



JUDICIAL COUNCIL OF CALIFORNIA

520 Capitol Mall, Suite 600 • Sacramento, California 95814-3368
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

CORY T. JASPERSON
Director, Governmental Affairs

September 17, 2021

Hon. Gavin Newsom
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 716 (Bennett) – Removal of opposition

Dear Governor Newsom:

The Judicial Council writes to inform you that, concurrent with the September 3, 2021 amendments to AB 716, the Judicial Council officially removes our opposition to the bill.

As amended, AB 716 expands the state's commitment to open court proceedings to those that are held via remote technology. This expansion re-emphasizes the nearly 150-year-old policy in California that, with very limited exceptions, court proceedings are open to the public.

In addition, AB 716 as amended makes clear that remote access, when provided, shall not be a substitute for in-person access, unless in-person court access must be limited or halted for health and safety reasons.

And finally, the Judicial Council appreciates the flexibility amended into the bill that would permit a court that provides remote access to do so in a manner appropriate for the court, avoiding a one-size-fits-all technology approach to remote proceedings that would be costly to implement.

Hon. Gavin Newsom
September 17, 2021
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Because of these amendments, the Judicial Council has removed our previous opposition to AB 716.

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

Sincerely,

Sent September 23, 2021

Cory T. Jasperson
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Hon. Steve Bennett, Member of the Assembly
Jessica Devencenzi, Deputy Legislative Affairs Secretary, Office of the Governor
Martin Hoshino, Administrative Director, Judicial Council of California



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September 9, 2021

Hon. Steve Bennett
Member of the Assembly
State Capitol, Room 4164
Sacramento, California 95814

Subject: Assembly Bill 716 (Bennett), as amended September 3, 2021 – OPPOSITION
REMOVED

Dear Assembly Member Bennett:

The Judicial Council is pleased to state that pursuant to the September 3, 2021 amendments to AB 716, any previous council opposition to that bill is removed.

As amended, AB 716 expands the state's commitment to open court proceedings to those that are held via remote technology. This expansion re-emphasizes the nearly 150-year-old policy of the people of California that, with very limited exceptions, courts are to be open to the public, their hearings subject to community attendance, tribunals in California are not, except when privacy interests outweigh public need, to be held behind closed doors.

In addition to this critical expansion, AB 716 makes clear that remote access, when provided, shall not be a satisfactory substitute for in-person access, unless in-person court access must be limited or halted for health and safety reasons.

And finally, the Judicial Council appreciates the flexibility amended into the bill that would permit a court that provides remote access to do so in the manner appropriate for the court; by avoiding a one-size-fits-all technology approach to remote proceedings, AB 716 preserves to the courts the best ways to serve their communities.

Hon. Steve Bennett
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Because of these amendments, the Judicial Council is pleased to remove our previous opposition to AB 716 that was contingent upon such amendments.

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

Sincerely,

A handwritten signature in blue ink that reads "Andi Liebenbaum". The signature is fluid and cursive.

Andi Liebenbaum
Attorney

AL/ycs

cc: Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Martin Hoshino, Administrative Director, Judicial Council of California



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August 17, 2021

Hon. Steve Bennett
Member of the Assembly
State Capitol, Room 4164
Sacramento, California 95814

Subject: Assembly Bill 716 (Bennett), as amended July 15, 2021 – Oppose unless amended

Dear Assembly Member Bennett:

The Judicial Council regrettably opposes AB 716 unless amended to eliminate subparagraph (c) in its entirety. While many of the July 15 amendments improve the bill significantly, the language in subparagraph (c) creates confusion in the law because it refers to issues (court reporters, evidence, the official verbatim record of court proceedings) that are not appropriately part of section 124 of the Code of Civil Procedure.

Code of Civil Procedures (CCP) section 124 reads as follows:

Except as provided in Section 214 of the Family Code or any other provision of law, the sittings of every court shall be public.

This provision, which seeks to ensure that court proceedings are accessible to the public, stands in intentional contrast to the closed tribunals of Old Europe that early Americans rebelled against and for which independence was fought over oceans and many years. CCP 124 was enacted in 1872, and has been substantively amended only three times, always only to enumerate the very narrow exceptions in which court proceedings may be closed to the public.

The COVID-19 global pandemic ushered in a new era of business communication, including impacting the way courts conduct business. As in business, remote court proceedings are now reality. And in this new reality, almost 150 years after CCP 124 was enacted, AB 716 represents a statement that we, the people of California, still maintain that proceedings—in person and now remote—must be open and accessible, unless closure is needed to protect health and safety. The language added by subparagraph (b) enshrines this carefully broadened policy.

Unfortunately, the language in subparagraph (c) presents a tangent that is at best unnecessary, but is more likely a cause for confusion and uncertainty in the law because it addresses issues unrelated to open and public tribunals. In proposed (c)(1), the official verbatim report of the court proceedings is addressed. Existing case law¹, statutes², California Rules of Court³, and [*Best Practices for the Use of Backup Audio Media*](#) by the Court Reporters Board of California, all address official transcripts (versus rough drafts, for example). Likewise, case law⁴ and statutory provisions⁵ address motions to correct an official transcript and what “back-up audio media” may be used for.

Likewise, (c)(2) addresses evidence, for which there is an [entire code](#). And, (c)(3) addresses the role of the court reporter creating the official verbatim record, which is addressed in statute and the California Code of Regulations⁶.

The problem with placing these elements in CCP 124 is that by doing so, they must have significance that distinguishes them from other existing law and policy. In some future case, the court will be required to review this new language, and will do so taking into consideration all of the existing statutory guidance; the court will ponder the need for, and reasons the Legislature added, new language, and an entirely new theme to CCP 124. After all, new statutory language must have meaning, must add to the body of existing law, and courts, in exercising their duties, must try to understand and give effect to new statutory language. The proposed amendments here will interject uncertainty and needlessly divert court time and resources when, in fact, no new directives are intended. The intent, as the Judicial Council understands the purpose for the amendments, is to reaffirm existing law.

It is possible, in the consideration of the Legislature, that amendments as proposed in subparagraph (c) are required *somewhere*. If so—if current law regarding evidence, court transcripts, and court reporting is unclear, and if amendments are necessary or would be

¹ See *Copley Press* (1992) 6 Cal.App.4th 106, 114.

² See Code of Civil Procedure, §§ 128, 273, and 2020.540.

³ California Rules of Court, rule 1.150

⁴ See *People v. Romero* (2008) 44 Cal.4th 386, 414.

⁵ See Code of Civil Procedure, §273, and Government Code, §69955.

⁶ See Business & Professions Code §8017, Code of Civil Procedure §269, Government Code §69941, and California Code of Regulations., title 2, division 24, §2403.

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helpful—existing statutes⁷ already address these topics broadly; any amendments or new guidance would be ideally situated in the sections that already address these topics.

Because proposed subparagraph (c) would make the law cumbersome, uncertain and confusing, and because it would add confusion to a statute that has been clear for the better part of 150 years, the Judicial Council regretfully must oppose AB 716, unless it is amended to remove subparagraph (c) in its entirety.

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

Sincerely,



Andi Liebenbaum

Attorney

AL/yc-s

cc: Jessica Devencenzi, Deputy Legislative Secretary, Office of the
Governor
Martin Hoshino, Administrative Director, Judicial Council of California

⁷ See all previous footnotes.