

SENATE BILL NO. 163

INTRODUCED BY J. SHOCKLEY

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT ACCEPTANCE OF A NOLO CONTENDERE PLEA IN A CRIMINAL CASE IS CONDITIONED UPON THE CONSENT OF THE COURT AND THE PROSECUTOR; AND AMENDING SECTIONS 46-12-211 AND 46-16-105, MCA."

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

Section 1. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.

(1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or the acceptance of a plea of nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

- (a) move for dismissal of other charges;
- (b) agree that a specific sentence is the appropriate disposition of the case; or
- (c) make a recommendation; for a particular sentence or agree not to oppose the defendant's request; for a particular sentence; with the understanding that the recommendation or request may not be binding upon the court.

(2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

1 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall,
 2 on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea
 3 agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the
 4 defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the
 5 defendant than that contemplated by the plea agreement.

6 (5) For purposes of this section, a disclosure of the agreement through the use of two-way electronic
 7 audio-video communication, allowing all of the participants to be heard in the courtroom by all present and
 8 allowing the party speaking to be seen, is considered to be a disclosure in open court. Audio-video
 9 communication may be used if neither party objects and the court agrees to its use and has informed the
 10 defendant that the defendant has the right to object to its use. The audio-video communication must operate as
 11 provided in 46-12-201."
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13 **Section 2.** Section 46-16-105, MCA, is amended to read:

14 **"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or
 15 during trial, a plea of guilty ~~or nolo contendere~~ must be accepted and a plea of nolo contendere may be accepted,
 16 with the consent of the court and the prosecutor, when:

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

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

21 (2) At any time before judgment or, except when a claim of innocence is supported by evidence of a
 22 fundamental miscarriage of justice, within 1 year after judgment becomes final, the court may, for good cause
 23 shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty to be substituted. A
 24 judgment becomes final for purposes of this subsection (2):

25 (a) when the time for appeal to the Montana supreme court expires;

26 (b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States
 27 supreme court for review expires; or

28 (c) if review is sought in the United States supreme court, on the date that that court issues its final order
 29 in the case.

30 (3) For purposes of this section, an entry of a plea of guilty or nolo contendere through the use of

1 two-way electronic audio-video communication, allowing all of the participants to be heard in the courtroom by
2 all present and allowing the party speaking to be seen, is considered to be an entry of a plea of guilty or nolo
3 contendere in open court. Audio-video communication may be used if neither party objects and the court agrees
4 to its use and has informed the defendant that the defendant has the right to object to its use. The audio-video
5 communication must operate as provided in 46-12-201."

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