

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED)	NOTICE OF SPECIAL
AMENDMENTS TO VARIOUS SECTIONS)	RULES HEARING
TO AUTHORIZE THE EXPANDED USE OF)	
INTERACTIVE AUDIOVISUAL DEVICES;)	NO. 143
IN THE MATTER OF THE PROPOSED)	
AMENDMENTS TO SDCL 15-6-45 (a);)	
IN THE MATTER OF THE PROPOSED)	
REPEAL OF SDCL 23A-44-5.1)	

Petitions for amendments of existing sections of the South Dakota Codified Laws and adoption of a new rule having been filed with the Court, and the Court having determined that the proposed amendments and adoption should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON NOVEMBER 17, 2020, at 9:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Adoption to amend various sections to authorize the expanded use of interactive audiovisual devices.

Section 1. That § 15-5A-9 be amended as follows:

At the discretion of the court, interactive audiovisual devices may be used to conduct an arraignment, an initial appearance on a probation revocation petition, a probation revocation hearing, any non-evidentiary based motion hearing, a felony plea hearing or a sentencing hearing. Use of interactive audiovisual device will not be permitted to conduct ~~any felony plea hearings, any stage of a trial, felony sentencing, or probation revocation hearing~~ unless all parties to the proceeding stipulate to the use of the interactive audiovisual device. ~~for one of the aforementioned purposes.~~ The judge presiding over the matter always retains the discretion not to allow an appearance by interactive audiovisual device if the judge believes that to do so would prejudice any party to the proceeding.

Section 2. That § 23A-39-1 be amended as follows:

(Rule 43 (a)) Presence required at all times except as provided. A defendant shall be present at his arraignment, at the time of his plea, at every stage of his trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as provided by §§ 23A-39-2 and 23A-39-3. For purposes of this rule a defendant's presence shall include participation via interactive audiovisual device for purposes of an arraignment, plea hearing or sentencing hearing.

Section 3. That a new section to chapter 23A be added as follows:

For the purposes of 23A-7-1 and 23A-7-2 the term "open court" shall include participation via an interactive audiovisual device for any court proceeding accessible to the public.

23A-7-1. (Rule 10) Arraignment in open court--Procedure--Verification or correction of name--Copy given to defendant. An arraignment shall be conducted in open court, except that an arraignment for a Class 2 misdemeanor may be conducted in chambers, and shall consist of reading the indictment, information, or complaint, as is applicable, to the defendant or stating to him the substance of the charge and calling on him to plead thereto.

A defendant must be informed that if the name in the indictment, information, or complaint is not his true name, he must then declare his true name or be proceeded against by the name given in the indictment, information, or complaint. If he gives no other name, the court may proceed accordingly. If he alleges that another name is his true name, he shall be proceeded against pursuant to § 23A-6-20. He shall be given a copy of the indictment, information, or complaint, as is applicable, before he is called upon to plead.

23A-7-2. (Rule 11(a)) Pleas permitted to defendant--Requirements for plea of guilty or nolo contendere. A defendant may plead:

- (1) Not guilty;
- (2) Not guilty and not guilty by reason of insanity;
- (3) Guilty;
- (4) Nolo contendere; or
- (5) Guilty but mentally ill.

Except as otherwise specifically provided, a plea of guilty or nolo contendere can only be entered by a defendant himself in open court. If a defendant refuses to plead, or if the court refuses to accept a plea of guilty or nolo contendere, the court shall enter a plea of not guilty. The court may not enter a judgment unless it is satisfied that there is a factual basis for any plea except a plea of nolo contendere.

Explanation for Proposal

The proposed rule changes are submitted by the Presiding Judges Council to authorize the expanded use of interactive audiovisual devices. The use of interactive audiovisual devices in court proceedings have expanded in response to the COVID-19 pandemic and have proven to be highly successful. The use of interactive audiovisual devices increases public safety in the courthouse, reduces the need for prisoner transports, reduces time associated with travel and a personal appearance at the courthouse and allows for the efficient administration of justice. The proposals are not based on any other federal or state rule.

2. Proposed Amendment of 15-6-45(a). Subpoena for attendance of witnesses--Form--Issuance.

Clerks of courts, judges, magistrates, notaries public, referees, and any other public officer or agency so empowered by § 1-26-19.1 or otherwise authorized by law in any matter pending before them, upon application of any person having a cause or any matter pending in court or before such agency, officer or tribunal, may issue a subpoena for a witness or witnesses to appear and give testimony and to produce records, books, papers and documents.

Any attorney of record who has been duly admitted to practice in this state and is in good standing upon the active list of attorneys of the State Bar of South Dakota may issue a subpoena for a witness or witnesses, and for production, inspection and copying of records and exhibits, in any action or proceeding, or collateral hearing, civil or criminal, in which he is the attorney of record for any party. When an attorney issues a subpoena, he must forthwith transmit a copy thereof to the clerk of the court, or to the secretary or other filing officer of the board or tribunal in which the matter is pending, for filing. Such officer shall file such copy as one of the public records of the action or proceeding.

A subpoena shall state the name of the court, or tribunal, the title of the action or proceeding, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. It shall state the name of the person or

party for whom the testimony of the witness is required. The seal of the court or officer, or tribunal, shall be affixed to the original and all copies, if issued by a court or officer having a seal. If the subpoena is issued by an attorney, it shall be issued in the name of the presiding officer of the court, or tribunal in which the matter is pending and shall be attested and signed by the attorney, designating the party for whom he is attorney of record.

Explanation for Proposal

The proposal by the State Court Administrator's Office is intended to clarify that a subpoena issued by a clerk of court, judge, magistrate, notary public or referee may compel a witness to appear and give testimony and to produce records, books, papers and documents. This clarifies the above section which only has a reference to the production of documents for an attorney issued subpoena and ensures that § 15-6-45(a) and § 15-6-45(b) are read together related to the subpoena power for documentary evidence when a subpoena is issued by a clerk of court, judge, magistrate, notary public or referee. The proposal is not based on any other federal or state law.

15-6-45(b). Subpoena for production of documentary evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may:

- (1) Quash or modify the subpoena if it is unreasonable and oppressive; or
- (2) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

3. Proposed Repeal of 23A-44-5.1. ~~Time allowed for disposition of criminal case--Periods excluded--Dismissal.~~

- ~~1) Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days, and such time shall be computed as provided in this section.~~
- ~~(2) Such one hundred eighty day period shall commence to run from the date the defendant has first appeared before a judicial officer on an indictment, information or complaint.~~
- ~~(3) If such defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such~~

~~period shall commence to run from the date of the mistrial, filing of the order granting a new trial, or the filing of the mandate on remand.~~

~~(4) The following periods shall be excluded in computing the time for trial:~~

~~(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions brought under § 23A-8-3; motions for a change of venue; and the time consumed in the trial of other charges against the defendant;~~

~~(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;~~

~~(c) The period of delay resulting from a continuance granted by the court at the request of the prosecuting attorney if the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date and provided a written order is filed;~~

~~(d) The period of delay resulting from the absence or unavailability of the defendant;~~

~~(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant shall be granted a severance so that he may be tried within the time limits applicable to him;~~

~~(f) The period of delay resulting from a change of judge or magistrate obtained by the defendant under chapter 15-12; and~~

~~(g) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause. A motion for good cause need not be made within the one hundred eighty day period.~~

~~(5) If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed. Unless the prosecuting attorney rebuts the presumption of prejudice, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged.~~

Explanation for Proposal

The proposal would strike the requirements of 23A-44.51. in its entirety for time allowed for disposition of criminal cases.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and five copies thereof filed with the Clerk of the Supreme Court no later than November 6, 2020. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoption or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://uj.s.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

DATED at Pierre, South Dakota this 14th day of October, 2020.

BY THE COURT:

ATTEST

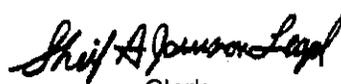


Clerk of the Supreme Court
(SEAL)



David Gilbertson, Chief Justice
SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

OCT 14 2020


Clerk