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## DIGEST

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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.