

RÉSUMÉ DIGEST

ACT 160 (HB 775)

2020 Regular Session

Marino

Prior law (C.Cr.P. Art. 562) provided 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.

New law (C.Cr.P. Art. 562) amends prior 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.

New law retains the existing 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 prior law requirement that the appearance in such manner be done in accordance with the provisions of prior law (C.Cr.P. Art. 562).

Prior law (C.Cr.P. Art. 562) required 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. Prior law required 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.

New law retains the prior law requirement that the defendant waive his right to be physically present at the proceeding but, consistent with other provisions of existing law, removes the requirement that the waiver be in writing and signed electronically.

Existing 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.

New law retains existing 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 existing law and new law (C.Cr.P. Art. 562).

New law repeals provisions of prior law (C.Cr.P. Arts. 553(C), 831(B), 832(B), and 833(C)) that were duplicative of the authority provided by other provisions of existing law and new 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.

Effective Aug. 1, 2020.

(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))