

AMENDED IN ASSEMBLY AUGUST 16, 1999

AMENDED IN ASSEMBLY JUNE 16, 1999

**SENATE BILL**

**No. 1126**

---

---

**Introduced by Senator Costa**

February 26, 1999

---

---

An act to amend Sections 977.2 and 1202.41 of, and to add Section 1202.46 to, the Penal Code, *and to add Item 5240-493 to Section 2.00 of the Budget Act of 1999*, relating to corrections, *and making an appropriation therefor*.

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 Existing law also provides that the provisions creating this project are repealed as of January 1, 2000, and requires the department to prepare and submit a report on the pilot project to the Legislature on or before January 1, 2000.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 audiovideo 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.

*Existing law makes various appropriations to the Department of Corrections for various purposes related to the operation of the department and the maintenance of facilities and equipment under the control of the department.*

*This bill would make reappropriations from the General Fund and from the 1986 Prison Construction Fund to the department for specified purposes related to prison construction.*

Vote: —~~majority~~ <sup>2</sup>/<sub>3</sub>. Appropriation: —~~no~~ yes. 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



1 in municipal or superior court to be conducted by  
2 two-way electronic audiovideo communication between  
3 the defendant and the courtroom in lieu of the physical  
4 presence of the defendant in the courtroom. Nothing in  
5 this section shall be interpreted to eliminate the authority  
6 of the court to issue an order requiring the defendant to  
7 be physically present in the courtroom in those cases  
8 where the court finds circumstances that require the  
9 physical presence of the defendant in the courtroom.

10 (b) If the defendant is represented by counsel, the  
11 attorney shall be present with the defendant at the initial  
12 court appearance and arraignment, and may enter a plea  
13 during the arraignment. However, if the defendant is  
14 represented by counsel at an initial hearing in superior  
15 court in a felony case, and if the defendant does not plead  
16 guilty or nolo contendere to any charge, the attorney shall  
17 be present with the defendant or if the attorney is not  
18 present with the defendant, the attorney shall be present  
19 in court during the hearing.

20 (c) In lieu of the physical presence of the defendant's  
21 counsel at the institution with the defendant, the court  
22 and the department shall establish a confidential  
23 telephone and facsimile transmission line between the  
24 court and the institution for communication between the  
25 defendant's counsel in court and the defendant at the  
26 institution. In this case, counsel for the defendant shall not  
27 be required to be physically present at the institution  
28 during the initial court appearance and arraignment via  
29 electronic audiovideo communication. Nothing in this  
30 section shall be construed to prohibit the physical  
31 presence of the defense counsel with the defendant at the  
32 state prison.

33 SEC. 2. Section 1202.41 of the Penal Code is amended  
34 to read:

35 1202.41. (a) There is created within the State Board  
36 of Control a four-year pilot program for the purpose of  
37 collaborating with judges to amend restitution orders  
38 imposed pursuant to Section 1202.4 of this code and  
39 Section 730.6 of the Welfare and Institutions Code to the  
40 extent that the victim has received assistance pursuant to



1 Article 1 (commencing with Section 13959) of Chapter 5  
2 of Part 4 of Division 3 of Title 2 of the Government Code.

3 (b) The program shall commence 30 days after the  
4 effective date of this section and shall include restitution  
5 orders imposed by courts in the regional judicial  
6 assignments as determined by the Judicial Council, and  
7 Court Operation Services encompassing the Counties of  
8 Sacramento, San Diego, and Alameda. The State Board of  
9 Control, with the assistance of the Judicial Council, shall  
10 collaborate with judges in each of the three participating  
11 regional judicial assignments.

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

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

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



1 (d) If an inmate who is not incarcerated in a state  
2 prison with two-way audio video communication  
3 capability or ward does not waive his or her right to  
4 attend a restitution hearing for the amendment of a  
5 restitution order, the State Board of Control shall  
6 determine if the cost of holding the hearing is justified. If  
7 the State Board of Control determines that the cost of  
8 holding the hearing is not justified, the amendment of the  
9 restitution order affecting that inmate or ward shall not  
10 be pursued at that time.

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

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

25 SEC. 3. Section 1202.46 is added to the Penal Code, to  
26 read:

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



1 SEC. 4. Item 5240-493 is added to Section 2.00 of the  
2 Budget Act of 1999 (Chapter 50 of the Statutes of 1999),  
3 to read:

4 5240-493—Reappropriations, Department of Corrections. The  
5 balances of the appropriations provided in the following citations  
6 are reappropriated for the purposes, and subject to the  
7 limitations unless otherwise specified, provided for in the  
8 appropriations and shall be available for expenditure as cited  
9 below:

10

11 0001—General Fund

12

Item 5240-301-0001, Budget Act of 1998

13

(2.3) 61.04.045—California Correctional Institution, Tehachapi:  
14 New Potable Water Source—Working drawings and  
15 construction

16

(11) 61.08.020—California Institution for Men, Chino: PCE  
17 Contamination Clean-up—Construction

18

(12) 61.08.024—California Institution for Men, Chino: Re-  
19 place

20

Locking Devices—Working drawings and construction

21

(17) 61.09.427—California State Prison—Solano, Vacaville:  
22 Correctional Treatment Center, Phase II—Working  
23 drawings

24

(18) 61.10.051—California Men’s Colony, San Luis Obispo:  
25 Central Kitchen Replacement—Working drawings

26

(27.1) 61.15.035—California Rehabilitation Center, Norco:  
27 Replace Men’s Dormitories—Working drawings and  
28 construction

29

(41) 61.28.428—North Kern State Prison, Delano:  
30 Correctional Treatment Center, Phase II—Working  
31 drawings

32

0746—1986 Prison Construction Fund

33

Item 5240-303-0746, Budget Act of 1993

34

(1) 61.01.711—Statewide: Electrified Fence—Working  
35 drawings and construction, as reappropriated by Item  
36 5240-491, Budget Act of 1996

37

O

