

IN THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 1951

Amending Criminal Rules 10(a) and 11(a) to add a conforming change related to the direct court rule amendments made by Chapter 4 FSSLA 2019 (HB 49);

Amending Criminal Rule 38(a)(2) to add cross-reference to Criminal Rule 38.2; and

Amending Criminal Rule 38.2 and adding Note to implement the direct court rule amendments made by Chapter 4 FSSLA 2019 (HB 49), add clarifying language, eliminate videoconference agreements, and allow the administrative director to approve videoconference systems.

IT IS ORDERED:

1. Criminal Rule 10(a) is amended to read as follows:

Rule 10. Felony Arraignment in Superior Court.

(a) Generally. Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead thereto. The defendant may appear by use of telephonic or [contemporaneous two-way videoconference television](#) equipment pursuant to Criminal Rules 38.1 and 38.2.

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2. Criminal Rule 11(a) is amended to read as follows:

Rule 11. Pleas.

(a) **Alternatives.** A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead, stands mute, or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. The defendant may appear by use of telephonic or contemporaneous two-way videoconference ~~television~~—equipment pursuant to Criminal Rules 38.1 and 38.2.

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3. Criminal Rule 38 is amended to read as follows

Rule 38. Presence of the Defendant.

(a) **Presence Required.** A defendant charged with a felony offense shall be present at a felony first appearance, an arraignment, any hearing where evidence will be presented, a change of plea hearing, at every stage of trial, including the impaneling of the jury and return of the verdict, at a sentencing hearing, and at a hearing on an adjudication or disposition for a petition to revoke probation.

(1) The defendant shall be physically present for every hearing at which evidence will be presented and all stages of the trial including the impaneling of the jury and return of the verdict; but

(2) Unless Rule 38.2 applies, the ~~The~~—defendant may elect to be present by telephone or by videoconference at any other proceeding, subject to the approval of the court.

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4. Criminal Rule 38.2(a) and (b) is amended to read as follows:

Rule 38.2. Videoconference ~~Televised~~ Appearance by Defendant.

(a) The Administrative Director of the Alaska Court System, after consultation with the presiding judge, Public Defender Agency, ~~and~~ Attorney General's Office, ~~may enter into agreements with the~~ Department of Public Safety, and Department of Corrections, ~~which~~ may approve systems allowing judges to provide for the appearance by a defendant at certain criminal proceedings by way of contemporaneous two-way videoconference ~~television~~ equipment in lieu of the physical presence of the defendant in the courtroom. Any approved system ~~Such an agreement~~ must provide for a procedure by which the defendant may confer with the defendant's attorney in private.

(b) In those court locations in which an approved system is in place ~~a television system has been approved by the supreme court and has been installed~~, in-custody defendants shall appear by way of contemporaneous two-way videoconference ~~television~~ for arraignment, pleas, and non-evidentiary bail reviews in traffic and misdemeanor cases; and initial appearance hearings, non-evidentiary bail reviews, and not guilty plea arraignments in felony cases, unless otherwise ordered for cause stated by the presiding judge. With the defendant's consent, sentencings may be done by way of contemporaneous two-way videoconference ~~television~~ in traffic and misdemeanor cases. Notwithstanding Criminal Rule 38(a)(2), the court may order a defendant to appear by contemporaneous two-way videoconference at any other hearings.

In any particular case, the trial court may order that the defendant be transported to court for court proceedings if the trial judge

finds that the defendant's rights would be prejudiced by use of the system.

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5. The following note is added to the end of Criminal Rule 38.2:

Note: Chapter 4, FSSLA 2019 (HB 49) enacted a number of changes relating to criminal procedure. Sections 136 and 137 of the Act amended paragraphs (a) and (b) to replace "television" with "contemporaneous two-way videoconference." Section 137 also added a provision that the court may order the defendant to appear by contemporaneous two-way videoconference at any other hearing. This rule change is adopted for the sole reason that the legislature has mandated the amendment.

DATED: July 25, 2019

EFFECTIVE DATE: *nunc pro tunc* July 9, 2019

/s/
Chief Justice Bolger

/s/
Justice Winfree

/s/
Justice Stowers

/s/
Justice Maassen

/s/
Justice Carney