

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
THIRD AMENDED GENERAL ORDER 20-03**

December 23, 2020

IN RE: COVID-19 PUBLIC EMERGENCY

THIRD AMENDED GENERAL ORDER 20-03

The purpose of this Order is to review and re-issue authorizations for the continued use of video and telephone conferences in accordance with the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

I. The CARES Act and Criminal Proceedings

On March 27, 2020, the President of the United States signed into law the CARES Act. Pub. L. No. 116-136, 134 Stat. 281 (2020). Section 15002(b) of the CARES Act provides for video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, for certain criminal proceedings, if the Judicial Conference of the United States finds that emergency conditions caused by the coronavirus 2019 disease (“COVID-19”) outbreak will materially affect the functioning of either the federal courts generally or a particular district court, and the chief judge of a court covered by that finding authorizes video teleconferencing, or telephone conferencing if video conferencing is not reasonably available. Additional case-by-case findings are required of the presiding judge relative to felony pleas and sentencings.

By late March the COVID-19 outbreak had impacted the Central District of Illinois, all 50 states and countries around the world. The Centers for Disease Control and Prevention (“CDC”) predicted millions of infections and between 100,000 and 200,000 deaths in the United States. On March 9, 2020, the Governor of Illinois declared all counties in the State of Illinois a disaster area. Illinois Executive Order 2020-13, entered March 26, 2020, placed prisons on administrative

quarantine and suspended new admissions to Illinois Department of Corrections facilities from county jails. The National Commission on Correctional Health Care recommended the suspension of all transfers to and from facilities unless absolutely necessary. On March 29, 2020, the Judicial Conference of the United States declared that emergency conditions caused by the COVID-19 outbreak are materially affecting, and will continue to materially affect, the functioning of the federal courts generally. On July 27, 2020, the Governor of Illinois issued Executive Order 2020-50, rescinding Executive Order 2020-13, declaring the Illinois Department of Corrections may resume accepting the transfer of individuals from Illinois county jails with guidelines to ensure the health and safety of the transferring individuals. This same date, the Illinois Department of Corrections issued a memorandum reflecting enhanced intake and transfer guidelines. On October 3, 2020, the Bureau of Prisons removed visitor restrictions and began non-contact visits between inmates and visitors.

The State of Illinois implemented a five-phase re-opening plan, and, on June 26, 2020, the State of Illinois entered phase four of this plan. Despite continued mitigation efforts, the State of Illinois experienced a resurgence of COVID-19 cases and, on November 20, 2020, moved into Tier Three of the Resurgence Mitigation Plan. Tier Three limits social gatherings to ten persons or less, requires social distancing and face coverings and states all employees who can work remotely should do so. On December 11, 2020, the Governor of Illinois declared all counties in the State of Illinois remain a disaster area.

At the time of review and reauthorization of this Order, the CDC reports 17,974,303 total positive COVID-19 cases, with 183,927 of these being new cases reported today, and 318,569 deaths in the United States. Although for many this disease appears to cause only flu-like symptoms, for others it can pose a serious risk, even death. According to the CDC, the virus is

thought to spread mainly from person-to-person, particularly between people who are in close contact with one another (within about six feet) and through respiratory droplets. Some studies suggest COVID-19 may be spread by people who do not display symptoms. The CDC continues to recommend frequent hand washing, avoiding close contact, covering your mouth and nose with a face cover when around others, covering coughs and sneezes and frequent cleaning and disinfecting of areas. On December 11, 2020, the U.S. Food and Drug Administration (FDA) issued the first emergency use authorization for a COVID-19 vaccine to be distributed in the U.S. to individuals 16 years of age and older. The State of Illinois implemented a three phased approach to distributing the COVID-19 vaccine, notably with Phase 1 having two subgroups: 1-A and 1-B, respectively. On December 15, 2020, Phase 1-A began by distributing the COVID-19 vaccine to frontline healthcare workers. At this time, vaccine distribution to other populations has not begun and a specific timeline is not available.

For the reasons stated, the Court continues to find that it cannot return to usual court operations without endangering the health of defendants, counsel, the public, and court personnel, thereby continuing to necessitate the use of video conferencing, or telephone conferencing if video conferencing is not reasonably available. As of the date of this Order, video conferencing is fully operational in all four divisional offices and continues to be utilized daily.

Therefore, the Court, on its own motion, continues to **AUTHORIZE** the use of video conferencing, or telephone conferencing if video conferencing is not reasonably available, for the following criminal proceedings, as specified in the CARES Act:

- Detention hearings under 18 U.S.C. § 3142;
- Initial appearances under Federal Rule of Criminal Procedure 5;
- Preliminary hearings under Federal Rule of Criminal Procedure 5.1;
- Waivers of Indictment under Federal Rule of Criminal Procedure 7(b);
- Arraignments under Federal Rule of Criminal Procedure 10;
- Probation and supervised revocation proceedings under Federal Rule of Criminal

- Procedure 32.1;
- Pretrial release revocation proceedings under 18 U.S.C. § 3148;
 - Appearances under Federal Rule of Criminal Procedure 40;
 - Misdemeanor pleas and sentencings under Federal Rule of Criminal Procedure 43(b)(2);
 - Proceedings under 18 U.S.C. § 403 (commonly known as the “Federal Juvenile Delinquency Act”), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings

The video conferencing or telephone conferencing authorized above may only take place with the consent of the defendant, or the juvenile, after consulting with counsel.

Further, the Court, *sua sponte*, specifically finds that felony pleas under Federal Rule of Criminal Procedure 11 and felony sentencings under Federal Rule of Criminal Procedure 32 cannot be conducted in person without seriously jeopardizing public health and safety. In accordance with the CARES Act, these proceedings are authorized to be conducted by video conference, or by telephone conference if video conference is not reasonably available, if the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice.

Information detailing how to access any audio and/or video feed of court proceedings will be posted in the notice of setting on a case-by-case basis, and general information will be published on the district court’s public web page, www.ilcd.uscourts.gov. The minutes of the proceeding will reflect when video conferencing and/or telephone conferencing is utilized.

II. **The Press and Public**

In any traditional in-court proceeding that is conducted via video conference or telephone conference due to the exigent circumstances stemming from the COVID-19 outbreak, audio and video feeds will be available to the public and press to the extent practicable. Information detailing how to access any audio and/or video feed of court proceedings will be posted in the notice of setting on a case-by-case basis, and general information will be published on the district court’s

public web page. Members of the public and press are expected to mute their end of the line and to not disrupt proceedings in any way. All rules and prohibitions on the recording of proceedings remain in effect. *See* CDIL-LR 83.7.

In the event a defendant in a criminal case does not consent to the use of video conferencing or telephone conferencing under Sections 15002(b)(1)–(2) of the CARES Act, credentialed members of the press and public may attend such hearings in person at the discretion of the presiding judge. Principal participants and the public and press may be physically segregated from each other, including utilizing multiple rooms, and video conferencing and/or telephone conferencing. Social distancing and face covering protocols will be required in all proceedings, and the number of in-person participants may be limited based on the capacity of the room and in consideration of CDC guidelines. Courtroom spectators are reminded that there are health and safety risks associated with attending an in-person court hearing.

The Court recognizes that the public and the press have a qualified First Amendment right of access to certain court proceedings and that the use of video conferencing and/or telephone conferencing may implicate that right. Nonetheless, for the reasons set forth herein, the Court finds that these revised procedures are necessitated by the emergency conditions caused by COVID-19 and must be implemented to prevent the spread of COVID-19. *See Press–Enter. Co. v. Superior Court*, 478 U.S. 1, 9 (1986); *Press–Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984); *Walton v. Briley*, 361 F.3d 431, 433 (7th Cir. 2004).

III. Review

This Court, in accordance with Section 15002(b)(3)(B) of the CARES Act, will continue to review the findings and authorizations made in this Order no later than ninety (90) days after this and any subsequent renewal.

IT IS SO ORDERED.

Dated this 23rd day of December, 2020.

/s Sara Darrow

**HON. SARA DARROW
Chief U.S. District Judge**