

**ASSEMBLY BILL**

**No. 100**

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**Introduced by Assembly Member Cohn**

January 11, 2005

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An act to amend Section 977.2 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 100, as introduced, Cohn. Arraignment: by audiovideo communication.

Existing law provides that in all cases in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for specified court appearances 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, as specified.

This bill would provide that the local law enforcement agency having jurisdiction over a defendant currently incarcerated in a county jail may also arrange for specified court appearances of the defendant to be conducted by 2-way electronic audiovideo communication in lieu of the physical presence of the defendant in the courtroom, as specified.

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 977.2 of the Penal Code is amended to  
2 read:

1 977.2. (a) (1) Notwithstanding Section 977 or any other law,  
2 in any case in which the defendant is charged with a  
3 misdemeanor or a felony and is currently incarcerated in the state  
4 prison, the Department of Corrections may arrange for all court  
5 appearances in superior court, except for the preliminary hearing,  
6 trial, judgment and sentencing, and motions to suppress, to be  
7 conducted by two-way electronic audiovideo communication  
8 between the defendant and the courtroom in lieu of the physical  
9 presence of the defendant in the courtroom. Nothing in this  
10 section shall be interpreted to eliminate the authority of the court  
11 to issue an order requiring the defendant to be physically present  
12 in the courtroom in those cases where the court finds  
13 circumstances that require the physical presence of the defendant  
14 in the courtroom. For those court appearances that the  
15 department determines to conduct by two-way electronic  
16 audiovideo communication, the department shall arrange for  
17 two-way electronic audiovideo communication between the  
18 superior court and any state prison facility located in the county.  
19 The department shall provide properly maintained equipment and  
20 adequately trained staff at the prison as well as appropriate  
21 training for court staff to ensure that consistently effective  
22 two-way communication is provided between the prison facility  
23 and the courtroom for all appearances that the department  
24 determines to conduct by two-way electronic audiovideo  
25 communication.

26 (2) *Notwithstanding Section 977 or any other law, in any case*  
27 *in which the defendant is charged with a misdemeanor or a*  
28 *felony and is currently incarcerated in a county jail, the law*  
29 *enforcement agency having jurisdiction over the defendant may*  
30 *arrange for all court appearances in municipal or superior*  
31 *court, except for the preliminary hearing, trial, judgment and*  
32 *sentencing, and motions to suppress, to be conducted by two-way*  
33 *electronic audiovideo communication between the defendant and*  
34 *the courtroom in lieu of the physical presence of the defendant in*  
35 *the courtroom. Nothing in this section shall be interpreted to*  
36 *eliminate the authority of the court to issue an order requiring*  
37 *the defendant to be physically present in the courtroom in those*  
38 *cases where the court finds circumstances that require the*  
39 *physical presence of the defendant in the courtroom. For those*  
40 *court appearances that the law enforcement agency having*

1 *jurisdiction over the defendant determines to conduct by two-way*  
2 *electronic audiovideo communication, the law enforcement*  
3 *agency shall arrange for the two-way electronic audiovideo*  
4 *communication between the municipal or superior court and the*  
5 *county jail. To ensure that consistently effective two-way*  
6 *communication is provided between the county jail and the*  
7 *courtroom for all appearances that the law enforcement agency*  
8 *determines to conduct by two-way electronic audiovideo*  
9 *communication, the law enforcement agency shall, at the very*  
10 *least, ensure that properly maintained equipment and adequately*  
11 *trained staff are available at the county jail and that*  
12 *appropriately trained court staff are available in the courtroom.*

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

22 (c) In lieu of the physical presence of the defendant's counsel  
23 at the institution with the defendant, the court and the department  
24 *or law enforcement agency* shall establish a confidential  
25 telephone and facsimile transmission line between the court and  
26 the institution for communication between the defendant's  
27 counsel in court and the defendant at the institution. In this case,  
28 counsel for the defendant shall not be required to be physically  
29 present at the institution during any court appearance that is  
30 conducted via electronic audiovideo communication. ~~Nothing~~

31 (d) *Nothing* in this section shall be construed to prohibit the  
32 physical presence of the defense counsel with the defendant at  
33 the state prison *or county jail*.

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