

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapter 29. Rules of Criminal Procedure (Refs & Annos)
VIII. Supplementary and Special Proceedings

Crim.P. Rule 43

Rule 43. Presence of the Defendant

Effective: July 15, 2021

Currentness

(a) Presence Required. The defendant shall be present at the preliminary hearing, 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 trial court in its discretion may complete the trial, and the defendant shall be considered to have waived his right to be present, whenever a defendant, initially present:

- (1) Voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to remain during the trial, or
- (2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded 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) At a conference or argument upon a question of law.
- (3) At a reduction of sentence under Rule 35.

(d) Waiver. The voluntary failure of the defendant to appear at the preliminary hearing may be construed by the court as an implied waiver of his right to a preliminary hearing.

(e) Presence of the Defendant by Interactive Audiovisual Device or Interactive Audio Device.

- (1) As used in this Rule 43:

(I) “Interactive audiovisual device” means a television - or computer - based audiovisual system capable of two-way transmission and of sufficient audio and visual quality that persons using the system can view and converse with each other.

(II) “Interactive audio device” means a telephone - or computer - based audio system capable of two-way transmission and of sufficient audio quality that persons using the system can converse with each other.

(2) With the court's approval, the defendant may be present within the meaning of this Rule 43 by the use of an interactive audiovisual device or an interactive audio device for any proceeding that does not involve a jury.

(3) The consent of the defendant shall be required prior to conducting any of the following types of proceedings by the use of an interactive audiovisual device or an interactive audio device pursuant to this subsection (e):

(I) Entry of guilty plea;

(II) Sentencing hearings;

(III) Probation and deferred sentence revocation hearings;

(IV) Preliminary hearings;

(V) Pre-trial motions hearings;

(VI) Hearings to modify bail;

(VII) Restitution hearings; and

(VIII) Crim. P. 35(b) and (c) hearings.

(4) The court shall advise the defendant of the following prior to any proceeding conducted pursuant to subsection (e)(3) of this rule:

(I) The defendant has the right to appear in person;

(II) The defendant has the right to have his or her counsel appear with him or her at the same physical location;

(III) The defendant's decision to appear by use of an interactive audiovisual device or an interactive audio device must be voluntary and must not be the result of undue influence or coercion on the part of anyone; and

(IV) If the defendant is pro se, he or she has the right to request that the identity and role of all individuals with whom he or she may have contact during the proceeding be disclosed.

(5) Every use of an interactive audiovisual device or an interactive audio device must comply with the following minimum standards:

(I) If defense counsel appears, such appearance shall be at the same physical location as the defendant if so requested by the defendant. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

(II) Installation of an interactive audiovisual device or an interactive audio device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe or listen to, and (where appropriate) participate in, the hearing.

(III) Unless the court determines otherwise, parties must have the ability to electronically transfer exhibits to the court, a witness, and each other during any proceeding conducted by an interactive audiovisual device or an interactive audio device pursuant to this subsection (e). Any exhibits electronically transferred to the court shall be treated as if they had been submitted in person.

Credits

Adopted effective January 1, 1984. Amended effective March 1, 1997. Amended May 11, 2006, effective July 1, 2006. Amended effective June 17, 2010; March 19, 2020; March 23, 2020; March 30, 2020; April 7, 2020; November 16, 2020; July 15, 2021.

Editors' Notes

COMMENT

The court recommends that defendants be informed of their rights pursuant to this rule by showing such defendants a pre-recorded video containing the judicial advisement contained in this rule. The video should be shown prior to any jail authorities asking whether a defendant planned to elect to participate by audiovisual device. The court recognized that such audiovisual devices will be used to conduct plea discussions. Accordingly, the pre-recorded video should also explain the plea discussion process.

Notes of Decisions (23)

Rules Crim. Proc. Rule 43, CO ST RCRP Rule 43

Current with amendments received through April 1, 2022.