AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

Friday, July 18, 2025, 12:45 p.m.
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to Order

II. Approval of Minutes from April 18, 2025, Meeting

III. Announcements from the Chair

IV. Business

A. Legislative Subcommittees
   a. SB23-254 and Crim. P. 41 (Abe Hutt, Judge VanGilder, and Christian Champagne)

   b. HB23-1187 and Crim. P. 35 (Judge Vigil, Karen Taylor, and Kevin McReynolds)

B. Crim. P. 37 and 37.1 Following Changes to C.A.R. 10 (Judge Harris and Johanna Coats)

C. Crim. P. 16 – Attorney Request to Update Language for Modern Forms of Communication (Judge Malone, Magdalena Rosa, and Kevin McReynolds)

D. Crim. P. 35(c) – (Judge Gerdes, Johanna Coats, and Karen Taylor)

E. Gendered Language Removal from the Criminal Rules – (Judge VanGilder)

V. Future Meetings: October 17
2026 Meeting Dates: January 16, April 17, July 17, October 16

VI. Adjourn

NOTICE
ANYONE WISHING TO INQUIRE ABOUT AN AGENDA ITEM MAY CONTACT THE CHAIRPERSON OF THE COMMITTEE, JUDGE ELIZABETH L. HARRIS, AT 720-625-5330.

COLORADO RULES OF CRIMINAL PROCEDURE

Rules 4.1, 6, 6.2, 6.8, 6.9, 9, 10, 11, 12, 15, 17, 21, 23, 25, 30, 31, 32, 41.1, 43, 48, 49, and 51

Rule 4.1. County Court Procedure--Misdemeanor and Petty Offense--Warrant or Summons Upon Complaint

Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided below in this Rule. This Rule shall have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(a) Definitions.

(1) "Complaint" means a written statement charging the commission of a crime by an alleged offender filed in the county court.

(2) Repealed eff. July 1, 2004.

(3) "Summons" means a written order or notice directing that a person appear before a designated county court at a stated time and place and answer to a charge against ~~him~~them.

(4) "Summons and complaint" means a document combining the functions of both a summons and a complaint.

(b) – (c) [NO CHANGE]

(d) Arrest Followed by a Complaint. If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time ~~he~~ the defendant is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

(e) Penalty Assessment Procedure.

(1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release ~~him~~ the person upon its terms, or take ~~him~~ the person before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice.

(2) – (3) [NO CHANGE]

(4) If the person given a penalty assessment notice chooses to acknowledge ~~his~~ guilt, ~~he~~ the person may pay the specified fine in person or by mail at the place and within the time specified in the notice. If ~~he~~ the person chooses not to acknowledge ~~his~~ guilt, ~~he~~ the person shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be

that specified in the notice for the offense of which ~~he~~ the offender was found guilty, but customary court costs may be assessed against ~~him~~ the offender in addition to such fine.

(f) [NO CHANGE]

Rule 6. Grand Jury Rules

(a) The chief judge of the district court in each county or a judge designated by ~~him~~ the chief judge may order a grand jury summoned where authorized by law or required by the public interest.

(b) [NO CHANGE]

(c) The foreperson~~man~~ of the grand jury may swear or affirm all witnesses who may come before the grand jury.

Rule 6.2. Secrecy of Proceedings--Witness Privacy--Representation by Counsel

(a) [NO CHANGE]

(b) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of said grand jury. If the witness desires legal assistance during ~~his~~ testimony, counsel must be present in the grand jury room with ~~his~~ the client during such questioning. However, counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an *in camera* hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising ~~his~~ the client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

Rule 6.8. Indictment--Amendment

(a) Matters of Form, Time, Place, Names. At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity for the defendant to be heard, order the amendment of an indictment with respect to defects, errors, or variances from the proof relating to matters of form, time, place, and names of persons when such amendment does not change the substance of the charge, and does not prejudice the defendant on the merits. Upon ordering an amendment, the court, for good cause, may grant a continuance to accord the defendant adequate opportunity to prepare ~~his~~ a defense.

(b) [NO CHANGE]

Rule 6.9. Testimony

(a) [NO CHANGE]

(b) Release to Witness. Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of ~~his~~ the witness's own grand jury testimony, or minutes, reports, or exhibits relating to them.

(c) - (d) [NO CHANGE]

Rule 10. Arraignment

Following preliminary proceedings pursuant to the provisions of Rules 5, 7, and 12, the arraignment shall be conducted in open court, informing the defendant of the offense ~~with which he is~~ charged, and requiring ~~him~~ the defendant to enter a plea to the charge. The defendant shall be arraigned in the court having trial jurisdiction in which the indictment, information, or complaint is filed, unless before arraignment the cause has been removed to another court, in which case ~~he~~ the defendant shall be arraigned in that court.

(a) - (b) [NO CHANGE]

(c) Upon arraignment, the defendant or ~~his~~ defendant's counsel shall be furnished with a copy of the indictment or information, complaint, or summons and complaint if one has not been previously served.

(d) [NO CHANGE]

(e) If the defendant appears without counsel at an arraignment, the information, indictment, or complaint shall be read to ~~him~~ the defendant by the court or the clerk thereof. If the defendant appears with counsel, the information or indictment need not be read and no waiver of said reading is necessary.

(f) As soon as the jury panel is drawn which will try the case, a list of the names and addresses of the jurors on the panel shall be made available by the clerk of the court to defendant's counsel, and if the defendant has no counsel, the list shall be served on ~~him~~ the defendant personally or by certified mail. It shall not be necessary to serve a list of jurors upon the defendant at the time of arraignment.

Rule 11. Pleas

(a) [NO CHANGE]

(b) Pleas of Guilty and Nolo Contendere. The court shall not accept a plea of guilty or a plea of nolo contendere without first determining that the defendant has been advised of all the rights set forth in Rule 5(a)(2) and also determining:

(1) That the defendant understands the nature of the charge and the elements of the offense to which ~~he~~ the defendant is pleading and the effect of ~~his~~ the plea;

(2) That the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone;

(3) That ~~he~~ the defendant understands the right to trial by jury and ~~that he waives his~~the waiver of the right to trial by jury on all issues;

(4) That ~~he~~ the defendant understands the possible penalty or penalties;

(5) That the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or the denial of probation, unless such representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report, if any;

(6) That there is a factual basis for the plea. If the plea is entered as a result of a plea agreement, the court shall explain to the defendant, and satisfy itself that the defendant understands, the basis for the plea agreement, and the defendant may then waive the establishment of a factual basis for the particular charge to which ~~he~~ the defendant pleads;

(7) That in class 1 felonies, or where the plea of guilty is to a lesser included offense, a written consent shall have been filed with the court by the district attorney.

(c) Misdemeanor Cases. In all misdemeanor cases except class 1, the court may accept, in the absence of the defendant, any plea entered in writing by the defendant or orally made by ~~his~~ counsel.

(d) [NO CHANGE]

(e) Defense of Insanity.

(1) The defense of insanity must be pleaded at the time of arraignment, except that the court for good cause shown may permit such plea to be entered at any time before trial. It must be pleaded orally, either by the defendant or by ~~his~~ counsel, in the form, “not guilty by reason of insanity”. A defendant who does not thus plead not guilty by reason of insanity shall not be permitted to rely on insanity as a defense as to any accusation of any crime; provided, however, that evidence of mental condition may be offered in a proper case as bearing upon the capacity of the accused to form specific intent essential to the commission of a crime. The plea of not guilty by reason of insanity includes the plea of not guilty.

(2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant, but the defendant refuses to permit the entry of such plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or psychologists to assist a psychiatrist to examine the defendant and advise the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter such plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily entered by the defendant ~~himself~~personally.

(3) [NO CHANGE]

(f) Plea Discussions and Plea Agreements.

(1) Where it appears that the effective administration of criminal justice will thereby be served, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement. ~~He~~ The district attorney should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel except where the defendant is not eligible for or refuses appointment of counsel and has not retained counsel.

(2) – (5) [NO CHANGE]

(6) Except as to proceedings resulting from a plea of guilty or nolo contendere which is not withdrawn, the fact that the defendant or ~~his~~ defense counsel and the district attorney engaged in plea discussions or made a plea agreement shall not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceeding.

Rule 12. Pleadings, Motions Before Trial, Defenses, and Objections

(a) [NO CHANGE]

(b) The Motion Raising Defenses and Objections.

(1) – (4) [NO CHANGE]

(5) *Effect of Determination.* If a motion is determined adversely to the defendant, ~~he~~ the defendant shall be permitted to plead if ~~he~~ the defendant has not previously pleaded. A plea previously entered shall stand.

Rule 15. Depositions

(a) – (a.5) [NO CHANGE]

(b) Subpoena of Witness. Upon entering an order for the taking of a deposition, the court shall direct that a subpoena issue for each person named in the order and may require that any designated books, papers, documents, photographs, or other tangible objects, not privileged, be produced at the deposition. If it appears, however, that the witness will disregard a subpoena, the court may direct the sheriff to produce the prospective witness in court where the witness may be released upon personal recognizance or upon reasonable bail conditioned upon the witness's appearance at the time and place fixed for the taking of deposition. If the witness fails to give bail, the court shall remand ~~him~~ the witness to custody until the deposition can be taken but in no event for longer than forty-eight hours. If the deposition ~~be~~is not taken within forty-eight hours, the witness shall be discharged.

(c) – (f) [NO CHANGE]

Rule 17. Subpoena

In every criminal case, the prosecuting attorneys and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness upon the trial or other hearing.

(a) – (d) [NO CHANGE]

(e) Service. Unless service is admitted or waived, a subpoena may be served by the sheriff, by ~~his~~ the sheriff's deputy, or by any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena may be made by delivering a copy thereof to the person named. Service may also be made in accordance with Section 24-30-2104(3), C.R.S. Service is also valid if the person named has signed a written admission or waiver of personal service, including an admission or waiver signed using a scanned or electronic signature. If ordered by the court, a fee for one day's attendance and mileage allowed by law shall be tendered to the person named if the person named resides outside the county of trial.

(f) – (h) [NO CHANGE]

Rule 21. Change of Venue or Judge

(a) Change of Venue.

(1) – (2) [NO CHANGE]

(3) *Effect of Motions.* After a motion for a change of venue has been denied, the applicant may renew ~~his~~ the motion for good cause shown, if since denial ~~he~~ the applicant has learned of new grounds for a change of venue. All questions concerning the regularity of the proceedings in obtaining changes of venue or the right of the court to which the change is made to try the case and execute the judgment, and all grounds for a change of venue, shall be considered waived if not raised before trial.

(4) [NO CHANGE]

(5) *Disposition of Confined Defendant.* When the defendant is in custody, the court shall order the sheriff, or other officer having custody of the defendant, to remove ~~him~~ the defendant not less than 7 days before trial to the jail of the county to which the venue is changed and there deliver ~~him~~ the defendant together with the warrant under which ~~he~~ the defendant is held, to the jailer. The sheriff or other officers shall endorse on the warrant of commitment the reason for the change of custody, and deliver the warrant, with the prisoner, to the jailer of the proper county, who shall give the sheriff or other officer a receipt and keep the prisoner in the same manner as if ~~he~~ the defendant had originally been committed to ~~his~~ the jailer's custody.

(6) *Transcript of Record.* When a change of venue is granted, the clerk of the court from which the change is granted shall immediately make a full transcript of the record and proceedings in the case, and of the motion and order for the change of venue, and shall transmit the same, together with all papers filed in the case, including the indictment or information, complaint, or summons and complaint, and bonds of the defendant and of all witnesses, to the proper court. When the change is granted to one or more, but not of several defendants, a certified copy of the indictment or information, and of each other paper in the case, shall be transmitted to the court to which the change of venue is ordered. Such certified copies shall stand as the originals, and the defendant shall be tried upon them. The transcript and papers may be transmitted by mail, or in any other way the court may direct. The clerk of the court to which the venue is changed shall file the transcript and papers transmitted ~~to him~~, and docket the case; and the case shall proceed before and after judgment, as if it had originated in that court.

(7) *Imprisonment.* When after a change of venue the defendant is convicted and sentenced to imprisonment in the county jail, the sheriff shall transport ~~him~~ the defendant at once to the county where the crime was committed if that county has a jail or other place of confinement.

(b) Substitution of Judges.

(1) Within 14 days after a case has been assigned to a court, a motion, verified and supported by affidavits of at least two credible persons not related to the defendant, may be filed with the court and served on the opposing party to have a substitution of the judge. Said motion may be filed

after the 14-day period only if good cause is shown to the court why it was not filed within the original 14-day period. The motion shall be based on the following grounds:

(I) The judge is related to the defendant or to any attorney of record or attorney otherwise engaged in the case; or

(II) The offense charged is alleged to have been committed against the person or property of the judge, or of some person related to ~~him~~the judge; or

(III) The judge has been of counsel in the case; or

(IV) The judge is in any way interested or prejudiced with respect to the case, the parties, or counsel.

(2) Any judge who knows of circumstances which disqualify ~~him~~ the judge in a case shall, on ~~his~~ the judge's own motion, self-disqualify ~~himself~~.

(3) Upon the filing of a motion under this section (b), all other proceedings in the case shall be suspended until a ruling is made thereon. If the motion and supporting affidavits state facts showing grounds for disqualification, the judge shall immediately enter an order self disqualifying ~~himself or herself~~. Upon self-disqualifying ~~himself or herself~~, the judge shall notify forthwith the chief judge of the district, who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the state court administrator, who shall obtain from the Chief Justice the assignment of a replacement judge.

Rule 23. Trial by Jury or to the Court

(a)

(1) – (2) [NO CHANGE]

(3) Every person accused of a class 1 or class 2 petty offense has the right to be tried by a jury of three, if ~~he or she~~the accused:

(I) – (II) [NO CHANGE]

(4) – (8) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 25. Disability of Judge

If by reason of absence from the district, death, sickness, or other disability, the judge before whom the defendant was tried is unable to perform the duties to be performed by the court after a verdict or finding, any other judge regularly sitting in or assigned to the court may perform those duties. If the substitute judge is satisfied that ~~he~~ the judge cannot perform those duties because ~~he~~ the judge did not preside at the trial, or for any other reason, ~~he~~ the judge may, in ~~his~~ the judge's discretion, grant a new trial.

Rule 30. Instructions

A party who desires instructions shall tender ~~his~~ proposed instructions to the court in duplicate, the original being unsigned. All instructions shall be submitted to the parties, who shall make all objections thereto before they are given to the jury. Only the grounds so specified shall be considered on motion for a new trial or on review. Before argument the court shall read its instructions to the jury, but shall not comment upon the evidence. Such instructions may be read to the jury and commented upon by counsel during the argument, and they shall be taken by the jury when it retires. All instructions offered by the parties, or given by court, shall be filed with the clerk and, with the endorsement thereon indicating the action of the court, shall be taken as a part of the record of the case.

Rule 31. Verdict

(a) Submission and Finding.

(1) *Forms of Verdict.* Before the jury retires the court shall submit to it written forms of verdict for its consideration.

(2) *Retirement of Jury.* When the jury retires to consider its verdict, the bailiff shall be sworn or affirmed to conduct the jury to some private and convenient place, and to the best of ~~his~~ the bailiff's ability to keep the jurors together until they have agreed upon a verdict. The bailiff shall not speak to any juror about the case except to ask if a verdict has been reached, nor shall ~~he~~ the bailiff allow others to speak to the jurors. When they have agreed upon a verdict, the bailiff shall return the jury into court. However, in any case except where the punishment may be death or life imprisonment, the court, upon stipulation of counsel for all parties, may order that if the jury should agree upon a verdict during the recess or adjournment of court for the day, it shall seal its verdict, to be retained by the foreperson~~man~~ and delivered by the jury to the judge at the opening of the court, and that thereupon the jury may separate, to meet in the jury box at the opening of court. Such a sealed verdict may be received by the court as the lawful verdict of the jury.

(3) *Return.* The verdict shall be unanimous and signed by the foreperson~~man~~. It shall be returned by the jury to the judge in open court.

(b) – (d) [NO CHANGE]

Rule 32. Sentence and Judgment

(a) [NO CHANGE]

(b) Sentence and Judgment.

(1) – (3) [NO CHANGE]

(c) Advisement.

(1) – (2) [NO CHANGE]

(3) When the court imposes a sentence, enters a judgment, or issues an order that obligates a defendant to pay any monetary amount, the court shall instruct the defendant as follows:

(I) If at any time the defendant is unable to pay the monetary amount due, the defendant must contact the court's designated official or appear before the court to explain why ~~he or she~~the defendant is unable to pay the monetary amount;

(II) – (III) [NO CHANGE]

(d) – (g) [NO CHANGE]

Rule 41.1. Court Order for Nontestimonial Identification

(a) – (d) [NO CHANGE]

(e) Contents of Order. An order to take into custody for nontestimonial identification shall contain:

(1) – (4) [NO CHANGE]

(5) The typewritten or printed name of the judge issuing the order and ~~his~~ the judge's signature.

(f) Execution and Return.

(1) Nontestimonial identification procedures may be conducted by any peace officer or other person designated by the judge. Blood tests shall be conducted under medical supervision, and the judge may require medical supervision for any other test ordered pursuant to this section when ~~he~~ the judge deems such supervision necessary. No person who appears under an order of appearance issued pursuant to this section (f) shall be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless ~~he~~ the person is arrested for an offense.

(2) – (7) [NO CHANGE]

(g) – (i) [NO CHANGE]

Rule 43. Presence of the Defendant

(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~~ the right to be present, whenever a defendant, initially present:

(1) Voluntarily self-absents ~~himself~~ after the trial has commenced, whether or not ~~he~~ the defendant has been informed by the court of ~~his~~ the obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause ~~him~~ the defendant to be removed from the courtroom, persists in conduct which is such as to justify ~~his~~ being excluded from the courtroom.

(c) [NO CHANGE]

(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~~ the 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) – (3) [NO CHANGE]

(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 as the defendant;

(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~~the defendant has the right to request that the identity and role of all individuals with whom ~~he or she~~the defendant may have contact during the proceeding be disclosed.

(5) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 48. Dismissal

(a) By the State. No criminal case pending in any court shall be dismissed or a nolle prosequi therein entered by any prosecuting attorney or ~~his~~ any deputy prosecuting attorney, unless upon a motion in open court, and with the court's consent and approval. Such a motion shall be supported or accompanied by a written statement concisely stating the reasons for the action. The statement shall be filed with the record of the particular case and be open to public inspection. Such a dismissal may not be filed during the trial without the defendant's consent.

(b) By the Court.

(1) If, after the filing of a complaint, there is unnecessary delay in finding an indictment or filing an information against a defendant who has been held to answer in a district court, the court may dismiss the prosecution. Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, ~~he~~ the defendant shall be discharged from custody if ~~he~~ the defendant has not been admitted to bail, the pending charges shall be dismissed, whether ~~he~~ the defendant is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.

(2) – (3.5) [NO CHANGE]

(4) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by ~~his~~ defendant's counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.

(5) To be entitled to a dismissal under subsection (b)(1) of this Rule, the defendant must move for dismissal prior to the commencement of ~~his~~ trial or the entry of a plea of guilty to the charge or an included offense. Failure ~~so~~ to so move is a waiver of the defendant's rights under this section.

(5.1) If a trial date is offered by the court to a defendant who is represented by counsel and neither the defendant nor ~~his~~ counsel expressly objects to the offered date as beyond the time within which the trial shall be had pursuant to this rule, then the period within which the trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this rule.

(6) In computing the time within which a defendant shall be brought to trial as provided in subsection (b)(1) of this Rule, the following periods of time shall be excluded:

(I) Any period during which the defendant is incompetent to stand trial or is unable to appear by reason of illness or physical disability or is under observation or examination at any time after the issue of insanity, incompetency or impaired mental condition is raised;

COMMITTEE COMMENT [NO CHANGE]

(II) – (III) [NO CHANGE]

(IV) The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever ~~his~~ the defendant's whereabouts are known but ~~his~~ presence for trial cannot be obtained, or ~~he~~ the defendant resists being returned to the state for trial;

(V) – (IX) [NO CHANGE]

(7) If a trial date has been fixed by the court and the case is subsequently transferred to a court in another county, the period within which trial must be had is extended for an additional three months from the date of the first appearance of all of the parties in a court of appropriate jurisdiction in the county to which the case has been transferred.

Rule 49. Service and Filing of Papers

(a) [NO CHANGE]

(b) Service -- How Made. Whenever under these Rules or by court order service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party ~~himself~~ is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided for civil actions unless otherwise ordered by the court.

(c) [NO CHANGE]

Rule 51. Exceptions Unnecessary

Exceptions to ruling or orders of the court are unnecessary. For all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the court ruling or order is made or sought, makes known to the court the action which ~~he~~ the party desires the court to take or ~~his~~ the objection to the court's action and the grounds therefor. But if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice ~~him~~the party.

~~Rule~~RULE 37 (~~original~~proposed amendments)

(a) Filing Notice of Appeal and Docketing Appeal. The district attorney may appeal a question of law, and the defendant may appeal a judgment of the county court in a criminal action, under simplified procedure to the district court of the county. To appeal, the appellant shall, within 35 days after the date of entry of the judgment or the denial of post-trial motions, whichever is later, (1) file a notice of appeal in the county court~~, post such~~; (2) pay any advance costs as may be required ~~for~~or ordered by the ~~preparation of the record and~~ court; (3) serve a copy of the notice of appeal ~~upon~~on the appellee~~. He shall also, within such 35 days, docket~~; and (4) file the notice of appeal in the district court and pay the docket fee. No motion for new trial or ~~in arrest of judgment~~other post-trial relief shall be required as a prerequisite to an appeal, but such motions if filed shall be pursuant to Rule 33(b) of these Rules.

(b) Contents of Notice of Appeal and Designation of ~~Record~~Transcripts. The notice of appeal shall state with particularity the alleged errors of the county court or other grounds relied upon for the appeal~~, and shall include a stipulation or designation of~~. Within the ~~evidence and other proceedings which~~time for filing the notice of appeal, the appellant ~~desires to have included in the record certified to~~ shall separately designate all transcripts necessary for resolution of the ~~district court. If the appellant intends to urge upon appeal that the judgment or a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.~~issues raised on appeal. The appellee shall have 14 days after service ~~upon him~~ of the notice of appeal to file with the clerk of the county court and serve ~~upon~~on the appellant a designation of any additional ~~parts of the transcript or record which he~~transcripts that the appellee deems necessary. ~~The~~ If ordered by the court, the advance cost of preparing the additional ~~record~~transcript(s) shall be posted by the appellant with the clerk of the county court within 7 days after service ~~upon him~~ of the appellee's designation of transcripts, or the appeal will be dismissed. If the district court finds that any part of the additional ~~record~~transcripts designated by the appellee was unessential to a complete understanding of the questions raised by the appeal, it shall order the

appellee to reimburse the appellant for the cost advanced for the preparation of such part without regard to the outcome of the appeal.

(c) Contents of Record on Appeal. Upon the filing of a notice of appeal and ~~upon the posting of any advance costs by the appellant, as are required for the preparation of a record~~, unless the appellant is granted leave to proceed as ~~an~~ indigent, upon the posting of any advance costs by the appellant as are required for the preparation of any transcripts, the clerk of the county court shall prepare and issue ~~as soon as possible~~ a record of the proceedings in the county court~~, including the summons and complaint or warrant, the separate complaint if any has been issued, and the judgment.~~. The record on appeal in all cases shall ~~also include a transcription or a joint stipulation~~consist of ~~such part~~ (1) all documents filed in the county court case as of the ~~actual evidence and other proceedings as the parties designate. If the proceedings have been recorded electronically, the transcription~~date of ~~designated evidence and proceedings shall be prepared in the office of the clerk of the court, either by him or her or under his or her supervision, within 42 days after the~~ filing of ~~the~~a notice of appeal or ~~within such additional time as may be granted~~ any amended notice of appeal; (2) transcripts designated in accordance with section (b) or, if a transcript if unavailable, a statement of the evidence or proceedings certified by the county court~~. The clerk shall notify in writing the opposing parties of the completion of the record, and such parties shall have 14 days within which~~; and (3) any timely filed post-trial motion, responses to ~~file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge and the record then certified.~~the motion, and any order on the post-trial motion.

(d) Filing of Record. ~~When the record has been duly certified and~~ Within 42 days after the filing of the notice of appeal or within such additional time as may be granted by the county court, and after any additional fees ~~therefor paid, it shall be filed with~~ have been paid, the clerk of the county court shall certify and electronically transmit the record on appeal to the clerk of the district court ~~by the clerk of the county court, and the opposing~~. The parties shall be notified by the

clerk of the county court ~~of such filing~~when the record on appeal is transmitted to the district court.

(e) Briefs. ~~A~~Within 21 days after the certified record is transmitted to the district court, the appellant shall file in the district court, and serve on the appellee, a written brief setting out ~~matters relied upon as constituting~~ contentions of error and ~~outlining any~~supporting arguments ~~to be made shall be filed in the district court by the appellant within 21 days after certification of the record. A copy of the appellant's brief shall be served upon the appellee.~~. The appellee may file an ~~answering~~answer brief within 21 days after such service~~.~~ and, if an answer brief is filed, it shall be served on the appellant. A reply brief may be filed within 14 days after service of the ~~answering~~answer brief. In the discretion of the district court, the time for filing ~~briefs and answers~~any brief may be extended.

(f) Stay of Execution. Pending the ~~docketing~~filing of the appeal, a stay of execution shall be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof may be required by the county court. ~~Upon~~ After the filing of the appeal, a request for stay of execution ~~made any time after the docketing of the appeal, such action may~~shall be ~~taken~~considered and resolved by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts, shall remain in effect until after final disposition of the appeal, unless modified by the district court.

(g) Trials de Novo; Penalty Not Increased. If for any reason an adequate record cannot be certified to the district court the case shall be tried de novo in that court. No action on appeal shall result in an increase in penalty.

(h) Judgment; How Enforced. Unless there is further review by the ~~Supreme Court upon~~supreme court on writ of certiorari pursuant to the rules of such court, after final disposition of the appeal the judgment on appeal entered by the district court shall be certified to the county court for action as directed by the district court~~, except~~. But in cases tried de novo by the district court or in cases in which

the district court modifies the county court judgment, ~~and in such cases,~~ the judgment on appeal shall be that of the district court and so enforceable.

~~**(i) Appeals to Superior Court.** In counties in which a superior court has been established, appeals from the county court shall be taken to the superior court rather than the district court. All of the provisions of this section governing appeals from the county court to the district court are applicable when the appeal is taken to the superior court, and the term "district court" as used in this section shall be understood to include the superior court.~~

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law)*

Rule 41 - Search, Seizure, and Confession

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any judge of a court of record.

(b) Grounds for Issuance. A search warrant may be issued under this Rule to search for and seize any property:

(1) Which is stolen or embezzled; or

(2) Which is designed or intended for use as a means of committing a criminal offense; or

(3) Which is or has been used as a means of committing a criminal offense; or

(4) The possession of which is illegal; or

(5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or

(6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) Application for Search Warrant.

(1) A search warrant shall issue only on affidavit sworn or affirmed to before the judge, except as provided in (c)(3). Such affidavit shall relate facts sufficient to:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and

(IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

Proposed Change #1 per 16-3-303(6)

(2.5) A no-knock search warrant, which means, for purposes of this section, a search warrant authorized by the court to be executed by law enforcement officers ~~through a forcible entry without first announcing their identity, purpose, and authority,~~ WHICH DOES NOT REQUIRE COMPLIANCE WITH THE REQUIREMENTS OF SECTION 16-3-305(7)(d), C.R.S, shall be issued only if the affidavit for such warrant:

(I) Complies with the provisions of subsections (1) and (2) of this section (c) and section 16-3-303(4), C.R.S.;

(II) Specifically requests the issuance of a no-knock search warrant;

Proposed Change #2 per 16-3-303(4)(a.5)

(III) ~~Relates sufficient circumstances to support the issuance of a no-knock search warrant~~ ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE OFFICERS EXECUTING THE WARRANT

(IV) Has been reviewed and approved for legal sufficiency and signed by a district attorney with the date and ~~his or her~~ attorney registration number on the affidavit, pursuant to section 20-1-106.1(2), C.R.S.; and

Commented [LV1]: Remove gender language

(V) If the grounds for the issuance of a no-knock warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant, but such statement shall not identify the confidential informant.

(3) Application and Issuance of a Warrant by Facsimile or Electronic Transmission. A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent the tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, ~~he~~ THE JUDGE shall issue a search warrant, which shall:

Commented [LV2]: Fix gender

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the

custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, AND AS LIMITED FOR SEARCH WARRANTS OF DWELLINGS AS OUTLINED IN SECTION 16-3-305(7), every search warrant authorizes the officer executing the same:

Commented [LV3]: Proposed change #3

(I) To execute and serve the warrant at any time; and

(II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.

(4) Joinder. The search of one or more persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with Rule 41(c)(1)(IV) of these Rules.

(5) Execution and Return.

(I) Except as otherwise provided in this Rule, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

Proposed Change #4 per 16-3-305(7)

(II~~) Any judge issuing a search warrant, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado State Patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (5) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.~~ WHEN A PEACE OFFICER, HAVING A WARRANT FOR THE SEARCH OF A DWELLING, EXECUTES THE SEARCH WARRANT, THE OFFICER SHALL:

(A) EXECUTE THE WARRANT BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. UNLESS THE JUDGE, FOR GOOD CAUSE, EXPRESSLY AUTHORIZES EXECUTION AT ANOTHER TIME;

(B) BE READILY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER IN UNIFORM OR WEARING A VISIBLE LAW ENFORCEMENT BADGE AND CLEARLY IDENTIFY THEMSELVES AS A LAW ENFORCEMENT OFFICER;

(C) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(D) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT

SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (D) DOES NOT APPLY IF:

(i) A COURT AUTHORIZES A NO-KNOCK WARRANT PURSUANT TO SECTION 16-3-303; OR

(ii) THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME THE WARRANT IS TO BE EXECUTED PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF.

Proposed Change # 5 per 16-3-305(7)

(III) ANY JUDGE ISSUING A SEARCH WARRANT, FOR THE SEARCH OF A PERSON OR FOR THE SEARCH OF ANY MOTOR VEHICLE, AIRCRAFT, OR OTHER OBJECT WHICH IS MOBILE OR CAPABLE OF BEING TRANSPORTED MAY MAKE AN ORDER AUTHORIZING A PEACE OFFICER TO BE NAMED IN SUCH WARRANT TO EXECUTE THE SAME, AND THE PERSON NAMED IN SUCH ORDER MAY EXECUTE SUCH WARRANT ANYWHERE IN THE STATE. ALL SHERIFFS, CORONERS, POLICE OFFICERS, AND OFFICERS OF THE COLORADO STATE PATROL, WHEN REQUIRED, IN THEIR RESPECTIVE COUNTIES, SHALL AID AND ASSIST IN THE EXECUTION OF SUCH WARRANT. THE ORDER AUTHORIZED BY THIS SUBSECTION (5) MAY ALSO AUTHORIZE EXECUTION OF THE WARRANT BY ANY OFFICER AUTHORIZED BY LAW TO EXECUTE IT IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported, shall be in pursuit thereof and such person, motor vehicle, aircraft, or other object shall cross or enter into another county, such officer is authorized to execute the warrant in such other county.

(IV) It shall be the duty of all peace officers into whose hands any search warrant shall come, to execute the same, in their respective counties or municipalities, and make due return thereof.

(V) The officers executing a search warrant shall first announce their identity, purpose, and authority, and if they are not admitted, may make a forcible entry into the place to be searched; however, the officers may make forcible entry without such prior announcement if the warrant expressly authorizes them to do so OR if ~~the particular facts and circumstances known to them at the time the warrant is to be executed adequately justify dispensing with this requirement.~~THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME THE WARRANT IS EXECUTED PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO-KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF GRAVE INJURY

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law)*

TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF

(VI) A search warrant shall be executed within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(VII) A warrant under Rule 41(b) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(d)(5)(VI) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

(1) The property was illegally seized without warrant; or

(2) The warrant is insufficient on its face; or

(3) The property seized is not that described in the warrant; or

(4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(5) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

(f) Return of Papers to Clerk. The judge who has issued a warrant shall attach to the warrant a copy of the return, inventory, and all other documents in connection therewith, including any affidavit in application for the warrant, and shall file them with the clerk of the district court for the county of origin. If a case has

been filed in the district court after issuance of the warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the warrant has been filed in the district court. When the warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the warrant, the documents shall remain in the county court. Any documents transmitted by fax or electronic transmission to the judge to obtain the warrant and the documents transmitted by the judge to the applicant shall be filed with the clerk of the court.

(g) Suppression of Confession or Admission. A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

(h) Scope and Definition. This Rule does not modify any statute, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.