

CHAPTER 29

COLORADO RULES OF CRIMINAL PROCEDURE

RULE 43 Presence of the Defendant.

(a)-(d) [No change]

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

(1) Definitions. 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 with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 43 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances pursuant to Crim.P. 5, for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;

(II) Further appearances for the filing of charges or for setting the preliminary hearing;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in misdemeanor, petty offense, and traffic cases where the offense charged is not included within those offenses enumerated in C.R.S. 24-4.1-302 (I).

(V) Waivers of preliminary hearing;

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Crim.P. 35(B) hearings.

(3) Minimum standards. Every use of an interactive audiovisual device must comply with the following minimum standards in addition to those set forth in Crim.P. 43(e)(1):

(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) No defendant shall be compelled to appear by interactive video device at a hearing pursuant to subsection (e)(2)(III), (VI) or (VIII) of this rule.

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

(IV) Any hearing held pursuant to Crim.P. 43(e)(2)(IV) shall be conducted with the written consent of the defendant. The court shall advise a defendant of the following prior to obtaining a defendant's written consent and prior to any plea discussions being conducted:

(a) The rights enumerated in Crim.P. 5(2).

(b) The defendant has the right to appear in person and will not be prejudiced if he chooses to do so.

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

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

(e) If the defendant is pro se, the identity and role of all individuals with whom the defendant may have contact through the interactive audiovisual device.

(V) An interactive audiovisual system used for hearings pursuant to Crim.P. 43(e)(2)(IV) shall include the ability to electronically transfer documents between the defendant and the court and such transferred documents shall be considered the same as originals.

(4) Nothing in this rule shall require a court to use an interactive audiovisual device.

(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring under Crim.P. 5, the court may conduct the hearing by use of an interactive audiovisual procedure which does not comply with the minimum standards set forth in subsection (3).

Amended by the Court, En Banc June 17, 2010, effective immediately.

By the Court:

Alex J. Martinez

Justice, Colorado Supreme Court