

JAN 19 2023

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# 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.





# S.B. NO. 226

**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.*

