agencies are **strongly encouraged** to notify the appropriate JP Court location of operations that are likely to result in a significant

increase in videophone activity over a short period of time such as a prostitution sting or drug sweep. JP Court requests at least a three-day advance notice to properly staff the videophone court for the extra caseload. The Court does not need to know the details of the operation, only the likely magnitude of increased activity.

2. During times when the Statewide Videophone Court is NOT in operation:

Police or others wishing to conduct a videophone proceeding from any county should **contact any open Justice of the Peace Court location with a videophone in their county as a first priority.**

3. All previously scheduled videophone processing times with particular Justice of the Peace Court locations and correctional facilities remain in effect and will not be altered by this protocol. (For example, Court 3 will continue to conduct videophone proceedings with Sussex Correctional Institution).
4. If police have any difficulties with videophone proceedings conducted by the Justice of the Peace Court (such as significant delays in receiving service) they should either contact the Statewide Videophone Court (Court 2) supervisor or the Operations Manager for the court location involved. No complaints can be investigated without specifics such as date, time and location.

B. Operational Procedures

1. Warrant Requests
 - a. Requesting officer enters information into DELJIS capias/warrant system, including the defendant's birthday, social security number, or license number, before submitting a warrant for approval by the Court.

- b. Officer will notify the court that a warrant is being sent through DELJIS and request approval by the judge.
- c. The judge will review the warrant and the clerk or judge will notify the officer that it is approved or disapproved.
- d. The judge/clerk will advise the officer to either fax a signed copy of the warrant or have a copy of the warrant available to sign in front of the videophone.
- e. If requested the officer will fax a signed copy of the warrant to the court.
- f. The judge will initiate the videophone call and will administer the oath to the officer in support of the warrant request including an affirmation that the signature on the affidavit of probable cause is the affiant's signature (if the warrant was pre-signed by the officer).

2. Arraignments/Initial Presentments/Capias Returns

- a. Arresting officer will call the court to advise that an arraignment, initial presentment and/or capias return is requested by videophone.
- b. The arresting officer will fax the approved warrant/charging documents to the court, along with the completed defendant history form. Police **MUST** include the arrest number on the warrant/charging documents AND provide a contact number for the officer presenting the defendant.
- c. The officer will advise which Justice of the Peace Criminal Court location is closest to the location where the offense occurred (for purposes of scheduling the trial or arraignment, or to enter a guilty plea), if the case is to remain in the Justice of the Peace Court.
- d. The officer should have the defendant available to conduct the proceeding at the time the judge initiates the videophone call to the arresting officer or other agency. If the officer is not available, the judge will move the request to the end of the queue and proceed with the next case.
- e. The judge will be seated in the view of the defendant.

- f. The defendant and officer will be in the view of the judge.
- g. If the defendant's attorney is present at the arresting or other agency, the attorney must be allowed to attend the videophone proceeding in the same location as the defendant.
- h. Once the proceeding is conducted, the court will fax the jurisdictional form, the bond/conditions of bond forms, and other forms (where applicable) to the arresting or other agency for the defendant's signature.
- i. Commitments for persons being incarcerated pursuant to the videophone proceeding shall be faxed to the agency and the officer will take the commitment to the Corrections facility along with the defendant.
- j. The officer **MUST** get the defendant's signature on the bond/jurisdictional documents and fax the signed forms to the Court **IMMEDIATELY** after receiving the forms.
- k. The officer must give a copy of the bond/conditions of bond to the defendant.
- l. The arraigning court should schedule the trial/capias hearing for the defendant at the court indicated by the officer (or at other appropriate court), consistent with Policy Directive 00-182 (Revised), "Scheduling Trial/Hearings for other Justice of the Peace Courts", (December 20, 2001).
- m. Bail for bonds ordered through the videophone court process may be posted at any open Criminal Justice of the Peace Court location.
- n. Each court's batch reports will include the list of cases transferred to that court which were handled by videophone in another court and will note cases scheduled for trial or arraignment.
- o. All information written in the bail and disposition form "notes" or "reasons for secured bail" sections by judges **SHALL BE ENTERED** by the clerk in the automated notes section in DELJIS.
- p. Documents on cases which are transferred to another court, whether JP Court, Court of Common Pleas, Family Court, or Superior Court, should be faxed immediately (or taken by the mail runner the next

day, where appropriate) to the other court. The videophone court will forward all originals (including warrants, commitment or bond forms) to the court in which the defendant will next appear through state or regular mail.