

2020 Regular Session

HOUSE BILL NO. 775

BY REPRESENTATIVE MARINO

CRIMINAL/PROCEDURE: Provides relative to a defendant's appearance at certain proceedings by audio-visual transmission

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 551(B), 553(A), 556(E),
3 556.1(F), 562(A), (B), and (D), and 835 and to repeal Code of Criminal Procedure
4 Articles 533(C), 831(B), 832(B), and 833(C), relative to appearance by the defendant
5 at certain proceedings; to provide relative to the defendant's appearance at
6 arraignment, at the entry of his plea, at a revocation or contempt hearing, and at
7 sentencing; to provide relative to the appearance of a defendant at certain
8 proceedings by way of simultaneous transmission through audio-visual electronic
9 equipment; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Articles 551(B), 553(A), 556(E), 556.1(F),
12 562(A), (B), and (D), and 835 are hereby amended and reenacted to read as follows:

13 Art. 551. Arraignment of defendant

14 * * *

15 B. The court may, by local rule, provide for the defendant's appearance at
16 the arraignment, at and the entry of his plea ~~of guilty, or both~~, by way of
17 simultaneous transmission through audio-visual electronic equipment ~~in accordance~~
18 ~~with the provisions of Article 562.~~

19 * * *

1 Art. 553. Method of pleading

2 A. Except when otherwise provided under Paragraph B of this Article or by
3 local rule in accordance with Articles 551 and 562, the defendant in a felony case
4 shall plead in person. In misdemeanor cases, the defendant may plead not guilty
5 through counsel, may plead guilty through counsel with consent of the court, may
6 appear at arraignment, at the entry of and enter his plea of guilty, ~~or both~~, by way of
7 simultaneous audio-visual transmission in accordance with local rules of court and
8 Articles 551 and 562, and may plead and be arraigned in accordance with procedures
9 established according to R.S. 32:57(C). A corporation may plead through counsel
10 in all cases. The plea shall be made in open court and shall be immediately entered
11 in the minutes of the court. A failure to enter a plea in the minutes shall not affect
12 the validity of any proceeding in the case.

13 * * *

14 Art. 556. Plea of guilty or nolo contendere in misdemeanor cases; duty of court

15 * * *

16 E. Nothing in this Article prohibits the court, by local rule, from providing
17 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by
18 simultaneous audio-visual transmission ~~in accordance with the provisions of Articles~~
19 ~~551 and 562.~~

20 Art. 556.1. Plea of guilty or nolo contendere in felony cases; duty of court

21 * * *

22 F. Nothing in this Article prohibits the court, by local rule, from providing
23 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by
24 simultaneous audio-visual transmission in accordance with the provisions of ~~Articles~~
25 ~~551 and~~ Article 562.

26 * * *

27 Art. 562. Use of simultaneous audio-visual transmission for certain proceedings

28 A.(1) In a case where the offense is a noncapital felony or ~~an enhanceable~~
29 a misdemeanor, the defendant, who is confined in a jail, prison, or other detention

1 facility in Louisiana, may, with the court's consent and the consent of the district
 2 attorney, appear at ~~the arraignment, at any preliminary matter or pretrial conference~~
 3 ~~that does not involve the taking of testimony, at the entry of his plea of guilty, and~~
 4 at any revocation hearing for a probation violation, including any hearing for a
 5 contempt of court, and at sentencing by simultaneous audio-visual transmission if
 6 the court, by local rule, provides for the defendant's appearance in this manner and
 7 the defendant waives, ~~in accordance with the provisions of Paragraph D of this~~
 8 ~~Article,~~ his right to be physically present at the proceeding.

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

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

21 B. ~~Notwithstanding the provisions of Paragraph A of this Article, in~~ In a
 22 capital case, the defendant may not enter his plea by simultaneous audio-visual
 23 transmission.

24 * * *

25 D.(1) ~~A defendant who elects to appear at the proceeding by simultaneous~~
 26 ~~audio-visual transmission in accordance with the provisions of this Article and enter~~
 27 ~~a plea of guilty or nolo contendere shall submit to the court a form signed by the~~
 28 ~~defendant and, if represented by an attorney at the proceeding, by the defendant's~~
 29 ~~attorney, stating that the defendant waives his right to be physically present at the~~

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)]

HB 775 Engrossed

2020 Regular Session

Marino

Abstract: Provides relative to the defendant's authority to appear at certain criminal proceedings by way of simultaneous audio-visual transmission.

Present law (C.Cr.P. Art. 562) provides for the following:

- (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 **arraignment** (C.Cr.P. Arts. 551 and 562), at the **entry of his plea of guilty** (C.Cr.P. Arts. 553, 556.1, and 562), at **any preliminary matter or pretrial conference that does not involve the taking of testimony** (C.Cr.P. Art. 562), and at **any revocation hearing for a probation violation** (C.Cr.P. Arts. 562 and 900), 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 **arraignment** (C.Cr.P. Arts. 551 and 562), at the **entry of his plea of guilty** (C.Cr.P. Arts. 553, 556, and 562), at **any preliminary matter or pretrial conference that does not involve the taking of testimony** (C.Cr.P. Art. 562), and at **any revocation hearing for a probation violation** (C.Cr.P. Arts. 562 and 900), 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 (C.Cr.P. Art. 562) amends present law to provide that for any **noncapital felony** or **misdemeanor** offense, the defendant who is confined in a jail, prison, or other detention facility in La., may, with the consent of the court and the district attorney, appear at the **entry of his plea of guilty**, at **any revocation hearing for a probation violation**, including any hearing for a **contempt of court**, and at **sentencing** by simultaneous audio-visual transmission if the court, by local rule, provides for the defendant's appearance in this manner.

Proposed law retains the present law provisions which authorize the court to allow for the defendant's appearance at the **arraignment** (C.Cr.P. Art. 551) and at **the entry of his plea of guilty or nolo contendere in misdemeanor cases** (C.Cr.P. Art. 556) by way of simultaneous audio-visual transmission, but removes the present law requirement that the appearance in such manner be done in accordance with the provisions of present law (C.Cr.P. Art. 562).

Present law (C.Cr.P. Art. 562) 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 existing law. Present 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 retains the present law requirement that the defendant waive his right to be physically present at the proceeding but, consistent with other provisions of present law, removes the requirement that the waiver be in writing and signed electronically.

Present law (C.Cr.P. Art. 835) provides that in felony cases a defendant shall always be present when sentence is pronounced and, in misdemeanor cases, the defendant shall be present when the sentence is pronounced unless excused by the court.

Proposed law retains present law (C.Cr.P. Art. 835) but authorizes the court, by local rule, to allow for the defendant's appearance at the pronouncement of sentence by simultaneous audio-visual transmission in accordance with present law and proposed law (C.Cr.P. Art. 562).

Proposed law repeals provisions of present law (C.Cr.P. Arts. 553(C), 831(B), 832(B), and 833(C)) that are duplicative of the authority provided by other provisions of present law and proposed law that allow for the defendant's appearance at the arraignment, at the entry of his plea of guilty, or both, by way of simultaneous audio-visual transmission.

(Amends C.Cr.P. Arts. 551(B), 553(A), 556(E), 556.1(F), 562(A), (B), and (D), and 835; Repeals C.Cr.P. Arts. 533(C), 831(B), 832(B), and 833(C))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Add that the court, by local rule, may provide for a defendant's appearance at the pronouncement of sentence by simultaneous audio-visual transmission in accordance with certain provisions of present law and proposed law (C.Cr.P. Art. 562).
2. Provide that the provisions of present law and proposed law (C.Cr.P. Art. 562) providing procedures regarding the use of simultaneous audio-visual transmission for certain proceedings apply to the defendant's appearance in such manner at the entry of his plea of guilty, at any revocation hearing for a probation violation, and at sentencing and do not apply to the defendant's appearance at arraignment and at any preliminary matter or pretrial conference that does not involve the taking of testimony.
3. Restore the present law requirement that the district attorney's consent be obtained in order for the defendant to appear at the **entry of his plea of guilty**, at **any revocation hearing for a probation violation**, including any hearing for a **contempt of court**, or at **sentencing** by simultaneous audio-visual transmission.