

Rule 43. Defendant's Presence

(a) WHEN REQUIRED. Unless this rule, Rule 5, or Rule 10 provides otherwise, the defendant must be present at:

- (1) the initial appearance, the initial arraignment, and the plea;
- (2) every trial stage, including jury impanelment and the return of the verdict; and
- (3) sentencing.

(b) WHEN NOT REQUIRED. A defendant need not be present under any of the following circumstances:

(1) *Organizational Defendant*. The defendant is an organization represented by counsel who is present.

(2) *Misdemeanor Offense*. The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur by video teleconferencing or in the defendant's absence.

(3) *Conference or Hearing on a Legal Question*. The proceeding involves only a conference or hearing on a question of law.

(4) *Sentence Correction*. The proceeding involves the correction or reduction of sentence under Rule 35.

(c) WAIVING CONTINUED PRESENCE.

(1) *In General*. A defendant who was initially present at trial waives the right to be present under the following circumstances:

(A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;

(B) when the defendant is voluntarily absent during sentencing; or

(C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

(2) *Waiver's Effect*. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

COMMENT TO 2017 AMENDMENTS

This rule incorporates the 2011 amendment to *Federal Rule of Criminal Procedure* 43. Subsection (b)(2) has been amended to permit proceedings in misdemeanor cases to occur by video teleconference, if the defendant consents in writing and the court approves.

COMMENT TO 2016 AMENDMENTS

This rule has been redrafted to conform to the general restyling of the federal rules in 2002. It is identical to the federal rule except that subparagraph (c)(1)(B) omits the phrase "in a noncapital case" since there are no such cases in Superior Court.

The former Superior Court rule did not permit the court to impose sentence on a defendant who was voluntarily absent. As amended, this rule does permit it, and so conforms to the changes made in the federal rule in 1995.