

**2008 Innovations Awards Program
APPLICATION**

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ID # (assigned by CSG): 08-M-14MI

Please provide the following information, adding space as necessary:

State: **Michigan**

Assign Program Category (applicant): **Public Safety/Corrections** (Use list at end of application)

1. Program Name
Video Testimony Project
2. Administering Agency
Michigan State Police – Forensic Science Division
3. Contact Person (Name and Title)
F/Lt. Gregoire P. Michaud – Interim Assistant Division Commander, Forensic Science Division
4. Address
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<http://www.michigan.gov/msp/>
9. Please provide a two-sentence description of the program.

The Department of Michigan State Police has begun utilizing video conferencing capabilities within their forensic science laboratories for the purposes of video testimony at court proceedings. The initiative to date involves Michigan's seven state forensic laboratories working in partnership with over 50 courts.

10. How long has this program been operational (month and year)? Note: the program must be between 9 months and 5 years old on March 1, 2008 to be considered.

December 2005

11. Why was the program created? What problem[s] or issue[s] was it designed to address?

The program was created to eliminate wasted costs and time associated with court appearances requiring expert testimony. Freeing forensic science experts from travel and wait time in court means more valuable time for them to conduct necessary testing and analysis on other cases.

Courtroom testimony obligations present both logistical and operational challenges for the laboratory system, with analysts often receiving multiple subpoenas requesting their presence in different courts on the same day. Additionally, the time spent in these courtrooms, and in transit to and from, equates to less time available for analyzing casework. The amount of time that forensic science experts waste in travel and wait time contributes significantly to casework backlogs. Casework backlogs exist in all forensic disciplines due to continuously increasing case submissions and staffing levels that are challenged to meet the growing demand.

A large number of court cases are often either waived or rescheduled for a variety of reasons. Many witnesses spend a considerable amount of time traveling to and waiting at courthouses only to have to come back another day when the proceeding is cancelled. Each time a court date is scheduled, the witness must appear at the courthouse and be prepared to offer their testimony.

The time and money spent on court appearances by forensic scientists continues to grow. The total number of appearances by Forensic Science Division scientists is close to 1000 times each year. This figure does not account for the 25-30% of the time scientists traveled to court and did not testify.

In addition to the problem of a scientist's inability to complete casework as a result of being away from the bench, many scientists also receive multiple subpoenas from different courts requiring their presence on the same day. Court appearances have the greatest impact on the Toxicology Unit where, on average, analysts total nearly 250 court appearances each year. This number reflects only the appearances where an analyst actually testifies. Annually, a toxicologist completes approximately 2100 cases. A day with a court appearance takes an average of five hours out of an analyst's day which equates to five cases not being completed. Therefore, 250 court appearances plus the additional trips where testimony was not given (approximately 75 additional trips) means over 1600 cases are not being completed as a result of court appearances.

The remaining 700+ appearances (plus the approximate 150-180 additional non-testifying trips to court) made by other FSD analysts from the other disciplines adds significantly to the total number of cases not getting completed which contributes to those disciplines' backlogs.

To emphasize the impact court appearances can have, one particular toxicologist in 2005 spent 102 hours over a three-month period traveling to court to testify. The actual time on the stand during that three-month period was only 13.5 hours. A considerable amount of time (87% in this example) is spent in driving and then sitting and waiting to testify. All of this time could be eliminated with the use of video testimony.

With the implementation of video testimony to all seven forensic laboratories, hundreds of trips to court could be eliminated, increasing laboratory productivity and increasing casework completion per analyst. Cost savings are also anticipated with respect to vehicle costs, airfare for appearances in Michigan's Upper Peninsula, meal expenses, and occasional lodging for travelers' time away from the laboratories.

12. Describe the specific activities and operations of the program in chronological order.

December 2005

- **Submission of Project (Program) Feasibility Documents to Michigan State Police**
- **Acquire a grant through the State Court Administrator's Office and the Office of Highway Safety Planning to purchase initial video testimony equipment for participating courts and the Lansing Forensic Laboratory.**

January 2006

- **Michigan Compiled Law 766.11 and MCR 6.006 amended to allow for video testimony.**
- **Develop a pilot project with a select number of courts to participate in the use of video testimony.**

January – December 2006

- **Video testimony equipment purchased and installed at the Lansing Forensic Laboratory.**
- **Developed a working partnership with the Office of Enterprise Securities and the Department of Information Technology Telecommunications within Michigan to allow for video transmissions through Michigan State Police firewalls.**
- **Established Quality of Service for video transmissions occurring from IP addresses where video testimony was taking place from.**
- **Video conferencing testing with courts identified in the pilot project. Identifying troubleshooting needs and point of contact for each court.**

January - December 2007

- **Expand the pilot project to include the remaining six MSP forensic laboratories as well as all additional courts having video conferencing capabilities.**
- **Implement program as part of the Michigan Governor Jennifer Granholm's Cabinet Action Plan.**
- **Seek grant funding from the National Institute of Justice to purchase the six additional video testimony systems for the remaining laboratories.**
- **Coordinate site visits to each forensic laboratory with AT&T to determine equipment and location installation needs.**
- **Continued testing with additional courts.**

- **Purchase (through NIJ Coverdell grant funding) additional video testimony systems for each laboratory.**

13. Why is the program a new and creative approach or method?

There are no known video conferencing systems specifically designed for forensic expert testimony purposes within the United States. Utilizing this technology for this purpose is unprecedented and required legislative changes, the cooperation of the courts, and the acquisition of grant funding.

14. What were the program's start-up costs? (Provide details about specific purchases for this program, staffing needs and other financial expenditures, as well as existing materials, technology and staff already in place.)

The initial start-up costs totaled \$28,661. These costs included the purchase of a single mobile plasma video conferencing system and two desktop video conferencing systems for the Lansing Forensic Laboratory. The costs for the remaining video testimony systems, along with the video server, totaled \$150,000.

There were no additional financial expenditures related to staffing needs, materials, or technology. The only other resources utilized in the implementation of this program were analysts' hours. Many hours went into the grant coordination, legislative initiatives, connectivity issues, and testing with the courts.

There are minimal additional costs associated with connectivity as existing communication lines (T1 network) already in place within the laboratories are being used for the video testimonies. When ISDN lines are utilized (Lansing Lab only) for connectivity to those courts not having IP connectivity, a rate of approximately \$0.09/minute is billed to the Department of State Police. As this program is still in its infancy and there exists a dependency on the courts, it is anticipated that a total cost of approximately \$470/year is expected through the use of ISDN connectivity. However, as technology improves and the IP communication lines reach throughout Michigan, the use of ISDN connectivity will be eliminated.

15. What are the program's annual operational costs?

There are no additional annual operational costs other than those described above which are incurred through the use of the ISDN connectivity. These costs are minimal and again will be eliminated in the future.

16. How is the program funded?

Two grants were received for the purchase of all the hardware and software associated with this program.

- 1. Office of Highway Safety Planning Grant (\$28,661)**
- 2. National Institute of Justice Coverdell Grant (\$150,000)**

17. Did this program require the passage of legislation, executive order or regulations? If YES, please indicate the citation number.

YES – Michigan Compiled Law 766.11a and Michigan Court Record 6.006(B). See Appendix A.

18. What equipment, technology and software are used to operate and administer this program?

Polycom is the vendor providing the video testimony hardware and software being utilized for this program. These systems, depending on location, are comprised of both fixed desktop and mobile units. Additionally, a video server is being installed to record all video testimonies taking place from any of the seven laboratories. These recordings will allow for remote witness evaluations and will help bolster the Forensic Science Division’s expert witness training program.

Video testimonies will be taking place over both ISDN and IP connections. The majority however will be over IP. Included with the video testimony systems are document cameras that allow for court exhibits to be displayed and viewed by all parties. Additionally, the systems allow for connectivity to computers where presentations (e.g. Powerpoints) can be shown to the courts. The equipment also has multi-point capabilities and will allow for intra-division meetings between all laboratories when not being utilized for testimony purposes.

19. To the best of your knowledge, did this program originate in your state? If YES, please indicate the innovator’s name, present address, telephone number and e-mail address.

YES

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20. Are you aware of similar programs in other states? If YES, which ones and how does this program differ?

NO – Some states have video arraignments (closed circuit systems) that take place between courts and prisons. However, there does not exist a forensic laboratory system other than the State of Michigan’s that utilizes and has the capability of statewide video testimony.

21. Has the program been fully implemented? If NO, what actions remain to be taken?

NO – The remaining video conferencing systems need to be installed at the six satellite laboratories (to be completed by 3/31/2008).

22. Briefly evaluate (pro and con) the program's effectiveness in addressing the defined problem[s] or issue[s]. Provide tangible examples.

It is difficult to evaluate the true impact that the program will have because of the limited success thus far. This limited success is because the Lansing Forensic Laboratory is the only facility that has the capability to provide video testimony at this time. Until the other laboratories get their equipment installed, it is unclear as to how many courts statewide will begin to use the technology.

To date, there have been only a handful of video testimonies that have taken place with all of them receiving good reviews. In January of 2008, three video testimonies took place over a two-week period. All three video testimonies originated from the Lansing Forensic Laboratory (Toxicology Unit) and were received in Delta County (Escanaba) of Michigan's Upper Peninsula. On average, each testimony took approximately 30 minutes. These three video testimonies saved over 2300 miles in travel and nearly 42 hours of analysts' time traveling to and from the court along with waiting to testify at the court. In addition, a savings of nearly \$650 was seen by the Forensic Science Division as a result of not having to pay for gas and meals for these trips.

23. How has the program grown and/or changed since its inception?

Initially in 2006, a pilot program was developed that consisted of only the Lansing Forensic Laboratory's Toxicology Unit and several courts identified by the State Courts Administrator's Office. As of March 31, 2008, all seven forensic laboratories will have the capability to provide video testimony to any court in Michigan as well as any court within the United States. The testimony is no longer being limited to Toxicology and has been approved for all disciplines to use.

24. What limitations or obstacles might other states expect to encounter if they attempt to adopt this program?

Depending on the size of the laboratory system, funding for the initial start-up costs may be an issue. However, with Michigan setting the precedent by using NIJ Coverdell monies, other agencies may be able to travel that same path towards acquiring similar grant funding.

Another obstacle will be getting legislation enacted that will allow for this type of testimony by experts at trial. The best that Michigan could provide for at this time was legislation that allowed for the testimony upon an agreement by both parties (Prosecutor and Defense). Eventually, when this means of testimony becomes more common place within the courts, the legislation will be amended to allow for the testimony upon either party's wish to do so.

An obvious obstacle with most states will be convincing the Information Technology departments to allow for these transmissions to occur across existing firewalls at that level. Securities and safeguards put in place by a state's IT department will become an issue if these types are transmissions are to be allowed.

Finally, cooperation between all parties directly involved with the testimony (i.e. Judges, Prosecutors, Defense Attorneys and Court Administrators) has been one of the biggest challenges towards making this program a huge success. Tradition dictates that an expert witness enters the courtroom, approaches the bench, raises his/her right hand, and swears to tell the truth. With video testimony, a monitor turns-on and the expert witness is seen sitting comfortably within the confines of their laboratory. It is a foreign experience for all parties at first and takes time to get used to. Some defense attorneys have argued they lose the right to confrontation by the use of video testimony. Eventually though, as has been seen in Delta County of Michigan's Upper Peninsula, video testimony becomes generally accepted and, ultimately, a common practice within the courtroom. Recently, a toxicologist within the Lansing Forensic Laboratory received a subpoena that actually had printed on it, "Video Testimony"--an actual "testimony" to the success of this program.

2008 Innovations Awards Program Program Categories and Subcategories

Use these as guidelines to determine the appropriate Program Category for your state's submission and list that program category on page one of this application. Choose only one.

Infrastructure and Economic Development

- Business/Commerce
- Economic Development
- Transportation

Government Operations

- Administration
- Elections
- Public Information
- Revenue

Health & Human Services

- Aging
- Children & Families
- Health Services
- Housing
- Human Services

Human Resources/Education

- Education
- Labor
- Management
- Personnel
- Training and Development
- Workforce Development

Natural Resources

- Agriculture
- Energy
- Environment
- Environmental Protection
- Natural Resources
- Parks & Recreation
- Water Resources

Public Safety/Corrections

- Corrections
- Courts
- Criminal Justice
- Drugs
- Emergency Management
- Public Safety

Save in .doc or rtf. Return completed application electronically to innovations@csg.org or mail to:

CSG Innovations Awards 2008
The Council of State Governments
2760 Research Park Drive, P.O. Box 11910
Lexington, KY 40578-1910

Contact:

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This application is also available at www.csg.org, in the Programs section.

Deadline: March 1, 2008

Appendix A

Michigan Court Rule 6.006 Video and Audio Proceedings

(A) Defendant in the Courtroom or at a Separate Location. District and circuit courts may use two-way interactive video technology to conduct the following proceedings between a courtroom and a prison, jail, or other location: initial arraignments on the warrant or complaint, arraignments on the information, pretrials conferences, pleas, sentencings for misdemeanor offenses, show cause hearings, waivers and adjournments of extradition, referrals for forensic determination of competency, and waivers and adjournments of preliminary examinations.

(B) Defendant in the Courtroom - Preliminary Examinations. As long as the defendant is either present in the courtroom or has waived the right to be present, on motion of either party, district courts may use telephonic, voice, or video conferencing, including two-way interactive video technology, to take testimony from an expert witness or, upon a showing of good cause, any person at another location in a preliminary examination.

(C) Defendant in the Courtroom - Other Proceedings. As long as the defendant is either present in the courtroom or has waived the right to be present, upon a showing of good cause, district and circuit courts may use two-way interactive video technology to take testimony from a person at another location in the following proceedings:

(1) evidentiary hearings, competency hearings, sentencings, probation revocation proceedings, and proceedings to revoke a sentence that does not entail an adjudication of guilt, such as youthful trainee status;

(2) with the consent of the parties, trials. A party who does not consent to the use of two-way interactive video technology to take testimony from a person at trial shall not be required to articulate any reason for not consenting.

(D) Mechanics of Use. The use of telephonic, voice, video conferencing, or two-way interactive video technology, must be in accordance with any requirements and guidelines established by the State Court Administrative Office, and all proceedings at which such technology is used must be recorded verbatim by the court.

Michigan Compiled Law 766.11a

Expert testimony; conduct by telephonic, voice, or video conferencing.

Sec. 11a. On motion of either party, the magistrate may permit the testimony of an expert witness or, upon a showing of good cause, any witness to be conducted by means of telephonic, voice, or video conferencing.