

RULE CHANGE 2020(08)
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. 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 (including victims) 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 any proceeding that does not involve a jury. The defendant's oral or written consent is not necessary if the proceeding is listed in subsection (f)(1). ~~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.~~ 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 (including victims) 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]

Rule 43. Presence of the Defendant

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(f) Public Health Crisis Exception

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(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 any proceeding that does not involve a jury. The defendant's oral or written consent is not necessary if the proceeding is listed in subsection (f)(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 (including victims) 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, April 7, 2020, effective immediately.

By the Court:

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