

**SUPREME COURT OF COLORADO
OFFICE OF THE CHIEF JUSTICE**

**LIVE STREAMING COVERAGE OF CRIMINAL COURT
PROCEEDINGS IN THE TRIAL COURTS**

I. POLICY STATEMENT

In response to the Covid-19 pandemic, Colorado courts have utilized virtual proceedings since the spring of 2020. Part and parcel with virtual proceedings has been the live streaming of some criminal proceedings to the public, allowing increased transparency between the public and the courts. This Directive is created to provide a more uniform process for the live streaming of criminal court proceedings in Colorado.

Colorado courts have not historically live streamed court proceedings for several reasons. First, a core requirement of criminal trials and contested evidentiary hearings is the sequestration of witnesses, whereby a witness cannot listen to the testimony of other witnesses in a proceeding. This sequestration preserves the integrity of the proceeding by reducing the risk that witnesses will tailor their testimony to mirror one another. The live streaming of trials and contested evidentiary hearings can potentially jeopardize the effectiveness of such sequestration, as courts cannot monitor who is observing the transmission.

In addition, crime victims are often reluctant to recount their victimization in a public courtroom, especially those who have been sexually assaulted or those subject to domestic violence. The live streaming of such testimony risks making crime victims even more reluctant to testify and could lead to further trauma or a higher likelihood of retaliation against a victim. The risk of retaliation can also increase for independent witnesses whose testimony is live streamed. This Directive also recognizes a victim's right to be present in person, by phone, virtually by audio or video, or similar technology for all critical stages of the criminal justice process.

Courts are also responsible for protecting the rights of the accused. An individual accused of a crime can be at risk of retaliation because of the mere nature of the charges. An accused individual may also face retaliation for cooperating with the prosecution by testifying against a co-defendant. The live streaming of certain court proceedings could amplify the risk of harm to those individuals. Live streaming could also jeopardize a defendant's right to a fair trial, particularly when identification of the defendant is at issue.

Finally, Problem-Solving Courts throughout the state require participants to expose deeply personal struggles in open court and to discuss their medical diagnoses, treatment, and medication management. The live streaming of these proceedings could inhibit

rehabilitation in those courts.

Over 100 public comments were reviewed and considered in drafting this Directive. It is evident from the comments how many perspectives must be considered when making determinations regarding live streaming. There is no other mechanism to tailor the needs of everyone impacted by live streaming court proceedings than to allow judicial discretion in determining when to expand or limit live streaming on a case-by-case basis. This live streaming Directive seeks to create consistency and transparency and further open most of the day-to-day business of Colorado's criminal courts to the public, while allowing each trial court the discretion not to live stream proceedings where the public's interest is outweighed by the interests of the parties and witnesses.

Subject to the technological capability of a courtroom and staffing levels, a judicial officer shall live stream certain court proceedings pursuant to the guidelines set forth in this Directive.

II. APPLICABILITY

This policy is applicable to all state trial courts.

III. DEFINITIONS

- A. Proceeding – any matter held in open court that the public is entitled to attend in person.
- B. Live Streaming – all live one-way transmission of video and audio coverage of a proceeding over the internet for the purpose of public viewing.
- C. Judicial Officer – the judge or magistrate presiding over the proceeding.
- D. Viewer – any person who is attending the proceedings virtually, either by audio-only or audio-video means.

IV. ACCESS AND LIMITATIONS

A. Access to Live streaming

A judicial officer shall provide live streaming during initial bond setting proceedings and any other criminal proceedings, except those limited by this Directive pursuant to sections IV(B) and IV(C). Judicial officers shall have the discretion to expand or limit the live streaming of proceedings after consideration of the standards set forth in section IV(B).

B. Standards for Expanding and Limiting Live Streaming

A judicial officer may expand or limit live streaming at any time before or during a proceeding. The judicial officer may consider any request to expand or limit live streaming made by parties, alleged victims in the case, or interested third parties. In determining whether live streaming should be expanded or limited, a judicial officer shall consider the following factors:

- i. Whether there is a reasonable likelihood that live streaming would interfere with the rights of the parties to a fair trial;
- ii. Whether there is a reasonable likelihood that live streaming would create any adverse consequence to a party, attorney, victim, or witness;
- iii. Whether there is a reasonable likelihood that live streaming would unduly detract from the solemnity, decorum, and dignity of the court;
- iv. Whether any prior violations of this directive or other rules of the court have occurred in the same matter;
- v. The level of public interest in the case;
- vi. Consideration of the Victim Rights Act, whereby a victim has the right to be present in person, by phone, virtually by audio or video, or similar technology for all critical stages of the criminal justice process; and
- vii. Consideration of the Americans with Disabilities Act, whereby deaf, hard of hearing, and deafblind individuals may request communication access services by completing the standard judicial ADA request form.

C. Express Limitations on Live Streaming

There shall be no presumptive live streaming of the following criminal proceedings. A judicial officer may live stream these criminal proceedings as permitted under sections IV(A) and IV(B) of this Directive:

- i. Evidentiary hearings
- ii. Trials, including jury selection
- iii. Bench conferences
- iv. Communications between counsel and client

- v. In camera hearings
- vi. Problem-solving dockets
- vii. Juvenile delinquency and juvenile direct filings

D. Conditions for coverage

Live streaming coverage shall be conducted only under the following conditions:

- i. The courtroom is equipped with suitable technology to live stream a proceeding and there is sufficient staff to initiate and monitor the live stream. In the event the courtroom is unable to live stream due to connectivity issues, including power outages, network outages, or internet availability, the judicial officer should put the reason for the inability to live stream on the official court record and proceed with the docket.
- ii. Conduct of Viewers. Viewers shall conduct themselves in a manner consistent with the solemnity, decorum, and dignity of the courtroom. If a viewer is disruptive during proceedings, the viewer may be expelled from the live stream or muted by the court without warning and be subject to contempt proceedings.
- iii. Other than the formal record of the proceeding, there shall be no audio or video recording, screenshots, or photos of any live streamed court proceeding without express authorization of the court. Unless a court expressly grants permission, there shall be no unauthorized publishing of any court proceeding. Those who violate this Directive may be subject to contempt proceedings.
- iv. Nothing in this CJD is intended to modify the process for Expanded Media Coverage pursuant to P.A.I.R.R. Rule 3.

V. IMPLEMENTATION AUTHORITY

Implementation of this policy is the responsibility of each judicial officer, with the support of each Chief Judge of the judicial district and the State Court Administrator's Office.

VI. VIRTUAL PROCEEDINGS COMMITTEE CHARGE

The Virtual Proceedings Committee shall continue to meet regularly and, with input from

stakeholders, recommend any modifications of this Directive.

CJD 23-02 is adopted effective May 15, 2023.

 /s/
Brian D. Boatright, Chief Justice