

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 are~~ encouraged to establish a consistent, predictable process for attorneys to appear remotely in court and are encouraged to develop formal practice standards for remote representation.

(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

1 communicate privately with the defendant's or person's attorney.

2 (b) "Nonsubstantive hearing" means a court event in which the substantive outcome of the matter

3 will not be decided during the event, including:

4 (i) arraignments and initial appearances;

5 (ii) bond and bail hearings;

6 (iii) status hearings, conferences, and court check-ins;

7 (iv) hearings for the purpose of scheduling;

8 (v) omnibus hearings;

9 (vi) calendar calls; and

10 (vii) other hearings in which substantive arguments or testimony will not be heard.

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12 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an
13 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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