

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2484 (Bryan)
Version: May 23, 2024
Hearing Date: June 4, 2024
Fiscal: No
Urgency: No
AWM

SUBJECT

Courts: juveniles: remote proceedings

DIGEST

This bill permits a parent, child, nonminor dependent, or Indian tribe, as defined, in a juvenile dependency case to utilize remote technology for the appearance of an expert witness without the consent of all parties.

EXECUTIVE SUMMARY

In recent years, California law has moved to increase the use of remote technology in court proceedings. In juvenile dependency proceedings, existing law permits an expert witnesses to testify remotely only if all of the parties consent. This limitation was intended to balance the convenience of remote appearances with the recognition that, in some circumstances, remote appearances can hamper the presentation of argument or evidence – a balance which is particularly acute in dependency proceedings, where parental rights may be at stake.

As the author and proponents of this bill note, hiring an expert witness and paying for their court appearance can be extremely expensive; because current law gives all parties in a dependency case veto power over another party’s right to present an expert witness remotely, these parties can force each other to incur significant costs in connection with expert testimony. To prevent this potential for gamesmanship, and to assist low- and middle-income participants in the dependency process, this bill establishes a narrow exception to the requirement that all parties consent to a remote appearance in a dependency case, by permitting an expert witness for a parent, child, nonminor dependent, or Indian tribe to present an expert witness remotely without the consent of all parties.

This bill is sponsored by California Dependency Attorneys for Parents and is supported by the County Welfare Directors Association of California. The Committee has not received timely opposition to this bill.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Permits, in general civil cases, a party to appear at a proceeding through the use of remote technology, provided that certain conditions are met, including:
 - a) The party has provided notice to the court and all other parties of their intention to appear remotely.
 - b) The court has the technology necessary to conduct the conference, hearing, or proceeding remotely, and the quality of the technology or audibility at the proceeding does not inhibit the court reporter's ability to accurately prepare a transcript.
 - c) The court has not determined that an in-person appearance would materially assist in the determination in, or effective management or resolution of, the case.
 - d) If the proceeding is a trial or an evidentiary hearing, the opposing party has not shown why a remote appearance or testimony should not be allowed. (Code Civ. Proc., § 367.75(a), (b), (d).)
- 2) Permits an expert witness to appear remotely in a general civil matter, subject to the technology requirements, absent good cause to compel in-person testimony. (Code Civ. Proc., § 367.75(c).)
- 3) Permits a juvenile dependency hearing to be conducted in whole or in part through the use of remote technology subject to the following:
 - a) Any person authorized to be present may request to appear remotely.
 - b) Any party to the proceeding may request that the court compel the physical presence of a witness or party. A witness, including a party providing testimony, may appear through remote technology only with the consent of all parties and if the witness has access to the appropriate technology.
 - c) A court shall not require a party to appear through the use of remote technology.
 - d) The confidentiality requirements that apply to an in-person juvenile dependency proceeding shall apply to a juvenile dependency proceeding conducted through the use of remote technology. (Code Civ. Proc., § 367.75(h).)
- 4) Provides that 1)-3) will sunset on January 1, 2026.

This bill:

- 1) Permits a parent, child, nonminor dependent, or Indian tribe, as defined, in a juvenile dependency case to utilize remote technology for the appearance of an expert witness without the consent of all parties, subject to the existing sunset.
- 2) Makes nonsubstantive technical and conforming changes.

COMMENTS

1. Author's comment

According to the author:

Assembly Bill 2484 seeks to address the financial constraints faced by parents in Child Dependency cases and ensures their equal access to expert testimony. By exempting parents from obtaining consent from all parties for remote appearances of expert witnesses this bill aims to alleviate the disproportionate burden carried by financially disadvantaged parents. This solution enables experts in support of parents to testify remotely instead of in person, thereby ensuring their fair access to the expert testimony they are entitled to.

2. Background on remote proceedings

To prevent cases from grinding to a complete halt during the COVID-19 pandemic, many courts pivoted to remote proceedings, which allowed them to process cases while still complying with state and local health and safety orders. This pivot was first authorized by the Judicial Council's Emergency Rule 3, adopted on April 6, 2020.¹ Then, in 2021, the Legislature enacted SB 241 (Umberg, Ch. 214, Stats. 2021), which authorized remote proceedings in civil and juvenile dependency proceedings, subject to certain technological and procedural requirements; a court may not require a party to appear remotely, so that each individual can determine whether to appear in-person or remotely based on their own assessment of the needs of the case.² The bill included a sunset provision set at July 1, 2023. Although the bill did not expressly address juvenile justice proceedings (criminal cases for minor defendants) and civil commitment proceedings, the Judicial Council voted to adopt a Rule of Court setting forth

¹ Cal. Rules of Court, Appendix I, Emergency Rule 3 [repealed]; California Courts Newsroom, *Judicial Council Adopts New Rules to Lower Jail Population, Suspend Evictions and Foreclosures* (Apr. 6, 2020), available at <https://newsroom.courts.ca.gov/news/judicial-council-adopts-new-rules-lower-jail-population-suspend-evictions-and-foreclosures> (link current as of May 30, 2024).

² See Code Civ. Proc., § 367.75. The bill also authorizes a court to conduct proceedings remotely, but there is no statutory basis for forcing a party to appear remotely, even if the court is experiencing extenuating circumstances. (*Ibid.*)

procedures for remote appearances in all civil matters, including juvenile justice and civil commitments.³

In 2022, the Legislature considered a bill that would have first removed the sunset, then extended it until January 1, 2026;⁴ however, after the Assembly Appropriations Committee amended the bill to prohibit certain types of civil proceedings from using remote technology, the bill failed passage on the Senate Floor at the request of the author. The following year, provisions extending the sunset on the use of remote technology in civil proceedings, and adding a separate statute for remote proceedings in juvenile justice, civil commitment, and competency proceedings were added through the budget.⁵ Both civil remote statutes are now set to sunset on January 1, 2026.⁶

The statute covering remote appearances in general civil cases includes specific provisions for juvenile dependency cases (i.e., cases in which a child has, or may be, taken from the custody of their parent or guardian) which are more stringent than those in other cases.⁷ Under those provisions, any party may request to appear remotely, but any other party may request that the court compel the physical presence of a witness or party.⁸ Additionally, a witness (including a party) may provide testimony through remote technology only if all of the parties consent to the remote appearance and the witness has access to the appropriate technology.⁹ Unlike the provisions for general civil appearances, the juvenile dependency provisions do not establish special rules for the appearances of expert witnesses.¹⁰

3. This bill allows a parent, child, nonminor dependent, or Indian tribe in a juvenile dependency case to present an expert witness's testimony through remote means without the consent of all of the parties

This bill creates a narrow exception to the requirement that a party may appear in a juvenile dependency case only with the consent of all other parties, by permitting a

³ See Cal. Rules of Court, r. 3.672. Juvenile justice proceedings are technically civil, but are also quasi-criminal in nature because they so often involve "the possibility of a substantial loss of freedom." (*Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 801.)

⁴ See SB 848 (Umberg, 2022).

⁵ SB 133 (Committee on Budget and Fiscal Review, Ch. 34, Stats. 2023).

⁶ Code Civ. Proc., §§ 367.75(m), 367.76(q).

⁷ See Welf. & Inst. Code, §§ 300 et seq.

⁸ Code Civ. Proc., § 367.75(h).

⁹ *Ibid.*

¹⁰ Compare *ibid.* with *id.*, § 367.75(c). In at least one case, a county attorney objected to a parent presenting an expert witness's testimony over Zoom, meaning the parent was unable to present their expert testimony. (*Valerie W. Superior Court* (Aug. 24, 2023, F086300, F086302) [nonpub. opn] 2023 WL 5443505, *8.) The Court of Appeal agreed, in a nonpublished opinion, that the court lacked the discretion to permit the expert witness to appear remotely absent consent from all the parties. (*Id.* at p. *10.)

parent, child, nonminor dependent, or Indian tribe¹¹ to present the testimony of an expert witness through the use of remote technology without the other parties' consent. This exception is consistent with the rule in general civil cases, which permits an expert witness to appear remotely unless there is good cause to require in-person testimony.¹² According to the author, this measure is intended to help the individuals navigating the juvenile court by easing the financial burden of retaining an expert. Allowing an expert to testify remotely would likely reduce the expert's travel expenses and the need to bill time while waiting for a case to be called; given that expert witness fees can be significant, it seems likely that this bill could meaningfully cut down on those fees.

Because this bill's provisions are being added to the existing statute authorizing remote appearances in civil cases, this bill will sunset on January 1, 2026, along with the rest of the statute, unless the sunset is extended or eliminated.

4. Arguments in support

According to the County Welfare Directors Association of California:

While expert testimony is often an important component of child dependency hearings, the process of obtaining testimony in-person can be highly expensive, adding additional travel associated costs and other fees. The disproportionate cost to low-income families or those located in rural or underserved areas for in-person testimony presents a major equity concern.

The COVID 19 Pandemic has demonstrated the viability of remote expert testimony for child dependency hearings. This bill maintains all existing requirements intended to ensure that remote testimony remains effective and that court records can be accurately maintained, while also allowing parents, children, nonminor dependents, and Indian tribes to solicit expert witnesses remotely without being blocked by a unilateral veto from another party. Therefore, AB 2484 will fairly ensure that parties may solicit testimonies regardless of their ability to pay for an expert to physically travel to the courtroom, leading to better outcomes for families and children.

SUPPORT

California Dependency Attorneys for Parents (sponsor)
County Welfare Directors Association of California

¹¹ "Indian tribe" has the same meaning as in Welfare & Institutions Code section 224.1 and the federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901 et seq.), which, among other things, establish the rights of Indian tribes when an Indian child is under the jurisdiction of the juvenile court.

¹² Code Civ. Proc., § 367.75(c).

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 133 (Committee on Budget and Fiscal Review, Ch. 34, Stats. 2023) extended the sunset on the statute authorizing remote appearances in civil cases, until January 1, 2026; and established a new statute authorizing remote appearances in juvenile justice, civil commitment, competency, and civil commitment proceedings, which is also set to sunset on January 1, 2026.

SB 22 (Umberg, 2023) would have created a separate statute for the use of remote technology in juvenile justice and specified civil commitment proceedings, which would sunset on January 1, 2023, and would have extended the sunset on the statutes authorizing the use of remote technology in criminal matters from January 1, 2024, to January 1, 2028. The subject matter of this bill was included in the budget and this bill was gutted and amended to address a different subject matter after it was heard by this Committee.

SB 21 (Umberg, 2023) would have extended the sunset on the remote provisions statute until January 1, 2026; clarified that the existing remote provisions do not apply in specified juvenile justice and commitment proceedings; specifies that an adoption finalization hearing may be held through remote technology; required the Judicial Council to annually report to the Legislature matters relating to the use of remote technology; and eliminated the sunset provision on the statute clarifying that a continuance or postponement of a trial or arbitration date also extends any deadlines not already passed. The subject matter of this bill was included in the budget and this bill was gutted and amended to address a different subject matter after it was heard by this Committee.

AB 1214 (Maienschein, 2023) among other things, would have prohibited 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. The subject matter of this bill was included in the budget, and AB 1214 is pending before the Senate Judiciary 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 as a result of amendments added in the Assembly

Appropriations Committee. SB 848 was voted down on the Senate Floor with a vote of 0-38 at the request of the author.

SB 241 (Umberg, Ch. 214, Stats. 2021) titled the 2021 Court Efficiency Act, 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.

AB 177 (Assembly Committee on Budget, Ch. 257, Stats. 2021) among other things, required the Judicial Council of California to convene a working group for the purpose for recommending a statewide framework for remote civil court proceedings that addresses equal and fair access to justice, to be submitted no later than January 1, 2023.

PRIOR VOTES:

Assembly Floor (Ayes 72, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
