

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-15-4

PENOBSCOT COUNTY PILOT PROJECT TO ALLOW REMOTE
TESTIMONY IN CRIMINAL CASES

Effective: July 1, 2015

I. SCOPE AND PURPOSE

This Administrative Order creates a pilot project for criminal cases in Penobscot County only, though nothing contained herein shall prevent a judge from exercising discretion in addressing the presentation of witnesses in any other Region, including consideration of allowing remote testimony, upon appropriate findings demonstrating good cause, and with necessary protections to assure due process of law.

The Pilot Project authorizes the court, as in civil proceedings, to permit presentation of testimony in open court by contemporaneous transmission from a different location on the court's own motion or for good cause shown. Although the Sixth Amendment right to confrontation is not absolute, *see Maryland v. Craig*, 497 U.S. 836, 850 (1990), it may be restricted 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," *id.* Courts have addressed remote testimony by video conferencing technology in cases such as in *United States v. Fee*, 425 F. App'x 847, 848-51 (11th Cir. 2011); *Horn v. Quarterman*, 508 F.3d 306 (5th Cir. 2007); and *United States v. Yates*, 438 F.3d 1307 (11th Cir. 2006).

Before allowing remote testimony of a witness, the court must have in place adequate procedural safeguards to ensure that the defendant's right to confrontation is otherwise assured and must specifically find that the procedure is necessitated by important policy considerations. Factors to evaluate in determining if remote testimony should be permitted include whether (1) the witness is unable or unwilling to testify in the courtroom because of fear of the courtroom process or of a person who will be in attendance in the courtroom; (2) there is a substantial likelihood, established by expert testimony, that the witness would suffer emotional trauma from testifying in the courtroom; (3) the witness suffers from

