

STANDING ORDER BENNINGTON CRIMINAL DIVISION

Paragraph 5 of Administrative Order 49 concerning remote hearings was deleted effective September 6, 2022. The Reporter's Notes regarding the change provided that remote participation in criminal proceedings will now be governed Rule 43 of the Vermont Rules of Criminal Procedure (V.R.Cr.P.) and by Administrative Order No. 38. Pursuant to the most recent amendments to A.O. 38:

Non-evidentiary hearings: In non-evidentiary hearings such as status conferences and other proceedings where the presence of the defendant is not required by law under Rule 43 of the Vermont Rules of Criminal Procedure (V.R.Cr.P.), on its own motion, the court may: (1) preside remotely; (2) require parties, witnesses, counsel or other necessary persons to participate remotely by audio or video conference upon reasonable notice.

Evidentiary hearings: In evidentiary hearings, including jury or court trials, including jury draw proceedings, contested violation of probation hearings on the merits, sentencing hearings and contested hearings involving witnesses whom the defendant has the right to cross examine, the court may: (1) preside remotely; (2) use audio or video technology to effect the appearance of parties upon agreement of the parties. In determining whether to allow a witness to provide testimony by remote audio or video by agreement of the parties, the court will consider the factors in Rule 43.1(c) and (d) of the Vermont Rules for Civil Procedure (V.R.C.P.). V.R.Cr.P. 43 still requires a defendant's waiver of the right to be physically present after opportunity to consult with counsel.

The expectation in the Bennington Unit, Criminal Division is that the following criminal proceedings will require in person participation of the State, Defendant and Defendant's counsel unless a stipulation or motion is filed and approved:

- arraignments, VOP Rule 5; extradition
- jury draws;
- jury and court trials;
- contested evidentiary VOP merits hearings;
- contested evidentiary motion hearings (final civil suspension hearings will be in person subject to V.R.C.P. 43.1(c) and (d));
- change of plea and sentencing;
- competency hearings;

The following criminal proceedings that do not require in person participation by the parties, such that they may participate remotely without the need for a motion are:

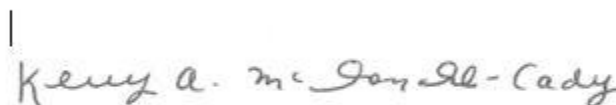
- status conferences;
- calendar calls;
- lodged Rule 5 emergency arraignments;
- attorney or appear;
- pretrials;

Masks are not required in the courtroom unless otherwise ordered by the Court. The Court will consider factors including but not limited to the local community COVID-19 transmission rates, the number of people in the courtroom and the specialized needs of attorneys, parties, witnesses and jurors.

This standing order shall take effect October 17, 2022.

Dated October 4, 2022.

Electronically signed pursuant to V.R.E.F. 9(d).

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Kerry A. McDonald-Cady, Superior Court Judge