



[SF 400](#) – Video Conferencing (LSB1186SV)
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Fiscal Note Version – New

Description

[Senate File 400](#) does the following:

- Provides that for an initial appearance or arraignment, upon the motion of any of the parties, the proceeding is to be conducted by video conference if appropriate technology is available.
- Provides that for a pretrial conference, scheduling conference, or any other noncontested judicial proceeding, upon the motion of any of the parties, the proceeding is to be conducted by video conference if appropriate technology is available unless the court orders the proceeding to be held in person for good cause.
- Provides that for a hearing in a criminal, juvenile, or postconviction relief proceeding, upon motion of any of the parties, the hearing may be conducted by video conference if it is conducted in an efficient manner and does not prejudice a substantial right of any party, if appropriate technology is available.
- Provides that any party may file a resistance to a motion to hold a judicial proceeding by video conference.
- Provides that the term “open court” includes the remote testimony of a witness by video conference or other remote means of communication if approved by the court.
- Adds video recordings to the provisions of Iowa Code section [602.3205](#) related to audio recordings of certified shorthand reporters.

The Bill takes effect upon enactment.

Background

During the COVID-19 pandemic, Judicial Branch orders temporarily allowed certain judicial proceedings to be conducted by video conference or telephone.

Currently, Iowa Code section [624.1](#) provides that all issues of fact in ordinary actions are to be tried upon oral evidence taken in open court, except that depositions may be used as provided by law. The Iowa Supreme Court held that the phrase “in open court” meant physical presence in the courtroom and ruled that allowing telephonic testimony over objection violated this statute. In re Estate of Rutter, 633 N.W.2d 745-46 (Iowa Ct. App. 2001).

On November 4, 2022, the Iowa Supreme Court, in an effort to provide clarification and uniformity in Iowa courts, issued an order regarding remote judicial proceedings. The order stated the following for nonappellate court proceedings:

- The court has the discretion to determine when a judicial proceeding will be held remotely or in person unless otherwise provided by law.
- Any decision on whether to hold a judicial proceeding remotely must be made on a case-by-case basis.
- Courts should not have a standard practice of always having a particular proceeding occur in person or remotely.

- All contested court proceedings are presumed to occur in person.
- A contested testimonial proceeding may occur by video conference or telephone only with the consent of all parties and in the court's discretion.
- Courts may direct, and parties may request, that uncontested court proceedings or contested nontestimonial court proceedings occur by video conference or telephone if appropriate technology is available.
- For routine, uncontested matters, courts are encouraged to utilize remote technology when available and when doing so does not prejudice a party.
- Any party may file a resistance to a proceeding being conducted remotely and request that the proceeding occur in person.
- If the court denies the request, the court shall state the reasons for the denial with particularity.

According to data collected by the Judicial Branch in January 2023:

- 95.0% of requests for noncontested proceedings to be held remotely were granted;
- 91.0% of requests for pretrial conferences to be held remotely were granted;
- 35.0% of noncontested proceedings are held remotely, regardless of whether they were done at the request of a party or on the court's initiative;
- 24.0% of pretrial conferences were held remotely, regardless of whether they were done at the request of a party or on the court's initiative.

Public defenders are funded from the State Public Defender (SPD) operating budget, and contract attorneys are funded from the Indigent Defense Fund. Both funds receive a General Fund appropriation in the annual Justice System Appropriations Act. See the [***Issue Review Indigent Defense — Overview and Funding History***](#) for more information about the indigent defense program in Iowa and the costs of providing indigent defense.

In FY 2015, the SPD contracted with 1,018 attorneys, and in FY 2023, that number decreased by 45.0% to 559.

Assumptions

- The Office of the SPD pays mileage expenses for its attorneys to travel to judicial proceedings.
- Approximately 40.0% of proceedings for adult criminal and juvenile cases will be held by video conference under the Bill.
- Judicial proceedings held by video conference will incur no mileage expenses to SPD attorneys and contract attorneys.
- The SPD reports that due to the COVID-19 pandemic's impact on the scheduling of judicial proceedings and the decrease in the number of SPD contract attorneys, future mileage expenses for the SPD attorneys and contract attorneys will more closely resemble FY 2019 mileage expenditures than those of more recent fiscal years.
- In FY 2019, \$794,000 was expended from the Indigent Defense Fund on mileage expenses for adult criminal and juvenile proceedings. Using the recently increased reimbursement rate of 50 cents per mile, the equivalent expenditure would be \$1.0 million.
- In FY 2019, \$110,000 was expended from the SPD operating budget on mileage expense reimbursement.
- The recent decrease in SPD contract attorneys will lead to increased mileage expenses.
- The Judicial Branch reports that the Bill will result in the need for substantial operational modifications for scheduling and docket management, as the way court proceedings often work in high-volume docket environments is not conducive to switching between in-person and remote proceedings.

- To implement the Bill, the Judicial Branch will create and manage separate court time for in-person and remote proceedings and manage and assign cases from one setting to another.
- Additional motions and the need for orders to set video conference hearings will add additional work for judges, clerks, and law clerks.
- The Judicial Branch anticipates that an additional 1.0 Judicial Specialist full-time equivalent (FTE) position will be needed for each of the 10 largest urban counties to handle additional scheduling, filing, and technology management and for each of the eight judicial districts to handle scheduling, filing, and technology management in rural areas, for a total of 18.0 FTE positions.
- The cost per judicial specialist FTE position is approximately \$74,000.

Fiscal Impact

The Bill is estimated to have an annual net cost of approximately \$965,000 if future trends mirror FY 2019. This estimate consists of costs to the Judicial Branch and savings to the SPD. If current trends mirror FY 2022 and FY 2023 and video conferences become more commonly utilized, the SPD may experience less savings and the net cost of the Bill may be higher to the Judicial Branch.

The Bill is estimated to have an annual cost of approximately \$1.3 million to the Judicial Branch, as shown in **Table 1**. The Judicial Branch also reports several operational impacts of the Bill, but the fiscal impact of these cannot be determined. The Judicial Branch is funded through the General Fund.

Table 1 — Annual Cost to Judicial Branch

New FTE Positions	Cost Per FTE Position	Total Cost Per Year
18.0	\$73,700	\$1,326,600

The Bill may have an annual cost savings of approximately \$362,000 to the Office of the State Public Defender, as shown in **Table 2**. The cost savings are composed of savings to the Office of the State Public Defender operating budget and the Indigent Defense Fund. Both are funded through the State General Fund. If video conferences become commonly utilized throughout the State or the number of contract attorneys increases, cost savings may be less.

Table 2 — Annual Savings to the Office of the State Public Defender

	Mileage Expenses Per Year	Percent of Proceedings Held by Video Conference	Cost Savings Per Year
State Public Defender Operating Budget	\$110,000	40.0%	\$44,000
Indigent Defense Fund	\$794,000	40.0%	\$317,600
Total	<u>\$904,000</u>		<u>\$361,600</u>

Note: **Table 2** uses data from FY 2019.

Sources

Office of the State Public Defender
Judicial Branch
Legislative Services Agency

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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