



SENATE JUDICIARY
Exhibit No. HB 280 1
Date 3-7-05
Bill No. HB 280

MONTANA ADVOCACY PROGRAM

The Civil Rights Protection & Advocacy System for the State of Montana

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March 7, 2005

Senate Judiciary Committee
Senator Mike Wheat, Chairman

RE: HB 280, Audio-video hearings in all arraignments, change of plea and sentencing hearings

Dear Mr. Chairman and Members of the Committee,

The Montana Advocacy Program is very concerned that this legislation will impair the right of defendants in criminal proceedings to counsel, to be present at critical stages of criminal proceedings and to due process.

MAP believes that by expanding the use of video hearings to felony change of plea and sentencing proceedings, HB 280 will result in unsound judgments and sentences, easily challenged under the Montana and U.S. Constitutions.

MAP is particularly concerned about the disproportionate impact these hearings will have on people with disabilities. As the Committee knows, people with mental illness are already disproportionately represented in the criminal justice and correctional systems. Video hearings will be particularly unfair to people experiencing the perceptual, organizational, memory and other cognitive problems that often accompany schizophrenia, bipolar disorder and severe depression or that may be caused by the medications used to treat these disorders.

In addition, the criminal justice system deals with great numbers of individuals with severe cognitive limitations and low levels of literacy, with fetal alcohol syndrome or fetal alcohol effect, and with other forms of brain disfunction.

In MAP's experience, people in the criminal justice system whose cognitive functions are affected by any these disorders tend to be reluctant to admit their limitations and often do not recognize them at all. They are unlikely to insist on being present in court in order to improve their chances of effectively participating in and understanding a change of plea or sentencing proceeding.

Yet if HB 280 is passed, these clients may never actually see the judge or even see their counsel, since every stage of the proceeding, from arraignment to pronouncement of sentence, may be conducted by video conference.

MAP is concerned that the limited insight these individuals gain in video proceedings will be matched by the lack of insight the judge will gain by viewing defendants on a small screen. In front of a video camera and without the benefit of the presence of counsel, they are more likely to make a poor impression on the judge—to appear flippant or disrespectful or defiant—than defendants without cognitive impairments.

MAP respectfully requests that the Committee not approve this bill's expansion of video hearings to felony change of plea and sentencing proceedings because there is no effective way to ensure that video proceedings will be fair to people with mental disabilities.

However, if the Committee decides to approve this bill in some form, than MAP asks that the Committee amend the bill to increase the procedural protections in the bill as follows:

Require that Defendant's waiver in court must be in writing, signed in the presence of his counsel, and filed with the court before the commencement of the video hearing.

Require that counsel for Defendant must be physically present with Defendant in the same place for all change of plea and sentencing proceedings, and that this requirement cannot be waived by defendant.

Provide that sentencing proceedings may only be conducted by video hearing when the Court is bound by the sentencing recommendation recited in a plea agreement that was reviewed and signed by Defendant in the presence of counsel.

Thank you for considering these matters.

Yours truly,



Anita Roessmann
Staff Attorney