

SENATE THIRD READING
SB 848 (Umberg)
As Amended August 18, 2022
Majority vote

SUMMARY

Extends the sunset date of the provisions of law authorizing remote court appearances in civil cases.

Major Provisions

- 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), above, and submit a report to the Legislature before December 31, 2023, and annually thereafter.
- 4) Provides that the data collected pursuant to 2), above, and the report provided to the Legislature pursuant to 3), above, 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) Clarifies that remote technology may be utilized in adoption finalization hearings.
- 6) 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.
- 7) Prohibits the use of remote technology, through January 1, 2024, in the following proceedings:
 - a) Juvenile delinquency and juvenile commitment proceedings, as specified;
 - b) Civil commitment proceedings, as specified; and

- c) Proceedings related to intellectually disabled and dangerous commitments.

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), Chapter 214, Statutes of 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.

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.*)

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.

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. Importantly, this bill clarifies that certain types of civil commitment and juvenile delinquency proceedings, including Lanterman-Petris-Short proceedings, are not permitted to use remote technology. Many stakeholders in the SB 241 discussions noted that these proceedings were not contemplated to be "civil" proceedings during the SB 241 debate, thus this bill removes those proceedings from the authorization for the use of remote technology.

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.

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.

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 which will be reported to the Legislature annually.

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.

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.

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 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

In opposition to this measure 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. 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.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, the Judicial Council of California (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: 1) the number of civil proceedings conducted with the use of remote technology, 2) any superior court in which technology issues or problems occurred, 3) the superior courts in which remote technology was used, 4) the types of civil trial court conferences, hearings, or proceedings in which remote technology was used, 5) the cost of purchasing, leasing, or upgrading remote technology, and 6) 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 (Budget Committee), 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.

VOTES

SENATE FLOOR: 37-0-3

YES: Allen, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Archuleta, Caballero, Hertzberg

ASM JUDICIARY: 11-0-0

YES: Stone, Cunningham, Bloom, Davies, Haney, Kalra, Kiley, Maienschein, Reyes, Mia Bonta, Wicks

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Arambula, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, McCarty

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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