

Date of Hearing: August 3, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

SB 848 (Umberg) – As Amended June 20, 2022

Policy Committee: Judiciary

Vote: 11 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill extends the sunset date of the provisions of law authorizing remote court appearances in civil cases and requires the Judicial Council of California (JCC) to provide an annual report to the Legislature regarding the efficacy of remote appearance in court.

FISCAL EFFECT:

JCC estimates costs of an unknown, but significant amount in excess of \$150,000 (General Fund (GF)) to issue a report to the Legislature that includes information about: (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. JCC notes it is already required to report its use of remote access in civil proceedings pursuant to Code of Civil Procedure section 367.8 (AB 177 (Committee on Budget), Chapter 257, Statutes of 2021) but the reporting requirement in this bill requires JCC to collect data its case management system does not capture. As a result, JCC estimates significant costs to change its existing information technology to capture data like the use of remote proceedings at specific civil proceedings. JCC also notes it is already required to issue reports to the Legislature detailing its equipment purchases and how courts anticipate using the purchased equipment.

COMMENTS:

1) **Purpose.** According to the author:

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.

- 2) **SB 241 (Umburg), Chapter 214, Statutes of 2021.** SB 241 created a framework that allows witnesses to testify via remote access at conferences, trials and evidentiary hearings if requested by the parties or if the court finds, based on a list of factors, that remote testimony is appropriate. Since the beginning of the pandemic, courts have been conducting proceedings remotely out of necessity given the health risks of being present in enclosed spaces. However, numerous contested hearings, including dispositive motion hearings and trials were continued. Proponents of SB 241 argued courts have become increasingly comfortable with remote testimony and remote testimony should continue to be used until January 1, 2024. However, opponents argued that remote access has been fraught with glitches and interruptions resulting in parties missing court appearances or, in some cases, are unable to understand what is happening because of language barriers. This bill proposes to extend the use of remote proceedings until January 1, 2026.
- 3) **Rule of Court 3.672.** In January 2022, the JCC adopted Rule of Court 3.672 (Rule) to implement the remote proceedings language in Code of Civil Procedure section 367.75, enacted by SB 241. The Rule defines “civil cases” as all cases except criminal cases and petitions for habeas corpus, other than petitions for habeas corpus under Welfare and Institutions Code section 5000 et seq., which are governed by this Rule. According to the California Public Defenders Association and the Pacific Juvenile Defender Center (PJDC), this Rule of Court is impermissibly broad and authorizes remote testimony for quasi-criminal cases, including juvenile proceedings, sexually violent predator proceedings, cases involving defendants incompetent to stand trial, and conservatorship hearings pursuant to the Lanterman Petris Short Act (LPS). According to the PJDC:

SB 241 contains no reference to juvenile delinquency proceedings – in fact, SB 241 does not contain even one mention of the words ‘delinquency,’ ‘justice,’ ‘602,’ or ‘criminal.’ SB 241 does, however, contain multiple references to juvenile cases in the context of juvenile dependency. New Code of Civil Procedure section 367.75 appropriately recognizes that special rules must govern juvenile dependency cases, as compared to traditional “civil” cases, given the due process rights of children and families in child welfare proceedings.

According to the California Public Defenders Association:

Civil commitment and juvenile delinquency proceedings implicate the fundamental right to liberty. Examples of civil commitment proceedings which implicate a person’s liberty, potentially for the rest of their lives, include proceedings under Penal Code section 1368. CPDA request that SB 848 only apply to general civil cases and that Section 367.75 be amended to limit its application to general civil cases, and not to proceedings implicating liberty interests, such as delinquency and civil commitment proceedings.

The CPDA and PJDC are opposed unless amended to specify remote proceedings do not include quasi-criminal proceedings such as juvenile delinquency and therefore, any use of remote testimony for quasi-criminal proceedings should include restrictions designed to

protect a person's due process rights. Although this bill does not authorize the use of remote testimony in quasi-criminal proceedings, given this bill extends the sunset on remote access, the author may wish to consider accepting amends that provide sufficient constitutional protections for people facing a deprivation of liberty. As explained above, courts are already using remote access for juvenile delinquency proceedings and other quasi-criminal hearings, so these amends would not constitute an expansion of remote access.

- 4) **JCC Budget Change Proposal.** In response to the need for funding to support SB 716 (Bennett), Chapter 526, Statutes of 2022, the JCC submitted a budget change proposal requesting \$33.2 million in fiscal year 2022-23 that described the way in which the courts are using remote technology. JCC 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.)

JCC received \$33 million in the 2022 budget act to continue improving all remote access, including video and audio. While JCC has received substantial funds to support remote access over the past two fiscal years, it is unclear whether remote technology is working effectively in all 58 counties. This bill requires JCC to submit a report to the Legislature no later than October 1, 2023 on how remote access is working.

- 5) **Argument in Support.** According to JCC:

Last year, the council supported SB 241 (Umberg, Chapter 214, Statutes of 2021), which, among other things, enacted CCP 367.75 to provide for remote civil proceedings as originally authorized¹ by temporary emergency rules in response to the COVID-19 pandemic. While we do not have totals from all of the courts, preliminary data from 17 of the 582 courts show that more than 1.2 million remote proceedings, including at least 651,000 civil proceedings and 315,000 criminal proceedings have been conducted over the past 18 months. SB 848 will allow the courts to continue offering this full menu of remote access options beyond the July 1, 2023 sunset.

- 6) **Argument in Opposition.** According to United Public Employees:

UPE has many court reporter members who have experienced first-hand, the impact that remote proceedings have had on the court and their work for the past two years. From technological issues to logistical problems, court reporters have identified many problems with remote proceedings that have negatively impacted participation in court hearings. These technological issues have made it impossible to know if the transcript of the proceedings is actually full and complete. There have been significant concerns with how last year's SB 241 have be implemented. Additionally, many of our reporters continue to have gaps in communication that are not being addressed by courts. And too often hearings are delayed or extended due to technical issues.

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