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ANGIE SPARKS, Clerk of District Court
By *S.M. Lawrence* Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

In the Matter of Appearances by
Incarcerated Defendants in Department
Four.

Cause No.: DV-2023-1

ORDER

This Court has repeatedly encountered logistical difficulties with inmates appearing by two-way audio-visual communication for criminal law and motion. This Order is intended to mitigate those difficulties.

1. Lewis and Clark County Detention Center

This Court has experienced problems with inmates appearing remotely from the Lewis and Clark County Detention Center. In most cases, the difficulty arises from claims by inmates that they cannot hear the Court. Even in cases where the Court has attempted to determine at the beginning of the hearing that inmates can indeed hear and view the proceedings, at the very end of a hearing, inmates have often complained that they could not hear

1 everything that was said or they could only hear “bits and pieces.” This often
2 results in the Court ordering inmates to be brought over to the courtroom for a
3 repeat of the hearing, resulting in inordinate waste of time. Less frequently,
4 inmates either lack necessary paperwork to proceed or are stymied by an inability
5 to consult contemporaneously with their attorneys during court. The current
6 system is not working.

7 Numerous statutes make clear that Defendants generally have a
8 right to personal appearance for criminal court appearances unless they waive
9 that right and consent to appear by two-way audio/video communication and the
10 Court “agrees to its use.” *See* Mont. Code Ann. §§ 46-7-101(2) (initial
11 appearances), 46-12-201(3) (arraignment), 46-12-211(5) (change of plea), 46-13-
12 110 (omnibus hearings), 46-16-105(3) (change of plea), 46-18-102(1)
13 (pronouncement of sentence), 46-18-115(3) (sentencing hearing). Defendants
14 further enjoy a constitutional right to be present for all critical stages of a
15 criminal prosecution. *See, e.g., State v. Blake*, 2016 MT 212, ¶¶ 7–8,
16 384 Mont. 407, 377 P.3d 1213. This right may be violated if a proceeding is held
17 where the Defendant is unable to view or hear the proceedings. Moreover, this
18 Court has inherent authority to take measures necessary to exercise its
19 jurisdiction and ensure the court’s proper functioning. Mont. Code Ann.
20 § 3-1-113; *Clark v. Dussault*, 265 Mont. 479, 486, 878 P.2d 239, 243 (1994).
21 This includes the power to require custodians of prisoners with prosecutions
22 pending before the Court to secure their attendance before the Court. *See* Mont.
23 Code Ann. § 3-1-111(5); *In re Graveley*, 188 Mont. 546, 614 P.2d 1033 (1980);

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1 *cf. also State ex rel. Ariz. Dep't of Corrections v. Kiger*, 229 P.3d 264, 266 (Ariz.
2 Ct. App. 2010) (courts have inherent authority to order the transport of a prisoner
3 relative to a matter proceeding before the court).

4 Finally, the Court notes that in 2015, in the face of similar
5 problems with remote appearances, Judge Sherlock had issued an order
6 compelling the transportation of all inmates for initial appearances and
7 arraignments. *In re Initial Appearance Procedure for Incarcerated Defendants*,
8 Cause No. SB-2014-24 (Mar. 10, 2015).

9 **2. Montana State Prison and other Out-of-County Facilities**

10 This Court has experienced somewhat different issues with inmates
11 appearing remotely from the Montana State Prison (MSP). MSP requires a signed
12 order from the Court to make inmates available by Zoom. In the Court's
13 experience, however, these orders are not timely requested by the parties, and
14 thus MSP is often unable to accommodate the remote hearing in the time given.
15 This has created a particular problem for pretrial conferences, which generally
16 cannot be rescheduled without causing unnecessary delays of trials. In other
17 situations, the parties have erroneously assumed this Court or the Clerk will
18 arrange for a defendant's appearance or that the opposing party is responsible for
19 making arrangements. The orderly coordination of remote inmate appearances
20 has been frustrated by this collective action problem.

21 Unlike the case of the Lewis and Clark County Detention Center,
22 this Court has not received many complaints from prison inmates that they
23 cannot hear the proceedings. The Court is also aware that transportation of the
24 inmate to this Court for hearings can result in the loss of the inmate's housing
25 assignment at the prison, which can in turn disrupt programming or cause them to

1 be temporarily housed in a higher-security setting when they return to the prison.
2 For this reason, the Court understands that many inmates prefer not to be
3 transported to the Court for non-contested hearings. The Court is also aware that
4 transportation is costly for the County and taxes the limited time and resources of
5 the Sheriff's Office.

6 Given these considerations, the Court finds it necessary to clarify
7 who bears the burden of ensuring that prison inmates and inmates held in other
8 counties are brought before the Court for scheduled hearings. On balance, it is the
9 State who seeks to prosecute them, and so it is the County Attorney who bears
10 the fundamental burden of assuring their presence before the Court. Moreover,
11 because MSP and other state facilities are tasked with scheduling hearings and
12 managing inmates with court proceedings in 56 different counties and several
13 other states, they cannot be expected to track inmates' court dates on their own.
14 Similarly, other counties are often not well-equipped to track hearings in this
15 county. Thus, it makes sense to ensure that Lewis and Clark County Attorney
16 assumes primary responsibility for ensuring out-of-county inmates' presence at
17 hearings.

18 Accordingly,

19 **IT IS ORDERED:**

20 1. **Lewis and Clark County Detention Center.**

21 a. The Lewis and Clark County Detention Center shall
22 transport all inmates in its custody to the Court for its regular law and motion
23 setting (every Thursday beginning at 9:00 a.m.).

24 b. The Court may grant leave for specified inmates to
25 appear by Zoom upon timely application by the County Attorney or the

1 Detention Center, provided contemporaneous notice of such requests are given to
2 the inmate's counsel of record (or if no counsel has appeared in the case, the
3 managing attorney of the Helena OPD office). Defense counsel may object to any
4 such application. Leave will be granted only for good cause shown, including but
5 not limited to a showing that transportation of a particular inmate: (a) poses an
6 unreasonable security risk to the transporting officers or to others in the
7 courtroom; (b) will endanger the safety of the inmate being transported; or (c)
8 will otherwise harm the mental or physical wellbeing of the inmate being
9 transported.

10 2. **Out-of-County facilities (including MSP).**

11 a. Whenever the County Attorney knows that a
12 Defendant is in the custody of the Montana State Prison or another secure facility
13 outside Lewis and Clark County, the County Attorney is responsible for making
14 reasonable efforts to timely apprise that facility of court dates at which the
15 Defendant may need to appear.

16 b. As soon as is practicable prior to any pretrial hearing
17 (i.e., initial appearance, arraignment, bail hearings, status hearings, motions
18 hearings, and pretrial conferences) at which the Defendant's presence is required,
19 the County Attorney will obtain and send to the facility an order directing the
20 defendant's appearance by Zoom or equivalent remote means.

21 c. The County Attorney will obtain an order directing
22 transport from the out-of-county facility only if the Defendant requests transport
23 for the hearing or if the County Attorney reasonably believes that the
24 Defendant's physical presence is necessary for the effective conduct of the
25 hearing. Any motions to transport an out-of-county inmate should state that the

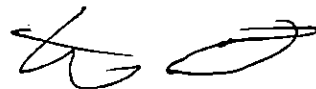
1 County Attorney attempted to contact defense counsel and state whether defense
2 counsel objects to the transport of their client, if known. Motions to transport
3 must be contemporaneously served on defense counsel.

4 d. Zoom appearances by the Defendant will not be
5 permitted for trials. Zoom appearances by the Defendant will not routinely be
6 permitted for sentencings and contested motions hearings. In such situations, the
7 Defendant must obtain leave of court to appear remotely. Otherwise, the County
8 Attorney will timely facilitate transportation of the Defendant to those hearings.

9 e. If an inmate is held out-of-state, the County Attorney
10 has primary responsibility for working with the relevant facility to facilitate the
11 Defendant's appearance for hearings before this Court.

12 The Clerk shall provide copies of this Order to the Lewis and Clark
13 County Detention Center Captain; to the Lewis and Clark County Attorney; to
14 the Helena Managing Attorney for the Office of Public Defender; to the Warden
15 of the Montana State Prison; and to Chief Legal Counsel for the Department of
16 Corrections.

17 DATED this 1st day of March 2023.

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20 CHRISTOPHER D. ABBOTT
21 District Court Judge

22 cc: Bradley Bragg, L&C County Detention Center, via email to:
23 bbragg@lccountymt.gov

24 Kevin Downs, Lewis & Clark County Attorney, via courthouse mail

25 Suzanne Seburn, OPS, via courthouse mail

Jim Salmonsens, MSP, via email to: jisalmonsens@mt.gov

Colleen Ambrose, MSP, via email to: cambrose@mt.gov