

AMENDED IN SENATE JUNE 25, 2001
AMENDED IN ASSEMBLY MAY 3, 2001
AMENDED IN ASSEMBLY MARCH 28, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Cohn

(Coauthors: Assembly Members Alquist, Chu, Diaz, Horton, Kehoe, Koretz, Leach, Pavley, Pescetti, Steinberg, Strom-Martin, and Zettel)

(Coauthors: Senators Machado and Scott)

February 21, 2001

An act to amend Section 977 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as amended, Cohn. Criminal procedure.

Existing law provides that, unless a showing of necessity is made, a person charged with a misdemeanor offense involving domestic violence, may appear by counsel only for the purpose of service of a protective order, as specified.

This bill would require that persons accused of misdemeanor offenses involving domestic violence be present for arraignment and sentencing.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 977 of the Penal Code is amended to
2 read:

3 977. (a) (1) In all cases in which the accused is charged with
4 a misdemeanor only, he or she may appear by counsel only, except
5 as provided in paragraph (2). If the accused agrees, the initial court
6 appearance, arraignment, and plea may be by video, as provided
7 by subdivision (c).

8 (2) ~~When~~ If the accused is charged with a misdemeanor offense
9 involving domestic violence, as defined in Section 6211 of the
10 Family Code, or a misdemeanor violation of Section 273.6, the
11 accused shall be present for arraignment and sentencing.

12 (b) (1) In all cases in which a felony is charged, the accused
13 shall be present at the arraignment, at the time of plea, during the
14 preliminary hearing, during those portions of the trial when
15 evidence is taken before the trier of fact, and at the time of the
16 imposition of sentence. The accused shall be personally present at
17 all other proceedings unless he or she shall, with leave of court,
18 execute in open court, a written waiver of his or her right to be
19 personally present, as provided by paragraph (2). If the accused
20 agrees, the initial court appearance, arraignment, and plea may be
21 by video, as provided by subdivision (c).

22 (2) The accused may execute a written waiver of his or her right
23 to be personally present, approved by his or her counsel, and the
24 waiver shall be filed with the court. However, the court may
25 specifically direct the defendant to be personally present at any
26 particular proceeding or portion thereof. The waiver shall be
27 substantially in the following form:

28

29 “WAIVER OF DEFENDANT’S PERSONAL PRESENCE”

30

31 “The undersigned defendant, having been advised of his or her
32 right to be present at all stages of the proceedings, including, but
33 not limited to, presentation of and arguments on questions of fact
34 and law, and to be confronted by and cross-examine all witnesses,
35 hereby waives the right to be present at the hearing of any motion
36 or other proceeding in this cause. The undersigned defendant
37 hereby requests the court to proceed during every absence of the
38 defendant that the court may permit pursuant to this waiver, and



1 hereby agrees that his or her interest is represented at all times by
2 the presence of his or her attorney the same as if the defendant were
3 personally present in court, and further agrees that notice to his or
4 her attorney that his or her presence in court on a particular day at
5 a particular time is required is notice to the defendant of the
6 requirement of his or her appearance at that time and place.”
7

8 (c) The court may permit the initial court appearance and
9 arraignment in municipal or superior court of defendants held in
10 any state, county, or local facility within the county on felony or
11 misdemeanor charges, except for those defendants who were
12 indicted by a grand jury, to be conducted by two-way electronic
13 audiovideo communication between the defendant and the
14 courtroom in lieu of the physical presence of the defendant in the
15 courtroom. If the defendant is represented by counsel, the attorney
16 shall be present with the defendant at the initial court appearance
17 and arraignment, and may enter a plea during the arraignment.
18 However, if the defendant is represented by counsel at an initial
19 hearing in superior court in a felony case, and if the defendant does
20 not plead guilty or nolo contendere to any charge, the attorney shall
21 be present with the defendant or if the attorney is not present with
22 the defendant, the attorney shall be present in court during the
23 hearing. The defendant shall have the right to make his or her plea
24 while physically present in the courtroom if he or she so requests.
25 If the defendant decides not to exercise the right to be physically
26 present in the courtroom, he or she shall execute a written waiver
27 of that right. A judge may order a defendant’s personal appearance
28 in court for the initial court appearance and arraignment. In a
29 misdemeanor case, a judge may, pursuant to this subdivision,
30 accept a plea of guilty or no contest from a defendant who is not
31 physically in the courtroom. In a felony case, a judge may,
32 pursuant to this subdivision, accept a plea of guilty or no contest
33 from a defendant who is not physically in the courtroom if the
34 parties stipulate thereto.

35 (d) Notwithstanding subdivision (c), if the defendant is
36 represented by counsel, the attorney shall be present with the
37 defendant in any county exceeding 4,000,000 persons in
38 population.

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