

AMENDED IN ASSEMBLY APRIL 19, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2102**

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**Introduced by Assembly Member Lieu**

February 18, 2010

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An act to amend Section 977 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2102, as amended, Lieu. Criminal procedure: court proceedings.

Existing law provides that in a misdemeanor proceeding, if the accused agrees, the initial court appearance, arraignment, and plea may be by video, as specified. ~~Existing law provides that if the accused is charged with a misdemeanor offense involving domestic violence, as specified, the defendant shall be present in certain court proceedings.~~

~~This bill would remove the requirement that the accused agree to making these appearances by video and would remove the requirement that the accused shall be personally present pursuant to these provisions.~~

*This bill would instead provide that if the accused agrees, any court appearance not involving testimonial evidence, including, but not limited to, the initial court appearance, arraignment, or plea may be by video.*

Existing law provides that in all cases in which a felony is charged, the accused shall be present at specified court proceedings and provides a process for the accused to waive his or her right to be personally present at all other proceedings, as specified. Existing law provides that if the accused agrees, the initial court appearance, arraignment, and plea may be by video, as specified.

~~This bill would remove the requirement that the accused be present at specified court proceedings, including those involving the presentation~~

~~of and arguments on questions of fact and law and proceedings to be confronted by and cross-examine all witnesses, and remove the waiver process and instead provide that the accused may be present at all court proceedings. The bill would remove the requirement that the accused agree to making the appearances noted above by video.~~

~~Existing law provides that if the defendant is represented by counsel, the attorney shall be present at specified court proceedings conducted via two-way electronic audiovideo communication. Existing law provides that the defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests and provides for the waiver of this right.~~

~~This bill would remove the requirement that the defendant’s attorney be present at these proceedings. The bill would remove the defendant’s right to make his or her plea while physically present in the courtroom.~~

*This bill would instead provide that if the accused agrees, any court appearance not involving testimonial evidence, including, but not limited to, the initial court appearance, arraignment, or plea may be by video.*

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) ~~Video—arraignment—increases~~ *appearances increase*
- 4 ~~courtroom efficiencies resulting in lower costs and, fewer delays~~
- 5 ~~associated with transporting inmates and staffing courtrooms, and~~
- 6 ~~safer conditions for defendants by utilizing technology.~~
- 7 (b) ~~Advances in videoconferencing technology and equipment~~
- 8 ~~have enabled a more~~ *created* ~~cost-effective and comparable~~
- 9 ~~alternative alternatives~~ to in-person proceedings with secure
- 10 privacy protection.
- 11 (c) ~~Video—arraignment—enhances~~ *appearances enhance* peace
- 12 ~~officer and public safety and reduces~~ *reduce* risks associated with
- 13 ~~transporting inmates between the jail and the courtroom.~~
- 14 (d) ~~Transportation and personnel expenses associated with~~
- 15 ~~providing security and supervision for inmates who are being~~
- 16 ~~transported between the jail and courtroom are reduced with the~~
- 17 ~~use of videoconferencing technology.~~

1 ~~(e) Jail release efficiencies can be realized with video~~  
2 ~~arraignment proceedings.~~

3 *(d) Appearing via video is often a preferred option for*  
4 *defendants.*

5 SEC. 2. Section 977 of the Penal Code is amended to read:

6 977. (a) (1) In all cases in which the accused is charged with  
7 a misdemeanor only, he or she may appear by counsel only, except  
8 as provided in paragraphs (2) and (3). ~~The~~ *If the accused agrees,*  
9 *any court appearance not involving testimonial evidence, including,*  
10 *but not limited to, the initial court appearance, arraignment, and*  
11 *or plea, may be by video, as provided by subdivision (c).*

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

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

25 (A) Subdivision (b) of Section 191.5.

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

28 (C) Section 23152 of the Vehicle Code.

29 (D) Section 23153 of the Vehicle Code.

30 (b) (1) In all cases in which a felony is charged, the accused  
31 ~~may~~ *shall* be present at the arraignment, at the time of plea, during  
32 the preliminary hearing, during those portions of the trial when  
33 evidence is taken before the trier of fact, and at the time of the  
34 imposition of sentence. ~~The~~ *The accused shall be personally*  
35 *present at all other proceedings unless he or she shall, with leave*  
36 *of court, execute in open court, a written waiver of his or her right*  
37 *to be personally present, as provided by paragraph (2). If the*  
38 *accused agrees, any court appearance not involving testimonial*  
39 *evidence, including, but not limited to, the initial court appearance,*

1 arraignment, ~~and~~ or plea, may be by video, as provided by  
 2 subdivision (c).

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

9  
 10 *“Waiver of Defendant’s Personal Presence”*

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

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

1 the defendant or if the attorney is not present with the defendant,  
2 the attorney ~~may~~ *shall* be present in court during the hearing. *The*  
3 *defendant shall have the right to make his or her plea while*  
4 *physically present in the courtroom if he or she so requests. If the*  
5 *defendant decides not to exercise the right to be physically present*  
6 *in the courtroom, he or she shall execute a written waiver of that*  
7 *right.* A judge may order a defendant's personal appearance in  
8 court for the initial court appearance and arraignment. In a  
9 misdemeanor case, a judge may, pursuant to this subdivision,  
10 accept a plea of guilty or no contest from a defendant who is not  
11 physically in the courtroom. In a felony case, a judge may, pursuant  
12 to this subdivision, accept a plea of guilty or no contest from a  
13 defendant who is not physically in the courtroom if the parties  
14 stipulate thereto.

15 (d) Notwithstanding subdivision (c), if the defendant is  
16 represented by counsel, the attorney ~~may~~ *shall* be present with the  
17 defendant in any county exceeding 4,000,000 persons in  
18 population.

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