
THIRD READING

Bill No: SB 848
Author: Umberg (D)
Amended: 3/7/22
Vote: 21

SENATE JUDICIARY COMMITTEE: 10-0, 4/5/22
AYES: Umberg, Borgeas, Caballero, Durazo, Hertzberg, Jones, Laird, Stern,
Wieckowski, Wiener
NO VOTE RECORDED: Gonzalez

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Civil actions: parties and postponements

SOURCE: Author

DIGEST: This bill removes the sunset on the statutory authorization for specified remote appearances in specified civil court proceedings.

ANALYSIS:

Existing law:

- 1) Provides that a party who has provided the requisite notice may appear telephonically in the following civil proceedings:
 - a) A case management conference, provided that the party has made a good faith effort to meet and confer before the conference and has timely filed and served a case management statement.
 - b) A trial setting conference.
 - c) A hearing on law and motion, except motions in limine.
 - d) A hearing on a discovery motion.
 - e) A conference to review the status of an arbitration or mediation.
 - f) A hearing to review the dismissal of an action.

- g) Any other hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate. (Code Civ. Proc. § 367.5(b), (e).)
- 2) Provides that, notwithstanding any party's notice of intention to appear telephonically at one of the above proceedings, the court may require a party to appear in person at a hearing, conference, or proceeding if the court determines on a hearing-by-hearing basis that a personal appearance would materially assist in the determination of the proceedings or in the effective management of the particular case. (Code Civ. Proc. § 367.5(c).)
 - 3) Authorizes parties to civil cases, including self-represented parties and nonparties subject to discovery requests, to appear remotely at a proceeding, and for the court to conduct the proceeding remotely, when the party has provided notice to the court and all other parties of the intent to appear remotely, subject to the limitations in 4)-7). (Code Civ. Proc. § 367.75(a).)
 - a) A court is prohibited from requiring a party to appear remotely. (Code Civ. Proc. § 367.75(f), (g).)
 - b) A court permitting remote appearances must ensure that technology in the courtroom enables all parties, whether appearing remotely or in person, to fully participate in the conference, hearing, or proceeding. (Code Civ. Proc. § 367.75(f).)
 - c) Separate procedures are set forth for remote appearances in juvenile dependency proceedings, at 9).
 - 4) Authorizes a court to require an in-person appearance by a party or witness in a civil proceeding if any of the following conditions is present:
 - a) The court does not have adequate technology to conduct the proceeding remotely.
 - b) Although the court has adequate technology, the quality of the technology or the audibility at the proceeding prevents the effective management or resolution of the proceeding.
 - c) The court determines, on the facts of the specific proceeding, that an in-person appearance would materially assist in the determination of the proceeding or in the effective management or resolution of the particular case. With respect to expert witnesses, however, an expert witness must be permitted to appear remotely absent good cause to compel in-person testimony.
 - d) The quality of the technology or audibility of the proceeding inhibits the court reporter's ability to accurately prepare a transcript of the proceeding.

- e) The quality of the technology or audibility of the proceeding prevents an attorney from being able to provide effective representation to their client.
 - f) The quality of the technology or audibility of the proceeding inhibits a court interpreter's ability to provide language access to a court user or authorized individual. (Code Civ. Proc. § 367.75(b).)
- 5) Authorizes a court, on its own motion or by motion of any party, to conduct a trial or evidentiary hearing, in whole or in part, through the use of remote technology, subject to the limitations of 4) above, unless an opposing party shows why a remote appearance or testimony should not be allowed.
- a) Except where law expressly provides otherwise, if the court conducts a trial in whole or in part through remote means, the official reporter or official reporter pro tempore must be physically present in the courtroom.
 - b) Upon request, a court interpreter must be present in the courtroom. (Code Civ. Proc. § 367.75(d).)
- 6) Requires a court, prior to conducting remote proceedings, to have a process for a party, witness, official reporter or reporter pro tempore, court interpreter, or other court personnel to alert the judicial officer of technological or audibility issues that arise during the proceeding, and to require that a remote appearance by a party or witness have the necessary privacy and security appropriate for the proceeding. (Code Civ. Proc. § 367.75(e)(1)-(2).)
- 7) Requires a court to inform all parties, and particularly self-represented parties, about the potential technological or audibility issues that may arise when using remote technology, and which may require a delay or halt to the proceeding; and to make information available to self-represented parties regarding the options for appearing in person and through remote technological means. (Code Civ. Proc. § 367.75(e)(3).)
- 8) Provides that, subject to the technological and qualitative limitations in 4), the statute does prohibit attorneys for represented parties from stipulating to the use of remote appearances.
- 9) Authorizes a juvenile dependency proceeding to be conducted in whole or in part as follows:
- a) Any person authorized to be present at the proceeding may request to appear remotely.
 - b) Any party to the proceeding may request that the court compel the physical presence of a witness or party.

- c) A witness may appear remotely only with the consent of all parties and if the witness has access to the appropriate technology.
 - d) A court may not require a party to appear through the use of remote technology.
 - e) The confidentiality requirements that apply to an in-person juvenile dependency proceeding also apply in a juvenile dependency proceeding conducted through the use of remote technology. (Code Civ. Proc. § 367.75(h).)
- 10) Requires the Judicial Council to adopt rules for the policies and procedures set forth above, including for deadlines by which a party must notify the court and other parties of its intent to appear remotely, and standards for a judicial officer to apply in determining whether a remote appearance is appropriate. (Code Civ. Proc. § 367.75(k).)
- 11) Provides that the remote technology provisions in 3)-10) will sunset on July 1, 2023. (Code Civ. Proc. § 367.75(l).)

This bill removes the July 1, 2023 sunset on the remote technology provisions.

Comments

Until the onset of the COVID-19 pandemic, the default mode for appearing in court on a civil matter was in-person. Telephonic appearances were permitted in specified proceedings, such as law and motion hearings, but were generally prohibited in trials and other proceedings involving witnesses.¹ In 2017, a bill to extend the telephonic appearance statute to also permit appearances via other audiovisual means failed.²

The COVID-19 pandemic and the need to socially distance caused massive disruption to California's justice system. According to the Judicial Council, California's courts resolved nearly 1.4 million fewer cases during the first six months of the COVID-19 pandemic—a decline of 49.1 percent from the same six-month period in 2019.³ The pandemic-induced slowdown disproportionately

¹ See Code Civ. Proc., § 367.5; Cal. Rules of Court, r. 3.670.

² See SB 467 (Wilk, 2017).

³ Report to the Judicial Council, *Trial Court Budget: \$50 Million COVID-19 Backlog Funding* (Jan. 12, 2021), at Attachment A.

affected civil cases because constitutional speedy trial guarantees for criminal cases require courts to prioritize those matters.⁴

To prevent cases from grinding to a complete halt, many courts pivoted to remote proceedings, which allowed them to process cases while still complying with state and local health and safety orders. This pivot was first authorized by the Judicial Council’s Emergency Rule 3, adopted on April 6, 2020.⁵ Then, in 2021, the Legislature enacted SB 241 (Umberg, Chapter 214, Statutes of 2021), which authorized remote proceedings in civil and juvenile dependency proceedings, subject to certain technological and procedural requirements.⁶ The bill is scheduled to sunset on July 1, 2023. This bill eliminates the sunset, thereby making the remote proceedings statute permanent.

While many of the bill’s opponents are opposed to the elimination of the sunset, others object to the reach of the bill as interpreted by the Judicial Council. When the Judicial Council adopted a rule of court to implement SB 241, the rule included in its scope proceedings under Welfare and Institutions Code Sections 601 and 602, known as juvenile justice or juvenile delinquency proceedings.⁷ These proceedings are technically civil, but are also quasi-criminal in nature because they so often involve “the possibility of a substantial loss of freedom.”⁸ Bill opponents Pacific Juvenile Defender Center and the California Public Defenders Association argue that the provisions of SB 241—designed for general civil cases—are improper for juvenile justice cases, and likely even violate the constitutional rights of those alleged to be juvenile defendants. The author of this bill has agreed to work with these opponents on devising the appropriate language for inclusion in this bill.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 4/26/22)

California Defense Council
California Judges Association

⁴ E.g., White, *What happens when COVID-19 shuts civil courts?*, Los Angeles Times (Sept. 11, 2020), available at <https://www.latimes.com/business/story/2020-09-11/covid-shuts-courts-mediation-arbitration-boom> (last visited Apr. 26, 2022).

⁵ Cal. Rules of Court, Appendix I, Emergency Rule 3; California Courts Newsroom, *Judicial Council Adopts New Rules to Lower Jail Population, Suspend Evictions and Foreclosures* (Apr. 6, 2020), available at <https://newsroom.courts.ca.gov/news/judicial-council-adopts-new-rules-lower-jail-population-suspend-evictions-and-foreclosures> (last visited Apr. 26, 2022).

⁶ See Code Civ. Proc., § 367.75.

⁷ See Cal. Rules of Court, r. 3.672.

⁸ *Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 801.

Consumer Attorneys of California
Encore Capital Group
Judicial Council of California

OPPOSITION: (Verified 4/26/22)

American Federation of State, County and Municipal Employees
California Court Reporters Association
California Federation of Interpreters
California Labor Federation
California Public Defenders Association
Orange County Employees Association
Pacific Juvenile Defender Center
SEIU California
United Public Employees

ARGUMENTS IN SUPPORT: According to the Judicial Council of California, writing in support:

The remote access to the courts originally authorized by temporary emergency rules during the pandemic demonstrated its value as the pandemic revealed the need for a variety of options for accessing courts, both in-person and remotely. In order to avoid further delays or outright denials of access to justice, remote access must become a basic service rather than a temporary way to address current statutory restrictions on access to the courts. Investment in those services as well as the flexibility to continue expanding the remote access under the authority of SB 241 continues to provide increased access to the courts by the public and reduces disruption to the public and prepares courts for future crises—whether caused by pandemics, wildfires, natural disasters, bad weather or other unexpected events. Courts must be allowed to continue to utilize and develop the tools rolled out during the pandemic and maximize the ability to provide a full menu of equal, safe, and reliable access to justice and court services, and removing the sunset of [Code of Civil Procedure] section 367.75 is an important step to ensuring that this is possible.

ARGUMENTS IN OPPOSITION: According to SEIU California, writing in opposition:

The type of remote proceedings that were utilized during the COVID pandemic when physical courtrooms were shuttered, and as envisioned by last year's SB 241 are, in fact, experiments that have not been assessed for their impacts on litigants, the integrity of the record or those who are charged with delivering the

service of justice. There is not yet any empirical evidence about the success, failures, or weakness of remote proceedings or how it has affected justice in California. To eliminate the sunset date in [Code of Civil Procedure section] 367.75 is a putting-the-cart-before-the-horse approach that is risky to a vital component of our democracy. We ought not to rush to permanently reform our trial court system without thoughtful review, assessment and implementation—the risk is just too great.

SB 848 would also undo a critical component of last year's carefully negotiated agreement among the affected parties on SB 241 and budget funding of \$30 million in ongoing funds allocated to trial courts to increase the number of official court reporters creating the verbatim record in family and civil proceedings.

Prepared by: Allison Meredith / JUD. / (916) 651-4113
4/27/22 14:15:45

**** **END** ****