

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT LEG20-02

Title

Proposal for Judicial Council–Sponsored
Legislation: Remote Video Appearances in
All Civil Actions and Proceedings

Proposed Rules, Forms, Standards, or Statutes

Enact Code Civ. Proc., § 367.7

Proposed by

Civil and Small Claims Advisory Committee
Hon. Ann I. Jones, Chair
Family and Juvenile Law Advisory
Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair
Information Technology Advisory
Committee
Hon. Sheila F. Hanson, Chair

Action Requested

Review and submit comments by June 9,
2020

Proposed Effective Date

January 1, 2022

Contact

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Executive Summary and Origin

The Civil and Small Claims, Family and Juvenile Law, and Information Technology Advisory Committees recommend the Judicial Council sponsor legislation to provide statutory authority for courts to permit remote video appearances in any civil actions or proceedings including trials and evidentiary hearings. The proposal originates with recommendations included in reports from the Commission on the Future of California’s Court System and the Information Technology Advisory Committee’s Remote Video Appearances Workstream.

Background

In 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California’s Court System (Futures Commission) to examine the work of the trial courts and consider how court operations could be improved and streamlined. The Futures Commission released its final report in 2017 and noted that, “the option to attend court proceedings remotely

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.
It is circulated for comment purposes only.*

should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.”¹

In 2018, the Information Technology Advisory Committee (ITAC) formed the Remote Video Appearances Workstream (the workstream), which analyzed the state of video and digital appearances in California courts, and made recommendations to “broaden the adoption of this emerging model for court appearances.”² The workstream made several recommendations that legislative and rule proposals be developed to facilitate the use of video appearances in most civil proceedings.

Following the workstream’s report, the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, and ITAC formed a joint ad hoc subcommittee to move forward with development of legislative and rule proposals.

The Proposal

The proposed legislation would provide statutory authority for courts to permit remote video appearances in any civil action or proceeding, including trials and evidentiary hearings. The scope is broad. Examples of actions and proceedings that would be included are civil and small claims, unlawful detainers, juvenile dependency, family law, petitions for gun violence restraining orders, petitions for name changes, and sexually violent predator hearings.

The proposed legislation would also specify that the Judicial Council may adopt rules effectuating the new code section. Potential areas for rule making include the notice to be given by a person requesting a video appearance, the manner in which video appearances are to be conducted, the conditions required for a person to be permitted to appear by video, and provisions relating to the courts’ use of private vendors to provide video appearance services.

Because the proposed legislation would provide clear statutory authority for the courts to give people the option of appearing in court by video instead of in person, it would advance the judicial branch’s technology goals of (1) promoting the digital court to improve access to the courts,³ and (2) promoting legislative changes to facilitate the use of technology in court operations and the delivery of court services.⁴

¹ Judicial Council of Cal., Futures Commission Rep. (2017), pp. 221–222. (Recommendation 5.1), available online at <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.

² Remote Video Appearances Workstream, *Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase I Report, Final* (Nov. 20, 2019), p. 3 (Workstream Report), available online at <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>.

³ Judicial Council of Cal., *Strategic Plan for Technology 2019–2022* (2019), pp. 8–9, available online at <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf> (as of Feb. 11, 2020).

⁴ *Id.* at pp. 14–15.

Alternatives Considered

The committees considered the alternatives of recommending no action, recommending rules, or recommending something other than legislation or rules. The committees determined legislation providing statutory authority to courts to permit video appearances was an important first step to facilitate the use of video appearances in California. The proposal would ensure courts have clear authority to proceed with video appearances in all civil actions for all types of proceedings, including trials and evidentiary hearings. While the committees did not develop a rule proposal at this time, they anticipate doing so if the Judicial Council chooses to sponsor the legislation following public comment.

The committees considered amending existing Code of Civil Procedure section 367.5, which governs telephonic appearances, to include video, but determined that a separate code section would be clearer given that the overall scope of the case types and proceedings for video are generally broader than for telephone.

The committees considered excluding juvenile cases from the proposal. The Workstream Report noted that juvenile cases may require special attention and different rules than other civil proceedings, made no juvenile-specific recommendations, and recognized that the use of video remote technology in juvenile cases would require further discussion. (Workstream Report, p. 4.) The members of the joint ad hoc subcommittee discussed the matter and learned that courts already have used or are using video capability in juvenile cases. For example, the Superior Court of Placer County allows juveniles to appear by video from a courtroom in one location to a courtroom in another location. The committees did not want the proposal to stand as a potential obstacle to existing video appearance efforts by the courts, or create conflicts with other statutes on the subject. The committees determined it would be preferable to keep the proposed code section broad.

Fiscal and Operational Impacts

The legislation would provide courts with statutory authority to permit video appearances, but it would not require courts to permit video appearances. Courts that choose to proceed with permitting video appearances would have fiscal and operational impacts because they would need resources to run video appearances such as staff, training, equipment, and software. Government Code section 70630 authorizes courts to charge fees to recover costs of permitting parties to appear by video.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal?
- Would this proposal impact the court's current efforts to allow video appearances?
- How well would this proposal work in courts of different sizes?
- What challenges, if any, does the court anticipate facing to allow video appearances?

Attachments and Links

1. Code Civ. Proc., § 367.7, at page 5.
2. Link A: Judicial Council of Cal., Futures Commission Report (2017), <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.
3. Link B: Remote Video Appearances Workstream, *Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase 1 Report, Final* (Nov. 20, 2019), <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>.
4. Link C: Judicial Council of Cal., *Strategic Plan for Technology 2019–2022* (2019), <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>.
5. Link D: Gov. Code, § 70630, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70630.

Section 367.7 of the Code of Civil Procedure would be enacted, effective January 1, 2022, to read:

1 **§ 367.7**

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3 (a) It is the intent of this section to improve access to the courts and reduce litigation
4 costs by providing that a court may, as appropriate and practical, permit parties to appear
5 in court by video in all civil actions and proceedings including trials and evidentiary
6 hearings.

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8 (b) A court may permit a person to appear by video in any civil action or proceeding.

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10 (c) The Judicial Council may adopt rules effectuating this section.

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