
UNFINISHED BUSINESS

Bill No: SB 848
Author: Umberg (D)
Amended: 8/18/22
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

SENATE FLOOR: 37-0, 5/24/22

AYES: 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

NO VOTE RECORDED: Archuleta, Caballero, Hertzberg

ASSEMBLY FLOOR: 74-0, 8/25/22 - See last page for vote

SUBJECT: Civil actions: parties and postponements

SOURCE: Author

DIGEST: This bill extends, to January 1, 2026, the sunset on the statutory authorization for specified remote appearances in specified civil court proceedings, extends the use of remote appearances to adoption finalization hearings, prohibits the use of remote appearances for testimony, hearings, and proceedings in juvenile justice cases and specified commitment proceedings; imposes reporting requirements on the superior courts and the Judicial Council of California to provide the Legislature with certain information relating to remote proceedings in civil cases; and removes the COVID-19-emergency-related sunset on the law

providing that, when a trial or arbitration is continued, the discovery deadlines are extended for the same length of time as the continuance.

Assembly Amendments authorize remote appearances in adoption finalization hearings and prohibit remote appearances for testimony, hearings, and proceedings in juvenile justice cases and specified commitment proceedings.

ANALYSIS:

Existing law:

- 1) 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).
- 2) 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).)
- 3) 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).)
 - 4) 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 technology 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).)
 - 5) 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).)
 - 6) 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.
 - 7) 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).)
- 8) 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).)
- 9) Provides that the remote technology provisions in 3)-10) will sunset on July 1, 2023. (Code Civ. Proc. § 367.75(l).)
- 10) Provides that, for the duration of the COVID-19 state of emergency declared by the Governor and 180 days thereafter, unless otherwise agreed to by the parties, a continuance or postponement of a trial or arbitration date also extends any deadlines that had 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. The deadlines are extended for the same length of time as the continuance or postponement of the trial date.

This bill:

- 1) Adds to the existing remote civil proceedings statute provisions authorizing a court to conduct an adoption finalization hearing in whole or in part through remote technology without finding that it is impossible or impracticable for either prospective adoptive parent to appear in person.
- a) The court may not require a party to appear remotely under 1).
 - b) The confidentiality and privacy requirements that apply to an in-person adoption finalization hearing also apply to a remote or partially remote adoption finalization hearing.
- 2) Adds to the existing remote civil proceedings statute a requirement that each superior court shall report to Judicial Council on or before October 1, 2023, and annually thereafter, and the Judicial Council shall report to the Legislature on or before December 31, 2023, and annually thereafter, to assess the impact of technology issues or problems affecting remote civil proceedings and all purchases and leases of technology or equipment to facilitate civil remote

- conferences, hearings, or proceedings, specifying all of the following for each annual reporting period:
- 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.
 - f) The type of technology and equipment purchased or leased.
- 3) Extends the sunset on the remote technology provisions, including the provisions in 1)-2), to January 1, 2026.
 - 4) Prohibits testimony, conferences, hearings, and proceedings, in whole or in part, from being conducted using remote technology in any of the following cases until January 1, 2024:
 - a) A juvenile court proceeding occurring pursuant to Welfare and Institutions Code Sections 601 or 602.
 - b) An extension of juvenile commitment pursuant to Welfare and Institutions Code Section 1800.
 - c) A proceeding involving a range of commitment types arising under the Penal Code and the Welfare Institutions Code.
 - d) A proceeding related to an intellectually disabled and dangerous commitment authorized pursuant to Article 2 of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.
 - 5) Removes the COVID-19-emergency-related sunset on the provision establishing that discovery dates are extended for the same time period as the continuance of a trial or arbitration.

Comments

To prevent civil cases from grinding to a complete halt during the COVID-19 pandemic, 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, 2020.¹ Then, in 2021, the Legislature enacted SB 241

¹ 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 Aug. 25, 2022).

(Umberg, Chapter 214, Statutes of 2021), which authorized remote proceedings in civil and juvenile dependency proceedings, subject to certain technological and procedural requirements.² The bill is scheduled to sunset on July 1, 2023.

This bill extends the sunset on the existing remote provisions, until January 1, 2026, in response to feedback from many litigants and the Judicial Council about the overall usefulness of remote appearances. As amended by the Assembly Appropriations Committee, however, the bill also narrows the scope of the remote appearance provisions by prohibiting remote testimony, conferences, hearings, and proceedings in juvenile justice cases and certain juvenile and civil commitment proceedings. The Judicial Council of California, the California Judges Association, the Children's Initiative, The California Sheriffs' Association, and 60 California judges now oppose the bill unless the newly added prohibitions are removed, noting, in the words of Judicial Council, that the amendments will have "a devastating impact on our state's most vulnerable populations."

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

According to the Assembly Appropriations Committee, the Judiciary 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 (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.

² See Code Civ. Proc., § 367.75.

SUPPORT: (Verified 8/25/22)

California Defense Council
California Judges Association
Consumer Attorneys of California
Encore Capital Group

OPPOSITION: (Verified 8/25/22)

California Court Reporters Association
California Federation of Interpreters
California Judges Association
California Labor Federation
California State Sheriffs' Association
Judicial Council of California
The Children's Initiative
60 California judges

ARGUMENTS IN SUPPORT: According to the Consumer Attorneys of California and California Defense Counsel, writing in support:

Without an amendment to remove the sunset [on the remote appearances statute], next July the courts will be shifted back to March of 2020, before the courts were able to pivot to remote hearings and hybrid trials. The benefits have been widespread. Housing advocates and legal aid can help more individuals in need of representation through remote access, individuals seeking justice for domestic violence and child abuse cases may not have to face their abuser in person, and others can fight for justice even while courtrooms are fully or partially closed.

Without remote court access working parents and children will be forced to continue taking time off of work and school to spend a full day in court instead of a fraction of their time attending remotely. Elderly individuals will not be able to attend their court proceedings as in person requirements would force them to choose between safety or justice. Civil plaintiffs struggle without access to the recovery they need to pay for medical treatment, or otherwise recover their lost wages or damages, and defendants are unable to resolve claims against them.

ARGUMENTS IN OPPOSITION: According to 60 California judges, writing in opposition, "The use of remote technology in juvenile justice court, necessitated initially by the public health crisis caused by the COVI-19 pandemic, has

ultimately improved how the juvenile court serves youth and their families and their communities, and promoted better outcomes. As judicial officers serving in, having served in, and/or familiar with the important work of juvenile justice courts throughout the state, we strongly encourage you to continue the use of remote technology in juvenile justice court proceedings. Currently, youth and their parents as well as other participants may choose to appear remotely when appropriate. We are gravely concerned that SB 848, as amended, would severely limit access to justice for youth, their families, justice partners, and victims of crime in these important cases by prohibiting the utilization of remote technology in all juvenile justice conferences, hearings, and proceedings. We are also concerned that SB 848 creates a disparity of access to justice for juvenile justice cases whereas remote technology is permitted in all civil proceedings, including dependency cases, and criminal cases.”

ASSEMBLY FLOOR: 74-0, 8/25/22

AYES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Bigelow, Cunningham, Gray, Irwin, Rodriguez, Salas

Prepared by: Allison Meredith / JUD. / (916) 651-4113
8/26/22 15:48:03

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