

AMENDED IN ASSEMBLY MAY 12, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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~~ *authorize* a defendant who ~~wishes~~ *does not wish* to be personally present for noncritical portions of trial, *as defined*, to submit *an oral waiver in open court prior to the proceeding, or 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

1 purpose of being informed of the conditions of a protective order
2 issued pursuant to Section 136.2.

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

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

10 (B) Section 23103 as specified in Section 23103.5 of the Vehicle
11 Code.

12 (C) Section 23152 of the Vehicle Code.

13 (D) Section 23153 of the Vehicle Code.

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

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

31

32 “Waiver of Defendant’s Personal Presence”

33

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

1 defendant that the court may permit pursuant to this waiver, and
2 hereby agrees that his or her interest is represented at all times by
3 the presence of his or her attorney the same as if the defendant
4 were personally present in court, and further agrees that notice to
5 his or her attorney that his or her presence in court on a particular
6 day at a particular time is required is notice to the defendant of the
7 requirement of his or her appearance at that time and place.”

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

34 (2) (A) The court may require a defendant held in any state,
35 county, or local facility within the county on felony or
36 misdemeanor charges to be present for noncritical portions of the
37 trial, including, but not limited to, confirmation of the preliminary
38 hearing, status conferences, trial readiness conferences, discovery
39 motions, receipt of records, the setting of the trial date, a motion
40 to vacate the trial date, and motions in limine, by two-way

1 electronic audiovideo communication between the defendant and
2 the courtroom in lieu of the physical presence of the defendant in
3 the courtroom. A defendant who ~~wishes~~ *does not wish* to be
4 personally present for noncritical portions of trial ~~shall~~ *may make*
5 *an oral waiver in open court prior to the proceeding or may* submit
6 a written request to the court, which the court may grant in its
7 discretion. If the defendant is represented by counsel, the attorney
8 shall not be required to be personally present with the defendant
9 for noncritical portions of the trial, if the audiovideo conferencing
10 system or other technology allows for private communication
11 between the defendant and the attorney prior to and during the
12 noncritical portion of trial. Any private communication shall be
13 confidential and privileged pursuant to Section 952 of the Evidence
14 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.

19 (C) *For purposes of this subdivision, noncritical portions of the*
20 *trial shall only include appearances in which testimonial evidence*
21 *is not taken.*