

**This checklist was endorsed by the Defender Services Advisory Group (DSAG)  
and the Performance Measurement Working Group (PMWG) during their  
Spring 2022 meeting.**

**CHECKLIST FOR ADVICE TO CLIENTS RE: VIRTUAL HEARINGS**

Setting and technology

1. Will it make a difference that there will be no eye contact between the judge and the client? How close will the client be to the camera during a virtual hearing?
2. What is the virtual court setting? Does it dehumanize the client by having a hostage-like look? Does it reflect the formality and seriousness of the court proceeding?
3. Will your client be shackled during a virtual hearing?
4. What are the computer skills that are required to participate in the virtual hearing?
5. Are there language barriers which are made worse by a virtual hearing?
6. How good will the sound and other technology be during the virtual hearing?
7. Will other defendants and/or detention facility staff be in the room during the proceedings?
8. Will there be conflicting sounds from the detention facility interrupting or interfering with the virtual hearing?
9. Will your client be wearing a mask?

Individual client and court

1. What is your assessment about the judge's attitude toward virtual hearings?
2. Will the client feel abandoned because he is by himself? Does the client trust the arrangements, such as his ability to talk to his attorney?
3. Is there a way for the attorney and client to have confidential conversation, not just in a "breakout" video connection, but without others present in the room where the client is held during the virtual hearing?
4. Will the virtual hearing cause inconveniences for the client?
5. Does the client have a disability (e.g., mental or physical) that should be considered?
6. How long has the client been incarcerated?
7. What happens to the client if they are removed from the jail and taken to court? Quarantined? Under what conditions?
8. What type of hearing will be held?
9. Will there be witnesses? Experts? Exhibits?
10. Is it a contested hearing?

Big picture concerns

1. Will the client's family be able to participate?
2. Is this a hearing where the judge should be able to see the family or community support? Can you make arrangements so the client's family and witnesses are present and observed by the judge during the hearing?
3. Will the public be able to attend?
4. Will the press be able to attend?

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Smaller picture concerns:

Initial Appearance:

1. Does the client have a likely chance of immediate release?
2. Will a request for an in-person hearing delay an otherwise-likely release?
3. Do you have sufficient time to meaningfully review consent/waiver forms with the client?

Preliminary Hearing or Detention Hearing

1. Will your witnesses be more effective in-person?
2. Will video or in-court setting allow better access to observe/present evidence?
3. Studies have shown that bail hearings conducted virtually generally result in higher bond amounts than bail hearings conducted in person; will an in-person hearing increase your client's chances of release?

Arraignment

1. What is the nature of your client's indicted charge?
2. Does the client have concerns about public knowledge of their charges? Will video or in-court proceedings permit any desired limitation on public awareness of charge?

Pretrial Evidentiary Hearings

1. Will your witnesses be more effective in-person?
2. Will video or in-court setting allow better access to observe/present evidence?
3. Will you have the court's full attention during a video versus in-person hearing?

Trial: Don't do it virtually

Sentencing: Generally, don't agree to virtual proceeding, unless in-person hearing will result in substantial delay.