

**Introduced by Committee on Judiciary (Senators Corbett (Chair),
Ackerman, Harman, Kuehl, and Steinberg)**February 22, 2007

An act to amend Sections 6455, 12606, and 12606.2 of the Business and Professions Code, to amend Sections 399, 580, 586, 688.010, 688.030, 904.1, and 904.2 of, and to add Section 904.3 to, the Code of Civil Procedure, to amend Sections 25564, 29733, 43039, and 59289 of the Food and Agricultural Code, to amend Sections 12965, 12980, and 71601 of the Government Code, and to amend Sections 977 and 977.2 of the Penal Code, relating to trial court restructuring.

LEGISLATIVE COUNSEL'S DIGEST

SB 649, as introduced, Committee on Judiciary. Trial court restructuring.

(1) The California Constitution provides for the abolition of municipal courts and their unification within the superior courts, as specified.

This bill would conform various statutory provisions of law to the abolition of municipal courts and their unification within the superior courts. The bill would also make related statutory changes with respect to the classification of limited civil cases, appeals in limited civil cases and misdemeanor and infraction cases, and arraignment by 2-way electronic audiovideo communication.

(2) Existing law defines "subordinate judicial officer" for purposes of the Trial Court Employment Protection and Governance Act.

This bill would modify that definition to include child support commissioners, traffic trial commissioners, and juvenile hearing officers.

(3) The bill would make other technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6455 of the Business and Professions
2 Code is amended to read:

3 6455. (a) Any consumer injured by a violation of this chapter
4 may file a complaint and seek redress in ~~any municipal or~~ superior
5 court for injunctive relief, restitution, and damages. Attorney’s
6 fees shall be awarded in this action to the prevailing plaintiff.

7 (b) Any person who violates the provisions of Section 6451 or
8 6452 is guilty of an infraction for the first violation, which is
9 punishable upon conviction by a fine of up to two thousand five
10 hundred dollars (\$2,500) as to each consumer with respect to whom
11 a violation occurs, and is guilty of a misdemeanor for the second
12 and each subsequent violation, which is punishable upon conviction
13 by a fine of two thousand five hundred dollars (\$2,500) as to each
14 consumer with respect to whom a violation occurs, or imprisonment
15 in a county jail for not more than one year, or by both that fine and
16 imprisonment. Any person convicted of a violation of this section
17 shall be ordered by the court to pay restitution to the victim
18 pursuant to Section 1202.4 of the Penal Code.

19 SEC. 2. Section 12606 of the Business and Professions Code
20 is amended to read:

21 12606. (a) No container wherein commodities are packed shall
22 have a false bottom, false sidewalls, false lid or covering, or be
23 otherwise so constructed or filled, wholly or partially, as to
24 facilitate the perpetration of deception or fraud.

25 (b) No container shall be made, formed, or filled as to be
26 misleading. A container that does not allow the consumer to fully
27 view its contents shall be considered to be filled as to be misleading
28 if it contains nonfunctional slack fill. Slack fill is the difference
29 between the actual capacity of a container and the volume of
30 product contained therein. Nonfunctional slack fill is the empty
31 space in a package that is filled to less than its capacity for reasons
32 other than the following:

- 33 (1) Protection of the contents of the package.
- 34 (2) The requirements of machines used for enclosing the
35 contents of the package.
- 36 (3) Unavoidable product settling during shipping and handling.
- 37 (4) The need to utilize a larger than required package or
38 container to provide adequate space for the legible presentation of

1 mandatory and necessary labeling information, such as those based
2 on the regulations adopted by the Food and Drug Administration
3 or state or federal agencies under federal or state law, laws or
4 regulations adopted by foreign governments, or under an
5 industrywide voluntary labeling program.

6 (5) The fact that the product consists of a commodity that is
7 packaged in a decorative or representational container where the
8 container is part of the presentation of the product and has value
9 that is both significant in proportion to the value of the product
10 and independent of its function to hold the product, such as a gift
11 combined with a container that is intended for further use after the
12 product is consumed, or durable commemorative or promotional
13 packages.

14 (6) An inability to increase the level of fill or to further reduce
15 the size of the package, such as where some minimum package
16 size is necessary to accommodate required labeling, discourage
17 pilfering, facilitate handling, or accommodate tamper-resistant
18 devices.

19 (7) The product container bears a reasonable relationship to the
20 actual amount of product contained inside, and the dimensions of
21 the actual product container, the product, or the amount of product
22 therein is visible to the consumer at the point of sale, or where
23 obvious secondary use packaging is involved.

24 (8) The dimensions of the product or immediate product
25 container are visible through the exterior packaging, or where the
26 actual size of the product or immediate product container is clearly
27 and conspicuously depicted on the exterior packaging, accompanied
28 by a clear and conspicuous disclosure that the representation is the
29 “actual size” of the product or the immediate product container.

30 (9) The presence of any head space within an immediate product
31 container necessary to facilitate the mixing, adding, shaking, or
32 dispensing of liquids or powders by consumers prior to use.

33 (10) The exterior packaging contains a product delivery or
34 dosing device if the device is visible, or a clear and conspicuous
35 depiction of the device appears on the exterior packaging, or it is
36 readily apparent from the conspicuous exterior disclosures or the
37 nature and name of the product that a delivery or dosing device is
38 contained in the package.

39 (11) The exterior packaging or immediate product container is
40 a kit that consists of a system, or multiple components, designed

1 to produce a particular result that is not dependent upon the
2 quantity of the contents, if the purpose of the kit is clearly and
3 conspicuously disclosed on the exterior packaging.

4 (12) The exterior packaging of the product is routinely displayed
5 using tester units or demonstrations to consumers in retail stores,
6 so that customers can see the actual, immediate container of the
7 product being sold, or a depiction of the actual size thereof prior
8 to purchase.

9 (13) The exterior packaging consists of single or multi-unit
10 presentation boxes of holiday or gift packages if the purchaser can
11 adequately determine the quantity and sizes of the immediate
12 product container at the point of sale.

13 (14) The exterior packaging is for a combination of one
14 purchased product, together with a free sample or gift, wherein
15 the exterior packaging is necessarily larger than it would otherwise
16 be due to the inclusion of the sample or gift, if the presence of both
17 products and the quantity of each product are clearly and
18 conspicuously disclosed on the exterior packaging.

19 (15) The exterior packaging or immediate product container
20 encloses computer hardware or software designed to serve a
21 particular computer function, if the particular computer function
22 to be performed by the computer hardware or software is clearly
23 and conspicuously disclosed on the exterior packaging.

24 (c) Any sealer may seize a container that facilitates the
25 perpetration of deception or fraud and the contents of the container.
26 By order of the ~~municipal~~ or superior court of the ~~city~~ or county
27 within which a violation of this section occurs, the containers
28 seized shall be condemned and destroyed or released upon ~~such~~
29 conditions ~~as~~ the court may impose to insure against their use in
30 violation of this chapter. The contents of any condemned container
31 shall be returned to the owner thereof if the owner furnishes proper
32 facilities for the return. *A proceeding under this section is a limited*
33 *civil case if the value of the property in controversy is less than*
34 *or equal to the maximum amount in controversy for a limited civil*
35 *case under Section 85 of the Code of Civil Procedure.*

36 SEC. 3. Section 12606.2 of the Business and Professions Code
37 is amended to read:

38 12606.2. (a) This section applies to food containers subject to
39 Section 403 (d) of the Federal Food, Drug, and Cosmetic Act (21
40 U.S.C. Sec. 343 (d)), and Section 100.100 of Title 21 of the Code

1 of Federal Regulations. Section 12606 does not apply to food
2 containers subject to this section.

3 (b) No food containers shall be made, formed, or filled as to be
4 misleading.

5 (c) A container that does not allow the consumer to fully view
6 its contents shall be considered to be filled as to be misleading if
7 it contains nonfunctional slack fill. Slack fill is the difference
8 between the actual capacity of a container and the volume of
9 product contained therein. Nonfunctional slack fill is the empty
10 space in a package that is filled to less than its capacity for reasons
11 other than the following:

12 (1) Protection of the contents of the package.

13 (2) The requirements of the machines used for enclosing the
14 contents in the package.

15 (3) Unavoidable product settling during shipping and handling.

16 (4) The need for the package to perform a specific function,
17 such as where packaging plays a role in the preparation or
18 consumption of a food, if that function is inherent to the nature of
19 the food and is clearly communicated to consumers.

20 (5) The fact that the product consists of a food packaged in a
21 reusable container where the container is part of the presentation
22 of the food and has value that is both significant in proportion to
23 the value of the product and independent of its function to hold
24 the food, such as a gift product consisting of a food or foods
25 combined with a container that is intended for further use after the
26 food is consumed or durable commemorative or promotional
27 packages.

28 (6) Inability to increase the level of fill or to further reduce the
29 size of the package, such as where some minimum package size
30 is necessary to accommodate required food labeling exclusive of
31 any vignettes or other nonmandatory designs or label information,
32 discourage pilfering, facilitate handling, or accommodate
33 tamper-resistant devices.

34 (d) This section shall be interpreted consistent with the
35 comments by the United States Food and Drug Administration on
36 the regulations contained in Section 100.100 of Title 21 of the
37 Code of Federal Regulations, interpreting Section 403(d) of the
38 Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)),
39 as those comments are reported on pages 64123 to 64137, inclusive,
40 of Volume 58 of the Federal Register.

1 (e) If the requirements of this section do not impose the same
2 requirements as are imposed by Section 403(d) of the Federal
3 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 343(d)), or any
4 regulation promulgated pursuant thereto, then this section is not
5 operative to the extent that it is not identical to the federal
6 requirements, and for this purpose those federal requirements are
7 incorporated into this section and shall apply as if they were set
8 forth in this section.

9 (f) Any sealer may seize any container that is in violation of
10 this section and the contents of the container. By order of the
11 superior court of the ~~city or~~ county within which a violation of this
12 section occurs, the containers seized shall be condemned and
13 destroyed or released upon any conditions that the court may
14 impose to ensure against their use in violation of this chapter. The
15 contents of any condemned container shall be returned to the owner
16 thereof if the owner furnishes proper facilities for the return. *A*
17 *proceeding under this section is a limited civil case if the value of*
18 *the property in controversy is less than or equal to the maximum*
19 *amount in controversy for a limited civil case under Section 85 of*
20 *the Code of Civil Procedure.*

21 SEC. 4. Section 399 of the Code of Civil Procedure is amended
22 to read:

23 399. (a) When an order is made transferring an action or
24 proceeding under any of the provisions of this title, the clerk shall,
25 after expiration of the time within which a petition for writ of
26 mandate could have been filed pursuant to Section 400, or if ~~such~~
27 *a writ* petition is filed after judgment denying the writ becomes
28 final, and upon payment of the costs and fees, transmit the
29 pleadings and papers therein (or if the pleadings be oral a transcript
30 of the same) to the clerk of the court to which the same is
31 transferred. When the transfer is sought on any ground specified
32 in ~~subdivisions 2, 3, 4 and 5~~ *subdivision (b), (c), (d), or (e)* of
33 Section 397, the costs and fees thereof, and of filing the papers in
34 the court to which the transfer is ordered, shall be paid at the time
35 the notice of motion is filed, by the party making the motion for
36 the transfer. When the transfer is sought solely, or is ordered,
37 because the action or proceeding was commenced in a court other
38 than that designated as proper by this title, ~~such those~~ costs and
39 fees (including any expenses and attorney's fees awarded defendant
40 pursuant to Section 396b) shall be paid by the plaintiff before ~~such~~

1 *the* transfer is made; and if, ~~in any such case,~~ the defendant has
2 paid ~~such~~ *those* costs and fees at the time of filing ~~his or her a~~
3 notice of motion, the same shall be repaid to the defendant, upon
4 the making of ~~such~~ *the transfer* order. If ~~such~~ *those* costs and fees
5 have not been so paid by the plaintiff within five days after service
6 of notice of ~~such~~ *the transfer* order, then any other party interested
7 therein, whether named in the complaint as a party or not, may
8 pay ~~such~~ *those* costs and fees, and the clerk shall thereupon transmit
9 the papers and pleadings therein as if ~~such~~ *those* costs and fees
10 had been originally paid by the plaintiff, and the same shall be a
11 proper item of costs of the party so paying the same, recoverable
12 by ~~such~~ *that* party in the event ~~he or she~~ *that party* prevails in the
13 action; otherwise, the same shall be offset against and deducted
14 from the amount, if any, awarded the plaintiff in the event the
15 plaintiff prevails against ~~such~~ *that* party in ~~such~~ *the* action. The
16 cause of action shall not be further prosecuted in any court until
17 ~~such~~ *those* costs and fees are paid. If ~~such~~ *those* costs and fees are
18 not paid within 30 days after service of notice of ~~such~~ *the transfer*
19 order, or if a copy of a petition for writ of mandate pursuant to
20 Section 400 is filed in the trial court, or if an appeal is taken
21 pursuant to Section 904.2 ~~or 904.3~~, then within 30 days after notice
22 of finality of the order of transfer, the court on a duly noticed
23 motion by any party may dismiss the action without prejudice to
24 the cause on the condition that no other action on the cause may
25 be commenced in another court prior to satisfaction of the court's
26 order for costs and fees. When a petition for writ of mandate or
27 appeal does not result in a stay of proceedings, the time for
28 payment of ~~such~~ *those* costs shall be 60 days after service of the
29 notice of the order.

30 ~~At~~

31 *(b)* At the time of transmittal of the papers and pleadings, the
32 clerk shall mail notice to all parties who have appeared in the action
33 or special proceeding, stating the date on which ~~such~~ transmittal
34 occurred. Promptly upon receipt of ~~such~~ *the* papers and pleadings,
35 the clerk of the court to which the action or proceeding is
36 transferred shall mail notice to all parties who have appeared in
37 the action or special proceeding, stating the date of the filing of
38 the case and number assigned to the case in ~~such~~ *the* court.

39 ~~The~~

1 (c) *The* court to which an action or proceeding is transferred
2 under this title shall have and exercise over the same the like
3 jurisdiction as if it had been originally commenced therein, all
4 prior proceedings being saved, and ~~such~~ *the* court may require
5 ~~such~~ amendment of the pleadings, the filing and service of ~~such~~
6 amended, additional, or supplemental pleadings, and the giving of
7 ~~such~~ notice, as may be necessary for the proper presentation and
8 determination of the action or proceeding in ~~such~~ *the* court.

9 SEC. 5. Section 580 of the Code of Civil Procedure is amended
10 to read:

11 580. (a) The relief granted to the plaintiff, if there is no answer,
12 cannot exceed that demanded in the complaint, in the statement
13 required by Section 425.11, or in the statement provided for by
14 Section 425.115; but in any other case, the court may grant the
15 plaintiff any relief consistent with the case made by the complaint
16 and embraced within the issue. The court may impose liability,
17 regardless of whether the theory upon which liability is sought to
18 be imposed involves legal or equitable principles.

19 (b) Notwithstanding subdivision (a), the following types of relief
20 may not be granted in a limited civil case:

21 (1) Relief exceeding the maximum amount in controversy for
22 a limited civil case as provided in Section 85, exclusive of
23 attorney's fees, interest, and costs.

24 (2) A permanent injunction, *except as otherwise authorized by*
25 *statute*.

26 (3) A determination of title to real property.

27 (4) Declaratory relief, except as authorized by Section 86.

28 SEC. 6. Section 586 of the Code of Civil Procedure is amended
29 to read:

30 586. (a) In the following cases the same proceedings shall be
31 had, and judgment shall be rendered in the same manner, as if the
32 defendant had failed to answer:

33 (1) If the complaint has been amended, and the defendant fails
34 to answer it, as amended, or demur thereto, or file a notice of
35 motion to strike, of the character specified in Section 585, within
36 30 days after service thereof or within the time allowed by the
37 court.

38 (2) If the demurrer to the complaint is overruled and a motion
39 to strike, of the character specified in Section 585, is denied, or
40 where only one thereof is filed, if the demurrer is overruled or the

1 motion to strike is denied, and the defendant fails to answer the
2 complaint within the time allowed by the court.

3 (3) If a motion to strike, of the character specified in Section
4 585, is granted in whole or in part, and the defendant fails to answer
5 the unstricken portion of the complaint within the time allowed
6 by the court, no demurrer having been sustained or being then
7 pending.

8 (4) If a motion to quash service of summons or to stay or
9 dismiss; the action has been filed, or writ of mandate sought and
10 notice thereof given, as provided in Section 418.10, and upon
11 denial of ~~such~~ *the* motion or writ, defendant fails to respond to the
12 complaint; within the time provided in ~~such~~ *that* section or as
13 otherwise provided by law.

14 (5) If the demurrer to the answer is sustained and the defendant
15 fails to amend the answer within the time allowed by the court.

16 (6) (A) If a motion to transfer pursuant to Section 396b is denied
17 and the defendant fails to respond to the complaint within the time
18 allowed by the court pursuant to subdivision (e) of Section 396b
19 or within the time provided in subparagraph (C).

20 (B) If a motion to transfer pursuant to Section 396b is granted
21 and the defendant fails to respond to the complaint within 30 days
22 of the mailing of notice of the filing and case number by the clerk
23 of the court to which the action or proceeding is transferred or
24 within the time provided in subparagraph (C).

25 (C) If the order granting or denying a motion to transfer pursuant
26 to Section 396a or 396b is the subject of an appeal pursuant to
27 Section 904.2 ~~or 904.3~~ in which a stay is granted or of a mandate
28 proceeding pursuant to Section 400, the court having jurisdiction
29 over the trial, upon application or on its own motion after ~~such~~ *the*
30 appeal or mandate proceeding becomes final or upon earlier
31 termination of a stay, shall allow the defendant a reasonable time
32 to respond to the complaint. Notice of the order allowing the
33 defendant further time to respond to the complaint shall be
34 promptly served by the party who obtained ~~such~~ *the* order or by
35 the clerk if the order is made on the court's own motion.

36 (7) If a motion to strike the answer in whole, of the character
37 specified in Section 585, is granted without leave to amend, or if
38 a motion to strike the answer in whole or in part, of the character
39 specified in Section 585, is granted with leave to amend and the

1 defendant fails to amend the answer within the time allowed by
2 the court.

3 (8) If a motion to dismiss pursuant to Section 583.250 is denied
4 and the defendant fails to respond within the time allowed by the
5 court.

6 (b) For the purposes of this section, “respond” means to answer,
7 to demur, or to move to strike.

8 SEC. 7. Section 688.010 of the Code of Civil Procedure is
9 amended to read:

10 688.010. ~~For~~ A *proceeding* for the purpose of the remedies
11 provided under this article, ~~jurisdiction is conferred upon any of~~
12 ~~the following courts:~~

13 ~~(a) The superior court, regardless of whether the municipal court~~
14 ~~also has jurisdiction under subdivision (b):~~

15 ~~(b) The municipal court if (1) is a limited civil case if (a) the~~
16 ~~amount of liability sought to be collected does not exceed the~~
17 ~~jurisdictional amount of the court and (2) maximum amount in~~
18 ~~controversy for a limited civil case provided in Section 85, and~~
19 ~~(b) the legality of the liability being enforced is not contested by~~
20 ~~the person against whom enforcement is sought.~~

21 SEC. 8. Section 688.030 of the Code of Civil Procedure is
22 amended to read:

23 688.030. (a) Whenever pursuant to any provision of the Public
24 Resources Code, Revenue and Taxation Code (excluding Sections
25 3201 to 3204, inclusive), or Unemployment Insurance Code,
26 property is levied upon pursuant to a warrant or notice of levy
27 issued by the state or by a department or agency of the state for
28 the collection of a liability:

29 (1) If the debtor is a natural person, the debtor is entitled to the
30 same exemptions to which a judgment debtor is entitled. Except
31 as provided in subdivisions (b) and (c), the claim of exemption
32 shall be made, heard, and determined as provided in Chapter 4
33 (commencing with Section 703.010) of Division 2 in the same
34 manner as if the property were levied upon under a writ of
35 execution.

36 (2) A third person may claim ownership or the right to
37 possession of the property or a security interest in or lien on the
38 property. Except as provided in subdivisions (b) and (c) or as
39 otherwise provided by statute, the third-party claim shall be made,
40 heard, and determined as provided in Division 4 (commencing

1 with Section 720.010) in the same manner as if the property were
2 levied upon under a writ of execution.

3 (b) In the case of a levy pursuant to a notice of levy:

4 (1) The claim of exemption or the third-party claim shall be
5 filed with the state department or agency that issued the notice of
6 levy.

7 (2) The state department or agency that issued the notice of levy
8 shall perform the duties of the levying officer, except that the state
9 department or agency need not give itself the notices that the
10 levying officer is required to serve on a judgment creditor or
11 creditor or the notices that a judgment creditor or creditor is
12 required to give to the levying officer. The state department or
13 agency in performing the duties of the levying officer under this
14 paragraph has no obligation to search public records or otherwise
15 seek to determine whether any lien or encumbrance exists on
16 property sold or collected.

17 (c) A claim of exemption or a third-party claim pursuant to this
18 section shall be heard and determined in the *superior* court
19 ~~specified in Section 688.010~~ in the county where the property
20 levied upon is located.

21 SEC. 9. Section 904.1 of the Code of Civil Procedure is
22 amended to read:

23 904.1. (a) An appeal, other than in a limited civil case, is to
24 the court of appeal. An appeal, other than in a limited civil case,
25 may be taken from any of the following:

26 (1) From a judgment, except (A) an interlocutory judgment,
27 other than as provided in paragraphs (8), (9), and (11), *or* (B) a
28 judgment of contempt that is made final and conclusive by Section
29 1222, ~~or (C) a judgment granting or denying a petition for issuance~~
30 ~~of a writ of mandamus or prohibition directed to a municipal court~~
31 ~~or the superior court in a county in which there is no municipal~~
32 ~~court or the judge or judges thereof that relates to a matter pending~~
33 ~~in the municipal or superior court. However, an appellate court~~
34 ~~may, in its discretion, review a judgment granting or denying a~~
35 ~~petition for issuance of a writ of mandamus or prohibition, or a~~
36 ~~judgment or order for the payment of monetary sanctions, upon~~
37 ~~petition for an extraordinary writ.~~

38 (2) From an order made after a judgment made appealable by
39 paragraph (1).

1 (3) From an order granting a motion to quash service of
2 summons or granting a motion to stay the action on the ground of
3 inconvenient forum, or from a written order of dismissal under
4 Section 581d following an order granting a motion to dismiss the
5 action on the ground of inconvenient forum.

6 (4) From an order granting a new trial or denying a motion for
7 judgment notwithstanding the verdict.

8 (5) From an order discharging or refusing to discharge an
9 attachment or granting a right to attach order.

10 (6) From an order granting or dissolving an injunction, or
11 refusing to grant or dissolve an injunction.

12 (7) From an order appointing a receiver.

13 (8) From an interlocutory judgment, order, or decree, hereafter
14 made or entered in an action to redeem real or personal property
15 from a mortgage thereof, or a lien thereon, determining the right
16 to redeem and directing an accounting.

17 (9) From an interlocutory judgment in an action for partition
18 determining the rights and interests of the respective parties and
19 directing partition to be made.

20 (10) From an order made appealable by the provisions of the
21 Probate Code or the Family Code.

22 (11) From an interlocutory judgment directing payment of
23 monetary sanctions by a party or an attorney for a party if the
24 amount exceeds five thousand dollars (\$5,000).

25 (12) From an order directing payment of monetary sanctions
26 by a party or an attorney for a party if the amount exceeds five
27 thousand dollars (\$5,000).

28 (13) From an order granting or denying a special motion to
29 strike under Section 425.16.

30 (b) Sanction orders or judgments of five thousand dollars
31 (\$5,000) or less against a party or an attorney for a party may be
32 reviewed on an appeal by that party after entry of final judgment
33 in the main action, or, at the discretion of the court of appeal, may
34 be reviewed upon petition for an extraordinary writ.

35 SEC. 10. Section 904.2 of the Code of Civil Procedure is
36 amended to read:

37 904.2. An appeal of a ruling by a superior court judge or other
38 judicial officer in a limited civil case is to the appellate division
39 of the superior court. An appeal of a ruling by a superior court

1 *judge or other judicial officer* in a limited civil case may be taken
2 from any of the following:

3 (a) From a judgment, except (1) an interlocutory judgment, or
4 (2) a judgment of contempt that is made final and conclusive by
5 Section 1222.

6 (b) From an order made after a judgment made appealable by
7 subdivision (a).

8 (c) From an order changing or refusing to change the place of
9 trial.

10 (d) From an order granting a motion to quash service of
11 summons or granting a motion to stay the action on the ground of
12 inconvenient forum, or from a written order of dismissal under
13 Section 581d following an order granting a motion to dismiss the
14 action on the ground of inconvenient forum.

15 (e) From an order granting a new trial or denying a motion for
16 judgment notwithstanding the verdict.

17 (f) From an order discharging or refusing to discharge an
18 attachment or granting a right to attach order.

19 (g) From an order granting or dissolving an injunction, or
20 refusing to grant or dissolve an injunction.

21 (h) From an order appointing a receiver.

22 SEC. 11. Section 904.3 is added to the Code of Civil Procedure,
23 to read:

24 904.3. An appeal shall not be taken from a judgment of the
25 appellate division of a superior court granting or denying a petition
26 for issuance of a writ of mandamus or prohibition directed to the
27 superior court, or a judge thereof, in a limited civil case or a
28 misdemeanor or infraction case. An appellate court may, in its
29 discretion, upon petition for extraordinary writ, review the
30 judgment.

31 SEC. 12. Section 25564 of the Food and Agricultural Code is
32 amended to read:

33 25564. If the lot of poultry meat ~~which~~ *that* is held is perishable
34 or subject to rapid deterioration, the enforcing officer may file a
35 verified petition in ~~any superior or municipal court of the state~~
36 ~~destroy~~ ~~such~~ *the* lot or otherwise abate the nuisance. The petition
37 shall show the condition of the lot, that the lot is situated within
38 the county, that the lot is held, and that notice of noncompliance
39 has been served pursuant to this chapter. The court may thereupon
40 order that ~~such~~ *the* lot be forthwith destroyed or the nuisance

1 otherwise abated as set forth in ~~such~~ the order. *A proceeding under*
 2 *this section is a limited civil case if the value of the property in*
 3 *controversy is less than or equal to the maximum amount in*
 4 *controversy for a limited civil case under Section 85 of the Code*
 5 *of Civil Procedure.*

6 SEC. 13. Section 29733 of the Food and Agricultural Code is
 7 amended to read:

8 29733. If a packer or owner of honey, or the agent of either,
 9 after notification to the packer, owner, or agent that the honey and
 10 its containers are a public nuisance, refuses, or fails within a
 11 reasonable time, to recondition or remark the honey so as to comply
 12 with all requirements of this chapter, the honey and its containers:

13 (a) May be seized by the director or any enforcement officer.

14 (b) By order of the ~~municipal or~~ superior court of the county ~~or~~
 15 ~~city~~ within which the honey and its containers may be, shall be
 16 condemned and destroyed, or released upon ~~such~~ conditions ~~as~~ the
 17 court, in its discretion, may impose to ~~insure~~ ensure that it will not
 18 be packed, delivered for shipment, shipped, transported, or sold
 19 in violation of this chapter. *A proceeding under this section is a*
 20 *limited civil case if the value of the property in controversy is less*
 21 *than or equal to the maximum amount in controversy for a limited*
 22 *civil case under Section 85 of the Code of Civil Procedure.*

23 SEC. 14. Section 43039 of the Food and Agricultural Code is
 24 amended to read:

25 43039. If the lot which is held is perishable or subject to rapid
 26 deterioration, the enforcing officer may file a verified petition in
 27 ~~any superior or municipal court of the state~~ to destroy the lot or
 28 otherwise abate the nuisance. The petition shall show the condition
 29 of the lot, that the lot is situated within the county, that the lot is
 30 held, and that notice of noncompliance has been served as provided
 31 in this article. The court may thereupon order that the lot be
 32 forthwith destroyed or the nuisance otherwise abated as set forth
 33 in the order. *A proceeding under this section is a limited civil case*
 34 *if the value of the property in controversy is less than or equal to*
 35 *the maximum amount in controversy for a limited civil case under*
 36 *Section 85 of the Code of Civil Procedure.*

37 SEC. 15. Section 59289 of the Food and Agricultural Code is
 38 amended to read:

39 59289. (a) The enforcing officer may file a verified petition
 40 in ~~any superior or municipal court of this state~~ requesting

1 permission to divert ~~such~~ *the* lot to any other available lawful use
2 or to destroy the lot. The verified petition shall show all of the
3 following:

4 ~~(a)~~

5 (1) The condition of the lot.

6 ~~(b)~~

7 (2) That the lot is situated within the territorial jurisdiction of
8 the court in which the petition is being filed.

9 ~~(c)~~

10 (3) That the lot is held, and that the notice of noncompliance
11 has been served as provided in Section 59285.

12 ~~(d)~~

13 (4) That the lot has not been reconditioned as required.

14 ~~(e)~~

15 (5) The name and address of the owner and the person in
16 possession of the lot.

17 ~~(f)~~

18 (6) That the owner has refused permission to divert or to destroy
19 the lot.

20 (b) *A proceeding under this section is a limited civil case if the*
21 *value of the property in controversy is less than or equal to the*
22 *maximum amount in controversy for a limited civil case under*
23 *Section 85 of the Code of Civil Procedure.*

24 SEC. 16. Section 12965 of the Government Code is amended
25 to read:

26 12965. (a) In the case of failure to eliminate an unlawful
27 practice under this part through conference, conciliation, or
28 persuasion, or in advance thereof if circumstances warrant, the
29 director in his or her discretion may cause to be issued in the name
30 of the department a written accusation. The accusation shall contain
31 the name of the person, employer, labor organization, or
32 employment agency accused, which shall be known as the
33 respondent, shall set forth the nature of the charges, shall be served
34 upon the respondent together with a copy of the verified complaint,
35 as amended, and shall require the respondent to answer the charges
36 at a hearing.

37 For any complaint treated by the director as a group or class
38 complaint for purposes of investigation, conciliation, and
39 accusation pursuant to Section 12961, an accusation shall be issued,
40 if at all, within two years after the filing of the complaint. For any

1 complaint alleging a violation of Section 51.7 of the Civil Code,
2 an accusation shall be issued, if at all, within two years after the
3 filing of the complaint. For all other complaints, an accusation
4 shall be issued, if at all, within one year after the filing of a
5 complaint. If the director determines, pursuant to Section 12961,
6 that a complaint investigated as a group or class complaint under
7 Section 12961 is to be treated as a group or class complaint for
8 purposes of conciliation and accusation as well, that determination
9 shall be made and shall be communicated in writing within one
10 year after the filing of the complaint to each person, employer,
11 labor organization, employment agency, or public entity alleged
12 in the complaint to have committed an unlawful practice.

13 (b) If an accusation is not issued within 150 days after the filing
14 of a complaint, or if the department earlier determines that no
15 accusation will issue, the department shall promptly notify, in
16 writing, the person claiming to be aggrieved that the department
17 shall issue, on his or her request, the right-to-sue notice. This notice
18 shall indicate that the person claiming to be aggrieved may bring
19 a civil action under this part against the person, employer, labor
20 organization, or employment agency named in the verified
21 complaint within one year from the date of that notice. If the person
22 claiming to be aggrieved does not request a right-to-sue notice,
23 the department shall issue the notice upon completion of its
24 investigation, and not later than one year after the filing of the
25 complaint. A city, county, or district attorney in a location having
26 an enforcement unit established on or before March 1, 1991,
27 pursuant to a local ordinance enacted for the purpose of prosecuting
28 HIV/AIDS discrimination claims, acting on behalf of any person
29 claiming to be aggrieved due to HIV/AIDS discrimination, may
30 also bring a civil action under this part against the person,
31 employer, labor organization, or employment agency named in
32 the notice. The superior ~~and municipal~~ courts of the State of
33 California shall have jurisdiction of those actions, and the aggrieved
34 person may file in ~~any~~ of these courts. An action may be brought
35 in any county in the state in which the unlawful practice is alleged
36 to have been committed, in the county in which the records relevant
37 to the practice are maintained and administered, or in the county
38 in which the aggrieved person would have worked or would have
39 had access to the public accommodation but for the alleged
40 unlawful practice, but if the defendant is not found within any of

1 these counties, an action may be brought within the county of the
2 defendant's residence or principal office. A copy of any complaint
3 filed pursuant to this part shall be served on the principal offices
4 of the department and of the commission. The remedy for failure
5 to send a copy of a complaint is an order to do so. Those actions
6 may not be filed as class actions or may not be maintained as class
7 actions by the person or persons claiming to be aggrieved where
8 those persons have filed a civil class action in the federal courts
9 alleging a comparable claim of employment discrimination against
10 the same defendant or defendants. In actions brought under this
11 section, the court, in its discretion, may award to the prevailing
12 party reasonable attorney's fees and costs, including expert witness
13 fees, except where the action is filed by a public agency or a public
14 official, acting in an official capacity.

15 (c) (1) If an accusation includes a prayer either for damages
16 for emotional injuries as a component of actual damages, or for
17 administrative fines, or for both, or if an accusation is amended
18 for the purpose of adding a prayer either for damages for emotional
19 injuries as a component of actual damages, or for administrative
20 fines, or both, the respondent may within 30 days after service of
21 the accusation or amended accusation, elect to transfer the
22 proceedings to a court in lieu of a hearing pursuant to subdivision
23 (a) by serving a written notice to that effect on the department, the
24 commission, and the person claiming to be aggrieved. The
25 commission shall prescribe the form and manner of giving written
26 notice.

27 (2) No later than 30 days after the completion of service of the
28 notice of election pursuant to paragraph (1), the department shall
29 dismiss the accusation and shall, either itself or, at its election,
30 through the Attorney General, file in the appropriate court an action
31 in its own name on behalf of the person claiming to be aggrieved
32 as the real party in interest. In this action, the person claiming to
33 be aggrieved shall be the real party in interest and shall have the
34 right to participate as a party and be represented by his or her own
35 counsel. Complaints filed pursuant to this section shall be filed in
36 the appropriate superior court in any county in which unlawful
37 practices are alleged to have been committed, in the county in
38 which records relevant to the alleged unlawful practices are
39 maintained and administered, or in the county in which the person
40 claiming to be aggrieved would have worked or would have had

1 access to public accommodation, but for the alleged unlawful
2 practices. If the defendant is not found in any of these counties,
3 the action may be brought within the county of the defendant's
4 residence or principal office. Those actions shall be assigned to
5 the court's delay reduction program, or otherwise given priority
6 for disposition by the court in which the action is filed.

7 (3) A court may grant as relief in any action filed pursuant to
8 this subdivision any relief a court is empowered to grant in a civil
9 action brought pursuant to subdivision (b), in addition to any other
10 relief that, in the judgment of the court, will effectuate the purpose
11 of this part. This relief may include a requirement that the employer
12 conduct training for all employees, supervisors, and management
13 on the requirements of this part, the rights and remedies of those
14 who allege a violation of this part, and the employer's internal
15 grievance procedures.

16 (4) The department may amend an accusation to pray for either
17 damages for emotional injury or for administrative fines, or both,
18 provided that the amendment is made within 30 days of the
19 issuance of the original accusation.

20 (d) (1) Notwithstanding subdivision (b), the one-year statute
21 of limitations, commencing from the date of the right-to-sue notice
22 by the Department of Fair Employment and Housing, to the person
23 claiming to be aggrieved, shall be tolled when all of the following
24 requirements have been met:

25 (A) A charge of discrimination or harassment is timely filed
26 concurrently with the Equal Employment Opportunity Commission
27 and the Department of Fair Employment and Housing.

28 (B) The investigation of the charge is deferred by the
29 Department of Fair Employment and Housing to the Equal
30 Employment Opportunity Commission.

31 (C) A right-to-sue notice is issued to the person claiming to be
32 aggrieved upon deferral of the charge by the Department of Fair
33 Employment and Housing to the Equal Employment Opportunity
34 Commission.

35 (2) The time for commencing an action for which the statute of
36 limitations is tolled under paragraph (1) expires when the federal
37 right-to-sue period to commence a civil action expires, or one year
38 from the date of the right-to-sue notice by the Department of Fair
39 Employment and Housing, whichever is later.

1 (3) This subdivision is intended to codify the holding in *Downs*
2 *v. Department of Water and Power of City of Los Angeles* (1997)
3 58 Cal.App.4th 1093.

4 (e) (1) Notwithstanding subdivision (b), the one-year statute
5 of limitations, commencing from the date of the right-to-sue notice
6 by the Department of Fair Employment and Housing, to the person
7 claiming to be aggrieved, shall be tolled when all of the following
8 requirements have been met:

9 (A) A charge of discrimination or harassment is timely filed
10 concurrently with the Equal Employment Opportunity Commission
11 and the Department of Fair Employment and Housing.

12 (B) The investigation of the charge is deferred by the Equal
13 Employment Opportunity Commission to the Department of Fair
14 Employment and Housing.

15 (C) After investigation and determination by the Department
16 of Fair Employment and Housing, the Equal Employment
17 Opportunity Commission agrees to perform a substantial weight
18 review of the determination of the department or conducts its own
19 investigation of the claim filed by the aggrieved person.

20 (2) The time for commencing an action for which the statute of
21 limitations is tolled under paragraph (1) shall expire when the
22 federal right-to-sue period to commence a civil action expires, or
23 one year from the date of the right-to-sue notice by the Department
24 of Fair Employment and Housing, whichever is later.

25 SEC. 17. Section 12980 of the Government Code is amended
26 to read:

27 12980. This article governs the procedure for the prevention
28 and elimination of discrimination in housing made unlawful
29 pursuant to Article 2 (commencing with Section 12955) of Chapter
30 6.

31 (a) Any person claiming to be aggrieved by an alleged violation
32 of Section 12955, 12955.1, or 12955.7 may file with the department
33 a verified complaint in writing that shall state the name and address
34 of the person alleged to have committed the violation complained
35 of, and that shall set forth the particulars of the alleged violation
36 and contain any other information required by the department.

37 The filing of a complaint and pursuit of conciliation or remedy
38 under this part shall not prejudice the complainant's right to pursue
39 effective judicial relief under other applicable laws, but if a civil
40 action has been filed under Section 52 of the Civil Code, the

1 department shall terminate proceedings upon notification of the
2 entry of final judgment unless the judgment is a dismissal entered
3 at the complainant’s request.

4 (b) The Attorney General or the director may, in a like manner,
5 make, sign, and file complaints citing practices that appear to
6 violate the purpose of this part or any specific provisions of this
7 part relating to housing discrimination.

8 No complaint may be filed after the expiration of one year from
9 the date upon which the alleged violation occurred or terminated.

10 (c) The department may thereupon proceed upon the complaint
11 in the same manner and with the same powers as provided in this
12 part in the case of an unlawful practice, except that where the
13 provisions of this article provide greater rights and remedies to an
14 aggrieved person than the provisions of Article 1 (commencing
15 with Section 12960), the provisions of this article shall prevail.

16 (d) Upon the filing of a complaint, the department shall serve
17 notice upon the complainant of the time limits, rights of the parties,
18 and choice of forums provided for under the law.

19 (e) The department shall commence proceedings with respect
20 to a complaint within 30 days of filing of the complaint.

21 (f) An investigation of allegations contained in any complaint
22 filed with the department shall be completed within 100 days after
23 receipt of the complaint, unless it is impracticable to do so. If the
24 investigation is not completed within 100 days, the complainant
25 and respondent shall be notified, in writing, of the department’s
26 reasons for not doing so.

27 (g) Upon the conclusion of each investigation, the department
28 shall prepare a final investigative report containing all of the
29 following:

30 (1) The names of any witnesses and the dates of any contacts
31 with those witnesses.

32 (2) A summary of the dates of any correspondence or other
33 contacts with the aggrieved persons or the respondent.

34 (3) A summary of witness statements.

35 (4) Answers to interrogatories.

36 (5) A summary description of other pertinent records.

37 A final investigative report may be amended if additional
38 evidence is later discovered.

39 (h) If an accusation is not issued within 100 days after the filing
40 of a complaint, or if the department earlier determines that no

1 accusation will issue, the department shall promptly notify the
2 person claiming to be aggrieved. This notice shall, in any event,
3 be issued no more than 30 days after the date of the determination
4 or 30 days after the date of the expiration of the 100-day period,
5 whichever date first occurs. The notice shall indicate that the person
6 claiming to be aggrieved may bring a civil action under this part
7 against the person named in the verified complaint within the time
8 period specified in Section 12989.1. The notice shall also indicate,
9 unless the department has determined that no accusation will be
10 issued, that the person claiming to be aggrieved has the option of
11 continuing to seek redress for the alleged discrimination through
12 the procedures of the department if he or she does not desire to
13 file a civil action. The superior and municipal courts of the State
14 of California shall have jurisdiction of these actions, and the
15 aggrieved person may file in any of these courts. The action may
16 be brought in any county in the state in which the violation is
17 alleged to have been committed, or in the county in which the
18 records relevant to the alleged violation are maintained and
19 administered, but if the defendant is not found within that county,
20 the action may be brought within the county of the defendant's
21 residence or principal office. A copy of any complaint filed
22 pursuant to this part shall be served on the principal offices of the
23 department and of the commission. The remedy for failure to send
24 a copy of a complaint is an order to do so. In a civil action brought
25 under this section, the court, in its discretion, may award to the
26 prevailing party reasonable attorneys' fees.

27 (i) All agreements reached in settlement of any housing
28 discrimination complaint filed pursuant to this section shall be
29 made public, unless otherwise agreed by the complainant and
30 respondent, and the department determines that the disclosure is
31 not required to further the purposes of the act.

32 (j) All agreements reached in settlement of any housing
33 discrimination complaint filed pursuant to this section shall be
34 agreements between the respondent and complainant, and shall be
35 subject to approval by the department.

36 SEC. 18. Section 71601 of the Government Code is amended
37 to read:

38 71601. For purposes of this chapter, the following definitions
39 shall apply:

- 1 (a) “Appointment” means the offer to and acceptance by a
2 person of a position in the trial court in accordance with this chapter
3 and the trial court’s personnel policies, procedures, and plans.
- 4 (b) “Employee organization” means either of the following:
- 5 (1) Any organization that includes trial court employees and
6 has as one of its primary purposes representing those employees
7 in their relations with that trial court.
- 8 (2) Any organization that seeks to represent trial court
9 employees in their relations with that trial court.
- 10 (c) “Hiring” means appointment as defined in subdivision (a).
- 11 (d) “Mediation” means effort by an impartial third party to assist
12 in reconciling a dispute regarding wages, hours, and other terms
13 and conditions of employment between representatives of the trial
14 court and the recognized employee organization or recognized
15 employee organizations through interpretation, suggestion, and
16 advice.
- 17 (e) “Meet and confer in good faith” means that a trial court or
18 representatives as it may designate, and representatives of
19 recognized employee organizations, shall have the mutual
20 obligation personally to meet and confer promptly upon request
21 by either party and continue for a reasonable period of time in
22 order to exchange freely information, opinions, and proposals, and
23 to endeavor to reach agreement on matters within the scope of
24 representation. The process should include adequate time for the
25 resolution of impasses where specific procedures for resolution
26 are contained in this chapter or in a local rule, or when the
27 procedures are utilized by mutual consent.
- 28 (f) “Personnel rules,” “personnel policies, procedures, and
29 plans,” and “rules and regulations” mean policies, procedures,
30 plans, rules, or regulations adopted by a trial court or its designee
31 pertaining to conditions of employment of trial court employees,
32 subject to meet and confer in good faith.
- 33 (g) “Promotion” means promotion within the trial court as
34 defined in the trial court’s personnel policies, procedures, and
35 plans, subject to meet and confer in good faith.
- 36 (h) “Recognized employee organization” means an employee
37 organization that has been formally acknowledged to represent
38 trial court employees by the county under Sections 3500 to 3510,
39 inclusive, prior to the implementation date of this chapter, or by
40 the trial court under Rules 2201 to 2210, inclusive, of the California

1 Rules of Court, as those rules read on April 23, 1997, Sections
2 70210 to 70219, inclusive, or Article 3 (commencing with Section
3 71630) of this chapter.

4 (i) “Subordinate judicial officer” means an officer appointed to
5 perform subordinate judicial duties as authorized by Section 22 of
6 Article VI of the California Constitution, including, but not limited
7 to, a court commissioner, probate commissioner, *child support*
8 *commissioner*, referee, *traffic trial commissioner*, traffic referee,
9 juvenile court referee, *juvenile hearing officer*, and temporary
10 judge ~~pro tempore~~.

11 (j) “Transfer” means transfer within the trial court as defined
12 in the trial court’s personnel policies, procedures, and plans, subject
13 to meet and confer in good faith.

14 (k) “Trial court” means a superior court ~~or a municipal court~~.

15 (l) “Trial court employee” means a person who is both of the
16 following:

17 (1) Paid from the trial court’s budget, regardless of the funding
18 source. For the purpose of this paragraph, “trial court’s budget”
19 means funds from which the presiding judge of a trial court, or his
20 or her designee, has authority to control, authorize, and direct
21 expenditures, including, but not limited to, local revenues, all grant
22 funds, and trial court operations funds.

23 (2) Subject to the trial court’s right to control the manner and
24 means of his or her work because of the trial court’s authority to
25 hire, supervise, discipline, and terminate employment. For purposes
26 of this paragraph only, the “trial court” includes the judges of a
27 trial court or their appointees who are vested with or delegated the
28 authority to hire, supervise, discipline, and terminate.

29 (m) A person is a “trial court employee” if and only if both
30 paragraphs (1) and (2) of subdivision (l) are true irrespective of
31 job classification or whether the functions performed by that person
32 are identified in Rule 810 of the California Rules of Court. The
33 phrase “trial court employee” includes those subordinate judicial
34 officers who satisfy paragraphs (1) and (2) of subdivision (l). The
35 phrase “trial court employee” does not include temporary
36 employees hired through agencies, jurors, individuals hired by the
37 trial court pursuant to an independent contractor agreement,
38 individuals for whom the county or trial court reports income to
39 the Internal Revenue Service on a Form 1099 and does not
40 withhold employment taxes, sheriffs, and judges whether elected

1 or appointed. Any temporary employee, whether hired through an
2 agency or not, shall not be employed in the trial court for a period
3 exceeding 180 calendar days, except that for court reporters in a
4 county of the first class, a trial court and a recognized employee
5 organization may provide otherwise by mutual agreement in a
6 memorandum of understanding or other agreement.

7 SEC. 19. Section 977 of the Penal Code is amended to read:

8 977. (a) (1) In all cases in which the accused is charged with
9 a misdemeanor only, he or she may appear by counsel only, except
10 as provided in paragraphs (2) and (3). If the accused agrees, the
11 initial court appearance, arraignment, and plea may be by video,
12 as provided by subdivision (c).

13 (2) If the accused is charged with a misdemeanor offense
14 involving domestic violence, as defined in Section 6211 of the
15 Family Code, or a misdemeanor violation of Section 273.6, the
16 accused shall be present for arraignment and sentencing, and at
17 any time during the proceedings when ordered by the court for the
18 purpose of being informed of the conditions of a protective order
19 issued pursuant to Section 136.2.

20 (3) If the accused is charged with a misdemeanor offense
21 involving driving under the influence, in an appropriate case, the
22 court may order a defendant to be present for arraignment, at the
23 time of plea, or at sentencing. For purposes of this paragraph, a
24 misdemeanor offense involving driving under the influence shall
25 include a misdemeanor violation of any of the following:

26 (A) Paragraph (3) of subdivision (c) of Section 192.

27 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
28 Code.

29 (C) Section 23152 of the Vehicle Code.

30 (D) Section 23153 of the Vehicle Code.

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

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

7
8 “Waiver of Defendant ’s Personal Presence”
9

10 “The undersigned defendant, having been advised of his or her
11 right to be present at all stages of the proceedings, including, but
12 not limited to, presentation of and arguments on questions of fact
13 and law, and to be confronted by and cross-examine all witnesses,
14 hereby waives the right to be present at the hearing of any motion
15 or other proceeding in this cause. The undersigned defendant
16 hereby requests the court to proceed during every absence of the
17 defendant that the court may permit pursuant to this waiver, and
18 hereby agrees that his or her interest is represented at all times by
19 the presence of his or her attorney the same as if the defendant
20 were personally present in court, and further agrees that notice to
21 his or her attorney that his or her presence in court on a particular
22 day at a particular time is required is notice to the defendant of the
23 requirement of his or her appearance at that time and place.”

24 (c) The court may permit the initial court appearance and
25 arraignment ~~in municipal or superior court~~ of defendants held in
26 any state, county, or local facility within the county on felony or
27 misdemeanor charges, except for those defendants who were
28 indicted by a grand jury, to be conducted by two-way electronic
29 audiovideo communication between the defendant and the
30 courtroom in lieu of the physical presence of the defendant in the
31 courtroom. If the defendant is represented by counsel, the attorney
32 shall be present with the defendant at the initial court appearance
33 and arraignment, and may enter a plea during the arraignment.
34 However, if the defendant is represented by counsel at an ~~initial~~
35 ~~hearing in superior court~~ *arraignment on an information* in a felony
36 case, and if the defendant does not plead guilty or nolo contendere
37 to any charge, the attorney shall be present with the defendant or
38 if the attorney is not present with the defendant, the attorney shall
39 be present in court during the hearing. The defendant shall have
40 the right to make his or her plea while physically present in the

1 courtroom if he or she so requests. If the defendant decides not to
 2 exercise the right to be physically present in the courtroom, he or
 3 she shall execute a written waiver of that right. A judge may order
 4 a defendant’s personal appearance in court for the initial court
 5 appearance and arraignment. In a misdemeanor case, a judge may,
 6 pursuant to this subdivision, accept a plea of guilty or no contest
 7 from a defendant who is not physically in the courtroom. In a
 8 felony case, a judge may, pursuant to this subdivision, accept a
 9 plea of guilty or no contest from a defendant who is not physically
 10 in the courtroom if the parties stipulate thereto.

11 (d) Notwithstanding subdivision (c), if the defendant is
 12 represented by counsel, the attorney shall be present with the
 13 defendant in any county exceeding 4,000,000 persons in
 14 population.

15 SEC. 20. Section 977.2 of the Penal Code is amended to read:

16 977.2. (a) Notwithstanding Section 977 or any other law, in
 17 any case in which the defendant is charged with a misdemeanor
 18 or a felony and is currently incarcerated in the state prison, the
 19 Department of Corrections may arrange for all court appearances
 20 in superior court, except for the preliminary hearing, trial, judgment
 21 and sentencing, and motions to suppress, to be conducted by
 22 two-way electronic audiovideo communication between the
 23 defendant and the courtroom in lieu of the physical presence of
 24 the defendant in the courtroom. Nothing in this section shall be
 25 interpreted to eliminate the authority of the court to issue an order
 26 requiring the defendant to be physically present in the courtroom
 27 in those cases where the court finds circumstances that require the
 28 physical presence of the defendant in the courtroom. For those
 29 court appearances that the department determines to conduct by
 30 two-way electronic audiovideo communication, the department
 31 shall arrange for two-way electronic audiovideo communication
 32 between the superior court and any state prison facility located in
 33 the county. The department shall provide properly maintained
 34 equipment and adequately trained staff at the prison as well as
 35 appropriate training for court staff to ensure that consistently
 36 effective two-way communication is provided between the prison
 37 facility and the courtroom for all appearances that the department
 38 determines to conduct by two-way electronic audiovideo
 39 communication.

1 (b) If the defendant is represented by counsel, the attorney shall
2 be present with the defendant at the initial court appearance and
3 arraignment, and may enter a plea during the arraignment.
4 However, if the defendant is represented by counsel at an ~~initial~~
5 ~~hearing in superior court arraignment on an information or~~
6 ~~indictment~~ in a felony case, and if the defendant does not plead
7 guilty or nolo contendere to any charge, the attorney shall be
8 present with the defendant or if the attorney is not present with the
9 defendant, the attorney shall be present in court during the hearing.

10 (c) In lieu of the physical presence of the defendant's counsel
11 at the institution with the defendant, the court and the department
12 shall establish a confidential telephone and facsimile transmission
13 line between the court and the institution for communication
14 between the defendant's counsel in court and the defendant at the
15 institution. In this case, counsel for the defendant shall not be
16 required to be physically present at the institution during any court
17 appearance that is conducted via electronic audiovideo
18 communication. Nothing in this section shall be construed to
19 prohibit the physical presence of the defense counsel with the
20 defendant at the state prison.