

2017 Regular Session

HOUSE BILL NO. 83

BY REPRESENTATIVE MARINO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 551(B), 553(A) and (C), 831, 832, 833(A) and (C), and 900(A)(introductory paragraph), (B), and (C) and to enact Code of Criminal Procedure Articles 556(E), 556.1(F), and 562, relative to presence of the defendant; to provide relative to an incarcerated defendant's appearance at arraignment, the entry of his plea, and probation violation hearing; to authorize the incarcerated defendant to appear by way of simultaneous audio-visual transmission; to provide the procedure and requirements for using simultaneous audio-visual transmission; to provide relative to a defendant's waiver of certain rights; to provide relative to the use of electronic signatures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 551(B), 553(A) and (C), 831, 832, 833(A) and (C), and 900(A)(introductory paragraph), (B), and (C) are hereby amended and reenacted and Code of Criminal Procedure Articles 556(E), 556.1(F), and 562 are hereby enacted to read as follows:

Art. 551. Arraignment of defendant

\* \* \*

~~B. Nothing in this Article shall prohibit the court, by local rule, or the defense counsel from providing for a defendant's appearance at his arraignment by simultaneous audio-visual transmission.~~ The court may, by local rule, provide for

1 the defendant's appearance at the arraignment, ~~and at~~ at the entry of his plea of guilty,  
2 or both, by way of simultaneous transmission through audio-visual electronic  
3 equipment in accordance with the provisions of Article 562.

4 \* \* \*

5 Art. 553. Method of pleading

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

17 \* \* \*

18 C. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
19 from providing for a defendant's appearance at his arraignment, at the entry of his  
20 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
21 the provisions of Articles 551 and 562. ~~For good cause shown, defense counsel may~~  
22 ~~request, and the court may require the defendant's appearance in open court.~~

23 \* \* \*

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

25 \* \* \*

26 E. Nothing in this Article prohibits the court, by local rule, from providing  
27 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by  
28 simultaneous audio-visual transmission in accordance with the provisions of Articles  
29 551 and 562.

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

2 \* \* \*

3 F. Nothing in this Article prohibits the court, by local rule, from providing  
4 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by  
5 simultaneous audio-visual transmission in accordance with the provisions of Articles  
6 551 and 562.

7 \* \* \*

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

9 A. If the defendant is confined in jail, prison, or other detention facility in  
10 Louisiana, the defendant may, with the court's consent, appear at the entry of his plea  
11 of guilty and at any revocation hearing for a probation violation, including any  
12 hearing for a contempt of court, by simultaneous audio-visual transmission if the  
13 court, by local rule, provides for the defendant's appearance in this manner and the  
14 defendant waives, in accordance with the provisions of Paragraph D of this Article,  
15 his right to be physically present at the proceeding.

16 B. In a capital case, the defendant may not enter his plea by simultaneous  
17 audio-visual transmission.

18 C. If the defendant is represented by an attorney during the proceeding in  
19 which a simultaneous audio-visual transmission system is used, the attorney may  
20 elect to be present either in the courtroom with the presiding judicial officer or in the  
21 place where the defendant is confined. Upon request by the defendant or the  
22 attorney representing the defendant, the court shall provide the opportunity for  
23 confidential communication between the defendant and the attorney representing him  
24 at any time prior to or during the proceeding.

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

1 proceeding and that he has been addressed by the court and informed of his rights  
2 pursuant to Article 556 or 556.1. The form shall allow for the defendant to sign, or  
3 initial where appropriate, each element of the waiver of rights set forth in Article 556  
4 or 556.1.

5 (2) The defendant and, if represented by an attorney at the proceeding, the  
6 defendant's attorney may sign, or initial where appropriate, the waiver of presence  
7 as set forth in Paragraph A of this Article and the waiver of rights form as set forth  
8 in Subparagraph (1) of this Paragraph by use of an electronic signature as defined by  
9 R.S. 9:2602. The court, by local rule, shall provide for the method of electronic  
10 signature to be used to ensure authenticity of the electronic signature.

11 (3) The law enforcement agency who has custody of the defendant at the  
12 time of the proceeding shall obtain the fingerprints of the defendant for purposes of  
13 Article 871. The fingerprints may be taken electronically or in ink and converted to  
14 electronic format.

15 \* \* \*

16 Art. 831. Presence of defendant; ~~when felony~~ prosecution is for felony

17 A. Except as may be provided by local rules of court in accordance with  
18 Articles 522, ~~and 551, and 562,~~ a defendant charged with a felony shall be present  
19 at all of the following:

20 (1) At arraignment;

21 (2) When a plea of guilty, not guilty, or not guilty and not guilty by reason  
22 of insanity is made;

23 (3) At the calling, examination, challenging, impaneling, and swearing of the  
24 jury, and at any subsequent proceedings for the discharge of the jury or of a juror;

25 (4) At all times during the trial when the court is determining and ruling on  
26 the admissibility of evidence;

27 (5) In trials by jury, at all proceedings when the jury is present, and in trials  
28 without a jury, at all times when evidence is being adduced; ~~and.~~

1 (6) At the rendition of the verdict or judgment, unless he voluntarily absents  
2 himself.

3 B. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
4 from providing for a defendant's appearance at his arraignment, at the entry of his  
5 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
6 the provisions of Articles 551 and 562, ~~except when the defense counsel requests the~~  
7 ~~defendant's appearance in open court.~~

8 Art. 832. Continued presence not required

9 A. A defendant initially present for the commencement of trial shall not  
10 prevent the further progress of the trial, including the return of the verdict, and shall  
11 be considered to have waived his right to be present if his counsel is present or if the  
12 right to counsel has been waived and either of the following occur:

13 (1) He voluntarily absents himself after the trial has commenced, whether  
14 or not he has been informed by the court of his obligation to be present during the  
15 trial; ~~or.~~

16 (2) After being warned by the court that disruptive conduct will cause him  
17 to be removed from the courtroom, he persists in conduct which justifies his  
18 exclusion from the courtroom.

19 B. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
20 from providing for a defendant's appearance at his arraignment, at the entry of his  
21 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
22 the provisions of Articles 551 and 562, ~~except when the defense counsel requests the~~  
23 defendant's appearance in open court. Any appearance made by way of simultaneous  
24 audio-visual transmission under applicable local rules of court in accordance with  
25 the provisions of ~~Article~~ Articles 551 and 562 shall not constitute absence for the  
26 purposes of this Article.

27 Art. 833. Presence of defendant; ~~when~~ misdemeanor prosecution ~~is for~~  
28 misdemeanor

1           A. The court may permit a defendant charged with a misdemeanor to be  
2 arraigned, ~~plead guilty~~ enter his plea of guilty, or be tried, in his absence. ~~Otherwise~~  
3 ~~he must be present, provided that he may appear at arraignment by way of~~  
4 ~~simultaneous audio-visual transmission under applicable local rules in accordance~~  
5 ~~with the provisions of Articles 522 and 551.~~

6   \*       \*       \*

7           C. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
8 from providing for a defendant's appearance at his arraignment, at the entry of his  
9 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
10 the provisions of Articles 551 and 562, ~~except when the defense counsel requests the~~  
11 ~~defendant's appearance in open court.~~

12   \*       \*       \*

13 Art. 900. Violation hearing; sanctions

14           A. After an arrest pursuant to Article 899, the court shall cause a defendant  
15 who continues to be held in custody to be brought before it within thirty days for a  
16 hearing. If a summons is issued pursuant to Article 899, or if the defendant has been  
17 admitted to bail, the court shall set the matter for a violation hearing within a  
18 reasonable time. The hearing may be informal or summary. The defendant may  
19 choose, with the court's consent, to appear at the violation hearing and stipulate the  
20 revocation by simultaneous audio-visual transmission in accordance with the  
21 provisions of Article 562. If the court decides that the defendant has violated, or was  
22 about to violate, a condition of his probation it may:

23   \*       \*       \*

24           B. When a defendant has been committed to a community rehabilitation  
25 center pursuant to Subparagraph ~~(4) of Paragraph A~~ (A)(4) of this Article, upon  
26 written request of the department that an offender be removed for violating the rules  
27 or regulations of the community rehabilitation center, the court shall cause the  
28 defendant to be brought before it and order that probation be revoked with credit for  
29 the time served in the community rehabilitation center.

1 C. The department may pay a per diem for offenders placed in a community  
2 rehabilitation center pursuant to the provisions of Subparagraph ~~(4) of Paragraph A~~  
3 (A)(4) of this Article.

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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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HB 83 Engrossed

2017 Regular Session

Marino

**Abstract:** Authorizes an incarcerated defendant to appear at certain proceedings by way of simultaneous audio-visual transmission and provides the procedure and requirements for the defendant to appear in this manner.

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 only a defendant who is confined in jail, prison, or other detention facility in La. may appear, with the court's consent, at his arraignment, at the entry of his plea of guilty, or both, and at any revocation hearing for a probation violation, including any hearing for contempt of court, by simultaneous audio-visual transmission.

Proposed law provides that the defendant may only appear in this manner if the defendant waives his right to be physically present at the proceeding.

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)