

AMENDED IN ASSEMBLY JUNE 16, 1999

SENATE BILL

No. 1126

Introduced by Senator Costa

February 26, 1999

An act to amend ~~Section 977.2~~ of Sections 977.2 and 1202.41 of, and to add Section 1202.46 to, the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1126, as amended, Costa. Criminal procedure: arraignment: audiovideo.

Existing law authorizes the Department of Corrections to establish a 3-year pilot project at more than 5 institutions that permits the initial court appearance and arraignment of a defendant in municipal or superior court to be conducted by 2-way electronic audiovideo communication in all cases where the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison. Existing law also provides that the provisions creating this project are repealed as of January 1, 2000, and requires the department to prepare and submit a report on the pilot project to the Legislature on or before January 1, 2000.

This bill would delete from these provisions the language that establishes a pilot project. The bill also would delete the reporting requirement and the repeal provision, thereby extending the provisions of the bill indefinitely.

Existing law establishes a pilot program to enable collaboration between the State Board of Control and judges in the counties in the program in connection with amending

restitution orders. Under the program, among other things, if the hearing has not been waived, the State Board of Control determines if the cost of holding the hearing is justified.

This bill would in addition, in the case of a defendant who is incarcerated, authorize the above-described hearings to be held via 2-way audio video communication between the defendant and the court, as specified.

This bill also would specify that these provisions shall not be construed to prohibit an individual from independently pursuing the imposition or amendment of a restitution order that may result in a hearing, regardless of whether that individual has received assistance.

The bill further would require the court to retain jurisdiction over a defendant for purposes of imposing or modifying restitution until such time as the losses may be determined when the economic losses of a victim cannot be ascertained at the time of sentencing.

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 977.2 of the Penal Code is
2 amended to read:

3 977.2. (a) Notwithstanding Section 977 or any other
4 law, in all cases in which the defendant is charged with a
5 misdemeanor or a felony and is currently incarcerated in
6 the state prison, the Department of Corrections may
7 arrange for the initial court appearance and arraignment
8 in municipal or superior court to be conducted by
9 two-way electronic audiovideo communication between
10 the defendant and the courtroom in lieu of the physical
11 presence of the defendant in the courtroom. Nothing in
12 this section shall be interpreted to eliminate the authority
13 of the court to issue an order requiring the defendant to
14 be physically present in the courtroom in those cases
15 where the court finds circumstances that require the
16 physical presence of the defendant in the courtroom.

17 (b) If the defendant is represented by counsel, the
18 attorney shall be present with the defendant at the initial



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

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

22 *SEC. 2. Section 1202.41 of the Penal Code is amended*
23 *to read:*

24 1202.41. (a) There is created within the State Board
25 of Control a four-year pilot program for the purpose of
26 collaborating with judges to amend restitution orders
27 imposed pursuant to Section 1202.4 of this code and
28 Section 730.6 of the Welfare and Institutions Code to the
29 extent that the victim has received assistance pursuant to
30 Article 1 (commencing with Section 13959) of Chapter 5
31 of Part 4 of Division 3 of Title 2 of the Government Code.

32 (b) The program shall commence 30 days after the
33 effective date of this section and shall include restitution
34 orders imposed by courts in the regional judicial
35 assignments as determined by the Judicial Council, and
36 Court Operation Services encompassing the Counties of
37 Sacramento, San Diego, and Alameda. The State Board of
38 Control, with the assistance of the Judicial Council, shall
39 collaborate with judges in each of the three participating
40 regional judicial assignments. ~~If an inmate or ward does~~



1 ~~not waive his or her right to attend a restitution hearing~~
2 ~~for the amendment of a restitution order, the State Board~~
3 ~~of Control shall determine if the cost of holding the~~
4 ~~hearing is justified. If the State Board of Control~~
5 ~~determines that the cost of holding the hearing is not~~
6 ~~justified, the amendment of the restitution order~~
7 ~~affecting that inmate or ward shall not be pursued at that~~
8 ~~time.~~

9 (c) (1) *Notwithstanding Section 977 or any other law,*
10 *in all cases in which the defendant is currently*
11 *incarcerated in a state prison with two-way audio video*
12 *communication capability, the Department of*
13 *Corrections at the request of the Board of Control, may*
14 *arrange for a hearing to impose or amend a restitution*
15 *order, to be conducted by two-way electronic audio video*
16 *communication between the defendant and the*
17 *courtroom in lieu of the defendant's physical presence in*
18 *the courtroom, provided the county has agreed to make*
19 *the necessary equipment available in the courtroom.*

20 (2) *Nothing in this subdivision shall be interpreted to*
21 *eliminate the authority of the court to issue an order*
22 *requiring the defendant to be physically present in the*
23 *courtroom in those cases where the court finds*
24 *circumstances that require the physical presence of the*
25 *defendant in the courtroom.*

26 (3) *In lieu of the physical presence of the defendant's*
27 *counsel at the institution with the defendant, the court*
28 *and the Department of Corrections shall establish a*
29 *confidential telephone and facsimile transmission line*
30 *between the court and the institution for communication*
31 *between the defendant's counsel in court and the*
32 *defendant at the institution. In this case, counsel for the*
33 *defendant shall not be required to be physically present*
34 *at the institution during the hearing via electronic*
35 *audio-video communication. Nothing in this subdivision*
36 *shall be construed to prohibit the physical presence of the*
37 *defense counsel with the defendant at the state prison.*

38 (d) *If an inmate who is not incarcerated in a state*
39 *prison with two-way audio video communication*
40 *capability or ward does not waive his or her right to*



1 attend a restitution hearing for the amendment of a
2 restitution order, the State Board of Control shall
3 determine if the cost of holding the hearing is justified. If
4 the State Board of Control determines that the cost of
5 holding the hearing is not justified, the amendment of the
6 restitution order affecting that inmate or ward shall not
7 be pursued at that time.

8 (e) The State Board of Control shall prepare a
9 preliminary report to the Legislature on the outcome of
10 the pilot program no later than one year and 180 days
11 after the effective date of the four-year pilot program.
12 The board shall prepare a final report on the outcome of
13 the pilot program no later than 2 years and 180 days after
14 the conclusion of the four-year pilot program.

15 (f) Nothing in this section shall be construed to
16 prohibit an individual from independently pursuing the
17 imposition or amendment of a restitution order that may
18 result in a hearing, regardless of whether that individual
19 has received assistance pursuant to Article 1
20 (commencing with Section 13959) of Chapter 5 of Part 4
21 of Division 3 of Title 2 of the Government Code.

22 SEC. 3. Section 1202.46 is added to the Penal Code, to
23 read:

24 1202.46. Notwithstanding Section 1170, when the
25 economic losses of a victim cannot be ascertained at the
26 time of sentencing pursuant to subdivision (f) of Section
27 1202.4, the court shall retain jurisdiction over a defendant
28 for purposes of imposing or modifying restitution until
29 such time as the losses may be determined. Nothing in
30 this section shall be construed as prohibiting a victim, the
31 district attorney, or a court on its own motion from
32 requesting correction, at any time, of a defendant's
33 sentence when the sentence is invalid due to the omission
34 of a restitution order or fine without a finding of
35 compelling and extraordinary reasons pursuant to
36 Section 1202.4.

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