

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
SB 848 (Umberg) – As Amended June 20, 2022

**SENATE VOTE:** 37-0

**SUBJECT:** CIVIL ACTIONS: REMOTE APPEARANCES

**KEY ISSUE:** SHOULD THE STATUTORY AUTHORIZATION FOR REMOTE PROCEEDINGS IN CIVIL CASES BE EXTENDED THROUGH 2025?

**SYNOPSIS**

*Last year this Committee heard and approved SB 241 (Umberg), Chap. 214, Stats. 2021, which sought to build upon the expanded use of technology in the legal industry during the COVID-19 pandemic by permanently permitting witnesses in civil cases to testify remotely. That bill, which was highly controversial and heavily debated, provided for the use of remote technology until June 2023. The relatively short sunset date for SB 241 was the result of compromises made to get the measure enacted. This bill would extend that sunset date through 2025 and provide for the collection and transmittal to the Legislature of much-needed empirical data regarding the effectiveness of remote court appearances.*

*As currently in print, most of the stakeholders involved in last year's measure remain supportive of the effort to use remote technology in courts or are neutral on this bill. The supporters of this measure, including plaintiff and defense counsel, legal aid organizations, and the Judicial Council of California, tout the convenience of remote appearances, especially for witnesses and litigants who work and have family obligations. This bill is opposed by groups representing interpreters as well as those representing juvenile defendants. The court interpreters contend that the technology involved in remote appearances makes real time language translation difficult at best and nearly-impossible at worst. Although the interpreters have not been able to find consensus with the author and sponsors of this measure, the data requirements of this measure are intended to highlight potential issues related to remote technology so the Legislature can better assess these concerns when the new sunset date is reevaluated in 2025. The opposition concerns raised by the California Public Defenders Association and the Pacific Juvenile Defense stem from the very broad interpretation of the term "civil cases" employed by the Judicial Council of California when adopting the rules needed to implement SB 241. These organizations contend that the Judicial Council's definition inappropriately encompasses several juvenile justice and other quasi-criminal matters, including gun violence restraining orders and sexually violent predator hearings. These criminal defense-focused organizations contend that these matters are more criminal in nature than civil and should therefore be excluded from the scope of remote appearance rules for more traditional civil law matters. The author has agreed to continue to engage all stakeholders, and, much like SB 241, negotiations are certain to continue should this bill be approved by this Committee.*

**SUMMARY:** Extends the sunset date of the provisions of law authorizing remote court appearances in civil cases and requires the Judicial Council of California to provide an annual report to the Legislature regarding the efficacy of remote appearance in court. Specifically, **this bill:**

- 1) Extends the sunset date on the provisions of law authorizing remote court appearances from July 1, 2023 to January 1, 2026.
- 2) Requires all 58 superior courts to report to the Judicial Council of California on or before October 1, 2023, and annually thereafter, assessments of the impacts of technology issues or problems affecting civil remote proceedings and all purchases and leases of technology or equipment to facilitate civil remote conferences, hearings, or proceedings.
- 3) Requires the Judicial Council of California to consolidate the data provided in 2) and submit a report to the Legislature before December 31, 2023, and annually thereafter.
- 4) Provides that the data collected pursuant to 2) and the report provided to the Legislature pursuant to 3) must contain the following information:
  - a) The number of civil proceedings conducted with the use of remote technology;
  - b) Any superior court in which technology issues or problems occurred;
  - c) The superior courts in which remote technology was used;
  - d) The types of civil trial court conferences, hearings, or proceedings in which remote technology was used;
  - e) The cost of purchasing, leasing, or upgrading remote technology; and
  - f) The type of technology and equipment purchased or leased.
- 5) Provides that a continuance or postponement of a trial or arbitration date extends any deadlines that have not already passed as of March 19, 2020, applicable to discovery, including the exchange of expert witness information, mandatory settlement conferences, and summary judgment motions in the same matter.

**EXISTING LAW:**

- 1) Provides that, generally, a party that has provided notice may appear by telephone at the following conferences, hearings, and proceedings:
  - a) A case management conference, provided the party has made a good faith effort to meet and confer before the conference as required by law and has timely served and filed 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; and

- g) Any other hearing, conference, or proceeding if the court determines that a telephone appearance is appropriate. (Code of Civil Procedure Section 367.5 (b).)
- 2) Provides that, notwithstanding 1), a 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 or resolution of the particular case. (Code of Civil Procedure Section 367.5 (c).)
  - 3) Provides that, generally, in civil cases, when a party has provided notice to the court and all other parties that it intends to appear remotely, a party may appear remotely and the court may conduct conferences, hearings, and proceedings, in whole or in part, through the use of remote technology. (Code of Civil Procedure Section 367.75 (a).)
  - 4) Provides that, notwithstanding 3), a court may require a party or witness to appear in person at a conference, hearing, or proceeding if any of the following conditions are present:
    - a) The court with jurisdiction over the case does not have the technology necessary to conduct the conference, hearing, or proceeding remotely;
    - b) The quality of the technology or audibility at a conference, hearing, or proceeding prevents the effective management or resolution of the conference, hearing, or proceeding;
    - c) The court determines on a hearing-by-hearing basis that an in-person appearance would materially assist in the determination of the conference, hearing, or proceeding or in the effective management or resolution of the particular case;
    - d) The quality of the technology or audibility at a conference, hearing, or proceeding inhibits the court reporter's ability to accurately prepare a transcript of the conference, hearing, or proceeding;
    - e) The quality of the technology or audibility at a conference, hearing, or proceeding prevents an attorney from being able to provide effective representation to the attorney's client; or
    - f) The quality of the technology or audibility at a conference, hearing, or proceeding inhibits a court interpreter's ability to provide language access to a court user or authorized individual. (Code of Civil Procedure Section 367.75 (b).)
  - 5) Provides that, notwithstanding 3), upon its own motion or the motion of any party, the court may conduct a trial or evidentiary hearing, in whole or in part, through the use of remote technology, absent a showing by the opposing party as to why a remote appearance or testimony should not be allowed. (Code of Civil Procedure Section 367.75 (d)(1).)
  - 6) Requires, if the court conducts a trial, in whole or in part, through the use of remote technology, the official reporter or official reporter pro tempore shall be physically present in the courtroom, as specified. (Code of Civil Procedure Section 367.75 (d)(2).)
  - 7) Requires that, before the court with jurisdiction over the case may proceed with a remote conference, hearing, proceeding, or trial, the court must have a process for a party, witness,

official reporter, official reporter pro tempore, court interpreter, or other court personnel to alert the judicial officer of technology or audibility issues that arise during the conference, hearing, proceeding, or trial. (Code of Civil Procedure Section 367.75 (e)(1).)

- 8) 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 Civil Procedure Section 367.75 (e)(3).)
- 9) 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 Civil Procedure Section 367.75 (k).)
- 10) Provides that the provisions of 3) through 9) remain in effect only until July 1, 2023, and are repealed as of that date.

**FISCAL EFFECT:** As currently in print this bill is keyed fiscal.

**COMMENTS:** In the wake of the highly contentious negotiations related to the 2021 legislative codification of COVID-19 era rules permitting the use of remote technology in civil courts (SB 241 (Umberg), Chap. 214, Stats. 2021), this compromise measure extends the sunset date on the provisions governing remote appearances through 2025 and greatly expands the nature of the information that must be provided to the Legislature regarding the efficacy and potential issues arising from deploying technology in the courts. In support of this measure the author states:

SB 848 extends the sunset date on important judicial reforms that increase access to justice in our civil courts. Widespread and pervasive inefficiencies in our courts were well-documented before the COVID-19 pandemic. To make matters worse, these shortcomings were exacerbated during the pandemic to the point that California courts have reached a crisis point due to years of inaction and inflexibility. Several urgent reforms [are] in order for the courts in order to ensure that we minimize negative impacts on court clients, employees, lawyers, and access to justice in general.

Last year, SB 241 (Umberg, Chap. 214, Stats. 2021) was passed in order to address some of these shortcomings in our justice system, firstly, by allowing authorized parties to appear remotely and the court to conduct conferences, hearings, proceedings, and trials in civil cases, in whole or in part, through the use of remote technology. Also, SB 241 allowed for the remote appearance of noncontroversial witnesses. Additionally, SB 241 ensured clarity and predictability in pretrial and arbitration deadlines when trials are delayed. All of these reforms are critically important to shortening trial length, saving litigants money, and preventing gamesmanship, but unfortunately, the statutory allowance for these provisions is set to expire next year. Therefore, SB 848 extends the sunset clause on these important civil court reforms.

***The pandemic forced most day-to-day legal functions to move into the online world. A significant portion of civil litigation requires persons to be in the close physical presence of one another. The courtroom is no different. Although various county Superior Courts have handled civil litigation differently, the realities of social distancing and the constitutional priority***

afforded to criminal cases imposed delays to most if not all civil cases at the height of the pandemic. Some counties went so far as to vacate all civil trials on the 2020 court calendar. (Cheryl Miller, *How COVID-19 Is Impacting California Courts: Roundup of Services*, The Recorder (July 21, 2020).) The proponents of this bill, both plaintiffs and defense counsel, note to the Committee that these delays are still impacting some aspects of litigation.

In-court litigation was not the only aspect of the legal practice impacted by the pandemic. Many aspects of the legal profession, from interviewing potential clients, to deposing witnesses, to conducting trials require people to be in close proximity with one another. Given the legal industry's experience with technology during the pandemic, and the growing comfort with the technology, the proponents of this bill now seek to make many of the innovative practices that were developed in 2020 a lasting fixture in civil litigation.

***At the height of the pandemic, court backlogs delayed justice for too many Californians.***

Despite the increased use of technology in the court system, as a result of the stay-at-home orders issued at the height of the COVID-19 pandemic, California's civil justice system ground to a halt. Even as courts began to reopen, the use of technology to move cases through the system was inconsistent between California's 58 superior courts. In February 2021, this Committee held a joint hearing with the Senate Committee on Judiciary to better understand the scale of the backlog. Information provided to the Committee by the Judicial Council noted that in 2020 total case dispositions dropped by nearly 1.5 million cases when compared to case dispositions in 2019. (Joint Informational Hearing of Assembly and Senate Committees on Judiciary, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward* (Feb. 23, 2021) Background Paper, available at <https://ajud.assembly.ca.gov/reports>.) In addition to delaying disposition of cases, courts noted moderate to severe impact on telephone wait times, the time to set hearings, trial settings, and case dispositions. (*Ibid.*) Although data regarding the total number of delayed cases during the pandemic remains unclear, the proponents of this measure note that many of their clients have suffered significant harms as a result of these delays.

To ensure that remote technology would remain accessible to the courts, even after the first round of vaccines appeared to lessen the risks of COVID-19, last year the Legislature adopted SB 241 to codify the ability to use remote proceedings in civil matters through June 2023, under specific conditions. At the time, most of the discussion focused on the use of remote technology that would primarily occur in traditional tort civil cases. One of the most debated of those conditions was the location of court reporters and interpreters during remote proceedings. Representatives for both court reporters and interpreters argued that the remote technology deployed by the court was insufficient to properly hear witnesses and thus both real-time stenographer transcription and translation services were being impacted. Of particular concern was the impact these difficulties posed on the generation of a complete and accurate record. Although, at the time, the Judicial Council of California argued the technology was sufficient to keep court reporters and interpreters at remote locations, a compromise was reached whereby a court reporter was required to be in the courtroom.

***This bill.*** For all of the controversy and contention surrounding SB 241, and prior versions of this measure, this bill simply extends the sunset on the existing authorizations for the use of remote technology in California courts through the end of 2025. The bill also adds a much needed data reporting requirement to require all 58 county courts to report on the frequency of the use of remote technology, the frequency of issues with the technology, and the costs

associated with deploying the technology in courts. Finally, this bill eliminates a sunset on COVID-19 era provisions related to extending deadlines based on a continuance or postponement of a trial or arbitration date for deadlines that had not expired prior to the issuance of the COVID-19 emergency orders in March 2020.

***Despite contentions regarding the adequacy of technology during the debate over SB 241, California courts now seek tens of millions of dollars to improve remote court technologies.***

During the negotiations surrounding SB 241, significant anecdotal evidence surrounding the efficacy, or lack thereof, of remote court technology were shared back and forth between stakeholders. Consistently, the Judicial Council of California touted its success in deploying this technology, noting in their support letter for that bill, “all 58 local courts have the capability to hold proceedings remotely in at least one case type, and 39 courts have the capacity to hold proceedings remotely in most (if not all) case types.” Additionally, the Judicial Council noted that the passage of that bill, “allow[s] the courts to continue offering a full menu of remote access options.”

Such statements, in conjunction with the prior budget allocations to enable remote-proceedings during the pandemic certainly gave the impression that remote technology was working in California courts and justified the ongoing authorization of such work. However, in seeking two annual allocations of \$33.2 million in the 2022-2023 Budget, the Judicial Council stated:

Existing courtrooms were designed with the older courtroom audio and video technology, based on all parties being in the courtroom or in a room within the courthouse facilities.

These existing courtroom audio and video systems do not integrate with newer digital audio and video solutions utilized during the pandemic. During the pandemic, many courts rolled out a patchwork of solutions to meet requirements for access. While some participants joined a remote proceeding by telephone, many people found it more convenient to use an internet-based video conferencing tool such as Zoom, even if they did not turn on their video and were only using the audio features of the tool. Some components of these interim solutions should be updated to ensure that they can be better maintained and improved to provide the public with the best possible remote experience. (Budget Change Proposal 0250-125-BCP-2022-GB.)

Based on the statements made in the Budget Change Proposal, it is unclear if remote technology in courtrooms was working as well as it was presented to stakeholders by the Judicial Council in 2021. Accordingly, should the budget be finalized to provide additional funds to the courts for the technology, it is imperative the courts work with all stakeholders, including court reporters and interpreters, to ensure that the technology purchased by the court is effective for all parties.

***The data requirements of this bill will, finally, provide the Legislature the information necessary to adequately evaluate the benefits and downsides of remote court proceedings.*** As noted the Legislature is poised to provide significant budgetary investments for the courts to put toward the development and deployment of technology in the courts. Given the fraught discussions surrounding remote proceedings and the debate about the sufficiency of the technology utilized in remote proceedings, it is imperative that the Legislature properly oversee the use of these funds, and the effectiveness of remote proceedings as the technology deployed in the courts improves.

To that end this bill provides for useful reporting information regarding remote proceedings that was missing from SB 241. The bill requires all 58 superior courts to disclose the number of proceedings in which remote technology was used, the individual courts using the technology, the individual courts experiencing technical issues involving remote appearances, types of civil trial court conferences, hearings, or proceedings in which remote technology was used, and finally the costs associated with procuring the equipment used in remote proceedings. This data will then be compiled by the Judicial Council and reported to the Legislature annually. It is the hope of this Committee that this data will inform future bills on this topic and permit the Legislature to examine issues surrounding the use of remote technology in courts with empirical data rather than conjecture and simple anecdotal evidence.

***Several opponents contend that rules implementing SB 241 has improperly expanded the use of remote technology.*** The California Public Defenders Association and the Pacific Juvenile Defenders Center have both voiced vociferous opposition to this measure, as well as the Rule of Court 3.672. They object to how broadly the phrase “civil cases” is being interpreted by the Judicial Council. The Public Defenders note that several of these cases include matters that, while technically civil, occasionally entitle a party to counsel from a public defender including, “juvenile delinquency, family law, petitions for gun violence restraining orders, petitions for name changes and sexually violent predator hearings.”

In response the Judicial Council of California notes that these proceedings are technically civil. Additionally, the Service Employees International Union, noted that trying to clarify when and how remote technology can be utilized in these proceedings would require codifying additional specific proceedings in which remote technology would be statutorily permitted, a bridge too far for most court reporters. Recognizing that the various stakeholders involved in negotiating the original SB 241 may have different views as to what “civil cases” meant for the purpose of that bill, and by extension this measure, the Judicial Council is strongly encouraged to reexamine Rule 3.672. Additionally, as this bill progresses, the author is encouraged to work with all stakeholders, including labor, the courts, and court users, to determine if specific types of civil cases involving personal freedoms and potential detention, including but not limited to matters related to juvenile delinquency, dependency, conservatorships, the potential Care Court proceedings, gun violence restraining orders, and sexually violent predator hearings, should be removed from the authorization on the use of remote proceedings.

***Additional concerns remain regarding the use of remote court interpretation services.*** Beyond the above mentioned groups, this bill is also opposed by the California Federation of Interpreters on behalf of the court interpreters. The interpreters, as noted above, outline numerous issues experienced during the initial rollout of remote court technology during the pandemic. The interpreters note that remote proceedings make it exceptionally difficult to translate to a client, and more importantly, quickly address and clarify any questions or ambiguities that the client may have regarding statements made in court. The interpreters also contend that the existing technology being used by the courts has resulted in dropped calls between interpreters and their client as well as other audio issues.

While several of the amendments proposed to this Committee by the interpreters go farther than is necessary, and eliminate necessary considerations for the needs of the person requiring interpreting services, the interpreters do raise an important point. Indeed, the ability to receive adequate interpretation services in court is a constitutionally protected right that cannot be sacrificed for mere convenience. (*Lau v. Nichols* (1974) 414 U.S. 563.) Nonetheless, as

California deals with yet another wave of COVID-19 infections and society is embracing remote communications, remote technology in the courts appears to be a function likely to endure. Accordingly, in order to make sure interpretation services can be provided in a manner that best serves the user, the author and the interpreters are encouraged to continue conversations in order to determine how to provide remote and in-person interpreter services in the most effective manner.

***ARGUMENTS IN SUPPORT:*** This bill is supported by the Judicial Council as well as court users ranging from the plaintiff's and defense bar to legal aid organizations. In support of this measure, Bay Area Legal Aid writes:

Throughout the pandemic, BayLegal has zealously represented low-income litigants via video-based technology for hundreds of hours of remote trials and hearings. Our clients, their witnesses, and attorneys have appeared remotely out of necessity for the past seventeen months. We have found the option of remote appearances to be effective and important for litigants and witnesses who struggle to appear in person, for instance, due to financial hardships, prohibitive health conditions, and child care barriers. Clients of BayLegal who would have otherwise lost their homes or faced continued intimate partner abuse during the pandemic have successfully accessed the courts because of these remote options. We have also heard feedback from judicial officers who likewise find the option of remote appearances to be effective and even preferable. We wholeheartedly support the continuation of remote appearance options going forward as California emerges from the state of emergency. As the courts brace for the impending eviction tsunami, we should extend the remote options put in place to address longstanding inefficiencies in the court.

***ARGUMENTS IN OPPOSITION:*** As noted this bill is opposed by public defenders and other juvenile justice organizations, some court reporters, as well as court interpreters. In opposition to this measure, the California Public Defenders Association writes:

At issue for CPDA is the unnecessary and unsupported sweep of proceedings that involve a liberty interest into the scope of "civil proceedings." Section 367.75, itself did not define "civil cases," but the Judicial Council has since interpreted the phrase in Rule of Court 3.672 by referring to its own Rule of Court 1.6(3), to include 'all cases except criminal cases and writs of habeas corpus.' In fact, however, legislative history demonstrates that juvenile justice proceedings—traditionally held to be "quasi-criminal" and many special proceedings that are "quasi-civil"—were never contemplated as being included within section 367.75.

The explicit inclusion of juvenile dependency – and silence in the area of juvenile justice and other civil commitment proceedings – assured stakeholders in its belief that CCP §367.75 would not apply to matters considered criminal, quasi-criminal, or quasi-civil. This belief was cemented when SB 241 was formally introduced and debated. SB 241 does not mention "juvenile justice," "delinquency," or "602."

Additionally, the California Federation of Interpreters write:

CFI members have had extensive experience working through remote proceedings over the past 2 years. The COVID-19 pandemic resulted in a rush to remote proceedings in courts across the state, often resulting in a haphazard process that put court-user's rights at risk. Our members have experienced first-hand how remote proceedings have negatively impacted court access for limited English proficient individuals. It is extremely difficult to have



proceedings interpreted remotely. Interpreters are not next to the person in court, which allows them to quickly translate and address any nuances. This is made even more difficult by the fact that courts have experienced many technical difficulties, with individuals not being able to hear or having calls dropped unexpectedly. No technology can adequately replicate the benefits of interpreting in-person.

Last year, SB 241 was passed to establish moderate rules regarding remote hearings in civil cases. In this limited time there have been numerous problems with court hearings including inconsistent implementation, and failure of courts to ensure effective communication between LEP individuals, interpreters, judges, and court personnel. Unfortunately, SB 848 fails to incorporate key changes and protocols to ensure effective interpreter services. SB 848 would benefit from learning from the real-life experience of court interpreters and court users.

**REGISTERED SUPPORT / OPPOSITION:****Support**

Bay Area Legal Aid  
California Defense Counsel  
California Judges Association  
Consumer Attorneys of California  
Encore Capital Group, Inc.  
Judicial Council of California  
OneJustice

**Oppose**

California Court Reporters Association (unless Amended)  
California Federation of Interpreters (unless Amended)  
California Public Defenders Association (unless Amended)  
Pacific Juvenile Defense Center (unless Amended)  
United Public Employees

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