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INTRODUCED BY Christiansen Tass ^{SB} BILL NO. 163 Wynne Powell

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF THE PROSECUTOR DOES NOT OBJECT; AMENDING SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.

(1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) ~~Subject to the provisions of subsection (5),~~ if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

1 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the
 2 court shall, on the record, inform the parties of this fact and advise the defendant that the court is not
 3 bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the
 4 defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable
 5 to the defendant than that contemplated by the plea agreement.

6 (5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
 7 offense, a disclosure of the agreement through the use of two-way electronic audio-video communication,
 8 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to
 9 be a disclosure in open court. However, audio-video communication may not be used if the prosecutor
 10 objects to its use. The audio-video communication must operate as provided in 46-12-201."

11
 12 **Section 2.** Section 46-16-105, MCA, is amended to read:

13 **"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before
 14 or during trial, a plea of guilty may be accepted when:

15 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court;
 16 and

17 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum
 18 penalty provided by law ~~which~~ that may be imposed upon acceptance of ~~such~~ the plea.

19 (2) At any time before or after judgment, the court may, for good cause shown, permit the plea
 20 of guilty to be withdrawn and a plea of not guilty substituted.

21 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
 22 offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication,
 23 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to
 24 be an entry of a plea of guilty in open court. However, audio-video communication may not be used if the
 25 prosecutor objects to its use. The audio-video communication must operate as provided in 46-12-201."

26
 27 **Section 3.** Section 46-17-203, MCA, is amended to read:

28 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before
 29 or during trial, a plea of guilty may be accepted when:

30 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court;

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2 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum
3 penalty provided by law ~~which~~ that may be imposed upon acceptance of the plea.

4 (2) A plea of guilty in a ~~justices'~~ justice's court, city court, or other court of limited jurisdiction
5 waives the right of trial de novo in district court. A defendant must be informed of the waiver before the
6 plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver
7 are entered voluntarily.

8 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
9 offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication,
10 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to
11 be an entry of a plea of guilty in open court. However, audio-video communication may not be used if the
12 prosecutor objects to its use. The audio-video communication must operate as provided in 46-12-201."

13

14 **Section 4.** Section 46-18-102, MCA, is amended to read:

15 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic**
16 **audio-video communication.** (1) The judgment ~~shall~~ must be rendered in open court. For purposes of this
17 section, in cases in which the defendant is charged with a misdemeanor offense, a judgment rendered
18 through the use of two-way electronic audio-video communication, allowing all of the participants to be
19 observed and heard in the courtroom by all present, is considered to be a judgment rendered in open court.
20 However, audio-video communication may not be used if the prosecutor objects to its use. The audio-video
21 communication must operate as provided in 46-12-201.

22 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the
23 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ a bail bond.

24 (3) (a) If the verdict or finding is guilty, sentence ~~shall~~ must be pronounced and judgment rendered
25 within a reasonable time.

26 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons
27 for imposing the sentence."

28

29 **Section 5.** Section 46-18-115, MCA, is amended to read:

30 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.** Before

1 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding
2 of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

3 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
4 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
5 sentences, persistent felony offender status, or an exception to these matters.

6 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
7 by 46-18-301.

8 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
9 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
10 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
11 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
12 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor
13 offense, the requirement that the court address the defendant personally may be satisfied by the use of
14 two-way electronic audio-video communication. However, audio-video communication may not be used
15 if the prosecutor objects to its use. The audio-video communication must operate as provided in
16 46-12-201.

17 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
18 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
19 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the
20 statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

21 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
22 defendant prior to imposing sentence.

23 (c) The court shall consider the victim's statement along with other factors. However, if the
24 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
25 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

26 (5) The court shall impose sentence or make any other disposition authorized by law.

27 (6) In felony cases, the court shall specifically state all reasons for the sentence, including
28 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
29 judgment."
30

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0163, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

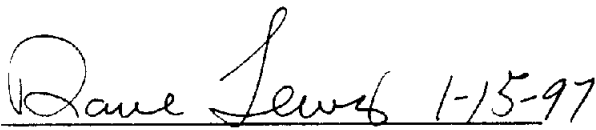
An act allowing the use of two-way electronic audio-video communication for entering pleas and sentencing in misdemeanor criminal cases if the prosecutor does not object.

FISCAL IMPACT:

There is no fiscal impact to the state.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

To implement this legislation, counties may have to purchase audio-video equipment. Information is not available to quantify this potential cost.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


CHRIS CHRISTIAENS, PRIMARY SPONSOR DATE

Fiscal Note for SB0163, as introduced

SB 163

1 SENATE BILL NO. 163

2 INTRODUCED BY CHRISTIAENS, TUSS, RYAN, DOWELL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO
5 COMMUNICATION FOR ENTERING PLEAS AND SENTENCING IN MISDEMEANOR CRIMINAL CASES IF THE
6 ~~PROSECUTOR DOES NOT OBJECT~~ NEITHER PARTY OBJECTS AND THE COURT AGREES; AMENDING
7 SECTIONS 46-12-211, 46-16-105, 46-17-203, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN
8 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."
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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a
16 charged offense or to a lesser or related offense, the prosecutor will do any of the following:

17 (a) move for dismissal of other charges;

18 (b) agree that a specific sentence is the appropriate disposition of the case; or

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23 of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in
24 subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to
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 10 ~~prosecutor~~ NEITHER PARTY objects AND THE COURT AGREES to its use. The audio-video communication
 11 must operate as provided in 46-12-201."

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 13 **Section 2.** Section 46-16-105, MCA, is amended to read:

14 **"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before
 15 or during trial, a plea of guilty may be accepted when:

16 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty in open court;

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18 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum
 19 penalty provided by law ~~which that~~ that may be imposed upon acceptance of ~~such~~ the plea.

20 (2) At any time before or after judgment, the court may, for good cause shown, permit the plea
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 27 audio-video communication must operate as provided in 46-12-201."

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 29 **Section 3.** Section 46-17-203, MCA, is amended to read:

30 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before

1 or during trial, a plea of guilty may be accepted when:

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3 and

4 (b) the court has informed the defendant of the consequences of ~~his~~ the plea and of the maximum
5 penalty provided by law ~~which~~ that may be imposed upon acceptance of the plea.

6 (2) A plea of guilty in a ~~justice's~~ justice's court, city court, or other court of limited jurisdiction
7 waives the right of trial de novo in district court. A defendant must be informed of the waiver before the
8 plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver
9 are entered voluntarily.

10 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
11 offense, an entry of a plea of guilty through the use of two-way electronic audio-video communication,
12 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to
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15 communication must operate as provided in 46-12-201."

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17 **Section 4.** Section 46-18-102, MCA, is amended to read:

18 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic**
19 **audio-video communication.** (1) The judgment ~~shall~~ must be rendered in open court. For purposes of this
20 section, in cases in which the defendant is charged with a misdemeanor offense, a judgment rendered
21 through the use of two-way electronic audio-video communication, allowing all of the participants to be
22 observed and heard in the courtroom by all present, is considered to be a judgment rendered in open court.
23 ~~However, audio-video~~ AUDIO-VIDEO communication may ~~not~~ be used if ~~the prosecutor~~ NEITHER PARTY
24 objects AND THE COURT AGREES to its use. The audio-video communication must operate as provided
25 in 46-12-201.

26 (2) If the verdict or finding is not guilty, judgment ~~shall~~ must be rendered immediately and the
27 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ a bail bond.

28 (3) (a) If the verdict or finding is guilty, sentence ~~shall~~ must be pronounced and judgment rendered
29 within a reasonable time.

30 (b) When the sentence is pronounced, the judge shall clearly state for the record ~~his~~ the reasons

1 for imposing the sentence."

2

3 **Section 5.** Section 46-18-115, MCA, is amended to read:

4 **"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication.** Before
5 imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding
6 of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

7 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
8 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
9 sentences, persistent felony offender status, or an exception to these matters.

10 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
11 by 46-18-301.

12 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
13 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
14 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
15 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
16 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor
17 offense, the requirement that the court address the defendant personally may be satisfied by the use of
18 two-way electronic audio-video communication. However, audio-video AUDIO-VIDEO communication may
19 not be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The
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24 statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

25 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
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27 (c) The court shall consider the victim's statement along with other factors. However, if the
28 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
29 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

30 (5) The court shall impose sentence or make any other disposition authorized by law.

1 (6) In felony cases, the court shall specifically state all reasons for the sentence, including
2 restrictions, conditions, or enhancements imposed, in open court on the record and in the written
3 judgment."

4

5 NEW SECTION. Section 6. Applicability. [This act] applies to guilty pleas entered and sentences
6 pronounced after [the effective date of this act].

7

8 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

9

-END-

1 SENATE BILL NO. 163

2 INTRODUCED BY CHRISTIAENS, TUSS, RYAN, DOWELL

3
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SENATE BILL NO. 163

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27 does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the
28 plea.29 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody
30 in the judgment and sentence the disposition provided for in the plea agreement.

REFERENCE BILL

1 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the
 2 court shall, on the record, inform the parties of this fact and advise the defendant that the court is not
 3 bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the
 4 defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable
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27 defendant ~~shall~~ must be discharged from custody or from the obligation of ~~his~~ a bail bond.

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7 (1) The court shall afford the parties an opportunity to be heard on any matter relevant to the
8 disposition, including the applicability of sentencing enhancement provisions, mandatory minimum
9 sentences, persistent felony offender status, or an exception to these matters.

10 (2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided
11 by 46-18-301.

12 (3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address
13 the defendant personally to ascertain whether the defendant wishes to make a statement and to present
14 any information in mitigation of punishment or reason why the defendant should not be sentenced. If the
15 defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to
16 do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor
17 offense, the requirement that the court address the defendant personally may be satisfied by the use of
18 two-way electronic audio-video communication. However, audio-video AUDIO-VIDEO communication may
19 not be used if the prosecutor NEITHER PARTY objects AND THE COURT AGREES to its use. The
20 audio-video communication must operate as provided in 46-12-201.

21 (4) (a) The court shall permit the victim to present a statement concerning the effects of the crime
22 on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated,
23 and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the
24 statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

25 (b) The court shall give copies of any written statements of the victim to the prosecutor and the
26 defendant prior to imposing sentence.

27 (c) The court shall consider the victim's statement along with other factors. However, if the
28 victim's statement includes new material facts upon which the court intends to rely, the court shall allow
29 the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

30 (5) The court shall impose sentence or make any other disposition authorized by law.

