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OPD004 Remote Appearances.docx

OPD004

*** Bill No. ***

Introduced By *****

By Request of the Office of State Public Defender

A Bill for an Act entitled: "An Act providing for attorneys to appear remotely in court; establishing that public defenders may appear remotely in nonsubstantive hearings; providing that a court may order an attorney to appear in person if good cause exists; and providing definitions."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. Section 1. Remote appearance by counsel-definitions. (1) All courts shall establish a consistent, predictable process for attorneys to appear remotely in court.

(2) (a) Except as provided in subsection (2)(b), an attorney assigned pursuant to 47-1-104 who is appearing in court for a nonsubstantive hearing may appear remotely. If appearing remotely, the attorney shall use a camera to appear onscreen.

(b) A court may order an attorney to appear in person for a specific nonsubstantive hearing if the court finds good cause for the attorney's personal presence and issues an order providing the legal and factual basis for good cause at least 5 business days before the specified hearing.

(c) For the purposes of this subsection (2), the term "good cause" includes a court's lack of available technological resources or capacity to accommodate having the attorney appear remotely.

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(3) As used in this section, the following definitions apply:

(a) "Appear remotely" means to participate in a hearing through the use of two-way electronic audio-video communication such that:

- (i) each participant can hear and be heard by all other participants;
- (ii) each speaker can be seen by all participants; and
- (iii) arrangements can be made for the defendant or represented person to communicate privately with their attorney.

(b) "Nonsubstantive hearing" means a court event in which the substantive outcome of the matter will not be decided during the event, including:

- (i) arraignments and initial appearances;
- (ii) bond and bail hearings;
- (iii) status hearings, conferences, and court check-ins;
- (iv) hearings for the purpose of scheduling;
- (v) omnibus hearings;
- (vi) calendar calls; and
- (vii) other hearings in which substantive arguments or testimony will not be heard.

NEW SECTION. Section 2. {standard} Codification.

[Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 3, and the provisions of Title 3, chapter 1, part 3, apply to [section 1].

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