

## CONFERENCE COMMITTEE REPORT

HB 83

2017 Regular Session

Marino

June 7, 2017

To the Honorable Speaker and Members of the House of Representatives and the Honorable President and Members of the Senate.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning House Bill No. 83 by Representative Marino, recommend the following concerning the Engrossed bill:

1. That the set of Senate Committee Amendments by the Senate Committee on Judiciary C (#2287) be rejected.
2. That the set of Senate Floor Amendments by Senator Claitor (#2665) be rejected.
3. That the following amendments to the engrossed bill be adopted:

AMENDMENT NO. 1

On page 3, delete lines 9 through 15 in their entirety and insert the following:

"A.(1) In a case where the offense is a felony or an enhanceable misdemeanor, the defendant, who is confined in a jail, prison, or other detention facility in Louisiana, may, with the court's consent and the consent of the district attorney, appear at the arraignment, at any preliminary matter or pretrial conference that does not involve the taking of testimony, at the entry of his plea of guilty, and at any revocation hearing for a probation violation, including any hearing for a contempt of court, by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner and the defendant waives, in accordance with the provisions of Paragraph D of this Article, his right to be physically present at the proceeding.

(2) In a case where the offense is not a felony and is not an enhanceable misdemeanor, the court, with the consent of the district attorney, may require the defendant, who is confined in a jail, prison, or other detention facility in Louisiana, to appear at the arraignment, at any preliminary matter or pretrial conference that does not involve the taking of testimony, at the entry of his plea of guilty, and at any revocation hearing for a probation violation, including any hearing for a contempt of court, by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner.

(3) For purposes of this Paragraph, "enhanceable misdemeanor" means a misdemeanor offense that provides increased or enhanced penalties for a subsequent conviction of the offense or that provides increased or enhanced penalties when certain elements are present during the commission of the offense."

AMENDMENT NO. 2

On page 3, line 16, after "B." and before "a capital" delete "In" and insert "Notwithstanding the provisions of Paragraph A of this Article, in"

Respectfully submitted,

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Representative Joseph Marino

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Senator Dan Claitor

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Representative Sherman Mack

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Senator Jean-Paul J. Morrell

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Representative John Stefanski

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Senator Daniel "Danny" Martiny

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 DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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**CONFERENCE COMMITTEE REPORT DIGEST**
**HB 83****2017 Regular Session****Marino**
**Keyword and oneliner of the instrument as it left the House**

CRIMINAL/PROCEDURE: Authorizes an incarcerated defendant to appear at certain proceedings by way of simultaneous audio-visual transmission

**Report rejects Senate amendments which would have:**

1. Incorporated the Reengrossed version of Senate Bill No. 139 of the 2017 R.S. which would have done all of the following:
  - (a) Provided relative to eligibility for felony probation, eligibility for the substance abuse probation program and the drug division probation program, the duration of the probation period, the authority to extend the maximum term of probation for participation in certain programs, the authority to receive "earned compliance credits" while on probation, and the use of administrative sanctions and revocation for probation violations.
  - (b) Provided relative to the rate by which an offender may earn diminution of sentence for good behavior or "good time", the applicability of changes in the rate, and prohibitions on certain offenders from earning good time.
  - (c) Created administrative parole, provided the requirements for eligibility, provided the procedure by which the victim and district attorney are notified, and provided relative to the duties of the Dept. of Public Safety and Corrections in this regard.
  - (d) Provided relative to parole eligibility; the applicability of changes in parole eligibility; the authority to receive "earned compliance credits" while on parole; and the use of detainers, administrative sanctions, and revocations for parole violations.
  - (e) Provided relative to medical parole, required the committee on parole to establish the medical treatment furlough program, and provided for eligibility requirements.
2. Made technical corrections to the Senate Committee Amendments proposed by Senate Committee on Judiciary C which would have incorporated the Reengrossed version of Senate Bill No. 139 of the 2017 R.S.

**Report amends the bill to:**

1. Provide that proposed law procedures and requirements for a defendant to appear at certain proceedings by simultaneous audio-visual transmission, including the requirement that the defendant waive his right to be physically present at the proceeding pursuant to proposed law, applies only to defendants in a case where the offense is a felony or an enhanceable misdemeanor.

2. Provide that in a case where the offense is not a felony and is not an enhanceable misdemeanor, the court, with the consent of the district attorney, may require the defendant, who is confined in a jail, prison, or other detention facility in Louisiana, to appear at certain proceedings by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner.
3. Define "enhanceable misdemeanor" as a misdemeanor offense that provides increased or enhanced penalties for a subsequent conviction of the offense or that provides increased or enhanced penalties when certain elements are present during the commission of the offense.

**Digest of the bill as proposed by the Conference Committee**

With regard to a defendant charged with a misdemeanor offense, present law (C.Cr.P. Arts. 551 and 833) authorizes the court to allow the defendant to be arraigned, plead guilty, or be tried, in his absence, and further authorizes the court, by local rule, to allow for the defendant's appearance at his arraignment by way of simultaneous audio-visual transmission, except when the defense counsel requests the defendant's appearance in open court.

With regard to a defendant charged with a felony offense, present law (C.Cr.P. Art. 831) requires the defendant to be present at all of the following:

- (1) At arraignment.
- (2) When a plea of guilty, not guilty, or not guilty and not guilty by reason of insanity is made.
- (3) At the calling, examination, challenging, impaneling, and swearing of the jury, and at any subsequent proceedings for the discharge of the jury or of a juror.
- (4) At all times during the trial when the court is determining and ruling on the admissibility of evidence.
- (5) In trials by jury, at all proceedings when the jury is present, and in trials without a jury, at all times when evidence is being adduced.
- (6) At the rendition of the verdict or judgment, unless he voluntarily absents himself.

Present law (C.Cr.P. Arts. 553 and 831) requires a defendant in a felony case to plead in person, but authorizes the court, by local rule, to allow for the defendant's appearance at his arraignment by simultaneous audio-visual transmission, except when the defense counsel requests the defendant's appearance in open court.

Present law (C.Cr.P. Arts. 556 and 556.1) provides that the court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally in open court and informing him of, and determining that he understands, certain things including but not limited to the nature of the charges against him; the penalties for such offense; that he has a right to be represented by an attorney, to have a trial, to confront and cross-examine witnesses against him, and to not be compelled to incriminate himself; and that if he pleads guilty or nolo contendere, he waives his right to a trial.

Present law (C.Cr.P. Art. 900) provides that when a defendant is arrested for violating a condition of his probation, the matter shall be sent for hearing within a reasonable time.

Proposed law retains present law and authorizes the defendant to appear at the entry of his plea of guilty and at a probation violation hearing by way of simultaneous audio-visual transmission pursuant to proposed law.

Proposed law provides that the following procedure and requirements apply in order for a defendant to appear by simultaneous audio-visual transmission pursuant to proposed law:

- (1) In a case where the offense is a felony or an enhanceable misdemeanor, the defendant, who is confined in a jail, prison, or other detention facility in La., may, with the court's consent and the consent of the district attorney, appear at the entry of his plea of guilty, at any preliminary matter or pretrial conference that does not involve the taking of testimony, and at any revocation hearing for a probation violation, including any hearing for a contempt of court, by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner and the defendant waives his right to be physically present at the proceeding.
- (2) In a case where the offense is not a felony and is not an enhanceable misdemeanor, the court, with the consent of the district attorney, may require the defendant, who is confined in a jail, prison, or other detention facility in La., to appear at the entry of his plea of guilty, at any preliminary matter or pretrial conference that does not involve the taking of testimony, and at any revocation hearing for a probation violation, including any hearing for a contempt of court, by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner.

Proposed law defines "enhanceable misdemeanor" as a misdemeanor offense that provides increased or enhanced penalties for a subsequent conviction of the offense or that provides increased or enhanced penalties when certain elements are present during the commission of the offense."

Proposed law prohibits the defendant in a capital case from entering his plea by simultaneous audio-visual transmission.

If the defendant is represented by an attorney during the proceeding in which a simultaneous audio-visual transmission system is used, proposed law authorizes the attorney to elect to be present either in the courtroom with the presiding judicial officer or in the place where the defendant is confined. Proposed law requires the court to provide the opportunity for confidential communication between the defendant and the attorney representing him at any time prior to or during the proceeding.

Proposed law requires the defendant who elects to appear by simultaneous audio-visual transmission and enter a plea of guilty or nolo contendere to submit to the court a form signed by the defendant and, if represented by an attorney at the proceeding, by the defendant's attorney, stating that the defendant waives his right to be physically present at the proceeding and that he has been addressed by the court and informed of his rights pursuant to present law. Proposed law requires the court, by local rule, to provide a method by which a defendant may electronically sign the waiver of presence and the waiver of rights form.

Proposed law requires the law enforcement agency who has custody of the defendant at the time of the proceeding to obtain the fingerprints of the defendant for purposes of present law (C.Cr.P. Art. 871) which requires the sheriff, in every judgment of guilty of a felony and certain misdemeanors, to cause to be attached to the bill of information or indictment the fingerprints of the defendant against whom the judgment is rendered.

(Amends C.Cr.P. Arts. 551(B), 553(A) and (C), 831, 832, 833(A) and (C), and 900(A)(intro. para.), (B), and (C); Adds C.Cr.P. Arts. 556(E), 556.1(F), and 562)