

SENATE BILL NO. 267

INTRODUCED BY THOMAS, PHILLIPS, WANZENRIED

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PLEAS OF NOLO CONTENDERE MAY BE ACCEPTED WITH THE CONSENT OF THE COURT AND THE PROSECUTOR; AMENDING SECTIONS 46-16-105 AND 46-17-203, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

**Section 1.** Section 46-16-105, MCA, is amended to read:

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

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

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

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after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.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

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

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

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

(3) For purposes of this section, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be heard in the courtroom by all present and allowing the party speaking to be seen, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees

1 to its use and has informed the defendant that the defendant has the right to object to its use. The audio-video  
2 communication must operate as provided in 46-12-201."

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4 **Section 2.** Section 46-17-203, MCA, is amended to read:

5 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before or  
6 during trial, a plea of guilty must be accepted, and a plea of ~~or~~ nolo contendere may be accepted with the consent  
7 of the court and the prosecutor, when:

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

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

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

16 (b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move  
17 to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the  
18 motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office  
19 of state public defender, provided for in 47-1-201, to assign counsel pursuant to the Montana Public Defender  
20 Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision  
21 affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction.  
22 The district court may remand the case, or the defendant may appeal the decision of the district court.

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

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29 **NEW SECTION. Section 3. Applicability.** [This act] applies to proceedings begun on or after [the  
30 effective date of this act].

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