

HOUSE BILL NO. 233

INTRODUCED BY B. MERCER, F. FLEMING, B. USHER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING GUILTY PLEAS AND ELIMINATING  
5 THE RIGHT TO APPEAL TO THE MONTANA SUPREME COURT WHEN A DEFENDANT MOVES TO  
6 WITHDRAW A PLEA OF GUILTY OR NOLO CONTENDERE BECAUSE THE PLEA WAS NOT VOLUNTARILY  
7 MADE; AND AMENDING SECTIONS 3-5-303 AND 46-17-203, MCA."

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

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11 **Section 1.** Section 3-5-303, MCA, is amended to read:

12 **"3-5-303. Appellate jurisdiction.** ~~Except as provided in 46-17-203, the~~ The district court has appellate  
13 jurisdiction in cases arising in justices' courts and other courts of limited jurisdiction in their respective districts  
14 as may be prescribed by law and consistent with the constitution."

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

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

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

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

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

28 (b) A defendant who claims that a plea of guilty or nolo contendere was not entered voluntarily may move  
29 to withdraw the plea. If the motion to withdraw is denied, the defendant may, within 90 days of the denial of the  
30 motion, appeal the denial of a motion to withdraw the plea to district court. The district court may order the office

1 of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender  
2 Act, Title 47, chapter 1, hold a hearing, and enter appropriate findings of fact, conclusions of law, and a decision  
3 affirming or reversing the denial of the defendant's motion to withdraw the plea by the court of limited jurisdiction.  
4 The district court may remand the case, ~~or the~~ The defendant may not appeal the decision of the district court.

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

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