

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2021

In the Matter of Amendments to)
Rule 43.1 of the Wyoming Rules of)
Criminal Procedure)

**ORDER AMENDING RULE 43.1 OF THE WYOMING RULES OF
CRIMINAL PROCEDURE**

The Permanent Rules Advisory Committee, Criminal Division, has recommended that the Court amend Rule 43.1 of the Wyoming Rules of Criminal Procedure. The Court finds the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 43.1 of the Wyoming Rules of Criminal Procedure, attached hereto, be, and hereby are, adopted by the Court to be effective May 15, 2022; and it is further

ORDERED that this order and the amendments be published in the advance sheets of the Pacific Reporter; the amendments be published in the Wyoming Court Rules Volume; and that this order and the amendments be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>, on the "Rule Amendments" page. The amendments shall thereafter be recorded in the journal of this Court.

DATED this 10th day of March, 2022.

BY THE COURT:

/s/

KATE M. FOX
Chief Justice

Wyoming Rules of Criminal Procedure

Rule 43.1. Use of video conferencing.

(a) For purposes of these rules, “video conferencing” means use of communication devices whereby all participants can simultaneously see, hear, and speak with each other. Where video conferencing is allowed under these rules, any person (including a judge) appearing by video conferencing at a proceeding shall be considered present for purposes of the record.

(b) Where these rules permit a criminal proceeding to be conducted by video conferencing, the proceeding may be conducted by audio only, where the available technology is such that only audio is available. Such audio proceedings may be conducted at the discretion of the presiding judge and consistent with due process.

~~(b) At the discretion of the court, the judge and/or the defendant may appear by video conferencing as follows:~~

~~—(1) *Initial appearance.* With or without the defendant's consent, video conferencing may be used at initial appearance, subject to the condition contained in subsection (c)(2) of this rule.~~

~~—(2) *Preliminary examination.* Video conferencing may be used to conduct a preliminary examination under this rule if the defendant consents thereto in writing or on the record. Video conferencing at preliminary examination shall also be subject to the conditions of subsection (c) of this rule.~~

~~—(3) *Arraignment and plea.* Video conferencing may be used to arraign a defendant and to enter any plea, if the defendant consents thereto in writing or on the record. Video conferencing at arraignment shall also be subject to the conditions of subsection (c) of this rule.~~

~~—(4) Video conferencing shall not be used for bench trials, jury trials, or felony sentencing.~~

~~—(5) *Felony probation revocation.* If the defendant consents thereto in writing or on the record, video conferencing may be used for non-evidentiary hearings in felony probation revocation proceedings.~~

~~—(6) *Misdemeanors.* If the defendant consents thereto in writing or on the record, video conferencing may be used to conduct the following proceedings in misdemeanor cases: the defendant may waive his Rule 11 rights, enter a plea, admit to probation revocation allegations pursuant to W.R.Cr.P. 39, and be sentenced at a location other than the court by use of video conferencing. Such use of video conferencing shall be subject to the conditions of subsection (c) of this rule.~~

~~—(7) With or without the defendant's consent, video conferencing may be used for hearings pursuant to W.S. § 7-11-301 et. seq. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.~~

~~—(8) With or without the defendant's consent, video conferencing may be used for hearings on W.R.Cr.P. 35 motions seeking reduction or modification of sentence and for any proceeding where the defendant's presence is not required by W.R.Cr.P. 43. Such use of video conferencing shall be subject to the condition contained in subsection (c)(2) of this rule.~~

(c) The judge, defendant, and counsel for the parties may appear via video conferencing as provided below:

(1) Subject to the conditions contained in subsection (d) of this rule, the following criminal proceedings may, at the discretion of the court, be conducted via video conferencing with the consent of the defendant either in writing or on the record:

- (A) Preliminary examinations
- (B) Misdemeanor bench trials
- (C) Felony sentencings
- (D) Felony bond and probation revocations
- (E) Suppression hearings and use of force in self-defense hearings pursuant to W.S. § 6-2-602.

(2) The following criminal proceedings shall not be conducted by video conferencing: jury trials, felony bench trials. This limitation does not restrict appearance of witnesses by electronic means if authorized by Rule 26(b).

(3) All criminal proceedings not specifically enumerated in subsections (c)(1) or (c)(2) above may, at the discretion of the court, be conducted via video conferencing with or without the consent of the defendant.

~~(e) (d) Conditions regarding counsel.~~ When the defendant appears by video conferencing, the defendant's attorney may appear by video conferencing as well, ~~although the attorney cannot be ordered to so appear. Where a defendant's consent to video conferencing is required, the following shall apply:~~

- ~~–(1) If the defendant's attorney is not present at the defendant's location, video conferencing may be conducted only if the defendant waives the right to have his attorney physically present at defendant's location. Such waiver must be in writing or on the record; and~~
- ~~–(2) If the defendant's attorney is not present at the defendant's location, the defendant and the defendant's attorney have the right to consult privately with one another and may request a recess to do so if the opportunity does not exist during the course of the proceeding. The defendant may waive the right to consult privately with counsel during the hearing.~~

~~(d) (e) Judge appearing by video conferencing.~~ For any proceeding in which the defendant appears by video conferencing, the judge may appear by remote video conferencing, *i.e.*, from a location other than the courthouse where the case would be tried. For any proceeding where video conferencing is permitted under these rules and the defendant has not, where required, consented to video conferencing, the judge may be present for the proceeding by video conferencing if the defendant consents in writing or on the record to the judge being so present.
