

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 22 (Umberg)
Version: February 13, 2023
Hearing Date: March 28, 2023
Fiscal: Yes
Urgency: Yes
AWM

SUBJECT

Courts: remote proceedings

DIGEST

This bill, as the author has agreed to amend it, creates a new statute to authorize the use of remote technology in juvenile justice and specified civil and criminal commitment proceedings. This bill contains an urgency clause.

EXECUTIVE SUMMARY

Before the COVID-19 pandemic, there was no explicit statutory authorization for parties in civil cases to appear in, or call witnesses via, electronic audiovisual means (shorthand to “remote” means). Anecdotally, parties occasionally stipulated to remote appearances by witnesses, but the only sanctioned method of appearing, other than in person, was through the use of Court Call in specified proceedings. This changed when the COVID-19 pandemic made large-scale in-person gatherings a public safety hazard: the Judicial Council of California (Judicial Council) adopted emergency orders that, among other things, authorized remote proceedings in civil cases and in criminal cases with the consent of the defendant. Later, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021), which created a statutory framework for remote appearances in civil proceedings, including trials, subject to certain technological requirements and safeguards.

The remote proceedings statute is currently set to sunset on July 1, 2023. Last year, SB 848 (Umberg, 2022) would have extended the sunset to January 1, 2026; however, the bill failed passage on the Senate floor.

This year, the subject matter of SB 848 has been split into two bills, both set to be heard in this Committee at the March 28, 2023, hearing. SB 21 (Umberg, 2023) extends the sunset on the existing civil remote statute until January 1, 2026, and exempts from its ambit juvenile justice proceedings, civil commitment proceedings under the Lanterman-

Petris-Short (LPS) Act, and specified commitment proceedings arising out of criminal matters. This bill establishes a separate section in the Code of Civil Procedure to authorize the use of remote technology in the proceedings expressly exempted under SB 21; this new section will also sunset on January 1, 2026. Both bills also require that the Judicial Council of California provide the Legislature with information relating to the volume of, and problems experienced with, proceedings conducted through the use of remote technology, so that the Legislature can improve on legislation regarding the availability of remote proceedings going forward.

As currently in print, this bill also includes matters related to the use of remote technology in criminal cases. Following this bill's hearing in the Senate Public Safety Committee, the author agreed to remove the criminal-related provisions. This analysis discusses the bill as proposed to be amended; the proposed amendments to the bill are set forth in Appendix A of the analysis.

This bill is sponsored by the author and supported by the California Association of Collaborative Courts, the California District Attorneys Association, the Children's Law Center of California, the Judicial Council of California, OneJustice, the Superior Court of California for the County of Los Angeles, and The Children's Initiative. This bill is opposed by ACLU California Action, AFCSME California, the California Court Reporters Association, the California Labor Federation, the California Public Defenders Association, Communities United for Restorative Youth Justice, Initiate Justice, the International Union of Operating Engineers, the Orange County Employees Association, the Pacific Juvenile Defender Center, SEIU California, and one individual. This bill passed out of the Senate Public Safety Committee with a vote of 5-0.

PROPOSED CHANGES TO THE LAW

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 2)-8). (Code Civ. Proc., § 367.75(a), (g).)
 - 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 apply for remote appearances in juvenile dependency proceedings, at 7).

- d) "Party," for purposes of 1)-10), is defined to include a nonparty subject to Chapter 6 of Title 4 of Part 4 (commencing with Section 2020.010). (Code Civ. Proc., § 367.75(i).)
- 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) Provides, notwithstanding 2)(c), that an expert witness may appear remotely absent good cause to compel in-person testimony. (Code Civ. Proc., § 367.75(c).)
 - 4) 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 2) 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).)
 - 5) 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).)

- 6) 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).)
- 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) Provides that, subject to the court's authority to require an in-person requirement under 2), the statute does not prohibit attorneys for represented parties from stipulating to the use of remote appearances. (Code Civ. Proc., § 367.75(j).)
- 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 Civ. Proc., § 367.75(k).)
- 10) Provides that the remote technology provisions in 3)-9) will sunset on July 1, 2023. (Code Civ. Proc., § 367.75(l).)

Existing California Rules of Court:

- 1) Establish that the civil remote technology provisions set forth in 2)-10), above, apply in juvenile dependency cases and set forth specific requirements for the use of remote proceedings in those cases. (Cal. Rules of Court, r. 3.672(b), (i).)
- 2) Establish that the civil remote technology provisions set forth in 2)-10), above, apply in juvenile justice proceedings and various civil and criminal commitment proceedings. (Cal. Rules of Court, r. 3.672(c).)

This bill:

- 1) Provides that a party, subject to the requirements and limitations of 2)-10), below, may appear remotely and a court may conduct conferences, hearings, and proceedings in whole or in part through the use of remote technology when a party has provided notice to the court and all other parties of their intent to appear remotely in the following types of proceedings:
 - a) A juvenile court proceeding occurring under Sections 601 or 602 of the Welfare and Institutions Code (juvenile justice proceedings).
 - b) An extension of a juvenile commitment pursuant to Section 1800 of the Welfare and Institutions Code.
 - c) A proceeding involving a commitment type identified pursuant to Section 4355 of Title 9 of the California Code of Regulations (including civil commitments under the LPS Act).
 - 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.

- 2) Authorizes a court, except where otherwise provided by law, to require a party or witness to appear in person at a conference, hearing, or proceeding described in 1), 5), or 8) 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) Although the court has the requisite technology, 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 of the attorney's client.
 - 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.

- 3) Provides, notwithstanding 2)(c), that an expert witness may appear remotely absent good cause to compel in-person testimony.

- 4) Authorizes a court, on its own motion or by motion of a party, except as otherwise provided by law and subject to the limitations in 2), to 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.
 - a) If the court conducts a trial in whole or in part through remote means, the official reporter or official reporter pro tempore shall be physically present in the courtroom, except as provided for by Code of Civil Procedure section 269 and Government Code section 69957.
 - b) If the court conducts a trial in whole or in part through the use of remote technology, the court interpreter, on request, shall be physically present in the courtroom.
- 5) Requires a court, before proceeding with a remote conference, hearing, proceeding, or trial, to 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.
 - a) The court shall require a remote appearance by a party or witness to have the necessary privacy and security appropriate for the conference, hearing, proceeding, or trial.
 - b) The court shall inform all parties, particularly parties without legal representation, about the potential technological or audibility issues that could arise when using remote technology, which may require a delay of, or halt, the conference, hearing, proceeding, or trial. The court shall make information available to self-represented parties regarding the options for appearing in person and through the use of remote technology.
- 6) Prohibits a court from requiring a party to appear through the use of remote technology; and requires a court, if it permits an appearance through remote technology, to ensure that technology in the courtroom enables all parties, whether appearing remotely or in person, to fully participate in the conference, hearing, or proceeding.
- 7) Authorizes a self-represented party to appear remotely in a conference, hearing, or proceeding conducted through the use of remote technology.
- 8) Provides that, subject to the limitations in 2), the requirements of this bill do not prohibit the use of remote technology when stipulated to by attorneys for represented parties.
- 9) Requires the Judicial Council to adopt rules to implement the policies and provisions set forth in 1)-8) to promote statewide consistency, including, but not limited to, the following:

- a) A deadline by which a party must notify the court and the other parties of their request to appear remotely.
 - b) Procedures and standards for a judicial officer to determine when a conference, hearing, or proceeding may be conducted through the use of remote technology. The procedures and standards shall require that a judicial officer give consideration to the limited access to technology or transportation that a party or witness might have.
- 10) Provides that, for purposes of 1)-9), “party” includes a nonparty from whom nonparty discovery has been sought.
- 11) Requires each superior court to report to the Judicial Council on or before October 1, 2023, and annually thereafter, and the Judicial Council to report to the Legislature on or before December 31, 2023, and annually thereafter, to assess the impact 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, specifying all of the following for each annual reporting period:
- a) The number of 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.
- 12) Provides that 1)-11) will sunset on January 1, 2026.
- 13) Contains an urgency clause.

COMMENTS

1. Author’s comment

According to the author:

Widespread and pervasive inefficiencies in our courts were well-documented before the COVID-19 pandemic. However, the pandemic exacerbated these issues, as it made it more difficult to appear in court physically, especially for people with low income, juveniles, and people suffering from mental illnesses. SB 241, signed by Governor Newsom in 2021, was absolutely critical in protecting access to justice for California’s vulnerable populations. According to the Judicial Council of California, the option for remote hearings “has great benefits for youth who are sensitive to a change in environment or who struggle

with health issues (including serious mental health conditions), by allowing them to appear without having to travel to a courtroom. Some youth in treatment programs would not otherwise be able to attend their proceedings due to individual facility restrictions or the location of their facility.”

Terminating the option to use remote technology in civil commitment proceedings will have significant adverse consequences for our youth and individuals with serious mental illness issues. There can often be a lack of transportation options for youth and families, many of whom would have to take time off from school/work to travel long distances for in-person juvenile proceedings. Furthermore, many individuals with serious mental health conditions are unable to leave their care facilities due to their condition, and not allowing them the option to appear remotely in court jeopardizes their treatment. Courts have commonly used remote appearances in these types of cases for years prior to the pandemic, and have found it effective in allowing these populations to appear in court without jeopardizing their respective situations. It is of the utmost importance that we extend these provisions to protect access to justice, and keep our courts efficient, fair, and just. SB 22 will do this by allowing parties in certain civil proceedings, like civil commitment and juvenile delinquency proceedings, to appear remotely in court until January 2026.

2. The rapid adoption of remote technology after the onset of the COVID-19 pandemic and the impending sunset of the provisions permitting the use of remote technology

Until the arrival 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

As this Committee heard at its joint informational hearing with the Assembly Judiciary Committee on February 23, 2021, *COVID and the Courts: Assessing the Impact on Access to Justice, Identifying Best Practices, and Plotting the Path Forward*, 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

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.

disproportionately 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 Rules, which authorized remote appearances as specified in civil cases, certain criminal cases, juvenile dependency cases, and juvenile delinquency cases.⁵ Then, in 2021, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021), which authorized remote proceedings in civil and juvenile dependency proceedings, subject to certain technological and procedural requirements.⁶ The bill included a sunset provision set at July 1, 2023. Although the bill did not expressly address juvenile justice proceedings (criminal cases for minor defendants) and civil commitment proceedings, the Judicial Council voted to adopt a Rule of Court setting forth procedures for remote appearances in all civil matters, including juvenile justice and civil commitments.⁷ The Emergency Rules pertaining to the civil matters covered by SB 241 were subsequently repealed.⁸

In 2022, the Legislature considered a bill that would have first removed the sunset, then extended it until January 1, 2026;⁹ however, after the Assembly Appropriations Committee amended the bill to prohibit certain types of civil proceedings from using remote technology, the bill failed passage on the Senate Floor at the request of the author. Accordingly, unless the Legislature takes action, the statutory authorization for remote appearances in civil cases will end on July 1, 2023.¹⁰

In March 2023, this Committee held a joint hearing with the Senate Public Safety Committee, titled *The Judicial Branch: Protecting Access to Justice as the COVID-19 State of Emergency Expires*, to learn more about the status of the Judicial Branch and issues affecting the courts, including the ongoing use of remote technology in civil and criminal proceedings. The hearing provided valuable insights into what aspects of remote technology are working, where there have been problems, and what areas need

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> (link current as of Mar. 24, 2023).

⁵ Cal. Rules of Court, Appendix I, Emergency Rule 3 [repealed], Emergency Rule 5 [repealed], Emergency Rule 6 [repealed]; Emergency Rule 7 [repealed].

⁶ See Code Civ. Proc., § 367.75.

⁷ See Cal. Rules of Court, r. 3.672. Juvenile justice proceedings are technically civil, but are also quasi-criminal in nature because they so often involve "the possibility of a substantial loss of freedom." (*Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 801.)

⁸ Cal. Rules of Court, Appendix I, Emergency Rule 3 [repealed], Emergency Rule 6 [repealed]; Emergency Rule 7 [repealed].

⁹ See SB 848 (Umberg, 2022).

¹⁰ See Code Civ. Proc., § 367.75.

improvement. The author of this bill is continuing to work with stakeholders on issues raised at the hearing, to ensure that remote technology is used equitably and effectively.

3. This bill, as the author has agreed to amend it, clarifies the requirements and procedures for using remote technology in a range of criminal and civil commitment proceedings

This bill, as the author has agreed to amend it, establishes a remote proceeding statute, separate from the existing civil remote statute, for juvenile justice, juvenile commitment, civil commitments, and commitments in lieu of trial and other specified criminal commitments, separate from the existing general civil statute. The brunt of this bill – juvenile justice proceedings and various commitments arising out of criminal proceedings – fall within the jurisdiction of the Senate Public Safety Committee. That Committee heard the bill on March 21, 2023, and passed the bill with a vote of 5-0. For a discussion of the provisions that fall under the Senate Public Safety Committee’s jurisdiction, see the Senate Public Safety Committee’s analysis of this bill, which is incorporated herein by reference.

Following the bill’s hearing before the Senate Public Safety Committee, based on feedback from stakeholders, the author determined that the portions of the bill that extend separate sunset provisions on purely criminal matters would best be dealt with separately from the matters dealt with in the bill’s newly created civil remote statute. The author has therefore agreed to amend the bill to remove the portions of the bill addressing remote proceedings under the Penal Code and related measures, as well as to make certain technical changes to the remaining provisions to make them more precise. The amended version of the bill, with changes in ~~strikeout~~ and underline, is set forth at Appendix A of this analysis.¹¹

This Committee has jurisdiction over the bill insofar as the bill’s newly created remote statute applies in proceedings and hearings relating to civil commitments and the establishment of conservatorships under the LPS Act.¹² Although these proceedings are technically civil, the United States Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.”¹³ To that end, the subjects of LPS Act proceedings are provided procedural protections such as counsel and the right to demand a jury trial.¹⁴

¹¹ In addition to removing the provisions relating to remote technology in criminal cases, the amendments remove subdivision (h) of the new section 367.76, which was inadvertently added and is duplicative of the same provision in the existing section 367.75(h) addressed in SB 21.

¹² See Cal. Code Regs., tit. 9, div. 1, ch. 16, art. 3.5, § 4335(2)(N)-(V); Welf. & Inst. Code, div. 5, pt. 1, §§ 5000 et seq.

¹³ *Addington v. Texas* (1979) 441 U.S. 418, 425.

¹⁴ Welf. & Inst. Code, §§ 5350, 5365.

The use of remote technology in LPS Act commitment and conservatorship proceedings is currently addressed under the existing remote statute¹⁵ and the California Rules of Court.¹⁶ This bill shifts the use of remote technology in civil commitment proceedings into a new section of the Code of Civil Procedure, but the requirements and limitations are virtually identical to those authorized in the existing statute. As in the current statute, the bill provides the party or attorney making an appearance the right to appear remotely or in person and prohibits a court from mandating a remote appearance. The bill permits remote trials in these proceedings with the consent of all parties, except that expert witnesses may appear remotely unless good cause is shown as to why they should appear in person. The bill also carries over the existing limitations on the use of remote technology, including permitting a judge to require an in-person appearance if the quality of the technology or the internet connection prevents the preparation of a transcript or if an in-person appearance would materially assist the resolution of the case. The California Association of Collaborative Courts, writing in support, argues that remote appearances benefit persons in LPS Act proceedings by, among other things, reducing barriers to court participation and making it easier for witnesses to testify without disrupting their schedules.

The bill, as amended, will also require the courts to report certain information regarding the use of remote proceedings in the courts, which the Judicial Council of California will compile into an annual report for the Legislature. The new statute will sunset on January 1, 2026 – the same sunset date as in SB 21, extending the general civil remote statute – so the Legislature can use the information received to determine how to hone the civil remote appearance framework going forward. This bill also contains an urgency clause, in light of the July 1, 2023, sunset date for the existing civil remote statute.

4. Arguments in support

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

The Judicial Council has seen the many benefits of giving people the *option* to participate remotely in civil and criminal proceedings. The remote option helps preserve access to justice for many Californians and vulnerable court users by reducing time and expense for them when they are hospitalized or would lose time from work, child care, and would incur travel and parking costs for short hearings and appearances. It also preserves equal access to justice and increases the efficiency of court services by continuing to allow the courts the flexibility to require in-person court proceedings when it is more appropriate. And court users have also noted the benefits of remote participation in court proceedings:

¹⁵ Civ. Code, § 367.75. This statute is set to sunset on July 1, 2023; SB 21 (Umberg, 2023) extends the sunset and exempts the provisions that are addressed in this bill from the general civil remote statute. SB 21 is set to be heard in this Committee on the same date as this bill.

¹⁶ Cal. Rules of Ct., r. 3.672.

in a March-October 2022 survey, conducted by the Judicial Council, 35,000 individuals – including parties, attorneys, and court employees – responded to a simple question about their experience with the remote proceedings and 90 percent of those who responded reported that they had a positive experience with the remote proceeding. This includes parties, attorneys, and court employees. Parties and attorneys were 91 percent positive. Employees were 98 percent positive...

SB 22 extends authority for remote access to the courts for especially vulnerable populations such as hearings to determine competence to stand trial and not guilty by reason of insanity, [LPS] Act certifications, and juvenile delinquency proceedings. Some examples include:

- Patients at the Department of State Hospitals are able to maintain their continuity of care. When patients must be transported via bus for in-court personal appearances and the facilities are too far for same-day transportation, the patient must be held in a county jail. Jails are not a therapeutic setting, which can lead to decompensation and other treatment setbacks. Additionally, the remote option maintains continuity of care for patients in other hospital settings, including acute psychiatric and substance abuse facilities. And the remote option enables individuals with serious mental illness and/or substance abuse disorders who cannot leave their care facilities during in-house treatment the ability to participate.
- As the state's mental health crisis continues to grow, behavioral health experts are in short supply: if clinicians must attend court proceedings in person, this impacts continuity of care not only for the court participant, but also other staff and patient care as much-needed services cannot be provided while clinicians are away.

5. Arguments in opposition

According to the California Public Defenders Association:

As proposed to be amended in committee, SB 22 would extend the sunset dates of COVID era remote rules for civil commitments and juvenile.

CPDA is not opposed to the judicious use of remote technology in civil commitment and juvenile delinquency proceedings. Remote capability is an excellent option for brief non-evidentiary hearings or pretrial continuances. In these circumstances, remote proceedings allow individuals in state hospitals or other mental health or treatment facilities to avoid lengthy trips to court holding cells, allow youth to attend school, eliminate the need for parents and caregivers to travel and miss work, and allow civilly committed individuals to appear from the location of their placements....

These statutes allowing remote proceedings have been in effect for several years first as emergency rules and then as enacted by the Legislature. Without adequate safeguards in the existing statutes, CPDA members have witnessed some courts routinely choosing expediency or convenience over their mandate of fair and equitable access to justice....

Californians expect and deserve fairness and equitable justice from their courts. To maintain the integrity of the judicial system while allowing the option of remote proceedings, we request that SB 22 be amended to include the following:

- Protect the rights of all persons accused of crimes or subject to civil commitment, including juveniles, to choose to have in-person court proceedings with all parties present unless there are extenuating circumstances.
- Given the unique nature of juvenile justice matters, establish distinct statutory procedures in the Welfare and Institutions Code to govern the use of remote technology in juvenile justice proceedings, distinct from civil and adult criminal remote procedures.
- Limit the court's ability to force individuals receiving care from mental health facilities to appear in person if appearing in person could disrupt their treatment or be detrimental to their mental health.
- Require the same standards of confidentiality for remote proceedings that apply to in-person appearances, including the ability for the individual to communicate confidentially with their lawyer.
- Prohibit remote proceedings if the court's technology is insufficient, the court reporter cannot capture a verbatim record and certify the transcript, or the court cannot ensure that confidential communications are protected and secure.
- Require the Judicial Council to adopt minimum standards for courtroom technology necessary to conduct remote proceedings.
- Require courts to solicit feedback on remote proceedings from interested parties via their internet sites.
- Require the Judicial Council to compile the public's feedback on remote proceedings annually and provide copies to the chairs of the Assembly and Senate committees on Judiciary and Public Safety.

SUPPORT

California Association of Collaborative Courts
California District Attorneys Association
Children’s Law Center of California
Judicial Council of California
OneJustice
Superior Court of California, County of Los Angeles
The Children’s Initiative

OPPOSITION

ACLU California Action
AFCSME California
California Court Reporters Association
California Labor Federation
California Public Defenders Association
Communities United for Restorative Youth Justice
Initiate Justice
International Union of Operating Engineers
Orange County Employees Association
Pacific Juvenile Defender Center
SEIU California
1 individual

RELATED LEGISLATION

Pending Legislation:

SB 21 (Umberg, 2023) extends the sunset on the remote provisions statute until January 1, 2026; clarifies that the existing remote provisions do not apply in specified juvenile justice and commitment proceedings; specifies that an adoption finalization hearing may be held through remote technology; requires the Judicial Council to annually report to the Legislature matters relating to the use of remote technology; and eliminates the sunset provision on the statute clarifying that a continuance or postponement of a trial or arbitration date also extends any deadlines not already passed. SB 21 is pending before the Senate Judiciary Committee and is set to be heard on the same date as this bill.

AB 1214 (Maienschein, 2023) among other things, prohibits a trial court from retaliating or threatening to retaliate against an official reporter or official reporter pro tempore who notifies the judicial officer that technology or audibility issues are impeding the creation of the verbatim records of a proceeding that includes participation through remote technology. AB 1214 is pending before the Assembly Public Safety Committee.

Prior Legislation:

SB 848 (Umberg, 2022) would have extended the remote proceedings sunset until January 1, 2026; the bill also would have prohibited remote proceedings in certain types of proceedings as a result of amendments added in the Assembly Appropriations Committee. The June 15, 2022, version of the bill would have added remote appearance provisions relating to juvenile justice, conservatorship, and civil commitment proceedings, but those provisions were subsequently amended out by the author. SB 848 failed passage on the Senate Floor with a vote of 0-38 at the request of the author.

SB 538 (Susan Rubio, Ch. 686, Stats. 2021) authorized a party or witness to appear remotely at the hearing on a petition for a domestic or gun violence restraining order.

SB 241 (Umberg, Ch. 214, Stats. 2021) titled the 2021 Court Efficiency Act, among other things, authorized specified remote appearances in specified civil court proceedings. The remote proceedings portion of the bill is set to sunset on July 1, 2023.

AB 177 (Assembly Committee on Budget, Ch. 257, Stats. 2021) among other things, required the Judicial Council of California to convene a working group for the purpose for recommending a statewide framework for remote civil court proceedings that addresses equal and fair access to justice, to be submitted no later than January 1, 2023.

SB 467 (Wilk, 2017) would have extended the existing civil Court Call framework to appearances via video teleconferencing and other remote electronic means. SB 467 died in the Assembly Judiciary Committee.

PRIOR VOTES:

Senate Public Safety Committee (Ayes 5, Noes 0)

Appendix A: Amendments

Additions to the bill are in bold and underlined; deletions are in strikethrough. The Office of Legislative Council may make nonsubstantive changes to the language below.

The people of the State of California do enact as follows:

SECTION 1. Section 367.76 is added to the Code of Civil Procedure, to read:

367.76. (a) Except as provided in subdivisions (b) and (d), 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 when a party has provided notice to the court and all other parties that it intends to appear remotely in any of the following types of proceedings:

(1) A juvenile court proceeding occurring pursuant to Section 601 or 602 of the Welfare and Institutions Code.

(2) An extension of juvenile commitment pursuant to Section 1800 of the Welfare and Institutions Code.

(3) A proceeding involving a commitment type identified pursuant to Section 4355 of Title 9 of the California Code of Regulations or any successor regulation.

(4) A proceeding related to an intellectually disabled and dangerous commitment authorized pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(b) Except as otherwise provided by law, the court may require a party or witness to appear in person at a conference, hearing, or proceeding described in subdivision (a), or under subdivisions (e) and (h), if any of the following conditions are present:

(1) The court with jurisdiction over the case does not have the technology necessary to conduct the conference, hearing, or proceeding remotely.

(2) Although the court has the requisite technology, 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(c) Notwithstanding paragraph (3) of subdivision (b), an expert witness may appear remotely absent good cause to compel in-person testimony.

(d) (1) Except as otherwise provided by law and subject to the limitations of subdivision (b), 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.

(2) (A) Except as provided in Section 269 of the Code of Civil Procedure and Section 69957 of the Government Code, 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.

(B) If the court conducts a trial, in whole or in part, through the use of remote technology, upon request, the court interpreter shall be physically present in the courtroom.

(e) (1) Before the court with jurisdiction over the case may proceed with a remote conference, hearing, proceeding, or trial, the court shall 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.

(2) The court shall require that a remote appearance by a party or witness have the necessary privacy and security appropriate for the conference, hearing, proceeding, or trial.

(3) The court shall inform all parties, particularly parties without legal representation, about the potential technological or audibility issues that could arise when using remote technology, which may require a delay of or halt the conference, hearing, proceeding, or

trial. The court shall make information available to self-represented parties regarding the options for appearing in person and through the use of remote technology.

(f) The court shall not require a party to appear through the use of remote technology. If the court permits an appearance through remote technology, the court shall ensure that technology in the courtroom enables all parties, whether appearing remotely or in person, to fully participate in the conference, hearing, or proceeding.

(g) A self-represented party may appear remotely in a conference, hearing, or proceeding conducted through the use of remote technology only if they agree to do so.

~~(h) Any juvenile dependency proceeding may be conducted in whole or in part through the use of remote technology subject to the following:~~

~~(1) Any person authorized to be present may request to appear remotely.~~

~~(2) Any party to the proceeding may request that the court compel the physical presence of a witness or party. A witness, including a party providing testimony, may appear through remote technology only with the consent of all parties and if the witness has access to the appropriate technology.~~

~~(3) A court shall not require a party to appear through the use of remote technology.~~

~~(4) The confidentiality requirements that apply to an in-person juvenile dependency proceeding apply to a juvenile dependency proceeding conducted through the use of remote technology.~~

~~(hi)~~ For purposes of this section, a party includes a nonparty subject to Chapter 6 of Title 4 of Part 4 (commencing with Section 2020.010).

~~(ij)~~ Subject to the limitations in subdivision (b), this section is not intended to prohibit the use of appearances through the use of remote technology when stipulated by attorneys for represented parties.

~~(jk)~~ Consistent with its constitutional rulemaking authority, the Judicial Council shall adopt rules to implement the policies and provisions in this section to promote statewide consistency, including, but not limited to, the following procedures:

(1) A deadline by which a party must notify the court and the other parties of their request to appear remotely.

(2) Procedures and standards for a judicial officer to determine when a conference, hearing, or proceeding may be conducted through the use of remote technology. The

procedures and standards shall require that a judicial officer give consideration to the limited access to technology or transportation that a party or witness might have.

~~(k)~~ Each superior court shall report to the 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 civil remote 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:

- (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 trial court conferences, hearings, or proceedings in which remote technology was used.
- (5) The cost of purchasing, leasing, or upgrading remote technology.
- (6) The type of technology and equipment purchased or leased.

~~(l)~~ This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

~~SEC. 2. Section 71651.1 of the Government Code is amended to read:~~

~~71651.1. (a) Consistent with federal and California labor law, a trial court shall not retaliate against an official reporter or official reporter pro tempore who notifies the judicial officer that technology or audibility issues are interfering with the creation of the verbatim record for a remote proceeding pursuant to subdivisions (f) and (g) of Section 977 of the Penal Code.~~

~~(b) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

~~SEC. 3. Section 977 of the Penal Code, as amended by Section 12 of Chapter 57 of the Statutes of 2022, is amended to read:~~

~~977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, they may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, plea, and all other~~

proceedings, except jury and court trials, may be conducted remotely through the use of technology, as provided by subdivision (c).

~~(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.~~

~~(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:~~

~~(A) Subdivision (b) of Section 191.5.~~

~~(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.~~

~~(C) Section 23152 of the Vehicle Code.~~

~~(D) Section 23153 of the Vehicle Code.~~

~~(b) (1) Except as provided in subdivision (c), in all cases in which a felony is charged, the accused shall be physically present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be physically or remotely present at all other proceedings unless they waive their right to be physically or remotely present, with leave of court and with approval by defendant's counsel.~~

~~(2) The waiver of a defendant's right to be physically or remotely present may be in writing and filed with the court or, with the court's consent, may be entered personally by the defendant or by the defendant's counsel of record.~~

~~(A) A defendant's personal waiver of the right to be physically or remotely present shall be on the record and state that the defendant has been advised of the right to be physically or remotely present for the hearing at issue and agrees that notice to the attorney that the defendant's physical or remote presence in court at a future date and time is required is notice to the defendant of that requirement.~~

~~(B) A waiver of the defendant's physical or remote presence may be entered by counsel, after counsel has stated on the record that the defendant has been advised of the right to be physically or remotely present for the hearing at issue, has waived that right, and~~

~~agrees that notice to the attorney that the defendant's physical or remote presence in court at a future date and time is required is notice to the defendant of that requirement.~~

~~(3) The court may specifically direct the defendant, either personally or through counsel, to be physically or remotely present at any particular proceeding or portion thereof, including upon request of a victim, to the extent required by Section 28 of Article I of the California Constitution.~~

~~(4) A written waiver of the defendant's physical or remote presence shall be substantially in the following form:~~

~~"Waiver of Defendant's Physical or Remote Presence"~~

~~"The undersigned defendant, having been advised of their right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby knowingly, intelligently, and voluntarily waives the right to be physically or remotely present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that their interest is represented at all times by the presence of their attorney the same as if the defendant were physically or remotely present in court, and further agrees that notice to their attorney that their physical or remote presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of their physical or remote appearance at that time and place."~~

~~(c) (1) (A) Upon waiver of the right to be physically present by the defendant, criminal proceedings may be conducted through the use of remote technology, except as provided in subparagraphs (D) and (E). The defendant may withdraw the waiver at any time.~~

~~(B) The court may specifically direct the defendant, either personally or through counsel, to be physically present at any particular felony proceeding or portion thereof, including as provided in subdivision (f).~~

~~(C) If the defendant is represented by counsel, the attorney shall not be required to be physically present with the defendant if remote technology allows for private communication between the defendant and the attorney prior to and during the proceeding, unless, upon request of defense counsel, the court allows the appearance without private communication. Any private communication shall be confidential and privileged pursuant to Section 952 of the Evidence Code.~~

~~(D) A defendant charged with a felony or misdemeanor shall not appear remotely for a jury trial or court trial, except as provided in subparagraph (A) of paragraph (2).~~

~~(E) A defendant charged with a felony shall not appear remotely at sentencing, except for postconviction relief proceedings and as otherwise provided by law.~~

~~(F) A witness may appear at any misdemeanor or felony criminal proceeding, except for felony trial, remotely pursuant to section 977.3.~~

~~(2) (A) A felony defendant who does not wish to be physically or remotely present for noncritical portions of the trial when no testimonial evidence is taken may make an oral waiver in open court prior to the proceeding, or may submit a written request to the court, which the court may grant in its discretion.~~

~~(B) This paragraph does not expand or limit the right of a defendant to be personally present with their counsel at a particular proceeding as required by Section 15 of Article 1 of the California Constitution.~~

~~(d) (1) Notwithstanding any other provision in this section, the court may allow a defendant to appear by counsel on that day, at a trial, hearing, or other proceeding, with or without a written waiver, if the court finds, by clear and convincing evidence, all of the following to be true:~~

~~(A) The defendant is in custody and is refusing, without good cause, to appear in court on that day for that trial, hearing, or other proceeding.~~

~~(B) The defendant has been informed of their right and obligation to be personally present in court.~~

~~(C) The defendant has been informed that the trial, hearing, or other proceeding will proceed without the defendant being present.~~

~~(D) The defendant has been informed that they have the right to remain silent during the trial, hearing, or other proceeding.~~

~~(E) The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront any witnesses against them or to testify on their own behalf.~~

~~(F) The defendant has been informed whether or not defense counsel will be present.~~

~~(2) The court shall state on the record the reasons for the court's findings and shall cause those findings and reasons to be entered into the minutes.~~

~~(3) If the trial, hearing, or other proceeding lasts for more than one day, the court is required to make the findings required by this subdivision anew for each day that the defendant is absent.~~

~~(4) This subdivision does not apply to any trial, hearing, or other proceeding in which the defendant was personally present in court at the commencement of the trial, hearing, or other proceeding.~~

~~(e) A court may, as appropriate and practicable, allow a prosecuting attorney or defense counsel to participate in a criminal proceeding through the use of remote technology without being physically present in the courtroom and in accordance with subdivision (f).~~

~~(f) Except as otherwise provided by law, the court shall require a prosecuting attorney, defense counsel, defendant, or witness to appear in person at a proceeding, if any of the following conditions are present and cannot be resolved in a reasonable amount of time:~~

~~(1) The court does not have the technology necessary to conduct the proceeding remotely.~~

~~(2) Although the court has the requisite technology, the quality of the technology or audibility at a proceeding prevents the effective management or resolution of the proceeding.~~

~~(3) The quality of the technology or audibility at a proceeding inhibits the court reporter's ability to accurately prepare a transcript of the proceeding.~~

~~(4) The quality of the technology or audibility at a proceeding prevents defense counsel from being able to provide effective representation to the defendant.~~

~~(5) The quality of the technology or audibility at a proceeding inhibits a court interpreter's ability to provide language access, including the ability to communicate and translate directly with the defendant and the court during the proceeding.~~

~~(g) (1) Before the court may proceed with a remote proceeding, the court shall have a process for a defendant, defense counsel, prosecuting attorney, witness, official reporter, official reporter pro tempore, court interpreter, or other court personnel to alert the judicial officer of technological or audibility issues that arise during the proceeding.~~

~~(2) When the court conducts a remote proceeding that will be reported by an official reporter or official reporter pro tempore, the reporter shall be physically present in a courtroom.~~

~~(h) The court shall make findings on the record that any waiver entered into pursuant to this section is knowingly, voluntarily, and intelligently made by the defendant.~~

~~(i) The Judicial Council shall adopt rules and standards that are necessary to implement the policies and provisions of this section and the intent of the Legislature.~~

~~(j) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

~~SEC. 4. Section 977 of the Penal Code, as added by Section 13 of Chapter 57 of the Statutes of 2022, is amended to read:~~

~~977. (a) (1) In all cases in which the accused is charged with a misdemeanor only, they may appear by counsel only, except as provided in paragraphs (2) and (3). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).~~

~~(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused shall be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.~~

~~(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:~~

~~(A) Subdivision (b) of Section 191.5.~~

~~(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.~~

~~(C) Section 23152 of the Vehicle Code.~~

~~(D) Section 23153 of the Vehicle Code.~~

~~(b) (1) Except as provided in subdivision (c), in all cases in which a felony is charged, the accused shall be personally present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. The accused shall be personally present at all other proceedings unless they shall, with leave of court, execute in open court, a written waiver of their right to be personally present, as provided by paragraph (2). If the accused agrees, the initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).~~

~~(2) The accused may execute a written waiver of their right to be personally present, approved by their counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:~~

~~“Waiver of Defendant’s Personal Presence”~~

~~“The undersigned defendant, having been advised of their right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact and law, and to be confronted by and cross-examine all witnesses, hereby waives the right to be present at the hearing of any motion or other proceeding in this cause. The undersigned defendant hereby requests the court to proceed during every absence of the defendant that the court may permit pursuant to this waiver, and hereby agrees that their interest is represented at all times by the presence of their attorney the same as if the defendant were personally present in court, and further agrees that notice to their attorney that their presence in court on a particular day at a particular time is required is notice to the defendant of the requirement of their appearance at that time and place.”~~

~~(c)(1) The court may permit the initial court appearance and arraignment of defendants held in any state, county, or local facility within the county on felony or misdemeanor charges, except for those defendants who were indicted by a grand jury, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an arraignment on an information in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing. The defendant shall have the right to make their plea while physically present in the courtroom if they request to do so. If the defendant decides not to exercise the right to be physically present in the courtroom they shall execute a written waiver of that right. A judge may order a defendant’s personal appearance in court for the initial court appearance and arraignment. In a misdemeanor case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom. In a felony case, a judge may, pursuant to this subdivision, accept a plea of guilty or no contest from a defendant who is not physically in the courtroom if the parties stipulate thereto.~~

~~(2) (A) A defendant who does not wish to be personally present for noncritical portions of the trial when no testimonial evidence is taken may make an oral waiver in open court prior to the proceeding or may submit a written request to the court, which the court may grant in its discretion. The court may, when a defendant has waived the right~~

~~to be personally present, require a defendant held in any state, county, or local facility within the county on felony or misdemeanor charges to be present for noncritical portions of the trial when no testimonial evidence is taken, including, but not limited to, confirmation of the preliminary hearing, status conferences, trial readiness conferences, discovery motions, receipt of records, the setting of the trial date, a motion to vacate the trial date, and motions in limine, by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. If the defendant is represented by counsel, the attorney shall not be required to be personally present with the defendant for noncritical portions of the trial, if the audiovideo conferencing system or other technology allows for private communication between the defendant and the attorney prior to and during the noncritical portion of trial. Any private communication shall be confidential and privileged pursuant to Section 952 of the Evidence Code.~~

~~(B) This paragraph does not expand or limit the right of a defendant to be personally present with their counsel at a particular proceeding as required by Section 15 of Article 1 of the California Constitution.~~

~~(d) (1) Notwithstanding any other provision in this section, the court may allow a defendant to appear by counsel on that day, at a trial, hearing, or other proceeding, with or without a written waiver, if the court finds, by clear and convincing evidence, all of the following to be true:~~

~~(A) The defendant is in custody and is refusing, without good cause, to appear in court on that day for that trial, hearing, or other proceeding.~~

~~(B) The defendant has been informed of their right and obligation to be personally present in court.~~

~~(C) The defendant has been informed that the trial, hearing, or other proceeding will proceed without the defendant being present.~~

~~(D) The defendant has been informed that they have the right to remain silent during the trial, hearing, or other proceeding.~~

~~(E) The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront any witnesses against them or to testify on their own behalf.~~

~~(F) The defendant has been informed whether or not defense counsel will be present.~~

~~(2) The court shall state on the record the reasons for the court's findings and shall cause those findings and reasons to be entered into the minutes.~~

~~(3) If the trial, hearing, or other proceeding lasts for more than one day, the court is required to make the findings required by this subdivision anew for each day that the defendant is absent.~~

~~(4) This subdivision does not apply to any trial, hearing, or other proceeding in which the defendant was personally present in court at the commencement of the trial, hearing, or other proceeding.~~

~~(e) This section shall become operative on January 1, 2028.~~

SEC. 5. Section 977.3 of the Penal Code is amended to read:

~~977.3. (a) A witness may testify in any misdemeanor or felony criminal proceeding, except for felony trials, through the use of remote technology with the written or oral consent of the parties on the record and with the consent of the court. The defendant shall waive the right to have a witness testify in person on the record.~~

~~(b) Notwithstanding subdivision (a), the court may allow a witness to testify through the use of remote technology as otherwise provided by any law, including, but not limited to, Sections 1340, 1347.5, and 2624 of this code, Section 16519.63 of the Welfare and Institutions Code, the holding in *Maryland v. Craig* (1990) 497 U.S. 836, and the holding in *People v. Powell* (2011) 194 Cal.App.4th 1268.~~

~~(c) The court shall make findings on the record that any waiver entered into pursuant to this section is knowingly, voluntarily, and intelligently made by the defendant.~~

~~(d) The Judicial Council shall adopt rules and standards that are necessary to implement the policies and provisions of this section and the intent of the Legislature.~~

~~(e) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

SEC. 6. Section 1043.5 of the Penal Code, as amended by Section 15 of Chapter 57 of the Statutes of 2022, is amended to read:

~~1043.5. (a) Except as otherwise provided in this section, the defendant in a preliminary hearing shall be personally present.~~

~~(b) The absence of the defendant in a preliminary hearing after the hearing has commenced in their physical presence shall not prevent continuing the hearing to, and including, holding to answer, filing an information, or discharging the defendant in any of the following cases:~~

~~(1) Any case in which the defendant, after being warned by the judge that they will be removed if they continued their disruptive behavior, nevertheless insists on acting in a manner so disorderly, disruptive, and disrespectful of the court that the hearing cannot be carried on with the defendant present in the courtroom.~~

~~(2) Any prosecution for an offense which is not punishable by death in which the defendant is voluntarily absent.~~

~~(c) Any defendant who is absent from a preliminary hearing pursuant to paragraph (1) of subdivision (b) may reclaim their right to be present at the hearing as soon as they are willing to act consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.~~

~~(d) Subdivisions (a) and (b) shall not limit the right of a defendant to waive the right to be physically present or to appear through the use of remote technology in accordance with Section 977.~~

~~(e) (1) For purposes of subdivision (b), a preliminary hearing shall be deemed to have commenced in the presence of the defendant if the court finds, by clear and convincing evidence, all of the following to be true:~~

~~(A) The defendant is in custody and is refusing, without good cause, to appear in court on that day for that preliminary hearing.~~

~~(B) The defendant has been informed of their right and obligation to be personally present in court.~~

~~(C) The defendant has been informed that the preliminary hearing will proceed without the defendant being present.~~

~~(D) The defendant has been informed that they have the right to remain silent during the preliminary hearing.~~

~~(E) The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront any witnesses against them or to testify on their own behalf.~~

~~(F) The defendant has been informed whether or not defense counsel will be present.~~

~~(2) The court shall state on the record the reasons for the court's findings and shall cause those findings and reasons to be entered into the minutes.~~

~~(3) If the preliminary hearing lasts for more than one day, the court is required to make the findings required by this subdivision anew for each day that the defendant is absent.~~

~~(4) This subdivision does not apply to any preliminary hearing in which the defendant was personally present in court at the commencement of the preliminary hearing.~~

~~(f) This section shall remain in effect only until January 1, 2028, and as of that date is repealed.~~

~~SEC. 7. Section 1043.5 of the Penal Code, as added by Section 16 of Chapter 57 of the Statutes of 2022, is amended to read:~~

~~1043.5. (a) Except as otherwise provided in this section, the defendant in a preliminary hearing shall be personally present.~~

~~(b) The absence of the defendant in a preliminary hearing after the hearing has commenced in their physical presence shall not prevent continuing the hearing to, and including, holding to answer, filing an information, or discharging the defendant in any of the following cases:~~

~~(1) Any case in which the defendant, after being warned by the judge that they will be removed if they continued their disruptive behavior, nevertheless insists on acting in a manner so disorderly, disruptive, and disrespectful of the court that the hearing cannot be carried on with the defendant present in the courtroom.~~

~~(2) Any prosecution for an offense which is not punishable by death in which the defendant is voluntarily absent.~~

~~(c) Any defendant who is absent from a preliminary hearing pursuant to paragraph (1) of subdivision (b) may reclaim their right to be present at the hearing as soon as they are willing to act consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.~~

~~(d) Subdivisions (a) and (b) shall not limit the right of a defendant to waive the right to be present in accordance with Section 977.~~

~~(e) (1) For purposes of subdivision (b), a preliminary hearing shall be deemed to have commenced in the presence of the defendant if the court finds, by clear and convincing evidence, all of the following to be true:~~

~~(A) The defendant is in custody and is refusing, without good cause, to appear in court on that day for that preliminary hearing.~~

~~(B) The defendant has been informed of their right and obligation to be personally present in court.~~

~~(C) The defendant has been informed that the preliminary hearing will proceed without the defendant being present.~~

~~(D) The defendant has been informed that they have the right to remain silent during the preliminary hearing.~~

~~(E) The defendant has been informed that their absence without good cause will constitute a voluntary waiver of any constitutional or statutory right to confront any witnesses against them or to testify on their own behalf.~~

~~(F) The defendant has been informed whether or not defense counsel will be present.~~

~~(2) The court shall state on the record the reasons for the court's findings and shall cause those findings and reasons to be entered into the minutes.~~

~~(3) If the preliminary hearing lasts for more than one day, the court is required to make the findings required by this subdivision anew for each day that the defendant is absent.~~

~~(4) This subdivision does not apply to any preliminary hearing in which the defendant was personally present in court at the commencement of the preliminary hearing.~~

~~(f) This section shall become operative on January 1, 2028.~~

SEC. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure courts can continue to conduct conferences, hearings, proceedings, and trials in civil and criminal cases using remote technology, it is necessary that this act take effect immediately.