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## VIDEO ARRAIGNMENTS

House Bill 4909 as introduced  
Sponsor: Rep. Richard Bandstra

House Bill 4910 as introduced  
Sponsor: Rep. Bill Martin

House Bill 4911 as introduced  
Sponsor: Rep. Tracey Yokich

House Bill 4912 as introduced  
Sponsor: Rep. Candace Curtis

House Bill 4913 as introduced  
Sponsor: Rep. Frank M. Fitzgerald

First Analysis (8-31-93)  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

In March 1990, under the auspices of supreme court administrative order 1990-1, the 67th district court and the 7th circuit court (both in Genesee County) adopted local orders establishing the state's first video arraignment programs. Since that time, a number of other courts have established similar programs under succeeding supreme court orders. Supreme court order 1991-2, extended indefinitely by order 1993-1, authorizes the state court administrator to review and approve local proposals to use two-way closed circuit television between a jail and a courtroom for conducting "initial criminal arraignments on the warrant, arraignments on the information, criminal pretrials, criminal pleas, criminal sentencings for misdemeanor offenses cognizable in the district court and show cause hearings." Video proceedings have been approved in 14 courts in five counties.

Video proceedings, where simultaneous transmissions allow participants in the courtroom and those at the jail to see and speak with each other, have the potential to greatly reduce costs for local authorities. Sheriffs' departments can especially benefit: much money and deputy time can be saved by not having to transport prisoners from the county jail to five or more different court locations. Security risks are minimized, and prisoners are spared the humiliation of being paraded through public places in handcuffs and

chains. Defendants can further benefit by the speedier process and release that video arraignment can permit. While concerns exist about whether defendants' rights are adequately protected when face-to-face proceedings in open court are omitted, opinion is widespread that the advantages offered by video proceedings outweigh the potential disadvantages, providing certain safeguards are in place.

Although video arraignments are being conducted in a number of courts in this state, some judges are said to be uncomfortable with conducting video proceedings without explicit statutory authority. In addition, some criminal law experts have argued that establishing video guidelines in statute would let the legislature ensure that appropriate limitations are placed on the use of video proceedings. And, many would like to see the authority for video arraignments extended statewide, without the need for approval from the state court administrative office. Following the success of the video pilot projects in Genesee County, legislation was developed to provide for video arraignments in statute.

## ***THE CONTENT OF THE BILLS:***

House Bill 4910 would amend the Code of Criminal Procedure (MCL 761.1 and 761.37a) to provide for initial criminal arraignments and the setting of bail by two-way closed circuit television between the court and the place where the accused was imprisoned. The accused, his or her attorney, the judge, and the prosecutor would have to be able to see, hear, and communicate with each other simultaneously. Except as otherwise provided by law, the public would have to have access to the courtroom and be able to view and hear the proceedings. The court would have to maintain an original audio-visual recording of the entire proceeding; the recording would be a part of the court record.

House Bills 4909 and 4911-13 would amend various acts to replace language requiring that the accused be brought before a court with language requiring instead that the person be arraigned. House Bill 4909 would amend the Michigan Vehicle Code (MCL 257.727 and 257.728); House Bill 4911 would amend the Marine Safety Act (MCL 281.1162 et al.); House Bill 4912 would amend the Michigan Uniform Municipal Court Act (MCL 730.527), and House Bill 4913 would amend the conservation law, Public Act 192 of 1929 (MCL 300.16).

None of the bills could take effect unless all were enacted.

## ***FISCAL IMPLICATIONS:***

The House Fiscal Agency says that the bills would have no significant fiscal impact on the state, but could present cost savings for local units of government. (8-26-93)

## ***ARGUMENTS:***

### ***For:***

Video arraignments make sense in a number of ways. They reduce demands on sheriffs' deputies who otherwise would have to transport prisoners to various court locations, they minimize the security risks posed by taking prisoners out of the jail, and they offer defendants the opportunity for speedier process and quicker release on bond, as well as sparing them the public humiliation of being herded about in handcuffs and chains. The state has already seen the establishment of a number of successful projects where video proceedings are

conducted by way of two-way closed circuit television between the courtroom and the jail; by providing for video arraignments in statute, the bills would remove any doubts over the legitimacy of video arraignments, and encourage courts across the state to adopt the technology if they so choose.

### ***Against:***

Video proceedings may erode defendants' rights and provide the opportunity for abuse of authority. For one thing, the camera does not always provide the same impression of a person as is gained in person, and camera techniques and lighting could subtly affect how a defendant is perceived, providing an inaccurate picture of the defendant. The defense could be similarly hampered by a difficulty in assessing participants in the courtroom. Even worse, a defendant could be the victim of off-camera coercion by his or her jailers. And, the legislation lacks any provision to ensure that the accused and his or her counsel are able to confer confidentially. A basic element of our system is the ability of a defendant to confront his or her accusers in a neutral forum; the bills would impair that ability. At a minimum, the legislation should allow a defendant to refuse video arraignment and demand an in-person hearing.

### ***Response:***

The legislation would be limited to initial criminal arraignments; certain proceedings, such as sentencing or the acceptance of guilty pleas, where the demeanor of the defendant is an important element, would not be included. This limitation reduces the potential for adverse effects on defendants. Defendants' rights would be additionally safeguarded with requirements for all participants to be able to see and hear each other simultaneously, for the public to have access to the courtroom, and for video records to be maintained. Defense counsel typically is not present at the initial arraignment, but any concerns about interference with the relationship between counsel and client can be met by providing a separate private area, or by simply covering the microphone during a whispered conversation.

### ***Against:***

The legislation is inconsistent with the supreme court administrative order on video proceedings and with video projects already established. The supreme court order authorizes a broader use of video than contemplated by the bills. The bills, by limiting video proceedings to initial arraignments, would limit the benefits that may be derived by use

of the technology and put some operations into question. Courts now using two-way video for proceedings other than initial arraignments would not be the only ones affected: at least one court is using public cable hook-ups for its two-way video proceedings, yet the legislation only contemplates two-way closed-circuit television. There is general agreement that the projects are operating successfully under the terms of the supreme court order; rather than enact legislation on the subject, it may be better to leave well enough alone.

***Against:***

The videotaping of trial proceedings reportedly have generated and prolonged appeals nationwide. If video is to have a larger role in criminal procedure here, the state should be prepared for the effect on appellate courts.

***Response:***

Two-way video proceedings have been used in Michigan courts since early 1990, when the first projects were undertaken in Genesee County. There does not appear to have been any appeals as yet based on the use of two-way video proceedings.

***Against:***

The legislation would place burdens on courts that might cause them to reject the two-way video alternative. By requiring all participants to see and hear each other simultaneously, the legislation would require the purchase and operation of extra cameras, and would make a number of existing court systems obsolete. In addition, the requirement to maintain video records would impose substantial expenses for storage and purchase of fresh videotape. The legislation should at least allow a written transcript to replace the video record after a specified period of time.

***Response:***

The use of two-way video for court proceedings is still relatively new. The legislation's criteria for the use of the technology constitute important safeguards of the rights of the accused. If those criteria prove unnecessary for that purpose, or if they prove to be unwarranted impediments to the use of video arraignments, they can be modified or eliminated in the future. As for the expense of the equipment, money saved through the use of video arraignments can soon cover the initial outlay for video equipment; one court is reported to have recouped its \$30,000 costs in one year.

***POSITIONS:***

The Department of State Police supports the bills. (8-23-93)

The Michigan District Judges Association supports the bills. (8-24-93)

The Michigan Sheriffs' Association supports the bills. (8-23-93)

The Prosecuting Attorneys Association of Michigan has no position at this time. (8-20-93)

The Michigan Press Association has no formal position on the bills at this time, but has concerns regarding the bills' effects on due process of law for defendants. (8-26-93)

The American Civil Liberties Union of Michigan opposes the bills. (8-24-93)