

1 S.12

2 Introduced by Senator Illuzzi of Essex-Orleans District

3 Referred to Committee on

4 Date:

5 Subject: Criminal procedure; presence of defendant or offender in court;
6 interactive technology

7 Statement of purpose: This bill proposes that the physical presence of a
8 defendant or offender not be required at any court hearing where no evidence
9 is taken, or at any hearing at which the court in its discretion believes that
10 testimony may be taken using interactive technology. The bill proposes that
11 the Vermont supreme court effectuate this policy by rule otherwise. If the
12 court does not take action on the issue by September 1, 2009, the bill would
13 take effect and the policy would be implemented by the general assembly.

14 AN ACT RELATING TO NOT REQUIRING THE PHYSICAL
15 PRESENCE OF A DEFENDANT OR OFFENDER AT CERTAIN
16 COURT PROCEEDINGS

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. FINDINGS

19 The general assembly finds:

20 (1) Since 1993, the general assembly has expressed concern at the
21 increasing cost of transporting defendants and offenders in state custody from

1 correctional facilities to courts. The financial burden on the ability of the state
2 to pay for such transports has dramatically increased over the past several
3 years. There is also a heightened concern regarding the generation of
4 greenhouse gases and carbon emissions as a result of the number of transports.

5 (2) The general assembly intends to continue to preserve the due
6 process rights granted by the United States and Vermont Constitutions to
7 defendants and offenders in state custody, but in case-appropriate
8 circumstances to preserve these rights through the use of available interactive
9 technologies now deployed with great success in other states and countries.

10 (3) Many court hearings can be held without the physical presence of
11 defendants and offenders in the courtroom. Some hearings, such as status
12 conferences, pre-trial conferences, calendar calls, and other similar events, can
13 be held without the participation of the defendant or offender, while many
14 others may be held with the use of telephone, IPTV, VoIP, or other interactive
15 technology.

16 Sec. 2. Vermont Rule of Criminal Procedure 43.1 is added to read:

17 RULE 43.1. PRESENCE OF DEFENDANT OR OFFENDER IN STATE

18 CUSTODY

19 (a) "Presence" as used in Rule 43 shall include presence via any interactive
20 technology from an in-state or out-of-state correctional facility. Presence shall
21 not be required for any hearing where no issue of fact necessitates the taking

1 of evidence. Presence shall not be required if the court in its discretion
2 believes that testimony may be taken using an interactive technology.

3 (b) Physical presence of a defendant or offender in state custody shall be
4 required for a change of plea hearing or jury drawing, even though no issue of
5 fact necessitates the taking of evidence. The defendant or offender may
6 waive his or her presence at either or both events, as may the court for good
7 cause.

8 (c) Within five days after receiving a scheduling notice, the attorney
9 representing a defendant or offender in state custody shall notify the court on a
10 form prescribed by the court administrator whether the physical presence of the
11 individual is required. The attorney shall indicate whether he or she is
12 requesting the presence of the defendant via telephone or, if available at the
13 court where the appearance is scheduled, a combination of audio and video.

14 (d)(1) Except as provided in subdivision (2) of this subsection, if a party or
15 the court requests the physical presence of a defendant or offender at a
16 nonevidentiary hearing, proceeding, or event, the attorney requesting the
17 physical presence of the defendant or offender shall pay for the charges and costs
18 incurred for transportation of the individual. The sheriff's department shall bill
19 the attorney and file a copy in the defendant's or offender's file.

20 (2) The court may for good cause relieve the requesting party's attorney
21 from paying the charges and costs incurred for transportation of the defendant

1 or offender, in which case the charges and costs shall be paid by the court
2 administrator's office. If the court issues an order under this subdivision, the
3 court clerk shall forward the invoice to the court administrator's office for
4 payment of the charges and costs.

5 (e) The court may modify the requirements of this rule for a defendant or
6 offender who is in state custody and is representing himself or herself pro se.

7 Sec. 3. EFFECTIVE DATE

8 (a) Unless subsection (b) of this section applies, this act shall take effect on
9 September 1, 2009.

10 (b) This act shall not take effect if, by September 1, 2009, the Vermont
11 Supreme Court effectuates the purpose of the act by revising Rule 43 of the
12 Vermont Rules of Criminal Procedure, promulgating other rules, or taking
13 some other action. The court may promulgate comparable rules for the
14 presence of a defendant or offender who is not in state custody, the presence of
15 a witness in state custody at an evidentiary hearing, and the presence of a party
16 or witness in a family proceeding.