

HOUSE BILL NO. 166  
INTRODUCED BY D. WANZENRIED  
BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT A PLEA OF GUILTY OR NOLO CONTENDERE MUST BE ACCEPTED UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, in *State v. Peplow*, 2001 MT 253, 307 Mont. 172, 36 P.3d 922 (2001), the Montana Supreme Court held that in section 46-16-105, MCA, when the term "may" is used to confer power on an officer, court, or tribunal and the public or a third person has an interest in the exercise of the power, then the exercise of the power becomes imperative.

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 or nolo contendere ~~may~~ must be accepted 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time before or after judgment, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, 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 observed and heard in the courtroom by all present, 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 to its use. The audio-video communication must operate as provided in 46-12-201."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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