

LEGISLATIVE BILL 623

Approved by the Governor May 12, 1999

Introduced by Brashear, 4

AN ACT relating to the criminal procedure; to authorize the use of audiovisual court appearances and written arraignments by a detainee or prisoner.

Be it enacted by the people of the State of Nebraska,

Section 1. It is the intent and purpose of sections 1 to 7 of this act to authorize the usage of audiovisual court appearances and certain district court arraignments by writing in criminal proceedings consistent with the statutory and constitutional rights guaranteed by the Constitution of the United States and the Constitution of Nebraska.

Sec. 2. (1) Except for trials, when the appearance of a detainee or prisoner is required in any court at a criminal proceeding, the detainee or prisoner may make an audiovisual court appearance. However, a judge or magistrate is not required to allow an audiovisual court appearance and may order the detainee or prisoner to appear physically in the courtroom.

(2) An audiovisual court appearance shall meet the conditions required by this act.

Sec. 3. When an audiovisual court appearance is made:

(1) The detainee or prisoner shall sign a written consent and waiver of his or her right to a physical personal appearance at the proceeding;

(2) The judge or magistrate shall verify the written consent and waiver and obtain an oral waiver of the detainee's or prisoner's right to a physical personal appearance at the commencement of the proceeding;

(3) A transcribed record and a videotape of the proceeding shall be made; and

(4) The audiovisual communication system and the facilities shall meet the requirements of section 4 of this act.

Sec. 4. The audiovisual communication system and the facilities for an audiovisual court appearance shall:

(1) Operate so that the detainee or prisoner and the judge or magistrate can see each other simultaneously and converse with each other verbally and documents can be transmitted by facsimile equipment between the judge or magistrate and the detainee or prisoner;

(2) Operate so that the detainee or prisoner and his or her counsel, if any, are both physically in the same location during the audiovisual court appearance; or if the detainee or prisoner waives the right to have counsel physically present and the detainee or prisoner and his or her counsel are in different locations, operate so that the detainee or prisoner and counsel can communicate privately and confidentially by way of telephone and be allowed to confidentially fax papers back and forth;

(3) Be at locations conducive to judicial proceedings. Audiovisual court proceedings may be conducted in the courtroom, the judge's or magistrate's chambers, or any other location suitable for audiovisual communications. The locations shall be sufficiently lighted for use of the audiovisual equipment. The location provided for the judge or magistrate to preside shall be accessible to the public and shall be so that interested persons have an opportunity to observe the proceeding; and

(4) Have at least two video cameras, one to record the detainee or prisoner and one to record the judge or magistrate. The cameras must also be capable of recording counsel and witnesses as necessary. There shall be at least two television monitors so that the detainee or prisoner and the judge or magistrate can observe the proceeding at each other's location simultaneously. There shall be facsimile equipment at both the detainee's or prisoner's location and at the judge's or magistrate's location.

Sec. 5. In a proceeding in which an audiovisual court appearance is made:

(1) Facsimile signatures are acceptable for purposes of releasing the detainee or prisoner from custody; however, actual signed copies of the release documents must be promptly filed with the court and the detainee or prisoner must promptly be provided with a copy of all documents which the detainee or prisoner signs; and

(2) A copy of the videotape of such proceeding shall be made upon written request of the detainee or prisoner or the prosecutor if the request is received by the court within thirty days of the date of the proceeding. The original videotape may be destroyed one year after the date of the

proceeding unless an appeal is taken, in which case the original videotape shall be preserved until all appeals are concluded.

(3) On motion of the defendant or the prosecuting attorney or in the court's discretion, the court may terminate an audiovisual appearance and require an appearance by the detainee or prisoner.

Sec. 6. The district courts may accept arraignments in writing if the detainee or prisoner has entered a not guilty plea in county court. The arraignment form shall contain the necessary consent and waiver of the right to a physical appearance and shall be signed by the detainee or prisoner and his or her counsel of record, if any.

Sec. 7. The Supreme Court shall promulgate rules of practice and procedure for implementation of this act.