

**ACT No. 406**

2017 Regular Session

HOUSE BILL NO. 83

BY REPRESENTATIVE MARINO

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

\* \* \*

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

19 \* \* \*

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

21 \* \* \*

22 E. 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 562.

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

27 \* \* \*

28 F. Nothing in this Article prohibits the court, by local rule, from providing  
29 for a defendant's appearance at the entry of his plea of guilty or nolo contendere by

1 simultaneous audio-visual transmission in accordance with the provisions of Articles  
2 551 and 562.

3 \* \* \*

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

5 A.(1) In a case where the offense is a felony or an enhanceable  
6 misdemeanor, the defendant, who is confined in a jail, prison, or other detention  
7 facility in Louisiana, may, with the court's consent and the consent of the district  
8 attorney, appear at the arraignment, at any preliminary matter or pretrial conference  
9 that does not involve the taking of testimony, at the entry of his plea of guilty, and  
10 at any revocation hearing for a probation violation, including any hearing for a  
11 contempt of court, by simultaneous audio-visual transmission if the court, by local  
12 rule, provides for the defendant's appearance in this manner and the defendant  
13 waives, in accordance with the provisions of Paragraph D of this Article, his right to  
14 be physically present at the proceeding.

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

23 (3) For purposes of this Paragraph, "enhanceable misdemeanor" means a  
24 misdemeanor offense that provides increased or enhanced penalties for a subsequent  
25 conviction of the offense or that provides increased or enhanced penalties when  
26 certain elements are present during the commission of the offense.

27 B. Notwithstanding the provisions of Paragraph A of this Article, in a capital  
28 case, the defendant may not enter his plea by simultaneous audio-visual  
29 transmission.

1           C. If the defendant is represented by an attorney during the proceeding in  
 2           which a simultaneous audio-visual transmission system is used, the attorney may  
 3           elect to be present either in the courtroom with the presiding judicial officer or in the  
 4           place where the defendant is confined. Upon request by the defendant or the  
 5           attorney representing the defendant, the court shall provide the opportunity for  
 6           confidential communication between the defendant and the attorney representing him  
 7           at any time prior to or during the proceeding.

8           D.(1) A defendant who elects to appear at the proceeding by simultaneous  
 9           audio-visual transmission in accordance with the provisions of this Article and enter  
 10          a plea of guilty or nolo contendere shall submit to the court a form signed by the  
 11          defendant and, if represented by an attorney at the proceeding, by the defendant's  
 12          attorney, stating that the defendant waives his right to be physically present at the  
 13          proceeding and that he has been addressed by the court and informed of his rights  
 14          pursuant to Article 556 or 556.1. The form shall allow for the defendant to sign, or  
 15          initial where appropriate, each element of the waiver of rights set forth in Article 556  
 16          or 556.1.

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

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

\* \* \*

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

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

5 (1) At arraignment;

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

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

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

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

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

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

21 Art. 832. Continued presence not required

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

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

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

4 B. Nothing in this Article ~~shall prohibit~~ prohibits the court, by local rule,  
5 from providing for a defendant's appearance at his arraignment, at the entry of his  
6 plea of guilty, or both, by simultaneous audio-visual transmission in accordance with  
7 the provisions of Articles 551 and 562, except when the defense counsel requests the  
8 defendant's appearance in open court. Any appearance made by way of simultaneous  
9 audio-visual transmission under applicable local rules of court in accordance with  
10 the provisions of ~~Article~~ Articles 551 and 562 shall not constitute absence for the  
11 purposes of this Article.

12 Art. 833. Presence of defendant; ~~when~~ misdemeanor prosecution is ~~for~~  
13 misdemeanor

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

19 \* \* \*

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

25 \* \* \*

26 Art. 900. Violation hearing; sanctions

27 A. After an arrest pursuant to Article 899, the court shall cause a defendant  
28 who continues to be held in custody to be brought before it within thirty days for a  
29 hearing. If a summons is issued pursuant to Article 899, or if the defendant has been  
30 admitted to bail, the court shall set the matter for a violation hearing within a

1 reasonable time. The hearing may be informal or summary. The defendant may  
 2 choose, with the court's consent, to appear at the violation hearing and stipulate the  
 3 revocation by simultaneous audio-visual transmission in accordance with the  
 4 provisions of Article 562. If the court decides that the defendant has violated, or was  
 5 about to violate, a condition of his probation it may:

6 \* \* \*

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

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

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\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_