



The Federal Judiciary and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)

April 17, 2020

On March 27, 2020, the President signed the [Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act or “the Act”) to address the nationwide impact of Coronavirus disease 2019 (COVID-19). The [portions of the CARES Act directed at the federal courts](#) seek to support the federal judiciary in two key ways. First, the Act expands courts’ ability to conduct criminal proceedings by video or audio conference. Second, the Act provides funding for the federal judiciary to respond to the pandemic.

Video and Audio Conferencing

[Federal Rule of Criminal Procedure 53](#) (“Rule 53”) constrains federal courts’ ability to conduct criminal proceedings by video or audio conference, prohibiting, with limited exceptions, “the taking of photographs in the courtroom during judicial proceedings or the broadcasting of judicial proceedings from the courtroom.” However, [Section 15002\(b\)\(1\)](#) of the CARES Act provides that if the Judicial Conference of the United States finds that “emergency conditions” created by COVID-19 “will materially affect the functioning” of all or some federal district courts, the chief judge of any affected district court may allow certain criminal proceedings to be conducted by video or audio conference. Before enactment of the CARES Act, [Federal Rules of Criminal Procedure 5\(f\)](#), [10\(c\)](#), and [43\(b\)\(2\)](#) allowed courts to conduct some criminal proceedings by “video teleconferencing” with the defendant’s written consent. The Act expands that authorization to include telephone conferencing. Additionally, while the defendant’s consent is still required, such consent need not be *in writing*.

On March 29, 2020, the Judicial Conference of the United States determined that the COVID-19 pandemic “will [materially affect the functioning of the federal courts generally](#)[.]” Under [Section 15002\(b\)\(1\) of the CARES Act](#), that finding allows the chief judge of each federal district court to authorize temporarily the use of video or telephone conferences for all criminal proceedings covered by the Act, which include the following:

- **Initial appearances** under [Federal Rule of Criminal Procedure 5](#): During the initial appearance, held as soon as practicable after arrest, the judge [advises the accused of his](#)

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or her rights and determines whether the accused can afford an attorney or requires a public defender.

- **Detention hearings** under [18 U.S.C. § 3142](#): The court conducts a pretrial detention hearing to determine whether to release or detain a defendant pending trial.
- **Arraignments** under [Federal Rule of Criminal Procedure 10](#): Within ten days of arrest, the defendant appears in court, hears the charges against him or her, and enters a plea of guilty or not guilty. If necessary, the court sets a trial date.
- **Hearings related to the revocation of pretrial release** under [18 U.S.C. § 3148](#), or **revocation of probation or supervised release** under [Federal Rule of Criminal Procedure 32.1](#).
- **Misdemeanor pleas and sentencing** under [Federal Rule of Criminal Procedure 43\(b\)\(2\)](#): A defendant must generally be physically present during certain criminal proceedings, but may consent to waive that requirement if the offense is a misdemeanor.
- **Proceedings under the Federal Juvenile Delinquency Act**: The [Federal Juvenile Delinquency Act](#) governs federal criminal violations committed [before the offender's eighteenth birthday](#). This authorization of the use of teleconferencing does not include adjudicatory proceedings.

Additionally, Section 15002(b)(2) of the CARES Act permits courts to conduct felony pleas and felony sentencing (including for juveniles) by video or telephonic conference if the chief judge of a district court finds that such proceedings “cannot be conducted in person without seriously jeopardizing public health and safety, and the district judge in a particular case finds for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice.”

Under Section 15002(b)(5) of the CARES Act, the authorization for expanded use of video and audio conferencing in criminal matters will terminate 30 days after the national emergency ends or when the Judicial Conference determines that the emergency no longer materially affects the federal courts—whichever occurs first. Separately, the Judicial Conference also [authorized access to civil proceedings by teleconference](#) during the COVID-19 national emergency.

The Administrative Office of the U.S. Courts (AO) on April 3 issued [guidance](#) related to the CARES Act and [Rule 53](#). According to AO, the Act “permit[s] courts to include the usual participants and observers of such proceedings by remote access” through videoconference and teleconference—including the media and the public. The AO emphasized, however, that Rule 53 “continues to prohibit broadcasting of court proceedings generally, such as through live streaming on the internet.” Accordingly, improper recording or rebroadcast of proceedings conducted by teleconference may be subject to penalties.

The CARES Act does not authorize the use of video and telephonic conferencing to conduct federal criminal [jury trials](#). However, as the AO [explains](#), “courts across the country have postponed jury trials, grand juries, and other court proceedings to safeguard the health of jurors” and others.

Besides responding specifically to COVID-19, Section 15002(b)(6) of the CARES Act directs the Judicial Conference of the United States and the U.S. Supreme Court to consider rule amendments under the [Rules Enabling Act](#) “that address emergency measures that may be taken by the Federal courts when the President declares a national emergency under the [National Emergencies Act](#).”

A separate bill introduced in the 116th Congress, the [Twenty-First Century Courts Act](#), would (among other things) require the Supreme Court and the U.S. Courts of Appeals to make audio recordings of certain proceedings publicly available online.

Judiciary Funding

The CARES Act also makes [appropriations to the federal judiciary](#) “to prevent, prepare for, and respond to coronavirus, domestically or internationally.” [By law](#), Congress designated such appropriations to be for an emergency requirement.

The three [judiciary accounts](#) that received funds under the Act include the *Supreme Court of the United States—Salaries and Expenses* account (\$500,000); the *Courts of Appeals, District Courts, And Other Judicial Services—Salaries and Expenses* account (\$6,000,000); and the *Defender Services* account (\$1,000,000).

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