



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 27, 2022

Action Requested

For Your Information

To

Presiding Judges of the Superior Courts
Court Executive Officers of the Superior
Courts

Deadline

N/A

From

Martin Hoshino
Administrative Director
Judicial Council

Contact

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Subject

Criminal Remote Proceedings

[Assembly Bill 199](#), the budget bill on courts, authorizes criminal remote proceedings, effective July 1, 2022, by amending Penal Code sections 977 and 1043.5 and Government Code section 71651.1, and adding Penal Code section 977.3. This statutory authorization allows courts to continue criminal remote proceedings after emergency rules 3 and 5 of the California Rules of Court sunset on June 30, 2022. Like emergency rules 3 and 5, AB 199 requires the consent of the defendant, and the court may direct the defendant to be physically present at any felony proceeding. The legislation sunsets on January 1, 2024.

We anticipate that the Legislature will pass this bill on Wednesday, June 29, 2022, and that the Governor will sign it before July 1, 2022.

Remote Appearances by Defendant, Attorneys, and Witnesses

The legislation allows the following remote appearances by defendants and witnesses:

- Misdemeanors
 - Defendants may appear remotely in all misdemeanor proceedings except misdemeanor trials.
 - Attorneys may appear remotely if the court finds it appropriate and practicable.
- Felonies
 - Defendants may appear remotely in all felony proceedings except trials and sentencing, unless the court allows the waiver of defendant’s presence for noncritical portions of felony trials where no testimonial evidence is taken. Remote proceedings are allowed in postconviction relief proceedings and as otherwise provided by law.
 - Attorneys may appear remotely if the court finds it appropriate and practicable.
- Witnesses
 - Witnesses may appear remotely for misdemeanor and felony proceedings—except for felony trials and only with the consent of both parties and the court.
 - Witnesses may appear remotely as otherwise allowed by statutes for the closed-circuit examination of victims of sexual crimes and conditional examinations of witnesses.

Court Reporters

- Court reporters must be physically present in a courtroom when the court conducts remote proceedings that are reported by a court reporter.
- The Trial Court Employment Protection and Governance Act is amended to state that trial courts cannot retaliate against a court reporter for reporting technology or audibility issues.

Administration and Implementation

- Courts must have a process for participants to alert the court of audibility or technology problems before and during a proceeding.
- Courts shall require a person appearing remotely to appear in person if technology or audibility issues arise that cannot be resolved in a reasonable amount of time.
- The legislation directs the Judicial Council to adopt rules and standards necessary to implement the provisions of the statute.

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Waiver of Appearance

In addition to addressing criminal remote proceedings, the legislation amends the procedure for personal appearance waivers by a felony defendant. It allows the waiver to be in writing or, with the court's consent, entered personally by the defendant or defendant's counsel.

MH/SC/SFI

cc: Millicent Tidwell, Chief Deputy Director, Judicial Council
Shelley Curran, Chief Policy and Research Officer, Judicial Council
Rob Oyung, Chief Operating Officer, Judicial Council
John Wordlaw, Chief Administrative Officer, Judicial Council