

## 1 HOUSE BILL NO. 210

2 INTRODUCED BY SHOCKLEY

3 BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING AN APPEAL TO DISTRICT COURT BASED UPON  
6 THE DENIAL OF A MOTION TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BY A COURT  
7 OF LIMITED JURISDICTION; PROVIDING A TIME FOR AN APPEAL; AMENDING SECTIONS 46-17-203 AND  
8 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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10 WHEREAS, the concurring opinion in State v. Boucher, 2002 MT 114, 309 Mont. 114, 48 P.3d 21 (2002),  
11 urges the Legislature to give the District Courts authority to entertain direct appeals from courts of limited  
12 jurisdiction in cases in which the defendant claims that a guilty plea was not voluntary.

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

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16 **Section 1.** Section 46-17-203, MCA, is amended to read:

17 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or  
18 during trial, a plea of guilty or nolo contendere may be accepted when:

19 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere  
20 in open court; and

21 (b) the court has informed the defendant of the consequences of the plea and of the maximum penalty  
22 provided by law that may be imposed upon acceptance of the plea.

23 (2) (a) A Subject to subsection (2)(b), a plea of guilty or nolo contendere in a justice's court, city court,  
24 or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be  
25 informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to  
26 ensure that the plea and waiver are entered voluntarily.

27 (b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily MAY  
28 MOVE TO WITHDRAW THE PLEA. IF THE MOTION TO WITHDRAW IS DENIED, THE DEFENDANT may, WITHIN 90 DAYS OF THE  
29 DENIAL OF THE MOTION, appeal the denial of a motion to withdraw the plea to district court. The district court may  
30 appoint counsel, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision

1 affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction.

2 The district court may remand the case, or the defendant may appeal the decision of the district court.

3 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor  
4 offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video  
5 communication, allowing all of the participants to be observed and heard in the courtroom by all present, is  
6 considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may  
7 be used if neither party objects and the court agrees to its use. The audio-video communication must operate  
8 as provided in 46-12-201."

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10 **Section 2.** Section 46-17-311, MCA, is amended to read:

11 **"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in  
12 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for  
13 appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district  
14 court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal  
15 from a municipal court to the district court is governed by 3-6-110.

16 (2) The defendant may appeal to the district court by filing written notice of intention to appeal within  
17 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided  
18 in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the  
19 date that the order complained of is given. The prosecution may appeal only in the cases provided for in  
20 46-20-103.

21 (3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of  
22 limited jurisdiction to the district court.

23 (4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the  
24 district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury  
25 trial is not available in a sentence revocation procedure."

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27 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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29 NEW SECTION. **Section 4. Applicability.** [This act] applies to denial of motions to withdraw pleas of  
30 guilty or nolo contendere entered on or after [the effective date of this act].

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