

HOUSE BILL NO. 116

INTRODUCED BY V. MOORE

BY REQUEST OF THE OFFICE OF PUBLIC DEFENDER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ATTORNEYS TO APPEAR REMOTELY IN COURT; ESTABLISHING THAT PUBLIC DEFENDERS MAY APPEAR REMOTELY IN NONSUBSTANTIVE HEARINGS; PROVIDING THAT A COURT MAY ORDER AN ATTORNEY TO APPEAR IN PERSON IF GOOD CAUSE EXISTS; AND PROVIDING DEFINITIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Remote appearance by counsel -- definitions.** (1) All courts shall establish a consistent, predictable process for attorneys to appear remotely in court.

(2) (a) Except as provided in subsection (2)(b), an attorney assigned pursuant to 47-1-104(4) who is appearing in court for a nonsubstantive hearing may appear remotely. IF APPEARING REMOTELY, THE ATTORNEY SHALL USE A CAMERA TO APPEAR ONSCREEN.

(b) A court may order an attorney to appear in person for a specific nonsubstantive hearing if the court finds good cause for the attorney's personal presence and issues an order providing the legal and factual basis for good cause at least 5 business days before the specified hearing.

(c) For the purposes of this subsection (2), the term "good cause" includes a court's lack of available technological resources or capacity to accommodate having the attorney appear remotely.

(3) As used in this section, the following definitions apply:

(a) "Appear remotely" means to participate in a hearing through the use of two-way electronic audio-video communication that allows:

(i) all of the participants to be heard in the courtroom by all present and allows the party speaking to be seen; and

(ii) a defendant or person represented by counsel assigned pursuant to 47-1-104(4) to see and communicate privately with the defendant's or person's attorney.

(b) "Nonsubstantive hearing" means a court event in which the substantive outcome of the matter will not be decided during the event, including:

- (i) arraignments and initial appearances;
- (ii) bond and bail hearings;
- (iii) status hearings, conferences, and court check-ins;
- (iv) hearings for the purpose of scheduling;
- (v) omnibus hearings;
- (vi) calendar calls; and
- (vii) other hearings in which substantive arguments or testimony will not be heard.

NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 3, and the provisions of Title 3, chapter 1, part 3, apply to [section 1].

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