
A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 801, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§801- Presence of the defendant. (a) A defendant
5 shall be present either physically or by video conference at the
6 arraignment, at the time of entering a plea, at pretrial
7 evidentiary hearings, at every stage of the trial including the
8 impaneling of the jury and the return of the verdict, and at the
9 imposition of sentence; provided that the defendant need not be
10 present and shall be considered to have waived the right to be
11 present if:

- 12 (1) The defendant is a corporation and appears by counsel;
13 (2) The proceeding is a conference or argument involving a
14 question of law;
15 (3) The proceeding involves a potential reduction of
16 sentence;



- 1 (4) The defendant consents in writing to the proceeding
2 being conducted in the defendant's absence;
- 3 (5) The defendant's counsel orally represents that the
4 defendant consents to the proceeding being conducted
5 in the defendant's absence; or
- 6 (6) The defendant is voluntarily absent from two
7 consecutive court appearances and:
- 8 (A) The defendant's counsel notified the defendant of
9 the purpose of the proceeding; and
- 10 (B) If the proceeding is an arraignment, the
11 defendant was provided a copy of the charging
12 document.
- 13 (b) The further progress of a pretrial evidentiary hearing
14 or of the trial, to and including the return of the verdict,
15 shall not be prevented and the defendant shall be considered to
16 have waived the right to be present if a defendant who was
17 initially present:
- 18 (1) Is voluntarily absent after the hearing or trial has
19 commenced, whether or not the defendant has been
20 informed by the court of the obligation to remain
21 during the trial; or



- 1 (2) Engages in conduct that justifies the defendant's
2 exclusion from the courtroom.
- 3 (c) The court may conduct by video conference:
- 4 (1) Without the consent of the defendant, an arraignment
5 in which the court accepts a plea of not guilty;
- 6 (2) With the oral or written consent of the defendant:
- 7 (A) An arraignment in which the court accepts, or
8 takes under advisement, a plea of guilty or no
9 contest;
- 10 (B) A pretrial evidentiary or non-evidentiary
11 proceeding; or
- 12 (C) A post-conviction evidentiary or non-evidentiary
13 proceeding, other than a sentencing hearing; or
- 14 (3) With the oral or written consent of both the
15 prosecution and the defendant, a sentencing hearing in
16 which a sentence is imposed."

17 SECTION 2. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Sam*

By Request

JAN 17 2023



H.B. NO. 125

Report Title:

Honolulu Prosecuting Attorney Package; Criminal Procedure;
Defendant's Presence

Description:

Adds a new section to Chapter 801, Hawaii Revised Statutes, establishing circumstances in which the presence of a defendant is required for court proceedings or may be waived.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

