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THIRD READING

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Bill No: SB 22  
Author: Umberg (D)  
Amended: 3/30/23  
Vote: 27 - Urgency

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SENATE PUBLIC SAFETY COMMITTEE: 5-0, 3/21/23  
AYES: Wahab, Ochoa Bogh, Bradford, Skinner, Wiener

SENATE JUDICIARY COMMITTEE: 10-0, 3/28/23  
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello,  
Wiener  
NO VOTE RECORDED: Stern

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/18/23  
AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

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**SUBJECT:** Courts: remote proceedings

**SOURCE:** Author

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**DIGEST:** This bill extends the right of a party to appear remotely and a court to conduct specified conferences, hearings and proceedings in c specified juvenile and commitment cases until January 1, 2026.

**ANALYSIS:** Existing law allows for remote proceedings in civil cases under specified circumstances and outlines those circumstances. Those provisions sunset on July 1, 2023. (Code of Civil Procedure § 376.75)

This bill:

- 1) Provides that a party may appear remotely and the court may conduct conferences, hearings and proceedings through the use of remote technology when a party has provided notice to the court and all parties that it intends to appear remotely in any of the following proceedings:

- a) Juvenile court, delinquency proceedings under Welfare and Institutions Code Sections 61 and 602.
  - b) An extension of a juvenile commitment under Welfare and Institutions Code 1800.
  - c) A proceeding involving a commitment pursuant to Section 4355 of Title 9 of the California Code of Regulations.
  - d) A proceeding related to an intellectually disabled and dangerous commitment.
- 2) Provides that except as otherwise provided by law, the court may require a party or witness to appear in person at one of the above proceedings if any of the following 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.
  - e) The quality of the technology or audibility at a conference, hearing or proceeding inhibits an attorney from being able to provide effective representation to 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 that an expert witness may appear remotely absent good cause to compel in-person testimony.

- 4) Provides that except as provided by law, 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.
- 5) Requires the official court reporter to be physically in the courtroom if the court conducts a trial in whole or in part through the use of remote technology.
- 6) Requires, upon request, that the court interpreter be physically present if a court conducts a trial in whole or in part through the use of remote technology.
- 7) Provides that 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, court interpreter or other court personnel to alert the judge about any issues.
- 8) Provides that 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.
- 9) Provides that the court shall inform all parties about the potential issues that could arise when using remote technology and make information available to self-represented parties about appearing in person.
- 10) Provides that the court shall not require a party appear through the use of remote technology, but if remote technology is used the court shall ensure that the technology permits all parties, remote or in person, can participate fully.
- 11) Provides that a self-represented party may appear remotely through the use of remote technology only if they agree to do so.
- 12) Provides that a juvenile dependency proceeding may be conducted in whole or part through the use of remote technology under specified conditions.
- 13) Provides that it is not intended to prohibit the use of appearances in civil cases through the use of remote technology when stipulated by attorneys for represented parties.
- 14) Requires the Judicial Council to adopt rules to implement policies and provisions on remote technology to promote statewide consistency.
- 15) Requires a report by each superior court to Judicial Council regarding: the number of civil 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; and, the type of technology and equipment purchased or leased.

16) Sunsets the Code of Civil Procedure Section it creates on January 1, 2028.

## **Comments**

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 of 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. Furthermore, SB 22 will extend

the sunset for the option for remote access in all criminal hearings until January 2028, which will allow for more flexibility for the parties.

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

According to the Senate Appropriations Committee, 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.

**SUPPORT:** (Verified 5/18/23)

California Association of Collaborative Courts  
California District Attorneys Association  
Judicial Council of California  
Superior Court of California, County of Santa Clara  
Superior Court of Los Angeles County

**OPPOSITION:** (Verified 5/18/23)

ACLU California Action  
AFSCME  
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  
San Francisco Public Defender  
SEIU California State Council

**ARGUMENTS IN SUPPORT:** In support, the Superior Court of Los Angeles County states, in part:

Without the continued authorization for remote proceedings in civil commitment matters, court-involved individuals with significant mental health issues will suffer the most. Many of these individuals prefer to appear remotely to avoid the journey to and from court and the time spent waiting in courthouse hallways or lockup areas. Sometimes, participating remotely is

the only way to encourage participation from individuals who would otherwise refuse to participate in their hearings. In LA County, Department of State Hospital (DSH) facilities are often too far away from the Mental Health and other courthouses to permit the person to be transported to and from a facility on the same day. For example, DSH facilities in Atascadero and Napa are three and five hours away by car, respectively. Lacking an alternative, many of these individuals are booked into county jail the day before so they are closer to the courthouse for their 8:30 a.m. court hearing and risk a delay in their return to the state hospital due to continuing jail quarantine rules. This is a significant issue for a person experiencing mental health issues, as a county jail is far from an ideal setting for a person in need of mental health treatment and resources. In addition, increased bookings into the County jail resulting from a lack of remote access to court proceedings impose significant burdens on the LA County Sheriff's Department.

The Mental Health Division scheduled over 30,000 certification review hearings last year for determinations on whether a person suffering from a mental illness, who has been involuntarily committed to a mental health facility, will remain in the facility or be released. All of these hearings are currently held remotely and conducted by a limited pool of Mental Health Referees with subject matter expertise and depth of experience. Requiring in-person certification review hearings would force these referees to spend significant court time traveling to visit patients in nearly 50 LA County-area hospitals, substantially delaying the certification review process and likely requiring the Court to hire additional Mental Health Referees to avoid significant backlogs and missed hearings. Furthermore, eliminating remote appearances for in-court writ hearings, and civil commitments generally, would require transporting patients via ambulance to the Norwalk Courthouse where these cases are heard, a significant and destabilizing burden on the patients, who are often dressed in hospital attire and occasionally restrained, and it would create substantial logistical parking issues.

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Losing the ability to conduct remote hearings would have a devastating impact on our Mental Health Division. With mental health cases skyrocketing, the Hollywood Courthouse, opened in 2019, scheduled over 60,000 mental health proceedings in four courtrooms in 2022, many of which were conducted remotely. The Court also recently expanded the Mental Health

Division to an additional courtroom at the Norwalk Courthouse to meet demand. Eliminating the ability to conduct hearings remotely will crowd our hallways, delay case processing, require significant additional staff time, and will limit access to justice for this fragile population.

Finally, the loss of a remote hearing option will have a significant impact on the Hollywood Courthouse's new and expanded lockup. Even with many litigants choosing to appear remotely, the lockup has nearly reached capacity for those choosing to appear in person. Requiring all those who are detained to appear in person will push the Court beyond the limits of our lockup, causing significant delays in cases and increasing the time it takes to determine whether a defendant is competent to stand trial in a criminal case for those who are detained in the County jail.

**ARGUMENTS IN OPPOSITION:** The opponents are not opposed to any remote proceedings but have some concerns regarding access to technology, how technology works, and access to justice. Specifically, SEIU California State Council is opposed unless amended and states:

We are not inherently opposed to remote proceedings and recognize that the option can sometimes benefit the court and its users. However, we cannot ignore the limitations of remote technology when an individual's liberty or right to justice is at stake. Proponents of remote proceedings tout its convenience -- but our justice system can never be allowed to prioritize convenience over equitable access to justice.

These points were eloquently made by many of the witnesses who testified at the Joint Hearing of the Senate Judiciary and Public Safety committees on March 7, 2023. We must consider the digital divide, which disproportionately impacts indigent youth, families, and communities of color. Access to remote technology is inequitable, and even those with access are not always comfortable using it. Not everyone has a personal computer or space in their homes or elsewhere to safely and privately participate in remote proceedings. A party should not be prejudiced by lack of access or inability to use remote technology effectively.

Additionally, the frequency of internet disconnections, glitches, microphone issues, and background noise during remote proceedings threatens the integrity of verbatim transcripts, which are integral to the justice system. Court reporters are keenly aware of every glitch and interruption, even if they seem insignificant to other parties, because reporters are solely responsible for maintaining an accurate verbatim transcript. An inaccurate or

incomplete transcript can deny someone justice or wrongly strip someone's liberty.

This is precisely why some proceedings must be conducted in person. In person proceedings ensure the reporter can capture everything said in court, substantially diminish issues such as witness tampering, and allows jurors and attorneys to physically see witnesses to assess their credibility and demeanor.

Finally, there have been documented incidents of unknown parties infiltrating remote proceedings and using the chat function to masquerade as lawyers or court employees requesting fees from unsuspecting litigants. This raises serious issues regarding the security of these proceedings and those participating in them. The Legislature must establish thoughtful guidelines on when and how remote proceedings should be used, and how to ensure the security of the proceedings

Prepared by: Mary Kennedy / PUB. S. /  
5/20/23 12:37:42

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