Judicial Council *of* California

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PATRICIA GUERRERO
Chief Justice of California
Chair of the Judicial Council

MILLICENT TIDWELL
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July 5, 2023

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

Subject: Senate Bill 99 (Umberg), as amended April 10, 2023—Support
Hearing: Assembly Public Safety Committee—July 11, 2023

Dear Senator Wahab:

The Judicial Council supports Senate Bill 99, which extends the sunset on criminal remote proceedings that expires on January 1, 2024, until January 1, 2028.

SB 99 would extend authority for criminal remote proceedings provided by AB 199 (Committee on the Budget; Stats. 2022, ch. 57) 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. It also 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 Judicial Council has seen the many benefits of giving people the ***option*** to participate remotely in 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 or 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.

Further, participants in collaborative justice court programs and diversion programs especially benefit from the ability to appear remotely. Unlike other courts, collaborative courts and diversion 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 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 and diversion programs.

Moreover, the remote option is helpful for witness testimony in criminal proceedings, making appearances more affordable and efficient for court participants when the defendant consents.

For example, the remote option has been used when:

- Expert testimony is required by national experts to prove racial discrimination under the Racial Justice Act (Stats. 2020, ch. 317) 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.

- 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.

Since the Legislature first passed SB 199 and related civil remote proceeding legislation authorizing remote proceedings in 2021, the Judicial Council has submitted two reports to the Legislature and Governor on this topic to fulfill statutory mandates for reviewing and evaluating the impacts of remote proceedings.

The first report submitted pursuant to *Code of Civil Procedure section 367.8* was submitted to the Legislature and Governor in December 2022 and included an array of data on the implementation and impacts of remote proceedings including data from 38 courts concerning criminal proceedings. 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.

When the nearly 1 million civil remote proceedings are included, there are 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 on remote proceedings was required under *Code of Civil Procedure section 367.9* and directed the council to convene a working group made up of many court stakeholders to consider and make recommendations on the future of these proceedings. That working group undertook extensive efforts to collect information from various stakeholders, receive written comment, and convene 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 2023.

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

- 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.

Court users have also noted the benefits of remote participation in court proceedings: 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.

In closing, the Judicial Council is actively working with Senator Umberg and stakeholders to address the concerns raised about SB 99 and we look forward to continuing these productive conversations.

For these reasons, the Judicial Council strongly supports SB 99.

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, Assembly Public Safety Committee
Hon. Thomas J. Umberg, Member of the Senate,
Ms. Cheryl Anderson, Deputy Chief Counsel, Assembly Public Safety Committee
Mr. Gary Olson, Consultant, Assembly Republican Office of Policy
Ms. Jessica Devencenzi, Chief 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

April 18, 2023

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

Subject: Senate Bill 99 (Umberg), as amended April 10, 2023—Support
Hearing: Senate Public Safety Committee—April 25, 2023

Dear Senator Wahab:

The Judicial Council supports SB 99 (Umberg), which extends the sunset on criminal remote proceedings that expires on January 1, 2024, until January 1, 2028.

SB 99 would extend authority for criminal remote proceedings provided by AB 199 (Committee on the Budget; Stats. 2022, ch. 57) 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. It also includes many protections to ensure that remote proceedings both enhance access to justice and are used appropriately:

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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 Judicial Council has seen the many benefits of giving people the ***option*** to participate remotely in 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 or 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.

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Moreover, the remote option is helpful for witness testimony in criminal proceedings, making appearances more affordable and efficient for court participants when the defendant consents. For example, the remote option has been used when:

  - Expert testimony is required by national experts to prove racial discrimination under the Racial Justice Act (Stats. 2020, ch. 317)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

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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:

  - 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.

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.

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