

HOUSE BILL NO. 171
INTRODUCED BY PARKER
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CRIMINAL OFFENDER HAS 1 YEAR AFTER FINAL JUDGMENT TO WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE; PROVIDING AN EXCEPTION; AMENDING SECTION 46-16-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE 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 or nolo contendere may 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 or, EXCEPT WHEN A CLAIM OF INNOCENCE IS SUPPORTED BY EVIDENCE OF A FUNDAMENTAL MISCARRIAGE OF JUSTICE, within 1 year after judgment is entered BECOMES FINAL, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.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, 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 July 1, 2003.

~~NEW SECTION. Section 3. Retroactive applicability.~~ [This act] applies retroactively, within the meaning of 1-2-109, to offenders in the custody or under the supervision of the department of corrections on [the effective date of this act].

NEW SECTION. SECTION 3. APPLICABILITY. [THIS ACT] APPLIES TO ALL OFFENDERS WHO PLEAD GUILTY ON OR AFTER [THE EFFECTIVE DATE OF THIS ACT].

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