



AN ACT PERMITTING TESTIMONY OF CERTAIN CHILD WITNESSES BY TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CRIMINAL CASES INVOLVING SEXUAL OR VIOLENT OFFENSES; AND REPEALING SECTION 46-16-216, MCA.

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

Section 1. Definitions. As used in [sections 2 through 4] and this section, the following definitions apply:

(1) "Child witness" means an individual who is:

(a) 13 years of age or younger at the time the individual is called as a witness in a criminal proceeding involving a sexual or violent offense; or

(b) under 16 years of age at the time that the individual is called as a witness in a criminal proceeding involving a sexual or violent offense and who is an individual with a developmental disability, as defined in 53-20-102.

(2) "Sexual offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-507, 45-5-603, or 45-5-625.

(3) "Violent offense" means any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206, 45-5-210, 45-5-212, 45-5-213, 45-5-302, 45-5-303, 45-5-401, 45-6-103, or 45-9-132.

Section 2. Raising issue of testimony of child witness outside presence of defendant -- motion by prosecution or defense. Upon a motion by the prosecution or defense if the defense intends to call a child witness other than the victim in its case in chief, a court shall conduct a hearing to consider whether the testimony of a child witness may be taken outside the presence of the defendant and communicated to the courtroom by two-way electronic audio-video communication.

Section 3. Hearing -- procedure -- evidence that may be received -- protection for child witness.

(1) A court shall conduct a hearing on a motion made under [section 2].

(2) The prosecution, if the prosecution made the motion pursuant to [section 2], or the defense, if the

defense made the motion pursuant to [section 2], shall present evidence at the hearing made on the motion to prove the need for an order under [section 4].

(3) In ruling on the motion, the court shall consider the following factors:

- (a) the age and maturity of the child witness;
- (b) the possible effect that testifying in person might have on the child witness;
- (c) the extent of the trauma that the child witness has already suffered;
- (d) the nature of the testimony to be given by the child witness;
- (e) the nature of the offense;

(f) threats made to the child witness or the child witness's family in order to prevent or dissuade the child witness from attending or giving testimony at any trial or court proceeding;

(g) conduct on the part of the defendant or the defendant's attorney that causes the child witness to be unable to continue the child witness's testimony; and

(h) any other matter that the court considers relevant.

(4) The court may consider hearsay evidence of reports or testimony by psychologists who have examined or treated the child witness.

Section 4. Order for two-way electronic audio-video communication testimony -- finding by court -- procedure for conducting testimony. (1) The court shall order that the testimony of a child witness be taken by two-way electronic audio-video communication if, after considering the factors set forth in [section 3(3)], the court finds by clear and convincing evidence that the child witness is unable to testify in open court in the presence of the defendant for any of the following reasons:

(a) the child witness is unable to testify because of fear caused by the presence of the defendant;

(b) the child witness would suffer substantial emotional trauma from testifying in the presence of the defendant; or

(c) conduct by the defendant or the defendant's attorney causes the child witness to be unable to continue testifying.

(2) If the court orders that the child witness's testimony be taken by two-way electronic audio-video communication, the testimony must be taken outside the courtroom in a suitable location designated by the judge. Examination and cross-examination of the child witness must proceed as though the child witness were testifying in the courtroom. The only persons who may be permitted in the room with the child witness during the child's

testimony are:

- (a) the judge or a judicial officer appointed by the court;
- (b) the prosecutor;
- (c) the defense attorney;
- (d) the child's attorney;
- (e) persons necessary to operate the two-way electronic audio-video communication equipment; and
- (f) any person whose presence is determined by the court to be necessary to the welfare and well-being

of the child witness.

(3) The defendant must be afforded a means of private, contemporaneous communication with the defendant's attorney during the testimony.

(4) This section does not preclude the presence of both a victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

Section 5. Repealer. Section 46-16-216, MCA, is repealed.

Section 6. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to [sections 1 through 4].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- END -

I hereby certify that the within bill,
HB 0491, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 491

INTRODUCED BY SINRUD, CLARK, KASTEN, TAYLOR, RIPLEY, LANGE, SONJU, SALES

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