

Winter 2021

No Ordinary Process: The Flaws in Illinois Courts' Use of Remote Video Technology in Mental Health Trials

Matthew R. Davison

State of Illinois, Guardianship & Advocacy Commission, matthewrdavison@gmail.com

Follow this and additional works at: <https://lawcommons.luc.edu/annals>



Part of the [Health Law and Policy Commons](#), and the [Life Sciences Commons](#)

Recommended Citation

Matthew R. Davison *No Ordinary Process: The Flaws in Illinois Courts' Use of Remote Video Technology in Mental Health Trials*, 30 *Annals Health L.* 137 (2021).

Available at: <https://lawcommons.luc.edu/annals/vol30/iss1/4>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in *Annals of Health Law and Life Sciences* by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

No Ordinary Process: The Flaws in Illinois Courts' Use of Remote Video Technology in Mental Health Trials.

*Matthew R. Davison**

INTRODUCTION

There is an inherent tension between any state or federal crisis response and such efforts infringing upon or undermining important legal rights.¹ Hurricanes,² terrorism,³ plagues,⁴ and wars (both actual⁵ and cold⁶)

* Matthew R. Davison, JD, is staff attorney with the State of Illinois, Guardianship & Advocacy Commission. He serves as trial and appellate counsel for mental health respondents in proceedings throughout Illinois. The content (and errors) of this Article are his alone and do not reflect the opinion or position of any agency or entity. He may be contacted directly at MatthewRDavison@gmail.com. The author wishes to express his gratitude to the members of the *Annals of Health Law and Life Sciences* for their assistance, edits, and comments on this Article.

¹ See Lindsay F. Wiley & Stephen I. Vladeck, *Coronavirus, Civil Liberties, and the Courts: The Case Against "Suspending" Judicial Review*, 133 HARV. L. REV. 179, 183 (2020); see also Conor Friedersdorf, *How to Protect Civil Liberties in a Pandemic*, ATLANTIC (Apr. 24, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/civil-libertarians-coronavirus/610624/>.

² See generally Michael Cook, "Get Out Now or Risk Being Taken Out by Force": *Judicial Review of State Government Emergency Power Following a Natural Disaster*, 57 CASE W. RES. L. REV. 265, 289 (2006) (summarizing and analyzing various government responses to hurricanes, such as curfews, forced evacuations, and seizure of firearms); see also Rebecca Mae Salokar, *After the Winds: Hurricane Andrew's Impact on Judicial Institutions in South Florida*, 37 JUDGES' J. 26, 30 (1998) (giving an example where a curfew was enforced to ensure safety).

³ See generally David Cole, *Where Liberty Lies: Civil Society and Individual Rights After 9/11*, 57 WAYNE L. REV. 1203, 1216 (2012) (giving an example of how the Central Intelligence Agency was authorized to use forms of waterboarding and torture after 9/11).

⁴ See generally Charles McClain, *Of Medicine, Race, and American Law: The Bubonic Plague Outbreak of 1900*, 13 L. & SOC. INQUIRY 447, 453 (1998) (discussing San Francisco's efforts to combat the bubonic plague).

⁵ See generally Thomas Y. Fujita-Rony, *Korematsu's Civil Rights Challenges: Plaintiffs' Personal Understandings of Constitutionally Guaranteed Freedoms, the Defense of Civil Liberties, and Historical Context*, 13 TEMP. POL. & CIV. RTS. L. REV. 51, 62 (2003) (giving an example where a suspected war enemy was taken into jail without any hearing or trial afforded to him).

⁶ See generally Martin H. Redish, *Unlawful Advocacy and Free Speech Theory: Rethinking the Lessons of the McCarthy Era*, 73 U. CIN. L. REV. 9, 16 (2004) (stating that "historians

demonstrate that, in times of emergency, individual safeguards often have been set aside in favor of efficiency and safety.⁷ After President Abraham Lincoln suspended writs of *habeas corpus* in 1861, he defended his action to Congress and asked for its endorsement by arguing, in part, that arrests and detentions of individuals “without resort[ing] to ordinary processes” was necessary to ensure the safety of both the public and the republic.⁸

The emergence of a new crisis, COVID-19,⁹ presented courts and government leadership with an uncomfortable choice: shut down altogether or set aside ordinary processes and improvise. Courts’ answer to this choice was not uniform, especially early on during the pandemic, where some courts that insisted on in-person proceedings quickly learned how grievous the virus is and had to reverse course.¹⁰ Across the United States, many courts opted to postpone the majority of pending matters and entered a series of orders aimed at reducing in-person interactions to curtail any transmission of the

seem to be unaware of the important implications of foundational free speech theory for the proper assessment of the treatment received by American Communists during the Cold War”).

⁷ Elizabeth Goitein, *The Alarming Scope of the President’s Emergency Powers*, ATLANTIC (Jan./Feb. 2019), <https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418/> (“At key points in American history, presidents have cited inherent constitutional powers when taking drastic actions that were not authorized—or, in some cases, were explicitly prohibited—by Congress. Notorious examples include Franklin D. Roosevelt’s internment of U.S. citizens and residents of Japanese descent during World War II and George W. Bush’s programs of warrantless wiretapping and torture after the 9/11 terrorist attacks. Abraham Lincoln conceded that his unilateral suspension of habeas corpus during the Civil War was constitutionally questionable but defended it as necessary to preserve the Union.”).

⁸ Abraham Lincoln, Pres., July 4th Message to Congress (Jul. 4, 1861).

⁹ See *generally COVID-19 Facts*, CORONAVIRUS.GOV, <https://faq.coronavirus.gov/covid-19-facts/> (last visited Nov. 1, 2020) (“Coronavirus disease 2019 (COVID-19) is a respiratory illness that can spread from person to person. There are many types of human coronaviruses, including some that commonly cause mild upper-respiratory tract illnesses. COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in humans.”); see also *Coronavirus Disease 2019 (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Nov. 15, 2020) (explaining that symptoms of the virus include “fever or chills, cough shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and diarrhea”).

¹⁰ Cory Shaffer, *An Ohio Judge Determined to Hold a Trial, a Defendant Removed from the Courtroom with Coronavirus Symptoms Illustrate Perils of Pandemic-era Trials*, CLEVELAND.COM (May 1, 2020), <https://www.cleveland.com/court-justice/2020/05/an-ohio-judge-determined-to-hold-a-trial-a-defendant-removed-from-the-courtroom-with-coronavirus-symptoms-illustrate-perils-of-pandemic-era-trials.html> (describing how an Ohio trial court judge who insisted on in-person proceedings during the state’s stay-at-home order was ultimately forced to postpone a trial after the defendant presented with a fever and was carried from the courtroom on a stretcher).

disease.¹¹ Even the United States Supreme Court resorted to hearing oral arguments by teleconference, which was not without a small amount of drama.¹² Meanwhile, in cases involving exigent issues or true emergencies, courts improvised and adapted by hearing cases remotely through video conference technology.¹³ During this hurried transition, other, non-exigent proceedings, such as mental health trials in Illinois, were also relegated to a remote video conference format with little scrutiny or notice.¹⁴ For example, when members of the judiciary touted in a local publication that Cook County successfully conducted its “first” civil trial-by-video, they overlooked that civil mental health trials had already been occurring by video in that very same county for weeks.¹⁵

While many other cases were postponed or delayed at the introduction of COVID-19, courts across Illinois continued to adjudicate mental health trials concerning the involuntary commitment of individuals and forced medication of the same by using popular video platforms such as Microsoft’s Zoom.¹⁶ The rushed effort to adopt the remote format was largely rooted in the pre-pandemic supposition that these hearings are necessary for the individual to start receiving treatment as untreated mental illness might

¹¹ See generally *Coronavirus & the Courts*, NAT’L CTR. FOR ST. CTS., https://www.ncsc.org/_data/assets/pdf_file/0021/42870/Coronavirus-and-the-Courts-State-Profiles-7-29-2020.pdf (last visited Nov. 1, 2020) (continuously updating list of what individual states are doing about jury trials in response to COVID-19).

¹² See Adam Liptak, *Were the Supreme Court’s Phone Arguments a Success?*, N.Y. TIMES (May 18, 2020), <https://www.nytimes.com/2020/05/18/us/politics/supreme-court-phone-arguments-lyle-denniston.html> (describing at least one oral argument over telephone where scrupulous listeners may notice the sound of a toilet flushing).

¹³ Allie Reed & Madison Alder, *Zoom Courts Will Stick Around as Virus Forces Seismic Change*, BLOOMBERG L. (July 30, 2020) <https://news.bloomberglaw.com/us-law-week/zoom-courts-will-stick-around-as-virus-forces-seismic-change>.

¹⁴ Press Release, Ill. S. Ct., Illinois Court Procedures for COVID-19; Supreme Court Livestream (Mar. 13, 2020) courts.illinois.gov/Media/PressRel/2020/031320.pdf [hereinafter Press Release, Livestream].

¹⁵ Jordyn Reiland, *Cook County’s Debut Virtual Civil Trial Goes Smoothly*, CHI. DAILY L. BULL. (June 23, 2020), <https://www.chicagolawbulletin.com/cook-county-judge-presides-over-zoom-bench-trial-20200623>.

¹⁶ See, e.g., CIR. CT. COOK CNTY., GEN. ADMIN. ORD. NO. 2020-3 (Apr. 13, 2020), <http://www.cookcountycourt.org/Portals/0/County%20Division/General%20Administrative%20Orders/Administrative%20Order%20County%202020-3.pdf?ver=2020-04-15-105509-380> [hereinafter APR. 13 ADMIN. ORD. 2020-3] (administrative order indicating, *inter alia*, “all [mental health] hearings will be heard remotely by zoom video conferencing or telephone”) (as detailed *infra* text accompanying note 47, once COVID-19 was declared a pandemic, the Illinois Supreme Court issued orders and announcements declaring certain cases like mental health matters “essential” and encouraged the adoption and use of remote video technology to avoid any interruptions in scheduling such trials to ensure that cases went before the circuit court in a timely fashion).

contribute to grievous developments in symptomology and any delays should be avoided, if possible.¹⁷ As set forth in Part II.C, such concerns are overstated and should not be used to justify the exclusive use of video conference for mental health trials.¹⁸

This article details why, however noble the impetus for such implementation, the current framework throughout Illinois for remote video conference proceedings in mental health cases is too rigid, and likely unlawful. Part I of this article provides a national backdrop of how courts have generally incorporated remote video proceedings due to the ongoing pandemic and then narrows its focus to the current configuration for remote trials in Illinois. Part II goes into detail about the specific challenges of remote video conference technology in Illinois mental health matters and highlights the existing practical gaps to such an approach as well as some outright substantive problems with conducting remote video conference trials under the current scheme. As discussed in Part II, these issues are more than mere shortcomings and are instead inconsistent with Illinois law, as well as federal equity safeguards, such as the Americans with Disabilities Act (“ADA”). Finally, this article concludes that, while the reasoning for resorting to video technology during a crisis was logical, the current framework must be reimaged in a manner that safeguards individuals’ rights and ensures public access to these critical proceedings. If the framework is left uncorrected, there is a risk that this extraordinary process, where fundamental liberty interests are litigated via video conference—over the respondents’ objection and without any public access or oversight—will be normalized.

I. REMOTE COURT PROCEEDINGS DURING COVID-19

A. *An Overview of State Courts’ Use of Remote Video Technology During COVID-19*

Before COVID-19, courts were becoming increasingly familiar with video technology.¹⁹ Throughout the past decade, courts across the United States engaged in exploratory projects to see how video technology could assist in

¹⁷ Jhilam Biswa et al., *Treatment Delayed is Treatment Denied*, 46 J. AM. ACAD. PSYCHIATRY & L. 447, 447 (2018) (describing that delays could turn into life-long psychiatric problems).

¹⁸ See *infra* at Part II.C (detailing how individuals may be held at a local health facility while their case is pending and, further, how emergency treatment may be administered to an individual, without court oversight, while that person’s case is pending).

¹⁹ Herbert B. Dixon, *The Evolution of a High-Technology Courtroom*, 2011 TRENDS ST. CTS. 28, 28 (giving an example of how some court rooms are technology-enabled and have video displays that are more affordable).

civil and criminal proceedings.²⁰ This video experiment included the federal courts, where, between 2011 and 2015, a pilot project of the Judicial Conference of the United States recorded and publicized a wide variety of civil hearings and trials.²¹ COVID-19 accelerated the relationship between courts and video conference technology.²² For example, between late March and mid-July of 2020, there were over 500,000 hours of video conferenced hearings in Michigan's court system.²³ Similarly, by early June, New Jersey had already conducted 31,000 virtual hearings, which included 262,000 individual litigants.²⁴ As such, the breadth of this implementation in various corners of the country has left commentators wondering whether the transition to remote proceedings will ultimately be permanent rather than temporary.²⁵

To guide courts through this transition, most state supreme courts, or their functional equivalents, have created respective online repositories of COVID-19 information, including restrictions on in-person hearings as well as orders and announcements related to the use of video conference

²⁰ See *Case Video Archive*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/judicial-administration/cameras-courts/case-video-archive> (last visited Dec. 30, 2020) (detailing a multi-year pilot project in the judicial conference of the federal courts aimed at allowing video broadcasts of certain civil cases); see also U.S. DEP'T JUST., RESEARCH ON VIDEOCONFERENCING AT POST-ARRAIGNMENT RELEASE HEARINGS: PHASE I FINAL REPORT 1 (2015) (reporting on various considerations applicable to adjudicating when aspects of criminal cases over videoconferencing).

²¹ See U.S. DEP'T JUST., *supra* note 20; see also *History of Cameras in Courts*, U.S. CTS., <https://www.uscourts.gov/about-federal-courts/judicial-administration/cameras-courts/history-cameras-courts> (summarizing the history of cameras in federal courtrooms).

²² *COVID-19 Forces Courts to Hold Proceedings Online*, ECONOMIST (June 14, 2020), <https://www.economist.com/international/2020/06/14/covid-19-forces-courts-to-hold-proceedings-online> (describing how the "coronavirus pandemic has forced courts around the globe to [modernize] with unprecedented haste").

²³ Press Release, John Nevin, Communications Director, Michigan Supreme Court, Michigan's 'Virtual' Courtrooms Surpass 500,000 Hours of Zoom Hearings (July 14, 2020), https://courts.michigan.gov/NewsEvents/press_releases/Documents/Zoom%20500000%20Media%20Release.pdf.

²⁴ Tom Nobile & Richard Cowen, *Reopening NJ: Why Virtual Jury Trials Face Pushback from Attorneys*, N.J. HERALD (June 9, 2020), <https://www.njherald.com/story/news/2020/06/09/reopening-nj-why-virtual-jury-trials-face-pushback-from-attorneys/113420898/>.

²⁵ Zack Quaintance, *Will COVID-19 Cause Long-Term Tech Changes for Courts?*, GOV'T TECH. (May 29, 2020), <https://www.govtech.com/public-safety/Will-COVID-19-Cause-Long-Term-Tech-Changes-for-Courts.html> ("In effect, the courts are yet another segment of the public sector that is learning what some companies in the private sector have known for years — it is often easier to conduct business via phone or video chat, than it is to find time to gather a dozen-plus people in the same room. It's a lesson learned during the crisis, but as those involved point out, it's also a lesson that can shape the way work is done moving forward.").

technology in trials during the pandemic.²⁶ Each state's online repository for COVID-19 (if available) is presented in this article in Appendix A.²⁷ Supplementing online orders and announcements, many state supreme court websites have also hosted online courses for judges and attorneys with guidance on conducting hearings using video technology.²⁸

The National Center for State Courts ("NCSC")²⁹ identified five common elements among state courts' efforts to adapt during COVID-19: (i) restricting or ending jury trials, (ii) generally suspending in-person proceedings, (iii) restricting entrances into courthouses, (iv) granting extensions on filing deadlines and on due dates for fees or costs, and (v) encouraging or requiring teleconferences and video conferences in lieu of in-person hearings.³⁰ On June 22, 2020, the NCSC released its findings from a nationwide poll which assessed whether individuals would be comfortable appearing remotely for legal proceedings. The study found that sixty-four percent of respondents would be comfortable using such technology to appear remotely for a court proceeding.³¹ Considering that only forty-three percent of responders felt that way in 2014, there has been a demonstrable shift of the public's willingness to engage with technology.³²

Conversely, the same 2020 inquiry by the NCSC found that sixty-one percent of individuals polled were concerned about their ability to receive a fair and impartial trial in a virtual proceeding.³³ Public skepticism about the efficacy of virtual courtrooms appears warranted, as reports from around the country about courts using video conferencing for hearings during COVID-

²⁶ *State Supreme Courts Gather by Videoconference to Hear Oral Arguments*, NAT'L CTR. FOR ST. CTS. (Apr. 17, 2020), <https://www.ncsc.org/newsroom/backgrounder/2020/state-supreme-courts-gather-for-videoconferencing>.

²⁷ See *infra* Appendix A.

²⁸ See *Recommendations on Using Zoom & Public Access for Court Proceedings*, JUD. INFO. SYS. (Aug. 7, 2020), <https://info.courts.mi.gov/virtual-courtroom-info> (explaining that there are webinars available for instruction).

²⁹ See *About Us*, NAT'L CTR. FOR ST. CTS., <https://www.ncsc.org/about-us> (last visited Jan. 3, 2021) ("The National Center for State Courts is an independent, nonprofit court improvement organization founded at the urging of Chief Justice of the Supreme Court Warren E. Burger. He envisioned NCSC as a clearinghouse for research information and comparative data to support improvement in judicial administration in state courts.")

³⁰ *5 of the Most Common Efforts State Courts are Taking to Combat Coronavirus*, NAT'L CTR. FOR ST. CTS., https://www.ncsc.org/_data/assets/image/0017/13058/coronavirus.png.

³¹ Memorandum from GBAO to National Center for State Courts (June 22, 2020), https://www.ncsc.org/_data/assets/pdf_file/0006/41001/NCSC-Juries-Post-Pandemic-World-Survey-Analysis.pdf (containing a National Survey Analysis on Jury Trials in a Post-Pandemic World).

³² *Id.*

³³ *Id.*

19 range from harmlessly amusing to outright concerning.³⁴ One attorney-participant described the gallery view on Zoom, which displays a mosaic of all the various attendees, as “the Brady Bunch on steroids.”³⁵ In another remote hearing, an attorney had to assure the judge that he was human person after a cat filter had appeared over the attorney’s face.³⁶ The gravity of the issues seem to only compound when courts expanded the use of video conferencing from mere status hearings to substantive matters such as jury trials.³⁷ The public opinion demonstrated by the above statistics, coupled with these anecdotes, illustrates a less-than-formal picture of what is normally considered an orderly judiciary and reliable system.

B. *Illinois Courts and COVID-19*

Three concentric tracks should be considered when assessing the dynamic between Illinois courts and remote mental health trials conducted during the COVID-19 outbreak and stay-at-home orders: the Illinois Supreme Court’s response to the pandemic; the local circuit courts’ general response; and the sub-divisions of local courts’ specific handling of mental health proceedings.

The Illinois Supreme Court issued rule changes and published formal guidance on conducting proceedings via video conference.³⁸ Similarly, the largest circuit court in Illinois, the Circuit Court of Cook County,³⁹ responded to COVID-19 by entering a series of orders beginning in March 2020 that contained information and instructions about virtual proceedings throughout

³⁴ David Ovalle, *Audio Glitches, Lousy WiFi, Shirtless Guests: Miami Zoom Court Expands Despite Limitations*, MIAMI HERALD (May 28, 2020), <https://www.miamiherald.com/news/local/crime/article242820901.html> (detailing disruptions from barking dogs to indecency, as well as misunderstandings causing a defendant to testify without his attorney present).

³⁵ Charles Scudder, *In a Test Case, Collin County Jury Renders Verdict on Zoom for the First Time; Too Risky for a Full Trial*, DALL. MORNING NEWS (May 22, 2020), <https://www.dallasnews.com/news/courts/2020/05/22/in-a-test-case-collin-county-jury-meets-on-zoom-for-the-first-time-but-some-lawyers-say-its-too-risky-for-real-trial> (a juror remained offscreen, engaged in a personal phone call, until the judge shouted loudly enough to alert the juror to return to the hearing).

³⁶ Daniel Victor, *‘I’m Not a Cat,’ Says Lawyer Having Zoom Difficulties*, N.Y. TIMES (Feb. 9, 2021), <https://www.nytimes.com/2021/02/09/style/cat-lawyer-zoom.html>.

³⁷ Scudder, *supra* note 35.

³⁸ See discussion *infra* Part I.B.1.

³⁹ See *Organization of the Circuit Court*, CIR. CT. COOK CNTY. (Oct. 31, 2020), <http://www.cookcountycourt.org/ABOUTTHECOURT/OrganizationoftheCircuitCourt.aspx> (“The Circuit Court of Cook County of the State of Illinois is the largest of the twenty-four judicial circuits in Illinois and one of the largest unified court systems in the world. It has about 400 judges who serve the 5.2 million residents of Cook County within the City of Chicago and its 126 surrounding suburbs. More than one million cases are filed each year.”).

the county.⁴⁰ Within the Circuit Court of Cook County, specific divisions then entered orders that addressed particular areas of law and provided information about virtual hearings.⁴¹ For example, the County Division in Cook County oversees mental health trials.⁴² Accordingly, the Chief Judge of the County Division within Cook County entered a sequence of orders during COVID-19 addressing mental health trials and remote technology.⁴³ The variations and commonalities of all three channels—the Illinois Supreme Court, the Circuit Court of Cook County, and the County Division—are now presented.

1. Illinois Supreme Court

The Illinois Supreme Court's responses to COVID-19 promote a common theme of safety and flexibility by directing lower courts to conduct hearings remotely, when possible.⁴⁴ Like other state judiciaries,⁴⁵ the Illinois Supreme Court established a dedicated web resource to host the most recent orders entered by itself and by lower courts for how day-to-day operations have been altered in response to the onset of COVID-19.⁴⁶ This online resource and its timeline demonstrate how the court first addressed which legal matters were considered “essential” (including mental health cases),⁴⁷ and then went

⁴⁰ See, e.g., *Court Operations and the Coronavirus*, CIR. CT. COOK CNTY., <http://www.cookcountycourt.org/HOME/INFORMATION-REGARDING-CORONA-VIRUS> (last visited Dec. 30, 2020) (sequentially listing all COVID-19 orders from the various districts and divisions within Cook County).

⁴¹ *Id.*

⁴² See CIR. CT. COOK CNTY GEN ORD NO. 1.2, 2.1 (Sept. 15, 2017), <http://www.cookcountycourt.org/Manage/Division-Orders/View-Division-Order/ArticleId/188/GENERAL-ORDER-NO-1-2-2-1-County-Department> [hereinafter GEN. ORD. NO. 1.2, 2.1]; see also Matt Ford, *America's Largest Mental Hospital is a Jail*, ATLANTIC (June 8, 2015), <https://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/> (Cook County also happens to contain one of America's largest, *de facto*, mental-health facilities: Cook County Jail).

⁴³ See COVID-19 Emergency tab within County Division subpage, CIR. CT. COOK CNTY., <http://www.cookcountycourt.org/ABOUT-THE-COURT/County-Department/County-Division>.

⁴⁴ ILL. S. CT., SUPREME COURT GUIDELINES FOR RESUMING ILLINOIS JUDICIAL BRANCH OPERATIONS DURING THE COVID-19 PANDEMIC, (2020), https://courts.illinois.gov/Administrative/covid/052020_SC_GL.pdf. See also ILL. S. CT., M.R.30370 (Mar. 17, 2020), <https://courts.illinois.gov/SUPREMECOURT/Announce/2020/031720-3.pdf> (stating that “essential court matters and proceedings shall continue to be heard by the Illinois. If feasible and subject to constitutional limitations, essential matters and proceedings shall be heard remotely via telephone or video or other electronic means.”).

⁴⁵ See *infra* Appendix A.

⁴⁶ See *COVID-19 Information and Updates*, ILL. CTS. (last visited Dec. 25, 2020), <http://illinoiscourts.gov/Administrative/covid-19.asp>.

⁴⁷ See Press Release, Livestream, *supra* note 14.

on to offer specific guidance and changes to promote a viable (but remote) legal system to ensure vital cases continued during the pandemic.

An initial action taken by the Illinois Supreme Court was releasing new and amended modifications to the Illinois Supreme Court Rules.⁴⁸ Specifically, Illinois Supreme Court Rule 45, an amendment to Illinois Supreme Court Rule 46, and an amendment Illinois Supreme Court Rule 241.⁴⁹ As discussed herein, all three of these rules advance and promote the practice of law through remote means.⁵⁰ Similarly, the Illinois Supreme Court also published a document titled “Remote Court Proceedings — Guidance Document” (“Guidance Document”).⁵¹ The Guidance Document details the key components needed to ensure an effective remote proceeding.⁵² Like the Guidance Document and the various rule changes, the Illinois Supreme Court also issued the Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings memorandum (“ISC Remote Memo”).⁵³ All three of these initiatives (developed more fully below) promote the remote practice of law in a manner consistent with access to justice and applicable limitations.⁵⁴

a. New and Amended Illinois Supreme Court Rules for Virtual Practice.

On May 22, 2020, the Illinois Supreme Court repealed Illinois Supreme Court Rule 185, issued Rule 45, and amended Rule 46 and 241.⁵⁵ Each change relates remote hearings.⁵⁶ The Illinois Supreme Court developed and adopted these updates to “improve the administration of justice, increase

⁴⁸ ILL. S. CT., M.R. 3140 (eff. May 22, 2020), <https://courts.illinois.gov/SupremeCourt/Announce/2020/052220-1.pdf>.

⁴⁹ Press Release, Ill. S. Ct., Illinois Supreme Court Amends Rules to Support use of Remote Hearings in Court Proceedings (2020), <https://courts.illinois.gov/Media/PressRel/2020/052220-1.pdf> [hereinafter Press Release, Amendment].

⁵⁰ *Id.*

⁵¹ See ILL. S. CT., REMOTE COURT PROCEEDINGS – GUIDANCE DOCUMENT (2020), https://courts.illinois.gov/Administrative/covid/052220-SC_RHG.pdf [hereinafter GUIDANCE DOCUMENT].

⁵² *Id.*

⁵³ ILL. S. CT., ILLINOIS SUPREME COURT POLICY ON REMOTE COURT APPEARANCES IN CIVIL PROCEEDINGS (2020), https://courts.illinois.gov/SupremeCourt/Policies/Pdf/ATJ_Commission_Policy_on_Remote_Court_Appearances_in_Civil_Proceedings.pdf [hereinafter ISC REMOTE MEMO].

⁵⁴ *Id.* at 2–4.

⁵⁵ Press Release, Amendment, *supra* note 49.

⁵⁶ *Id.*

efficiency and reduce costs.”⁵⁷ For instance, the repeal of Rule 185 and the creation of Rule 45 grants courts “broad discretion to allow Remote Court Appearances.”⁵⁸ Indeed, the ISC Remote Memo asserts that, under the new Rule 45, an individual’s inquiry about appearing remotely for court “should be easy to request and liberally allowed.”⁵⁹ Similarly, the amendment to Rule 46 allows for the recording from a video hearing “to be used by the official court reporter to make the transcript that becomes the official record of the proceeding.”⁶⁰ Finally, the amendment to Rule 241 addresses civil trials , which includes mental health proceedings. The updated version of Rule 241 reads:

The court may, upon request or on its own order, for good cause shown and upon appropriate safeguards, allow a case participant to testify or otherwise participate in a civil trial or evidentiary hearing by video conferencing from a remote location. Where the court or case participant does not have video conference services available, the court may consider the presentation of the testimony by telephone conference in compelling circumstances with good cause shown and upon appropriate safeguards. The court may further direct which party shall pay the cost, if any, associated with the remote conference and shall take whatever action is necessary to ensure that the cost of remote participation is not a barrier to access to the courts.⁶¹

Unlike earlier language of Rule 241, this current form now expressly recognizes that the court itself has discretion to allow and order a participant to attend by remote means.⁶²

The committee comments for these rules provide additional context. In Illinois, a Supreme Court Rules Committee is responsible for collecting any proposed rules by the public or judiciary and vetting such suggestions before ultimately recommending whether the change should or should not be adopted by the Illinois Supreme Court.⁶³ The committee comments to Rule 241 are longer than the rule itself.⁶⁴ The comments first emphasize the preference for and importance of live testimony.⁶⁵ The comments provide a balancing test for trial courts to employ if a case-participant seeks to testify

⁵⁷ *Id.*

⁵⁸ ISC REMOTE MEMO, *supra* note 53, at 2.

⁵⁹ *Id.*

⁶⁰ Press Release, Amendment, *supra* note 49, at 1.

⁶¹ ILL. S. CT., M.R. 3140, *supra* note 48, at 4.

⁶² *Id.*

⁶³ *How a Proposal Becomes a Supreme Court Rule*, ILL. CTS., <http://illinoiscourts.gov/SupremeCourt/Rules/Process.asp> (last visited Nov. 1, 2020).

⁶⁴ ILL. S. CT., M.R. 3140, *supra* note 48, at 4–6.

⁶⁵ *Id.* at 4.

remotely.⁶⁶ In addition, there are proposed instructions for attorneys to provide to their clients who may be appearing remotely so that they are not improperly relying on extrinsic assistance or unknown third parties.⁶⁷ For those attending a video hearing without a lawyer, the comments direct that the trial court should provide those same admonishments to the unrepresented participant.⁶⁸

This collection of changes reflects a judiciary in motion. As Chief Justice Anne Burke acknowledged when these amendments were announced, the onset of COVID-19 accelerated the Court's previous exploration and endorsement of remote proceedings.⁶⁹

b. The Illinois Supreme Court's Remote Court Proceedings Guidance Document

In conjunction with the new rules highlighted above, the Court also released the aforementioned Guidance Document for remote court proceedings.⁷⁰ The Guidance Document addresses: (i) public access to such proceedings, (ii) general considerations, (iii) conduct at the virtual hearing, and (iv) management of the electronic record.⁷¹ Notably, it explicitly states that the guidelines are meant to assist lower courts interested in overseeing virtual proceedings "in the pandemic *and beyond*" (emphasis added).⁷² Further, the Court commits to reviewing ongoing implementation of remote hearings to identify areas for improvements and best practices.⁷³ This is so that the endorsed guidance does not become outdated, but may be updated as more hearings occur.⁷⁴

This Guidance Document is similar to the ISC Remote Memo because it acknowledges and emphasizes the importance of public access to court

⁶⁶ *Id.* at 5.

⁶⁷ *Id.* ("In furtherance of their obligations under Illinois Rules of Professional Conduct 3.3 (Candor Toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), and 8.4(d) (Misconduct), counsel representing a case participant should instruct the case participant that (a) he or she may not communicate with anyone during the examination other than the examining attorney or the court reporter and (b) he or she may not consult any written, printed, or electronic information during the examination other than information provided by the examining attorney.").

⁶⁸ *Id.*

⁶⁹ Press Release, Amendment, *supra* note 49, at 1.

⁷⁰ GUIDANCE DOCUMENT, *supra* note 51.

⁷¹ *Id.*

⁷² *Id.* at 1.

⁷³ *Id.*

⁷⁴ *Id.*

proceedings.⁷⁵ Accordingly, the Court specifically states that any hearing hosted over a virtual platform such as Zoom should also be capable of livestreaming on a public website service like YouTube.⁷⁶ It goes on to provide a suggested label for each YouTube hearing so that the public may identify the judge and proceeding.⁷⁷ In almost all jurisdictions where Illinois courts are conducting hearings and trials over remote video, the public has access to a court-provided website so they may observe the proceedings.⁷⁸ Yet, as discussed *infra* at II.A.1,⁷⁹ there is currently no public access to virtual mental health trials in most Illinois counties.

The Guidance Document also reminds trial courts to remain mindful of any difficulties a participant may face when attempting to connect remotely, such as a lack of internet or a disability.⁸⁰ Similarly, when an interpreter is necessary for a video hearing, the Court recommends implementing a consecutive method of interpretation as opposed to simultaneous interpretation.⁸¹ Finally, the Guidance Document provides sample admonishments for a judge to deliver at the outset of a remote hearing.⁸²

c. Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings

The ISC Remote Memo contains additional considerations for overseeing civil trials by remote means.⁸³ While it shares many sentiments of the Guidance Document, the ISC Remote Memo provides a more detailed blueprint for virtual court proceedings and outlines key considerations from a nuts-and-bolts perspective, as well highlighting substantive pitfalls that may come with such efforts.⁸⁴

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See *Remote Hearings Directory*, ILL. CTS., <http://illinoiscourts.gov/Media/RemoteHearings/default.asp> (last visited Nov. 15, 2020) (demonstrating the remote hearings directory for Illinois Courts which links any trial to be viewed over remote video).

⁷⁹ See *infra* Part II, Section A, Subsection 1.

⁸⁰ GUIDANCE DOCUMENT, *supra* note 51.

⁸¹ *Id.*

⁸² See *e.g.*, *id.* at 4 (“When you want to speak, unmute yourself and identify yourself by stating your last name. Identify yourself each time we change who is speaking, otherwise, the court reporter may have a difficult time determining who you are. If you have an objection, you may want to state “Objection by [Name or other identifying title/party/etc.]”).

⁸³ See *generally* ISC REMOTE MEMO, *supra* note 53 (detailing the Illinois Supreme Court’s policy on remote court proceedings).

⁸⁴ See *id.* Part VI (discussing details such as what to do in the case of an objection and that there shall be no penalties for technical failures).

The ISC Remote Memo acknowledges “the need for Remote Court Appearances and innovative methods for allowing access to our courts became acute during the COVID-19 crisis.”⁸⁵ Further, it enumerates topics that courts should consider as each creates its respective remote appearance procedures.⁸⁶ For video hearings, it also specifies what type of technology and internet access each case-participant will need to have on-hand.⁸⁷ While the ISC Remote Memo touts the various benefits of remote proceedings, it also contains express regard for public access to such hearings and a section about accommodations for those individuals that qualify under the Americans with Disabilities Act (“ADA”).⁸⁸

Further evidenced by the ISC Remote Memo is the Court’s awareness that some litigants may be unable or unwilling to participate by remote means. For example, it directs courts to reconsider their own local, pre-COVID-19 rules to ensure none of them have the effect of creating financial or other barriers to appearing remotely.⁸⁹ Like Rule 241, the ISC Remote Memo also anticipates situations where someone objections to a request to appear remotely.⁹⁰ However, the Court’s guidance on how to assess a request to attend court by video is disjointed or, at the least, inconsistent.⁹¹ Consider this side-by-side comparison:

Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings⁹²	Illinois Supreme Court Rule 241⁹³
<i>“When ruling on a request to appear remotely where there is an objection, a court may consider:</i>	<i>“A court has broad discretion to determine if video testimony is appropriate for a particular case.</i>
<ol style="list-style-type: none"> 1. Access to the courts. 2. The court’s available technology. 	A court should take into consideration and balance any

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* (reciting, at a minimum, each video participant will require “[a] computer, telephone, or mobile device with a webcam or embedded video camera, an internal or external microphone, and internal or external speakers” along with “high-speed internet connection and access to the same Video Conference service used by the court.”).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See id.* (discussing factors to take into consideration in the event someone objects to a request to appear remotely); *see also* ILL. SUP. CT. R. 241 (eff. May 22, 2020).

⁹¹ ISC REMOTE MEMO, *supra* note 53 ; *see also* ILL. SUP. CT. R. 241 (eff. May 22, 2020).

⁹² ISC REMOTE MEMO, *supra* note 53.

⁹³ ILL. SUP. CT. R. 241 (eff. May 22, 2020).

<p>3. Whether any undue prejudice would result.</p> <p>4. The degree of inconvenience or hardship.</p> <p>5. Whether there are security or safety concerns for allowing the Remote Court Appearance.</p> <p>6. Whether the Case Participants have waived personal appearances or agreed to Remote Appearances.</p> <p>7. The purpose of the court date.</p> <p>8. Previous abuse of Remote Court Appearances by the requesting Case Participant or objections by the objecting Case Participant.</p> <p>9. Any other factors or fairness considerations that the court may determine to be relevant. If the court denies the request, it should state the reasons for the denial.”</p>	<p>due process concerns, the ability to question witnesses, hardships that would prevent the case participant from appearing in person, the type of case, any prejudice to the parties if testimony occurred by video conference, and any other issues of fairness. A court must balance these and other relevant factors in an individual case.”</p>
--	---

A possible explanation for this apparent inconsistency is that the ISC Remote Memo document sets forth specific considerations for matters where there is an objection to a remote appearance, while the committee comments to Rule 241 discuss how to assess and balance specific requests to allow for video testimony.⁹⁴ However, while Rule 241 installs a balancing methodology, the ISC Remote Memo expresses that such requests should be liberally allowed.⁹⁵

As set forth in Section II,⁹⁶ further clarity should be provided by the Court, and, ideally, it should be promulgated and set forth in the actual rules relied upon by litigants and courts rather than in a policy document or buried in committee comments. Currently, there is too much opportunity for confusion and competing interpretations due to the interplay, or lack thereof, of the documents. Further, it is not clear whether practitioners will realize that other guidance exists outside formal supreme court rules. Additionally, assuming such resources are readily available and cited, if competing arguments are made that reference these various resources, local courts are likely to favor an actual supreme court rule.

⁹⁴ ISC REMOTE MEMO, *supra* note 53; *see also* ILL. SUP. CT. R. 241 (eff. May 22, 2020).

⁹⁵ ISC REMOTE MEMO, *supra* note 53; *see also* ILL. SUP. CT. R. 241 (eff. May 22, 2020).

⁹⁶ *See infra* Part II.

Overall, though, the Illinois Supreme Court's concerted efforts to promote the integration of video technology into a wide variety of proceedings are practical because they are flexible. They allow for objections,⁹⁷ encourage public access,⁹⁸ and even contemplate the ADA.⁹⁹ Unfortunately, as set forth below, these practical considerations are critically absent from the local response to COVID-19, including those specific courts responsible for overseeing mental health cases.

2. Circuit Court of Cook County

Like the Illinois Supreme Court's ongoing response to COVID-19, local courts issued their own sequential orders and statements about practicing law during a pandemic. In Illinois, there are twenty-three circuit courts.¹⁰⁰ Cook County is the largest county in Illinois by population,¹⁰¹ and has its own unified system of trial courts.¹⁰² This circuit court entered its first order addressing COVID-19 on March 13, 2020.¹⁰³ In that order, Chief Judge Timothy Evans of the Circuit Court of Cook County expressed the circuit court's concern about COVID-19 and safety of the public and court personnel.¹⁰⁴ The order went on to address how or why certain matters would be delayed or postponed due to COVID-19.¹⁰⁵ Notably, the Order stated that "mental health hearings will continue as scheduled."¹⁰⁶ Early amendments to that Order reflect the same vague assertion that mental health hearings would be held "as scheduled."¹⁰⁷

⁹⁷ Press Release, Amendment, *supra* note 49.

⁹⁸ GUIDANCE DOCUMENT, *supra* note 51.

⁹⁹ ISC REMOTE MEMO, *supra* note 53.

¹⁰⁰ *About the Courts in Illinois*, ILL. CTS., <http://www.illinoiscourts.gov/General/CourtsInIL.asp> (last visited Nov. 5, 2020).

¹⁰¹ *Illinois Counties by Population*, ILL. DEMOGRAPHICS BY CUBIT, https://www.illinois-demographics.com/counties_by_population (last visited Nov. 5, 2020).

¹⁰² *Organization of the Circuit Court*, *supra* note 39.

¹⁰³ CIR. CT. COOK CNTY., GEN. ADMIN. ORD. 2020-01 (Mar. 13, 2020), <http://www.cookcountycourt.org/Manage/Division-Orders/View-Division-Order/ArticleId/2737/General-Administrative-Order-2020-01-COVID-10-EMERGENCY-MEASURES>.

¹⁰⁴ *Id.*

¹⁰⁵ *See generally id.* (outlining each division and the status of the hearings, arbitrations, etc.).

¹⁰⁶ *Id.*

¹⁰⁷ *See, e.g.*, CIR. CT. COOK CNTY., GEN. ADMIN. ORD. 2020-01 (May 28, 2020), [http://www.cookcountycourt.org/Portals/0/Portal/Rules.Orders/5_28_20%20GAO%202020-01%20\(amended\).pdf?ver=2020-05-28-154237-623](http://www.cookcountycourt.org/Portals/0/Portal/Rules.Orders/5_28_20%20GAO%202020-01%20(amended).pdf?ver=2020-05-28-154237-623) [hereinafter May 28 GEN. ADMIN. ORD. 2020-01].

On June 26, 2020, the original countywide administrative order was again superseded.¹⁰⁸ The new circuit court order provided additional guidance for trial court matters with aim on reopening most proceedings on July 6, 2020, with the exception of jury trials.¹⁰⁹ The June 26, 2020 order further stated that all matters in all Cook County districts should be conducted via video conference to the extent reasonably possible—subject to any constitutional limitations.¹¹⁰ The same order expressly gave trial judges discretion over objections to video proceedings and deciding whether proceedings be conducted by teleconference, video conference in person, or a combination.¹¹¹

These sequential countywide orders provide key glimpses into the Circuit Court of Cook County's priorities during COVID-19. For instance, by comparing the earlier administrative order from March 16, 2020, alongside a superseding order from June 26, 2020, it is clear that Cook County initially focused its message on postponing in-person matters, whereas later on it focused its instructions on video hearings and promoting the remote practice of law.

Absent from these countywide orders, though, is any specific commentary on mental health trials (other than they will continue as scheduled).¹¹² Instead, the specific division within the same circuit court that oversees mental health trials entered its own orders that contain more information on how such trials would occur exclusively by video during COVID-19.

3. County Division

So far, this piece has highlighted two separate, but related, continuums of Illinois courts' responses to COVID-19. That is, the overall guiding track of the Illinois Supreme Court's answer to COVID-19 and its push for consideration of remote video conference technology (tempered by the ADA, objections, and public access). And, parallel to that effort by the Illinois Supreme Court, the Circuit Court of Cook County's own measures to advance the same agenda at an intermediate level. A third and final track, then, is to consider the on-the-ground approach by trial courts charged with putting these policies into practice.

This third track, the County Division within the Circuit Court of Cook County, oversees adoptions, elections, real estate taxes, civil orders of

¹⁰⁸ CIR. CT. COOK CNTY., GEN. ADMIN. ORD. 2020-02 (amended June 26, 2020), https://courts.illinois.gov/Administrative/covid/062620-Cook_AO.pdf.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² MAY 28 GEN. ADMIN. ORD. 2020-01., *supra* note 107.

protection, and mental health trials.¹¹³ Before the pandemic, mental health trials occurred at various on-site, court-approved hospitals.¹¹⁴ Even before COVID-19, Circuit Court Rule 10.9 permitted the use of video conferencing software for mental health trials.¹¹⁵ But this use of video technology was limited to situations when respondent-patient, and his or her attorney, agreed to a remote appearance and were not located in the same location as the judge and opposing party.¹¹⁶ In conjunction with this local rule, a pilot program for remote video technology was also underway in Cook County for several months before the pandemic.¹¹⁷ The program was launched on December 2, 2019 and continued through November 30, 2020.¹¹⁸ This project included remote video use for ongoing mental health cases in the County Division, but did not contemplate or discuss contested mental health trials in which the respondent objected to the use of such means.¹¹⁹ Instead, parties' use of the pilot program was relegated to agreed matters only, and utilized a different video system.¹²⁰

Similar to the evolving nature of the Illinois Supreme Court and Circuit Court of Cook County orders, the County Division released several, sequential orders in response to COVID-19. First, on March 16, 2020, the Chief Judge of the County Division entered an order addressing COVID-19,

¹¹³ GEN. ORD. NO. 1.2, 2.1 *supra* note 42.

¹¹⁴ *Mental Health Proceedings*, CIR. CT. COOK CNTY., www.cookcountycourt.org/ABOUT/THECOURT/CountyDepartment/CountyDivision/MentalHealthProceedings.aspx (from the Mental Health Proceedings tab, expand "Hearing Locations" from the dropdown options) (last visited Jan. 18, 2020).

¹¹⁵ CIR. CT. COOK CNTY., 10.9 RULES GOVERNING THE USE OF VIDEOCONFERENCING EQUIPMENT IN HEARINGS UNDER THE MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES CODE (Sept. 2, 2016), www.cookcountycourt.org/FORATTORNEYS/LITIGANTS/RulesoftheCourt/ReadLocalRule/tabid/1139/ArticleId/2478/10-9-Rules-Governing-the-Use-of-Videoconferencing-Equipment-in-Hearings-Under-the-Mental-Health-and-Developmental-Disabilities-Code.aspx [hereinafter CIR. CT. COOK CNTY., 10.9 RULES].

¹¹⁶ *Id.*

¹¹⁷ See Press Release, Ill. Sup. Ct., Remote Video Pilot Program Announced for Cook County Circuit Courts (Nov. 21, 2019), <https://courts.illinois.gov/Media/PressRel/2019/112119.pdf> [hereinafter Press Release, Pilot Program] (explaining that "The Remote Video Pilot program will launch on December 2, 2019 and run through November 30, 2020." Two judges from each of the Chancery, County, and Domestic Relations Division will oversee the use of remote video in their courtrooms).

¹¹⁸ *Id.*

¹¹⁹ *Id.* (explaining that "In the county division, remote video will be used for mental health proceedings, such as a mental health case management call, one day per week and for unique situations such as issues where a party is located in a different county or state and a video proceeding would allow a more efficient disposition.").

¹²⁰ *Mental Health Proceedings*, *supra* note 114, at "Video Conferencing" from the dropdown options.

stating mental health trials would continue and that “parties are encouraged to consider video conferencing.”¹²¹ Then, on April 13, 2020, the County Division entered a superseding COVID-19 order and indicated “[n]o [mental health] hearings will be held at the hospitals, all hearings will be done via video conferencing.”¹²² After this shift to trials-by-video, the division released another order on July 28, 2020 that stated “only attorneys, respondents, court personnel, and designated witnesses will be provided with the meeting information to preserve any confidentiality associated with the proceeding.”¹²³ Meaning, no public access link would be posted or available for any mental health trials, an approach which directly conflicts with state law requiring open and public trials.¹²⁴

In sum, in a few short weeks, the County Division of the Circuit Court of Cook County went from encouraging parties to consider video conferencing for mental health trials to requiring it, without exception.¹²⁵ In stark contrast to the direct sentiments of the Illinois Supreme Court’s various efforts that highlighted flexibility and accommodation, these County Division orders contained no exceptions, no balancing tests, no consideration to the ADA, or any accommodations for participants who desire an in-person hearing or an alternative method of participation.¹²⁶ This is concerning given that respondents, almost exclusively, qualify as having a disability recognized by the ADA.¹²⁷ Further concerning is the fact that the respondent may be in an inpatient facility where they do not have the autonomy to make their own technological choices.

As previously noted, at the start of the COVID-19 pandemic, the Illinois Supreme Court published various rule changes and guidance that permitted

¹²¹ CIR. CT. COOK CNTY. DEPT., CNTY. DIV., ADMIN. ORD. 2020-1 (Mar. 16, 2020), [www.cookcountycourt.org/Portals/0/County%20Division/General%20Administrative%20Orders/corrected%20admin%20order%202020-0103182020%20\(1\).pdf](http://www.cookcountycourt.org/Portals/0/County%20Division/General%20Administrative%20Orders/corrected%20admin%20order%202020-0103182020%20(1).pdf) [hereinafter MAR. 16 ADMIN. ORD. 2020-1].

¹²² APR. 13 ADMIN. ORD. 2020-3 *supra* note 16.

¹²³ CIR. CT. COOK CNTY. DEPT., CNTY. DIV., ADMIN. ORD. 2020-7 (July 28, 2020), www.cookcountycourt.org/Portals/0/County%20Division/General%20Administrative%20Orders/7-28-20%20Admin_%20Order%202020-7FINAL%20amended.pdf?ver=g0p6c7vpnNtYayJlycGv1g%3D%3D [hereinafter JULY 28 ADMIN. ORD. 2020-7].

¹²⁴ CH. 405 ILL. COMP. STAT. § 5/3-800(c) (2015).

¹²⁵ Compare MAR. 16 ADMIN. ORD. 2020-1, *supra* note 121 (“The parties are encouraged to consider videoconferencing. . .”), with APR. 13 ADMIN. ORD. 2020-3 *supra* note 16 (“No hearings will be held at the hospitals, all hearings will be done via zoom conferencing.”).

¹²⁶ MAR. 16 ADMIN. ORD. 2020-1, *supra* note 121; APR. 13 ADMIN. ORD. 2020-3 *supra* note 16; JULY 28 ADMIN. ORD. 2020-7, *supra* note 123.

¹²⁷ *Enforcement Guidance on the ADA and Psychiatric Disabilities*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-ada-and-psychiatric-disabilities> (last visited Dec. 30, 2020).

more cases to be heard remotely by video conference.¹²⁸ Then, the circuit courts were tasked with actually implementing the shift to remote video proceedings consistent with the law.¹²⁹ Yet, despite the Illinois Supreme Court's repeated, overt commitment to ADA accommodations and public access, the largest circuit court in Illinois disregarded this commitment by requiring all mental health trials be conducted on video conference, regardless of a respondent's preference or agreement.¹³⁰ Further, the County Division openly ordered that mental health proceedings would not contain an accompanying public access link,¹³¹ a practice which is in stark contrast to all other active proceedings in the state¹³² and inconsistent with the law, which states "Court hearings under this Chapter, including hearings under Section 2-107.1, shall be open to the press and public unless the respondent or some other party requests that they be closed."¹³³ Remarkably, this "new normal" developed in mere weeks and, as the administrative orders compounded, respondents' preferences and public access faded from view.

The County Division oversees the largest caseload of mental health matters in Illinois.¹³⁴ Unfortunately, and despite its size and scope, this circuit court's one-size-fits-all approach to mental health trials during COVID-19 is bereft of the nuances and considerations espoused by the Illinois Supreme Court during the same crisis. As set forth next, this failure matters because the rights and interests of those involved in these proceedings are significant and require strict adherence with state and federal law.

II. REMOTE VIDEO TECHNOLOGY AND ILLINOIS MENTAL HEALTH PROCEEDINGS

As Part I briefly mentions, courts across the country were already conducting pilot projects for remote hearings prior to the stay-at-home orders.¹³⁵ With the emergence of COVID-19, courts went from casually dipping their toes into these virtual waters to plunging straight into the deep end. As this section demonstrates, this forced implementation of video

¹²⁸ Press Release, Amendment, *supra* note 49.

¹²⁹ *Id.*

¹³⁰ APR. 13 ADMIN. ORD. 2020-3, *supra* note 16.

¹³¹ See JULY 28 ADMIN. ORD. 2020-7., *supra* note 123 (stating "only attorneys, respondents, court personnel, and designated witnesses will be provided with the meeting information to preserve any confidentiality associated with the proceeding").

¹³² See *Remote Hearings Directory*, *supra* note 78.

¹³³ CH. 405 ILL. COMP. STAT. § 5/3-800(c) (2015).

¹³⁴ ILL. COURTS, 2019 STATISTICAL SUMMARY (2019) https://courts.illinois.gov/SupremeCourt/AnnualReport/2020/2019_Statistical_Summary.pdf.

¹³⁵ Press Release, Pilot Program, *supra* note 117.

conference technology in mental health trials in Illinois overlooked, or otherwise disregarded, important safeguards. This section will conclude with a discussion on how current processes in Illinois mental health proceedings are incompatible with both law and policy.

An involuntary commitment to a mental facility is a significant curtailment of liberty and, as a result, this proceeding requires constitutional due process protections.¹³⁶ Similarly, the involuntary administration of psychotropic medication against a patient's wishes involves fundamental liberty interests that are also constitutionally protected by due process.¹³⁷ These liberty interests "must be balanced against the State's interests (1) to provide care for persons unable to care for themselves and (2) to protect society from dangerous [persons living with mental illness]."¹³⁸ This is because the State's aim is "not to punish [a recipient], but to treat him."¹³⁹ Consequently, the State's role in advocating at mental health trials is anchored in its *parens patriae*¹⁴⁰ and its police powers.¹⁴¹ Only acting under these powers, may a State ultimately deprive individuals living with mental illnesses of their fundamental right to liberty.¹⁴² Because these proceedings involve the State's interference with a person's liberty, they should not be conducted *pro forma*.¹⁴³ This requirement exists even when it is "abundantly clear" that a person may require mental health treatment.¹⁴⁴ Further, mere "public intolerance or animosity cannot constitutionally justify the

¹³⁶ *Vitek v. Jones*, 445 U.S. 480, 491–492 (1980) (explaining that "the loss of liberty produced by an involuntary commitment is more than a loss of freedom from confinement" and it may "engender adverse social consequences to the individual" and that "[w]hether we label this phenomena 'stigma' or choose to call it something else . . . we recognize that it can occur and that it can have a very significant impact on the individual." (citing *Addington v. Texas*, 441 U.S. 418, 425–426 (1979))).

¹³⁷ *In re Cynthia S.*, 326 Ill. App. 3d 65, 67 (2nd Dist. 2001).

¹³⁸ *In re Torski C.*, 395 Ill. App. 3d 1010, 1017 (4th Dist. 2009), citing *In re Robinson*, 151 Ill.2d 126, 130–31 (1992).

¹³⁹ *Id.*

¹⁴⁰ *Parens Patriae*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("The state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves <the attorney general acted as *parens patriae* in the administrative hearing>.").

¹⁴¹ *In re Torski C.*, 395 Ill. App. 3d at 1017.

¹⁴² *Id.*

¹⁴³ *In re John R.*, 339 Ill. App. 3d 778, 785 (5th Dist. 2003); see also Bruce J. Winick, *Therapeutic Jurisprudence and the Civil Commitment Hearing*, 10 J. CONTEMP. LEGAL ISSUES 37, 44 (1999) (citing Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433 (1992) ("Civil commitment hearings that appear to patients to be a sham violate their need to be treated with 'respect, politeness, and dignity,' and to feel that 'their rights as citizens are acknowledged.'").

¹⁴⁴ *In re Louis S.*, 361 Ill. App. 3d 774, 783 (4th Dist. 2005).

deprivation of a person's physical liberty."¹⁴⁵ Accordingly, Illinois provides a specific statutory framework for when and how the State may override a person's liberty interests.¹⁴⁶ Illinois courts have repeatedly held that these various statutory safeguards "are not mere technicalities" but essential components designed to protect these liberty interests.¹⁴⁷

In Illinois, commitment proceedings and treatment proceedings are separate matters.¹⁴⁸ While a patient may be voluntarily residing at an inpatient mental health facility, they may still be subject to a petition for involuntary administration of medication or electroconvulsive therapy.¹⁴⁹ Conversely, someone may be consenting to various medications but contesting her ongoing detention at a facility.¹⁵⁰ Each proceeding, involuntary commitment and involuntary treatment, contain different criteria¹⁵¹ but impose a clear and convincing standard of proof.¹⁵² A respondent has the right to request a jury in an involuntary commitment trial, but is denied that same right in a forced treatment proceeding.¹⁵³

A. *Attendance at Trial and Access to Justice*

In mental health proceedings, it has "long been recognized that procedural due process guarantees a respondent the right to be present at his hearing in

¹⁴⁵ O'Connor v. Donaldson, 422 U.S. 563, 575 (1975).

¹⁴⁶ *In re of Gardner*, 121 Ill. App. 3d 7, 10 (4th Dist. 1984) ("The [Mental Health Code] contains an elaborate and complex system of procedures designed to protect the rights of [those living with mental illnesses].").

¹⁴⁷ *In re Cynthia S.*, 326 Ill. App. 3d 65, 69 (2nd Dist. 2001); *In re Nancy A.*, 344 Ill. App. 3d 540, 549 (1st Dist. 2003); *In re Robert D.*, 345 Ill. App. 3d 769, 771, (2nd Dist. 2004).

¹⁴⁸ CH. 405 ILL. COMP. STAT. § 5/2-107.1(a-5)(2) (2015) ("The hearing shall be separate from a judicial proceeding held to determine whether a person is subject to involuntary admission but may be heard immediately preceding or following such a judicial proceeding and may be heard by the same trier of fact or law as in that judicial proceeding"); *see also In re E.F.*, 2014 IL App (3d) 130814 (reversing a circuit court that failed to bifurcate such hearings.)

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ CH. 405 ILL. COMP. STAT. § 5/1-119 (2010) (laying out the criteria for inpatient admission); *id.* (laying out the criteria for involuntary administration of medication or electroconvulsive therapy).

¹⁵² CH. 405 ILL. COMP. STAT. § 5/2-107.1 ("(4) Psychotropic medication and electroconvulsive therapy may be administered to the recipient if and only if it has been determined by clear and convincing evidence."); CH. 405 ILL. COMP. STAT. § 5/4-608 (the burden is reiterated with respect to involuntary admission).

¹⁵³ CH. 405 ILL. COMP. STAT. § 5/3-802 (2010) ("A respondent is not entitled to a jury on the question of whether psychotropic medication or electroconvulsive therapy may be administered under Section 2-107.1.").

order to protect his liberty interest.”¹⁵⁴ Ensuring a respondent has the opportunity to attend a trial that implicates fundamental interests is a keystone of our legal system.¹⁵⁵ Illinois law also carves out statutory protections for those respondents that prefer not to attend their hearing by disallowing any adverse inferences to be drawn from a respondent’s non-attendance.¹⁵⁶

In any event, ongoing research in the field of therapeutic jurisprudence makes a compelling argument that, even if a respondent does not prevail at his or her mental health trial, the opportunity to observe and participate in that proceeding may have lasting, positive effects on that person.¹⁵⁷ This may be because, in part, “people with mental illness already have been marginalized and stigmatized by a variety of social mechanisms, self-respect and their sense of their value as members of society are of special importance to them.”¹⁵⁸ In support, research yields consistent, positive findings about treatment compliance and overall engagement with the legal system when respondents are provided the opportunity to testify like any other party-participant.¹⁵⁹ As one comment suggests, it may increase a person’s perceptions of “fairness, respect, and dignity in the process, with a resulting increase in their receptivity to treatment.”¹⁶⁰

This concept of attending one’s trial goes hand-in-hand with ensuring the participants have a meaningful courtroom experience. This does not suggest every trial should conform to expectations set by television, but, instead, it is understandable why some participants may desire more than what appears to be a perfunctory video conference for an adversarial trial that involves grievous topics like irreversible side effects,¹⁶¹ electroconvulsive therapy,¹⁶² or forced confinement for up to ninety days.¹⁶³ As one study notes, “if procedural safeguards are informalized to the point of becoming non-

¹⁵⁴ *In re* of Perona, 294 Ill. App. 3d 755, 763 (4th Dist. 1998) (citing *Specht v. Patterson*, 386 U.S. 605, 610 (1967)).

¹⁵⁵ *See In re* Barbara H., 183 Ill. 2d 482, 496 (1998) (“[Respondent] was stripped of the opportunity to be present at the hearing through the actions of an attorney she did not know and did not want to represent her. In effect, the circuit court allowed [respondent’s] rights to be surrendered by a stranger.”).

¹⁵⁶ CH. 405 ILL. COMP. STAT. § 5/3-806(c) (1996) (“No inference may be drawn from the recipient’s non-attendance pursuant to either subsection (a) or (b) of this Section.”).

¹⁵⁷ Winick, *supra* note 143.

¹⁵⁸ *Id.* at 45.

¹⁵⁹ *Id.* at 54.

¹⁶⁰ *Id.* at 47.

¹⁶¹ Bruce J. Winick, *Legal Limitations on Correctional Therapy and Research*, 65 MINN. L. REV. 331, 366–67 (1981).

¹⁶² *Id.* at 365.

¹⁶³ CH. 725 ILL. COMP. STAT. § 5/104–20 (2020).

existent, the hearing may be more traumatic than any formal adherence to procedural safeguards could possibly be.”¹⁶⁴ Here, I submit that procedural safeguards in Illinois have in fact been informalized to a dangerous degree.

1. Public Access to Open Mental Health Hearings

The Illinois Mental Health and Developmental Disabilities Code provides that, to the extent possible, mental health “hearings shall be held in the mental health facility where the respondent is hospitalized.”¹⁶⁵ These hearings “shall be open to the press and public unless the respondent or some other party requests that they be closed.”¹⁶⁶ Open and public trials are critical to our democracy. Time and again, courts recognize that a core purpose of public hearings is “to guarantee that the accused would be fairly dealt with and not unjustly condemned. History had proven that secret tribunals were effective instruments of oppression.”¹⁶⁷ Indeed, the United States Supreme Court has repeatedly emphasized that open trials are “bulwarks of our free and democratic government” and public access to such trials may safeguard against abuses of judicial power.¹⁶⁸

During COVID-19, there is no fidelity between Illinois circuit courts and the bedrock principle of open mental health hearings. Outside of mental health proceedings, most Illinois courts have public access links to livestreams and archived footage for other types of hearings throughout the state on their respective websites.¹⁶⁹ If a member of the public wants to view a criminal proceeding or a personal injury dispute, or attend an online hearing for domestic relations, all of the information to do so is readily available and

¹⁶⁴ David Wexler et al., *The Administration of Psychiatric Justice: Theory and Practice in Arizona*, 13 *AZ. L. REV.* 1, 5 (1971).

¹⁶⁵ CH. 405 ILL. COMP. STAT. § 5/3–800 (2020).

¹⁶⁶ *Id.* at (c) (“The court may also indicate its intention to close a hearing, including when it determines that the respondent may be unable to make a reasoned decision to request that the hearing be closed. A request that a hearing be closed shall be granted unless there is an objection to closing the hearing by a party or any other person. If an objection is made, the court shall not close the hearing unless, following a hearing, it determines that the patient’s interest in having the hearing closed is compelling. The court shall support its determination with written findings of fact and conclusions of law. The court shall not close the hearing if the respondent objects to its closure. Whenever a court determines that a hearing shall be closed, access to the records of the hearing, including but not limited to transcripts and pleadings, shall be limited to the parties involved in the hearing, court personnel, and any person or agency providing mental health services that are the subject of the hearing.”).

¹⁶⁷ *Estes v. Texas*, 381 U.S. 532, 538–39 (1965).

¹⁶⁸ *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 592 (1980) citing *In re Oliver*, 333 U.S. 257, 271–72 (1948).

¹⁶⁹ *Remote Hearings Directory*, *supra* note 78.

posted online.¹⁷⁰ However, if a member of the public wishes to observe mental health proceedings, which, by statute are considered open,¹⁷¹ no such information is available.¹⁷² A developing commentary attributes a lack of transparency in some online hearings to the hurried transition to the format.¹⁷³ The wholesale exclusion of the public from remote video conference hearings that involve the forced administration of neuroleptics or electroconvulsive therapy upon a person is disconcerting. Transparency for such trials is paramount, particularly during a crisis.¹⁷⁴ Some prominent groups associated with ensuring court oversight are quick to highlight that, in time of crisis, it is important for the public to feel confident in its state agencies and official entities.¹⁷⁵ The American Bar Association adopted a resolution addressing public access to courts during COVID-19, noting “as courts have moved online, many have not prioritized public access. Some do not have public access at all.”¹⁷⁶

There is an easy fix for this oversight. If circuit courts are reluctant to publish the details of ongoing mental health trials, the Illinois Supreme Court must remind them that these proceedings are open to the public and the press, absent an approved request by a party for the proceedings to be closed.¹⁷⁷ Too often, it seems that courts presume mental health hearings are “confidential” by default because they involve sensitive details that may further stigmatize participants.¹⁷⁸ This is a kind, but mistaken, position; a result of a conflation or misinterpretation of the Mental Health and

¹⁷⁰ *Id.*

¹⁷¹ CH. 405 ILL. COMP. STAT. § 5/3-800(c) (2015).

¹⁷² *Remote Hearings Directory*, *supra* note 78.

¹⁷³ Jamiles Lartey, *The Judge Will See You on Zoom, but the Public is Mostly Left Out*, MARSHALL PROJECT (Apr. 13, 2020, 6:00 AM), www.themarshallproject.org/2020/04/13/the-judge-will-see-you-on-zoom-but-the-public-is-mostly-left-out.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ AM. B. ASS'N, RESOLUTION NO. 117, at 12 (2020), <https://www.americanbar.org/content/dam/aba/directories/policy/annual-2020/117-annual-2020.pdf> (The resolution goes on to detail further concerns, such as “[i]n jurisdictions providing public access, that access is typically via a YouTube or Facebook Live Feed, rather than the court website. In watching or listening to a streamed or broadcast hearing, no header is provided concerning the case, the personnel, or even the type of docket. In in-person criminal proceedings, the judge, prosecutor, defense attorney and accused are identifiable by where they stand or sit in the courtroom. Most online platforms do not similarly allow a party to lock a view into place, and there is therefore no discernable way to distinguish attorneys from the court personnel or from the litigants.”).

¹⁷⁷ CH. 405 ILL. COMP. STAT. § 5/3-800 (2020).

¹⁷⁸ *See, e.g.*, JULY 28 ADMIN. ORD. 2020-7., *supra* note 123, (detailing that “[o]nly attorneys, respondents, court personnel, and designated witnesses will be provided with the meeting information to preserve any confidentiality associated with the proceeding.”) (emphasis added).

Developmental Disabilities Confidentiality Act¹⁷⁹ and the Health Insurance Portability and Accountability Act,¹⁸⁰ and it should be corrected.

2. Meaningful Participation in Mental Health Trials

At first blush, one may assume that remote video services would encourage or increase inpatient respondent attendance. After all, the ability to log onto court from just about anywhere would seem to suggest that more people may feel comfortable or capable of participating in their own case and also allow for better public access to such cases. Indeed, the Illinois Supreme Court cited these very ideas in its policy release when it touted the benefits of virtual proceedings.¹⁸¹ Notably, when immigration courts previously championed nearly identical benefits when transitioning to video court for some asylum matters, the resulting data was anything but heartening for actual participants.¹⁸²

Indeed, some mental health respondents take issue with this new process because, to them, a trial-by-Zoom presents a sharp contrast between the invasive degree of the relief sought and the inverse, informal appearance of a video conference.¹⁸³ Concerned patients are joined by courts who also recognize that video trials have their shortcomings.¹⁸⁴ Courts acknowledge that “virtual reality is rarely a substitute for actual presence and that, even in an age of advancing technology, watching an event on the screen remains less than the complete equivalent of actually attending it.”¹⁸⁵ Courts have also expressed concern that the “ability to observe demeanor, central to the fact-finding process, may be lessened in a particular case by video conferencing.”¹⁸⁶ This is especially concerning because personal impression may be a dispositive factor in whether or not a particular position carries the day.¹⁸⁷ Another shortcoming of the platform occurs when a participant has an unstable internet connection, which can result in an interruption in

¹⁷⁹ CH. 740 ILL. COMP. STAT. § 110/1 et seq. (2020).

¹⁸⁰ HHS Security and Privacy Rule, 45 C.F.R. § 164 (2000).

¹⁸¹ GUIDANCE DOCUMENT, *supra* note 51; ISC REMOTE MEMO, *supra* note 53.

¹⁸² See Frank M. Walsh & Edward M. Walsh, *Effective Processing or Assembly-Line Justice? The Use of Teleconferencing in Asylum Removal Hearings*, 22 GEO. IMMIGR. L.J. 259 (2008) (detailing how video court should not be considered a panacea and contends that the switch to video conferencing nearly doubled the amount of denials of asylum applications).

¹⁸³ Thornton v. Snyder, 428 F.3d 690, 697 (7th Cir. 2005).

¹⁸⁴ *Id.*

¹⁸⁵ United States v. Lawrence, 248 F.3d 300, 304 (4th Cir. 2001).

¹⁸⁶ Edwards v. Logan, 38 F. Supp. 2d 463, 467 (W.D. Va. 1999).

¹⁸⁷ *Id.*

testimony. An unstable connection or atypical distractions can also undermine a court reporter's ability to accurately take testimony.¹⁸⁸ Similarly, an unclear video connection may directly affect a court's ability to scrutinize whether a petitioner has provided clear and convincing evidence of certain facts.¹⁸⁹

Prior to COVID-19, one commitment matter, involving an already-incarcerated respondent, addressed the constitutionality of remote appearance via video conference.¹⁹⁰ The Court found that the remote appearance did not undermine protections of due process because there was only a slight risk of error compared to the substantial government interests in favor of such a method.¹⁹¹ However, the facts of that particular matter insulate it from any broader takeaways due to, in part, what the dissent described as "singularly inappropriate as a test case to determine the validity of [video conferencing]" because the case was largely uncontested and risked minimal errors as a result.¹⁹² Further, the Court expressly recognized the lower court's finding that there may be cases where particular respondents have a specific aversion to technology and in such cases, video conference would be inappropriate.¹⁹³

In addition to the patients' considerations, courts and judges, attorneys and advocates have also expressed concern about video conference in proceedings involving fundamental rights. At the onset of COVID-19 stay at home orders, some New Jersey attorneys stated they preferred waiting until in-person trials resumed because too much uncertainty existed with remote

¹⁸⁸ See, e.g., Victoria Hudgins, *Dog Barks, Zoom Conferences: Courtroom Reporters' New Normal Working Remotely*, LAW.COM (May 11, 2020, 11:30 AM), <https://www.law.com/legaltechnews/2020/05/11/dog-barks-zoom-conferences-court-reporters-new-normal-working-remotely/> (wherein one professional court reporter noted, how "[a] distorted or muted microphone could send a statement 'into the digital ether.'").

¹⁸⁹ For instance, in cases of involuntary commitment, a petitioner may assert that, due to a serious mental illness, a respondent is unable to attend to his basic needs. See CH. 405 ILL. COMP. STAT. § 5/1-119 (2) (2020). In support of this, a petitioner may often allege that a respondent is unable to take care of certain basic needs, such as showering or maintaining one's hygiene. See, e.g., *In re Miller*, 301 Ill. App. 3d 1060, 1064 (1998) ("When [the doctor] examined respondent on January 19, 1998, pursuant to the trial court's order, respondent had a "dirty" appearance and did not seem able to take care of his basic needs, such as bathing.").

¹⁹⁰ *United States v. Baker*, 45 F.3d 837, 845 (4th Cir. 1995).

¹⁹¹ *Id.*

¹⁹² *Id.* at 850 (Widener, J., dissenting).

¹⁹³ *Id.* at 845-46. This decision avoids any lengthy discussion about certain symptoms of illnesses that may overlap with a court's utilization of technology such as paranoia about televisions and screens. These concerns have merit but are not required to prove my instant points and I would prefer not to inadvertently sensationalize mental illness or further stigmatize those with such symptoms.

proceedings, such as a witness's credibility as there are no safeguards to prevent improper assistance to a third party.¹⁹⁴

Further, a majority of the public doubt that a trial-by-video would be fair and impartial.¹⁹⁵ The public's instinct about video conferenced proceedings aligns with a local project that found that Cook County's introduction of video bond hearings resulted in the average amount of bails that were set increased by sixty-five percent.¹⁹⁶ The study went on to suggest that the quality of the remote video conference technology, and how it was even installed, may have affected how a judge assessed a particular defendant.¹⁹⁷ It is also unclear whether certain witnesses or non-parties can provide quality testimony on behalf of the respondent at a video trial.¹⁹⁸ For instance, one study found that nearly forty percent of those polled would be unable to isolate themselves in a quiet setting for several hours without interruption.¹⁹⁹ If a witness is in the lowest income bracket, that number increased to fifty-eight percent.²⁰⁰ There is also a concern about whether the imposition of video conferencing software, in general, disproportionately affects those participants who are without reliable internet or phone service plans.²⁰¹

It appears, then, that courts, attorneys, litigants, and the public share similar concerns regarding the appropriateness and effectiveness of remote video conference proceedings. Given the significant liberty interests at stake

¹⁹⁴ Nobile & Cowen, *supra* note 24.

¹⁹⁵ Memorandum from GBAO to National Center for State Courts, *supra* note 31, at 8.

¹⁹⁶ Shari S. Diamond, Letter to Professor Locke Bowman Re: Mason v. County of Cook, et al. (Dec. 5, 2008), www.law.northwestern.edu/legalclinic/macarthur/projects/indigent/documents/ProfBowman_DiamondStudy.pdf; Shari S. Diamond, et al., *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. CRIM. L. & CRIMINOLOGY 869, 898 (2010).

¹⁹⁷ *Id.* at 899 ("It may be that the quality of the available video display was too degraded or the size of the video monitor was too small to enable the judge to adequately view the defendant. In addition, in order to watch the judge in the courtroom on the monitor, the defendant in Cook County had to look at the monitor rather than at the camera that was capturing his own image and projecting it into the courtroom. He thus could appear on the courtroom monitor as if he was avoiding direct eye contact. Modern technology with a camera embedded in the viewing monitor would be able to eliminate this problem. The inability of the defendant to see the judge clearly may also have discouraged the defendant from speaking up when it would have helped him to say something.").

¹⁹⁸ See, e.g., Jason Tashea, *The Legal and Technical Danger in Moving Criminal Courts Online*, BROOKINGS (Aug. 6, 2020), <https://www.brookings.edu/techstream/the-legal-and-technical-danger-in-moving-criminal-courts-online/> (describing the technical and financial hurdles for litigants who are low-income or who live in rural areas without reliable internet).

¹⁹⁹ Memorandum from GBAO to National Center for State Courts, *supra* note 31.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 3.

during mental health cases,²⁰² mental health respondents are justified in their unwillingness to undergo a trial-by-video conference.

B. *The Americans With Disabilities Act*

Even if one were to set aside all of section A of this Part, there is an ongoing concern about those parties or participants who may require accommodation due to a disability and it is unclear whether any circuit courts are engaged in alternative planning for such requests during COVID-19. The interplay between COVID-19 and application of the ADA is dynamic. For instance, the Equal Employment Opportunity Commission issued guidance on how COVID-19 does and does not affect workplace considerations under Title I of the ADA.²⁰³ This is an important consideration because someone with a standalone mental illness may qualify for protections under the ADA.²⁰⁴ Additionally, there is an alarming rate of comorbidity in individuals with a mental illness and a separate, overlapping disability.²⁰⁵ This discussion is not limited to a mental health respondent as a party but may include all sorts of court users such as jurors, witnesses, and attorneys.

Grounded in the Rehabilitation Act,²⁰⁶ the enactment of the ADA in 1990 was a watershed moment for those living among us with disabilities. Put simply, it greatly expanded the application and scope of overdue and necessary protections.²⁰⁷ A core purpose of the ADA is to provide a “clear and comprehensive national mandate for the elimination of discrimination

²⁰² SAMHSA, CIVIL COMMITMENT AND THE MENTAL HEALTH CARE CONTINUUM: HISTORICAL TRENDS AND PRINCIPLES FOR LAW AND PRACTICE 23 (2019), (“Involuntary commitment, whether associated with hospitalization or a community treatment program, involves a significant limitation of liberty—the kind of limitation that is rare outside of the criminal justice system.”).

²⁰³ *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EQUAL EMP. OPPORTUNITY COMM’N (June 17, 2020), www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws.

²⁰⁴ *Mental Health Conditions in the Workplace and the ADA*, ADA NAT’L NETWORK (Oct. 2020), <https://adata.org/factsheet/health>.

²⁰⁵ Kimberly Kendall & Michael J. Owen, *Intellectual Disability and Psychiatric Comorbidity: Challenges and Clinical Issues*, PSYCHIATRIC TIMES (May 26, 2015), www.psychiatristimes.com/view/intellectual-disability-and-psychiatric-comorbidity-challenges-and-clinical-issues.

²⁰⁶ Julia Carmel, *Before the A.D.A., There was Section 504*, N.Y. TIMES (July 22, 2020), <https://www.nytimes.com/2020/07/22/us/504-sit-in-disability-rights.html>.

²⁰⁷ Elizabeth Malloy, *Mental Health Courts and Title II of the ADA: Accessibility to State Court Systems for Individuals with Mental Disabilities and the Need for Diversion*, 25 ST. LOUIS U. PUB. L. REV. 307, 310 (2006).

against individuals with disabilities.”²⁰⁸ Title II of the ADA applies to state and local governments, including courts.²⁰⁹

A person qualifies for protection under the ADA if they can set forth that they meet the definition “disabled”²¹⁰ and demonstrate that they are eligible for services or actions covered by the entity.²¹¹ Federal regulations support a broad interpretation of disability, which may include a “mental or psychological disorder such as [intellectual disability], organic brain syndrome, emotional or mental illness, and specific learning disability.”²¹² The definition should be applied broadly “in favor of expansive coverage.”²¹³ The disability must “substantially limit[] one or more major life activities of such individual.”²¹⁴ Discrimination occurs in this setting when someone, “by reason of such disability, [is] excluded from participation in or [is] denied the benefits of the services, programs, or activities of a public entity, or [is] subjected to discrimination by any such entity.”²¹⁵

Under the ADA, courts “must ensure their services, programs, and activities are ‘readily accessible and usable’ by people with disabilities when viewed in the entirety.”²¹⁶ Some courts have construed this to mean an “affirmative accommodation to ensure meaningful access to a public service” must be provided in order to meet the access element.²¹⁷ Ostensibly, courts employing various remote-video services for attendance and participation seem to fit the spirit and goals of the ADA.²¹⁸ However, where a video conference hearing is the *only* option, there may be scenarios where individuals with symptoms that causes them to be uncomfortable or unable

²⁰⁸ 42 U.S.C. § 12101(b) (2006); Dep’t of Just. Nondiscrimination on the Basis of Disability in State and Local Government Services, Purpose and Broad Coverage, 28 C.F.R. § 35.101 (2016).

²⁰⁹ *Tennessee v. Lane*, 541 U.S. 509, 513, 533-34 (2004).

²¹⁰ 42 U.S.C. § 12102; 28 C.F.R. § 35.108(a)(1) (2016) (defining “disability” under the ADA).

²¹¹ 42 U.S.C. § 12131(2); Dep’t of Lab. Equal Opportunity Clause, Definitions 41 C.F.R. § 60-741.2 (2020) (defining “qualified individual”).

²¹² *See The Americans with Disabilities Act: Title II Technical Assistance Manual*, U.S. DEP’T JUST., at II-2.2000, <http://www.usdoj.gov/crt/ada/taman2.html> (last visited Jan. 15, 2021).

²¹³ 28 C.F.R. § 35.108(a)(2)(i) (2016).

²¹⁴ 28 C.F.R. § 35.108(a)(1) (2016); *see also* *Bragdon v. Abbott*, 524 U.S. 624, 637, 639 (1998).

²¹⁵ 42 U.S.C. § 12132.

²¹⁶ Chelsea Marx, *Accommodations for All—The Importance of Meaningful Access to Courts for Pro Se Litigants with Mental Disabilities*, 95 DENV. L. REV. ONLINE 152, 154 (2018).

²¹⁷ *Id.* at 154 (citing *Nunes v. Mass. Dept. of Correction* 766 F.3d 136, 145 (5th Cir. 2014) (quoting *Henrietta D. v. Bloomberg*, 331 F.3d 261, 273-76 (2d Cir. 2003)).

²¹⁸ 28 C.F.R. § 35.104 (2016) (defining “public entity”).

to sit before a video screen for long periods of time, or prevents them from engaging in such a medium in any meaningful manner.²¹⁹

Here, a qualifying individual may assert that the only available manner for accessing the Illinois courts, through video conferencing, is insufficient due to a disability. This argument is a modern iteration of *Tennessee v. Lane*, where the United States Supreme Court held that individuals who were unable to access certain *physical* courthouse services and areas were permitted to sue the state under the ADA in federal court.²²⁰ Here, access to a virtual courthouse may present difficulties for some mental health respondents. For example, some participants may have difficulty viewing the screens provided by certain hospitals,²²¹ some participants may distrust or have active paranoia regarding such screens and technology,²²² other participants may have heightened sensory issues that are aggravated by the introduction of such audio and visual equipment.²²³ These are real concerns

²¹⁹ Tashea, *supra* note 198.

²²⁰ *Tennessee v. Lane*, 541 U.S. 509, 513, 533–34 (2004); *see also* Ronda Cress et al., *Mental Health Courts and Title II of the ADA: Accessibility to State Court Systems for Individuals with Mental Disabilities and the Need for Diversion*, 25 ST. LOUIS U. PUB. L. REV. 307, 320 (2006).

²²¹ *See* Dan Robotham et al, *Do We Still Have a Digital Divide in Mental Health? A Five-Year Survey Follow-up*, 18 J. MED. INTERNET RES. (Nov. 22, 2016) (concluding that “fewer people with psychosis had access to the Internet...either via computers...or mobile phones...” and “fewer people with psychosis were confident in using the Internet...with computers...or mobile phones.”).

²²² *See* Benedict Carey, *The Psychiatrist Will See You Online Now*, N.Y. TIMES (Sept. 8, 2020), <https://www.nytimes.com/2020/08/28/health/virtual-therapy-psychiatry-coronavirus.html> (describing the various benefits of telepsychiatry during COVID-19 but warning “[f]or people who are deeply delusional, who are scared, paranoid and alone, for instance, a Zoom call in these situations can be an invitation to confusion, or much worse. The rich sensory experience of full human interaction with a gifted therapist — that quality that defies measurement and study, in any randomized trial—is what many such people need.”). *But see* APA COUNCIL ON PSYCHIATRY & LAW, RESOURCE DOCUMENT ON TELEPSYCHIATRY AND RELATED TECHNOLOGIES IN CLINICAL PSYCHIATRY (Jan. 2014), https://www.psychiatry.org/File%20Library/Psychiatrists/Directories/Library-and-Archive/resource_documents/Resource-2014-Telepsychiatry-Clinical-Psychiatry.pdf (acknowledging the risks of treating individuals experiencing paranoia or psychosis but countering that some studies “found no evidence for the inferiority of video conferencing telemental health for patients with psychosis, and one other report concluded that even psychotic patients with delusions pertaining to television were able to respond appropriately to teleconferencing and did not incorporate their telemedicine experience into their delusional system.”).

²²³ Daniel Young & Elizabeth Edwards, *Telehealth and Disability: Challenges and Opportunities for Care*, NAT’L HEALTH L. PROGRAM (May 6, 2020), <https://healthlaw.org/telehealth-and-disability-challenges-and-opportunities-for-care/> (“A provider may be inclined to visually examine patients with a videoconference, but the movements and positioning often necessary for a physical exam may be hard for people with mobility and

and courts should consider, along with ongoing litigation trends that confirm how issues with “access to courts” tend to favor plaintiffs.²²⁴ And further, the Illinois Mental Health and Developmental Disabilities Code echoes these very concerns by outright favoring requests for reasonable accommodations regarding the location of the hearing.²²⁵

In reaction, state courts may assert that any modification or compliance with Title II of the ADA would “fundamentally alter the nature of a service, program, or activity or would result in undue financial and administrative burdens.”²²⁶ However, this argument may carry little weight since most participants may simply assert that a postponement for an in-person hearing at a traditional, pre-pandemic courtroom is all that is required and no special setting or alternative location is needed. If that is the case, most entities may have a difficult task asserting that existing venues are somehow impractical when an individual is willing to wait until that traditional location is available for safe occupancy and use.

States are mindful of this issue and have incorporated ongoing ADA concerns into the new video conference landscape. For example, one state’s access to justice resource recommends that judges specifically inquire about whether a video conference participant desires any ADA modifications or alternatives.²²⁷ The Illinois Supreme Court recommends that trial courts “consider the capabilities of court patrons to participate via video conference or telephone and whether the selected method is accessible for persons with disabilities.”²²⁸ Consequently, any participant in a mental health matter during COVID-19 that seeks a modification for purposes of accessing the

sensory disabilities to perform. This problem increases when a person’s disability causes them to be unaware of symptoms indicating they have developing health issues.”).

²²⁴ See Marc Charnatz & Antoinette McRae, *Access to the Courts: A Blueprint for Successful Litigation Under the Americans With Disabilities Act and the Rehabilitation Act*, 3 UNIV. MD. L.J. RACE RELIGION GENDER & CLASS 333, 370 (2003) (“Notwithstanding some disappointments, the obvious trend in litigation involving ‘access to the courts’ for individuals with disabilities indicates that future plaintiffs in these cases will be successful. Further, the lessons learned in ‘access to the court’ cases serve the disability community well in other instances, such as reasonable accommodations in employment, auxiliary aids and services in education, challenging stereotypical notions about the abilities of individuals with disabilities in both employment and education contexts.”).

²²⁵ CH. 405 ILL. COMP. STAT. § 5/3-806(b) (1996).

²²⁶ Dep’t Just. Nondiscrimination of on the Basis of Disability in State and Local Governments, 28 C.F.R. § 35.130 (2016).

²²⁷ TEX. ACCESS TO JUSTICE COMM’N, BEST PRACTICES FOR COURT IN ZOOM HEARINGS INVOLVING SELF REPRESENTED LITIGANTS 2 (2020), <https://www.txcourts.gov/media/1446335/zoomsr1bestpractices.pdf>.

²²⁸ GUIDANCE DOCUMENT, *supra* note 51.

proceeding should utilize existing contracts and forms to secure a response by the local court prior to any substantive hearing.

C. *A Solution in Plain Sight*

Given these concerns, orders like the ones entered by County Division of the Circuit Court of Cook County in Illinois are problematic. There, the circuit court expressly stated that mental health trials would occur during the pandemic by video only, no hearings would occur in-person where the respondent was located, and no public access links exist for any of the ongoing hearings.²²⁹ Before COVID-19 rose to pandemic levels, Cook County's pilot project and local rules contemplated virtual mental health hearings, but only where the case participants agreed.²³⁰ The requirement of a respondent's consent is an important safeguard, but has now become a distant notion.²³¹ Illinois's regression in this area is similar to other states which also originally required a defendant's consent for a remote trial, but as the pandemic continued, eliminated it as a prerequisite safeguard.²³²

However, a mechanism already exists in Illinois for respondents who prefer an in-person proceeding: such respondents may request a continuance until such a proceeding can be safely overseen.²³³ In commitment matters, continuances may be granted by the court or by motion of the parties and cannot extend beyond fifteen days unless requested by the respondent.²³⁴ Similarly, in forced treatment cases, respondents are entitled to a continuance of up to seven days and additional continuances are permitted upon a showing that additional time is needed in order to adequately prepare or under exceptional circumstances.²³⁵ Both provisions, then, contain safeguards to allow respondents to ask for additional time, if the situation warrants the request.²³⁶ Additionally, if an individual seeks accommodation

²²⁹ APR. 13 ADMIN. ORD. 2020-3 *supra* note 16; JULY 28 ADMIN. ORD. 2020-7, *supra* note 123.

²³⁰ CIR. CT. COOK CNTY., 10.9 RULES, *supra* note 115.

²³¹ Compare CIR. CT. COOK CNTY., 10.9 RULES, *supra* note 115 (limiting pre-pandemic use of video conference technology to cases where attorney and respondent agree), with APR. 13 ADMIN. ORD. 2020-3 *supra* note 16 (requiring that all proceedings be conducted via video conference during pandemic).

²³² Nobile & Cowen, *supra* note 24.

²³³ See CH. 405 ILL. COMP. STAT. 5/3-800 (2020) (discussing a respondent's request of continuance).

²³⁴ *Id.*

²³⁵ CH. 405 ILL. COMP. STAT. § 5/2-107.1 (2018).

²³⁶ *Id.*; CH. 405 ILL. COMP. STAT. §5/3-800 (2020).

pursuant to Title II of the ADA, that request should be adjudicated and resolved prior to any trial on the underlying merits.²³⁷

Despite those statutory mechanisms, there is no clear record or indication of where circuit courts in Illinois during COVID-19 have postponed matters so a mental health respondent may experience an in-person hearing.²³⁸ Nor are there any local orders or records of courts in mental health cases applying any of the balancing tests set forth by Illinois Supreme Court's policy document for remote video testimony or the framework articulated in the committee comments to Rule 241.²³⁹ Worse, because there is no public access to mental health proceedings, no outside oversight exists for these virtual hearings where some respondents may otherwise prefer to wait for an in-person courtroom. Unlike years prior (pre-COVID-19), where mental health trials were held open to the public and on-site at hospitals, the majority of Cook County's mental health trials for the year 2020 have occurred over video conference without any public access. Given that circuit courts do not appear to be allowing these continuances for certain mental health respondents, the Illinois Supreme Court should expressly address the issue by ensuring its rules reflect that such requests should be honored.

Some medical practitioners may caution that delays in these matters will only cause respondents to further deteriorate or be deprived of what doctors consider to be much-needed medication.²⁴⁰ One can always easily envision a parade of horrors occurring if a respondent who is subject to a forced medication petition is allowed to postpone that trial for several weeks. However, the inimitable Karl Llewellyn reminds us that if law makes blind, more law is the cure.²⁴¹

Illinois law already contemplates scenarios where medical treatment is urgently needed but a case is postponed or delayed. For instance, "a treater may administer involuntary medication upon a respondent while a case remains pending and unresolved if such measures are to prevent that person

²³⁷ See Charnatz & McRae, *supra* note 224; see Dep't Just. Nondiscrimination of on the Basis of Disability in State and Local Governments, 28 C.F.R. § 35.130 (2016) ("No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.").

²³⁸ My own experience can confirm that such requests are politely set aside by trial judges in every occurrence.

²³⁹ *Id.*; SUP. CT. ILL. R. 241.

²⁴⁰ See generally *Mental Health Courts: Challenges, Questions and Tensions*, CTR. FOR CRT. INNOVATION (Aug. 8, 2005) (outlining issues and challenges seen regarding mental health patients and the court system).

²⁴¹ Karl Llewellyn, *THE BRAMBLE BUSH: THE CLASSIC LECTURES ON THE LAW AND LAW SCHOOL* 122 (Oxford University Press, Inc., 11th ed. 1930).

from causing serious and imminent physical harm to himself or others, and no less restrictive alternative is available.”²⁴² Unlike the limitations imposed on health care providers if no petition is pending, this avenue of emergency treatment is not as limited, so long as specific statutory elements are met and memorialized.²⁴³ Accordingly, in the event a respondent requests a postponement of his or her mental health trial so that it may occur in an actual courtroom, the treater is not without interim relief if an emergency arises. Similarly, if a respondent in an involuntary commitment case seeks a continuance so that the matter may be adjudicated in person or by a live jury, then that request can be honored, and the Mental Health Code allows the hospital to continue to detain the until the time of trial.²⁴⁴

CONCLUSION

It is undeniable that the existence of a crisis requires all stakeholders to demonstrate flexibility. However, systems like the judiciary cannot impose measures in the name of efficiency and safety when they result in a rigid, closed system in which even justice feels remote, as has occurred as a result of the Illinois courts’ response to COVID-19. While it is admirable that local courts have singled out mental health hearings as a priority for proceedings via video conference, in those instances where participants are uncomfortable or unwilling to have his or her liberty interest adjudicated over a screen, the judiciary should give these respondents the consideration they deserve. As one jurist has previously noted, “[m]ental-health cases are treated differently than other proceedings because we have permitted them to become different.”²⁴⁵ Here, again, mental health cases are being treated differently by our courts and it should not continue. Otherwise, our procedural safeguards and due process protections remain relegated in exchange for novel but injudicious processes.

²⁴² CH. 405 ILL. COMP. STAT. § 5/2–107 (2015).

²⁴³ *Id.*; see also Sarah Berkowitz & Matthew R. Davison, *Recognizing and Respecting the Limitations of Emergency Medications*, ILL. ST. B. ASS’N (Dec. 2018), <https://www.isba.org/sections/mentalhealth/newsletter/2018/12/recognizingandrespectingthelimitati>.

²⁴⁴ CH. 405 ILL. COMP. STAT. § 5/3–800(b) (2015).

²⁴⁵ *In re Lisa G.C.*, 373 Ill. App. 3d 586, 598 (2nd Dist. 2007) (Knecht, dissenting).

2021

No Ordinary Process

171

APPENDIX

State	Resource
Alabama	https://judicial.alabama.gov/Announcement/COVID_19 [https://perma.cc/J6Y2-TP33]
Alaska	https://courts.alaska.gov/covid19/index.htm [https://perma.cc/EP9R-TDNU]
Arizona	https://www.azcourts.gov/covid19/Info [https://perma.cc/ZF6U-K3A8]
Arkansas	https://www.arcourts.gov/arkansas-supreme-court-statement-novel-coronavirus-outbreak-and-courts [https://perma.cc/TZ98-MYS5]
California	https://newsroom.courts.ca.gov/covid-19-and-courts/judicial-branch-emergency-actions [https://perma.cc/XJ7W-Y8MA]
Colorado	https://www.courts.state.co.us/announcements/COVID-19.cfm [https://perma.cc/82KB-NWF2]
Connecticut	https://jud.ct.gov/COVID19.htm [https://perma.cc/J9RP-88EV]
Delaware	https://courts.delaware.gov/aoc/covid-19 [https://perma.cc/3D8P-Y3YD]
Florida	https://www.floridasupremecourt.org/Emergency [https://perma.cc/YBW5-XVJQ]
Georgia	https://georgiacourts.gov/covid-19-preparedness/ [https://perma.cc/MNL9-WFLY]
Hawaii	https://www.courts.state.hi.us/covid-19-information-page [https://perma.cc/M6DM-C4RQ]

Idaho	https://isc.idaho.gov/Emergency%20Orders [https://perma.cc/LJH4-8P2N]
Illinois	http://illinoiscourts.gov/Administrative/covid-19.asp [https://perma.cc/AX8H-XY69]
Indiana	https://www.in.gov/judiciary/5575.htm [https://perma.cc/ZPM6-A3UX]
Iowa	https://www.iowacourts.gov/iowa-courts/covid-19-information-and-updates/ [https://perma.cc/W93X-BZM7]
Kansas	https://www.kscourts.org/About-the-Courts/Court-Administration/OJA/Kansas-Courts-Response-to-Coronavirus-(COVID-19) [https://perma.cc/9U6M-W6JL]
Kentucky	https://kycourts.gov/pages/Coronavirus.aspx [https://perma.cc/6G7W-Q356]
Louisiana	https://www.lasc.org/COVID19/ [https://perma.cc/XM2P-TTGY]
Maine	https://www.courts.maine.gov/covid19.shtml [https://perma.cc/D2V2-8MGQ]
Maryland	https://www.mdcourts.gov/coronavirusupdate [https://perma.cc/L938-Q6R7]
Massachusetts	https://www.mass.gov/guides/court-system-response-to-covid-19 [https://perma.cc/YSS2-SPSG]
Michigan	https://courts.michigan.gov/News-Events/covid19-resources/Pages/COVID-19.aspx [https://perma.cc/SFH6-FMMG]
Minnesota	http://www.mncourts.gov/Emergency.aspx [https://perma.cc/Z5C4-2LE2]

2021

No Ordinary Process

173

Mississippi	No dedicated URL, but general information and orders available at home page of the court: https://courts.ms.gov/index.php [https://perma.cc/7EGQ-7K7Q]
Missouri	https://www.courts.mo.gov/pandemic/ [https://perma.cc/KBW8-5Q6L]
Montana	No dedicated URL, but general information and orders available at home page of the court: https://courts.mt.gov/ [https://perma.cc/3Y3G-LCK9]
Nebraska	https://supremecourt.nebraska.gov/administration/nebraska-judicial-branch-emergency-status-information [https://perma.cc/L4BC-UWRE]
Nevada	No dedicated URL, but general information and orders available at home page of the court: https://nvcourts.gov/ [https://perma.cc/2FA5-TEJC]
New Hampshire	https://www.courts.state.nh.us/aoc/corona-covid-19.html [https://perma.cc/KGX5-8B5K]
New Jersey	https://njcourts.gov/public/covid19.html [https://perma.cc/5DQT-GHGF]
New Mexico	https://www.nmcourts.gov/covid-19.aspx [https://perma.cc/M2TT-ZXRZ]
New York	https://www.nycourts.gov/index.shtml [https://perma.cc/3CXD-PZ9M]
North Carolina	https://www.nccourts.gov/covid-19 [https://perma.cc/Y3FJ-E6JR]
North Dakota	https://www.ndcourts.gov/emergency-order-and-pandemic-response [https://perma.cc/5BFV-7RC2]

Ohio	https://www.supremecourt.ohio.gov/coronavirus/courts/default.aspx [https://perma.cc/3PCU-QR8N]
Oklahoma	https://www.oscn.net/news/2003171536/covid19-notices [https://perma.cc/U4KP-57N9]
Oregon	https://www.courts.oregon.gov/courts/Pages/coronaviruss.aspx [https://perma.cc/A9CF-Z2A7]
Pennsylvania	http://www.pacourts.us/ujs-coronavirus-information [https://perma.cc/N9LG-Q2AB]
Rhode Island	https://www.courts.ri.gov/Courts/SupremeCourt/Pages/COVID-19.aspx [https://perma.cc/T4N6-JX3J]
South Carolina	https://www.sccourts.org/coronavirus/covid-19/ [https://perma.cc/6WGH-GWUU]
South Dakota	https://ujs.sd.gov/uploads/news/COVID19UJSProcedure_s.pdf [https://perma.cc/EB73-8KAJ]
Tennessee	https://www.tncourts.gov/Coronavirus [https://perma.cc/D4Q2-XC7V]
Texas	https://www.txcourts.gov/court-coronavirus-information/ [https://perma.cc/5H78-LGQG]
Utah	https://www.utcourts.gov/alerts/ [https://perma.cc/74MS-UYKM]
Vermont	https://www.vermontjudiciary.org/about-vermont-judiciary/covid-19-and-court-operations [https://perma.cc/P4JP-A8C2]

2021

No Ordinary Process

175

Virginia	http://www.courts.state.va.us/news/items/covid/sev_emergency_orders.pdf [https://perma.cc/2AKG-SBW4]
Washington	http://www.courts.wa.gov/newsinfo/index.cfm?fa=newsinfo.COVID19 [https://perma.cc/N9GM-8S3B]
West Virginia	http://www.courtswv.gov/covid19/COVID19.html [https://perma.cc/R6SG-MRAT]
Wisconsin	https://www.wicourts.gov/covid19.htm [https://perma.cc/2HJQ-MSZF]
Wyoming	https://www.courts.state.wy.us/coronavirus-covid-19-updates/ [https://perma.cc/M9GN-LBEA]

