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**Report on the Enhanced Use of
Videoconferencing in Civil and Criminal Court
Proceedings Involving Prisoners Committed to
the State and County Correctional Facilities**

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December 2011

STATE OF MAINE
SUPERIOR COURT

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December 1, 2011

The Honorable Garrett P. Mason, Senate Chairman
The Honorable Gary E. Plummer, House Chairman
Joint Standing Committee on Criminal Justice and Public Safety
100 State House Station
Augusta, ME 04333-0100

Dear Senator Mason and Representative Plummer:

On behalf of the Video Conferencing Technology Committee of the Judicial Branch, I am pleased to send you the committee's *Report on the Enhanced Use of Video Conferencing in Civil and Criminal Court Proceedings Involving Prisoners Committed to State and County Correctional Facilities*.

The full committee was comprised of a representative cross-section of various stakeholders connected in significant ways to the criminal and civil processes of Maine's District and Superior Courts. The committee's membership included Judges, prosecutors, sheriffs, DOC staff, county officials, information technology professionals and defense attorneys from around the state and met on two occasions. Additionally, three subcommittees were formed and met separately to explore legal, technical and protocol issues raised by and associated with the use and expanded use of video technology in civil and criminal court proceedings involving prisoners committed to county or state correctional facilities.

Our committee sincerely appreciated the opportunity, which the Joint Standing Committee provided, to meet and collaboratively explore these important issues. We hope this report satisfactorily addresses the task you presented to us and sufficiently informs you about this complex topic.

If you have any questions, we would be happy to discuss this report with the Joint Standing Committee at your convenience.

Yours Truly

A handwritten signature in black ink, appearing to read 'T. E. Humphrey', written over a horizontal line.

Thomas E. Humphrey
Chief Justice, Maine Superior Court
Chair, Video Conferencing Technology Committee

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**REPORT ON THE ENHANCED USE OF VIDEO CONFERENCING IN CIVIL
AND CRIMINAL COURT PROCEEDINGS INVOLVING PRISONERS
COMMITTED TO STATE AND COUNTY CORRECTIONAL FACILITIES**

VIDEO CONFERENCING TECHNOLOGY COMMITTEE

December 1, 2011

STATE OF TEXAS
COMMISSION ON
JUDICIAL BRANCH
OPERATIONS
2011

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I. INTRODUCTION: PURPOSE OF THE COMMITTEE AND SUMMARY OF ITS WORK

The Criminal Justice and Public Safety Committee (CJPS) of the Maine State Legislature requested that the Judicial Branch create a Video Conferencing Technology Committee (the Committee) to explore the enhanced use of video conferencing technology (VCT) in all civil and criminal proceedings involving a prisoner committed to a county or state correctional facility. CJPS asked that the Committee make recommendations regarding the uniform and consistent use of VCT in the State of Maine to achieve greater efficiencies and safety for courts, attorneys, litigants, correction officials, law enforcement, and others in the criminal justice system.

The Committee, whose members were drawn from around the state include judges, prosecutors, defense attorneys, IT professionals from various branches of government, sheriffs, and correctional facility representatives, divided its work into three subcommittees: Legal; Technology; and Protocol. The full Committee met two times, and each Subcommittee met separately and produced a report to the full Committee.

The Legal Subcommittee evaluated the legal permissibility of requiring prisoner participation by VCT in civil and criminal proceedings by examining whether there were any constitutional, statutory, or other legal impediments to such mandatory use of VCT in court proceedings. The Technology Subcommittee evaluated the requirements and the current capabilities for VCT between the various courthouses and correctional facilities across the State. The Protocol Subcommittee reviewed the existing limited uses of VCT in judicial proceedings involving prisoners and created a sample generic template to support future implementations of VCT in various types of court proceedings. The report of each Subcommittee is appended to this Report.

II. EXECUTIVE SUMMARY

Video conferencing technology currently is used with varying frequency in fourteen counties of the State in certain criminal proceedings, most notably arraignments. In addition, both teleconferencing and videoconferencing have been utilized successfully in some civil and family proceedings. However, the expanded use of VCT in certain cases and proceedings is constrained by resource limitations and by the varying needs and requirements necessary to meet the ends of justice in different proceedings.

The Committee's preliminary research of Maine's Constitution, statutes, and Court Rules and the United States Constitution strongly suggests that mandatory prisoner-participation by VCT is not legally permissible in the following proceedings:

- Criminal felony jury trials
- Criminal felony bench trials
- Sentencing for felony convictions
- Rule 11 pleas
- All juvenile proceedings
- Civil jury trials
- Civil bench trials
- Any testimonial hearing in which the prisoner's rights are at stake or will be affected by the proceeding

These proceedings require the physical presence of a prisoner, unless waived by the voluntary and informed consent of the prisoner and approved by the court. Further, even if the use of VCT is not legally prohibited in a particular proceeding, the ends of justice, coupled with the inherent power of the court, mandate that a presiding judge or justice should always have the authority and discretion to require the physical presence of a prisoner whenever, in the judgment of the court, it is necessary or appropriate.

The expanded use of VCT also is constrained by many diverse and unique challenges in various areas of the State. These challenges are grounded in issues such as geography; cross-region working alliances among multiple courthouses, prosecutorial districts and correctional facilities; existing and available video capabilities and related support technology; the proximity of aligned courts and correctional facilities appropriate and secure space within correctional facilities, available support staff, and budgetary restraints.

With these legal and resource considerations in mind, and in keeping with the separation of powers among the branches of State government, the Committee believes that there is no uniform, legislative solution to the use of VCT throughout the State. The Committee does not recommend the adoption of a mandatory "one-size-fits-all" statutory requirement of prisoner participation by VCT in any or all criminal and civil proceedings. Instead, the Judicial Branch should consider establishing a working group in some or all of Maine's eight Judicial Regions to investigate the use or expanded use of VCT in that region.¹ Each working group might include regionally affiliated members of the judiciary, prosecution, civil, family, and criminal defense bar, and correctional facilities.

¹ Maine's eight Judicial Regions geographically mirror the State's eight Prosecutorial Districts.

III. EXISTING CAPABILITIES; CURRENT USE OF VCT; AND CURRENT BARRIERS

A. Existing VCT Capabilities and Current Use of VCT

Videoconferencing equipment is in place in many, if not most, of the courthouses and correctional facilities across the State. Based on an updated Assessment by the Board of Corrections (Appendix G), the following courthouses and correctional facilities currently have equipment to facilitate VCT:

Courthouses by County

<i>Androscoggin</i>	Auburn Superior Lewiston District	<i>Lincoln</i>	Wiscasset Superior Wiscasset District	
<i>Aroostook</i>	Houlton Superior Caribou Superior Fort Kent District Houlton District Presque Isle District	<i>Oxford</i>	South Paris District	
		<i>Penobscot</i>	Bangor Superior Bangor District Bangor UCD Lincoln District Millinocket District Newport District	
<i>Cumberland</i>	Portland Superior Portland District Portland UCD Bridgton District		<i>Piscataquis</i>	Dover-Foxcroft District
			<i>Sagadahoc</i>	Bath Superior W. Bath District
<i>Franklin</i>	Farmington District	<i>Somerset</i>	Skowhegan District	
<i>Hancock</i>	Ellsworth Superior Ellsworth District	<i>Waldo</i>	Belfast District	
		<i>Washington</i>	Machias Superior Machias District Calais District	
<i>Kennebec</i>	Augusta Superior Augusta District Waterville District	<i>York</i>	Biddeford District Court Springvale District Court York District Court	
<i>Knox</i>	Rockland Superior Rockland District			

Correctional Facilities

<i>County Jails</i>	Aroostook Franklin Kennebec Lincoln Oxford Penobscot Piscataquis	<i>County Jails</i> <i>(cont.)</i>	Washington York
	Sagadahoc Somerset Waldo	<i>Adult Prisons</i>	Maine State Prison Bolduc Correctional Fac. Downeast Correctional Fac. Charleston Correctional Fac. Maine Correctional Center Two Bridges Regional Jail
		<i>Juvenile Facilities</i>	Longcreek Youth Dev. Ctr. Mountainview Youth Dev. Ctr.

Of these areas of the State where the aligned courts and correctional facilities are VCT-capable, the following are some examples of courthouses and facilities that have cooperated in the development of processes that enable prisoners to participate by VCT in some court proceedings:

<i>Aroostook</i>	Houlton Superior Caribou Superior Fort Kent District Houlton District Presque Isle District County Jail	<i>Penobscot (cont.)</i>	Bangor UCD Lincoln District Newport District County Jail Charleston Correctional Fac. Mountainview Youth Dev. Ctr.
<i>Cumberland</i>	Maine Correctional Center Longcreek Youth Dev. Ctr.	<i>Sagadahoc</i>	Bath Superior/W. Bath District Two Bridges Regional Jail
<i>Franklin</i>	Farmington District County Jail		
<i>Kennebec</i>	Augusta Superior Augusta District Waterville District County Jail	<i>Somerset</i>	Skowhegan District County Jail
		<i>Waldo</i>	Belfast District County Jail
<i>Knox</i>	Maine State Prison Bolduc Correctional Fac.	<i>Washington</i>	Machias Superior Machias District Calais District County Jail Downeast Correctional Fac.
<i>Lincoln</i>	Wiscasset Superior Wiscasset District Two Bridges Regional Jail		
<i>Oxford</i>	South Paris District County Jail	<i>York</i>	Biddeford District Court Springvale District Court York District Court County Jail Longcreek Youth Dev. Ctr.
<i>Penobscot</i>	Bangor Superior Bangor District		

It should be noted that many courthouses have equipment and/or technological capacity in only one courtroom and, thus, those locations cannot accommodate multiple VCT proceedings.

Most frequently, VCT is used for criminal arraignments, but VCT also is used in various civil and family proceedings. VCT and teleconferencing are used to conduct case management conferences in both criminal and civil proceedings, post-conviction review proceedings, mental health assessments, and, with the consent of all parties, to allow out of state witnesses to testify in court matters. For the most part, the use of VCT in civil proceedings is less restricted because of fewer constitutional barriers, which provides litigants and the court with more opportunities for flexible solutions.

Presently, several court rules contemplate and allow litigants, including prisoners, to participate remotely in some proceedings by means of teleconferencing and videoconferencing. The Rules of Civil Procedure permit presentation of testimony in open court by contemporaneous transmission from a different location. In family matters, parties may utilize VCT and teleconferencing in divorce proceedings, determinations of parental rights and responsibilities, visitation, child support, and mediation. The Criminal Rules of Procedure allow arraignments, pleas, trials, and sentencings for misdemeanor offenses to occur without the presence of a defendant who is represented by counsel.

B. Current Barriers to VCT

The transportation of prisoners across the State can be time-consuming and expensive. Over time, VCT has the potential to offer cost savings, particularly transportation costs. To understand the geographic challenges faced by many sheriffs, correctional facilities, prosecutors and courts, this report includes and incorporates appended maps showing the location of District and Superior Courthouses within each Judicial Region/ Prosecutorial District (Appendix E) and the various correctional facilities throughout the State (Appendix F).

Statewide implementation of expanded uses of VCT would likely have cost impacts related to renovations of courthouses and corrections facilities, the employment of additional staff, training, and expanded oversight capabilities. Just as likely, it would generate cost savings in some areas as a result of efficiencies from the reduction in prisoner transportation. Whether, when, or to what extent initial renovation and implementation costs can be efficiently recouped through reduced transportation costs will require further investigation; however, VCT can never fully eliminate the need and, therefore, the costs of transportation.

In addition to geographic and fiscal barriers, the use of VCT cannot impinge on a prisoner's constitutional rights or impede the delivery of and access to justice. As noted in the Legal Subcommittee's report, in order to achieve the ends of justice the court should always have the discretion to decide whether a prisoner's participation by VCT is appropriate after weighing several essential factors. Foremost among these are a prisoner's constitutional right to counsel and the effect of VCT on the ability of an attorney to effectively represent the client-prisoner, and the accused's rights of confrontation and due process. There are also important, practical concerns: the adequacy and quality of contact between and among the participants in the proceeding, including the court, clerk, prosecutor, defense counsel, the prisoner, witnesses, and corrections staff; the availability and the quality of facilities and technology to ensure that a prisoner's demeanor and countenance are adequately portrayed to a factfinder; the rapid and accurate exchange of paperwork required by the proceedings; the availability of necessary support technology (e.g., fax machines, scanners, computers, telephones, etc.); and support staff to operate that technology.

Finally, the Committee understands that the complexities and impact of the foregoing barriers, particularly in criminal proceedings, can be exacerbated when using VCT across regional lines — not necessarily because of the VCT technology itself, but because of resource and logistical issues regarding staffing and support technology.

IV. COMMITTEE'S RECOMMENDATION

It is the consensus of the Committee that there is no uniform, legislative solution to the use of VCT throughout the State. The Committee suggests that, where appropriate, the Judicial Branch consider establishing local working groups in Judicial Regions to evaluate the enhanced use of VCT in those regions. Each working group should strive to include members of the judiciary; prosecutors; criminal defense, civil, and family bars; IT professionals; Sheriffs; Department of Corrections officials; and related financial decision makers. The Committee has identified a number of considerations to guide the work of these proposed working groups, which are identified below.

A. Prisoner's Right to Counsel, Prisoner's Right of Access to the Courts, and Confidential Communications with Counsel

The substantive and procedural rights of the prisoner are paramount because they are constitutionally guaranteed. VCT cannot undermine a prisoner's right to counsel or right of access to the courts. Enhanced use of VCT requires evaluation of the appropriate location of the prisoners and their counsel. They should be together whenever possible. Whether together or separated, there must be an effective and appropriate arrangement to ensure the opportunity for confidential communications between client and counsel that cannot be overheard by other participants in the court proceedings.

B. Facilities and Space Requirements

By definition, the use of VCT means that not all of the participants will be present in the same place. Depending on the type of proceeding (e.g., criminal, civil, family), certain participants will need to be together in one location. Regions should evaluate the corrections facilities serving the region and determine how many participants can be accommodated safely, the availability of VCT in those spaces, whether those spaces allow for effective attorney-client communication, and whether those facilities can or should be upgraded or renovated to accommodate VCT.

C. Location of the Prisoner and Location of the Proceeding

Court proceedings that occur within the same region as the corrections facility where the prisoner is housed present different challenges than when the proceedings and facility are in separate regions. Depending on the type of proceeding and the location(s) of the participants, some VCT arrangements may require cooperation among multiple regions, prosecutorial offices, court clerk's offices, and corrections facilities. Enhanced use of VCT will require evaluation of regional considerations and coordination to make sure VCT is available on any particular day.

D. Safety of Participants

The use of VCT must also take into account the safety of all participants and non-participants, prisoner and non-prisoner alike, who are located within the corrections facility.

E. Availability and Quality of Technology

The available VCT hardware should allow for effective and high quality communications so that all parties can view one another and interact in as close to real time as possible. Bandwidth issues are also a serious concern in many areas and facilities.

F. Costs of Upgrading and Maintaining Existing Technology

While many courthouses and corrections facilities have VCT hardware in place, upgrades may be required and compatibility issues may need to be resolved. Regional working groups should also consider the cost of maintenance of existing or upgraded technologies, including hardware and software, and staff to support and maintain the technology.

G. Adequacy and Quality of Modes of Communication and non-VCT Support Technology

Most proceedings require a rapid exchange of paperwork between the prisoner, counsel and the court. When all of the participants and the court are not together, adequate arrangements and suitable staffing must exist to facilitate the timely and complete exchange of documents between participants at a courthouse and at a corrections facility. Such arrangements may include dedicated phone lines, fax machines, copiers, scanners, computers, and trained, qualified staff.

H. Staffing

VCT requires, in addition to hardware, knowledgeable, on-site staff to use the equipment, troubleshoot problems, and present significant issues to appropriate off-site staff. Staff must be familiar with the systems in place in the various courthouses and correctional facilities and be able to quickly and effectively assist on-site staff with technical issues so that delays or interruptions in proceedings are kept to a minimum.

Other staffing issues include: the availability of judges and court staff to participate in VCT and maintain the regular dockets; the availability of corrections officers to supervise VCT in jails; and the ability of attorneys and off-site technicians to travel to VCT sites when necessary.

I. Time and Cost Efficiencies and Inefficiencies

Enhanced use of VCT can assist many participants, but should not be utilized under all circumstances because it is not always cost effective. For example, in more populous counties where large numbers of prisoners are arraigned in the same court session, the physical presence of the prisoners in court can allow the process to be more time efficient and can lead to more early resolutions of cases. In other words, the burdens of transport must be weighed against the burdens on the process and VCT should not be used simply because it is possible and available.

J. Quality of Justice and Solemnity of Proceedings

VCT, while convenient and efficient, should not compromise the integrity of the court system, the dignity and solemnity of the proceedings, or the delivery of justice.

K. Protocol and Procedure

In line with the use of regional VCT working groups, the Judicial Branch may wish to consider statewide VCT guidelines to aid each region in the development of proposed procedures and protocols for the use of VCT in civil and criminal proceedings. Each region's proposed procedures and protocols should be reviewed and approved by the appropriate administrative authority within the Judicial Branch.

V. CONCLUSION

The use and expanded use of VCT in court proceedings involving prisoners committed to a county or state correctional facility is constrained by the constitutional rights of prisoners; by the diverse and unique challenges of Maine's sixteen counties, eight Judicial Regions and Prosecutorial Districts; by the technological and physical limitations of many courthouses and correctional facilities; and by the inherent authority of the court to assure that the ends of justice are met in a manner that does not compromise the integrity of the court process, the dignity and solemnity of the proceedings, or the delivery of justice.

Accordingly, the Committee recommends against the promulgation of a law requiring prisoner participation by VCT in criminal and civil proceedings, but suggests that the establishment of regional working groups by the Judicial Branch may be an effective mechanism for investigating the use or expanded use of VCT. The membership of each working group may include regionally affiliated members of the judiciary, prosecution, civil and defense bar, and correctional facilities.

The Video Conferencing Technology Committee appreciates the opportunity to submit this report to the Criminal Justice and Public Safety Committee. We hope we have satisfactorily addressed the issues presented to us. However, if you have any questions, we would be happy to discuss this report with you at your convenience.

Respectfully submitted,

VIDEO CONFERENCING TECHNOLOGY COMMITTEE
December 1, 2011

Video Conferencing Committee
Report of the Subcommittee
To Study Legal Permissibility of Prisoner–Video Participation

The subcommittee met on November 2, 2011, to examine whether any constitutional or other legal impediments are implicated if a prisoner is required to participate by video-conferencing in any criminal or civil proceedings in which the prisoner is a party or a witness.

As a preliminary matter, the subcommittee first identified the following as the primary types of criminal and civil proceedings to which this issue applies:

<u>Criminal</u>	<u>Civil</u>
<ul style="list-style-type: none">• Arraignments• Bail• Dispositional conferences and docket calls• Motions – testimonial• Motions – non-testimonial• Settlement conferences• NCR (not criminally responsible) pleas• Rule 11 pleas• Competency hearings• Unpaid fines• Jury trials• Bench trials• Sentencing• Probation violation• Post–conviction review (both when the prisoner is in state and out of state)• NCR expansion of privileges• Juvenile proceedings<ul style="list-style-type: none">○ Initial hearing (arraignment)○ Detention hearing (bail)○ Bindover hearing○ Competency hearing○ Adjudication hearing (hearing/trial)○ Dispositional hearing (sentencing)• Prisoner as witness in criminal proceeding	<ul style="list-style-type: none">• Settlement conferences• Mediation• Alternative dispute resolution• Foreclosure (including mediation)• Divorce (no children)• Divorce (children)• Parental rights and responsibilities• Child protective proceedings• Termination of parental rights• Involuntary commitments and/or involuntary treatment• Child support proceedings• Protection from abuse• Protection from harassment• Money judgments• Motions – testimonial• Motions – non-testimonial• Jury trials• Bench trials• Prisoner as witness in civil proceeding

Based upon available research, the subcommittee identified the following as proceedings in which, absent the voluntary and informed waiver and consent of the prisoner to participate by video-conferencing and the approval of the court, the physical presence of a prisoner is required either by the Federal Constitution, the Maine Constitutions, statute, or Court Rule:

- Criminal felony jury trials
- Criminal felony bench trials
- Sentencing for felony convictions
- Rule 11 pleas
- All juvenile proceedings
- Civil jury trials
- Civil bench trials
- Any testimonial proceeding in which the prisoner's rights (e.g., counsel; confrontation; due process; etc.) may be implicated or affected

Although the remaining enumerated court proceedings do not appear to legally require the physical presence of prisoner (hereafter referred to as "Allowable Proceedings"), the subcommittee has identified several considerations and concerns that strongly recommend against an unconditional requirement that prisoner's must participate in Allowable Proceedings by video-conference. Rather, a balancing test by the court employing several factors and based upon sound judicial discretion should be the norm. In random order, the following are some of the factors that should inform that judicial discretion:

- Prisoner's right to counsel
- Prisoner's right of access to the court
- Prisoner's right to due process
- Dignity and solemnity of the process
- Availability and quality of technology
- Adequacy and quality of modes of communication between stakeholders
- Local or geographic issues
- Adequacy of support technology
- Facilities and space requirements
- Confidentiality requirements for prisoner and counsel
- Cost efficiencies or inefficiencies
- Time efficiencies or inefficiencies
- The safety of all participants
- Staffing issues
- Authority of the court and separation of powers

Foremost among these are concerns regarding the prisoner's right to counsel and the effect of video-conferencing on the ability of an attorney to effectively represent the client-prisoner. The subcommittee also identified practical concerns: adequacy of contact between and among the participants in the proceeding, including the court (judge and clerk), all counsel, the prisoner, and corrections staff; the rapid exchange of paperwork required by the proceedings; and the availability of necessary support technology (e.g., fax machines, scanners, computers, telephones, etc.) and support staff to operate that technology.

Because the court is responsible for and must oversee the operation and management of the proceedings within its jurisdiction, the court in the exercise of its judicial discretion must weigh these considerations and determine whether a prisoner's participation by video-conferencing

should be permitted in any Allowable Proceeding. To this end, the court must consider the paramount rights of the prisoner; the relative time and cost efficiencies or inefficiencies of video-conferencing; staffing; and the availability and the quality of facilities and technology to ensure a prisoner's demeanor and countenance are adequately portrayed to a factfinder.

To all of these considerations must be added the fact that, in Maine, there are eight separate and independent prosecutorial districts, the Office of the Attorney General, sixteen separate and independent County Sheriffs Departments and the Department of Corrections. Further, within the State's vast geographic expanse there are a number of distinct resource issues that uniquely and parochially affect segments of the State in different ways. While this geographic diversity makes Maine the great State that it is, it also suggests that a mandated uniform statewide approach to prisoner participation by video-conferencing is unworkable and could generate issues grounded in the separation of powers.

Finally, all of these considerations must be directed to and preserve the quality of justice, access to the courts and the solemnity and dignity of the court process.

A more intense inquiry into these considerations is beyond the scope of the subcommittee's work at this juncture, and would require more resources to fully evaluate the feasibility and propriety of video-conferencing throughout the state.

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- Local or geographic issues
- Adequacy of support technology
- Facilities and space requirements
- Confidentiality requirements for prisoner and counsel
- Cost efficiencies or inefficiencies
- Time efficiencies or inefficiencies
- The safety of all participants
- Staffing issues
- Authority of the court and separation of powers

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To all of these considerations must be added the fact that, in Maine, there are eight separate and independent prosecutorial districts, the Office of the Attorney General, sixteen separate and independent County Sheriffs Departments and the Department of Corrections. Further, within the State's vast geographic expanse there are a number of distinct resource issues that uniquely and parochially affect segments of the State in different ways. While this geographic diversity makes Maine the great State that it is, it also suggests that a mandated uniform statewide approach to prisoner participation by video-conferencing is unworkable and could generate issues grounded in the separation of powers.

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VIDEO CONFERENCING COMMITTEE — PROTOCOLS SUBCOMMITTEE
SUMMARY OF REPORT

Summary:

While the exact tasks and mission of our group was not clear, we felt that our attention would be best focused on (1) reviewing current protocols and ensuring that the repository was complete and up to date, and (2) work to develop a protocol template that could be utilized to support both future and current implementations.

(a) Review Current Protocol

Judiciary maintains a website for quick and easy access to copies of all protocols statewide. A cursory review found some to be missing and copies have been sent for inclusion.

(b) Development of Protocol Template

There are many successful implementations of video arraignment proceedings being done all across the state. The protocols that support these instances were developed from many stakeholders within each region to include: Judges/Justices, District Attorneys, Defense Lawyers, Court Clerks, Sheriffs and Jail Security Staff.

We looked at the protocols for four recent implementations to include Franklin, Oxford, Waldo and Penobscot. While these protocols are different from each other (mostly in support of localized issues), the structure of each is very much the same.

Given that we now have a better sense for what works and what doesn't for video arraignment for Maine, we were able to start putting together a protocol template that could be used to support future and current implementations. The initial draft of this document is attached for your review. Please remember however this is in its infancy and will most likely be subject to several changes.

[Note: Proposed Protocol Template attached]

Reinsch, Margaret

From: Mary Ann Lynch <mary.ann.lynch@courts.maine.gov>
Sent: Wednesday, June 12, 2013 7:43 PM
To: Reinsch, Margaret
Subject: Fwd: Video Technology Committee Report
Attachments: Video Committee Report Cover Letter.pdf; Video Comm Report - FINAL 12-1-11.pdf; Appendix A - Video Comm Members.pdf; Appendix B - Video Comm Legal Sub Report.pdf; Appendix C - Video Comm Tech Sub Report.pdf; Appendix D1 - Video Comm Protocols Sub Report.pdf; Appendix D2 - Video Comm - Protocol Template.pdf; Appendix E - Video Comm - Map - Jud'l Regions.pdf; Appendix F - Video Comm - Map - Corrections.pdf; Appendix G - Video Comm - BOC Assessment.docx

This was a report we did about 18 months ago for the CJ Committee.

Sent from my iPad

Begin forwarded message:

From: "Mary Ann Lynch" <mary.ann.lynch@courts.maine.gov>
Date: December 1, 2011, 9:37:26 AM EST
To: "Mary Ann Lynch" <mary.ann.lynch@courts.maine.gov>
Subject: Video Technology Committee Report

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*Please note my new e-mail address: mary.ann.lynch@courts.maine.gov
My old address ceased forwarding on May 1, 2011.*

Mary Ann Lynch, Esq.
Director of Court Information
P.O. Box 4820
Portland, ME 04112
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[207-592-5940](tel:207-592-5940)

**Maine Judicial Branch
Video Arraignment Survey
Conducted on 4/12/13**

Region	Court	DC / SC	Does Court Have VC Equipment?	Does Jail Have VC Equipment?	Is Video Arraignment Conducted Regularly?	If Not, What are the Reasons?
1	Alfred	SC	Yes	Yes	No	The jail is close to the courthouse.
1	York	DC	Yes	Yes	No	Not needed. Video arraignments are handled through Biddeford and Springvale.
1	Biddeford	DC	Yes	Yes	Yes	
1	Springvale	DC	Yes	Yes	Yes	
2	Bridgton	DC	Yes	Yes	No	Not needed. Bridgton does not use Video arraignments because they are conducted from Cumberland County jail through the Portland District court or UCD. Oxford County arraignments are done in South Paris District Court.
2	Portland	DC / SC	Yes	Yes	No	Jail Administrator and DA prefer courthouse-based arraignments. The belief is that they are more efficient, they complete more procedures and ultimately save money.
3	Rumford	DC	Yes	Yes	No	Not needed. Arraignments are done through other courts.
3	Auburn	SC	Yes	No	No	County Jail does not have video equipment, They indicate that they aren't interested in obtaining equipment.
3	South Paris	DC / SC	Yes	Yes	Yes/No	Video is available and used on occasion, however, because of the close proximity of the Jail (physically beside courthouse) jail prefers to bring inmates in.
3	Lewiston	DC	Yes	No	No	Androscoggin Jail has no equipment. Judges do use video arraignments for the Oxford and Franklin County Prisoners.
3	Farmington	DC / SC	Yes	Yes	Yes/No	Video Arraignment is conducted but the jail's technical issues continue to prevent regular use.
4	Waterville	DC	Yes	Yes	Yes	County Jail has technical Issues,. Likely resolved as of 5/31/13.
4	Augusta	DC / SC	Yes	Yes	Yes	County Jail has technical issues, likely resolved as of 5/31/13.
4	Showhegan	DC / SC	Yes	Yes	Yes	
5	Millinocket	DC	Yes	Yes	No	Arraignments are done from other courts.
5	Lincoln	DC	Yes	Yes	No	Arraignments done at other courthouses.
5	Dover	DC / SC	Yes	No	No	Jail has no equipment. Video arraignments are used when a judge is not available in Dover and the judge comes to Dover through distance-judging. (The defendant is in the courtroom and the Judge is brought in by video.)
5	Bangor	DC / SC	Yes	Yes	Yes	
5	Newport	DC	Yes	Yes	No	Equipment is available, but In-custody arraignments are done in Bangor.
6	West Bath	DC / SC	Yes	Yes	Yes	
6	Belfast	DC	Yes	Yes	Yes	
6	Rockland	DC / SC	Yes	No	No	Knox County Jail does not have the equipment. (Knox does regional in-custodies occasionally.)

**Maine Judicial Branch
Video Arraignment Survey
Conducted on 4/12/13**

Region	Court	DC / SC	Does Court Have VC Equipment?	Does Jail Have VC Equipment?	Is Video Arraignment Conducted Regularly?	If Not, What are the Reasons?
6	Wiscasset	DC / SC	Yes	Yes	No	County Jail technology issues, picture quality insufficient for judicial action.
7	Calais	DC	Yes	Yes	Yes/No	Arraignments not done at this courthouse because Washington County (Machias) does arraignments of prisoners on Monday, Wednesday and Friday, and jail is connected to courthouse. On the rare occasions that the judge is in Calais any of those days and there are prisoners we handle them by video. We also occasionally use it if the District Attorney is here in Calais and the judge and prisoners are in Machias.
7	Machais	DC / SC	Yes	Yes	Yes/No	Because jail is connected to courthouse, video is not necessary. We use video conferencing for arraignments when there isn't a Judge available in Machias. We usually connect to either Ellsworth or Calais.
7	Ellsworth	DC / SC	Yes	No	Yes/No	Hancock Jail has no equipment, so Hancock arraignments are done in person. However, video is in use regularly. Judges in Hancock County arraignments for Washington County when they don't have a sitting judge.
8	Houlton	DC	Yes	Yes	Yes	Training issues are being addressed.
8	Caribou	DC / SC	Yes	Yes	Yes	
8	Fort Kent / Madawaska	DC	Yes	Yes	Yes	
8	Presque Isle	DC / SC	Yes	Yes	Yes	

Reinsch, Margaret

From: Mary Ann Lynch <mary.ann.lynch@courts.maine.gov>
Sent: Wednesday, June 12, 2013 7:42 PM
To: Reinsch, Margaret
Subject: Fwd: video arraignments
Attachments: Video Arraignment SummaryJune-13.xlsx

Here is our latest info on video capability.

Sent from my iPad

Begin forwarded message:

From: Amanda Martin <amanda.j.martin@courts.maine.gov>
Date: June 10, 2013, 9:50:45 AM EDT
To: James Glessner <james.t.glessner@courts.maine.gov>, "Mary Ann Lynch" <mary.ann.lynch@courts.maine.gov>, David Packard <david.packard@courts.maine.gov>
Subject: video arraignments

document attached, again -- reformatted so that the grayscale will show when printed/copied.

Amanda

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Secretary to Chief Justice Leigh I. Saufley  
Maine Supreme Judicial Court  
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## **MEMBERS OF VIDEO CONFERENCING TECHNOLOGY COMMITTEE**

*(Listed Alphabetically)*

Stephanie Anderson, District Attorney, Cumberland County; President, Maine Prosecutors Association

Douglas Birgfeld, OIT, Executive Branch

Jody Breton, Assistant Commissioner of Corrections

Sarah Churchill, Esq., Maine Association of Criminal Defense Lawyers

Peter Crichton, Manager, Cumberland County

Betsy Fitzgerald, Manager, Washington County

Amy Fowler, Maine County Commissioners

James T. Glessner, State Court Administrator, Judicial Branch

Robert Gross, Captain, Washington County Sheriff's Department

Thomas E. Humphrey, Chief Justice, Maine Superior Court, Judicial Branch

Marion Hylan-Barr, Office of Policy and Legal Analysis, Maine Legislature

Kathy Jones, Clerk, Biddeford District Court, Judicial Branch

Kevin Joyce, Sheriff, Cumberland County Sheriff's Department

Charles C. LaVerdiere, Chief Judge, Maine District Court, Judicial Branch

Mary Ann Lynch, Chief Information Officer, Judicial Branch

Chris Oberg, State of Maine Board of Corrections

John Pelletier, Maine Commission on Indigent Legal Services

Adam Raymond, OIT, Judicial Branch

Leann Robbin, AAG, Office of Attorney General, Executive Branch

Glenn Ross, Sheriff, Penobscot County Sheriff's Department; President, Maine Sherriff's Association

Geoff Rushlau, District Attorney, Sagadahoc, Lincoln, Knox and Waldo Counties

Amy Veilleux, OIT, Judicial Branch

Mary Zidalis, Deputy, Washington County Sheriff's Department

## **HONORED GUESTS**

Hon. Representative David C. Burns

Hon. Senator Garrett Mason

## VIDEO CONFERENCING COMMITTEE — TECHNOLOGY SUBCOMMITTEE

Currently the courts are using ISDN for video conferencing, with the exception of Bangor. Within the last month, the Judicial Branch installed a video border proxy that allows for us to take incoming IP calls through the State firewall to any one of our courts. Additionally, a separate project has been upgrading the bandwidth at each court location. To save on costs, the jails can now also transition to IP connections and utilize the Judicial Branch border proxy. IP connections are (generally) better quality, cheaper, and more reliable than ISDN.

The Judicial Department's plan is to transition these upgraded courts to IP and phase out the ISDN lines. When this is completed, the preferred method of video conferencing will be IP-based calls, however Judicial has a bridge that allows an ISDN call to connect to one of the IP units at a court. This is how Penobscot Judicial Center and Penobscot County Jail have been connecting for almost two years.

To summarize, the Judicial Branch has the backbone in place to handle either ISDN or IP based calls from outside agencies, and using IP based connections is preferred to ISDN.

## Protocol for *[judicial district number]* In-Custody Video Arraignments

### I. Introduction

Pursuant to M.R. Crim.P.5, the Court may preside at the arraignment of a defendant who appears by interactive video conferencing (IVC).

For purposes of this Protocol, definitions and abbreviations are applicable as follows:

- The *[court name]* shall be referred to as the “Court”.
- The *[jail name]* shall be referred to as the “Jail.”
- Lawyers of the Day / Retained Counsel will be referred to as “LOD’s”
- District Attorney’s / Asst. District Attorney’s will be referred to as “ADA’s”.
- Interactive Video Conferencing will be referred to as “IVC”.
- Video arraignment is defined as ‘the initial court appearance for a person being held in custody’ and can generally be used under the following provisions: initial appearances, bail hearings & motions in connection with the initial appearance. In addition, any motion or hearing where it’s mutually agreed to by all parties and within statutory authority can be heard via IVC.

In-custody arraignments for the trial courts of *[judicial district number]* shall be conducted via IVC from the *[jail name]*. Considerations for the following arraignment scenario(s) are applicable as follows:

**Arraignment of prisoners at the *[jail name]*.** Check all scenarios that apply:

- The usage of video arraignment will be considered as standard operating procedure and as determined by the presiding Judge/Justice; in consultation with the Sheriff.
- The usage of video arraignment is to be reserved for high risk inmates and other security risk situations; as determined by the presiding Judge/Justice and in consultation with the Sheriff.

The Jail will have IVC equipment with either IP connectivity or ISDN line(s) capability (Note: IP is referred), a dedicated (non-recordable) telephone, and a fax machine available in a conference room of sufficient size to allow for the safety of participants.

The Court will be responsible for providing recording equipment and a recording clerk (at the Court). The hearing shall be electronically recorded at the Court.

The LOD’s, Jail Staff, ADA’s and the prisoners will appear at the Jail hearing room. The presiding Judge/Justice, and Court Clerk will remain at Court with court security and members of the public and press.

### II. Protocol

#### **Prior to Commencement of Video Arraignments:**

1. Scheduling Note: The arraignment of in-custody prisoners will occur *[insert schedule – to minimize transportation issues - structure such that video arraignment is not occurring on the same day as*

*hearings*]. Scheduled arraignments that fall on a holiday or shutdown day will be presumably held on the next business day.

2. The Court Clerk shall determine coverage need and arrange for the appearance of the LOD(s).  
*[Remove this section if not applicable → Note: If local court is not available. The clerk shall inform the clerk of the presiding remote Court of the arraignment need and confirm availability. Upon confirmation, the clerk shall notify the LOD's, ADA's, Jail Security Staff.]*
3. The District Attorney's Office shall have all complaints and ancillary documents filed with the Court by *[time]*. Upon receipt of the complaints, the Court Clerks will enter them into MEJIS. **Note:** Late filings should be kept to an absolute minimum and only as necessary, as to not delay the commencement of video arraignments, which are ordinarily scheduled to begin at *[time]*.
4. The LOD(s) will *[describe arrangement for how LOD will meet with DA's office / get complaints]*, by *[time]*, to pick up copies of the complaints and related paperwork for each in-custody defendant they are representing. Any plea or bail negotiations should be discussed during this time as well.
5. By no later than *[time]*, the Jail shall have the prisoners fed, provided a completed review of defendant's rights by videotape and make the prisoners available for discussion with the LOD(s). Requests for Appointment of Counsel will also be made available at this time for completion by the prisoners. Any completed copies should be faxed to the Court prior to the commencement of scheduled arraignments at *[time]*.
6. At anytime after *[time]*, the LOD(s) will be provided access to the prisoners at the jail. A conference room will be made available to meet privately with the prisoners as a group or one at a time.
7. The jail security staff shall be responsible for calling and connecting with the Court approximately 20 minutes before the scheduled arraignment to ensure that the IVC equipment is in working order.
8. At the discretion of the Court, a phone may be made available for purposes of communication between the LOD and those present at the Court. It is within the Arraigning Judge's discretion as to whether any member of the public will be allowed to speak during the hearing.

#### **During Video Arraignments:**

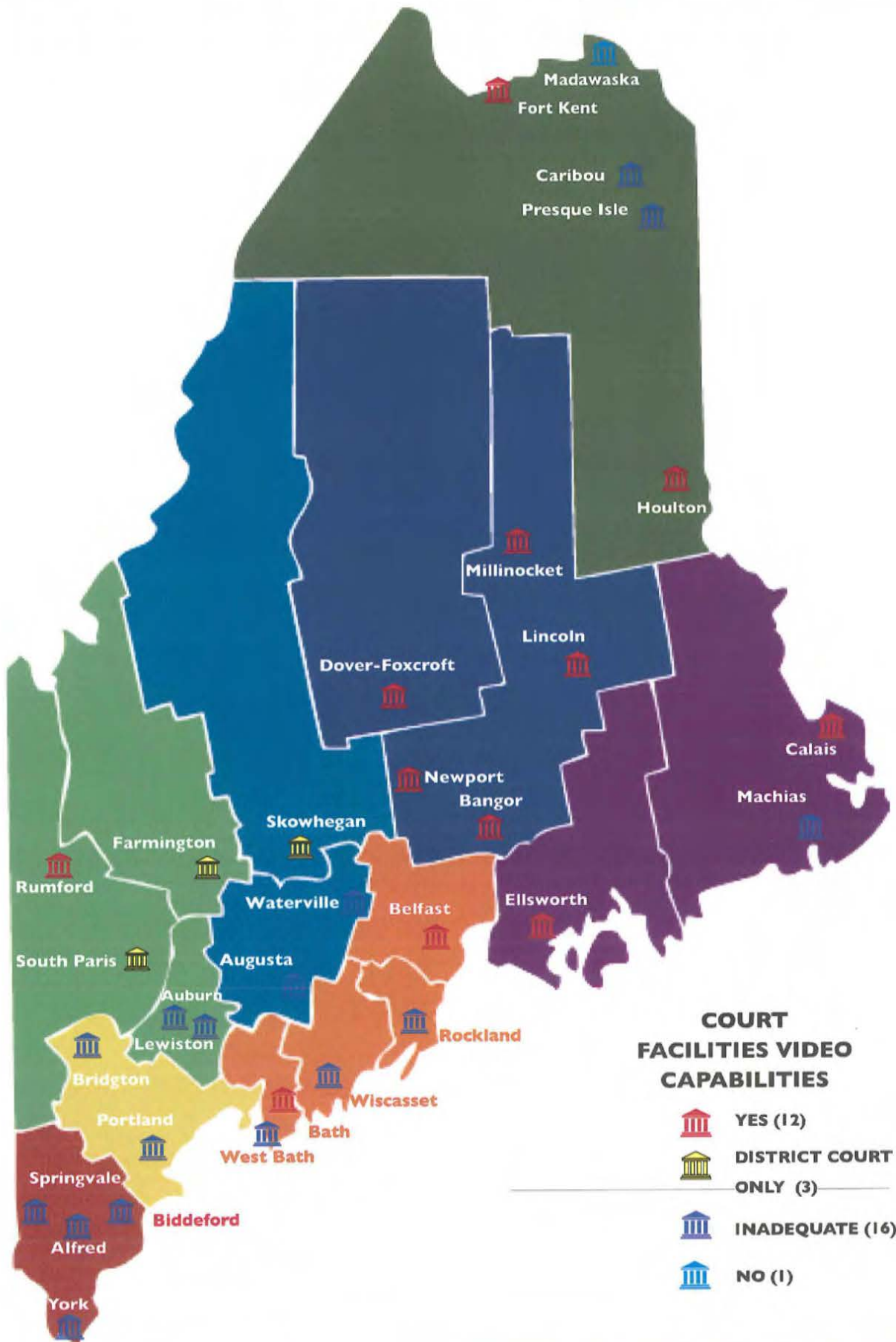
9. The prisoners will be presented to the Arraigning Judge in an order *[enter arrangement]*. Cases in which there is a privately retained attorney are typically heard first, then cases in which the prisoner is represented by an LOD.
10. The Jail will be responsible for providing adequate eyes-on security for all prisoners at the jail during all aspects of the arraignment process.
11. The Court Clerk will complete all paperwork as necessary on behalf of the Arraigning Judge. Documents requiring the prisoner's signature will be faxed to the jail hearing room. Upon receipt, designated Jail security staff shall acquire all signatures and fax the signed copies back to the Court Clerk.
12. Jail security staff will provide each prisoner with a 'scheduling notice / jury trial request form' informing them of their next hearing date/time and who their attorney will be.

#### **Post Video Arraignments:**

13. The Court Clerk will docket all arraignment outcomes and enter into MEJIS accordingly. Fax any Conditions of Release to the jail and enter bail conditions onto 'the switch'.
14. The Jail will forward copies of all original and signed paperwork to the Clerk's Office.

15. If the defendant desires to post a cash or surety bail, a bail commissioner will be called by the Jail to execute the bail. However, if a prisoner is placed on unsecured or personal recognizance bail, the Court may request the Clerk or designated jail security staff to execute the bail. Note: Jail Staff need to fax all completed bail bonds to the Court Clerk in a timely manner and in support 13.C above.

# APPENDIX E: COURT FACILITIES VIDEO STATUS



# APPENDIX F: CORRECTIONAL FACILITIES VIDEO STATUS

