



JUDICIAL COUNCIL OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

www.courts.ca.gov/ctac.htm
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COURT TECHNOLOGY ADVISORY COMMITTEE

OPEN MEETING AGENDA

Open to the Public Unless Otherwise Indicated as Closed or Not Subject to the Rule
(Cal. Rules of Court, rule 10.75(c)(1))

OPEN PORTION OF THIS MEETING IS BEING RECORDED

Date: July 18, 2014
Time: 10:00AM – 10:30AM Open Meeting
10:30AM – 12:00PM Nonpublic Meeting
[Agenda Items Not Subject to the Rule]
Location: Teleconference
Public Call-in Number: 1-877-820-7831 Public Access Code # **4348559**

Meeting materials for open portions of the meeting will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Public Comment

The public may only submit written comments for this meeting. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to ctac@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102, attention: CTAC c/o Jackie Woods. Only written comments received by July 17 at 10AM will be provided to advisory body members.

The chair may elect to receive and consider comments that are received late. Written comments received in a timely manner will be provided to advisory members before the start of the meeting or as soon as reasonably practicable during the meeting. Written comments are also posted to www.courts.ca.gov/ctac.htm.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEM 1-5)

Item 1

Opening Remarks and Chair Report

Presenter: Hon. Terence L. Bruiniers, Chair, CTAC

Item 2

Joint Appellate Technology Subcommittee Report

Presenter: Hon. Louis R. Mauro, Chair, Joint Appellate Technology Subcommittee

Item 3

Rules & Policy Subcommittee Report

Presenters: Hon. Daniel J. Buckley, Chair, CTAC Rules & Policy Subcommittee
Prof. Dorothy J. Glancy, Vice-Chair, CTAC Rules & Policy Subcommittee

Item 4

Projects Subcommittee Report

Presenters: Hon. Glen M. Reiser, Chair, CTAC Projects Subcommittee
Hon. Emily E. Vasquez, Vice-Chair, CTAC Projects Subcommittee

Item 5

Liaison Reports

Open discussion for members with liaison assignments to report back any relevant information to promote continuity and collaboration for programs and projects between CTAC and the liaised committee.

The chair will restrict Liaison Reports to 5 min each or less, not to exceed 10 minutes for all reports.

Appellate Advisory Committee (AAC)

Presenter: Hon. Terence L. Bruiniers, CTAC's Liaison

Advisory Committee on Providing Access & Fairness

Presenter: Hon. James M. Mize, CTAC's Liaison

Center for Judicial Education and Research Governing Committee

Presenter: Hon. Thomas Hollenhorst, CTAC's Liaison

Civil and Small Claims Advisory Committee

Presenter: Hon. Daniel P. Maguire, CTAC's Liaison

Civil Jury Instructions Advisory Committee

Presenter: Hon. Robert Freedman, CTAC's Liaison

Criminal Law Advisory Committee

Discussion of [Assembly Bill 2397](#).

Presenter: Hon. Emily E. Vasquez, CTAC's Liaison

Court Executives Advisory Committee (CEAC)

Presenter: Ms. Susan Matherly, CTAC's Liaison

Trial Court Presiding Judges Advisory Committee

Presenter: Hon. Glen M. Reiser, Chair, CTAC Projects Subcommittee

Traffic Advisory Committee

Presenter: Hon. James Otto, CTAC's Liaison

CEAC Court Records Management Working Group

Presenter: Mr. Robert Oyung, Member

Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office

**ADDITIONAL AGENDA ITEMS FOR NONPUBLIC SESSION
TOPICS NOT SUBJECT TO RULE OF COURT 10.75**

The chair has exercised his discretion to publicly agendize the items for this nonpublic session: Topics not covered by Rule of Court 10.75.

IV. ADMINISTRATIVE MATTERS (ACTION REQUIRED)

Approval of Minutes (Action Required)

Approve minutes of the March 7, 2014 Court Technology Advisory Committee meeting. This meeting took place prior to Rule of Court 10.75.

V. INFORMATION ONLY ITEMS (NO ACTION REQUIRED) (INFO 1-5)

Item 1: Open Meetings Rule Overview & Training

10:30AM – 11:00AM

Members training on newly effective California Rules of Court, rule 10.75: Open Meetings for Advisory Bodies.

Presenter: Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office

Item 2: Branch Update

11:00AM – 11:15AM

Regular update on the status of the branch and its budget, along with any technology-related discussions with the Department of Finance and/or with Legislators.

Presenter: Mr. Cory Jasperson, Director, Office of Governmental Affairs

Item 3: Judicial Council's (internal) Technology Committee (JCTC) Update

11:15AM – 11:45AM

Regular update of the JCTC and the Technology Planning Task Force. Current topic:

- Governance, Funding, and Strategy Plan Proposal Update

Presenters: Hon. James E. Herman, Chair, JCTC

Mr. Robert Oyung, Member, Technology Planning Task Force

Item 4: Key Statewide Technology Initiatives Update

11:45AM – 11:55AM

Regular update on the status of key branch/enterprise technology initiatives, specifically:

- 1DCA E-Filing Project

- Appellate Document Management System- BCP Effort
- Trial Court Document Management System- Master Agreement
- California Court Protective Order Registry (CCPOR)
- California Disposition Reporting Improvement Project (CA-DRIP)

Attachment: *Judicial Branch Technology Update* (dated June 30, 2014) provides a more comprehensive list of technology programs and projects underway in the California judiciary.

Presenter: Ms. Renea Stewart, Senior Manager, Information Technology Services Office

Item 5: New Business and/or Closing Remarks

11:55AM – 12:00PM

Forum for the chair to offer closing remarks and for members to share announcements or raise issues to consider on future CTAC agendas.

Facilitator: Hon. Terence L. Bruiniers, Chair, CTAC

VI. ADJOURNMENT

Adjourn

Next CTAC Meeting: TBD – October 2014

Court Technology Advisory Committee

Public Business Meeting

July 18, 2014

Teleconference

Open Meeting

Hon. Terence L. Bruiniers

Chair, Court Tech Advisory Committee

Open Meeting

I. Call to Order, Roll Call

II. Public Comment



Info 1: Chair Report

Hon. Terence L. Bruiniers
Chair, Court Tech Advisory Committee

Chair Report

- CTAC Nominations
- Open Meetings Rule 10.75



Info 2:

**Joint Appellate Technology
Subcommittee (JATS) Report**

Hon. Louis R. Mauro

Chair, JATS



ADMINISTRATIVE OFFICE
OF THE COURTS

Joint Appellate Technology Subcommittee

Status Report Highlights – July 2014

ANNUAL AGENDA PROJECT	STATUS	DELIVERABLES / NOTES
1. Modernize Appellate Court Rules for E-Filing and E-Business	In Progress	Working with Appellate Advisory Committee to identify action items.
2. Collaborate on Statewide Appellate Court Technology Implementations	In Progress	Working with 1DCA to identify action items.
3. Develop Branch Policy on Public Access to Electronic Appellate Court Records	In Progress	Plan is to have proposed rule amendments drafted for consideration by JATS in coming months and ready for CTAC and AAC review early 2015.
4. Coordinate with Subcommittees on Rule and Policy Matters Concerning the Appellate Courts	In Progress	Will work with subcommittees to identify action items.

For more information, review the JATS Memo in the Materials section of this binder.

Info 3:

Rules & Policy Subcommittee

Hon. Daniel J. Buckley

Chair, CTAC's R&P Subcommittee

Prof. Dorothy J. Glancy

Vice-Chair, CTAC's R&P Subcommittee

Rules & Policy Subcommittee

Status Report Highlights – July 2014

ANNUAL AGENDA PROJECT	STATUS	DELIVERABLES / NOTES
1. Organize and sponsor branch summit on court e-filing	On Hold	To be reconsidered for 2015 annual agenda
2. Develop branch and model court privacy policies on electronic court records and access	In Progress	Section drafts ready for peer review
3. Modernize trial court rules to support e-business	In Progress	Revised drafts of Title 2 and 3 ready for review by ad-hoc joint subcommittee
4. Develop standards for electronic signatures	In Progress	Finished research; developing guidelines draft
5. Survey and report state of electronic recording in the courts	In Progress	Survey being drafted

For more information, review the R&P Memo in the Materials section of this binder.

Info 4:

Projects Subcommittee

Hon. Glen Reiser

Chair, CTAC's Projects Subcommittee

Hon. Emily E. Vasquez

Vice-Chair, CTAC's Projects Subcommittee

Projects Subcommittee

Status Report Highlights – July 2014

ANNUAL AGENDA PROJECT	STATUS	DELIVERABLES / NOTES
1. Survey and summarize current state of branch e-filing	Complete	Posted to Serranus
2. Explore opportunities to expand remote interpreting	In Progress	
3. Study and identify opportunities to expand remote video appearances	In Progress	
4. Evaluate the feasibility of branch SRL E-Services portal	On Hold	
5. Evaluate and continue development of e-business webinar series	Completed	July 1- Launched 1 st E-Business webinar on remote video in courts
	In Progress	Next steps: Evaluate and seek approval for 2 nd installment
6. Maintain and improve branch remote video resource center	In Progress	Launched new resources in June

For more information, review the Projects Memo in the Materials section of this binder.

Info 5: Liaison Reports

Oral reports from CTAC members appointed as liaisons to fellow advisory bodies.

Liaisons

Appellate

Access

Center for Judicial Education

Civil and Small Claims

Civil Jury Instructions

Criminal Law

Court Executives (CEAC)

Trial Court Presiding Judges

Traffic

Hon. Terence L. Bruiniers

Hon. James M. Mize

Hon. Thomas Hollenhorst

Hon. Daniel P. Maguire

Hon. Robert Freedman

Hon. Emily E. Vasquez

Ms. Susan Matherly

Hon. Glen Reiser

Hon. James Otto

CEAC Court Records Management
Working Group

Mr. Rob Oyung

Mr. Patrick O'Donnell

End of Presentation (Slides)

Meeting Materials
follow this slide in the binder.

Please refer to the PDF Binder Bookmarks panel (left)
to view and navigate the list of additional materials.



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ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date	Action Requested
July 8, 2014	Information for review
To	Deadline
Court Technology Advisory Committee Hon. Terence Bruiniers, Chair	CTAC Meeting, July 18, 2014
From	Contact
Joint Appellate Technology Subcommittee Hon. Louis Mauro, Chair	Julie N. Bagoye, Appellate Court Liaison Information Technology Services Office 415-865-7976 Julie.bagoye@jud.ca.gov
Subject	
Status of Joint Appellate Technology Subcommittee Activities	

The Joint Appellate Technology Subcommittee (JATS) recently formed and met for the first time by teleconference in April. The subcommittee is tasked with improving the administration of justice within the appellate courts through the use of technology; and, for fostering cooperative endeavors to resolve common technological issues within the appellate courts, including developing and/or reviewing rule and related proposals to facilitate and modernize appellate E-Filing and E-Business. The initial focus of the subcommittee has been on expanding subcommittee membership and identifying priority action items from among our annual agenda assignments.

The following is the status of our progress on the subcommittee's annual agenda assignments:

1. Modernize appellate court rules for e-filing and e-business. The subcommittee is working with the Appellate Advisory Committee to identify action items for this assignment.

2. Collaborate on statewide appellate court technology implementation. The subcommittee is working with the First Appellate District to identify action items for this assignment.

3. Develop branch policy on public access to electronic appellate court records. The trial court rules (Title 2) include rules that address public access to electronic court records. The appellate rules (Title 8) do not currently include a similar set of rules. As the appellate courts move toward greater e-filing and electronic storage of court records, the question of public access to these electronic court records is likely to arise. Possible amendments to the Rules of Court to bring Title 8 into alignment with the trial court rules by adding new rules that address public access to electronic appellate court records will be drafted by staff for consideration by JATS in coming months. We anticipate a proposal will be ready for review by CTAC and the Appellate Advisory Committee early next year. If approved by the committees, the proposal can then be submitted to the Judicial Council's Rules and Projects Committee for possible circulation for public comment during the regular annual rules comment period in spring 2015.

4. Coordinate with other subcommittees on rule and policy matters concerning appellate courts. The subcommittee will work with the other subcommittees to identify action items for this assignment.

I look forward to talking with you at our upcoming CTAC meeting.

Cc: Mr. Mark Dusman, Director, AOC Information Technology Services Office
Ms. Renea Stewart, Senior Manager, AOC Information Technology Services Office
Ms. Jamel Jones, CTAC Lead Staff, AOC Information Technology Services Office



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MEMORANDUM

Date	Information Only
July 14, 2014	Please Review
To	Deadline
Court Technology Advisory Committee Hon. Terence Bruiniers, Chair	CTAC Meeting, July 18, 2014
From	Contact
Rules & Policy Subcommittee Hon. Daniel Buckley, Chair and Prof. Dorothy Glancy, Vice Chair	Manuel Floresca Information Technology Services Office 415-865-4070 manuel.floresca@jud.ca.gov
Subject	
Status Report on Rules & Policy Subcommittee Activities	Patrick O'Donnell Managing Attorney, Legal Services Office 415-865-7665 patrick.o'donnell@jud.ca.gov

Summary

This memorandum summarizes current activities of the Court Technology Advisory Committee's (CTAC) Rules & Policy Subcommittee.

The subcommittee's activities for 2014 fall into four categories:

- Privacy Policies on Terms of Use for Judicial Branch Websites;
- Modernization of Trial Court Rules to Support E-Business;
- Standards for Electronic Signatures; and
- State of Electronic Recording in the Courts

Privacy Policies and Terms of Use for Judicial Branch Websites

The Rules & Policy Subcommittee has progressed in developing a comprehensive statewide privacy policy addressing electronic access and restrictions to court records and data to align with both state and federal requirements. The model court privacy policy under development by the subcommittee will outline key contents and provisions to address within a local court's privacy policy.

The subcommittee has investigated and discussed various privacy policies adopted by a variety of government justice agencies, as well as courts. By utilizing a United States Department of Justice Policy Development Template that outlines privacy policy concepts and topics, the Subcommittee has drafted a model privacy policy tailored to the needs and practices of California trial courts.

Subcommittee members have completed initial drafts of the template's privacy policy topics that will provide minimum standards for the model local policy for trial courts. In a collaborative effort, the drafts will be reviewed by designated subcommittee members. The subcommittee will then present it to CTAC for discussion and recommendation to the Judicial Council Technology Committee, and subsequently to the Judicial Council.

Modernization of Trial Court Rules to Support E-Business

An ongoing project of the Rules & Policy (R&P) Subcommittee is to review the California Rules of Court, the Code of Civil Procedure, and other codes to determine what amendments are needed to permit courts and litigants to engage in e-business practices.

The approach being taken is to systematically review, in partnership with other subject matter advisory committees, each of the ten titles of the California Rules of Court for potential rule and statutory changes so that the rules and statutes will be consistent with modern business practices.

On June 30, 2014, members of the R&P Subcommittee joined with members of the Civil and Small Claims Advisory Committee to review draft revisions to titles 2 (Trial Court Rules) and 3 (Civil Rules) of the California Rules of Court. At the joint meeting, the revision of the two titles was largely completed.

The next step will be for members of the R&P Subcommittee to work with members of other advisory committees to review and modernize the text of other titles of the California Rules of Court. All the major subject advisory matter committees (e.g., civil, criminal, family and juvenile law, etc) have included rules and statutory modernization in their approved agendas for the next two years. By the end of next year, CTAC and the other committees should complete their review and make recommendations for the modernization of all the rules.

Standards for Electronic Signatures

The Rules & Policy Subcommittee has finished gathering detailed information about current practices of California trial courts that use electronic or digital electronic signatures on court-signed documents and has started developing operational guidelines for digital and electronic signatures in California courts.

At present, a draft of the guidelines is under development. Subcommittee members will work with members of the Court Executive Advisory Committee's (CEAC) Court Records Management Working Group on developing the guidelines.

State of Electronic Recording in the Courts

The Rules & Policy Subcommittee has completed a draft of a survey to identify current usage of electronic recording in the trial courts. That is, the survey will define and evaluate areas where recordings are already being used, problems with existing practice, and technology available for improved usage. This study is an evaluation of current usage and technology and does not propose expansion of usage. Recently, the draft of the survey was submitted and is under review.

Conclusion

We appreciate your attention to the work of the Rules & Policy Subcommittee and look forward to discussing these and other matters with you at the CTAC meeting on July 18.

Cc: Mr. Mark Dusman, Director, Information Technology Services Office
Ms. Renea Hatcher, Senior Manager, Information Technology Services Office
Mr. Patrick O'Donnell, Managing Attorney, Legal Services Office
Ms. Jamel Jones, CTAC Lead Staff
Mr. Manuel Floresca, CTAC Rules & Policy Subcommittee Staff



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MEMORANDUM

Date	Action Requested
July 7, 2014	Please Review
To	Deadline
Hon. Terence L. Bruiniers, Chair, Court Technology Advisory Committee (CTAC)	CTAC Meeting, July 18, 2014
From	Contact
Hon. Glen M. Reiser, Chair and Hon. Emily Vasquez, Vice-Chair CTAC Projects Subcommittee	Fati Farmanfarmaian Information Technology Services Office 415-865-4908 phone fati.farmanfarmaian@jud.ca.gov
Subject	
Status Report on CTAC Projects Subcommittee Activities	

This memo summarizes the activities of the Projects Subcommittee since the last Court Technology Advisory Committee (CTAC) meeting in March 2014, specifically as it relates to the six projects assigned from CTAC's annual agenda,

1. Survey and Summarize Current State of Branch E-Filing, including Cost Benefit and Best Practices

The *State of the Branch Report on E-Filing* which outlining the results of the Projects Subcommittee 2014 E-Filing Survey was posted on Serranus at the following location:

http://serranus.courtinfo.ca.gov/jc/court_tech.htm. The committee invites members to share the report, as needed and is helpful for court and branch e-filing planning.

2. Explore Opportunities to Expand Remote Interpreting

Partnership with CLAP, the Joint Working Group for California's Language Access Plan

The Joint Group for California's Language Access Plan (CLAP), which is comprised of members of the Court Interpreters Advisory Panel (CIAP) and the Access and Fairness Advisory Committee, was established in June 2013 to create a comprehensive statewide Language Access Plan (LAP) that will serve all of California's limited-English-proficient (LEP) court users.

On June 17, 2014, Donna Hershkowitz, Director, Office of Appellate Court Services and Court Operations Special Services Office, facilitated a teleconference call for CLAP to share their progress with branch stakeholders—including CTAC's chair, vice-chair and staff. Highlights of that call include:

- CLAP is on track to submit the LAP draft to the council at their July meeting, with the goal of having it adopted in December 2014 after a period of public comments.
- Region 3's video remote interpreting (VRI) implementation is also moving forward with a pilot to start in July 2014 in Fresno. At the request of CTACs chair, Fresno has scheduled a demo of their implementation on July 10, 2014 for Justice Bruiniers, Judge Reiser and staff. Region 2 will start their collective bargaining in the fall.
- A CourtCall Courtroom Video Conferencing demo will be scheduled for early August to coincide with CEAC's next meeting. CourtCall created the turn-key telephonic court appearance system that has become the industry standard. That standard now also extends to video appearances.

3. Study and Identify Opportunities to Expand Remote Video Appearances

The subcommittee's first step on this project will be to survey the courts and advisory committees to examine the extent and use of remote video in the courts. Judge Reiser is completing a draft of the survey, with Judge Vasquez and Judge Freedman's recommendations. The subcommittee is expected to review and finalize the survey by end of July, and will consolidate the results into a report on the *State of the Branch Report on Remote Video*.

4. Evaluate Feasibility of Establishing a Branch Self-Represented Litigants (SRL) E-Services Portal

This project is on-hold following consultation with the council's Technology Committee (JCTC).

5. Evaluate and Continue Development of the E-Business Webinar Series

The E-Business Webinar: "Remote Video in the Courts" has been posted to the Serranus website (http://serranus.courtinfo.ca.gov/programs/tech/branch_resource_center.htm).

July 7, 2014

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The subcommittee plans to evaluate the effectiveness and use of this first installment of the E-Business Webinar Series and to assess lessons learned by December 2014. The Projects Subcommittee will provide the evaluation to the JCTC and seek approval to develop the strategy, model and contents for the second installment of the e-delivered (web-based) e-business webinar series on the topic of remote interpreting.

6. Maintain and Improve the Branch Remote Video Resource Center

In addition to the new webinar, staff posted fresh and relevant content to the Remote Video Resource Center, including 2 new sections titled:

- 1) “Rules and Statutes” governing remote video use at <http://serranus.courtinfo.ca.gov/programs/tech/rules-statutes.htm>; and
- 2) “Videos” showcasing video interviews with judicial officers on various uses of videoconferencing at <http://serranus.courtinfo.ca.gov/programs/tech/videos.htm>.

We also expanded the resource center to include links to valuable resources such as:

- [Video Technologies Resource Guide](#) (*National Center for State Courts*); and the
- [Recommended Guidelines for Video Remote Interpreting \(VRI\) for ASL-Interpreted Events](#) (Nov 2012).

These updates align with CTAC’s charge to assist courts with developing useful technologies.

Conclusion

Thank you for reviewing this memo and for your attention to this subcommittee’s work. We look forward to speaking with you at our next CTAC meeting.

Cc: Mr. Mark Dusman, Director, Information Technology Services Office
Ms. Renea Hatcher, Senior Manager, Information Technology Services Office
Mr. Patrick O’Donnell, Managing Attorney, Office of General Counsel
Ms. Jamel Jones, CTAC Lead Staff
Ms. Fati Farmanfarmaian, CTAC Projects Subcommittee Staff

Assembly Bill No. 2397

Passed the Assembly June 30, 2014

Chief Clerk of the Assembly

Passed the Senate June 26, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2397, Frazier. Criminal procedure: defendant's appearance by video.

Existing law generally requires a defendant in a criminal trial in which a felony is charged to be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. Existing law requires the accused to be personally present at all other proceedings unless he or she executes a written waiver of his or her right to be personally present. Existing law authorizes a court to permit the initial court appearance and arraignment of a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Existing law requires the defendant to execute a written waiver if the defendant decides not to exercise the right to be physically present in the courtroom to make his or her plea.

Existing law requires the attorney of a defendant so held to be present in court during the hearing for an initial court appearance and arraignment if the attorney is not present with the defendant. Existing law, notwithstanding this provision, requires the attorney to be present with the defendant in any county exceeding 4,000,000 persons in population.

This bill would delete the requirement that the attorney be present in any county exceeding 4,000,000 persons in population. The bill would authorize a defendant who does not wish to be personally present for noncritical portions of the trial when no testimonial evidence is taken to submit an oral waiver in open court prior to the proceeding, or submit a written request to the court and would allow the court to grant the request in its discretion. The bill would

allow a court, when a defendant has waived the right to be personally present, to require the appearance of a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be conducted by 2-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom for noncritical portions of the trial. If the defendant is represented by counsel, the bill would not require the attorney to be personally present with the defendant for noncritical portions of the trial, if the audiovideo conferencing system or other technology allows for private communication between the defendant and the attorney. The bill would state that it does not expand or limit the right of a defendant to be personally present with his or her counsel at a particular proceeding as required by the California Constitution.

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

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

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

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Subdivision (b) of Section 191.5.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

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

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

“Waiver of Defendant’s Personal Presence”

“The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that his or her interest is represented at all times by the presence of his or her attorney the same as if the defendant were personally present in court, and further agrees that notice to his or her attorney that his or her presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of his or her appearance at that time and place.”

(c) (1) The court may permit the initial court appearance and arraignment of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an arraignment on an information in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests. If the defendant decides not to exercise the right to be physically present in the courtroom, he or she shall execute a written waiver of that right. A judge may order a defendant's personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.

(2) (A) A defendant who does not wish to be personally present for noncritical portions of the trial when no testimonial evidence is taken may make an oral waiver in open court prior to the proceeding or may submit a written request to the court, which the court may grant in its discretion. The court may, when a defendant has waived the right to be personally present, require a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be present for noncritical portions of the trial when no testimonial evidence is taken, including, but not limited to, confirmation of the preliminary hearing, status conferences, trial readiness conferences, discovery motions, receipt of records, the setting of the trial date, a motion to vacate the trial date, and motions in limine, by two-way electronic audiovideo communication between the defendant and

the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall not be required to be personally present with the defendant for noncritical portions of the trial, if the audiovideo conferencing system or other technology allows for private communication between the defendant and the attorney prior to and during the noncritical portion of trial. Any private communication shall be confidential and privileged pursuant to Section 952 of the Evidence Code.

(B) This paragraph does not expand or limit the right of a defendant to be personally present with his or her counsel at a particular proceeding as required by Section 15 of Article 1 of the California Constitution.

Approved _____, 2014

Governor