

RULE CHANGE 2020(05)
COLORADO RULES OF CRIMINAL PROCEDURE

Rule 43. Presence of the Defendant

(a) – (e) [NO CHANGE]

(f) Public Health Crisis Exception

(1) If the court finds that a public health crisis exists, it may require the defendant and counsel to appear by contemporaneous audio communication (such as by phone) at arraignment and any proceeding listed in subsections (e)(2)(I), (II), (III), (V), (VI), (VII), and (VIII) of this rule. During any contemporaneous audio communication proceeding under this subsection (f)(1), the court must allow counsel the opportunity to confer with the defendant confidentially when necessary~~defense counsel must be in the physical presence of the defendant unless the court permits defense counsel's participation from a different location, in which case a separate, confidential communication line (such as a phone line) must be available to allow counsel to confer with the defendant.~~ A contemporaneous audio communication proceeding under this subsection (f)(1) shall be conducted in a courtroom open to the public and or in a manner that allows members of the public to hear, and, where appropriate, participate in the proceeding.

(2) If the court finds that a public health crisis exists, it may, in its discretion and with the defendant's oral or written consent, allow the defendant and counsel to appear by an interactive audiovisual device for a preliminary hearing, entry of a plea, sentencing associated with that plea, a deferred judgment violation hearing, a probation violation hearing, sentencing following the revocation of a deferred judgment or probation, or a transfer hearing following termination of placement in community corrections. This subsection (f)(2) shall only apply in cases where none of the offenses charged is included within those offenses enumerated in C.R.S. 24-4.1-302(1). During any interactive audiovisual proceeding under this subsection (f)(2), the court must allow counsel the opportunity to confer with the defendant confidentially when necessary. An interactive audiovisual proceeding under this subsection (f)(2) shall be conducted in a courtroom open to the public or in a manner that allows members of the public to hear or watch and, where appropriate, participate in the proceeding. Use of an interactive audiovisual device under this subsection (f)(2) must comply with subsections (e)(1) ~~and (e)(3)(I) and (III)~~ of this rule.

Comment [NO CHANGE]

Rule 43. Presence of the Defendant

(a) – (e) [NO CHANGE]

(f) Public Health Crisis Exception

(1) If the court finds that a public health crisis exists, it may require the defendant and counsel to appear by contemporaneous audio communication (such as by phone) at arraignment and any proceeding listed in subsections (e)(2)(I), (II), (III), (V), (VI), (VII), and (VIII) of this rule. During any contemporaneous audio communication proceeding under this subsection (f)(1), the court must allow counsel the opportunity to confer with the defendant confidentially when necessary. A contemporaneous audio communication proceeding under this subsection (f)(1) shall be conducted in a courtroom open to the public or in a manner that allows members of the public to hear and, where appropriate, participate in the proceeding.

(2) If the court finds that a public health crisis exists, it may, in its discretion and with the defendant's oral or written consent, allow the defendant and counsel to appear by an interactive audiovisual device for a preliminary hearing, entry of a plea, sentencing associated with that plea, a deferred judgment violation hearing, a probation violation hearing, sentencing following the revocation of a deferred judgment or probation, or a transfer hearing following termination of placement in community corrections. This subsection (f)(2) shall only apply in cases where none of the offenses charged is included within those offenses enumerated in C.R.S. 24-4.1-302(1). During any interactive audiovisual proceeding under this subsection (f)(2), the court must allow counsel the opportunity to confer with the defendant confidentially when necessary. An interactive audiovisual proceeding under this subsection (f)(2) shall be conducted in a courtroom open to the public or in a manner that allows members of the public to hear or watch and, where appropriate, participate in the proceeding. Use of an interactive audiovisual device under this subsection (f)(2) must comply with subsection (e)(1) of this rule.

Comment [NO CHANGE]

Amended and Adopted by the Court, En Banc, March 23, 2020, effective immediately.

By the Court:

**Carlos A. Samour, Jr.
Justice, Colorado Supreme Court**