

***IN THE SUPREME COURT, STATE OF WYOMING***

*April Term, A.D. 2018*

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*In the Matter of Amendments to* )  
*Rules 5; 5.1; 10; 43 and 46.1 of the* )  
*Wyoming Rules of Criminal Procedure* )

**ORDER AMENDING RULES 5; 5.1; 10; 43; AND 46.1 OF THE  
WYOMING RULES OF CRIMINAL PROCEDURE**

**The Board of Judicial Policy and Administration** and its Court Technology Committee, following consultation with the Criminal Division of the Permanent Rules Advisory Committee, recommend that this Court amend Rules 5; 5.1; 10; 43; and 46.1 of the Wyoming Rules of Criminal Procedure, to allow for videoconferencing in certain circumstances. The Court finds the proposed amendments should be adopted. It is, therefore,

**ORDERED** that the amendments to Rules 5; 5.1; 10; 43; and 46.1 of the Wyoming Rules of Criminal Procedure, attached hereto, be and hereby are adopted by the Court to be effective January 1, 2019; and it is further

**ORDERED** that this order and the amendments be published in the advance sheets of the Pacific Reporter; the amendments to 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>. The amendments shall thereafter be spread at length upon the journal of this Court.

**DATED** this 21<sup>st</sup> day of August, 2018.

**BY THE COURT:**

/s/

**MICHAEL K. DAVIS**  
Chief Justice

## Wyoming Rules of Criminal Procedure

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### Rule 5. Initial appearance.

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(a) *Initial appearance before a judicial officer.* A person arrested and in custody shall be taken without unnecessary delay for appearance before a judicial officer of the court from which the warrant issued or if no warrant has issued before a judicial officer of the court where the charging document will be filed, with the initial appearance to be in person or by ~~real-time electronic means~~ video conferencing, at the discretion of the judicial officer. Use of video conferencing at initial appearance shall be governed by W.R.Cr.P. 43.1(b)(1). A person arrested without a warrant shall be released from custody unless probable cause for the arrest is established to the satisfaction of a judicial officer without unnecessary delay, but in no more than 72 hours. When a person arrested without a warrant is brought before a judicial officer an information or citation shall be filed at or before the initial appearance and, unless a judicial officer has previously found probable cause for the arrest, probable cause shall be established by affidavit or sworn testimony. When a person, arrested with or without a warrant or given a summons, appears initially before the judicial officer, the judicial officer shall proceed in accordance with the applicable subdivision of this rule.

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### Rule 5.1. Preliminary examination.

(a) ~~Right~~ – Examination. In all cases required to be tried in the district court, except upon indictment, the defendant shall be entitled to a preliminary examination in the circuit court. Use of video conferencing at preliminary examination shall be governed by W.R.Cr.P. 43.1(b)(2). The defendant may waive preliminary examination but the waiver must be written or on the record. If the preliminary examination is waived, the case shall be transferred to district court for further proceedings.

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### Rule 10. Arraignment.

Arraignments shall be conducted in open court and shall consist of reading the indictment, information or citation to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant shall be given a copy of the indictment, information or citation before being called upon to plead. Use of video conferencing at arraignment shall be governed by W.R.Cr.P. 43.1(b)(3).

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### Rule 43. Presence of defendant.

(a) *Presence required.* — The defendant shall be present at the initial appearance, at the preliminary examination, 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 further progress of the trial to and including the return of the verdict shall not be prevented and the defendant shall be considered to have waived the right to be present whenever a defendant, initially present:

(1) Is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during the trial); or

(2) After being warned by the court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

(c) *Presence Not Required.* A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes;

(2) In prosecutions for offenses punishable by fine or by imprisonment for not more than one year or both, the court, with the written consent of the defendant, may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence;

(3) At a conference or argument upon a question of law; and

(4) At a reduction of sentence under Rule 35.

#### **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) 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 sentencings.

(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) Conditions regarding counsel. When the defendant appears by video conferencing, the defendant's attorney may 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) 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.

**Rule 46.1. Pretrial release.**

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(g) A defendant who has appeared by video conference before a court outside the county within the State of Wyoming of their arrest or incarceration, and who has had bond set, shall be allowed 24 hours to post the bond and obtain release before being transported to the county from where the original warrant issued.

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