

RULE 119. USE OF TWO-WAY SIMULTANEOUS AUDIO-VISUAL COMMUNICATION
IN CRIMINAL PROCEEDINGS.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

- (1) preliminary hearings;
- (2) proceedings pursuant to Rule 569(A)(2)(b);
- (3) trials;
- (4) sentencing hearings;
- (5) parole, probation, and intermediate punishment revocation hearings; and
- (6) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

(B) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

(C) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

COMMENT: This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. See, e.g., Rule 602 *Comment*. Negotiated guilty pleas when the defendant has agreed to the sentence, **[and] probation revocation hearings, and hearings held pursuant to Rule 908(C) and the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 et seq.**, are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings,

bench warrant hearings, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

Within the meaning of this rule, counsel is present when physically with the defendant or with the judicial officer conducting the criminal proceeding.

This rule does not apply to preliminary arraignments (Rule 540), arraignments (Rule 571), or to search warrant (Rule 203) and arrest warrant (Chapter 5 Part B(3)) procedures.

This rule is not intended to preclude the use of advanced communication technology for the preservation of testimony as permitted by Rules 500 and 501.

See Rule 542 for the procedures governing preliminary hearings.

See Chapter 6 for the procedures governing trials.

See Chapter 7 for the procedures governing sentencing hearings.

See Rule 708 for the procedures governing revocation of probation, intermediate punishment, and parole.

The paragraph (A)(5) reference to revocation hearings addresses *Gagnon II*-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (*Gagnon I*).

NOTE: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and *Comment* revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006 **[.] ; Comment revised May 4, 2009, effective August 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 118 published with the Court's Order at 33 Pa.B. 830 (August 30, 2003).

Final Report explaining the June 30, 2005 renumbering of Rule 118 as Rule 119 and the revision of the second paragraph of the Comment published at 35 Pa.B. 3901 (July 16, 2005).

Final Report explaining the January 27, 2006 amendments adding Rule 569 proceedings as a proceeding for which ACT may not be used published with the Court's Order at 36 Pa.B. 694 (February 11, 2006).

Final Report explaining the May 4, 2009 revision to the Comment adding PCRA hearings as a proceeding to which the defendant may consent to be held using ACT published with the Court's Order at 39 Pa.B. (_____, 2009).