

RÉSUMÉ DIGEST

ACT 406 (HB 83)

2017 Regular Session

Marino

With regard to a defendant charged with a misdemeanor offense, existing 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, existing 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.

Existing 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.

Existing 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.

Existing 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.

New law retains existing 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 new law.

New law provides that the following procedure and requirements apply in order for a defendant to appear by simultaneous audio-visual transmission pursuant to new 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.

New 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.

New 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, new 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. New 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.

New 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 existing law. New 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.

New 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 existing 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.

Effective August 1, 2017.

(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)