



Judicial Council of California

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PATRICIA GUERRERO

*Chief Justice of California
Chair of the Judicial Council*

MILLICENT TIDWELL

Acting Administrative Director

March 24, 2023

Hon. Thomas J. Umberg, Chair
Senate Judiciary Committee
1020 N Street, Room 6530
Sacramento, California 95814

Subject: Senate Bill 22 (Umberg), as amended February 14, 2023—Support
Hearing: Senate Judiciary Committee—March 28, 2023

Dear Senator Umberg:

The Judicial Council supports SB 22 (Umberg), which: (1) authorizes, until January 1, 2026, a party to appear remotely and a court to conduct conferences, hearings, proceedings, and trials in specific types of proceedings, including, juvenile delinquency proceedings and civil commitment proceedings, in whole or in part, using remote technology; and (2) extends the sunset on criminal remote proceedings that expires on January 1, 2024, until January 1, 2028. We note that Senate Bill 21 (Umberg) addresses the sunset on civil proceedings in general and excludes the civil proceedings that are the subject of SB 22.¹

Since the Legislature first passed legislation authorizing remote proceedings in 2021, the Judicial Council has submitted two reports to the Legislature and Governor on this topic:

The first report submitted pursuant to [Code of Civil Procedure section 367.8](#) was submitted to the Legislature and Governor in December and included the following data: (1) the number of proceedings conducted with use of remote technology, (2) technology issues affecting remote proceedings, (3) any relevant expenditure information related to remote proceedings, (4) the impact of remote proceedings on court users' ability to access the courts, (5) the impact of the use of remote proceedings on case backlogs as a result of the COVID-19 pandemic, (6) information regarding court workers' and court users' experience using remote technology, and (7) any other information necessary to evaluate the use of remote proceedings by the courts.

¹ We note, however, that both bills extend authority for juvenile dependency proceedings with identical language.

As part of that effort, the Judicial Council received data from 38 courts on the number of remote court proceedings in criminal matters. Based on this data, we estimate that in those courts there were approximately 422,000 remote felony and misdemeanor criminal proceedings and 125,000 infraction proceedings in a one-year period.

On the civil side—based on data from 51 courts—we estimate that there were nearly 1 million civil remote proceedings annually in those courts.

That's over 6,000 remote hearings taking place in California courts each day. This increased access to justice has allowed Californians to avoid over 1.55 million trips to courthouses.

The second report is required under [*Code of Civil Procedure section 367.9*](#) which directed the council to convene a working group made up of many court stakeholders to consider and make recommendations on remote proceedings. That working group went through a long process where they collected information from various stakeholders, received written comment, and held a two-hour public comment session. All of this input informed the development of the workgroup's recommendations. The report and recommendations were submitted to the Legislature and Governor in January.

- Among the recommendations, the working group identified strong support for making remote proceedings available, but not mandatory, **in all case types—both civil and criminal—**when:
 - Courts, parties, and other participants have access to remote technology;
 - Clear and private communication between parties and their attorneys is available; and
 - Technology provides for clear communication between all participants and court interpreters.

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 otherwise lose time from work, childcare 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 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: in a March 2022 – February 2023 survey, conducted by the Judicial Council as required by law, more than 60,000 individuals—including parties, attorneys, and court employees responded to a simple question about their experience with remote proceedings and 96 percent of those who responded reported that they had a positive experience. Parties and attorneys were 91 percent positive. Employees were 98

percent positive. These same individuals reported audio issues in just 1.8 percent of the proceedings and video issues in just 0.8 percent of the proceedings.

Civil Proceedings Option

Giving people the option to participate remotely has increased the participation of litigants, attorneys, court personnel, and others while maintaining and expanding efficient and effective courtroom proceedings.

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, Lanterman-Petris-Short Act (LPS) certifications, and juvenile delinquency proceedings. Some specific 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 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.
- For participants in juvenile delinquency proceedings, the remote option can be particularly helpful when a minor lives a great distance away from the courthouse or is in school and traveling takes time and expense. Family members are also able to avoid taking time off of work and incur related travel costs to attend a hearing. Further, it helps youth who are sensitive to a change in environment or who struggle with health issues. Moreover, the remote option allows the participation of youth who cannot appear in person due to in-patient facility restrictions.
- Finally, in juvenile delinquency proceedings, the remote option supports the goal of the recently realigned Office of Youth and Community Restoration by promoting a continuum of services for youth that is trauma responsive and culturally informed, while supporting positive youth development.

Criminal Proceedings Option

AB 199 (Committee on the Budget; Stats. 2022, ch. 57) granted authority for criminal remote proceedings to allow defendants, both in-custody as well as out-of-custody, the option to appear remotely in misdemeanor and felony proceedings, except for misdemeanor trials and felony trials and sentencing, which the council supports because it improves access to justice for court participants.

In addition, the existing law that SB 22 seeks to extend, includes many protections to ensure that remote proceedings both enhance access to justice and are used appropriately:

- Courts must make findings on the record that any waiver of an in-court appearance by a defendant is entered into knowingly, voluntarily and intelligently.
- Witnesses may appear remotely, with consent of the parties and the court, except for felony trials.
- Judges have the authority to order in-person court proceedings when it is more appropriate.
- Courts must 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.
- When the court conducts a remote proceeding that will be reported by an official reporter or official reporter pro tempore, the reporter must be physically present in a courtroom.
- Trial courts are prohibited from retaliating 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.
- **Central in this law is that remote appearances require the informed consent of the defendant.**

The many benefits to court-users outlined for civil commitment and juvenile delinquency proceedings, equally apply to criminal remote proceedings. Moreover, participants in collaborative justice court programs especially benefit from the ability to appear remotely. Unlike other courts, collaborative courts meet on a frequent basis, making remote proceedings very helpful, while at the same time allowing judicial officers the discretion to balance the benefits of in-person participation with the efficiencies of remote proceedings for more routine matters. Program participants are not in custody, and remote appearances allow them to

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participate in court proceedings while not interrupting programming, schooling, or work obligations. Remote proceedings are also helpful to the many justice partners (behavioral health experts, probation, etc.) that help participants successfully graduate from collaborative court programs.

In closing, the Judicial Council is actively working with Senator Umberg and stakeholders to address the concerns raised about SB 22 and we look forward to continuing these productive conversations.

For these reasons, the Judicial Council strongly supports SB 22.

Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/SR/Imm

cc: Members, Senate Judiciary Committee
Ms. Allison Meredith, Counsel, Senate Judiciary Committee
Mr. Zach Keller, Legislative Director, Office of Sen. Thomas Umberg
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
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Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California



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March 14, 2023

Hon. Aisha Wahab, Chair
Senate Public Safety Committee
1020 N Street, Room 545
Sacramento, California 95814

Subject: Senate Bill 22 (Umberg), as amended February 14, 2023—Support
Hearing: Senate Public Safety Committee—March 21, 2023

Dear Senator Wahab:

The Judicial Council supports SB 22 (Umberg), which: (1) authorizes, until January 1, 2026, a party to appear remotely and a court to conduct conferences, hearings, proceedings, and trials in specific types of proceedings, including, juvenile delinquency proceedings and civil commitment proceedings, in whole or in part, using remote technology; and (2) extends the sunset on criminal remote proceedings that expires on January 1, 2024, until January 1, 2028. We note that Senate Bill 21 (Umberg) addresses the sunset on civil proceedings in general and excludes the civil proceedings that are the subject of SB 22.¹

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- Among the recommendations, the working group identified strong support for making remote proceedings available, but not mandatory, **in all case types—both civil and criminal—**when:
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Hon. Aisha Wahab

March 14, 2023

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Should you have any questions or require additional information, please contact Sharon Reilly at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/SR/Imm

cc: Members, Senate Public Safety Committee
Hon. Thomas J. Umberg, Member of the Senate
Ms. Mary Kennedy, Chief Counsel, Senate Public Safety Committee
Mr. Zach Keller, Legislative Director, Office of Sen. Thomas Umberg
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