Approved: Feb. 12, 1998
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice-Chairperson Keith Schraad at 10:15 a.m. on February 11, 1998 in Room 514S of the Capitol.

All members were present except: Senator Gilstrap (excused)

Committee Staff present: Mike Heim, Legislative Research Department
Gordon Self, Revisor of Statutes
Jamie Lane, Committee Secretary

Conferees appearing before the committee: Judge Terry Bullock, 3rd District, Shawnee County
Judge Philip Vieux, 25th District, Finney County
Kathy Porter, Judicial Administration

Others attending: See attached list

The minutes of the February 10 meeting were approved on a motion by Sen. Bond and a second by Sen. Donovan. Motion carried.

SB 553 - Redesigned administrative judges as chief judges of the district court

Conferee Bullock testified as a proponent of **SB 553**. He stated that the main reason for wanting to make a change is because there is confusion as to what "administrative law judge" means. Conferee Bullock stated that this change would be helpful when dealing with colleagues and is recommended by the Supreme Court and trial lawyers. He also stated there would be no costs involved. (no attachment)

Conferee Vieux testified in favor or **SB 553**. He stated that there are currently seventy-six Kansas statutes regarding the duties of the Administrative Judges. The statutes, however, do not list all the duties that befall the Administrative Judges. Conferee Vieux feels that changing the designation of Administrative Judge to Chief Judge would be desirable in that it would conform with the actual duties of the judicial officer and would eliminate confusion with surrounding states. (attachment 1)

SB 572 - Use of electronic audio-video communications in court

Conferee Vieux testified in favor of **SB 572**. The proposed bill is one of economics and safety. It provides for the use of two way interactive television for the conduct of all stages in criminal or juvenile offender proceeding up to but not including the actual trial. Finney County currently uses interactive television for adult and juvenile first appearances. Conferee Vieux feels that we have the capability of using it more if the statutory guidance is clear. He stated that this bill would be very beneficial to both the saving of tax money and the safety of the court system and makes effective use of modern technology (attachment 2). Conferee Vieux distributed a proposed amendment for **SB 572** and a map of Finney County's two-way television (attachments 3 and 4). Brief discussion followed.

SB 577 - Additional district magistrate judge positions of district courts

Conferee Porter testified in favor of **SB 577** which would authorize creating new district magistrate positions. She stated there is a statute that specifies the manner in which new district judge positions are to be created, but there is no statutory mechanism to create new district magistrate positions. Conferee Porter stated that **SB 577** would provide that magistrate judges are selected in the same manner provided for selecting district judges. She stated that this bill would give the Supreme Court the ability to determine the county or judicial district in which any newly created division or position shall be placed. (attachment 5)

Meeting adjourned at 10:50 a.m. The next scheduled meeting is Thursday, February 12.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 2/11/98

NAME	REPRESENTING
Philip C. Vieux	25th Judicial District
Kathy Porter	OJA
Jim Wellock	3rd Judicial District
Karen Ann Brown	KS Govt Consulting
Cindy Lash	Legislative Post Audit
Vicki Lynn Hebert	Budget Division
Heather Randall	Whitney Damron, P.A.
~~Justin Roth~~	
Paul Steele	

SB 553 2/11/98 Attach 2+1

IN THE SENATE JUDICIARY COMMITTEE
SENATE BILL No. 553
Memorandum in Support
Philip C. Vieux, District Judge
Administrative Judge
Twenty-fifth Judicial District

Premise:

Senate Bill No. 553 changes the designation of the Administrative Judge of each judicial district to Chief Judge of the district. I support this change for the following reasons.

Discussion:

There are currently seventy-six Kansas statutes regarding the duties of the Administrative Judges. A listing of these statutes is attached as Exhibit A to this memorandum. The statutes, however, do not list all the duties that befall the Administrative Judges.

The non-statutory duties of the Administrative Judge also include but is not limited to:

(1) The proposal and implementation of legal strategics in the handling of cases in the district that fit the actual abilities of the district. This involves such things as implementing house arrest programs that conform with the capabilities of county agencies and the court. It also involves the consultation with the other judges in the district and the proposal of uniform strategies among the judges as to discretionary matters that affect litigants so that attorneys need not guess as to an individual judges procedure. In this sense, the Administrative Judge is acting as a Chief Judge beyond merely administrative duties. The Administrative Judge is expected the be the Chief lawyer and judge among the judges of the district.

(2) The consultation and discussion of legal issues before other judges upon their request. The Administrative Judge is often called upon to consult with other judges of the district due the experiences the Administrative Judge usually has. Most Administrative Judges have in excess of 15 years experience on the bench. This gives them a tremendous amount of experience to call upon. These are not purely administrative duties. These are comparable to the duties of a senior partner in a law firm.

(3) The Administrative Judge is often called upon to deal with disciplinary matters involving attorneys and judges that are affecting the various courts of the district. In extreme situations the Administrative Judge becomes a lighten rod for demands that something be done. Generally the

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Administrative Judges take on those jobs to give relief to the members of the court and insure the overall operation of the court. These duties are not administrative and are not statutory.

(4) Coordination with out-of-state courts. In districts such as the Twenty-fifth we have a great deal of contact with the courts, prosecutors and institutions of other states. This may be trying to find out from a Texas court the waiting period on a divorce granted in Texas before a marriage license may be obtained, coordination with a Colorado Judge in setting the trial of a defendant common to both courts, or consultation with an Oklahoma Judge regarding child custody jurisdiction. In all instances it has been very difficult to deal with the out-of-state courts because of the title "Administrative Judge." To them an administrative judge is an ADMINISTRATIVE LAW JUDGE. It often takes a detailed explanation of Kansas court structure to explain the title. It would be very helpful to eliminate this type of confusion with states that we have to deal with regularly.

Conclusion:

The changing of the designation of Administrative Judge to Chief Judge would be desirable in that it would conform with the actual duties of the judicial officer and would eliminate confusion with surrounding states.

Respectfully Submitted,

Philip C. Vieux, District Judge
Administrative Judge
Twenty-fifth Judicial District

CURRENT ADMINISTRATIVE JUDGE STATUTORY DUTIES

Kansas Statute Annotated Citation.	
8-1008.	Alcohol and drug safety action program; evaluation and supervision of persons convicted of violation of 8-1567 or comparable city ordinance; certification of programs; reports of administrative judge; fees, disposition.
12-4509.	Sentence; possible disposition.
19-204a.	Change in number of districts, when; procedure if board fails to act.
19-15,123.	Additional courtrooms and facilities for probate and juvenile matters in counties over 300,000; no-fund warrants or general obligation bonds; tax.
19-4705.	Presiding judge; compensation.
19-4737.	Appeal; procedure.
19-4809.	Restitution payments; monitoring by district court; amount of restitution; modification, considerations.
19-4810.	Property crime compensation coordinator; appointment; duties.
19-4811.	Property crime compensation funds; annual reports.
20-158.	Budget for judicial branch of state government; preparation; submission; review by director of the budget.
20-159.	Reproduction and preservation of court records; minimum standards.
20-163.	Official station, justices and court of appeals judges.
20-302b.	District magistrate judges; jurisdiction, powers and duties; appeals. [See Revisor's Note]
20-310a.	Judges pro tem; when authorized; power and authority; compensation; reports.
20-311d.	Change of judge; procedure; grounds.
20-319.	Powers and duties of departmental justices; reports and information.
20-329.	Administrative judge; designation by supreme court; duties.

Exhibit A

20-335.	Abolishment of certain courts; transfer of records; certain officers of abolished courts to become employees of district court.
20-343.	Clerks of district courts; chief clerk; qualifications and duties of clerical personnel.
20-345.	Appointment of nonjudicial personnel for district courts; qualifications; compensation; duties; approval of appointment by certain judges, when.
20-347.	Location of courthouses; administrative judge's duties.
20-349.	Budget for district court expenses payable by counties, preparation; approval of budget, limitations.
20-350.	Disposition of money received by clerk; investment of moneys held; disposition of interest.
20-357.	Reproduction and preservation of court records.
20-365.	Clerks of district courts; use of facsimile signature.
20-438.	Specialized divisions of district court; establishment; assignment of personnel.
20-3013.	Principal offices of court of appeals in Topeka; courtroom and quarters; authority to hold court in any county; facilities provided by district court administrative judge.
21-4502.	Classification of misdemeanors and terms of confinement; possible disposition.
21-4603d.	Authorized dispositions, crimes committed on or after July 1, 1993.
22-2804.	Release after conviction.
22-2807.	Forfeiture of appearance bonds.
22-3101.	Inquisitions; witnesses.
22-3609.	Appeals from municipal courts.
22-3609a.	Appeals from district magistrate judges.
22-3708.	Compensation; travel allowances.

22-4009.	Procedure when convict appears to be pregnant.
23-494.	Court trustee; appointment.
23-496.	Same; powers.
23-497.	Same; expenses; compensation; court trustee operations fund, purposes and expenditures.
23-498.	Payment of authorized expenditures.
23-499.	Authorized expenditures, when paid.
23-4,118.	Income withholding agency designated; contracts for performance of functions.
23-701.	Expedited procedure.
38-555.	Public youth residential facilities in Johnson county; staff requirements; budget; tax levy, use of proceeds.
38-1808.	Family and children investment fund; expenditures, receipts, accounts.
38-1812.	Local citizen review boards; members.
39-1702.	Definitions.
44-555c.	Workers compensation board; jurisdiction; composition and appointment; term of office; qualifications, salary and expenses; nominating committee; panels; final orders, content and issuance.
59-2402.	District magistrate judges; certification of questions outside judges jurisdiction.
59-2402a.	Request for transfer of certain matters from district magistrate judge to district judge.
59-2402b.	Same; assignment of case or specific issue.
59-2402d.	Transfer of trust estates from district magistrate judge.
59-2408.	Appeal from a district magistrate judge; trial on appeal; pleadings; issues; evidence.

60-465a.	Reproductions of original court records deemed same as original record; certified copy as evidence.
60-2601a.	Computer information storage and retrieval system.
60-3502.	Convening of screening panel; selection of members; list of professional licensees to be maintained by state agencies.
60-3503.	Same; notice.
60-3505.	Recommendations on issue; concurring and dissenting opinions; notice to parties; copy of opinion to judge and commissioner of insurance; admissibility in subsequent legal proceedings.
61-1720.	Claims beyond the scope of actions authorized by 61-1603.
61-1724	Actions concerning title to or interest in real estate; certification to district judge.
61-2103.	Appeals from district magistrate judges; notice; assignment.
61-2709.	Appeals.
65-4901.	Medical malpractice screening panels; convening; membership; chairperson; list of health care providers by state agency.
65-4902.	Notice to parties of convening of panel and appointment; joint selection of health care provider or selection by judge.
65-4904.	Recommendations on issue; concurring and dissenting opinions; notice to parties; copies of opinions to parties and representatives, judge and commissioner of insurance; report admissible.
72-8906.	Powers and duties of persons conducting hearings.
74-2434.	State board of tax appeals; annual salaries of members; full-time duties.
75-3120g.	Salaries of district judges and administrative judges of district courts; limitations on county supplements.
75-5297.	Corrections advisory boards; membership, qualifications, appointment; alternative membership, qualification and appointment provisions for cooperating counties.

75-52,110. Required participation by counties in community corrections, options; administrative judge, recommendations.

79-1494. Binding arbitration process in certain counties for property valuation disputes; procedure; duties and authorities of the director of property valuation.

79-2804. Order of sale; publication notice; auctioneer may be employed; procedure for bidding in behalf of county; deed, execution and recordation.

SJ 2/11 Attach #2

IN THE SENATE JUDICIARY COMMITTEE
SENATE BILL No. 572
An Act concerning courts; relating to use of electronic audio-video communications
Memorandum in Support
Philip C. Vieux, District Judge
Administrative Judge
Twenty-fifth Judicial District

Premise:

The proposed bill is one of economics and safety. It provides for the use of two way interactive television for the conduct of all stages in a criminal or juvenile offender proceeding up to but not including the actual trial. Finney County currently uses interactive television for adult and juvenile first appearances. We have the capability of using it more if the statutory guidance is clear. This would involve more savings and a safer court system.

Discussion:

None of the provisions of the proposed bill are unique to Kansas. Alabama provides for such appearances at any hearing up to but excluding the actual trial. (*Page one, Exhibit A)* Alabama also allows for faxing documents between the court and participants. Montana also allows such a procedure for initial appearances, preliminary examination, arraignment, and bail hearings. *(Page six, Exhibit A)* North Carolina allows for such hearings in bail hearings and arraignments. *(Page seventeen, Exhibit A)* Virginia provides for such hearings in juvenile detention situations, juvenile dispositions and in adult criminal matters prior to trial. *(Page twenty, Exhibit A)* Texas allows such technology in inmate litigation. *(Page twenty-five, Exhibit A)* Delaware allows this type of hearing when there is a witness of 12 years old or younger. *(Page twenty-six, Exhibit A)* In a pilot project California uses such hearings for selected misdemeanors and felonies when the defendant waives his right to be in court. (*Page twenty-eight, Exhibit A)* By Supreme Court rule, Indiana allows such hearings up to but not including trials. *(Page thirty-one, Exhibit A)* And finally, Kansas allows such hearings in an initial bond hearing pursuant to K.S.A. 22-2802. *(Page thirty-eight, Exhibit A)*

The only Kansas challenges to procedure similar to those contemplated herein have been to the use of video tape testimony of child witnesses. The Kansas Supreme Court has determined that the federal case of *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct.3157, 111 L.Ed.2d 666 (1990), applies to such situations. See *State v. Chisholm*, 250 Kan. 153, 825 P.2d 147 (1992). The

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Craig line of cases require extensive finding by a trial court before such video is allowed. This bill, however, does not fall within the ambient of *Craig*. The child witness cases involved a lack of face to face confrontation. This bill allows for and requires all parties to be able to see and hear all other parties at the same time. And, this bill does not include the actual trial.

The fact that the bill does not include the actual trial is very important. Kansas law already allows for such hearing on initial bond hearings. No evidence is presented at arraignments. Preliminary hearings are limited in scope and there are already exceptions to the strict rules of evidence at such a hearing. (Note that hearsay evidence as to K.B.I. lab reports may be admitted at the preliminary hearing that are not allowable at trial. And, pretrial motions are not final and are easily reviewable. Although only concerned with arraignments and bail hearings the New Hampshire Supreme Court has held that there was no constitutional guarantee of face-to-face contact with the court and that video teleconferences did not violate petitioners' due process rights. *LaRose, et al. v. Superintendent, Hillsborough County Correction Administration*, 702 A.2d 326 (1997). *(Exhibit B)*

As stated in the premise of the memorandum, this bill is about economics and safety. Finney County has the duty of maintaining a regional juvenile detention center that serves a very large area in southwestern Kansas. Over the past several years there have been escapes by detainees. It is important to note, however, that these escapes have been made while the juveniles were being transported to court.

The use of the interactive technology for adults in Finney County has also been beneficial. No longer do we have to chain gang defendants to the courtroom the day after their arrest when they are often still very angry and sometimes still intoxicated. The added safety is immeasurable.

With the advent of interactive hearings in Finney County for first adult appearances only it is estimated by the Finney County Sheriff that they save approximately four hours per day, fifteen dollars per hour, four days a week. This amounts to a sizable savings of approximately $1,032.00 per month. ([(4x4)x15]x4.3=1,032) Expansion of the authority to use such hearings would allow savings to increase exponentially.

These hours saved by the Sheriff are also hours saved by the court in that there are no longer delays waiting for defendants to be shuffled in and out of the courtroom.

Conclusion:

This bill would be very beneficial to both the saving of tax money and the safety of the court system. It is not a novel procedure in the United States and makes effective use of modern technology.

Respectfully submitted,

Philip C. Vieux, District Judge
Administrative Judge
Twenty-fifth Judicial District

MICHIE'S ALABAMA CODE
TITLE 15 CRIMINAL PROCEDURE
CHAPTER 26 AUDIO-VIDEO COMMUNICATIONS

Current through 1996 2nd Sp. Sess.

s 15-26-1 Criminal defendants appearing pre-trial; use of device.

Whenever the law requires a defendant in a criminal case to appear before any judge or magistrate for a first or subsequent appearance, bail, arraignment, or other pre-trial proceeding, at the discretion of the court, the proceeding may be conducted by an audio-video communication device, in which case the defendant shall not be required to be physically brought before the judge or magistrate. The audio-video communication shall enable the judge or magistrate to see and converse simultaneously with the defendant or other person and operate so that the defendant and his or her counsel, if any, can communicate privately, and so that the defendant and his or her counsel are both physically present in the same place during the audio-video communication. The signal of the audio-video communication shall be transmitted live and shall be secure from interception through lawful means by anyone other than the persons communicating. Nothing herein shall be construed as affecting the defendant's right to waive counsel.

History. Acts 1996, No. 96-732.

NOTES, REFERENCES, AND ANNOTATIONS

Effective date Acts 1996, No. 96-726, effective May 28, 1996.

Like this, but would remove requirement that D + counsel be both physically present at same location. That they can converse privately should be restriction enough.

Exhibit A

2-4 1

MICHIE'S ALABAMA CODE
TITLE 15 CRIMINAL PROCEDURE
CHAPTER 26 AUDIO-VIDEO COMMUNICATIONS

Current through 1996 2nd Sp. Sess.

s 15-26-2 Physical presence of defendant not required.

If the court has provided for the use of an audio-video communication system to facilitate communication between the court and the defendant during any pre-trial proceeding, the physical presence of the defendant in open court during the proceeding shall not be required.

History. Acts 1996, No. 96-732.

Duplication - - stated in 15-26-1

MICHIE'S ALABAMA CODE
TITLE 15 CRIMINAL PROCEDURE
CHAPTER 26 AUDIO-VIDEO COMMUNICATIONS

Current through 1996 2nd Sp. Sess.

s 15-26-3 Documents; transmission.

Any documents filed during the audio-video communication may be transmitted electronically, including but not limited to, facsimile, personal computers, host computers, other terminal devices, and local, state, and national data networks. The electronic data transmission may be served or executed by the person to whom it is sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures on the electronic data transmission shall be treated as original signatures.

History. Acts 1996, No. 96-732.

Code 1975 s 15-26-3
AL ST s 15-26-3
END OF DOCUMENT

Good enabling law.

MICHIE'S ALABAMA CODE
TITLE 15 CRIMINAL PROCEDURE
CHAPTER 26 AUDIO-VIDEO COMMUNICATIONS

Current through 1996 2nd Sp. Sess.

s 15-26-4 Officers issuing traffic tickets and non-traffic citations; acknowledgement of facts on complaint.

Any law enforcement officer issuing a Uniform Traffic Ticket and Complaint or a Uniform Non-Traffic Citation and Complaint within the jurisdiction of the court may utilize audio-video communication equipment to acknowledge under oath facts alleged on the complaint. The audio-video communication shall operate in a manner which will allow the judge or magistrate and the law enforcement officer to simultaneously view and verbally communicate with each other.

History. Acts 1996, No. 96-732.

Do you perceive a need for this?

MICHIE'S ALABAMA CODE
TITLE 15 CRIMINAL PROCEDURE
CHAPTER 26 AUDIO-VIDEO COMMUNICATIONS

Current through 1996 2nd Sp. Sess.

s 15-26-5 Grand jury proceedings involving sworn police officers.

At the discretion of the district attorney, any grand jury proceeding involving sworn police officers may be conducted by an audio-video communication device. The audio-video communication shall enable the district attorney, the grand jury, and the sworn police officer to see and converse simultaneously with each other. The signal of the audio-video communication shall be transmitted live and shall be secure from interception or eavesdropping by anyone other than the persons communicating.

History. Acts 1996, No. 96-732.

Is there a need?

MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 7. INITIAL APPEARANCE OF ARRESTED PERSON
PART 1. GENERAL PROVISIONS

Current through End of 1995 Reg. Sess.

46-7-101. Appearance of arrested person -- use of two-way electronic audio-video communication

(1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(2) 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.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901; amd. Sec. 1, Ch. 710, L. 1991; amd. Sec. 87, Ch. 800, L. 1991.

< General Materials (GM) - References, Annotations, or Tables >

NOTES, REFERENCES, AND ANNOTATIONS

Commission Comments

1991 Comment: Following arrest, each defendant is entitled to an initial appearance before a judge without unnecessary delay. See St. v. Benbo, 174 Mont. 252 (1977). This basic principle was recognized in 1987 MCA 46-7-101 and is preserved in the statute. The language of the statute has been revised to simplify the process. [Subsection (2) was inserted by Ch. 710, L. 1991, and was not proposed by the Commission.]

Source: R.C.M. 1947, sections 94-6014 through 94-6016; Illinois Code, [Chapter] 38, section 109-1; A.L.I., section 7.

This provision includes the requirement of an appearance before a magistrate without unnecessary delay after arrest in cases of arrest with a warrant.

It is the commission's intention to limit the return, where no warrant is issued, to one before a justice of the peace or district court judge. This should afford greater protection to the defendant as well as the state. This section allows a first appearance in the county where the arrest is made rather than forcing the arrested person to be removed to another county for the

purpose of stating the charge and setting bail.

Subsection [(2)] is approximately the same as the present code requirements as to substance although it does not provide for the delivery of an arrested person to a peace officer as an alternative to appearance before a judge by the person making the arrest. It would seem that while the private person making the arrest may summon police assistance and the arrested person would proceed to the judge under the custody and control of the police officer it is reasonable to require the private arresting person to accompany the peace officer to the judge and assist in making the complaint.

Compiler's Comments

1991 Amendments:

Chapter 710 inserted (2) allowing satisfaction of requirement of initial appearance of defendant by two-way electronic audio-video communication; and made minor changes in style.

Chapter 800 substituted present language concerning taking arrested person before judge for initial appearance for former text that read: "(1) Any 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 be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any 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 be filed forthwith".

Source of 1991 Amendment:

The 1991 amendment made by Ch. 710 to this section is based in part on California Penal Code, section 977.2, and in part on Rule 43.1, Idaho Court Rules.

Case Notes

Remedy for Violation of Section:

The proper remedy for violation of this section is suppression of improperly obtained evidence. Dismissal is an inappropriate remedy when the defendant made no motion to suppress evidence, no suppression hearing was held, and there was no evidentiary record to review that might lead to dismissal. St. v. Dieziger, 200 M 267, 650 P2d 800, 39 St. Rep. 1734 (1982).

Forty-Two Day Delay From Offense to Charge -- Prison Inmate:

An inmate of the Montana State Prison who was not served with an arrest warrant until approximately 42 days after he assaulted a guard did not have his rights violated under this section based upon unnecessary delay from the date of the offense to the date of filing of information, initial appearance, and arraignment. Because he was incarcerated, arrest was unnecessary; thus, the need to bring him before a magistrate to prevent unjust incarceration did not exist. St. v. Dieziger, 200 M 267, 650 P2d 800, 39 St. Rep. 1734 (1982).

Five-Day Delay During Hospitalization:

Appellant had the burden of showing that the 5-day delay between arrest and arraignment constituted unnecessary delay. He showed that a Justice of the Peace was available. However, appellant was in a hospital for that period, which suggested that the delay was neither unreasonable nor prejudicial. There was nothing to suggest that the delay influenced the voluntariness of appellant's statements made to police during the period of delay. The statements were properly admitted, and motion to suppress them due to the delay was properly denied. St. v. Plouffe, 198 M 379, 646 P2d 533, 39 St. Rep. 1064 (1982).

Holding Youth Without Appearance Until Transfer to District Court:

Defendant claimed he was not brought to a magistrate "without necessary delay". Defendant surrendered to the authorities and was placed in jail but was not taken before a magistrate until some 20 days later. Although defendant could show no prejudice due to this lapse of time, the Supreme Court strongly disapproved of any deliberate attempt by the State to avoid arraignment "without unnecessary delay" by first arresting and holding a juvenile under the Youth Court Act for a sustained period of time and then later attempting to prosecute the juvenile as an adult. The Supreme Court stated that if a defendant could show prejudice or a deliberate attempt by the prosecution to circumvent a speedy arraignment, they would not hesitate to fashion an appropriate remedy. St. v. Rodriguez, 192 M 411, 628 P2d 280, 38 St. Rep. 578F (1981).

Delay Not Shown to Be Unnecessary:

The officers' failure to present the defendant before a magistrate before interrogation did not render the confession inadmissible when the defendant failed to show that it was an "unnecessary delay". St. v. Lenon, 174 M 264, 570 P2d 901 (1977).

Delay in Initial Appearance -- Evidence Excluded:

The failure to provide the defendant with a prompt initial appearance necessitated exclusion of evidence obtained and statements allegedly made after the defendant's arrest when he established that the delay was unnecessary and the prosecution failed to meet the burden of showing that such evidence and statements were not reasonably related to the delay. St. v. Benbo, 174 M 252, 570 P2d 894 (1977).

Unlawful Detention -- No Prejudice:

The defendant, convicted of the crime of uttering and delivering a fictitious check, was not entitled to a reversal of his conviction because he was detained for a period of 21 days without being taken before a magistrate when there was no confession and the detention did not prejudice him in presenting his defense on the merits at the trial. St. v. Johnston, 140 M 111, 367 P2d 891 (1962).

Delay:

Delay was not unreasonable. St. v. Nelson, 139 M 180, 362 P2d 224 (1961); Cline v. Tait, 113 M 475, 129 P2d 89 (1942).

Availability of Magistrate -- False Imprisonment:

In an action for false imprisonment brought by the plaintiff against a Sheriff and surety on his official bond based on unnecessary delay in taking the plaintiff before a magistrate, it was necessary for the plaintiff to prove that a magistrate was available on the particular day when the false imprisonment allegedly occurred. Rounds v. Bucher, 137 M 39, 349 P2d 1026 (1960).

Law Review Articles

The McNabb-Mallory Rule: Is the Benefit Worth the Burden?, Weldele-Wade, 44 Mont. L. Rev. 137 (Winter 1983).

Collateral References

Arrest k 70; Criminal Law k 222, 229.

6A C.J.S. Arrest s 17.

5 Am. Jur. 2d Arrest ss 76, 77.

Intoxication as ground for police postponing arrestee's appearance before magistrate. 3 ALR 4th 1057.

MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 9. BAIL
PART 2. BAIL -- GENERAL PROCEDURAL PROVISIONS

Current through End of 1995 Reg. Sess.

46-9-206. Setting bail -- appearance or use of two-way electronic audio-video communication

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.

History: En. Sec. 3, Ch. 710, L. 1991.

< General Materials (GM) - References, Annotations, or Tables >

NOTES, REFERENCES, AND ANNOTATIONS

Compiler's Comments
1991 Codification:
This section was enacted by Ch. 710 as subsection (2) of 46-9-202 (renumbered 46-9-115). The Code Commissioner codified the subsection as a new section because of the numerous amendments to 46-9-202 (renumbered 46-9-115) made by Ch. 800, L. 1991.
Source of 1991 Amendment:
The 1991 amendment made by Ch. 710 to this section is based in part on California Penal Code, section 977.2, and in part on Rule 43.1, Idaho Court Rules.

MONTANA CODE ANNOTATED
TITLE 46. CRIMINAL PROCEDURE
CHAPTER 10. PRELIMINARY EXAMINATION
PART 2. PROCEDURE AT PRELIMINARY EXAMINATION
Current through End of 1995 Reg. Sess.

46-10-202. Presentation of evidence

(1) The defendant may not enter a plea. The judge 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 the defendant and may introduce evidence in the defendant's 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-video communication may not be used unless the defendant's counsel is physically present with the defendant, unless this requirement is waived by the defendant.

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

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) 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 the defendant's counsel, if any, can communicate privately, and so that the defendant and the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that 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.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979; amd. Sec. 4, Ch. 710, L. 1991; amd. Sec. 91, Ch. 800, L. 1991; amd. Sec. 13, Ch. 262, L. 1993.

< General Materials (GM) - References, Annotations, or Tables >

NOTES, REFERENCES, AND ANNOTATIONS

Commission Comments

1991 Comment: This statute retains 1987 MCA 46-10-202 and governs the presentation of evidence at the preliminary examination. Minor amendments for clarity and gender neutrality have been made.

Subsection (3) is an addition to the 1987 code and adopts a provision present in the federal rules. See Rule 5.1(a), Fed. R. Crim. P.

Source: Illinois Code of Criminal Procedure, [Chapter] 38, section 109-3, and R.C.M. 1947, sections 94-6109 and 94-6110.

This provision is similar to the existing law.

The preliminary examination is not intended to be a trial of the issues of the case, nor is it considered a part of the trial. It should not be confused with the arraignment which is detailed in chapter 16. It is only a preliminary procedure for determining whether there is "probable cause to believe a felony has been committed by the defendant." Nothing more is required. As a result [46-10-202(1) and 46-10-203] may not be expanded into a detailed "fishing expedition" allowing for complete discovery by either side. The section must only be used to determine whether there is sufficient reason to continue the case through the filing of an information as provided by [46-11-203].

[Section 46-10-201, now repealed] is intended to protect the accused (and others) at the preliminary stage from possible unfavorable publicity. This protects the innocent and allows the court to avoid some of the prejudice that might otherwise be engendered in the more notorious cases by allowing everyone or anyone to witness the pre-trial examination. The provision is intended to give the court the necessary direction without including unnecessary detail. It is intended that one be committed to this means of initiating a prosecution once a preliminary examination has begun. However, simply scheduling a preliminary hearing after the initial appearance, does not commit the prosecution to this procedure. One of the other alternatives may be employed, i.e., leave to file an information, or use of the grand jury indictment.

Compiler's Comments

1993 Amendment:

Chapter 262 in fifth sentence of (1), after "electronic", substituted "audio-video" for "audio-visual"; and made minor changes in style.

1991 Amendments:

Chapter 710 in (1) inserted fifth and sixth sentences allowing conduct of a preliminary examination by two-way electronic audio-video communication; inserted (4) allowing satisfaction of requirement of appearance of defendant by two-way electronic audio-video communication; and made minor changes in style.

Chapter 800 in (1) and (2) substituted "judge" for "justice"; inserted (3)

prohibiting objection to evidence at preliminary examination; and made minor changes in style.

Source of 1991 Amendment:

The 1991 amendment made by Ch. 710 to this section is based in part on California Penal Code, section 977.2, and in part on Rule 43.1, Idaho Court Rules.

MONTANA CODE ANNOTATED

TITLE 46. CRIMINAL PROCEDURE

CHAPTER 12. ARRAIGNMENT OF DEFENDANT

PART 2. PROCEDURE ON ARRAIGNMENT

Current through End of 1995 Reg. Sess.

46-12-201. Manner of conducting arraignment -- use of two-way electronic audio-video communication -- exception

(1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. 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) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) 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.

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

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c); amd. Sec. 6, Ch. 710, L. 1991; amd. Sec. 131, Ch. 800, L. 1991.

< General Materials (GM) - References, Annotations, or Tables >

Commission Comments

1991 Comment: This statute combines elements from the 1987 code section and the federal rule. Subsection (1) is based on Rule 10 of the Federal Rules of Criminal Procedure, which more accurately reflects prevailing practice. [Subsections (4) and (5) were inserted by Ch. 710, L. 1991, and were not proposed by the Commission.]

Compiler's Comments

1991 Amendments:

Chapter 710 in (1) inserted third sentence allowing an arraignment made by two-way electronic audio-video communication to be considered an arraignment in open court; inserted (4) allowing an arraignment to be made either physically or by two-way electronic audio-video communication; inserted (5) allowing a judge to order defendant's physical appearance in court for arraignment and disallowing acceptance of a guilty plea in a felony case from a defendant not physically present in the courtroom; and made minor changes in style.

Chapter 800 in (1) inserted "and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead"; in (2) deleted second sentence that read: "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"; and made minor changes in style.

Source of 1991 Amendment:

The 1991 amendment made by Ch. 710 to this section is based in part on California Penal Code, section 977.2, and in part on Rule 43.1, Idaho Court Rules.

Case Notes

Guilty Plea Not to Be in Writing:

Both this section, regarding the arraignment of an accused, and 46-17-201, regarding the procedure applicable to a plea in Justice's Court, require that a defendant appear in open court, that there be actual communication between the judge and defendant, that the judge first make the requisite inquiries of and provide mandated information to the defendant, and that a plea be accepted as part of that communicative process. There is no provision in either statute that allows a judge to accept a guilty plea from a defendant in either a felony or misdemeanor case through the expedient of the defendant or defendant's counsel simply filing a written plea with the court. The Supreme Court expressed its disapproval of the practice and admonished state courts to comply with the statutory mandates. However, in this case, defendant was at all times represented by counsel, who was personally involved in the written plea. Because defendant's substantive rights were not affected, acceptance of the written guilty plea by the trial court was allowed to stand. St. v.

Schneiderhan, 261 M 161, 862 P2d 37, 50 St. Rep. 1242 (1993).

Failure to Arraign on Amended Information -- No Error When Amendment Not Affecting Original Charges:

Defendant contended the District Court erred when it accepted an information amended to add a reference to the requisite mental states but did not arraign him on the amended information. The amendment was in form only and did not make substantial changes in the charges set out in the original information. Failure to arraign defendant on charges set forth in the amended information did not constitute reversible error. St. v. Cameron, 255 M 14, 839 P2d 1281, 49 St. Rep. 150 (1992).

Five-Day Delay During Hospitalization:

Appellant had the burden of showing that the 5-day delay between arrest and arraignment constituted unnecessary delay. He showed that a Justice of the Peace was available. However, appellant was in a hospital for that period, which suggested that the delay was neither unreasonable nor prejudicial. There was nothing to suggest that the delay influenced the voluntariness of appellant's statements made to police during the period of delay. The statements were properly admitted, and motion to suppress them due to the delay was properly denied. St. v. Plouffe, 198 M 379, 646 P2d 533, 39 St. Rep. 1064 (1982).

Collateral References

Standing of media representatives or organizations to seek review of, or to intervene to oppose, order closing criminal proceedings to public. 74 ALR 4th 476.

Second offender, necessity of formal arraignment on charge of being, under statute enhancing penalty for second or subsequent offense. 139 ALR 689; 116 ALR 229.

GENERAL STATUTES OF NORTH CAROLINA
CHAPTER 15A. CRIMINAL PROCEDURE ACT.
SUBCHAPTER V. CUSTODY.
ARTICLE 26. BAIL.

s 15A-532 Persons authorized to determine conditions for release; use of two-way audio and video transmission.

(a) Judicial officials may determine conditions for release of persons brought before them or as provided in subsection (b) of this section, in accordance with this Article.

(b) Any proceeding under this Article to determine, modify, or revoke conditions of pretrial release in a noncapital case may be conducted by an audio and video transmission between the judicial official and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding. Upon motion of the defendant, the court may not use an audio and video transmission.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts.

(1973, c. 1286, s. 1; 1993, c. 30, s. 1.)

HISTORICAL NOTES

OFFICIAL COMMENTARY

This section builds upon the definition of "judicial official" in s 15A-101(5).

GENERAL STATUTES OF NORTH CAROLINA
CHAPTER 15A. CRIMINAL PROCEDURE ACT.
SUBCHAPTER IX. PRETRIAL PROCEDURE.
ARTICLE 51. ARRAIGNMENT.

s 15A-941 Arraignment before judge only upon written request; use of two-way audio and video transmission; entry of not guilty plea if not arraigned.

(a) Arraignment consists of bringing a defendant in open court or as provided in subsection (b) of this section before a judge having jurisdiction to try the offense, advising him of the charges pending against him, and directing him to plead. The prosecutor must read the charges or fairly summarize them to the defendant. If the defendant fails to plead, the court must record that fact, and the defendant must be tried as if he had pleaded not guilty.

(b) An arraignment in a noncapital case may be conducted by an audio and video transmission between the judge and the defendant in which the parties can see and hear each other. If the defendant has counsel, the defendant shall be allowed to communicate fully and confidentially with his attorney during the proceeding.

(c) Prior to the use of audio and video transmission pursuant to subsection (b) of this section, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge for the judicial district or set of districts and approved by the Administrative Office of the Courts.

(d) A defendant will be arraigned in accordance with this section only if the defendant files a written request with the clerk of superior court for an arraignment not later than 21 days after service of the bill of indictment. If a bill of indictment is not required to be served pursuant to G.S. 15A-630, then the written request for arraignment must be filed not later than 21 days from the date of the return of the indictment as a true bill. Upon the return of the indictment as a true bill, the court must immediately cause notice of the 21-day time limit within which the defendant may request an arraignment to be mailed or otherwise given to the defendant and to the defendant's counsel of record, if any. If the defendant does not file a written request for arraignment, then the court shall enter a not guilty plea on behalf of the defendant.

(e) Nothing in this section shall prevent the district attorney from calendaring cases for administrative purposes.

(1973, c. 1286, s. 1; 1975, c. 166, s. 27; 1993, c. 30, s. 3; 1995 (Reg. Sess., 1996), c. 725, s. 7.)

TENNESSEE CODE ANNOTATED
TITLE 41 CORRECTIONAL INSTITUTIONS AND INMATES
CHAPTER 21 INMATES
Part 8-- Lawsuits by Inmates

Current through End of 1996 2nd Reg. Sess.

41-21-809 Hearings -- Video communications.

The court may hold a hearing under this part at a county jail or a facility operated by the department or may conduct the hearing with video communications technology that permits the court to see and hear the inmate and that permits the inmate to see and hear the court and any other witnesses.

[Acts 1996, ch. 913, s 1.]

CODE OF VIRGINIA

TITLE 16.1. COURTS NOT OF RECORD.

CHAPTER 11. JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS.

ARTICLE 4. IMMEDIATE CUSTODY, ARREST, DETENTION AND SHELTER CARE.

s 16.1-250 Procedure for detention hearing.

A. When a child has been taken into immediate custody and not released as provided in s 16.1-247 or s 16.1-248.1, such child shall appear before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall appear before a judge within a reasonable time, not to exceed seventy-two hours, after he has been taken into custody. If the seventy-two hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

B. The appearance of the child may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of s 19.2-3.1.

C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child if twelve years of age or over and to the attorney for the Commonwealth.

D. During the detention hearing, the judge shall advise the parties of the right to counsel pursuant to s 16.1-266. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency and of the contents of the petition. The attorney for the Commonwealth shall be given the opportunity to be heard.

E. If the judge finds that there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child

committed the delinquent act alleged but that the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, the court may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him;

2. Place restrictions on the child's travel, association or place of abode during the period of his release;

3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in s 16.1-248.1; or

4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (s 19.2-119 et seq.) of Title 19.2.

F. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

G. All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

H. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the request of such person, the court shall rehear the matter on the next day on which the court sits within the county or city wherein the charge against the child is pending. If the court does not sit within the county or city on the following day, such hearing shall be held before a judge within a reasonable time, not to exceed seventy-two hours, after the request.

I. In considering probable cause under this section, if the court deems it necessary to summon witnesses to assist in such determination then the hearing may be continued and the child remain in detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal holidays.

(1977, c. 559; 1979, c. 338; 1985, c. 260; 1986, c. 542; 1988, c. 220; 1989, c. 549; 1992, c. 508; 1995, c. 451.)

NOTES, REFERENCES, AND ANNOTATIONS

The 1995 amendment, in subsection A, substituted "shall appear" for "shall be brought" in the first and second sentences; added present subsection B; and redesignated former subsections B through H as present subsections C through I.

Law Review. -- For survey of Virginia law on criminal procedure for the year 1978-1979, see 66 Va. L. Rev. 261 (1980). For 1985 survey of Virginia law affecting children, see 19 U. Rich. L. Rev. p. 753 (1985). For survey on legal issues involving children in Virginia for 1989, see 23 U. Rich. L. Rev. 705 (1989).

CODE OF VIRGINIA
TITLE 16.1. COURTS NOT OF RECORD.
CHAPTER 11. JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS.
ARTICLE 9. DISPOSITION.

Current through End of 1996 Regular Session

s 16.1-285.2 Release and review hearing for serious offender.

A. Upon receipt of a petition of the Department of Juvenile Justice for a hearing concerning a juvenile committed under s 16.1-285.1, the court shall schedule a hearing within thirty days and shall appoint counsel for the juvenile pursuant to s 16.1-266. The court shall provide a copy of the petition, the progress report required by this section, and notice of the time and place of the hearing to (i) the juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth who prosecuted the juvenile during the delinquency proceeding. The attorney for the Commonwealth shall provide notice of the time and place of the hearing by first-class mail to the last known address of any victim of the offense for which the juvenile was committed if such victim has submitted a written request for notification to the attorney for the Commonwealth.

B. The petition shall be filed in the committing court and shall be accompanied by a progress report from the Department. This report shall describe (i) the facility and living arrangement provided for the juvenile by the Department, (ii) the services and treatment programs afforded the juvenile, (iii) the juvenile's progress toward treatment goals and objectives, which shall include a summary of his educational progress, (iv) the juvenile's potential for danger to either himself or the community, and (v) a comprehensive aftercare plan for the juvenile.

B1. The appearance of the juvenile before the court may be by (i) personal appearance before the judge, or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of s 19.2-3.1.

C. At the hearing the court shall consider the progress report. The court may

also consider additional evidence from (i) probation officers, the juvenile correctional center, treatment professionals, and the court service unit; (ii) the juvenile, his legal counsel, parent, guardian or family member; or (iii) other sources the court deems relevant. The hearing and all records relating thereto shall be governed by the confidentiality provisions of Article 12 (s 16.1-299 et seq.) of this chapter.

D. At the conclusion of the hearing, the court shall order (i) continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order or (ii) release of the juvenile under such terms and conditions as the court may prescribe. In making a determination under this section, the court shall consider (i) the experiences and character of the juvenile before and after commitment, (ii) the nature of the offenses that the juvenile was found to have committed, (iii) the manner in which the offenses were committed, (iv) the protection of the community, (v) the recommendations of the Department, and (vi) any other factors the court deems relevant. The order of the court shall be final and not subject to appeal.

(1994, cc. 859, 949; 1995, c. 536; 1996, cc. 755, 914.)

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. -- Acts 1996, cc. 755 and 914, cls. 7, provide: "[t]hat the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments. -- The 1996 amendments by cc. 755 and 914 are identical, and added the last sentence of subsection A, added subdivision B 1, and substituted "juvenile correctional center" for "learning center" near the middle of clause (i) of subsection C.

CODE OF VIRGINIA
TITLE 19.2. CRIMINAL PROCEDURE.
CHAPTER 1. GENERAL PROVISIONS.

s 19.2-3.1 Personal appearance by two-way electronic video and audio communication; standards.

A. Where an appearance is required or permitted before a magistrate, intake officer or, prior to trial, before a judge, the appearance may be by (i) personal appearance before the magistrate, intake officer or judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a magistrate, intake officer or judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures.

B. Any two-way electronic video and audio communication system used for an appearance shall meet the following standards:

1. The persons communicating must simultaneously see and speak to one another;

2. The signal transmission must be live, real time;

3. The signal transmission must be secure from interception through lawful means by anyone other than the persons communicating; and

4. Any other specifications as may be promulgated by the Chief Justice of the Supreme Court.

(1991, c. 41; 1996, cc. 755, 914.)

NOTES, REFERENCES, AND ANNOTATIONS

Editor's note. -- Acts 1996, cc. 755 and 914, cls. 7 provide: "[t]hat the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments. -- The 1996 amendments by cc. 755 and 914 are identical, and inserted "intake officer" following "magistrate" in three places.

VIDEO COMMUNICATION TECHNOLOGY

VERNON'S TEXAS STATUTES AND CODES ANNOTATED
CIVIL PRACTICE AND REMEDIES CODE
TITLE 2. TRIAL, JUDGMENT, AND APPEAL
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 14. INMATE LITIGATION

Current through End of 1995 Reg. Sess.

s 14.008. Hearing

(a) The court may hold a hearing under this chapter at a jail or a facility operated by or under contract with the department or may conduct the hearing with video communications technology that permits the court to see and hear the inmate and that permits the inmate to see and hear the court and any other witness.
(b) A hearing conducted under this section by video communications technology shall be recorded on videotape. The recording is sufficient to serve as a permanent record of the hearing.

CREDIT(S)

1996 Electronic Pocket Part

Added by Acts 1995, 74th Leg., ch. 378, s 2, eff. June 8, 1995.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

1996 Electronic Pocket Part

1995 Legislation

For applicability provisions of the 1995 Act, see notes following V.T.C.A., Civil Practice & Remedies Code s 14.001.

DELAWARE CODE ANNOTATED
TITLE 11. CRIMES AND CRIMINAL PROCEDURE
PART II. CRIMINAL PROCEDURE GENERALLY
CHAPTER 35. WITNESSES AND EVIDENCE
SUBCHAPTER I. GENERAL PROVISIONS

Current through End of 1996 Reg. Sess.

s 3511 Videotaped deposition and procedures for child witnesses.

(a) In any criminal case or hearing on delinquency, upon motion of the Deputy Attorney General prior to trial and with notice to the defense, the court may order all questioning of any witnesses under the age of 12 years to be videotaped in a location designated by the court. Persons present during the videotaping shall include the witness, the Deputy Attorney General, the defendant's attorney and any person whose presence would contribute to the welfare and well-being of the witness, and if the court permits, the person necessary for operating the equipment. Only the attorneys or a defendant acting pro se may question the child. The court shall permit the defendant to observe and hear the videotaping of the witness in person or, upon motion by the State, the court may exclude the defendant providing the defendant is able to observe and hear the witness and communicate with the defense attorney. The court shall ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent to operate such equipment and the recording is accurate and is not altered;

(3) Each voice on the recording is identified;

(4) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(b) If the court orders testimony of a witness taken under this section, the witness may not be compelled to testify in court at the trial or upon any hearing for which the testimony was taken. At the trial or upon any hearing, a part or all of the videotaped deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(c) The witness need not be physically present in the courtroom when the videotape is admitted into evidence.

(d) The cost of such videotaping shall be paid by the court.

(e) Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(65 Del. Laws, c. 109, s 1; 70 Del. Laws, c. 186, s 1.)

WEST'S ANNOTATED CALIFORNIA CODES
PENAL CODE
PART 2. OF CRIMINAL PROCEDURE
TITLE 6. PLEADINGS AND PROCEEDINGS BEFORE TRIAL
CHAPTER 1. OF THE ARRAIGNMENT OF THE DEFENDANT

Current through end of 1995-96 Reg. Sess. and 1st-4th Ex. Sess.

s 977.4. Audio-video communication; presence of attorney; confidential communications; pilot project; evaluation; repealer

(a) Upon adoption of a resolution by the board of supervisors, the County of Santa Barbara may establish a three-year pilot project to be conducted pursuant to this section.

(b)(1) Notwithstanding Section 977, in all cases in which the accused is charged with a misdemeanor only, he or she may appear by counsel only, except as provided in paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) When the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, upon a satisfactory showing of necessity, the court may order through counsel that the accused be personally present in court for the purpose of the service of an order under Section 136.2, unless the court determines that the defendant will make another court appearance within a reasonable period of time and the defendant could be served with a restraining order at that time.

(c)(1) In all cases in which a felony is charged, the accused shall be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (d).

(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:

"WAIVER OF DEFENDANT'S PERSONAL PRESENCE"

"The undersigned defendant, having been advised of his or her right to be

present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place."

(d) The court may permit the initial court appearance and arraignment in municipal or superior court of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant or, in courts where the two-way electronic audiovideo communication system permits confidential communication, the attorney may be present either in court or with the defendant. If the attorney is present in court, the defendant shall consult with the attorney via confidential two-way electronic audiovideo communication prior to the entry of any plea by the attorney. The defendant shall consult confidentially with his or her attorney in person prior to the entry of any plea, unless the defendant has expressly waived the right to be represented by an attorney. If the attorney is present at the detention facility with the defendant, the attorney may enter a plea during the arraignment via two-way electronic audiovideo communication pursuant to this subdivision. However, if the defendant is represented by counsel at an initial hearing in superior court, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(e) For purposes of this section, "confidential communication" means a

communication that is secured under the confidentiality of the attorney-client privilege (Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code).

(f) The public defender of the County of Santa Barbara shall evaluate the pilot project conducted pursuant to this section and submit a report to the Legislature on or before January 1, 1999, on that evaluation.

(g) This section shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

CREDIT(S)

1997 Electronic Pocket Part Update

(Added by Stats.1995, c. 131 (A.B.167), s 1.)

< General Materials (GM) - References, Annotations, or Tables >

REPEAL

< This section, by its own terms, is operative only until July 1, 1999, and is repealed on Jan. 1, 2000. >

IN THE

SUPREME COURT OF INDIANA

ORDER ADOPTING ADMINISTRATIVE RULE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and pursuant to this Court's authority to supervise the administration of the courts of this state, Administrative Rule 14 is hereby adopted to read as follows:

ADMINISTRATIVE RULE 14. VIDEO TELECOMMUNICATION IN CRIMINAL, JUVENILE, AND MENTAL HEALTH PROCEEDINGS

(A) Authority. A trial court may conduct hearings and proceedings utilizing video telecommunications pursuant to the provisions of this rule in the following circumstances:

(1) In criminal proceedings, a court may utilize video telecommunications in conducting:

(a) Initial hearings pursuant to IC 35-33-7-1, 3, 3.5, 4 and 5, including any probable cause hearing pursuant to IC 35-33-7-2; determination of indigence and assignment of counsel pursuant to IC 35-33-7-6; amount and conditions of bail pursuant to IC 35-33-7-5(4), 35-33-8-3.1 and 4; and the setting of omnibus date pursuant to IC 35-36-8-1;

I don't think it desirable to get into a situation requiring a lot of waivers.

(b) Pre trial conferences;

(c) The taking of a plea of guilty to a misdemeanor charge, pursuant to IC 35-35-1-2;

(d) Sentencing hearings pursuant to IC 35-38-1-2 when the defendant has given a written waiver of his or her right to be present in person and the prosecution has consented;

(e) With the written consent of the parties, post-conviction hearings pursuant to Ind.Post-Conviction Rule 1(5).

Exhibit 9

(2) In mental health proceedings, a court may utilize video telecommunications in conducting:

(a) Preliminary hearings in mental health emergency detention proceedings pursuant to IC 12-26-5-10;

(b) Review hearings in mental health commitment proceedings pursuant to IC 12-26-15-2.

(3) In juvenile proceedings:

(a) When a child is alleged to be a delinquent child, a detention hearing pursuant to IC 31-6-4-5(f);

(b) When a child is alleged to be a child in need of service, a detention hearing pursuant to IC 31-6-4-6; and

(4) In any other hearing or proceeding in which the parties waive their rights of appearance. All such waivers shall be entered on the Chronological Case Summary.

Again, if counsel must be out-of-court party it limits value of system as in film appearances to Ford Co., etc.

B. Facilities and Equipment. During any hearing or proceeding conducted under this rule, the court shall assure that:

(1) The facility and equipment enable counsel to be present personally with the out of court party and be able to confer privately with such party outside the reach of the camera and audio microphone.

(2) The facility and equipment enable the parties' attorneys to confer with each other off the record.

25" would be too large for bench - such specifications not desirable.

(3) The judge must be able to view fully the out of court party and counsel, though not necessarily at the same time. The out of court party and counsel must be able to view fully the judge and all attorneys present in the court room.

(4) The facility must have the capacity, through video equipment or through facsimile or E mail, for the contemporaneous transmission of documents and exhibits.

(5) Images shall be in color; monitor screens shall be no smaller than twenty-five (25) inches.

(6) The audio and video transmission shall be of such quality, design and architecture as to allow easy public viewing of all public proceedings. The use of video technology in conducting hearings and proceedings shall in no way abridge any

Cont like #1

right that the public may have to access to the courtroom and or jail.

(7) A video and audio recording shall be made and preserved by the court.

This new rule shall be effective February 1, 1996.

The Clerk of this Court is directed to forward a copy of this order to the Clerk of each Circuit Court in the State of Indiana; Attorney General of Indiana; Legislative Services Agency; Office of Code Revision, Legislative Services Agency; Administrator, Supreme Court of Indiana; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission on Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; the libraries of all law schools in the state: The Michie Company; and West Publishing Company.

West Publishing Company is directed to publish this order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this order to the attention of all judges within their respective counties and to post this order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 20th day of December, 1995.

FOR THE COURT

Randall T. Shepard

Randall T. Shepard
Chief Justice of Indiana

Exhibit 9B

2-36

3B

WAIVER OF COURTROOM APPEARANCE

I am aware I have a right to appear in a courtroom for my initial hearing. I request that my initial hearing be done by video camera and monitor here at the jail. I understand that the Judge will be able to see and speak to me and I will be able to see and speak to the Judge by monitor. I understand that if I have an attorney, my attorney will either be with me at the jail or will be present in the courtroom during my initial hearing. I understand that the courtroom is open to the public and the public will be able to see and hear the court proceedings on the courtroom monitor.

I understand that by signing this waiver I will not be transferred to the courtroom and my initial hearing will be done by video camera and monitor at the jail.

Date:_____

Signature:_____

Print your name:_____

Exhibit 1

2-37 54

VIDEO RIGHTS DIALOGUE \ 2

This video tape has been prepared for the use of the Hamilton Circuit and Superior Courts as part of your initial hearing.

At the initial hearing a defendant is advised of their rights, advised of the pending charges and of the possible penalties that can be imposed. A trial date is also scheduled at the time of the initial hearing.

This tape will advise you of your rights in this case. At the conclusion of the tape your initial hearing will be completed either by video camera and monitor or by your personal appearance before a Judge or Magistrate. If you have any questions about your rights as stated on this tape, you should ask them at that time.

You have a right to a public and speedy trial by jury. If you are charged with a felony the Court will automatically set your case for a jury trial. If you are charged with a misdemeanor, you must make a written request stating that you want a jury trial not later than ten days before your trial date.

In a trial you have a right to compel witnesses to appear and to testify in your behalf. You have a right to face any witnesses against you and to cross examine them. You cannot be required to testify against yourself and have the right to exclude any evidence that may have been improperly obtained. In the trial, the State of Indiana has the burden of proving beyond a reasonable doubt that you committed any offense charged before you could be convicted of that offense.

Exhibit 2

55

If at some point you enter a plea of guilty the Court will proceed with a judgment and sentence you without a trial. If you plead guilty you will be admitting the truth of the material facts that are contained in the information or indictment filed in your case.

You have a right to be represented by an attorney at all stages of your case. If you can't afford an attorney now or at any later time, the Judge will appoint one for you. You will be asked some questions by the Judge or required to complete a statement under oath concerning your finances to see if you qualify as an indigent to have an attorney appointed for you at no cost to you. If you intend to hire your own attorney you should do so within ten days if you are charged with a misdemeanor or within twenty days if you are charged with a felony. There are deadlines for filing certain defense motions and raising legal issues that will be waived if those deadlines are missed. You should obtain an attorney promptly so that any motions can be filed within the time limits.

The Court will enter a preliminary plea of not guilty on your behalf and this will become a formal plea of not guilty within ten days from today's date on a misdemeanor case and twenty days from today's date on a felony case.

You are also reminded that you have a right to remain silent and to have your attorney with you any time any police officer or other persons question you regarding the matters in your case. You cannot be required to make any statement but have a right to remain silent.

Exhibit 2A

In a few minutes you will have the opportunity to speak with a Judge or Magistrate either on a video monitor or personally in the courtroom. The Judge or Magistrate will inform you of the specific charges against you and of the possible penalties that can be imposed. A trial date will also be set and you will be informed of the amount of your bond. . Please feel free to ask questions at that time. A representative from the Office of the Hamilton County Prosecutor will be present and the court reporter will make and record the balance of your initial hearing.

This approach is being used in many courts w/o video conferencing capabilities just to advise of rights at docket calls -- can be in multiple languages & done before judge enters court-room. Another use for our equipment.

Exhibit 2B

2-40 B2

KANSAS STATUTES ANNOTATED
CHAPTER 22. CRIMINAL PROCEDURE
KANSAS CODE OF CRIMINAL PROCEDURE
ARTICLE 28. CONDITIONS OF RELEASE

22-2802. Release prior to trial.

(1) Any person charged with a crime shall, at the person's first appearance before a magistrate, be ordered released pending preliminary examination or trial upon the execution of an appearance bond in an amount specified by the magistrate and sufficient to assure the appearance of such person before the magistrate when ordered and to assure the public safety. If the person is being bound over for a felony, the bond shall also be conditioned on the person's appearance in the district court or by way of a two-way electronic audio-video communication as provided in subsection (11) at the time required by the court to answer the charge against such person and at any time thereafter that the court requires. The magistrate may impose such of the following additional conditions of release as will reasonably assure the appearance of the person for preliminary examination or trial:

(a) Place the person in the custody of a designated person or organization agreeing to supervise such person;

(b) place restrictions on the travel, association or place of abode of the person during the period of release;

(c) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody during specified hours; or

(d) place the person under a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto.

(2) In addition to any conditions of release provided in subsection (1), for any person charged with a felony, the magistrate may order such person to submit to a drug abuse examination and evaluation in a public or private treatment facility or state institution and, if determined by the head of such facility or institution that such person is a drug abuser or incapacitated by drugs, to submit to treatment for such drug abuse, as a condition of release.

(3) The appearance bond shall be executed with sufficient solvent sureties who are residents of the state of Kansas, unless the magistrate determines, in the exercise of such magistrate's discretion, that requiring sureties is not necessary to assure the appearance of the person at the time ordered.

(4) A deposit of cash in the amount of the bond may be made in lieu of the execution of the bond by sureties.

(5) In determining which conditions of release will reasonably assure appearance and the public safety, the magistrate shall, on the basis of available information, take into account the nature and circumstances of the

crime charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, record of convictions, record of appearance or failure to appear at court proceedings or of flight to avoid prosecution; the likelihood or propensity of the defendant to commit crimes while on release, including whether the defendant will be likely to threaten, harass or cause injury to the victim of the crime or any witnesses thereto; and whether the defendant is on probation or parole from a previous offense at the time of the alleged commission of the subsequent offense.

(6) The appearance bond shall set forth all of the conditions of release.

(7) A person for whom conditions of release are imposed and who continues to be detained as a result of the person's inability to meet the conditions of release shall be entitled, upon application, to have the conditions reviewed without unnecessary delay by the magistrate who imposed them. If the magistrate who imposed conditions of release is not available, any other magistrate in the county may review such conditions.

(8) A magistrate ordering the release of a person on any conditions specified in this section may at any time amend the order to impose additional or different conditions of release. If the imposition of additional or different conditions results in the detention of the person, the provisions of subsection (7) shall apply.

(9) Statements or information offered in determining the conditions of release need not conform to the rules of evidence. No statement or admission of the defendant made at such a proceeding shall be received as evidence in any subsequent proceeding against the defendant.

(10) The appearance bond and any security required as a condition of the defendant's release shall be deposited in the office of the magistrate or the clerk of the court where the release is ordered. If the defendant is bound to appear before a magistrate or court other than the one ordering the release, the order of release, together with the bond and security shall be transmitted to the magistrate or clerk of the court before whom the defendant is bound to appear.

(11) Proceedings before a magistrate as provided in this section to determine the release conditions of a person charged with a crime including release upon execution of an appearance bond may be conducted by two-way electronic audio-video communication between the defendant and the judge in lieu of personal presence of the defendant or defendant's counsel in the courtroom in the discretion of the court. The defendant may be accompanied by the defendant's counsel. The defendant shall be informed of the defendant's right to be personally present in the courtroom during such proceeding if the defendant so requests. Exercising the right to be present shall in no way prejudice the defendant.

History: L. 1970, ch. 129, s 22-2802; L. 1976, ch. 163, s 6; L. 1986, ch. 130, s 1; L. 1989, ch. 98, s 1; L. 1990, ch. 107, s 1; July 1.

(CITE AS: 702 A.2D 326)

Jay LAROSE and others,

v.

SUPERINTENDENT, HILLSBOROUGH COUNTY CORRECTION ADMINISTRATION.

No. 96-740.

Supreme Court of New Hampshire.

Oct. 29, 1997.

Petitioners sought writ of habeas corpus, challenging legality of their arraignments and bail hearings conducted by VIDEO teleconferences. The Hillsborough County Superior Court, Dalianis, J., denied consolidated petitions, and petitioners appealed. The Supreme Court, Brock, C.J., held that: (1) arraignment statute was intended to ensure timely arraignment, not to guarantee face-to-face contact with the court, and (2) arraignments and bail hearings conducted by VIDEO teleconferences did not violate petitioners' due process rights.

Affirmed.

[1] STATUTES k188

361k188

Statutory interpretation must begin with plain meaning of words used.

[2] STATUTES k190

361k190

Phrase "taken before" the court in arraignment statute, requiring that person who is arrested and held in custody be "taken before" district or municipal court without unreasonable delay, was ambiguous in light of current audiovisual interactive technology; thus, Supreme Court had to determine intent of legislature in enacting statute. RSA 594:20-a.

[3] CRIMINAL LAW k264

110k264

Exhibit B

In enacting arraignment statute requiring that person who is arrested and held in custody be "taken before" district or municipal court without unreasonable delay, legislature intended to ensure timely arraignment of person being held in custody, not to guarantee face-to-face contact with court. RSA 594:20-a.

[4] BAIL k49(5)
49k49(5)
Conducting arraignments and bail hearings by VIDEO teleconferences does not violate arraignment statute requiring that person who is arrested and held in custody be "taken before" district or municipal court without unreasonable delay. RSA 594:20-a.

[4] CRIMINAL LAW k264
110k264
Conducting arraignments and bail hearings by VIDEO teleconferences does not violate arraignment statute requiring that person who is arrested and held in custody be "taken before" district or municipal court without unreasonable delay. RSA 594:20-a.

[5] CRIMINAL LAW k662.1

110k662.1

Defendant's right to confrontation is satisfied by his opportunity for cross-examination and by his opportunity to raise questions about accuracy of State's proffer in his own offer of proof or through his own witnesses. U.S.C.A. Const.Amend. 6.

[6] BAIL k49(5)

49k49(5)

Conducting arraignments and bail hearings by VIDEO teleconferences did not violate petitioners' due process rights, although petitioners had substantial interest in having bail set at a reasonable rate and possibly remaining free pending trial; VIDEO teleconferencing procedure did not pose risk of erroneous deprivation of an accused's liberty interest than "live" arraignment and bail hearing, and State had substantial interest in conducting arraignments and bail hearings through VIDEO teleconferences, which saved transportation costs and security fees and decreased likelihood of violence during proceedings by utilizing more secure environment of detention facility. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[6] CONSTITUTIONAL LAW k262

92k262

Conducting arraignments and bail hearings by VIDEO teleconferences did not violate petitioners' due process rights, although petitioners had substantial interest in having bail set at a reasonable rate and possibly remaining free pending trial; VIDEO teleconferencing procedure did not pose risk of erroneous deprivation of an accused's liberty interest than "live" arraignment and bail hearing, and State had substantial interest in conducting arraignments and bail hearings through VIDEO teleconferences, which saved transportation costs and

security fees and decreased likelihood of violence during proceedings by utilizing more secure environment of detention facility. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[6] CONSTITUTIONAL LAW k265.5

92k265.5

Conducting arraignments and bail hearings by VIDEO teleconferences did not violate petitioners' due process rights, although petitioners had substantial interest in having bail set at a reasonable rate and possibly remaining free pending trial; VIDEO teleconferencing procedure did not pose risk of erroneous deprivation of an accused's liberty interest than "live" arraignment and bail hearing, and State had substantial interest in conducting arraignments and bail hearings through VIDEO teleconferences, which saved transportation costs and security fees and decreased likelihood of violence during proceedings by utilizing more secure environment of detention facility. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[6] CRIMINAL LAW k264

110k264

Conducting arraignments and bail hearings by VIDEO teleconferences did not violate petitioners' due process rights, although petitioners had substantial

interest in having bail set at a reasonable rate and possibly remaining free pending trial; VIDEO teleconferencing procedure did not pose risk of erroneous deprivation of an accused's liberty interest than "live" arraignment and bail hearing, and State had substantial interest in conducting arraignments and bail hearings through VIDEO teleconferences, which saved transportation costs and security fees and decreased likelihood of violence during proceedings by utilizing more secure environment of detention facility. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[7] CONSTITUTIONAL LAW k251.5
92k251.5
In determining whether challenged procedures satisfy due process requirement, Supreme Court employs a two-part analysis: first, Court determines whether challenged procedures concern a legally protected interest, and second, it determines whether procedures afford requisite safeguards. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[8] CONSTITUTIONAL LAW k262
92k262
Arraignment and bail hearings concern a legally protected interest for purposes of due process. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[8] CONSTITUTIONAL LAW k265.5
92k265.5
Arraignment and bail hearings concern a legally protected interest for purposes of due process. U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

[9] CONSTITUTIONAL LAW k251.5
92k251.5

Supreme Court reviews requisite adequacy of safeguards under due process clause by focusing on private interest affected by official action; risk of erroneous deprivation of such interest through procedures used, and probable value, if any, of additional or substitute procedural safeguards; and government's interest, including function involved and fiscal and administrative burdens that additional or substitute procedural requirements would entail.
U.S.C.A. Const.Amend. 14; Const. Pt. 1, Art. 15.

*328 James E. Duggan, Chief Appellate Defender and Lawrence A. Vogelman, Public Defender, on the brief, Concord, and Behzad Mirhashem, Public Defender, orally, Nashua, for petitioners.

Philip T. McLaughlin, Attorney General (Patrick E. Donovan, Assistant Attorney General, on the brief and orally), for the State.

BROCK, Chief Justice.

The petitioners, Jay Larose, Shawna Brown, and Richard Theriault, appeal the Superior Court's (Dalianis, J.) denial of their consolidated petitions for writ of habeas corpus, challenging the legality of their arraignments and bail hearings conducted by VIDEO teleconference because they could not make bail. We affirm.

Pursuant to a temporary order of this court, arraignments and bail hearings in Hillsborough County may be conducted via a teleconference system installed

between the superior courthouse, housing in this instance the Nashua District Court, and the Nashua Police Station. Under the temporary procedure, a defendant and his or her attorney is able to view the courtroom on a television monitor divided into four sections, each displaying a different person or part of the courtroom. Similarly, the district court judge can view a defendant and his or her attorney on one of five monitors mounted around the courtroom. The petitioners were arraigned and their bail, which none of them could meet, was set using this procedure. Maintaining that the temporary procedure violated statutory and constitutional mandates, the petitioners filed petitions for writ of habeas corpus.

At the superior court hearing on the consolidated petitions, Dr. Donald Davidoff, a clinical psychologist, offered his opinion that the use of teleconferencing technology would adversely bias a judge's opinion of a defendant. Additionally, Attorney Kent Smith, who, during his ten-year tenure with the public defender's office, had conducted several VIDEO bail hearings, testified that conducting a bail hearing by VIDEO affected his ability to be an effective advocate for a client "[t]o some extent." Nonetheless, the trial court determined that the teleconference procedure did not violate either statutory or constitutional mandates and denied the petitions; this appeal followed.

We first address the petitioners' statutory argument. See Britton v. Town of Chester, 134 N.H. 434, 441, 595 A.2d 492, 496 (1991). The petitioners maintain that the teleconference procedure violates RSA 594:20-a (Supp.1996), which requires that a person who is arrested and held in custody "shall be taken before a district or municipal court without unreasonable delay, but not exceeding 24 hours, Sundays and holidays excepted, to answer for the offense." Because of the teleconference procedure, the petitioners contend, they were not "taken before the court."

[1][2][3][4] In matters of statutory interpretation, we turn first to the

plain meaning of the words used. Cross v. Warden, N.H. State Prison, 138 N.H. 591, 593, 644 A.2d 542, 543 (1994). What encompasses being "taken before" the court, in light of current audiovisual interactive technology, is ambiguous. Consequently, we must determine the intent of the legislature in enacting RSA 594:20-a. See Welch v. Director, N.H. Div. of Motor Vehicles, 140 N.H. 6, 8, 662 A.2d 292, 293 (1995). Here, the legislature intended to insure the timely arraignment of a person being held in custody, not to guarantee face-to-face contact with the court. Moreover, "the use of VIDEO conferencing allows for the respondent's 'presence,' at least in some sense, at the [arraignment and bail] hearing." United States v. Baker, 45 F.3d 837, 843 (4th Cir.1995) (upholding VIDEO conferencing in civil commitment hearing of inmate). Consequently, the teleconference procedure does not violate RSA 594:20-a.

[5] Citing both the New Hampshire and United States CONSTITUTIONS, the petitioners next assert that the teleconference procedure violated their right to confrontation. In pretrial proceedings such as these, a "defendant's right to confrontation is satisfied by his opportunity for cross-examination and by his opportunity to raise questions about the accuracy of the State's proffer in his own *329 offer of proof or through his own witnesses." State v. Poulicakos, 131 N.H. 709, 714, 559 A.2d 1341, 1344 (1989). In none of these cases, however, did the petitioner challenge the State's proffer; nor were

there any witnesses. Accordingly, on the facts of these cases, the confrontation issue is not before us and we need not address it.

[6] The petitioners finally argue that the teleconference procedure violated their due process rights under part I, article 15 of the New Hampshire CONSTITUTION and the fourteenth amendment to the United States CONSTITUTION. We first analyze the petitioners' argument under our State CONSTITUTION, referring to federal cases merely to aid in our analysis. State v. Ball, 124 N.H. 226, 231, 471 A.2d 347, 350 (1983). Because the federal CONSTITUTION provides no greater protection in this area, we need not undertake a separate federal constitutional analysis. Petition of Grimm, 138 N.H. 42, 49, 635 A.2d 456, 461 (1993); see Valenzuela-Gonzalez v. U.S.D.C. for Dist. of Arizona, 915 F.2d 1276, 1280 (9th Cir.1990) (decided under federal rules of criminal procedure).

[7] "In determining whether the challenged procedures satisfy the due process requirement, we employ a two-part analysis. First, we determine whether the challenged procedures concern a legally protected interest. Second, we determine whether the procedures afford the requisite safeguards." Petition of Bagley, 128 N.H. 275, 282-83, 513 A.2d 331, 337 (1986).

[8][9] That arraignment and bail hearings concern a legally protected interest is well settled. See Poulicakos, 131 N.H. at 712, 559 A.2d at 1343. Hence we turn to a review of the requisite safeguards, focusing our inquiry upon

(1) the private interest affected by the official action;

(2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and

(3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Bagley, 128 N.H. at 285, 513 A.2d at 338-39.

The first factor concerns the potential deprivation of liberty. The petitioners here have a substantial interest in having bail set at a reasonable level and thus, possibly, remaining free pending trial. Poulicakos, 131 N.H. at 713, 559 A.2d at 1343.

We disagree with the petitioners, however, that the videoconference procedure poses a greater risk of erroneous deprivation of that liberty. Although Dr. Davidoff offered his opinion that the teleconferencing procedure would adversely bias a judge's opinion of a defendant, he testified that he had never seen a tape of a VIDEO bail hearing, that none of the articles to which he referred related directly to the issue, and that he had never spoken with either a judge or a defendant who had participated in such a hearing. In response to a query by the court, Dr. Davidoff admitted that he could not reconcile his testimony with the fact that some defendants whose bail was set using VIDEO teleconferencing were apparently not subject to judicial bias, because the court set bail at a figure that they could meet. No evidence was offered to suggest that judges set bail at a higher amount for defendants who were arraigned by the VIDEO procedures than by in-person procedures. Similarly, Attorney Smith testified that he had no knowledge of how the VIDEO bail hearings were currently being conducted at the Nashua Police Station because he had not "done any of the VIDEO arraignments for a while and there

[was] probably new equipment."

Finally, the State has a substantial interest in conducting arraignment and bail hearings through VIDEO teleconferencing. At the hearing on the petitions for writ of habeas corpus, the State made an offer of proof that the teleconferencing procedure saved the State thousands of dollars in transportation and security fees. Additionally, the more secure environment of the detention facility decreases the likelihood of violence during the proceeding.

After considering the three Bagley factors, we conclude that the petitioners have not established that the teleconferencing procedure *330 employed here violated due process. As the trial court noted, the petitioners offered no evidence that the results of their arraignments and bail hearings would have been any more favorable if they had been conducted at the district court rather than by teleconference.

Affirmed.

All concurred.

END OF DOCUMENT

2-11-98 SJud Attachment 3

SENATE BILL No. 572

An Act concerning courts; relating to use of electronic audio-video communications.

Proposed Amendment

Philip C. Vieux

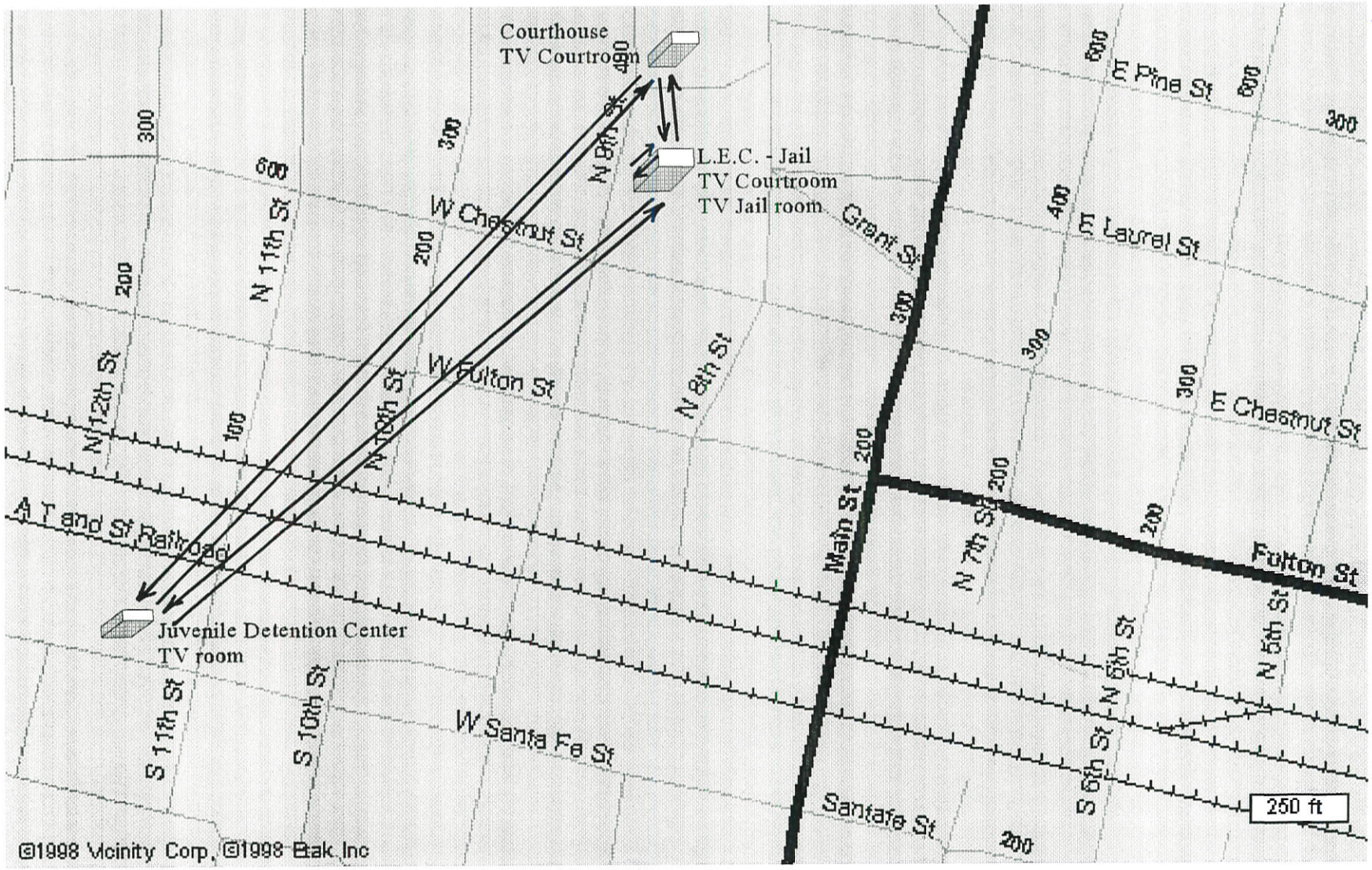
Administrative Judge

Twenty-fifth Judicial District

Section 1. (a) Whenever the law requires a party to appear before any judge for a first or subsequent appearance, bail, arraignment, ~~or other~~ pretrial proceeding *or other such similar proceeding in an action governed by the Kansas Code of Criminal Procedure, the Kansas Juvenile Offenders Code or the Kansas Code of Procedure for Municipal Courts*, at the discretion of the court, the proceeding may be conducted by a two-way audio-video communication device, in which case the party shall not be required to be physically brought before the judge.

Senate Judiciary
2-11-98
Att. 3

GARDEN CITY, FINNEY COUNTY, KANSAS
TWO-WAY TELEVISION



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State of Kansas

Office of Judicial Administration

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Testimony to the Senate Judiciary Committee

February 11, 1998

Senate Bill 577

Kathy Porter
Office of Judicial Administration

We appreciate the opportunity to discuss and support SB 577, which would authorize creating new district magistrate positions. Although K.S.A. 20-355 specifies the manner in which new district judge positions are to be created, there currently is no statutory mechanism to create new district magistrate positions.

Since court unification, the Judicial Branch has not created new district magistrate positions. However, the FY 1999 Judicial Branch budget includes a request for nine new district magistrate positions, including three for the Third Judicial District (Shawnee County), three for the Tenth Judicial District (Johnson County), two for the 25th Judicial District (Finney, Greeley, Hamilton, Kearny, Scott, and Wichita Counties), and one for the 29th Judicial District (Wyandotte County). Of the nine positions requested, the Governor recommended three, but did not specify the district or districts to which the magistrate judges would be assigned.

SB 577 would provide that magistrate judges are selected in the same manner provided for selecting district judges found in K.S.A. 20-355. In districts that have approved the nonpartisan selection method, that method would be used to select the new magistrate judge. Briefly summarized, the District Judicial Nominating Commission would nominate not less than two, nor more than three persons and submit those names to the Governor for selection. (K.S.A. 20-2909 - 2911) In districts that have not approved the nonpartisan method of selection, the district magistrate judge would be elected at the next general election held in November of the year in which the position is determined to be necessary.

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SB 577 does differ from current law for creating new positions in providing that any new positions created in 1998 for districts that have approved the partisan selection process would be filled in accordance with the provisions for filling a vacancy as set forth in K.S.A. 25-312a. That statute provides for the position to be filled by appointment by the Governor, with the successor to be elected at the next general election to serve the remainder of the term. This option is offered simply because it appears the timing requirements of the primary and possibly the general elections could not be met for the first year any new magistrate positions are created, given the fact that the 1998 appropriations bills authorizing and funding any new magistrate positions would not be signed by the Governor and enacted into law until mid-May.

Finally, SB 577 would provide that the Supreme Court shall determine the county or judicial district in which any newly created division or position shall be placed. If less than the full number of magistrate judge positions and district judge positions requested are approved by the 1998 Legislature, the Supreme Court would be faced with the responsibility of deciding which districts will be assigned the new positions.

Again, thank you for your consideration of SB 577. I would be happy to stand for any questions.