
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 22 (Umberg) - Courts: remote proceedings

Version: March 30, 2023

Urgency: Yes

Hearing Date: May 1, 2023

Policy Vote: PUB. S. 5 - 0, JUD. 10 - 0

Mandate: No

Consultant: Matthew Fleming

Bill Summary: SB 22, an urgency measure, would authorize the use of remote technology in juvenile justice and specified civil commitment proceedings.

Fiscal Impact: Unknown court workload cost pressures to conform reporting requirements to the parameters of this bill (Trial Court Trust Fund, General Fund). To the extent this bill creates new workload for the courts, it could result in delays and prioritization of court cases and may impact access to justice. Likely minor and absorbable costs to the Judicial Council (JCC) to produce and submit annual reports to the Legislature.

Background: Before the COVID-19 pandemic, there was no explicit statutory authorization for parties to legal cases to appear in, or call witnesses via, electronic audiovisual means (shorthanded 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 three bills. 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 specified civil proceedings not covered SB 21; this new section will also sunset on January 1, 2026. SB 99 (Umberg) deals with criminal proceedings. These 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.

Proposed Law:

- Provides that a party, subject to the specified requirements and limitations 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 juvenile court proceeding occurring, as specified.
 - An extension of a juvenile commitment, as specified.
 - 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).
 - A proceeding related to an intellectually disabled and dangerous commitment, as specified.
- Authorizes a court, except where otherwise provided by law, to require a party or witness to appear in person at specified conferences, hearings, or proceedings if any of the following conditions are present:
 - The court with jurisdiction over the case does not have the technology necessary to conduct the conference, hearing, or proceeding remotely.
 - 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.
 - 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.
 - 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.
 - 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.
 - 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.
- Provides that an expert witness may appear remotely absent good cause to compel in-person testimony.

- Authorizes a court, on its own motion or by motion of a party, except as otherwise provided by law and subject specified limitations, 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.
- Provides that 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 specified.
- Provides that 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.
- 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.
- Provides that 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.
- Provides that 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.
- 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.
- Authorizes a self-represented party to appear remotely in a conference, hearing, or proceeding conducted through the use of remote technology.
- Provides that, subject to specified limitations, the requirements of this bill do not prohibit the use of remote technology when stipulated to by attorneys for represented parties.
- Requires the JCC to adopt rules to implement specified policies and provisions to promote statewide consistency, including, but not limited to, the following:
 - A deadline by which a party must notify the court and the other parties of their request to appear remotely.

- Procedures and standards for a judicial officer to determine when a conference, hearing, or proceeding may be conducted through the use of remote technology.
- Requires each superior court to report to the JCC on or before October 1, 2023, and annually thereafter, and the JCC 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:
 - The number of proceedings conducted with the use of remote technology.
 - Any superior court in which technology issues or problems occurred.
 - The superior courts in which remote technology was used.
 - The types of civil trial court conferences, hearings, or proceedings in which remote technology was used.
 - The cost of purchasing, leasing, or upgrading remote technology.
 - The type of technology and equipment purchased or leased.
- Sunsets these provisions on January 1, 2026 and contains an urgency clause.

Related Legislation:

- SB 21 (Umberg, 2023) would extend the sunset on the statutory authorization for remote appearances in specified civil court proceedings not covered by this bill and require the Judicial Council of California to annually report to the Legislature about the use of remote technology in the courts.
- SB 99 (Umberg, 2023) would extend the sunset for remote proceedings in a criminal court.
- 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.
- SB 848 (Umberg, 2022) in its final form would have extended the remote proceedings sunset until January 1, 2026; the bill also would have prohibited remote proceedings in certain types of proceedings. SB 848 failed passage on the Senate Floor at the author's request, following amendments taken in the Assembly.
- SB 241 (Umberg, Ch. 214, Stats. 2021), among other things, authorized specified remote appearances in specified civil court proceedings, set to sunset on July 1,

2023, and added arbitrations to the statute requiring discovery deadlines to be extended when a trial date is continued.

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