

Board of Judicial Policy and Administration

Supreme Court Building, Room 237

Cheyenne, Wyoming

June 11, 2018

8:00 A.M. – 10:30 A.M.

Video Conference

MINUTES

BJPA Members Present: Chief Justice Jim Burke (Chair), Justice Kate Fox, Justice Keith Kautz, Judge John Fenn, Judge Catherine Rogers, Judge Curt Haws*, Judge John Perry*, Judge Wes Roberts*

BJPA Members Not Present: Judge Bob Castor

Others Present: Justice Mike Davis, Justice Lynne Boomgaarden, Judge Brian Christensen, Patty Bennett, Clerk of the Supreme Court, Julie Goyen, Chief Information Officer, Eydie Trautwein, Director of Legal Resources and Judicial Education, Ronda Munger, Deputy State Court Administrator, Tricia Gasner, Business Applications Manager, Angie Dorsch, Executive Director of Equal Justice Wyoming, Cierra Hipszky, Business Manager and Lily Sharpe, State Court Administrator

**Appeared remotely via phone or video conference*

Agenda Items	
Welcome	Chief Justice Burke welcomed board members and others present.
BJPA Elections	Chief Justice Burke reviewed the upcoming changes in board membership. Justice Davis will assume the position of chairperson upon becoming the Chief Justice in July. The conferences have conducted elections to replace BJPA members whose terms will expire this month. The Supreme Court Conference selected Justice Boomgaarden to replace Justice Kautz. The District Court Conference selected Judge Rumpke to replace Judge Perry. The Circuit Court Conference selected Judge Haws to serve another term.
Legislative Update	<p>1. Update – Lily Sharpe</p> <p>The Joint Judiciary Interim Committee met May 7-8, 2018 in Worland. The committee considered five bill drafts from the Judiciary. (Appendix 1) The courthouse security draft would clarify the county sheriff is responsible for court security cameras. Removing security cameras from the Judicial Branch network is a final effort to untangle the county and state networks. Ronda Munger added that Homeland Security grant funding may be available next spring for counties to purchase court security cameras. The attachments describe the process for applying</p>

	<p>for funding. (Appendix 2 and Appendix 3) The second bill draft relates to expungement of juvenile court records. The clarification is important as the circuit and district courts move to the FullCourt Enterprise case management system. The civil judgment index bill draft would allow clerks to provide certain case management information required by statute in electronic form. The change would allow clerks who still keep a written journal to rely on the case management system to provide the information. The bill draft pertaining to the jury statutes would clean up language and assist in implementing the new jury management. The terms of court bill draft clarifies terms are continuous and reflects how courts currently operate. The changes eliminate confusion as to the connection between terms of court and jury terms. There may be additional bill drafts requested as the FullCourt Enterprise committees identify additional updates.</p>
<p>Judicial Conference Reports</p> <p><u>District Conference President:</u> Judge Tyler</p> <p><u>Circuit Conference President:</u> Judge Christensen</p>	<p>1. Circuit Court Conference – Judge Christensen</p> <p>Judge Christensen stated the judges had a good meeting and very productive programs at their April conference in Jackson Hole.</p> <p>2. District Court Conference – Judge Fenn</p> <p>Judge Fenn described concerns of the district court judges about recent and significant abuse of Civil Rule of Procedure 40.1(b) which allows attorneys to disqualify judges. To curb the abuse, the conference has recommended the Supreme Court suspend the rules. (Appendix 4) Wholesale use of the rule to remove a judge from all cases filed by certain attorneys has been experienced in several judicial districts. Judge Fenn also reported the district court judges had a lively conversation about case numbering, but it appears the case numbering issues have been resolved.</p>
<p>Access to Justice Commission</p>	<p>1. Update – Justice Boomgaarden</p> <p>Justice Boomgaarden has met with each of the Access to Justice working group leaders. Justice Boomgaarden was pleased to report that the tribal working group is now being formed and will include Terri Smith, the new Eastern Shoshone and Northern Arapaho Tribal Court chief judge.</p> <p>The funding working group traveled to the District of Columbia to support funding for federal legal aid programs. The group had a very positive meeting with the Wyoming congressional delegation. Although the Trump Administration proposed to defund the Legal Services Corporation, it appears that Congress favors continued funding.</p> <p>Justice Boomgaarden added that Legal Aid Wyoming will likely have to conduct a civil legal services needs assessment within the next year to eighteen (18) months. The Access to Justice working groups will be working with Legal Aid Wyoming to carefully craft a needs assessment RFP so that any needs assessment performed will have maximum benefit to all Wyoming legal services providers and the Access to Justice Commission.</p>

<p>IT Resources Steering Committee</p>	<p>1. Update – Chief Justice Burke and Lily Sharpe</p> <p>At the request of Court Administration, the Supreme Court has created an IT Resources Steering Committee. The order creating the committee is attached. (Appendix 5) The purpose of the committee is to conduct strategic planning to ensure IT funding is efficiently and effectively allocated to meet the long-term needs of the entire Branch. Lily Sharpe stressed the importance of good planning now so the Branch will have adequate funding and staff to complete the major projects slated for the next five (5) to ten (10) years. It is critical to anticipate vendor delays and other obstacles that will arise in implementing major systems and have a committee to approve the reallocation of staff and resources as necessary. The committee adopted the attached hardware and software standards to guide the rollout of new workstations to the approximately three-hundred and twenty (320) branch employees. (Appendix 6) The standards provide for the transmission of information from court reporters to the Network via the Cloud. Other jurisdictions have implemented this solution and it works well for judges and court reporters while protecting the security of the court networks. Court Administration has met with court reporters and will work with them over the coming months to move to cloud transmission.</p>
<p>Judicial Branch Technology</p> <p><u>Courtroom Automation Committee</u> Members: Justice Davis (Chair), Judge Fenn, Judge Skar, Judge Campbell, Judge Christensen, Judge Castano, Judge Haws</p> <p><u>Courtroom Technology Committee</u> Members: Justice Davis (Chair), Chief Justice Burke, Judge Tyler, Judge Sharpe, Judge Christensen, and Judge Prokos</p>	<p>COURT TECHNOLOGY OFFICE UPDATES</p> <p>Courtroom Automation Committee Updates – Elisa Butler and Tricia Gasner</p> <p>FullCourt Enterprise Configuration (circuit and district)</p> <ul style="list-style-type: none"> • The FCE committees continue to meet weekly to work through the new system for configuration. • Court staff is currently in the process of migrating the system to the cloud. • Court staff will receive another migration of the data for the circuit courts currently in FullCourt v5 into FullCourt Enterprise in the next few weeks. That migration will be inspected to ensure that it is accurate and follow up with any changes that may need to be made. • Another release of FullCourt Enterprise is expected mid-July. Testing will begin on that release shortly thereafter. <p>Court Automation and Technology Committees Update</p> <ul style="list-style-type: none"> • The Court Technology and Automation committees met regularly. • Recently, the Court Automation Committee decided to move toward a method of gathering statistics that will allow the courts to compare case statistics with other state courts more accurately. This will require some changes to processes in the courts, but the Court Automation Committee is working through each of the issues that arise.

	<ul style="list-style-type: none"> • The committee is also attempting to gather a consensus on a jury questionnaire that could be used uniformly throughout the State in preparation for the rollout of the new jury management system. <p>Web Public Access – Lily Sharpe</p> <p>The Joint Judiciary Interim Committee discussed remote web access to public court records at its meeting in May. Some members expressed opposition to allowing access to all documents currently available over the counter. The Court will likely need to reevaluate how to move forward with remote public access. If substantial changes are needed, it may be necessary to look at a different vendor for public access. This is because the system purchased is fairly basic.</p> <p>Jury Management – Tricia Gasner</p> <p>The rollout of the pilot courts continues to proceed smoothly. Notifications to jurors by text and emails have been successful. Court Information Technology staff are preparing a workbook and will conduct a full data merge of names and information from driver's licenses, voting lists and vital statistics.</p> <p>Courtroom Technology Committee Updates – Julie Goyen</p> <p>Emergency Requests (Appendix 7)</p> <ul style="list-style-type: none"> • Biennium in Review: <ul style="list-style-type: none"> ○ Originally three-hundred thousand dollars (\$300,000) was appropriated by the Legislature for courtroom updates this biennium; ○ The committee has added JSA funding in 2017-2018 for: <ul style="list-style-type: none"> ▪ JVAN Unit Replacements, and ▪ Emergency Requests; ○ Thirty (30) emergency requests have been submitted since February 2017; ○ Twenty-four (24) have been implemented or resolved; and ○ The requests are primarily for audio upgrades or repair and include fifteen (15) new audio systems installed in eighteen (18) counties. <p>Shortfall in JSA Funds (Appendix 8)</p> <ul style="list-style-type: none"> • There is a shortfall in anticipated court automation funds. The shortfall for the 2017-2018 biennium is approximately one (1) million dollars. • If the trend continues, next biennium the shortfall will be approximately two (2) million dollars more. • The factors contributing the shortfall are: <ul style="list-style-type: none"> ○ Case filings are down nationally, and ○ The Wyoming Highway Patrol is down thirty (30) officers.
Court Security Update	1. Update – Justice Kautz and Ronda Munger

	<p>Ronda Munger provided an update on the Court Security Commission. The commission met on May 10, 2018 to discuss the four-hundred thousand dollars (\$400,000) appropriation provided by the Legislature to the Wyoming Supreme Court. She explained that the Legislature directed that the appropriated funds “only be expended upon recommendation by the Wyoming court security commission for direct purchase by the state or grants to counties for security equipment within courthouses or construction or modification of facilities containing a state court.” The Legislature did not, however, direct how the funding should be distributed. The commission will be developing a defensible, fair method for distribution of the appropriation and making a recommendation to the Supreme Court. The commission decided that grants should be limited to the seven (7) counties that received courthouse security assessments in 2016. The commission meeting was well attended by several county commissioners and interested parties. The next meeting will be June 26, 2018.</p>
<p>Judicial Education Committee</p> <p>Members: Justice Kautz (Chair), Chief Justice Burke, Judge Sullins, Judge Lavery, Judge Haws, and Judge Williams</p>	<p>1. Update – Eydie Trautwein</p> <p>The Judicial Education Committee met in May and generated a tentative agenda for the Judicial Council Meeting scheduled for September 18 – 19, 2018 in Laramie. (Appendix 9) The committee also discussed upcoming judicial orientations as we anticipate several additional retirements this summer.</p> <p>Eydie Trautwein discussed two proposal from Westlaw: (1) Legal Ed (judge access to on-demand CJE), and (2) Practical Law (Know How). Practical Law provides practice notes (antitrust, bankruptcy, corporate governance, employment law, finance, intellectual property, real estate, litigation, standard documents, standard clauses, checklists, toolkits, articles and legal updates). There was concern that judges may not have time to use the services. Court administration will continue to look at the proposals and budget.</p> <p>Westlaw is willing to travel the state to provide on-site trainings. Please let Eydie know if your area is interested in on-site training.</p> <p>Justice Kautz and Patty Bennett provided an update on the municipal court judge trainings they conducted in May. They hope to continue to build relationships with the municipal judges and offer more trainings in the future.</p>
<p>Children’s Justice Project</p>	<p>1. Review of Statutory Structure of Juvenile Court – Justice Fox</p> <p>The CJP Advisory Council is considering reviewing the statutory structure of juvenile matters and asked for BJPA feedback. Judge Fenn indicated a review of the statutes would be welcome, but it would be a big undertaking. Judge Perry also welcomed a review, adding that the current statutes are piecemeal. Based on this input, Justice Fox advised that the CJP Committee will put together a proposal to submit to the Joint Judiciary Committee for an interim study.</p> <p>2. Update – Eydie Trautwein</p>

	<p>The Joint Symposium on Children and Youth will be held June 24-26, 2018 in Cheyenne at Little America. It is anticipated there will be approximately four-hundred (400) attendees this year.</p> <p>CJP provided scholarships to four (4) district court judges to attend the Child Abuse and Neglect Institute Training in Reno this week. The training offers a national certification in child welfare law. CJP has additional scholarships available. There is a national conference in Denver in July 23-25, 2018. Please let Eydie know if you are interested in a scholarship.</p>
<p>Permanent Rules Advisory Committee (PRAC)</p> <p><u>Appellate Division</u> Judicial Members: Justice Davis, Judge Fenn</p> <p><u>Civil Division</u> Judicial Members: Justice Fox (Chair), Judge Castano, Judge Kricken, Judge Rumpke</p> <p><u>Criminal Division</u> Judicial Members: Judge Edelman (Chair), Judge Arp</p> <p><u>Evidence Division</u> Judicial Members: Judge Rumpke (Chair), Judge Nau, Judge Radda</p> <p><u>Juvenile Division</u> Judicial Members: Judge Wilking (Chair), Justice Kautz, Judge Campbell, Judge Fenn</p>	<p>1. Appellate Rules Update – Justice Davis and Patty Bennett</p> <p>Patty Bennet explained the Appellate Division is considering a change to Appellate Rule 7.05. The change would lower the maximum number of pages from seventy (70) to forty-five (45) for principal briefs and from twenty (20) to fifteen (15) pages for reply briefs. The change would also allow the option of a maximum word count for both principal briefs and reply briefs. The Appellate Division will meet again later this summer to review input from the Bar and decide whether to recommend the changes to the Supreme Court.</p> <p>2. Civil Rules Update – Justice Fox and Patty Bennett</p> <p>A. Rules of Civil Procedure, Rule 40.1. Transfer of Trial and Change of Judge</p> <p>Justice Fox reported the Civil Division considered the District Court Conference resolution requesting suspension of Rule 40.1(b). (Appendix 4) Since the rule has been suspended and reinstated at least twice, the members decided to study both the legitimate need for the rule and inappropriate use before recommending suspension, revocation, or revision. Judge Fenn suggested a temporary suspension may result in better self-regulation by the Bar, without necessarily permanently revoking the rule, which could result in increased motions to recuse for cause. Judges Fenn, Tyler and Perry pointed out that staff resources and financial costs are immense when judges, law clerks and court reporters have to travel to hear cases because Rule 40.1(b) is exercised. Judge Tyler noted that other states have limited the number of times an attorney can peremptorily challenge a judge. Justice Fox will seek input from the Bar and the Civil Division will review the comments received and consider possible options to address abuses.</p> <p>B. Rules of Civil Procedure, Rule 26. Duty to Disclose; General Provisions Governing Discovery</p> <p>On July 1, 2018, Rule 26(a)(1.1) will be amended to require disclosures in divorce proceedings to include the current value of financial accounts and the location on non-financial assets. (Appendix 10)</p> <p>C. Rules of Civil Procedure for Circuit Courts, Rule 3.1. Commencement of Action</p> <p>Confusion has arisen in the application of Rule 3.1, which allows commencement of an action in Circuit Court to occur after service of the complaint. A rule change will</p>

	<p>go into effect on September 1, 2018 to clarify the notice of filing shall be mailed by the plaintiff to the defendant on the same day the complaint is mailed to or filed with the court. (Appendix 11)</p> <p>D. Rules of Civil Procedure, Rule 62(a). Stay of Proceedings to Enforce a Judgement</p> <p>There were some questions from the clerks in regards to the rule amendment. The amendment provided for an automatic fourteen (14) day stay for enforcement of judgments. The clerks indicated their offices were receiving a lot of questions from individuals seeking to enforce the judgments right after entry. The language was amended further to include an exception to the rule if “otherwise provided by statute or court order”. (Appendix 12)</p> <p>E. Uniform Rules for District Courts, Rule 403 and Rules of Civil Procedure, Rule 10</p> <p>Justice Fox reported that the civil rules division had recommended changes to URDC 403 and WRCP 10 to require all filings to be on 8 ½” x 11” paper. (Appendix 13)</p> <p>This was done after consultation with the clerks, who had expressed some concerns about space issues, but who were in agreement with the change so long as they had enough lead time. For this reason, the change is recommended to go into effect January 1, 2019. The change is motivated in part by the fact that when the courts go to e-filing, all filings will have to be on 8 ½” x 11” paper. Judge Fenn conveyed there are still some district court judges who oppose eliminating the use of legal size pleadings. Lily Sharpe relayed the strong wishes by members of the Joint Judiciary Interim Committee and the Bar to end the requirement that any documents be filed on legal paper. Judge Fenn will relay the proposed changes and the reasons to support changing paper size to the District Court Conference.</p> <p>3. Criminal Rules Update – Judge Edelman and Patty Bennett</p> <p>A. Rules of Criminal Procedure, Rule 43: Presence of Defendant – Patty Bennett</p> <p>Patty Bennett explained the attached proposed changes for video conferencing in criminal cases allow appearance by a defendant, judge, attorney, or combination of, with the consent of the defendant. (Appendix 14) The attached memo elucidates why the changes are proposed. (Appendix 15) The changes are not intended to affect how witnesses or others can appear.</p> <p>4. Rules of Evidence Update – Judge Rumpke and Patty Bennett</p> <p>No update.</p> <p>5. Juvenile Rules Update – Judge Wilking and Patty Bennett</p> <p>No update.</p>
Equal Justice Wyoming	<p>1. Update – Angie Dorsch</p>

	<p>The Legislature appropriated two point nine (2.9) million dollars to Equal Justice Wyoming (EJW) for the 2019-2020 biennium. It was noted all of EJW's funding is special revenue. EJW recently awarded one point eight (1.8) million dollars in grants for FY 2019-2020 to six (6) legal aid programs. The grant recipients are Laramie County Community Partnership's Medical-Legal Partnership, Legal Aid of Wyoming, Wyoming Coalition Against Domestic Violence and Sexual Assault, Wyoming Children's Law Center, University of Wyoming Civil Legal Services Clinic, and the Teton County Access to Justice Center. Although the appropriation remained the same as the last biennium, EJW has seen a drop in the revenue generated by the court fees and assessment, and is having to use reserves. Those funds are being monitored, and EJW is looking for other potential sources of revenue.</p> <p>New federal funds under the Victims of Crime Act (VOCA) are being received. A former restriction on those funds was lifted and can now be used to provide civil legal services to victims of crime. EJW worked with the AG Division of Victim Services on a six (6) month pilot project. VOCA funds in the amount of one-hundred and fifty thousand dollars (\$150,000) were received to sub-award to current grantees. The funds were awarded to the Coalition Against Domestic Violence and the LCCP Medical-Legal Partnership. This has added four (4) new attorneys around the State to specifically provide services to victims of crime. Additionally, the pilot will be extended into a full-year grant for the FY 2019 with an award of three-hundred thousand dollars (\$300,000).</p> <p>Another federal grant has been received this year to pilot a mediation program in Cheyenne through an Access & Visitation grant from DFS. It has been difficult to get some of the pro se parties to cooperate and follow through with mediation. It was noted the program is starting to see cases with attorneys on both sides, and those are working more smoothly. EJW is going to spend the next several months trying to ramp up the program. For cases to qualify for the Access & Visitation grant, there must be an issue involving custody or visitation issues. For other domestic relations cases that don't qualify for this grant, EJW is also partnering with the Inns of Court on a Volunteer Mediation Program.</p> <p>The Volunteer Reference Attorney program continues to do well in the six (6) counties where it operates. Good feedback has been received from everyone involved: the courts, attorneys and litigants.</p> <p>EJW is holding monthly legal advice clinics in both Cheyenne and Laramie, and periodic clinics in other areas of the State.</p> <p>Wyoming Free Legal Answers website is another tool to reach people in rural areas who don't have a volunteer reference attorney program or free legal advice clinics. EJW's site, launched more than a year and a half ago, has answered over three-hundred and thirty (330) questions on the site with the help of volunteer attorneys.</p>
<p>Judicial Salaries Committee</p> <p>Members: Justice Fox (Chair), Justice Davis, Judge Fenn, Judge Rogers, Judge Bartlett, Judge Christensen</p>	<p>1. Update – Justice Fox</p> <p>The subcommittee reviewed a substantial amount of data gathered by Crystal Girolami and Cierra Hipszky. The committee will continue to gather information and investigate possibilities for implementing incremental raises. It is important for judges to start talking to legislators. When the climate is right, the committee will move forward with legislative options. Judge Fenn will encourage district judges to</p>

	forge relationships after the general election and subsequent selection of the 2019 legislative leaders.
Pretrial Release Issues	<p>1. Legislative Interim Work – Judges Christensen, Haws, and Roberts</p> <p>Judge Christensen reported on the Joint Judiciary Interim Committee in May and a recent Utah issued study on pretrial release. The study places significant weight on a defendant’s past record. Judge Haws stressed that making evidence based decisions requires the judge have evidence and facts to review. One proposal is to draft a uniform bail request form that would be used throughout the State. This would allow all the judges to have the same important information before them to make pretrial release decisions. Judge Roberts and Haws have asked judges to send them forms they are currently using. Judge Roberts, Haws and Patty Bennett will draft a form and rule changes for consideration by the BJPA. Chief Justice Burke observed the need for evidence based bail decisions is also an issue for municipal judges.</p>
Audit of Circuit Courts	<p>1. Thermopolis</p> <p style="padding-left: 40px;">A. Audit Letter April 12, 2018 (Appendix 16)</p> <p>2. Douglas</p> <p style="padding-left: 40px;">A. Audit Letter April 17, 2018 (Appendix 17)</p> <p>3. Kemmerer/Evanston</p> <p style="padding-left: 40px;">A. Audit Letter May 11, 2018 (Appendix 18)</p>
New Business	<p>1. Member Input</p> <p>Judge Fenn thanked Judge Perry for his service on the board and expressed appreciation and thanks to Chief Justice Burke for his service on the BJPA and his service as Chief Justice.</p>

<p>Actions taken by the Board:</p> <p>NONE.</p>

<p>Action items:</p> <ol style="list-style-type: none"> Justice Fox will seek input from the Bar on suspension of peremptory disqualification of judges under Wyoming Rule of Civil Procedure 40.1(b) Justice Fox will relay the proposed changes to the Uniform Rules for District Courts, Rule 403 and Rules of Civil Procedure, Rule 10 to Judge Fenn to circulate to the District Court Conference for possible approval

3. Judges Roberts, Haws and Patty Bennett will draft a form and rule changes for BJPA consideration for uniform bail requests

Schedule of Future Events

BJPA Meeting – August 13, 2018
Judicial Council Meeting (Laramie) – September 18-19, 2018
Joint Judiciary Interim Committee (Laramie) – September 20-21, 2018

Appendix 1: Bill Drafts Presented to JJC in May

Appendix 2: Court Security Grant Process

Appendix 3: Wyoming Court Security Standard

Appendix 4: District Court Resolution for Civil Rule 40.1(b)

Appendix 5: Order Establishing Information Technology Resources Steering Committee

Appendix 6: Hardware/Software Standards

Appendix 7: 2017-2018 Biennium Courtroom Technology Spending Overview

Appendix 8: State Revenue from Traffic Fees

Appendix 9: Judicial Council Meeting Agenda

Appendix 10: Amendment to Civil Rule 26(a): Duty to Disclose; General Provisions Governing Discovery

Appendix 11: Amendment to Civil Procedure for Circuit Courts Rule 3.1: Commencement of Action

Appendix 12: Amendment to Civil Rule 62(a): Stay of proceedings to enforce a judgment

Appendix 13: Proposed Paper Size Amendment to WRCP Rule 10 and URDC Rule 403

Appendix 14: Memo RE: Proposed Wyoming Rule of Criminal Procedure 43.1

Appendix 15: Draft Order Amending Rules 5; 5.1; 10; 43; and 46.1 of the Wyoming Rules of Criminal Procedure

Appendix 16: Thermopolis Audit Letter April 12, 2018

Appendix 17: Douglas Audit Letter April 17, 2018

Appendix 18: Kemmerer/Evanston Audit Letter May 11, 2018

Attachments are highlighted

Approved on July 25, 2018

Bill Drafts Presented to Joint Judiciary Committee Meeting in Worland May 7-8, 2018

- Courthouse security.....2-3
- Expungement of JV Records (Title 14).....4-7
- Index of civil judgments.....8-11
- Juries.....12-21
- Terms of court.....22-30

SENATE FILE NO. SF_____

Court security cameras.

Sponsored by: [Sponsorship Clause]

A BILL

for

1 AN ACT relating to court security cameras.

2

3 *Be It Enacted by the Legislature of the State of Wyoming:*

4

5 **Section 1.** W.S. 18-3-606 is amended to read:

6

7 **18-3-606. Duty to preserve peace.**8 (a) Each county sheriff and deputy shall preserve the

9 peace in the respective counties and suppress all affrays,

10 riots, unlawful assemblies and insurrections. Each sheriff or

11 deputy sheriff may call upon any person to assist in

12 performing these duties or for the service of process in civil

13 and criminal cases or for the apprehension or securing of any

14 person for felony or breach of peace.

15

1 (b) Each county sheriff shall install, maintain and
2 monitor a Closed-Circuit TV system. The Closed-Circuit TV
3 system shall provide viewing capability of courtrooms for
4 circuit and district court judges.

5

6 **Section 2.** This act is effective July 1, 2019.

7

8

(END)

SENATE FILE NO. SF_____

Expungements of juvenile court records.

Sponsored by: [Sponsorship Clause]

A BILL

for

1 AN ACT relating to the expungement of juvenile court records.

2

3 *Be It Enacted by the Legislature of the State of Wyoming:*

4

5 **Section 1.** W.S. 14-6-241 (intro) by creating a new
6 subsection (d), 14-6-241(a) through (b) and 14-6-440 are
7 amended to read:

8

9 **14-6-241. Expungement of records in juvenile, circuit**
10 **and municipal courts.**

11

12 (a) Any person adjudicated delinquent as a result of
13 having committed a delinquent act other than a violent felony
14 as defined by W.S. 6-1-104(a)(xii), under the provisions of
15 this act may petition the court for the expungement of his
16 record in the juvenile court upon reaching the age of

1 majority. If after investigation the court finds that the
2 petitioner has not been convicted of a felony since
3 adjudication, that no proceeding involving a felony is
4 pending or being instituted against the petitioner and the
5 rehabilitation of the petitioner has been attained to the
6 satisfaction of the court or the prosecuting attorney, it
7 shall order ~~expunged~~destroyed all records, in any format,
8 including electronic records, in the custody of the court or
9 any agency, including the division of criminal investigation,
10 or official, pertaining to the petitioner's case. Copies of
11 the order shall be sent to each agency or official named in
12 the order. Upon entry of an order the proceedings in the
13 petitioner's case are deemed never to have occurred and the
14 petitioner may reply accordingly upon any inquiry in the
15 matter.

16

17 (b) The record of a minor convicted of a violation of
18 municipal ordinances may be expunged in the same manner as
19 provided in subsection (a) of this section by petition to the
20 municipal court.

21

22 (d) The record of a minor admitted to a diversion program
23 or receiving a deferral pursuant to Wyoming statute may be

1 expunged in the same manner as provided in subsection (a) of
2 this section by petition to the court ordering the diversion
3 program or deferral.

4
5 **14-6-440. Expungement of records in juvenile court.**

6
7 Any person adjudicated in need of supervision under the
8 provisions of this act may petition the court for the
9 expungement of his record in the juvenile court upon reaching
10 the age of majority. If after investigation the court finds
11 that the petitioner has not been convicted of a felony since
12 adjudication, that no proceeding involving a felony is
13 pending or being instituted against the petitioner and the
14 rehabilitation of the petitioner has been attained to the
15 satisfaction of the court or the prosecuting attorney, it
16 shall order ~~expunged~~destroyed all records in the custody of
17 the court or any agency or official, pertaining to the
18 petitioner's case. Copies of the order shall be sent to each
19 agency or official named in the order. Upon entry of an order
20 the proceedings in the petitioner's case are deemed never to
21 have occurred and the petitioner may reply accordingly upon
22 any inquiry in the matter.

SENATE FILE NO. SF_____

Recordation of judgments and orders.

Sponsored by: [Sponsorship Clause]

A BILL

for

1 AN ACT relating to recordation of judgments and orders.

2

3 *Be It Enacted by the Legislature of the State of Wyoming:*

4

5 **Section 1.** W.S. 1-16-301, 1-16-307(a) through (c) and
6 1-22-104(d) are amended to read:

7

8 **1-16-301. ~~Judgements and orders to be entered in~~**
9 **~~journal; recordation~~ Recordation of judgments and orders**
10 **where real property affected.**

11 ~~(a) Except as provided in subsection (b) of this section,~~
12 ~~all judgments and orders must be entered in the journal of~~
13 ~~the court and specify clearly the relief granted or order~~
14 ~~made in the action.~~ When a judgment or order is made
15 determining any matter affecting the title to real property,
16 a certified copy of the judgment or order shall be recorded

1 in the office of the county clerk of the county in which the
2 property is situate.

3
4 **1-16-307. Index to judgments.**

5
6 (a) Except as provided in subsection (b) of this section,
7 the clerk shall keep ~~an index, direct and reverse, of all~~
8 ~~judgments, by the names of parties alphabetically arranged~~
9 ~~showing in separate columns the~~ and provide to the public an
10 index of all judgments containing the following information:

11
12 (iii) The amount of the original judgment ~~and the~~
13 ~~year and term when it was rendered;~~

14
15 (vii) ~~The number and time of issue of the execution~~
16 ~~and satisfaction thereof when satisfaction has been~~
17 ~~made.~~ Whether the judgment has been satisfied, and when the
18 satisfaction occurred.

19
20 (b) No index shall be made of a judgment by operation of
21 law arising under W.S. 14-2-204~~.,~~ and no index shall be made
22 of a judgment by operation of law arising under W.S. 7-9-
23 103(d) until execution is issued upon request of the victim,

1 the division of victim services or the district attorney as
2 set forth in W.S. 7-9-103(d).

3
4 (c) The clerk shall include in the index required by
5 subsection (a) of this section all judgments, decrees and
6 orders establishing or modifying a child support obligation,
7 ~~provided the index in such case shall show:.~~

8
9 **1-22-104. Petition for adoption of minor; by whom**
10 **filed; requisites; confidential nature; inspection; separate**
11 **journal to be kept.**

12
13 (d) The petition and documents filed pursuant to this
14 section, and the interlocutory decree, if entered, and the
15 final decree of adoption shall constitute a confidential file
16 and shall be available for inspection only to the judge, or,
17 by order of court, to the parties to the proceedings or their
18 attorneys. Upon the entry of the final decree of adoption,
19 all records in the proceedings shall be sealed and may be
20 available for inspection only by order of court for good cause
21 shown. ~~The clerk of court shall maintain a separate journal~~
22 ~~for adoption proceedings to be confidential and available for~~
23 ~~inspection only by order of the court for good cause shown.~~

1 The court may order inspection of all or part of the
2 confidential file in adoption proceedings only if it appears
3 to the court that the welfare and best interests of the child
4 will be served by the inspection.

5

6 **Section 2.** W.S. 1-16-301(b), 1-16-307(a)(ii) and (iv)
7 through (vi), 1-16-307(c)(i) through (iii), 5-3-211, 5-7-105
8 and 5-7-106 are repealed.

9

10 **Section 3.** This act is effective July 1, 2019.

11

12 (END)

SENATE FILE NO. SF_____

Juries.

Sponsored by: [Sponsorship Clause]

A BILL

for

1 AN ACT relating to juries.

2

3 *Be It Enacted by the Legislature of the State of Wyoming:*

4

5 **Section 1.** W.S. 1-11-101 (intro), by creating a new
6 subsection (c) and by amending 1-11-101(a) and (a)(i), 1-11-
7 103 by creating new paragraphs (a)(iii) and (iv) and amending
8 (a), (a)(i) and (ii) and (b), 1-11-104 by creating a new
9 subsection and (b) and amending and renumbering (a), 1-11-
10 105, 1-11-106(a) and (b), 1-11-109(c) and (d)(v), 1-11-112,
11 1-11-116, 1-11-118, 1-11-119, 1-11-120, 1-11-129 and 1-11-
12 302 are amended to read:

13

14 **1-11-101. Qualifications of juror-; discharge.**

15

1 (a) A person is ~~competent~~ qualified to act as juror if
2 he is:

3 (i) An adult citizen of the United States who has
4 been a resident of the state and of the county ninety (90)
5 days before being selected and returned pursuant to W.S. 1-
6 11-106;

7
8 (c) The court shall discharge a person from serving as
9 a trial juror for the jury term in which he was summoned if
10 it satisfactorily appears that the person is not qualified to
11 act as a juror pursuant to subsection (a).

12

13 **1-11-103. Persons exempt as juror; duty to discharge.**

14

15 (a) A person is exempt from liability to act as juror if
16 ~~the court finds that the provisions of W.S. 1-11-104 apply or~~
17 ~~for any other compelling reasons or if a person~~ he is:

18

19 (i) A salaried and active member of an organized
20 fire department or an active member of a police department of
21 a city, town or law enforcement agency of the county or state;
22 ~~or~~

23

1 (ii) An elected public official~~;~~i

2

3 (iii) An active duty member of the Wyoming national
4 guard; or

5

6 (iv) A person exempt pursuant to federal law or
7 regulation, including an active duty member of the armed
8 services when service on a jury would unreasonably interfere
9 with his performance of military duties or adversely affect
10 the readiness of his unit, command, or activity pursuant to
11 32 CFR 144.

12

13 (b) The court shall discharge a person from serving as
14 a trial juror for the jury term in which he was summoned if
15 it satisfactorily appears that the person is ~~not competent or~~
16 ~~the person is~~ exempt and specifically claims the benefit of
17 the exemption pursuant to W.S. 1-11-105.

18

19 **1-11-104. Causes for excusal.**

20

21 (a) A juror may not be excused for a trivial cause or
22 for hardship or inconvenience to his business, but only when
23 material injury or destruction to his property or property

1 entrusted to him is threatened, or when his health or the
2 sickness or death of a member of his family requires his
3 absence. A person may be excused at his request if he ~~is~~
4 ~~over~~has attained his seventy~~-two (72) years of age~~third
5 birthday. A person may be excused from jury duty when the
6 care of that person's young children requires his absence.
7 Any person who has served on a jury shall, upon request, be
8 excused from further jury service in that court for the
9 remainder of that jury term and in the discretion of the court
10 may be excused from jury service for the following jury term.

11

12 (b) For purposes of this section, a person has "served
13 on a jury" when he is summoned to serve and he is not
14 disqualified pursuant to W.S. 1-11-102 or discharged due to
15 an exemption pursuant to W.S. 1-11-103.

16

17 **1-11-105. Exemption affidavit required; failure to**
18 **file.**

19

20 If a person exempt from jury duty is summoned as a juror, he
21 may file his affidavit with the clerk of the court for which
22 he is summoned stating his office, occupation or employment.

23 ~~The affidavit must be delivered by the clerk to the judge of~~

1 ~~the court where the person is summoned, and if sufficient in~~
2 ~~substance, must be received as evidence of his right to~~
3 ~~exemption and as an excuse for nonattendance in person. The~~
4 ~~affidavit must then be filed by the clerk.~~ If the court
5 determines that the affidavit sufficiently demonstrates that
6 the person is exempt from liability to act as a juror pursuant
7 to W.S. 1-11-103(a), the court shall discharge the person
8 from serving as a trial juror for the jury term in which he
9 was summoned pursuant to W.S. 1-11-103(b). Failure of any
10 person who is exempt to file the affidavit is a waiver of his
11 exemption, and he is required to appear upon the day for which
12 the jury is summoned and serve as a juror the same as if he
13 were not entitled to exemption.

14
15 **1-11-106. Jury lists; preparation of base jury lists;**
16 **selecting jury panel; certificate and summons.**

17
18 (a) The list of persons ~~qualified~~ selected to serve as
19 trial jurors, compiled pursuant to W.S. 1-11-129, is the base
20 jury list for the district court and the circuit court ~~from~~
21 ~~April 1 of the year in which the list is certified and~~
22 ~~delivered through March 31 of the following year. Upon order~~
23 ~~of the court, the clerk of the district court shall select a~~

1 ~~panel of prospective trial jurors from the base jury list for~~
2 ~~the county. The clerk shall select the number of prospective~~
3 ~~jurors as specified by the court~~ for the jury term of each
4 court.

5
6 (b) The clerk shall prepare a certificate containing the
7 names constituting the ~~panel of trial jurors~~ base jury list,
8 and summon them to ~~appear in court for a trial whenever~~
9 ~~ordered by the court~~ serve as jurors for the jury term for
10 which they have been selected.

11
12 **1-11-109. Procedure for selecting jury; contents of**
13 **certificate; summons.**

14
15 (c) If any person selected is not ~~competent~~ qualified
16 to serve as a trial juror, ~~and the incompetence shall be made~~
17 ~~to appear to the satisfaction of the court,~~ the name of the
18 person shall be stricken from the jury list for the jury term
19 in which he was summoned. If any person selected is exempt
20 from serving as a trial juror pursuant to W.S. 1-11-103, and
21 such exemption has been claimed by the person pursuant to
22 W.S. 1-11-105, the name of the person shall be stricken from
23 the jury list for the jury term in which he was summoned.

1

2 (d) When the necessary number of jurors has been randomly
3 selected, the clerk shall make and certify a list of the names
4 selected. The certificate shall state:

5

6 (v) The ~~time and~~ place where the jurors are required
7 to appear.

8

9 **1-11-112. Jurors to appear at time specified.**

10

11 Each grand juror and petit juror summoned shall appear before
12 the court on the day and at the hour specified ~~in the summons,~~
13 by the court, and depart only with permission of the court.

14

15 **1-11-116. Empaneling of jury.**

16

17 At the opening of court on the day that trial jurors are
18 summoned and notified to appear, the clerk shall call the
19 names of those ~~summoned~~ notified to appear. The court shall
20 hear the jurors ~~summoned~~ who are present, and shall excuse
21 those whom the court finds are exempt, disqualified or have
22 material cause for being excused.

23

1 **1-11-118. Procedure upon exhaustion of prospective**
2 **jurors during empaneling.**

3
4 If at any time during the empaneling of a jury all the names
5 selected for the panel are exhausted, the court shall enter
6 an order directing that such additional number of names as
7 necessary be randomly selected from the base jury list. The
8 court may excuse any jurors so selected if it appears that,
9 because of distance, the delay occasioned by ~~summoning~~
10 notifying the juror and requiring his presence would unduly
11 prolong empaneling the trial jury. The clerk shall ~~summon~~
12 notify the persons selected and not excused to appear in court
13 immediately. The process shall continue from time to time
14 when necessary until a jury is obtained.

15
16 **1-11-119. Number of jurors; fees and mileage.**

17
18 Trial juries in circuit courts shall be composed of six (6)
19 persons. Trial juries in civil cases and all other proceedings
20 in the district courts except criminal cases shall be composed
21 of six (6) jurors unless one (1) of the parties to the action
22 files a written demand for twelve (12) jurors within the time
23 a demand for jury may be filed, in which event the number of

1 jurors shall be twelve (12). Jurors in all courts shall be
2 allowed the same fees and mileage as jurors in district court.

3 Trial juries in criminal cases in the district courts shall
4 be composed of twelve (12) jurors unless the parties stipulate
5 and the judge approves that the jury shall consist of any
6 number less than twelve (12) jurors.

7
8 **1-11-120. Persons sworn to constitute jury; generally.**

9
10 The first six (6) persons, or twelve (12) if demanded or if
11 the trial is for a criminal case in district court, who appear
12 as their names are randomly selected and are approved as
13 indifferent between the parties and not discharged or excused
14 shall be sworn and constitute the jury to try the issue.

15
16 **1-11-129. Procedure for maintaining jury lists.**

17
18 The supreme court shall compile a base jury list for each
19 county. The supreme court shall compile a base jury list for
20 the state as necessary under W.S. 7-5-303. The base jury
21 lists shall be compiled from voter lists and may include names
22 from Wyoming driver's license and state identification lists.

23 The base jury lists prepared by the supreme court and panels

1 or lists of prospective jurors selected by the clerk of court
2 may be compiled and maintained using any manual, mechanical,
3 electronic or other means calculated to insure the integrity
4 of the system and a random selection process.

5
6 **1-11-302. Mileage rate.**

7
8 ~~For each mile actually and necessarily traveled in going to~~
9 ~~and returning from the place of trial they shall receive~~
10 ~~mileage at the rate set in W.S. 9-3-103 when the distance~~
11 ~~traveled exceeds five (5) miles.~~ Jurors shall receive mileage
12 at the rate set in W.S. 9-3-103 when the distance required to
13 be travelled by the juror from his place of residence to the
14 place of trial exceeds five (5) miles one-way.

15
16 **Section 2.** W.S. 1-11-113 is repealed.

17
18 **Section 3.** This act is effective July 1, 2019.

19
20 (END)

SENATE FILE NO. SF_____

Terms of court.

Sponsored by: [Sponsorship Clause]

A BILL

for

1 AN ACT relating to terms of court.

2

3 *Be It Enacted by the Legislature of the State of Wyoming:*

4

5 **Section 1.** W.S. 2-2-104 through 2-2-106, 2-2-108, 2-
6 2-109, 2-4-203, 2-6-119, 5-3-101(a) and (a)(i) through (ix)
7 and by creating a new subsection (b) 5-3-106 and 41-9-270 are
8 amended to read:

9

10 **2-2-104. Court open ~~in vacation period~~.**

11

12 For the purpose of granting probate of wills, issuing letters
13 testamentary and of administration, filing reports, accounts
14 and petitions of personal representatives, filing claims
15 against the estate and issuing process and notices required
16 by the Probate Code, the court shall be kept open ~~in the~~

1 ~~vacation period, and the business pertaining thereto done by~~
2 ~~the court commissioner and the clerk, shall be subject to the~~
3 ~~supervision of the court at the next ensuing term~~during
4 regular business hours.

5
6 **2-2-105. Orders ~~in vacation~~ to be written, filed and**
7 **recorded.**

8
9 The judges of the district courts within their respective
10 jurisdictions and the court commissioners within the counties
11 in which they are appointed, may make orders ~~in vacation~~ for
12 the sale of personal property at public or private vendue,
13 for the compounding of debts, for the settlement of an estate
14 as insolvent, for the approval of bonds and all other orders
15 of an ex parte nature as may facilitate the settlement of
16 estates. The orders shall be in writing, signed by the judge
17 or commissioner issuing the same, and shall be filed and
18 recorded ~~as a vacation entry in the proper record.~~

19
20 **2-2-106. Powers and duties of court commissioners;**
21 **generally.**

1 The court commissioner of each district court shall, ~~upon the~~
2 ~~order of the court in vacation, or~~ upon a general order made
3 for that purpose, examine the bonds filed by the personal
4 representatives, with a view to ascertaining their
5 sufficiency, and may approve the same. He may examine any
6 inventory, sale bill, account current, except final accounts
7 and vouchers filed therewith, or examine into the condition
8 of an estate generally.

9
10 **2-2-108. Powers and duties of court commissioners;**
11 **compelling attendance of witnesses; failure to appear or**
12 **testify.**

13
14 Any person refusing to appear or testify ~~in vacation~~before a
15 commissioner, may be cited for contempt and held to bail to
16 answer to the alleged contempt ~~at the next term of court~~as
17 soon as is reasonable. The commissioner shall report his
18 findings upon the matter in writing, to the court for its
19 action. Exception may be filed to the report which shall be
20 heard and determined as in other cases.

21
22 **2-2-109. Authority of other judges to act when district**
23 **judge sick.**

1

2 Whenever any judge of the district court is absent from the
3 state, sick or otherwise unable to attend to the duties of
4 his office, any other district judge ~~may~~, upon application,
5 shall have the same powers as the original judge, including
6 the power to examine into all matters, make all orders, and
7 direct the affairs of the administration of estates ~~that are~~
8 ~~required to be performed by judges in vacation, and shall~~
9 ~~have the same powers as the original judge would have.~~

10

11 **2-4-203. Persons incompetent to administer.**

12 (a) No person is competent or entitled to serve as
13 administrator, who is:

14

15 (iii) Adjudged by the court, or commissioner ~~in~~
16 ~~vacation~~, incompetent to execute the duties of the trust.

17

18 **2-6-119. Duty of custodian to deliver will; failure to**
19 **comply; order to third persons.**

20

21 (b) If it is brought to the attention of the court that
22 any will is in the possession of a third person, and the court
23 or the commissioner ~~in vacation~~ is satisfied that the

1 information is correct, an order shall be issued and served
2 upon the person having possession of the will, and if he
3 neglects or refuses to produce it in obedience to the order
4 he may be punished by the court for contempt.

5
6 **5-3-101. Judicial districts enumerated; terms of court.**

7
8 (a) The state of Wyoming is divided into judicial
9 districts as follows ~~with terms as designated:~~

10
11 (i) The county of Laramie is the first judicial
12 district. ~~Regular terms of the district court shall be held~~
13 ~~in Laramie county one (1) term beginning on the fourth Monday~~
14 ~~in March, and one (1) term beginning on the first Monday in~~
15 ~~October;~~

16
17 (ii) The counties of Albany and Carbon are the
18 second judicial district. ~~Regular terms of the district court~~
19 ~~in each county shall be held:~~

20
21 (iii) The counties of Sweetwater, Lincoln and Uinta
22 are the third judicial district. ~~Regular terms of the district~~
23 ~~court in each county shall be held:~~

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22

(iv) The counties of Johnson and Sheridan are the fourth judicial district. ~~Regular terms of the district court in each county shall be held.~~

(v) The counties of Johnson and Sheridan are the fourth judicial district. ~~Regular terms of the district court in each county shall be held.~~

(vi) The counties of Campbell, Crook and Weston are the sixth judicial district. ~~Regular terms of the district court in each county shall be held.~~

(vii) Natrona county is the seventh judicial district. ~~Regular terms of district court shall be held, one (1) term beginning on the first Tuesday in March, and one (1) term beginning on the first Tuesday in September.~~

(viii) The counties of Converse, Platte, Goshen and Niobrara are the eighth judicial district. ~~Regular terms of the district court in each county shall be held.~~

1 (ix) The counties of Fremont, Teton and Sublette
2 are the ninth judicial district. ~~Regular terms of the district~~
3 ~~court in each county shall be held:~~

4
5 **(b) Notwithstanding any other provision of law, there**
6 **shall be one continuous term of court for district courts.**
7 **The continued existence of a term of court in no way affects**
8 **the power of a court to take any act in any matter.**

9
10 **5-3-106. Judges to hold court for each other.**

11
12 The judges of the several district courts shall hold courts
13 for each other, when from any cause, any judge of a district
14 court is unable to act or to hear, try or determine any cause,
15 or to hold any ~~term or~~ portion of a term of any district court
16 in his district; and in such event the judge so disqualified
17 or unable to act shall call upon one (1) of the other judges
18 of the district court to hear, try and determine such cause,
19 or to hold such ~~term or~~ portion of a term of court, and the
20 said judge so called upon, shall try, hear or determine said
21 cause, or hold such ~~term or~~ portion of a term, with all the
22 jurisdiction, power and authority possessed by the judge of

1 the district court of the district whereto he is called to
2 act as judge.

3
4 **41-9-270. Drained lands outside of district; filing of**
5 **commissioners' assessment report; hearing; trial; amendment**
6 **or confirmation of report.**

7
8 The commissioners shall file their said report and
9 assessments in court. The court shall by order require said
10 owners to show cause at a time and place therein fixed, not
11 less than twenty (20) days after the service of said order,
12 why said report and assessments should not be confirmed. And
13 on the hearing on said order to show cause if a jury trial is
14 demanded the court shall frame issues on benefits and damages
15 and empanel a jury or adjourn the hearing thereon until ~~some~~
16 ~~term of court when~~ a jury is in attendance and take the
17 verdict of a jury on such issues. All other issues arising on
18 said report shall be tried by the court. The court shall order
19 all necessary amendments of said report and make written
20 findings of fact and when said report is amended shall by
21 order confirm the same.

22

1 **Section 2.** W.S. 2-2-201, 2-2-202, 5-3-101(a)(ii)(A) and
2 (B), (iii)(A) through (C), (iv)(A) and (B), (v)(A) through
3 (D), (vi)(A) through (C), (vii)(A) through (D), (ix)(A)
4 through (C), 5-3-103 through 5-3-105 are repealed.

5

6 **Section 3.** This act is effective July 1, 2019.

7

8 (END)



THE STATE OF WYOMING

MATTHEW H. MEAD
Governor

Office of Homeland Security

Telephone (307) 777-Home (4663)
Fax (307) 635-6017
5500 Bishop Boulevard, Cheyenne, Wyoming 82002

June 1, 2018

Mr. Tim Chesnut,
Chairman, Albany County Commission
525 Grand Ave Suite 210
Laramie, WY 82070

Dear Chairman Chesnut:

I wanted to take this opportunity as Chairman of the Wyoming Court Security Commission to update you regarding current initiatives relative to court security and future funding opportunities through Homeland Security Grants to strengthen the security of our Judicial Branch of Government.

This past budget session the Wyoming legislature appropriated \$400,000.00 for court security improvements for state courts. The Wyoming Supreme Court contracted with the National Center for State Courts to perform vulnerability assessments of seven state court houses in Wyoming. The courthouses selected are located in Carbon, Converse, Hot Springs, Lincoln, Sheridan, Uinta and Washakie Counties. The Court Security Commission is currently establishing the application processes and grant match requirements to address these seven courts when the legislation becomes effective on July 1, 2018.

The Wyoming Office of Homeland Security is currently fortunate to receive annually the State Homeland Security Grant Federal Grant Program which provides opportunities for local governments to apply for 100% federal funding for a range of preparedness activities, including planning, organization, equipment purchases, training and exercises essential to achieving the national preparedness goals of a secure and resilient nation. This grant funding supports local homeland security initiatives including eligible court security enhancements.

The next Homeland Security Grant cycle will be open in Calendar Year 2019. The application window is tentatively set for January 2019 and will close in March of 2019 with grant awards coming out in the month of October 2019.

I have attached a listing of the types of grant eligible items for planning purposes. As you review the listing, please note what the Court Security Commission has identified as "recommended" necessary equipment to conduct court security according to Wyoming Court Security Standard 2010-1.

As you plan for needs relative to homeland security initiatives or court security needs please feel free to contact the Wyoming Office of Homeland Security Grant Program Manager herein listed:

Rachel Nuss
Wyoming Office of Homeland Security
State Homeland Security Program Manager
(307) 777-5768
Rachel.nuss2@wyo.gov

If I can be of further assistance please don't hesitate to contact me.

Respectfully,



Guy Cameron
Director
Wyoming Office of Homeland Security
(307) 777-8511
Guy.cameron@wyo.gov

Court Security Items Allowable under Homeland Security Grant (examples)

Mandatory Items:

- Magnetometer & Hand Held Detectors
 - 15SC-00-PPSS (Systems, Personnel/Package Screening)
- Lock Box for personal property with markers
- Gun Locker
 - 19MH-00-CONT (Containers, Storage)
- Portable Radios with earbuds/chargers
 - 06CP-01-PORT (Portable Radios)
 - 06CP-03-PRAC (Accessories, Portable Radio)
- Adequate Lighting
 - 14SW-01-LITE (Lighting, Area, Fixed)
- Rubber Gloves
 - 01ZA-02-GLVD (Gloves, Outer, Disposable)
- Flashlights
 - 03OE-04-LTHH (Light, Hand-Held or Helmet-Mounted)

Optional (strongly suggested)

- First Aid / Defibrillator
 - 09ME-03-DEAE (Defibrillator, Automated External)
 - 09MS-04-BAND (Bandages and Dressings)
 - 09MS-04-TAPE (Tape, Adhesive)
- Field Test Kits
 - 07BD-01-KFAS (Kit, Field Assay - Detection & Identification)
- Crowd Control Barriers
 - 14SW-01-DOOR (Doors and Gates, Impact Resistant)
 - 14SW-01-PACS (System, Physical Access Control)
 - 14SW-01-WALL (Barriers: Fences, Jersey Walls)

Suggested architecture or building elements:

- CCTV camera system monitored from a designated screening station
 - 14SW-01-VIDA (Systems, Video Assessment, Security)
- Durress alarm system
 - 14SW-01-ALRM (Systems/Sensors, Alarm)
- Fire alarm system
 - 14SW-01-EXTM (System, Fire Extinguisher Monitoring)

Other eligible items:

- Critical Infrastructure Continuation of Operations
 - 14CI-00-COOP (System, Information Technology Contingency Operations)
- Explosive Protection
 - 14EX-00-BCAN (Receptacles, Trash, Blast Resistant)
 - 14EX-00-BSIR (Systems, Building, Blast/Shock/Impact)
- Personal Identification
 - 14SW-01-SIDP (Systems, Personnel Identification)
- Vehicle Identification
 - 14SW-01-SVID (Systems, Vehicle Identification)
- Surveillance Equipment
 - 13LE-00-SURV (Equipment, Law Enforcement Surveillance)

Wyoming Court Security Commission

Wyoming Court Security Standard 2010-1

As directed by the Wyoming Court Security Act, W.S. § 5-11-101(e) the following standard is established:

Enclosed is a compilation of equipment to be considered as minimal to establish a court security process. The equipment is a compilation of equipment suggestions submitted by court security units throughout the state. The list includes the common elements derived from each list submitted. Cost of each item is not included due to the extent of suppliers available and local resources.

Minimal equipment necessary to conduct court security

Mandatory:

1. Magnetometer (at each court entrance)
2. Hand held detectors
3. Mandatory search information signage (prior to screening position)
4. Lock box for personal property w/markers
5. Gun locker
6. Portable radios w/earbuds/chargers
7. Handcuffs
8. Cordless phone at security station
9. Search mirrors/pole mirror
10. Rubber gloves
11. Adequate lighting
12. Tables or carts beside magnetometer for property display
13. Hand sanitizer
14. Property trays
15. Clip boards
16. Flashlights
17. Property bags
18. Body armor

Optional: (strongly suggested)

1. Long gun/shotgun
2. Tazer
3. First aid kit/Life-Pak defibrillator
4. UA kits
5. Alco-Sensor
6. Field test kits
7. Crowd control barriers

The following is a list of suggested architecture or building elements that should be considered for a successful court security process.

1. CCTV camera system monitored from a designated screening station
2. Duress alarm system throughout the courthouse monitored at both the screening station and emergency dispatch center.
3. Vault alarms (Treasurer's office) monitored at both the screening station and emergency dispatch center.
4. Fire alarm system Monitored at both the screening station and emergency dispatch center.

Note: new courthouse construction should include consideration of isolating the court room areas from the other sections of the court house, and developing a secure entrance and exit for custodial defendants.

There are numerous other concerns that specific and unique courthouses must consider based on age and structural design commonly used for the construction era.

**RESOLUTION OF THE WYOMING DISTRICT COURT JUDGES'
CONFERENCE REGARDING PEREMPTORY DISQUALIFICATION OF
JUDGES IN CIVIL MATTERS**

WHEREAS, Wyoming is in a minority of States which allow for the peremptory disqualification of judges. Wyoming's rules regarding peremptory disqualification of judges have a long and tortured history;

WHEREAS, the Wyoming Supreme Court concluded in 2013, when it repealed W.R.Cr.P. 21.1 and amended W.R.C.P. 40.1(b) so that it did not apply to juvenile or criminal matters, that the Rule was "was never intended to allow wholesale removal of a judge from all cases in which that attorney may be involved[.]" Wyo. Sup. Ct. Order dated Nov. 26, 2013, at 2. Furthermore, as the Supreme Court concluded, "[t]he blanket use of the disqualification rules negatively affects the administration of justice" by causing unnecessary travel costs and affecting the orderly management of District Court dockets. *Id.*;

WHEREAS, at the Spring meeting, the District Court judges discussed their experiences involving W.R.C.P. 40.1(b);

WHEREAS, of the 18 Judges in attendance, five judges covering four Judicial Districts, had attorneys who regularly disqualify that judge from *all* cases assigned to that particular judge. This included some attorneys who filed their peremptory disqualification motions with the Complaint even before the Clerk of District Court assigned the case to that particular judge. In short, it is common for attorneys in some Districts to swear off a judge before the attorney even knows if the case is assigned to that judge;

WHEREAS, in addition to the wholesale abuses that are substantially similar to the abuses in 2012, which caused the Wyoming Supreme Court to summarily suspend the disqualification rules on December 4, 2012, the current language of W.R.C.P. 40.1(b) is confusing and in need of updating;

BE IT RESOLVED, the District Court Judges' Conference respectfully requests that the Wyoming Supreme Court summarily suspend W.R.C.P. 40.1(b) as it did in December 2012, to allow the Permanent Rules Advisory Committee, Civil Division, to investigate the abuses of Rule 40.1(b), evaluate the continued viability of Rule 40.1(b), and determine whether any language changes are necessary.

Resolved this 26th day of April, 2018.



Marvin L. Tyler, President
Wyoming District Court Judges' Conference

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2018

IN THE SUPREME COURT
STATE OF WYOMING
FILED

IN THE MATTER OF THE ESTABLISHMENT)
OF AN INFORMATION TECHNOLOGY)
RESOURCES STEERING COMMITTEE)

JUN 04 2018

PATRICIA BENNETT, CLERK

Aura Huebly
by CHIEF DEPUTY

**ORDER ESTABLISHING INFORMATION TECHNOLOGY RESOURCES STEERING
COMMITTEE AND APPOINTING MEMBERS THEREOF**

This matter came before the Court upon recognition that to improve and protect the functionality and security of the statewide system for information technology, it is necessary to implement long-term strategic planning for the effective and efficient allocation of limited financial and human resources.

The Supreme Court having superintending authority pursuant to Article 5, § 2 of the Wyoming Constitution; and

The Supreme Court being charged with implementation of an integrated statewide system for information technology pursuant to W.S. § 5-3-102(b) and development of a plan for all trial and appellate courts within the state for the expenditure of funds from the judicial systems automation account pursuant to W.S. § 5-2-120; it is

ORDERED THAT the Information Technology Resources Steering Committee be established and consist of:

Members:

E. James Burke – Chair, Chief Justice of the Wyoming Supreme Court;

Michael K. Davis – Justice of the Wyoming Supreme Court;

Lily Sharpe – State Court Administrator;

Ronda Munger – Deputy State Court Administrator; and

Julie Goyen – Chief Information Officer.

Ex Officio Member:

Kristi Racines – Chief Financial Officer.

DATED this 4th day of June, 2018.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'E. James Burke', with a long horizontal flourish extending to the right.

E. JAMES BURKE
Chief Justice



WYOMING SUPREME COURT BRANCH HARDWARE/SOFTWARE STANDARD

Effective Date:06.04.2018

[Abstract](#)

Outlines the hardware and software provided to Wyoming Judicial Branch Employees by job role.

Information Technology Resources Steering Committee

I. Document Control

Date	Version	Created/Modified By	Notes	Owner

Hardware / Software Standard Policy

I. Purpose

The purpose of this document is to provide Wyoming Judicial Branch (WJB) staff a comprehensive set of hardware and software standards allowing employees the tools to fulfill their assigned duties.

II. Background and Scope

The WJB has not in the past standardized the hardware/software packages that are supported Branch-wide. This creates confusion of which parties are responsible for the purchase, maintenance, and support of equipment. This document outlines what the Court Technology Office (CTO) of the WJB will be providing to employees from the IT budget(s).

III. Audience

This policy applies to all WJB employees and limited software for county employees working for the courts, i.e. District Court Clerks.

IV. Policy Requirements

The IT Steering Committee shall be the final arbiter on this policy.

V. Hardware / Software by Job Role

Applies to all job roles:

- All current equipment/software will be grandfathered, except for subscription software. When the equipment/software breaks down or requires a renewal, if it falls outside of the specifications listed below, it will not be renewed/replaced.
- Software not listed is not supported by the (CTO).
- All desktops/laptops will be supplied with a standard keyboard and mouse. An ergonomic keyboard or mouse may be supplied on request.

1. Supreme Court Justices

Hardware

- ☐ 1 Computer (Laptop or Desktop)
- ☐ 3 Monitors
- ☐ 1 Web Camera, with speakers
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ Adobe Acrobat Pro, if requested
- ☐ CMS (C-Track)
- ☐ e-Filing
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

Cell Phone

- ☐ Provided on request.
- ☐ Equipment ordered by the CTO.
- ☐ Equipment and cell plan paid out of the Administration budget.
- ☐ Optional HotSpot functionality covered under the cell plan.

2. Supreme Court Judicial Assistants (JA)

Hardware

- ☐ 1 Computer (Laptop or Desktop)
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Pro
- ☐ CMS (C-Track)
- ☐ e-Filing
- ☐ Opinion Processing
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

3. Supreme Court Staff Attorneys

Hardware

- ☐ 1 Computer (Laptop or Desktop)
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (C-Track)
- ☐ e-Filing
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

4. Supreme Court Clerks

Hardware

- ☐ 1 Computer (Laptop or Desktop)
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Pro
- ☐ CMS (C-Track)
- ☐ e-Filing
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

5. Supreme Court Administration

Hardware

- ☐ 1 Computer (Laptop or Desktop)
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software*

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

**Software not listed is not supported by the CTO. This listing excludes specialized software used by the CTO or Administration staff in their duties supporting the Branch.*

6. District Court Judges

Hardware*

- ☐ 1 Laptop
- ☐ 1 Desktop
- ☐ 3 Monitors
- ☐ 1 Web Camera, with speakers
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (WyUSER/FCE)
- ☐ Judge Tools (aiSmartBench) **
- ☐ Anti-virus
- ☐ Adobe Acrobat Pro, if requested***

Storage

- ☐ 1TB OneDrive

Cell Phone

- ☐ Provided on request.
- ☐ Equipment ordered by the Court Technology Office.

- Equipment and cell plan paid out of the District Judge's budget.
- ☐ Optional HotSpot functionality covered under the cell plan.

**The laptop, desktop, and monitors are to be configured between the chambers and bench workstations.*

***A total of 3 aiSmartBench licenses are provided to the Judge's chambers. It is assumed in the standard that those licenses will be assigned to the Law Clerk and JA roles. However, if additional licenses are desired they can be purchased using the Judge's budget.*

****Must be done through the exception request process and would be paid for from the Judge's budget.*

7. Circuit Court Judges

Hardware*

- ☐ 1 Laptop
- ☐ 1 Desktop
- ☐ 3 Monitors
- ☐ 1 Web Camera, with speakers
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (FC v5/FCE)
- ☐ Anti-virus
- ☐ Adobe Acrobat Pro, if requested**

Storage

- ☐ 1TB OneDrive

Cell Phone

- ☐ Provided on request.
- ☐ Equipment ordered by the CTO.
- ☐ Equipment and cell plan paid out of the Circuit Court budget.
- ☐ Optional HotSpot functionality covered under the cell plan.

**The laptop, desktop, and 3 monitors are to be configured between the chambers and bench workstations.*

***Must be done through the exception request process and would be paid for from the Judge's budget.*

8. Retired Justices and District Judges

Hardware*

- ☐ 1 Laptop
- ☐ 1 Monitor

Software*

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (C-Track, FC v5/FCE, or WyUSER)
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

**Computers and peripherals utilized by retired judges will be checked-out from the CTO for the duration of their appointment. At the end of the appointment period, the equipment will be turned back into the CTO. This enables the CTO to keep the anti-virus, operating systems and software programs patched. Please see [Appendix C](#).*

9. District Court Judicial Assistants (JA)

Hardware

- ☐ 1 Laptop
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (WyUSER/FCE)
- ☐ Judge Tools (aiSmartBench)
- ☐ Anti-virus
- ☐ Adobe Acrobat Pro, if requested*

Storage

- ☐ 1TB OneDrive

**Must be done through the formal request process and would be paid for from the Judge's budget.*

10. District Court Law Clerks

Hardware

- ☐ 1 Laptop
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (WyUSER/FCE)
- ☐ Judge Tools (aiSmartBench)
- ☐ Anti-virus
- ☐ Adobe Acrobat Pro, if requested*

Storage

- ☐ 1TB OneDrive

**Must be done through the formal request process and would be paid for from the Judge's budget.*

11. District Court Reporters

Hardware

- ☐ None

Software*

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ CMS (WyUSER/FCE)

Storage

- ☐ 1TB OneDrive**

**Real time services must be provided via cloud services. Cloud service transfers are required to ensure security of the State Network.*

***File transfers between court reporter equipment and State computers must take place via OneDrive.*

12. District Court Clerks

Hardware

- ☐ None

Software

- ☐ CMS (WyUSER/FCE)

- ☐ AgileJury
- ☐ eJuror

Storage

- ☐ None

**Those on the State network have until June 30, 2018, to find other solutions through their county.*

13. Circuit Court Clerks

Hardware

- 1 Computer – Desktop
 - Exception: Chief Clerk will receive a laptop
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment
- ☐ 1 Scanner
- ☐ 1 Counter Computer, based on location/environment
- ☐ 1 CitePay Terminal, based on located/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ CMS (FC v5/FCE)
- ☐ AgileJury
- ☐ eJuror
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

14. Receptionists

Hardware

- ☐ 1 Laptop
- ☐ 2 Monitors
- ☐ 1 Printer, based on location/environment

Software

- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Skype for Business (Instant Messaging and Conferencing)
- ☐ Adobe Acrobat Reader
- ☐ Anti-virus

Storage

- ☐ 1TB OneDrive

15. Courtrooms

Hardware

- ☐ 1 Desktop with 1 Monitor
- ☐ 1 Printer, based on location/environment
- ☐ 1 Wireless Access Point (WAP)

Software

- ☐ Liberty Recording, if applicable.
- ☐ Microsoft Office Suite (Word, Excel, Outlook, PowerPoint, and OneNote)
- ☐ Adobe Acrobat Reader
- ☐ Anti-virus

Storage

- ☐ None

**This standard applies only to courtroom recording and wireless access points (WAPs). All other courtroom standards are set by the courtroom technology committee.*

16. Conference Rooms

Hardware

- ☐ 1 Wireless Access Point (WAP)

Software

- ☐ None

Storage

- ☐ None

17. Interns/Externs

Hardware

- ☐ None

Software

- ☐ None

Storage

- ☐ None

VI. Exception Requests

For those individuals that feel that the current policy does not provide adequately for their job duties, the policy provides an avenue for exception consideration. The formal request process is in [Appendix A](#). The exception request form is [Appendix B](#).

VII. Roles and Responsibilities

Role	Responsibility
IT Resources Steering Committee	Oversight over all IT security and governance initiatives for the WJB.
Court Administration	Ultimate authority to ensuring that established initiatives, policies and procedures, and committees are performing and are executing as expected.
Chief Information Officer	It is their responsibility to ensure workforce members are carrying out operational compliance with security and governance functions.
Workers	Personally, accountable for complying with security and governance matters.
Internal Audit	Authorized to assess compliance with this and other corporate policies at any time.

VIII. Right to Audit

Internal Audit will work with Court Administration and CTO representatives and shall have the right to audit, to examine, and to make copies of or extracts from all related records pertaining to these policies and procedures, as deemed necessary by the IT Steering Committee.

IX. Related Policies, Procedures, Guidelines, and Controls

Document	Name	Control Mapping	Comment
NIST CSF	National Institute of Standards Technology	NIST CSF ID.BE.3, ID.BE-5, ID.GV-1, ID.GV-2, ID.AM-6, PR.IP-11	
PCI-DSS v3.2	Payment Card Industry	PCI 12.X	

X. Glossary

CTO – Court Technology Office

Hardware – Physical equipment including, but not limited to, laptops, computers, monitors, etc.

Software – Computer system that consists of instructions or data, that reside on hardware.

WJB – Wyoming Judicial Branch

XI. Appendices

Appendix A: Exception Request Process

1. Complete an Exception Request Form

- a. Court Location(s)
- b. Requestor
- c. Job Role
- d. Hardware/Software/Both Indicator
- e. Business Justification

2. Submit to Court Technology Office (CTO)

SLA – 2 Weeks

- a. Review of Submittal
- b. Assign a Request Number
 - i. Provide to Requestor
- c. Request & Review Quote
- d. Determine Funding
- e. Provide information to the IT Steering Committee for Approval/Denial

3. Submit to IT Steering Committee

SLA – 4 Weeks

- a. Approval/Denial Determination
- b. Notification
 - i. Email
- c. If Approved, return to CTO
- d. CTO to order equipment or software
- e. CTO to schedule installation

4. Informal Dispute Resolution (Email)

If the requestor is dissatisfied with determination, the requestor can ask for a decision review by the Chief Justice.

Appendix B: Hardware / Software Exception Request Form

Please complete the top portion of the form. The shaded portions will be completed by Court Administration staff.

Request Date:	_____	Request Number:	_____
Court Location(s):	_____		
Requestor:	_____		
Job Role:	_____		
Request Type (Circle One):	Hardware / Software / Both		
Business Justification:	<div></div>		

Requestor Signature: _____

Date: _

Supervisor Signature: _____

Date: _

CTO Review

Date: _____

Total Cost:

Comments:

IT Steering Committee Review

Date: _____

Determination (Circle One): Approved / Denied

Comments:

IT Steering Committee Chair: _____

Date: _

Appendix C: Retired Justice and District Judges Hardware Check-out Form

Please complete the top portion of the form. The equipment list will be completed by Court Administration.

Request Date: _____
Court Location(s): _____
Requestor: _____
Appointment From: _____ **To:** _____

By signing below the requestor agrees to the following:

- The equipment provided is for the purposes of conducting work for the Wyoming Judicial Branch.
- Upon completion of the appointment the equipment will be returned within 10 business days to the Wyoming Judicial Branch.
- The requestor agrees to monthly connect the equipment to the Wyoming Judicial Branch network to apply crucial security updates to the hardware.

Requestor Signature: _____ **Date:** __

Equipment List (including description and State tag numbers)			
State Tag Number	Brief Description	Check-out Date	Check-in Date

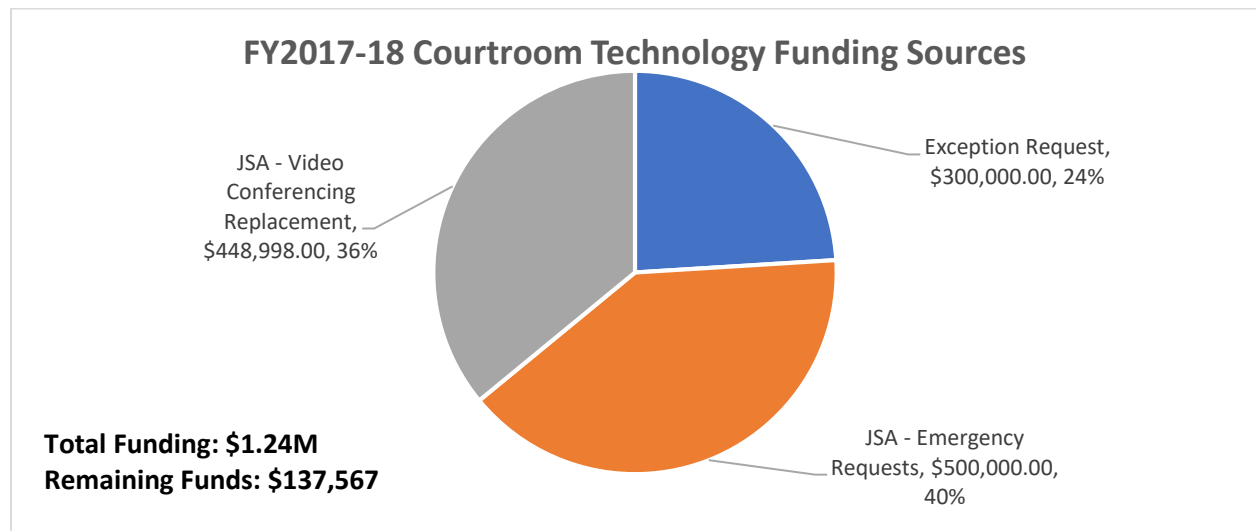


2017-2018 Biennium Courtroom Technology Spending Overview

Report Date: 2018.06.07

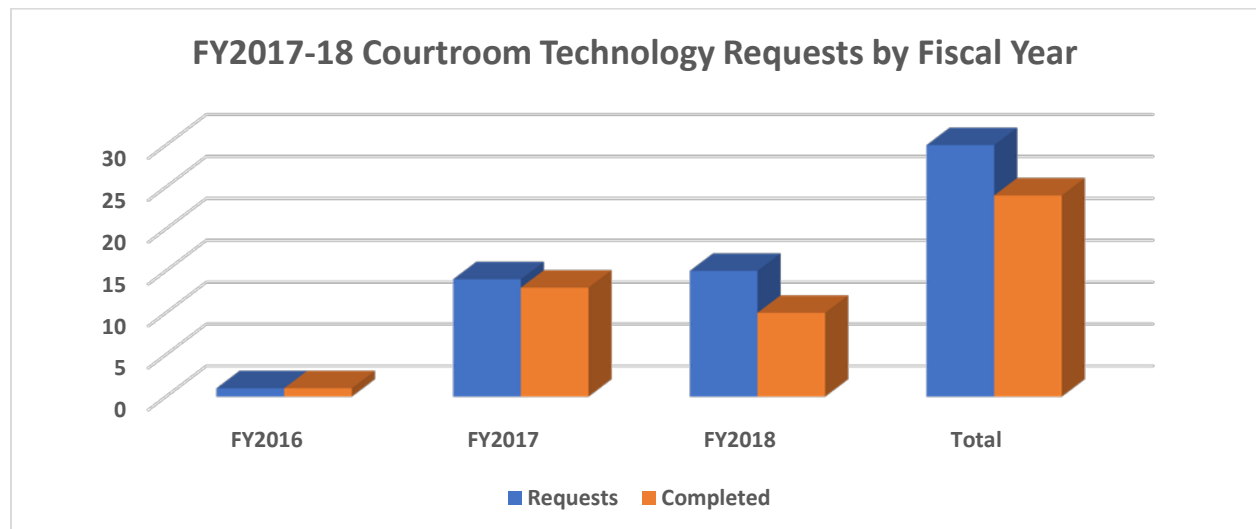
Funding Sources

Traditionally, funding for courtroom technology has been done solely through exception requests to the IT Budget. The current exception request is for \$300,000. Beginning this biennium, the Judicial Systems Automation Account (JSA) was added to the funding sources.



Formal Request Process Created

During the current biennium a new formal request process was implemented. There has been great response thus far for the funding. A total of thirty (30) requests have made their way through the process with twenty-four (24) having been implemented.



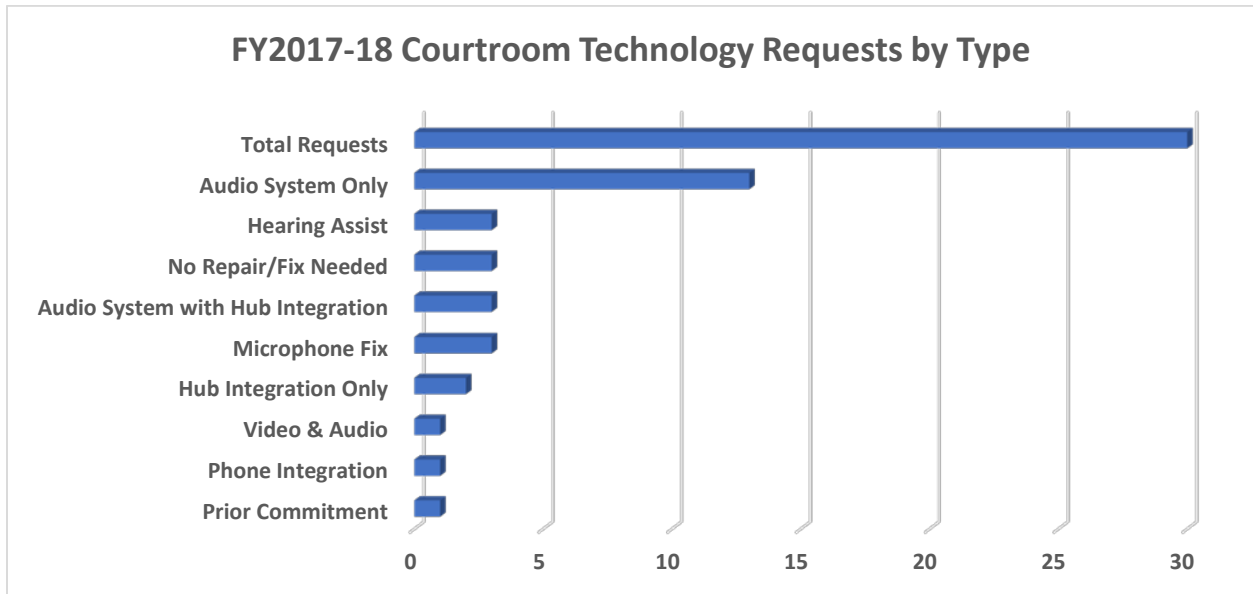


COURT TECHNOLOGY OFFICE

Wyoming Judicial Branch

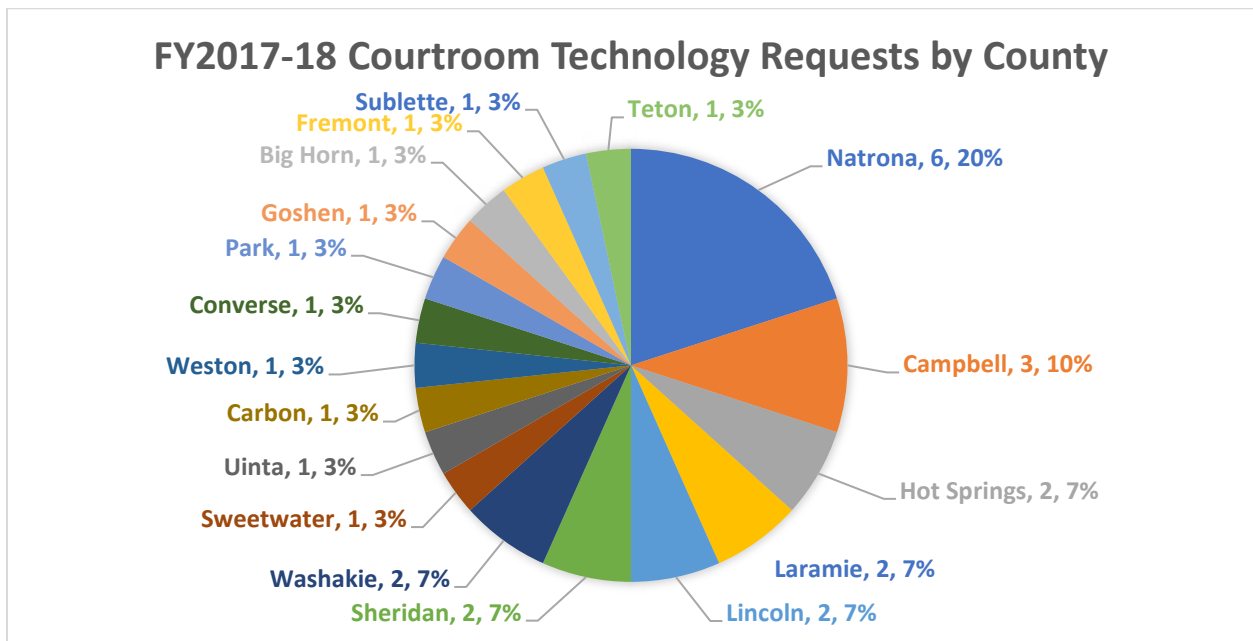
Request Types

Most of the request types were for replacement of failing audio systems. A total of fifteen (15) courtrooms had new audio systems installed. Below is a breakdown of the types of requests that were seen during the biennium.



Requests by County

Eighteen (18) counties made requests during the biennium. Natrona county had the majority, with a total of six (6).



Wyoming Supreme Court
2301 Capitol Ave., Cheyenne, Wyoming 82002
Phone 307.777.3319 Fax 307.777.3447

www.courts.state.wy.us

From: [Sharpe, Lily](#)
To: Bruce.Burns@wyoleg.gov; Bob.Nicholas@wyoleg.gov
Cc: [LSO - Don Richards](#)
Subject: State and revenue from traffic fees
Date: Monday, June 4, 2018 6:41:57 PM
Attachments: [image001.png](#)
[image002.png](#)
[image004.png](#)

Dear Chairmen,

This email is to update you on the inflow of funds to the court automation account.

Unfortunately the bulk of funds in the account comes from traffic cases. Although the Legislature increased the court automation fee from \$10 to \$25 in 2017, the funds received from the increase in the fee have been significantly less than expected. For the current biennium the inflow is short of the projection by approximately \$1M. It appears the decrease is directly related to vacancies in the Highway Patrol. Currently the Highway Patrol is down 30 officers.

An example of the effect of the vacancies is that if the 30 positions were filled and the officers were to write an average of 10 tickets a week for a year, the fees generated would be \$390K (\$710K for the biennium).

The below diagram illustrates the reduction of citations filed statewide and by the WHP Since 2011:

Fiscal Year	Total Citations	WHP Total Citations	% Total Diff	% WHP Diff
2011	149,725	94,142		
2012	154,822	98,780	3.40	4.93
2013	146,060	95,961	-5.66	-2.85
2014	141,416	93,901	-3.18	-2.15
2015	141,479	90,450	0.04	-3.68
2016	126,601	75,942	-10.52	-16.04
2017	120,597	71,205	-4.74	-6.24
2018*	110,953	63,225	-8.00	-11.21

The reduction in citations will also impact school districts, since the fines are paid to the public school funds of the counties. Wyo. Const. art. 7, § 5 and W.S. §§ 5-9-106, 6-10-108
**2018 is yet to be completed and the numbers displayed are projections for the last month and half until the end of the fiscal year. The citation numbers as of 2018.05.16 are 97,084 and 55,323 respectively. On average the WHP is writing approximately 5,268 citations per month for FY2018.*

**Projections for the courtroom technology project were based an inflow of \$5M in the 17-18 biennium, but the actual amount will be just shy of \$4M. For the 19-20 biennium original projections were for an inflow of \$7M, however if the current trend holds, there will be an additional shortfall of approximately \$2M.*

We thought you might be interested in this revenue update (or at least in in knowing that now is a good time to speed in Wyoming).

Best regards,

Lily Sharpe

Lily Sharpe, State Court Administrator
Wyoming Supreme Court
2301 Capitol Ave., Cheyenne, WY 82002
T: 307.777.3391 E: lsharpe@courts.state.wy.us
Judicial Branch Link: <http://www.courts.state.wy.us/>

JUDICIAL COUNCIL MEETING AGENDA
Gateway Center, Laramie, WY

Tuesday, September 18th		
9:00 a.m. to 9:15 a.m.	Welcome	Chief Justice Michael Davis Wyoming Supreme Court
9:15 a.m. to 10:15 a.m.	Criminal update for the judiciary	Panel: Rob Oldham, J.D. and Kirk Morgan, J.D, Office of the State Public Defender and Christyne Martens, Office of the Wyoming Attorney General
10:15 a.m. to 10:30 a.m.	Break	
10:30 a.m. to 11:45 a.m.	Legal writing for judges	Professor Michael Smith, J.D., University of Wyoming College of Law
11:45 a.m. to Noon	Break / Lunch Buffet	
Noon to 1:15 p.m.	Mindfulness and judging	Honorable Judge Fogel <i>District Court Judge, San Jose, CA</i>
1:15 p.m. to 1:30 p.m.	Break	
1:30 p.m. to 2:00 p.m.	Ethical implications related to motions to withdraw as counsel <i>Rule 1.16 of the Wyoming Rules of Professional Conduct</i>	Justice Keith Kautz, Wyoming Supreme Court and Mark Gifford, J.D., Bar Counsel, Wyoming State Bar
2:00 p.m. to 5:00 p.m.	Advanced evidence for judges: <i>Hearsay and character evidence</i>	Professor Steve Easton, J.D. <i>University of Wyoming College of Law</i>
Wednesday, September 19 th		
7:45 a.m. to 8:45 a.m.	2017-2018 Juvenile case law and Juvenile Court Rules update <i>Children’s Justice Project Breakfast</i>	Dan Wilde, J.D. and Aaron Hockman, J.D., Wyoming Guardian <i>ad Litem</i> Division and Jill Kucera, J.D. Office of the Wyoming Attorney General
8:45 a.m. to 9:00 a.m.	Break	
9:00 a.m. to 10:00 a.m.	Civil update for the judiciary	Anna Reeves Olson, J.D., Park Street Law Office
10:00 a.m. to 10:15 a.m.	Break	
Morning Tracks		
10:15 a.m. to 11:00 a.m.	Plain error <i>Justice Kautz and Judge Castor</i>	Advisements in criminal and civil proceedings, including pro-se advisements <i>Justice Davis, Judge Perry, Judge Christensen</i>
11:00 a.m. to Noon	Contempt proceedings <i>Judge Kricken and Judge Prokos</i>	Natural resource law - administrative appeals, including jurisdictional and procedural issues <i>Justice Boomgaarden and Andrew Kuhlmann, J.D.</i>
Noon to 1:20 p.m.	Ashby Pate Judicial Luncheon - Bar Association Sponsored Lunch	
Afternoon Tracks		
1:30 p.m. to 2:15 p.m.	Scheduling and docket management <i>Justice Fox and Judge Rumpke</i>	Child witness competency and taint, including children as witnesses in civil proceedings - <i>Judge Lavery</i>
2:15 p.m. to 2:30 p.m.	Break	
2:30 p.m. to 5:00 p.m.	District Court Judge Conference Meetings	Circuit Court Judge Conference Meetings

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2017

In the Matter of Amendments to)
Rule 26 of the Wyoming)
Rules of Civil Procedure)

IN THE SUPREME COURT
STATE OF WYOMING
FILED

MAR 27 2018

PATRICIA BENNETT, CLERK

by DEPUTY

**ORDER AMENDING RULE 26 OF THE WYOMING
RULES OF CIVIL PROCEDURE**

The Permanent Rules Advisory Committee, Civil Division, has recommended that this Court amend Rule 26 of the Wyoming Rules of Civil Procedure. This Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 26 of the Wyoming Rules of Civil Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective July 1, 2018; and it is further

ORDERED that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall also be recorded in the journal of this Court.

DATED this 27th day of March, 2018.

BY THE COURT:



E. JAMES BURKE
Chief Justice

Wyoming Rules of Civil Procedure

Rule 26. Duty to disclose; general provisions governing discovery.

(a) *Required Disclosures.*

(1.1) *Initial disclosures in divorce actions.* — In divorce actions the following initial disclosures are required in pre-decree proceedings, and in post-decree proceedings to the extent that they pertain to a particular claim or defense:

(A) A schedule of financial assets, owned by the party individually or jointly, which shall include savings or checking accounts, stocks, bonds, cash or cash equivalents, and shall include:

- (i) the name and address of the depository;
- (ii) the date such account was established;
- (iii) the type of account;
- (iv) the account number; and
- (v) the current value of the account; and

(vi) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(B) A schedule of non-financial assets, owned by the party individually or jointly, which schedule shall include:

- (i) the purchase price and the date of acquisition;
- (ii) the present market value;
- (iii) any indebtedness relating to such asset;
- (iv) the state of record ownership;
- (v) the current location of the asset;

~~(v)~~(vi) whether purchased from marital assets or obtained by gift or inheritance; and

~~(vi)~~(vii) whether acknowledged to be a marital asset or asserted to be a non-marital asset and, if asserted to be a non-marital asset, an explanation of the legal and factual basis for such assertion;

(C) A schedule of all debts owed individually or jointly, identifying:

Rule 3.1. Commencement of action.

(a) How Commenced. — A civil action in Circuit Court is commenced:

(1) On the date of filing a complaint with the court so long as service is accomplished within the time periods specified in Rule 4(w) of the Wyoming Rules of Civil Procedure; or

(2) On the date of the filing of a copy of the complaint, summons and proof of service. If the action is commenced under this subsection, then the complaint, the summons and proof of service must be filed within fourteen days of such service, and a notice of filing in the form of Appendix A shall be mailed by the plaintiff to the defendant on the same day the complaint is ~~filed~~mailed to or filed with the court. A defendant must file an answer within thirty-five (35) days of the filing of the complaint if the complaint is served under this subpart. If the complaint, summons and proof of service are not filed within fourteen days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. In such case the court may, in its discretion, tax a reasonable sum in favor of the defendant to compensate the defendant for expense and inconvenience, including attorney's fees, to be paid by plaintiff or plaintiff's attorney. The fourteen-day filing requirement may not be waived by a defendant and shall not be deemed waived upon the filing of an answer or motion to the complaint.

(b) Form of summons. —

(1) The summons shall be signed and issued by the Clerk if filed under 3.1(a)(1) or signed and issued by the plaintiff or the plaintiff's attorney if filed under 3.1(a)(2).

(2) The summons shall contain the name and address of the court and the names of the parties to the action. It shall be directed to the defendant, state the name, address and telephone of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default may be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within fourteen days of service.

(3) If the action is commenced under Rule 3.1 (a)(2), the summons shall also state

(i) that the defendant need not answer if the complaint is not filed within fourteen days after service, and

(ii) that Plaintiff will mail a notice of filing to the defendant upon filing the summons, complaint and proof of service.

APPENDIX A

IN THE CIRCUIT COURT OF THE _____ JUDICIAL DISTRICT
OF AND FOR _____ COUNTY, WYOMING

PLAINTIFF(s),

vs.

CIVIL ACTION NO.

DEFENDANT(s).

NOTICE OF FILING

The Complaint in the above titled action was mailed to or filed with the Court on _____. You are required to file with the Clerk of Court, and serve upon the Plaintiff's attorney, an answer to the Complaint that was served upon you, within thirty-five (35) days after the date the Complaint was filed with the Court, exclusive of the day of filing. If you fail to do so, Default Judgment may be entered against you. If a Default Judgment is entered against you, the Plaintiff reserves the right to take all legal remedies available to enforce said judgment. Please call the court to obtain the exact date the complaint was filed.

The undersigned does hereby certify that a copy of the foregoing NOTICE OF FILING was mailed by United States Mail, postage prepaid, on _____ to the following person at the last known address.

Defendant's full name

Defendant's street address

Defendant's city, state, zip

DATED this ____ day of _____, 20____.

By: _____

Rule 62. Stay of proceedings to enforce a judgment.

(a) *Automatic Stay; Exceptions for Injunctions, and Receiverships.* Except as stated in this rule or otherwise provided by statute or court order, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, an interlocutory or final judgment in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

WRCP

Rule 10. Form of pleadings.

(a) Caption; Names of Parties. Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence—and each defense other than a denial—must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) All filed documents shall be on 8 ½ by 11 inch white paper.

URDC

Rule 403. ~~Format of briefs and jury instructions.~~

(a) All ~~briefs and jury instructions~~ filed documents shall:

- (1) Be on 8 1/2 by 11 inch, white paper;
- (2) Be printed with type not smaller than pica;
- (3) Be double spaced (except descriptions of real property and quotations); and
- (4) Be on one side of the paper.

(b) One copy of submitted jury instructions shall be free of citations.

SUPREME COURT OF WYOMING



MEMORANDUM

DATE:

TO: Courtroom Technology Committee

FROM: Justice Davis

RE: Proposed Wyoming Rule of Criminal Procedure 43.1

Introduction

As you know, Judges Christensen and Prokos, with the assistance of Staff Attorney Tyler Garrett at first, and later Senior Staff Attorney Karl Linde and Clerk of Court Patricia Bennett, drafted changes to the Rules of Criminal Procedure intended to deal with the situation in which a video hearing might be held with the defendant and perhaps his counsel in one place and the judge in another (perhaps with defense counsel and the prosecutor). Those rules were reviewed by the Criminal Rules Committee, which suggested some changes, and the rule was modified accordingly. The draft rule, including some new but minor technical changes Karl suggests, is attached to the email transmitting this memo.

When the rules came back to the Courtroom Technology Committee for a final, just-in-case review, one of the district judge representatives expressed surprise and concern that the rules restricted the use of video conferencing too greatly. The District Judge Conference was contacted, and there were some comments that led me to believe that we (probably meaning I) had not done a very good job of explaining the rule. Although I had great confidence in the work of

those who drafted the proposed rule, I decided to dig into a number of issues listed below on my own, as much for my education as anyone else's.

Some of our rules of criminal procedure are simply intended to insure good operational procedures and the creation of a good record. Others, like the proposed Rule 43.1, are intended to reflect existing law, and to provide trial judges with a safe harbor – that is, if the rule is followed, the judge is unlikely to run afoul of the U.S. or Wyoming Constitutions, statutes, or case law. So the mission was to decide what would create that safe harbor.

I'm well aware of the significant savings of time and money that are possible because of video conferencing. The question is not whether those savings are desirable or not – they are – it's when they can be made consistent with constitutions, statutes, and case law.

I want to point out at the beginning that I'm not trying to predict how the U.S. Supreme Court or the Wyoming Supreme Court would rule on the issues discussed – there is no way to do that without adversarial briefing. My point is that the law on use of video-conferencing is a minefield of inconsistent decisions, and that it is best to avoid traps that may not be detectable until a particular case comes before the courts.

Scope

As I have already noted, proposed Rule 43.1 is intended to deal with the situation in which the defendant is in a different place than the judge. It does not deal with the situation in which a witness, like someone from the State Crime Lab identifying a controlled substance or blood alcohol content, testifies by video. Before abandoning that topic completely, I would just point out that the United States Supreme Court has only offered this vague guidance under the Confrontation Clause when a child victim was allowed to testify by video.

That the face-to-face confrontation requirement is not absolute does not, of course, mean that it may easily be dispensed with. As we suggested in *Coy* [v. *Iowa*, 487 U.S. 1012, 108 S.Ct. 2798, 101 L.Ed.2d 857 (1988)], our precedents confirm that a defendant's right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation at trial only where denial of such confrontation is necessary to further an important

public policy and only where the reliability of the testimony is otherwise assured.

Maryland v. Craig, 497 U.S. 836, 850, 110 S. Ct. 3157, 3166, 111 L. Ed. 2d 666 (1990). In *Wrotten v. New York*, 560 U.S. 959, 130 S. Ct. 2520, 177 L. Ed. 2d 316 (2010) (cert. denied), Justice Sotomayor pointed out that whether a witness could testify via video when he or she could see and be seen in the courtroom was not “obviously answered” by *Craig*, but agreed that *cert* was properly denied because of the procedural posture of the case. Neither case dealt with waiver of the right of confrontation, which I know happens routinely in these cases – witnesses may be less effective by video, and defendants and defense counsel seem to frequently waive any claim to have them testify in person.

This memo likewise does not deal with the use of video in civil cases.

Federal Constitutional Limits

The limits of video-conferencing have not been fully tested in the federal courts due to restrictive rules concerning its use. Rule 43(a) of the Federal Rules of Criminal Procedure provides (similarly to the Wyoming Constitution) that a defendant is required to be “present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.”

There are specific exceptions contained in F.R.Cr.P. 5 and 10. Rule 5(f) allows video conferencing in an initial appearance “if the defendant consents.” Rule 10(b), dealing with arraignment, also provides that video conferencing may be used “if the defendant consents.” Rule 43(b)(2) does not require the defendant to be present if “the offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant’s written consent, the court permits arraignment, plea, trial, and sentencing to occur by video teleconferencing or in the defendant’s absence.” F.R.Cr.P. 43(b)(2). The defendant is not entitled to be present if the proceeding only involves a conference or hearing on a question of law, or a motion for correction or reduction of sentence. F.R.Cr.P. 43(b)(3) and (4). These amendments were adopted with considerable caution:

The Advisory Committee on Criminal Rules recommended, and the Supreme Court and Congress approved, amending Rules 5 and 10 of the Federal Rules

of Criminal Procedure to expressly allow the use of video teleconferencing for initial appearances and arraignments. The Committee, however, noted that the suggested changes “could be viewed as an erosion of an important element of the judicial process,” and listed three potential concerns regarding conducting arraignments by video. First, conducting an arraignment by video may lessen the “impact of reading of the charge.” Second, the court may need “to personally see and speak with the defendant [during] the arraignment” to insure that the defendant adequately understands the gravity of the charge. Finally, the ability of counsel to communicate with the defendant may be impaired if the defense attorney is physically present in court, while the defendant appears by video. Despite these concerns, the Committee concluded that “the benefits of using video teleconferencing outweighed the costs,” and that “in appropriate circumstances the court, and the defendant, should have the option of conducting the arraignment” by video teleconference.

Ashdown and Menzel, *The Convenience of the Guillotine – Video Proceedings in Federal Prosecutions*, 80 Denv. U. L.R. 63, 67 (2002). The limited changes were driven, at least in part, by improvements in video technology. *Id.* at 76.

The point is that we are likely to learn little from the federal case law on this subject, with perhaps the exception of the judicial interpretation of the word “present,” because the exceptions as to initial appearance, arraignment, and misdemeanor proceedings require consent.

Wyoming Law

Wyoming law poses its own obstacles to expansive use of video technology for court appearances. Article 1, Section 10 of the Wyoming Constitution provides that “[i]n all criminal prosecutions, the accused shall have the right to defend in person and by counsel...”

The analysis in the cases under the above section focuses on whether the proceeding the defendant wanted to attend was a critical stage. For example, from *DeMillard v. State*:

A criminal defendant has the right to be present during every critical stage of his criminal proceeding. There are numerous federal and Wyoming guaranties of this right. “The Sixth Amendment and the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution guarantee an accused the right to be present during every stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.” *Skinner v. State*, 2001 WY 102, ¶ 20, 33 P.3d 758, 765 (Wyo. 2001). Article 1, § 10 of the Wyoming Constitution “is even more explicit in its guarantee to an accused of the right of presence at trial.” *Maupin v. State*, 694 P.2d 720, 722 (Wyo.1985). That provision states: “In all criminal prosecutions the accused shall have the right to defend in person....” Wyo. Const., art. 1, § 10. “The right to be present at trial stems in part from the fact that by his physical presence the defendant can hear and see the proceedings, can be seen by the jury, and can participate in the presentation of his rights.” *Skinner*, ¶ 21, 33 P.3d at 765, quoting *Bustamante v. Eyman*, 456 F.2d 269, 274 (9th Cir.1972). However, the “defendant’s presence is not required when it ‘would be useless, or the benefit but a shadow.’” *Seeley*, 959 P.2d at 177, quoting *Snyder v. Com. of Mass.*, 291 U.S. 97, 106-07, 54 S.Ct. 330, 332-33, 78 L.Ed. 674 (1934).

DeMillard v. State, 2008 WY 93, ¶¶ 9, 10, 190 P.3d 128, 130 (Wyo. 2008).

We also have a statute that provides as follows:

Except as otherwise provided by this section, **the defendant shall be present at the arraignment, at every stage of the trial, including the impaneling of the jury, and the return of the verdict and at the imposition of sentence.** In prosecution for offenses not punishable by death, the defendant’s voluntary absence after the trial has been commenced in his presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by

counsel for all purposes. In prosecutions of all misdemeanor cases, the court, with the written consent of the defendant, may permit arraignment, plea, and imposition of sentence in a defendant's absence. The defendant's presence is not required at a reduction of sentence hearing.

Wyo. Stat. Ann. § 7-11-202 (emphasis added).

Rule 43 of the Wyoming Rules of Criminal Procedure (as it now reads before any proposed changes are adopted) also provides that “[t]he defendant shall be present at the initial appearance [sic] at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.”¹ The rule also currently expressly provides that “[i]n prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, **with the written consent of the defendant**, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence.” (Emphasis added.) This is identical to the federal rule, and subsections (3) and (4), dealing with conferences, legal argument, and reduction of sentence are quite similar.

One of the suggestions received was that the trial judge could determine if using video was likely to result in any prejudice to the defendant. That decision would presumably be reviewed for an abuse of discretion. However, that's not the current standard of review. Professor Keiter says in his new book that “[a] violation of these constitutional rights [referring to the right to counsel part of Art. 1, § 10] is presumed prejudicial to the defendant, and requires reversal of any conviction, unless the state can demonstrate that the error is harmless beyond a reasonable doubt.” Keiter, *The Wyoming Constitution* at 70 (2d ed. 2017). For that proposition, he cites four cases, including *Vigil v. State*, 2004 WY 110, ¶ 19, 98 P.3d 172, 179 (Wyo. 2004), which was a confrontation case that did say that. This looks like de novo review to me, without any discretion, and without any deference. I found no case allowing trial judges to decide as a matter of discretion whether a defendant could participate by video without his consent.

¹ One comment received asked whether a change of plea was covered by the statute, because it refers only to “arraignment.” I would suspect that it does, but if not, our current Rule 43 is broader in its reference to “at the time of the plea.”

But here's an even more sobering thought than a requirement of demonstration of a lack of prejudice beyond a reasonable doubt. Some courts that do not identify the standard of review have simply reversed without any prejudice or harmful error analysis. *See, e.g., People v. Stroud*, 804 N.E.2d 510, 512 (Ill. 2004); *State v. Moore*, 2006 Ohio 816 (Ohio App. 2006). This suggests that conducting a video proceeding when it should have been done with the defendant physically present is structural error in those states, meaning automatic reversal. Structural error is not a popular standard of review for obvious reasons, but these cases are scary, particularly when we do not know how the United States Supreme Court would come down on the issue as a matter of federal constitutional law.

The bottom line is that we have the Wyoming Constitution and a statute requiring that the defendant be present for certain proceedings, at least if he doesn't consent to appear by video. The next question is what "present" means.

Is the Defendant "Present" by Video?

One of the district judges asked if a video appearance might be sufficient for the defendant to be "present." This is a question the federal courts and other states have grappled with. There is also a great deal of scholarly literature on the subject. The answer seems to be "no," although some proceedings do not require the defendant's presence.

Federal courts have held that a defendant must be physically present to satisfy the "present" requirement of F.R.Cr.P 43. *See United States v. Torres-Palma*, 290 F.3d 1244 (10th Cir. 2002) (challenging the use of videoconferencing at Rule 43 sentencing proceedings); *United States v. Lawrence*, 248 F.3d 300, 303-04 (4th Cir. 2001) (same); *United States v. Navarro*, 169 F.3d 228, 235 (5th Cir. 1999) (same); *Valenzuela-Gonzalez v. U.S. Dist. Court for Dist. of Ariz.*, 915 F.2d 1276, 1276 (9th Cir. 2000) (challenging the use of videoconferencing at a Rule 43 arraignment).

Scholarly publications generally recognize the utility of video proceedings, but contend that a video appearance is not the same as being there in person in various proceedings in criminal cases for the following reasons:

- Although technology is improved, it can still introduce distortion and delete some of the non-verbal and visual cues so often relied upon in the courtroom. The camera generally cannot show the entire courtroom.

- A judge may not be able to accurately “read” a defendant to see if he is repentant, or tell if the defendant really understands what he is pleading to.
- Video appearances present problems for defense counsel. If counsel is in the courtroom, he or she may be more effective because it is possible to read the judge and understand opposing counsel better, and to approach the bench. On the other hand, it is harder for counsel to read the defendant or to determine if the client needs to confer, and it is of course harder to confer under those circumstances.
- Appearing from confinement eliminates the ceremonial and formal atmosphere of the courtroom, and may result in a coercive environment. If counsel is not present with his client, it may appear to the defendant that his attorney is aligned with the judge and prosecutor, who are on the other end of the video. The limited amount of contact public defenders have with their incarcerated clients makes their ability to trust counsel even less when the attorney is on the other end of a video connection when the defendant waives rights that may result in imprisonment.

Hillman, *Pleading Guilty and Video Conference: Is a Defendant Constitutionally Present when Pleading Guilty by Video Conference?*, 7 J. of High Technology L. 41 (not star-paginated – pages 5 and 6 of the article) (2007); *Convenience of the Guillotine*, *supra*, 80 Denv. U. L. Rev at 67; Marr, *The Right to “Skype:” The Due Process Concerns of Videoconference at Parole Revocation Hearings*, 81 U. Cinn. L. Rev. 1515 (2013); Poulin, *Criminal Justice and Videoconferencing Technology: The Remote Defendant*, 78 Tul. L. Rev. 1089, 1098-1103 (2004) (discussing various problems created by use of video technology); Grubbe, *Electronic Plea Taking at Florida’s Weekend First Appearance Hearings: Weekend Justice or Weakened Justice?*, 21 Stetson L. Rev. 329, 365-67 (1991-1992) (describing the use of video teleconference in weekend arraignments and the potential negative effects in such a system); Wise, *Jailed Defendants Set to Make Video-Audio Court Appearances*, N.Y. L. J., at 2 (April 28, 1997) (quoting legal aid employee as describing the use of video technology potentially “dehumanizing” and having the effect of making the defendant or judge “just a face on a television screen.”).

Stating the case for the technology doubters, Judge Joseph Goodwin asks:

Does the prisoner thrust into a cinder block chamber with his face stuck in a camera and told to speak to a man in a glass box feel he has been dealt with equitably? Can the

public feel confident he has received a fair hearing? Do families, friends, neighbors, or the press feel they have witnessed the fair administration of justice? All of these participants should have the opportunity to take in the entirety of the courtroom to see and hear and feel what is going on. A court's moral authority rests on the perception that its proceedings are fair and just. Public confidence in the judicial system depends on this perception. The remarkable resiliency of this confidence is something we ought not take for granted, and we should eschew any practice that threatens to demean the dignity of or reduce respect for the courts.

Letter from Judge Joseph R. Goodwin, District Court Judge for the Southern District of West Virginia, to Judge Robin J. Cauthron, Chair, Defender Services Committee (Sept. 6, 2001) (arguing that the federal judicial system must “carefully segregate those inefficiencies that are mere products of time and place – which we would be foolish to retain – from those that are deliberately built into our system to spare a free people the convenience of the guillotine”) (quoted in *Convenience of the Guillotine*).

All of this adds up to a claim that participating by video is not the same as being physically present. Despite the hyperbole, it is clear that video proceedings play an important role in reducing delay and expense, particularly in a state like Wyoming, where holding all proceedings in person could require a judge to repeatedly travel significant distances by automobile, or for a prisoner to be transported, with all that implies, for preliminary steps in the criminal process. As one would suspect, courts have taken a more utilitarian view of how their time must be spent, although frankly the cases are far from uniform, are not all based on constitutional or statutory provisions like Wyoming's, and are limited to certain preliminary phases in criminal proceedings. For a survey, see Kletter, *Constitutional and Statutory Validity of Judicial Video Conferencing*, 115 A.L.R. 509 (2004, updated weekly). Some cases are worth noting.

One of the leading state cases dealing with the requirement to be “present” is *State v. Kinder*, 740 S.W.2d 654, 655 (Mo. 1987) (en banc) (superseded by statute). In that case, entry of a plea and a preliminary hearing occurred via what sounds like closed circuit TV. One Missouri statute required that no person can enter a plea of guilty unless he be “personally present,” and another required an examination “in the presence of the prisoner.” Because the statutes were silent on

the subject, the Court held that presence meant physical presence, and that video presence did not satisfy the mandates of the “presence requirements” under the governing rules and statutes. *Id.*²

Another case on this topic is *People v. Lindsay*, 772 N.E.2d 1268 (Ill. 2002). In that case, the Illinois Supreme Court held four to three that a defendant who pled not guilty and waived trial by jury by video conference was “present” enough to satisfy two statutory provisions that required pleas and waivers of jury trial to occur in “open court.” *Id.* at 1273. The Illinois Supreme Court cited cases from other states that it claimed were consistent with its decision:

We note that our holding today is in line with the holdings of other state supreme courts which have considered the matter. See *Commonwealth v. Ingram*, 46 S.W.3d 569 (Ky.2001) (properly functioning video arraignment is the constitutional equivalent of in-court arraignment if the video procedure is properly safeguarded and no specific constitutional right has been violated); *Larose v. Superintendent, Hillsborough County Correction Administration*, 142 N.H. 364, 702 A.2d 326 (1997) (conducting arraignment and bail hearings via teleconferencing system does not violate due process); *State v. Phillips*, 74 Ohio St.3d 72, 656 N.E.2d 643 (1995) (arraignment via closed circuit television is constitutionally adequate when the procedure is functionally equivalent to live, in-person arraignment); *In re Rule 3.160(a), Florida Rules of Criminal Procedure*, 528 So.2d 1179 (Fla.1988) (appearance at arraignment by audio-visual device approved because due process does not require the personal presence of a defendant in a courtroom when, through mechanical means, defendant can see and hear the judge and the judge can see and hear the defendant); *Commonwealth v. Terebieniec*, 268 Pa. Super. 511, 408 A.2d 1120 (1979) (no unconstitutional

² The Missouri legislature statutorily overruled the decision and enacted a statute that permits the use of video teleconferences for initial appearances, waiver of preliminary hearings, arraignment on an information or indictment where a plea of not guilty is entered, any pre-trial or post-trial proceeding that does not permit the cross-examination of witnesses, and sentencing after a plea of guilty. *Convenience of the Guillotine*, at 77, 86. Exactly what statutory changes could be made in Wyoming is an open question given Art. 1, § 10.

prejudice inherent in appellant's arraignment via closed circuit television).

I thought the dissent in *Lindsay* was pretty good, and that it distinguished the above cases cited by the majority pretty well. The continuing validity of the decision seems questionable, at least in part, in light of *People v. Stroud*, 804 N.E.2d 510, 512 (2004), a unanimous decision by the same court.

In that post-conviction case, Stroud pled guilty to possession of a stolen vehicle by video, without waiving whatever rights he had to appear before the court to make his plea. An intermediate appellate court reversed his conviction on the original charge and a probation revocation. The Illinois Supreme Court affirmed:

We hold today that a defendant's physical presence at a guilty plea proceeding is constitutionally required unless he consents to having the plea taken by closed-circuit television. Like the advisory committee to the federal rules, we believe that it would normally satisfy constitutional considerations for the defendant to waive his physical appearance in court by stating so on the record while participating through closed-circuit television. We further add that an admonishment about the right to be physically present should be given by the trial judge at the beginning of the guilty plea proceeding as part of the admonitions required by Supreme Court Rule 402 (177 Ill.2d R. 402), unless the defendant has previously given his written consent to the closed circuit procedure. Because defendant's plea was taken without him specifically waiving his right to be present, we affirm the judgment of the appellate court, which vacated defendant's convictions and remanded the cause for further proceedings.

Stroud, 804 N.E.2d at 519.

So in Illinois a not guilty plea by video may be all right without consent, while a guilty plea is evidently not. This pair of cases provides a glimpse into the uncertainty in this whole area, when a single court doesn't seem able to make up its mind.

Waiver

All of the cases I read assumed that a defendant could waive the right to appear in person in favor of a video appearance. We have repeatedly held that a defendant can waive his right to trial and plead guilty if the plea is intelligent, knowing, and voluntary, and entered into with an understanding of the consequences. *Sena v. State*, 2010 WY 93, ¶ 9, 233 P.3d 993, 996 (Wyo. 2010) (citing *Thomas v. State*, 2007 WY 186, ¶ 9, 170 P.3d 1254, 1257 (Wyo. 2007)). If a defendant can give up his right to defend to a jury of his peers, it's hard to believe that he cannot under the same circumstances relinquish his right to be present in person and appear by video.

One note of caution might be in order. Proposed Rule 43.1 would allow either a written waiver or one on the record. I suspect that a judge might be wise to have a discussion about waiver of the right to appear in person even if there is a written waiver, to cut off arguments of duress or coercion. That would make a nice record, assuming that the defendant consents. In addition, the written waiver should say that the defendant understands that he may have a right to appear in person. I believe Judges Prokos and Christensen are working on a waiver form.

The Proposed Rule

As everyone undoubtedly knows, the proposed Rule 43.1, and the changes to Rules 5, 5.1, 10, and 46.1 are intended to create a rule which complies with what is known about the law on the right to appear in person. The approach is to designate those hearings which can be held with and without consent as satisfying the presence requirement. The circuit judges were not all ecstatic with the portion of Rule 43.1 dealing with preliminary hearings. Two of the judges have very small courtrooms, and having inmates from the State Hospital and State Penitentiary in that small space is a legitimate concern. Many of these individuals will probably not waive the right to appear in person. However, the law supports the notion that the preliminary hearing is a critical stage for purposes of Art. 1, § 10 analysis, and I understand that as a group the circuit judges are willing to live with the problem.

Since the circuit judges' concerns seem to be addressed, I will turn to the district judges' comments and the proposed rule. One suggestion was that the rule could simply say that courts can use video whenever it doesn't violate either constitution, statutes, or case law, which is the same as having no rule. I liked the

idea at first, probably because it didn't require any work. However, I have not found any state that has taken that approach.

Minnesota is a good example of the opposite effort. It has a number of relatively far-flung judicial districts that do not have our equivalent of a district judge residing in them. The state started a limited pilot closed circuit television program in 1999 after trying it one judicial district. Use of video was then expanded to include certain contested matters – if the defendant agreed. The protocol was revised a number of times, and was evaluated by the National Center for State Courts. The committee responsible for the changes also relied on the A.B.A Standards for Criminal Justice: Special Functions of the Trial Judge, Standard 6-1.8(a) (3d Ed. 2000), which expresses a presumption in favor of in-person court appearances. Babcock & Johansen, *Remote Justice? Expanding the Use of Interactive Video Teleconference in Minnesota Criminal Proceedings*, 37 Wm. Mitchell L. Rev. 652, 658 (2011). The final version of the Minnesota Rules, adopted in 2010, is limited to these situations:

***1) when no judge is available in the venue; (2) when the defendant is in custody in a location outside the venue; and (3) when it is in the interests of justice. It is also limited to the following types of hearings: (1) Rule 5 or Rule 6 hearings; (2) Rule 8 hearings; (3) Rule 11 hearings (omnibus hearings in gross misdemeanor and felony cases) for the purpose of waiving an omnibus hearing; (4) pleas; (5) sentencing; and (6) probation revocation hearings. Rule 5 and Rule 6 hearings do not require consent, but note that a defendant can request an in-person hearing. The other hearings require consent by the defendant, defense attorney, prosecutor, and judge. Except in emergency situations, defense counsel is required to use the same terminal site as his or her client.

Id. at 668. I don't believe Minnesota has anything like Art. 1, § 10 or § 7-11-202, although I didn't feel it necessary to make a study of every state's constitution, statutes, or rules.

I know that Judges Christensen and Prokos considered video rules from other jurisdictions when completing their draft. It's hard to believe that having in effect no rule could be a good thing. From what I have seen so far, no one in our

judicial system, including me, had any idea of the degree of controversy surrounding the use of video.

My experience as a judge and justice tells me that courts tend to fall into certain practices, and that judges are unlikely to get any meaningful briefing on when video is appropriate without consent in a given case – that challenge will be briefed after the deed is done. New judges often come from civil backgrounds, and may not have any idea of the requirements of defendant presence, just as I did not back when. Imagine the outcry if a guilty plea by video was set aside in a serious crime, and in the interim a key witness died or otherwise became available.

The law is in flux, and as technology improves, perhaps greater use than the proposed rule can be made of it. I don't think now is the time to be creative or bold. Moreover, the notion that the Wyoming Supreme Court should adopt a rule that it might later have to find led trial judges to violate a defendant's right to be present is unattractive at best.

Conclusion

The proposed rule seems to me to be a cautious and reasonable way to approach this uncertain situation. That is not to say that some minor changes in the proposed rule are not desirable. But a lot of work has gone into the proposed rule, the Criminal Rules Committee has blessed it, and the ball should be in the court of those who think there should be changes to demonstrate that they are lawful and not merely convenient. I will recommend a one-month comment period to allow suggestions, which I hope will be supported by pertinent authority. Then, barring significant changes, the rule should be presented to the Court with notice, so that anyone who objects to it can do so.

MKD:sm

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2018

In the Matter of Amendments to)
Rules 5; 5.1; 10; 43 and 46.1 of the)
Wyoming Rules of Criminal Procedure)

**ORDER AMENDING RULES 5; 5.1; 10; 43; AND 46.1 OF THE
WYOMING RULES OF CRIMINAL PROCEDURE**

The Board of Judicial Policy and Administration and its Court Technology Committee, following consultation with the Criminal Division of the Permanent Rules Advisory Committee, recommend that this Court amend Rules 5; 5.1; 10; 43; and 46.1 of the Wyoming Rules of Criminal Procedure, to allow for videoconferencing in certain circumstances. The Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rules 5; 5.1; 10; 43; and 46.1 of the Wyoming Rules of Criminal Procedure, attached hereto, be and hereby are adopted by the Court to be effective ?????, 2018; and it is further

ORDERED that this order and the amendments be published in the advance sheets of the Pacific Reporter; the amendments to be published in the Wyoming Court Rules Volume; and that this order and the amendments be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall thereafter be spread at length upon the journal of this Court.

DATED this day of June, 2018.

BY THE COURT:

E. JAMES BURKE
Chief Justice

Wyoming Rules of Criminal Procedure

Rule 5. Initial appearance.

(a) *Initial appearance before a judicial officer.* A person arrested and in custody shall be taken without unnecessary delay for appearance before a judicial officer of the court from which the warrant issued or if no warrant has issued before a judicial officer of the court where the charging document will be filed, with the initial appearance to be in person or by ~~real-time electronic means~~ video conferencing, at the discretion of the judicial officer. Use of video conferencing at initial appearance shall be governed by W.R.Cr.P. 43.1(b)(1). A person arrested without a warrant shall be released from custody unless probable cause for the arrest is established to the satisfaction of a judicial officer without unnecessary delay, but in no more than 72 hours. When a person arrested without a warrant is brought before a judicial officer an information or citation shall be filed at or before the initial appearance and, unless a judicial officer has previously found probable cause for the arrest, probable cause shall be established by affidavit or sworn testimony. When a person, arrested with or without a warrant or given a summons, appears initially before the judicial officer, the judicial officer shall proceed in accordance with the applicable subdivision of this rule.

~~(d) If a defendant is arrested in a county other than the issuing county, the initial appearance shall be conducted as follows, whether in person or by video conference: (1) A defendant shall be seen as soon as possible following disposition of any charges in the arresting county; (2) If not being held on charges which have been disposed of, as soon as possible consistent with W.R.Cr.P. 5(a); (3) When a defendant appears by video conference before a court outside the county within the State of Wyoming of their arrest or incarceration, and who has had bond set, W.R.Cr.P. 46.1(a)(2)(C) applies.~~ [► NOTE: This proposed change probably still needs some work, but it probably fits better in this rule than in the video conferencing rules. For now, the recommendation is to leave this change for a later date, after further study and revision.]

Rule 5.1. Preliminary examination.

(a) ~~Right.~~ – *Examination.* In all cases required to be tried in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination in the circuit court. Use of video conferencing at preliminary examination shall be governed by W.R.Cr.P. 43.1(b)(2). The defendant may waive preliminary examination but the waiver must be written or on the record. If the preliminary examination is waived, the case shall be transferred to district court for further proceedings.

Rule 10. Arraignment.

Arraignments shall be conducted in open court and shall consist of reading the indictment, information or citation to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment,

information or citation before being called upon to plead. Use of video conferencing at arraignment shall be governed by W.R.Cr.P. 43.1(b)(3).

Rule 43. Presence of defendant.

(a) *Presence required.* — The defendant shall be present at the initial appearance, at the preliminary examination, at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) *Continued Presence Not Required.* The further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present:

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) After being warned by the court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) *Presence Not Required.* A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) At a conference or argument upon a question of law; and

(4) At a reduction of sentence under Rule 35.

Rule 43.1. Use of video conferencing.

(a) For purposes of these rules, “video conferencing” means use of communication devices whereby all participants can simultaneously see, hear, and speak with each other. Where video conferencing is allowed under these rules, any person (including a judge) appearing by video conferencing at a proceeding shall be considered present for purposes of the record.

(b) At the discretion of the court, the judge and/or the defendant may appear by video conferencing as follows:

(1) Initial appearance. With or without the defendant’s consent, video conferencing may be used at initial appearance, subject to the condition contained in subsection (c)(2) of this rule.

(2) Preliminary examination. Video conferencing may be used to conduct a preliminary examination under this rule if the defendant consents thereto in writing or on the record. Video conferencing at preliminary examination shall also be subject to the conditions of subsection (c) of this rule.

(3) Arraignment and plea. Video conferencing may be used to arraign a defendant **and to enter any plea**, if the defendant consents thereto in writing or on the record. Video conferencing at arraignment shall also be subject to the conditions of subsection (c) of this rule.

(4) Video conferencing shall not be used for bench trials, or jury trials, contested probation revocation hearings, or felony sentencings.

(5) Felony probation revocation. If the defendant consents thereto in writing or on the record, video conferencing may be used for non-evidentiary hearings in felony probation revocation proceedings.

(6) If the defendant consents thereto in writing or on the record, video conferencing may be used to conduct the following proceedings in misdemeanor cases: the defendant may waive his Rule 11 rights, enter a plea, admit to probation revocation allegations pursuant to W.R.Cr.P. 39, and be sentenced at a location other than the court by use of video conferencing. Such use of video conferencing shall be subject to the conditions of subsection (c) of this rule

(7) With or without the defendant's consent, video conferencing may be used for competency hearings pursuant to W.S. § 7-11-301 et. seq. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.

(8) With or without the defendant's consent, video conferencing may be used for hearings on W.R.Cr.P. 35 motions seeking reduction or modification of sentence and for any proceeding where the defendant's presence is not required by W.R.Cr.P. 43, unless evidence will be presented at the hearing. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.

(c) Conditions regarding counsel. When the defendant appears by video conferencing, the defendant's attorney may as well, although the attorney cannot be ordered to so appear. Where a defendant's consent to video conferencing is required, the following shall apply:

(1) If the defendant's attorney is not present at the defendant's location, video conferencing may be conducted only if the defendant waives the right to have his attorney physically present at defendant's location. Such waiver must be in writing or on the record; and

(2) If the defendant's attorney is not present at the defendant's location, the defendant and the defendant's attorney have the right to consult privately with one another and may request a recess to do so if the opportunity does not exist during the course of the proceeding. The defendant may waive the right to consult privately with counsel during the hearing.

(d) Judge appearing by video conferencing. For any proceeding in which the defendant appears by video conferencing, the judge may appear by remote video conferencing, i.e., from a location other than the courthouse where the case would be tried. For any proceeding where video conferencing is permitted under these rules and the defendant has not, where required, consented to video conferencing, the judge may be present for the proceeding by video conferencing if the defendant consents in writing or on the record to the judge being so present.

Rule 46.1. Pretrial release.

(g) A defendant who has appeared by video conference before a court outside the county within the State of Wyoming of their arrest or incarceration, and who has had bond set, shall be allowed 24 hours to post the bond and obtain release before being transported to the county from where the original warrant issued.
