

SENATE BILL NO. 57

INTRODUCED BY YELLOWTAIL
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON ADULT AND JUVENILE DETENTION

IN THE SENATE

JANUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

JANUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 24, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

JANUARY 25, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 49; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 25, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 26, 1991 FIRST READING.

FEBRUARY 11, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

FEBRUARY 12, 1991 SECOND READING, CONCURRED IN.

FEBRUARY 13, 1991 THIRD READING, CONCURRED IN.
AYES, 66; NOES, 34.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

FEBRUARY 15, 1991 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS NOT
CONCURRED IN.

1 admit the defendant to bail. For purposes of this section, a
 2 defendant's appearance before a judge may be either by
 3 physical appearance before the court or by two-way
 4 electronic audio-video communication as provided in
 5 46-9-202."

6 **Section 3.** Section 46-9-202, MCA, is amended to read:

7 **"46-9-202. Giving bail before another court or judge --**
 8 **use of two-way electronic audio-video communication. (1)** The
 9 defendant, when arrested for a bailable offense, must be
 10 taken without unnecessary delay before the nearest or most
 11 accessible judge in order that bail may be fixed. If the
 12 defendant is brought before a judge other than the court in
 13 which the charge is pending, the judge must shall establish
 14 and accept bail and set the time for the appearance of the
 15 defendant in the court in which the charge is pending. Upon
 16 acceptance of bail, the judge must shall deliver the bail
 17 without delay to the court in which the charge is pending.

18 **(2) The requirement that a defendant be taken before a**
 19 **judge for setting of bail may, in the discretion of the**
 20 **court, be satisfied either by the defendant's physical**
 21 **appearance before the court or by two-way electronic**
 22 **audio-video communication. The audio-video communication**
 23 **must operate so that the defendant and the judge can see**
 24 **each other simultaneously and converse with each other and**
 25 **so that the defendant and his counsel, if any, can**

1 communicate privately. A judge may order a defendant's
 2 physical appearance in court for the hearing of an
 3 application for admission to bail."

4 **Section 4.** Section 46-10-202, MCA, is amended to read:

5 **"46-10-202. Presentation of evidence. (1)** The defendant
 6 may not enter a plea. The justice shall hear the evidence
 7 without unnecessary delay. All witnesses must be examined in
 8 the presence of the defendant. The defendant may
 9 cross-examine witnesses against him and may introduce
 10 evidence in his own behalf. For purposes of this section, a
 11 preliminary examination conducted by the use of two-way
 12 electronic audio-video communication that allows all of the
 13 participants to be observed and heard by all other
 14 participants and that allows the defendant to cross-examine
 15 witnesses is considered to be an examination of a witness in
 16 the presence of the defendant.

17 **(2)** During the examination of any a witness or when the
 18 defendant is making a statement or testifying, the justice
 19 may, and on the request of the defendant or state shall,
 20 exclude all other witnesses. He may also cause the witnesses
 21 to be kept separate and to be prevented from communicating
 22 with each other until all are examined.

23 **(3)** For purposes of a hearing under this chapter, a
 24 defendant may, in the discretion of the court, appear before
 25 the court either by physical appearance or by two-way

1 electronic audio-video communication. The audio-video
 2 communication must operate so that the defendant and the
 3 judge can see each other simultaneously and converse with
 4 each other and so that the defendant and his counsel, if
 5 any, can communicate privately. A judge may order a
 6 defendant's physical appearance in court for a preliminary
 7 examination."

8 **Section 5.** Section 46-12-103, MCA, is amended to read:

9 **"46-12-103. Presence of defendant -- use of two-way**
 10 **electronic audio-video communication.** If the offense charged
 11 is a felony, the defendant must be personally present for
 12 arraignment either by physical appearance or by two-way
 13 electronic audio-video communication. If the offense charged
 14 is a misdemeanor, he may appear by counsel or be present
 15 either by physical appearance or by two-way electronic
 16 audio-video communication."

17 **Section 6.** Section 46-12-201, MCA, is amended to read:

18 **"46-12-201. General rules of procedure for arraignment**
 19 **-- use of two-way electronic audio-video communication --**
 20 **exception. (1)** The arraignment in any court in this state
 21 must be conducted in the following manner:
 22 {1}(a) The arraignment must be in open court. For
 23 purposes of this chapter, an arraignment that is conducted
 24 by the use of two-way electronic audio-video communication,
 25 allowing all of the participants to be observed and heard in

1 the courtroom by all present, is considered to be an
 2 arraignment in open court.

3 {2}(b) The court must inquire of the defendant or his
 4 counsel the defendant's true name, and if the defendant's
 5 true name be is given as any other than that used in the
 6 charge, the court must order the defendant's name to be
 7 substituted for the name under which he is charged. The
 8 subsequent proceedings must be conducted with the defendant
 9 charged under that name, but in the discretion of the court,
 10 the defendant may also be referred to by the name by which
 11 he was first charged.

12 {3}(c) The court must determine whether the defendant
 13 is under any disability which that would prevent the court
 14 in its discretion from proceeding with the arraignment. The
 15 arraignment may be continued until such time as the court
 16 determines the defendant is able to proceed.

17 (2) Whenever the law requires that a defendant in a
 18 misdemeanor or felony case be taken before a court for an
 19 arraignment, this requirement may, in the discretion of the
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 25 so that the defendant and his counsel, if any, can

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1 communicate privately.
2 (3) A judge may order a defendant's physical appearance
3 in court for arraignment. In a felony case, a judge may not
4 accept a plea of guilty from a defendant not physically
5 present in the courtroom."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 57

INTRODUCED BY YELLOWTAIL
BY REQUEST OF THE JOINT INTERIM SUBCOMMITTEE
ON ADULT AND JUVENILE DETENTION

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CERTAIN CRIMINAL PROCEDURES; ALLOWING TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN INITIAL APPEARANCES, BAIL HEARINGS, PRELIMINARY EXAMINATIONS, AND ARRAIGNMENTS; AND AMENDING SECTIONS 46-7-101, 46-9-201, 46-9-202, 46-10-202, 46-12-103, AND 46-12-201, MCA."

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

Section 1. Section 46-7-101, MCA, is amended to read:

"46-7-101. Bringing arrested person before a court -- use of two-way electronic audio-video communication. (1) Any A person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall must be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was

made.

(2) Any A person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall must be filed forthwith immediately.

(3) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

Section 2. Section 46-9-201, MCA, is amended to read:

"46-9-201. Who may admit to bail. Any A judge may admit to bail any defendant properly appearing before him in such a bail proceeding to-bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any a judge before whom the trial was had or any a judge having the power to issue a writ of habeas corpus may

SECOND READING

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1 admit the defendant to bail. For purposes of this section, a
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 4 electronic audio-video communication as provided in
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 14 and accept bail and set the time for the appearance of the
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1 communicate privately, AND SO THAT THE DEFENDANT AND HIS
 2 COUNSEL ARE BOTH PHYSICALLY PRESENT IN THE SAME PLACE DURING
 3 THE TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION. THE
 4 DEFENDANT MAY WAIVE THE REQUIREMENT THAT HIS COUNSEL BE IN
 5 THE DEFENDANT'S PHYSICAL PRESENCE DURING THE TWO-WAY
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 18 participants to be observed and heard by all other
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 22 AUDIO-VISUAL COMMUNICATION MAY NOT BE USED UNLESS THE
 23 DEFENDANT'S COUNSEL IS PHYSICALLY PRESENT WITH HIS CLIENT,
 24 UNLESS THIS REQUIREMENT IS WAIVED BY THE DEFENDANT.

25 (2) During the examination of any a witness or when the

1 defendant is making a statement or testifying, the justice
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4 to be kept separate and to be prevented from communicating
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19 may order a defendant's physical appearance in court for a
20 preliminary examination."

21 **Section 5.** Section 46-12-103, MCA, is amended to read:
22 "46-12-103. Presence of defendant -- use of two-way
23 electronic audio-video communication. If the offense charged
24 is a felony, the defendant must be **personally** present for
25 arraignment either by physical appearance or by two-way

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17 counsel the defendant's true name, and if the defendant's
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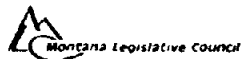
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THIRD READING



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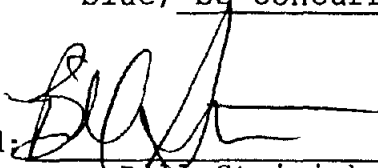
-End-

HOUSE STANDING COMMITTEE REPORT

February 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 57 (third reading copy -- blue) be concurred in as amended .

Signed: 
Bill Strizich, Chairman

CARRIED BY:

And, that such amendments read:

1. Page 2, line 8.

Page 3, line 20.

Page 5, line 7.

Page 7, line 8.

Strike: "court"

Insert: "defendant"

2. Page 3, line 2.

Following: "may"

Insert: ", in the discretion of the defendant,"

SB 57
HOUSE

1 SENATE BILL NO. 57

2 INTRODUCED BY YELLOWTAIL

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4 ON ADULT AND JUVENILE DETENTION

5
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REFERENCE BILL

SB 57

AS AMENDED



1 admit the defendant to bail. For purposes of this section, a
 2 defendant's appearance before a judge may, IN THE DISCRETION
 3 OF THE DEFENDANT, be either by physical appearance before
 4 the court or by two-way electronic audio-video communication
 5 as provided in 46-9-202."

6 **Section 3.** Section 46-9-202, MCA, is amended to read:

7 "46-9-202. Giving bail before another court or judge --
 8 use of two-way electronic audio-video communication. (1) The
 9 defendant, when arrested for a bailable offense, must be
 10 taken without unnecessary delay before the nearest or most
 11 accessible judge in order that bail may be fixed. If the
 12 defendant is brought before a judge other than the court in
 13 which the charge is pending, the judge must shall establish
 14 and accept bail and set the time for the appearance of the
 15 defendant in the court in which the charge is pending. Upon
 16 acceptance of bail, the judge must shall deliver the bail
 17 without delay to the court in which the charge is pending.

18 (2) The requirement that a defendant be taken before a
 19 judge for setting of bail may, in the discretion of the
 20 court DEFENDANT, be satisfied either by the defendant's
 21 physical appearance before the court or by two-way
 22 electronic audio-video communication. The audio-video
 23 communication must operate so that the defendant and the
 24 judge can see each other simultaneously and converse with
 25 each other and, so that the defendant and his counsel, if

1 any, can communicate privately, AND SO THAT THE DEFENDANT
 2 AND HIS COUNSEL ARE BOTH PHYSICALLY PRESENT IN THE SAME
 3 PLACE DURING THE TWO-WAY ELECTRONIC AUDIO-VIDEO
 4 COMMUNICATION. THE DEFENDANT MAY WAIVE THE REQUIREMENT THAT
 5 HIS COUNSEL BE IN THE DEFENDANT'S PHYSICAL PRESENCE DURING
 6 THE TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION. A judge
 7 may order a defendant's physical appearance in court for the
 8 hearing of an application for admission to bail."

9 **Section 4.** Section 46-10-202, MCA, is amended to read:

10 "46-10-202. Presentation of evidence. (1) The defendant
 11 may not enter a plea. The justice shall hear the evidence
 12 without unnecessary delay. All witnesses must be examined in
 13 the presence of the defendant. The defendant may
 14 cross-examine witnesses against him and may introduce
 15 evidence in his own behalf. For purposes of this section, a
 16 preliminary examination conducted by the use of two-way
 17 electronic audio-video communication that allows all of the
 18 participants to be observed and heard by all other
 19 participants and that allows the defendant to cross-examine
 20 witnesses is considered to be an examination of a witness in
 21 the presence of the defendant. TWO-WAY ELECTRONIC
 22 AUDIO-VISUAL COMMUNICATION MAY NOT BE USED UNLESS THE
 23 DEFENDANT'S COUNSEL IS PHYSICALLY PRESENT WITH HIS CLIENT,
 24 UNLESS THIS REQUIREMENT IS WAIVED BY THE DEFENDANT.

25 (2) During the examination of any a witness or when the

1 defendant is making a statement or testifying, the justice
2 may, and on the request of the defendant or state shall,
3 exclude all other witnesses. He may also cause the witnesses
4 to be kept separate and to be prevented from communicating
5 with each other until all are examined.

6 (3) For purposes of a hearing under this chapter, a
7 defendant may, in the discretion of the court DEFENDANT,
8 appear before the court either by physical appearance or by
9 two-way electronic audio-video communication. The
10 audio-video communication must operate so that the defendant
11 and the judge can see each other simultaneously and converse
12 with each other and, so that the defendant and his counsel,
13 if any, can communicate privately, AND SO THAT THE DEFENDANT
14 AND HIS COUNSEL ARE BOTH PHYSICALLY PRESENT IN THE SAME
15 PLACE DURING THE TWO-WAY ELECTRONIC AUDIO-VIDEO
16 COMMUNICATION. THE DEFENDANT MAY WAIVE THE REQUIREMENT THAT
17 HIS COUNSEL BE IN THE DEFENDANT'S PHYSICAL PRESENCE DURING
18 THE TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION. A judge
19 may order a defendant's physical appearance in court for a
20 preliminary examination."

21 **Section 5.** Section 46-12-103, MCA, is amended to read:

22 **"46-12-103. Presence of defendant -- use of two-way**
23 **electronic audio-video communication.** If the offense charged
24 is a felony, the defendant must be personally present for
25 arraignment either by physical appearance or by two-way

1 electronic audio-video communication. If the offense charged
2 is a misdemeanor, he may appear by counsel or be present
3 either by physical appearance or by two-way electronic
4 audio-video communication."

5 **Section 6.** Section 46-12-201, MCA, is amended to read:

6 **"46-12-201. General rules of procedure for arraignment**
7 **-- use of two-way electronic audio-video communication --**
8 **exception. (1)** The arraignment in any court in this state
9 must be conducted in the following manner:

10 †1(a) The arraignment must be in open court. For
11 purposes of this chapter, an arraignment that is conducted
12 by the use of two-way electronic audio-video communication,
13 allowing all of the participants to be observed and heard in
14 the courtroom by all present, is considered to be an
15 arraignment in open court.

16 †2(b) The court must inquire of the defendant or his
17 counsel the defendant's true name, and if the defendant's
18 true name be is given as any other than that used in the
19 charge, the court must order the defendant's name to be
20 substituted for the name under which he is charged. The
21 subsequent proceedings must be conducted with the defendant
22 charged under that name, but in the discretion of the court,
23 the defendant may also be referred to by the name by which
24 he was first charged.

25 †3(c) The court must determine whether the defendant

1 is under any disability which that would prevent the court
2 in its discretion from proceeding with the arraignment. The
3 arraignment may be continued until such time as the court
4 determines the defendant is able to proceed.

5 (2) Whenever the law requires that a defendant in a
6 misdemeanor or felony case be taken before a court for an
7 arraignment, this requirement may, in the discretion of the
8 court DEFENDANT, be satisfied either by the defendant's
9 physical appearance before the court or by two-way
10 electronic audio-video communication. The audio-video
11 communication must operate so that the defendant and the
12 judge can see each other simultaneously and converse with
13 each other and, so that the defendant and his counsel, if
14 any, can communicate privately, AND SO THAT THE DEFENDANT
15 AND HIS COUNSEL ARE BOTH PHYSICALLY PRESENT IN THE SAME
16 PLACE DURING THE TWO-WAY ELECTRONIC AUDIO-VIDEO
17 COMMUNICATION. THE DEFENDANT MAY WAIVE THE REQUIREMENT THAT
18 HIS COUNSEL BE IN THE DEFENDANT'S PHYSICAL PRESENCE DURING
19 THE TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION.

20 (3) A judge may order a defendant's physical appearance
21 in court for arraignment. In a felony case, a judge may not
22 accept a plea of guilty from a defendant not physically
23 present in the courtroom."

-End-

Conference Committee
on Senate Bill No. 57
Report No. 1, April 17, 1991

Page 1 of 1

Mr. President and Mr. Speaker:


We, your Conference Committee on Senate Bill No. 57 (reference copy - salmon), met and considered the amendments of the House Judiciary Standing Committee Report dated February 11, 1991.

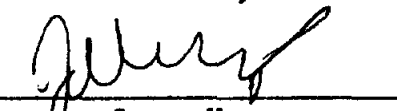
We recommend that the amendments of the House Judiciary Standing Committee Report dated February 11, 1991 be rejected in their entirety,

And that this Conference Committee report be adopted.

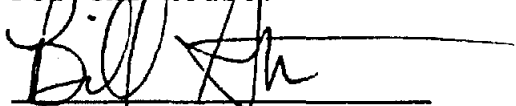
For the Senate:

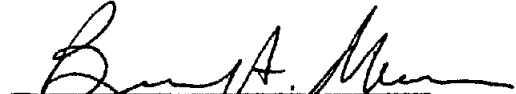

Chair, Sen. Yellowtail

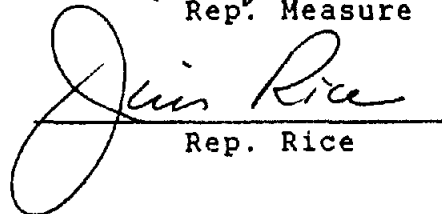

Sen. Halligan


Sen. Harp

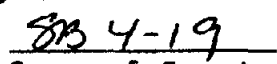
For the House:


Chair, Rep. Strizich


Rep. Measure


Rep. Rice


Amc. Coord.


Sec. of Senate

ADOPT

REJECT

CCR#1
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AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN CERTAIN CRIMINAL PROCEDURES; ALLOWING TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION IN INITIAL APPEARANCES, BAIL HEARINGS, PRELIMINARY EXAMINATIONS, AND ARRAIGNMENTS; AND AMENDING SECTIONS 46-7-101, 46-9-201, 46-9-202, 46-10-202, 46-12-103, AND 46-12-201, MCA.

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

Section 1. Section 46-7-101, MCA, is amended to read:

"46-7-101. Bringing arrested person before a court -- use of two-way electronic audio-video communication. (1) Any A person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall must be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any A person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall must be filed forthwith immediately.

(3) A defendant's initial appearance before a judge may, in

the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing."

Section 2. Section 46-9-201, MCA, is amended to read:

"46-9-201. Who may admit to bail. Any A judge may admit to bail any defendant properly appearing before him in such a bail proceeding to--bail. When bound over to any court or judge having jurisdiction of the offense charged, bail ~~shall~~ must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any a judge before whom the trial was had or any a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in 46-9-202."

Section 3. Section 46-9-202, MCA, is amended to read:

"46-9-202. Giving bail before another court or judge -- use of two-way electronic audio-video communication. (1) The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible

judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge ~~must~~ shall establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge ~~must~~ shall deliver the bail without delay to the court in which the charge is pending.

(2) The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail."

Section 4. Section 46-10-202, MCA, is amended to read:

"46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence

of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic audio-visual communication may not be used unless the defendant's counsel is physically present with his client, unless this requirement is waived by the defendant.

(2) During the examination of any a witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during

the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination."

Section 5. Section 46-12-103, MCA, is amended to read:

"46-12-103. Presence of defendant -- use of two-way electronic audio-video communication. If the offense charged is a felony, the defendant must be personally present for arraignment either by physical appearance or by two-way electronic audio-video communication. If the offense charged is a misdemeanor, he may appear by counsel or be present either by physical appearance or by two-way electronic audio-video communication."

Section 6. Section 46-12-201, MCA, is amended to read:

"46-12-201. General rules of procedure for arraignment -- use of two-way electronic audio-video communication -- exception. (1) The arraignment in any court in this state must be conducted in the following manner:

†1†(a) The arraignment must be in open court. For purposes of this chapter, an arraignment that is conducted by 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 arraignment in open court.

†2†(b) The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be is

given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

†3†(c) The court must determine whether the defendant is under any disability which that would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

(2) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(3) A judge may order a defendant's physical appearance in

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court for arraignment. In a felony case, a judge may not accept a plea of guilty from a defendant not physically present in the courtroom."