Judicial Council *of* California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717
Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
Acting Administrative Director

July 5, 2023

Hon. Thomas J. Umberg, Chair
Senate Judiciary Committee
1021 O Street, Suite 6530
Sacramento, California 95814

Subject: Assembly 1214 (Maienschein), as amended June 29, 2023—Oppose
Hearing: Senate Judiciary Committee—July 11, 2023

Dear Senator Umberg:

The Judicial Council must regretfully oppose Assembly Bill 1214, which seeks to extend authority for remote criminal proceedings until January 1, 2026, with several notable departures from existing law. While we appreciate the most recent amendments to the bill, the council remains opposed and is seeking amendments that would align AB 1214 with existing law for criminal remote proceedings as enacted by AB 199 (Stats. 2022, ch. 57). At the same time, the council appreciates the author's intention to extend authority for remote criminal proceedings beyond January 1, 2024 and looks forward to continuing discussions to address the council's concerns.

More specifically, the council has the following serious concerns about AB 1214 as amended:

- **Exclusion of out of custody defendants.** While portions of the bill appear to include both in custody and out of custody misdemeanor defendants as eligible to choose a remote option in the enumerated proceedings (see Pen. Code, § 977(a)(4), (c)(2)), other portions are unclear about remote options for out of custody felony defendants (see Pen. Code, § 977(b)(1), (c)(1)). Existing law allows both in custody and out of custody defendants, in felony and misdemeanor cases, to choose the remote option when authorized. We understand this may not be the author's intent, and the council requests that AB 1214 be amended to clarify that the bill allows the option for both in custody and

out of custody defendants in felony and misdemeanor cases to appear remotely when authorized.

- **Overly broad restrictions that will disadvantage defendants.** The inability to appear remotely for a "noncritical portion of a criminal proceeding when no sworn testimony is taken" will restrict—and potentially significantly so—the proceedings at which a defendant may choose the option to appear remotely, and is not a workable concept for the courts. Due to the fluid nature of criminal proceedings, sworn testimony may be introduced during the middle of a remote proceeding where sworn testimony was not originally anticipated, which would require a continuance to another date. Further, the council believes that the elimination of remote witness testimony would disadvantage defendants. For example, these limits on the ability of a defendant to choose the remote option for witness testimony could disadvantage a defendant when:

    - Expert testimony is required by national experts to prove racial discrimination under the Racial Justice Act who would not otherwise be available or whose in person appearance would be cost prohibitive. At its meeting on March 17, 2023 the Committee on the Revision of the Penal Code heard testimony from a California public defender who explained how helpful it was to have expert witnesses appear remotely to discuss the complicated analysis necessary to prove racial bias. Those experts, and others like them, are spread across the nation and their time is at a premium. Remote technology makes them accessible on a greater scale to appear in court.[1]

    - Testimony of behavioral health experts, who are notably in short supply, is necessary to the defendant's case and the option of remote appearances will assist the defendant. There are a number of statutes that may require expert testimony from clinicians, including:

        - Statutes involving mental health considerations including mental health diversion (Pen. Code, § 1001.36) and resentencing of currently incarcerated individuals who were in the military and suffer from military related trauma (Pen. Code, § 1170.91).

        - When sentencing the court is required to consider whether the person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence (Pen. Code, § 1170(b)(6)Penal Code section 1385 requires the court, in exercising

[1] See testimony of Evan Kuluk, Deputy Public Defender, Alternate Defender Office, Contra Costa County, www.youtube.com/watch?v=ugYMN79thqs at 1:09.

discretion to strike an enhancement, to consider whether: (1) the current offense is connected to mental illness, defined as a "mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia." (Pen. Code, § 1385(c)(5)) and (2) the current offense is connected to prior victimization or childhood trauma.

- A defendant requests resentencing or other record cleaning relief where they must have witnesses provide sworn testimony in support of the request.

These examples underscore that the remote option is an access to justice issue for defendants that should remain an option for them, when appropriate.

- The provisions in AB 1214 which mandate the location of the judicial officer, court reporter, and court interpreter are also problematic and raise concerns about court flexibility and staffing availability. In the case of court interpreters in particular, AB 1214's provision requiring that the court interpreter be in the same room as the judicial officer would statutorily invalidate negotiated collective bargaining agreements and exacerbate interpreter shortage issues.

- The language providing that the court shall require any person who participates remotely in a criminal proceeding to observe proper courtroom decorum is unnecessary. Canon 3B(3) of the California Code of Judicial Ethics already requires that a judge shall require order and decorum in proceedings before the judge. Furthermore, decorum standards are more appropriately within the purview of the Judicial Branch. This is also an access to justice barrier for those individuals who may not have formal clothing to wear for remote court appearances.

- The anti-retaliation provision concerning court reporters is inconsistent with language just passed by the Legislature last week and enacted in SB 133 (Stats. 2023, ch. 34) (see Code of Civ. Proc. § 367.76(p) and Welf. & Inst. Code § 679.5(o)). First, the anti-retaliation language should be amended to include the phrase, "Consistent with federal and California labor law" to ensure the bill's protections are anchored in labor law, including statutes, case law, regulations, and Public Employment Relations Board (PERB) precedent. Also, the most recent amendments to AB 1214 move this provision to the Penal Code, and we are unclear why the language is different than the language in the Code of Civil Procedure and Welfare and Institutions Code sections cited above and extensively negotiated in SB 133.

- Including specifics on the manner in which the branch or courts must forward, compile, and provide information to the Judicial Council inhibits the ability of the council to work with courts to create more efficient methods for the collection of data for reports to the Legislature. We are also concerned that open-ended feedback could lead to inappropriate ex parte communications and worked with the sponsors on reporting language for civil remote proceedings, including civil commitment and juvenile delinquency matters, that was included in SB 133 that could also be used in AB 1214.

- The bill reverts to the pre-pandemic requirement for a defendant to file a written waiver of presence, executed in open court, which stakeholders uniformly identified as cumbersome. Current law, as enacted in AB 199, allows for additional less cumbersome options for how a defendant may waive their personal presence in a felony case.

- Finally, we note that AB 1214 would give adult defendants in criminal cases less ability to take advantage of the remote option than juveniles in delinquency cases as provided in SB 133, which for example, permits opposing witnesses to appear remotely when the juvenile is remote with the consent of the juvenile and upon consultation with their counsel, and places no restrictions on remote testimony from witnesses testifying on behalf of the juvenile. (Stats. 2023, ch. 34) (Welf. & Inst. Code § 679.5 (c)-(d)).

The Judicial Council supports the ultimate goal of AB 1214 to extend authorization for remote criminal proceedings as the council has seen the many benefits of giving individuals the ***option*** to participate remotely in criminal proceedings. The remote option helps preserve access to justice for many Californians and vulnerable court users when they would otherwise lose time from work, childcare, and other obligations 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.

Since the Legislature passed legislation authorizing civil remote proceedings in 2021, the Judicial Council has submitted two reports to the Legislature and Governor as required by SB 241 (Umberg; Stats. 2021, ch. 214) and AB 177 (Comm. on Budget; Stats. 2021, ch. 257).

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.

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.

In a March 2022–June 2023 survey, conducted by the Judicial Council as required by law, more than 80,000 individuals—including parties, attorneys, and court employees in 55 courts—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.

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 collecting information from various stakeholders, receiving written comment, and holding 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.

Central to existing authority for remote criminal proceedings is that remote appearances **require the informed consent of the defendant**, which the council supports.

For the reasons stated above, the Judicial Council opposes AB 1214 and looks forward to continuing the discussions with the author to remove the council's opposition.

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

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/lmm
cc: Members, Senate Judiciary Committee
Hon. Brian Maienschein, Member of the Assembly, 76th District
Ms. Harleen Pannu, Legislative Aide, Office of Hon. Brian Maienschein
Mr. Eric Csizmar, Policy Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California

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PATRICIA GUERRERO
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MILLICENT TIDWELL
Acting Administrative Director

June 14, 2023

Hon. Aisha Wahab, Chair
Senate Public Safety Committee
1021 O Street, Suite 7330
Sacramento, California 95814

Subject: Assembly 1214 (Maienschein), as amended June 13, 2023—Oppose
Hearing: Senate Public Safety Committee—June 20, 2023

Dear Senator Wahab:

The Judicial Council, regretfully, is opposed to Assembly Bill 1214, which seeks to extend authority for remote criminal proceedings until January 1, 2026, with several notable departures from existing law. While we appreciate the most recent amendments to the bill, the council remains opposed and is seeking amendments that would align AB 1214 with existing law for criminal remote proceedings as enacted last summer by AB 199 (Stats. 2022, ch. 57). At the same time, the council appreciates the author's intention to extend authority for remote criminal proceedings beyond January 1, 2024 and looks forward to discussions to address the council's concerns.

More specifically, the council has the following serious concerns about AB 1214 as recently amended:

- **Exclusion of out of custody defendants.** While portions of the bill appear to include both in custody and out of custody misdemeanor defendants as eligible to choose a remote option in the enumerated proceedings (see Pen. Code, § 977(a)(4), (c)(2)), other portions are unclear about remote options for out of custody felony defendants (see Pen. Code, § 977(b)(1), (c)(1)). Existing law allows both in custody and out of custody defendants, in felony and misdemeanor cases, to choose the remote option when authorized. We understand this may not be the author's intent, and the council requests that AB 1214 be amended to clarify that the bill allows the option for both in custody and

out of custody defendants in felony and misdemeanor cases to appear remotely when authorized.

- **Overly broad restrictions that will disadvantage defendants.** The inability to appear remotely for a "noncritical portion of a criminal proceeding when no sworn testimony is taken" will restrict—and potentially significantly so—the proceedings at which a defendant may choose the option to appear remotely, and is not a workable concept for the courts. Due to the fluid nature of criminal proceedings, sworn testimony may be introduced during the middle of a remote proceeding where sworn testimony was not originally anticipated, which would require a continuance to another date. Further, the council believes that the elimination of remote witness testimony would disadvantage defendants. For example, these limits on the ability of a defendant to choose the remote option for witness testimony could disadvantage a defendant when:

    - Expert testimony is required by national experts to prove racial discrimination under the Racial Justice Act who would not otherwise be available or whose in person appearance would be cost prohibitive. At its meeting on March 17, 2023 the Committee on the Revision of the Penal Code heard testimony from a California public defender who explained how helpful it was to have expert witnesses appear remotely to discuss the complicated analysis necessary to prove racial bias. Those experts, and others like them, are spread across the nation and their time is at a premium. Remote technology makes them accessible on a greater scale to appear in court.[1]
    - Testimony of behavioral health experts, who are notably in short supply, is necessary to the defendant's case and the option of remote appearances will assist the defendant. There are a number of statutes that may require expert testimony from clinicians, including:

        - Statutes involving mental health considerations including mental health diversion (Pen. Code, § 1001.36) and resentencing of currently incarcerated individuals who were in the military and suffer from military related trauma (Pen. Code, § 1170.91).

        - When sentencing the court is required to consider whether the person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence (Pen. Code, § 1170(b)(6)Penal Code section 1385 requires the court, in exercising discretion to strike an enhancement, to consider whether: (1) the current

[1] See testimony of Evan Kuluk, Deputy Public Defender, Alternate Defender Office, Contra Costa County, www.youtube.com/watch?v=ugYMN79thqs at 1:09.

offense is connected to mental illness, defined as a "mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia." (Pen. Code, § 1385(c)(5)) and (2) the current offense is connected to prior victimization or childhood trauma.

- A defendant requests resentencing or other record cleaning relief where they must have witnesses provide sworn testimony in support of the request.

These examples underscore that the remote option is an access to justice issue for defendants that should remain an option for them, when appropriate.

- The provisions in AB 1214 which mandate the location of the judicial officer, court reporter, and court interpreter are also problematic and raise concerns about court flexibility and staffing availability. In the case of court interpreters in particular, AB 1214's provision requiring that the court interpreter be in the same room as the judicial officer would statutorily invalidate negotiated collective bargaining agreements and exacerbate interpreter shortage issues.

- The language providing that the court shall require any person who participates remotely in a criminal proceeding to observe proper courtroom decorum is unnecessary. Canon 3B(3) of the California Code of Judicial Ethics already requires that a judge shall require order and decorum in proceedings before the judge. Furthermore, decorum standards are more appropriately within the purview of the Judicial Branch. This is also an access to justice barrier for those individuals who may not have formal clothing to wear for remote court appearances.

- The anti-retaliation provision should be amended to include the phrase, "Consistent with federal and California labor law" to ensure the bill's protections are anchored in labor law, including statutes, case law, regulations, and Public Employment Relations Board (PERB) precedent. AB 1214 also expands existing law's prohibition on anti-retaliation beyond criminal proceedings to also include civil proceedings. The council engaged in extensive discussions with SEIU, one of the sponsors of AB 1214, regarding this same language proposed to be added to SB 22 (Umberg) and came to an agreement that language be added to make clear that this provision only applies to an official reporter and official reporter pro tempore when they meet the definition of "trial court employee" under subdivision (l) of Section 71601 of the Government Code. The council requests that this same language be added to AB 1214.

- Including specifics on the manner in which the branch or courts must forward, compile, and provide information to the Judicial Council inhibits the ability of the council to work with courts to create more efficient methods for the collection of data for reports to the Legislature. We are also concerned that open-ended feedback could lead to inappropriate ex parte communications and have been in discussions with the sponsors on these requirements in the context of SB 22.

- The bill reverts to the pre-pandemic requirement for a defendant to file a written waiver of presence, executed in open court, which stakeholders uniformly identified as cumbersome. Current law, as enacted in AB 199, allows for additional less cumbersome options for how a defendant may waive their personal presence in a felony case.

The Judicial Council supports the ultimate goal of AB 1214 to extend authorization for remote criminal proceedings as the council has seen the many benefits of giving individuals the ***option*** to participate remotely in criminal proceedings. The remote option helps preserve access to justice for many Californians and vulnerable court users when they would otherwise lose time from work, childcare, and other obligations 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.

Since the Legislature passed legislation authorizing civil remote proceedings in 2021, the Judicial Council has submitted two reports to the Legislature and Governor as required by SB 241 (Umberg; Stats. 2021, ch. 214) and AB 177 (Comm. on Budget; Stats. 2021, ch. 257).

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.

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.

In a March 2022–May 2023 survey, conducted by the Judicial Council as required by law, more than 75,000 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.

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 collecting information from various stakeholders, receiving written comment, and holding 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.

Central to existing authority for remote criminal proceedings is that remote appearances **require the informed consent of the defendant**, which the council supports.

For the reasons stated above, the Judicial Council must oppose AB 1214 and looks forward to continuing the discussions with the author to remove the council's opposition.

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

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

CTJ/SR/lmm
cc: Members, Senate Public Safety Committee
Hon. Brian Maienschein, Member of the Assembly, 76th District
Ms. Mary Kennedy, Chief Counsel, Senate Public Safety Committee
Ms. Harleen Pannu, Legislative Aide, Office of Hon. Brian Maienschein
Mr. Eric Csizmar, Policy Consultant, Senate Republican Office of Policy
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PATRICIA GUERRERO
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MILLICENT TIDWELL
Acting Administrative Director

March 23, 2023

Hon. Reginald Byron Jones-Sawyer, Chair
Assembly Public Safety Committee
1021 O Street, Suite 5210
Sacramento, California 95814

Subject: Assembly 1214 (Maienschein), as introduced—Oppose
Hearing: Assembly Public Safety Committee—March 28, 2023

Dear Assembly Member Jones-Sawyer:

The Judicial Council, regretfully, is opposed to Assembly Bill 1214 (Maienschein), which seeks to extend authority for remote criminal proceedings until January 1, 2026, with several notable departures from existing law. The council is seeking amendments that would align AB 1214 with existing law for criminal remote proceedings as enacted by AB 199 (Stats. 2022, ch. 57). At the same time, the council appreciates the author's intention to extend authority for remote criminal proceedings beyond January 1, 2024 and looks forward to discussions to address the council's concerns.

More specifically, the council has the following serious concerns about AB 1214 as currently in print:

- **Exclusion of out of custody defendants.** While portions of the bill appear to include both in custody and out of custody defendants as eligible to choose a remote option in the enumerated proceedings, another portion appears to limit that option only to in custody defendants. Existing law allows both in custody and out of custody defendants to choose the remote option when authorized. We understand this may not be the author's intent, and the council requests that AB 1214 be amended to clarify that the bill allows the option for both in custody and out of custody defendants to appear remotely when authorized.

- **Overly broad restrictions that may disadvantage defendants.** The limits on testimonial evidence will restrict—and potentially significantly so—the ability of defendants to choose the option to appear remotely (new PEN 977.4).[1] Further, the limits on "testimonial evidence" are vague and it is unclear whether the bill is addressing "sworn" testimony versus testimony that is not under oath. It would appear to also apply to written declarations, which are under oath and hence testimonial. Further, the council believes that the limits on remote witness testimony would disadvantage defendants. For example, these limits on the ability of a defendant to choose the remote option for testimony could disadvantage a defendant when:

    - Expert testimony is required by national experts to prove racial discrimination under the Racial Justice Act who would not otherwise be available or whose in person appearance would be cost prohibitive.
    - Testimony of behavioral health experts, who are notably in short supply, is necessary to the defendant's case and the option of remote appearances will assist the defendant.
    - A defendant requests resentencing – where they can submit declarations and testify on their own behalf as well as submit testimony from character witnesses. If the defendant must appear, then they must travel from prison to the county jail, and risk losing their current job, programming and housing

    These examples underscore that the remote option is an access to justice issue for defendants that should remain an option for them, when appropriate.

- **Limits access to justice.** Requiring that optional remote hearings hinge on the accused's "requests" (thereby prohibiting anyone from *asking* the accused if they would like the option of appearing remotely) interferes with the individual's access to justice and substantially modifies Penal Code 977(a), which has permitted a defendant charged with misdemeanors to appear by video for arraignment and plea, with their agreement, since 1993.

- The language providing that the court shall require any person who participates remotely in a criminal proceeding to observe proper courtroom decorum is unnecessary. Canon 3B(3) of the California Code of Judicial Ethics already requires that a judge shall require order and decorum in proceedings before the judge. Furthermore, decorum standards are more appropriately within the purview of the Judicial Branch. This is also an access to justice barrier for those individuals who may not have formal clothing to wear for remote

[1] It is also worth noting that the new PEN 977.4 significantly modifies the existing authority for remote witness testimony in PEN. 977.3. While 977.4 would still permit remote witness testimony in a few specific cases, PEN 977.4 would eliminate that option in all other case types.

court appearances.

- The provision that prohibits a court from retaliating, or threatening to retaliate, against an official court reporter or official court reporter pro tempore for notifying a judicial officer that technology or audibility issues are interfering with the creation of the record for a proceeding that includes participation through remote technology should be amended to include the phrase "consistent with federal and California labor law" to conform to the language in AB 199. The council is also evaluating the potential impacts of AB 1214's expansion to also include civil proceedings under this section.

- The requirement for "hard-wired internet connections for the judicial officer and court reporter," is problematic as the focus should be on what the required outcomes are versus the specific technology and equipment to provide those outcomes. Defining specific technology in statute should be avoided.

- Including specifics on the manner in which the branch or courts must forward, compile, and provide information to the Judicial Council inhibits the ability of the council to work with courts to create more efficient methods for the collection of data for reports to the Legislature.

- The bill reverts to the pre-pandemic requirement for a defendant to file a written waiver of presence, executed in open court, which stakeholders uniformly identified as cumbersome. Current law, as enacted in AB 199, allows for additional less cumbersome options for how a defendant may waive their personal presence in a felony case.

The Judicial Council supports the ultimate goal of AB 1214 to extend authorization for remote criminal proceedings as the council has seen the many benefits of giving individuals the ***option*** to participate remotely in criminal proceedings. The remote option helps preserve access to justice for many Californians and vulnerable court users when they would otherwise lose time from work, childcare, and other obligations 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.

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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.

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.

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.

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 collecting information from various stakeholders, receiving written comment, and holding 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.

Central to existing authority for remote criminal proceedings is that remote appearances **require the informed consent of the defendant**, which the council supports.

For the reasons stated above, the Judicial Council must oppose AB 1214 as currently in print and looks forward to discussions with the author to remove the council's opposition.

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

Sincerely,

Cory T. Jasperson
Director, Governmental Affairs

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cc: Members, Assembly Public Safety Committee
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Ms. Cheryl Anderson, Chief Counsel, Assembly Public Safety Committee
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