

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG16-03

Title	Action Requested
Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Enact Penal Code section 690.5	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, (415) 865-4534 kimberly.dasilva@jud.ca.gov
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Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) is leading a modernization project to amend the statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices. This proposal, developed jointly by ITAC and the Criminal Law Advisory Committee, would provide express authority for permissive electronic filing and service in criminal proceedings by adding a statute to the Penal Code applying the electronic filing and service provisions of Code of Civil Procedure section 1010.6 to criminal actions.

Background

The project is progressing in two phases. Phase one occurred during 2015 and involved developing and amending the California Rules of Court effective January 1, 2016. Phase two is taking place during 2016, for rules effective January 1, 2017 and statutes effective January 1, 2018.

Phase one focused on technical changes to the rules. In most cases these changes accounted for digital copies, e-mailing, and electronic filing where those practices were already authorized by statute but where the rules had not yet been revised to acknowledge existing practices. In the absence of express legislation authorizing electronic filing and service in criminal proceedings, the committees did not recommend similar proposed amendments to the Criminal Rules.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Phase two includes this legislative proposal to add a Penal Code section authorizing permissive electronic filing and service in criminal proceedings. It also focuses on more substantive changes to the California Rules of Court and concurrent legislative proposals, which are represented in separate proposals.

The Proposal

Code of Civil Procedure section 1010.6 authorizes electronic filing and service of documents in civil proceedings. No corresponding authority exists in the Penal Code to authorize electronic filing and service of documents in criminal cases.

However, because some county justice partners may not have the resources to undertake electronic filing and service in criminal cases, this proposal incorporates only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts would not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal would provide them with express authority to do so, provided the parties consent to electronic filing and service.

This proposal would add section 690.5 to part 2 of the Penal Code to apply section 1010.6(a) and (b) to criminal proceedings.

Alternatives Considered

The committees considered whether proposing amendments to the Criminal Rules of the California Rules of Court authorizing electronic filing and service absent express statutory authority was appropriate. They concluded that express statutory authority would be clearer.

Implementation Requirements, Costs, and Operational Impacts

Because the proposal is permissive, rather than mandatory, county justice partners would not be required to electronically file and serve in criminal proceedings. Rather, the proposal would provide the option where the county justice partners are technologically capable of making the transition and where the court offers electronic filing and service. Hence, no implementation costs or operational impacts would be forced on courts or counties. Efficiencies and cost savings gained through implementing electronic filing and service procedures in criminal proceedings would likely offset any significant costs or operational impacts on participating counties.

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?

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would one year from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachment

1. Proposed new Penal Code section 690.5, at page 4

Section 690.5 of the Penal Code would be added, effective January 1, 2018, to read:

1 **§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions**

2

3 (a) Subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 are applicable to criminal
4 actions, except as otherwise provided in this code.

5

6 (b) The Judicial Council shall adopt uniform rules for the electronic filing and service of
7 documents in criminal cases in the trial courts of this state.