

ASSEMBLY BILL

No. 2397

Introduced by Assembly Member Frazier

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, as introduced, Frazier. Criminal procedure: defendant's appearance by video.

Existing law generally requires a defendant in a criminal trial in which a felony is charged to 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. Existing law requires the accused to be personally present at all other proceedings unless he or she executes a written waiver of his or her right to be personally present. Existing law authorizes a court to permit the initial court appearance and arraignment of a defendant 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 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Existing law requires the defendant to execute a written waiver if the defendant decides not to exercise the right to be physically present in the courtroom to make his or her plea.

Existing law requires the attorney of a defendant so held to be present in court during the hearing for an initial court appearance and arraignment if the attorney is not present with the defendant. Existing

law, notwithstanding this provision, requires the attorney to be present with the defendant in any county exceeding 4,000,000 persons in population.

This bill would delete the requirement that the attorney be present in any county exceeding 4,000,000 persons in population. The bill would allow a court to require the appearance of a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be conducted by 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom for noncritical portions of the trial. The bill would require a defendant who wishes to be personally present for noncritical portions of trial to submit a written request to the court and would allow the court to grant the request in its discretion. The bill would, if the defendant is represented by counsel, provide that the attorney shall not be required to be personally present with the defendant for noncritical portions of the trial, if the audiovideo conferencing system or other technology allows for private communication between the defendant and the attorney. The bill would state that it does not expand or limit the right of a defendant to be personally present with his or her counsel at a particular proceeding as required by the California Constitution.

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. Section 977 of the Penal Code is amended to
2 read:
3 977. (a) (1) In all cases in which the accused is charged with
4 a misdemeanor only, he or she may appear by counsel only, except
5 as provided in paragraphs (2) and (3). If the accused agrees, the
6 initial court appearance, arraignment, and plea may be by video,
7 as provided by subdivision (c).
8 (2) If the accused is charged with a misdemeanor offense
9 involving domestic violence, as defined in Section 6211 of the
10 Family Code, or a misdemeanor violation of Section 273.6, the
11 accused shall be present for arraignment and sentencing, and at
12 any time during the proceedings when ordered by the court for the
13 purpose of being informed of the conditions of a protective order
14 issued pursuant to Section 136.2.

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

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

8 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
9 Code.

10 (C) Section 23152 of the Vehicle Code.

11 (D) Section 23153 of the Vehicle Code.

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

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

29
30 “Waiver of Defendant’s Personal Presence”

31
32 “The undersigned defendant, having been advised of his or her
33 right to be present at all stages of the proceedings, including, but
34 not limited to, presentation of and arguments on questions of fact
35 and law, and to be confronted by and cross-examine all witnesses,
36 hereby waives the right to be present at the hearing of any motion
37 or other proceeding in this cause. The undersigned defendant
38 hereby requests the court to proceed during every absence of the
39 defendant that the court may permit pursuant to this waiver, and
40 hereby agrees that his or her interest is represented at all times by

1 the presence of his or her attorney the same as if the defendant
2 were personally present in court, and further agrees that notice to
3 his or her attorney that his or her presence in court on a particular
4 day at a particular time is required is notice to the defendant of the
5 requirement of his or her appearance at that time and place.”

6 (c) (1) The court may permit the initial court appearance and
7 arraignment of defendants held in any state, county, or local facility
8 within the county on felony or misdemeanor charges, except for
9 those defendants who were indicted by a grand jury, to be
10 conducted by two-way electronic audiovideo communication
11 between the defendant and the courtroom in lieu of the physical
12 presence of the defendant in the courtroom. If the defendant is
13 represented by counsel, the attorney shall be present with the
14 defendant at the initial court appearance and arraignment, and may
15 enter a plea during the arraignment. However, if the defendant is
16 represented by counsel at an arraignment on an information in a
17 felony case, and if the defendant does not plead guilty or nolo
18 contendere to any charge, the attorney shall be present with the
19 defendant or if the attorney is not present with the defendant, the
20 attorney shall be present in court during the hearing. The defendant
21 shall have the right to make his or her plea while physically present
22 in the courtroom if he or she so requests. If the defendant decides
23 not to exercise the right to be physically present in the courtroom,
24 he or she shall execute a written waiver of that right. A judge may
25 order a defendant’s personal appearance in court for the initial
26 court appearance and arraignment. In a misdemeanor case, a judge
27 may, pursuant to this subdivision, accept a plea of guilty or no
28 contest from a defendant who is not physically in the courtroom.
29 In a felony case, a judge may, pursuant to this subdivision, accept
30 a plea of guilty or no contest from a defendant who is not
31 physically in the courtroom if the parties stipulate thereto.

32 ~~(d) Notwithstanding subdivision (c), if the defendant is~~
33 ~~represented by counsel, the attorney shall be present with the~~
34 ~~defendant in any county exceeding 4,000,000 persons in~~
35 ~~population.~~

36 (2) (A) *The court may require a defendant held in any state,*
37 *county, or local facility within the county on felony or misdemeanor*
38 *charges to be present for noncritical portions of the trial, including,*
39 *but not limited to, confirmation of the preliminary hearing, status*
40 *conferences, trial readiness conferences, discovery motions, receipt*

1 of records, the setting of the trial date, a motion to vacate the trial
2 date, and motions in limine, by two-way electronic audiovideo
3 communication between the defendant and the courtroom in lieu
4 of the physical presence of the defendant in the courtroom. A
5 defendant who wishes to be personally present for noncritical
6 portions of trial shall submit a written request to the court, which
7 the court may grant in its discretion. If the defendant is represented
8 by counsel, the attorney shall not be required to be personally
9 present with the defendant for noncritical portions of the trial, if
10 the audiovideo conferencing system or other technology allows
11 for private communication between the defendant and the attorney
12 prior to and during the noncritical portion of trial. Any private
13 communication shall be confidential and privileged pursuant to
14 Section 952 of the Evidence Code.

15 (B) This paragraph does not expand or limit the right of a
16 defendant to be personally present with his or her counsel at a
17 particular proceeding as required by Section 15 of Article 1 of the
18 California Constitution.