

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

**SPR13-16**

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Title	Action Requested
Criminal Cases: Encouraging Local Mental Health Protocols and Adding Stakeholders to Currently Mandated Meetings	Review and Submit Comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 10.951 and 10.952	January 1, 2014
Proposed by	Contact
Mental Health Issues Implementation Task Force	Eve Hershcopf, Attorney
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### Executive Summary and Origin

The Mental Health Issues Implementation Task Force (MHIITF) is proposing that the Judicial Council adopt two rule amendments to address recommendations from the final report of the Task Force for Criminal Justice Collaboration on Mental Health Issues (Mental Health Criminal Justice Task Force). The MHIITF proposes amending rule 10.951 to add a subsection to encourage courts to develop mental health case protocols. The task force also proposes amending rule 10.952 to include additional justice system stakeholders in the already mandated meetings concerning the criminal court system. These proposals are designed to encourage judicial leadership in facilitating an interbranch and interagency coordinated response to people with mental illness who have entered the criminal justice system, and to improve case processing and outcomes for defendants with mental illness or co-occurring disorders.

### Background

The judicial system is uniquely positioned to take a leadership role in coordinating an appropriate response to the disproportionate number of people with mental illness in the criminal justice system. Defendants with mental illness are overrepresented in the courtroom. One study found that 31 percent of arraigned defendants met criteria for a psychiatric diagnosis at some point in their lives and 18.5 percent had a current diagnosis of serious mental illness.<sup>1</sup>

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<sup>1</sup> Nahama Broner, Stacy Lamon, Damon Mayrl, and Martin Karopkin, "Arrested Adults Awaiting Arraignment: Mental Health, Substance abuse, and Criminal Justice Characteristics and Needs," *Fordham Urban Law Review* 30 (2002–2003), pp. 663–721.

*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.*

Defendants with mental illness often require significant judicial branch resources and their cases are often the most challenging for courts to handle appropriately. In many instances, the traditional adversarial approach is ineffective when processing cases in which the defendant has a mental illness. Connecting the defendant to mental health treatment and support services can be essential. Facilitating appropriate referrals to treatment and services for defendants with mental health issues may require courts to work closely with criminal justice partners and other community agencies.

The proposed rules revisions are designed to encourage judicial leadership in facilitating an interbranch and interagency coordinated response to people with mental illness who have entered the criminal justice system. The proposed amendment to rule 10.951 would add a subsection on mental health case protocols. The new subsection would encourage the presiding judge, supervising judge, or other designated judge, in conjunction with the justice partners, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders. The protocols would help to ensure early identification of and appropriate treatment for offenders with mental illness or co-occurring disorders with the goals of reducing recidivism, responding to public safety concerns, and providing better outcomes for these offenders while reducing costs. The proposed amendment to rule 10.952 would add various justice system stakeholders to the already mandated meetings concerning the criminal court system; in particular, justice partners such as Conditional Release Program (CONREP), the county mental health director, and the county director of the California Department of Alcohol and Drug Programs who are relevant to handling cases involving offenders with mental illness or co-occurring disorders.

The Mental Health Criminal Justice Task Force was established by former Chief Justice Ronald M. George in 2008 as part of a national project designed to assist state judicial leaders in their efforts to improve responses to people with mental illnesses in the criminal justice system. The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve system-wide responses to offenders with mental illness. The final report of the task force was accepted by the Judicial Council in April 2011.

On January 1, 2012, Chief Justice Tani G. Cantil-Sakauye appointed the MHIITF to address implementation of report recommendations under the purview of the Judicial Council and to develop a plan for implementation of recommendations in the report. These proposals to amend rules 10.951 and 10.952 are directly responsive to recommendations contained in the Mental Health Criminal Justice Task Force report.

### **Proposed Amendment to Rule 10.951**

Rule 10.951 currently prescribes the duties of the supervising (or presiding) judge of the criminal division. The Mental Health Criminal Justice Task Force report recommended that responsibility be placed on the courts and court partners to develop local responses for offenders with mental illness or co-occurring disorders to ensure early identification and appropriate treatment. The MHIITF's proposal to amend rule 10.951 addresses this recommendation by encouraging courts, together with justice partners, to develop local protocols for cases involving mentally ill offenders.

- The MHIITF proposes amending rule 10.951 to add a new subsection (subsection (c)) that encourages the supervising or presiding judge, in conjunction with the justice partners identified in rule 10.952, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders. While the development of local protocols for mental health cases is considered optimal, and thus important to encourage by rule, the current fiscal constraints together with differences in court size and local justice system culture make it unlikely that every court will be able to develop such proposals. The proposed amendment notes that local protocols “should” be developed; the development of local protocols are not mandatory.<sup>2</sup>
- The purpose of the protocols would be to ensure early identification and appropriate treatment of offenders with mental illness.
- By encouraging courts to develop local mental health case protocols, the proposal to amend rule 10.951 would benefit the judicial branch, justice partners, offenders, and the public by providing better outcomes for defendants, reducing recidivism, and responding to public safety concerns.

### **Proposed Amendment to Rule 10.952**

Rule 10.952 currently requires the supervising/presiding judge to designate judges of the court to attend regular meetings to be held with the district attorney, public defender, representatives of the local bar, probation department, court personnel, and other interested persons. The purpose of the rule 10.952 meetings is to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern.

The Mental Health Criminal Justice Task Force report recognized that all justice system stakeholders have a role in the criminal justice system’s response to defendants with mental illness, and identified a need to include a wider range of justice system partners in the rule 10.952 meetings concerning the criminal court system. The MHIITF’s proposal to amend rule 10.952 is responsive to these concerns and problems.

- The Mental Health Criminal Justice Task Force report recommended adding appropriate stakeholders to the rule 10.952 meetings.
- The MHIITF proposes amending rule 10.952 to add the following stakeholders to the courts’ regular meetings: parole, the sheriff and police departments, CONREP, the county mental health director (or designee) and the county director of the California Department of Alcohol and Drug Programs (or designee).
- The justice system stakeholders noted in the proposed amendment are county agencies with which the courts have overlapping responsibilities and interests, and are particularly

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<sup>2</sup> California Rule of Court 1.5(b)(5) clarifies that the term “should”, as used in the rules, “expresses a preference or a nonbinding recommendation.”

relevant to cases involving offenders with mental illness or co-occurring disorders. By adding these stakeholders to the court's regular meetings, the proposal to amend rule 10.952 encourages efficiency which would benefit the judicial branch, justice partners, offenders, and the public by providing for a more effective justice system response to defendants with mental illness, assisting in the fair administration of justice, leading to better outcomes for defendants, and thereby enhancing public safety.

### **Alternatives Considered**

The MHIITF considered alternatives such as education, training, guidelines, and best practices but determined that those alternatives would be more effective if they were supplemental to the two proposed rule changes.

The task force determined that a rule amendment is necessary to ensure that courts are encouraged to develop, with justice system partners, local protocols that provide guidance for handling the complex and challenging issues presented by cases involving offenders with mental health issues or co-occurring disorders. By working with justice system partners to develop local protocols that aid in early identification and appropriate treatment for this population of offenders, the courts will benefit from having clear, relevant, and appropriate guidance for case handling, including improvements in the fair administration of justice and potential financial savings through more efficient handling of such cases.

The task force also determined that a rule amendment is necessary to ensure that all of the justice partners essential for identifying and eliminating problems in the criminal court system and other problems of mutual concern, particularly problems related to cases involving offenders with mental health issues or co-occurring disorders, are included in the courts' regular meetings.

### **Implementation Requirements, Costs, and Operational Impacts**

Because the proposed amendment to rule 10.951 encourages, but does not require, courts to develop local protocols for cases involving offenders with mental health issues or co-occurring disorders, no significant implementation requirements, costs, or operational impacts for courts are expected. The committee has specifically invited comments on topics that could identify such requirements, costs, or impacts (see box below). The proposed amendment to rule 10.952 adds three additional justice system stakeholders to the courts' currently mandated meetings concerning the criminal court system, and thus the operational impacts, costs and implementation requirements are de minimus, if any.

The MHIITF is proposing these two rule amendments based on its assessment that the adoption of these changes, over time, would reduce costs incurred by courts and justice system partners for cases involving offenders with mental health issues or co-occurring disorders by encouraging courts to develop protocols that would provide for more efficient case handling, and by encouraging coordination with service providers that can provide expertise and treatment, thereby reducing defendants' involvement in the courts and criminal justice system.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the MHIITF is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?
- Is it helpful to have a statewide Rule of Court provide guidance to those jurisdictions interested in court procedures that are not mandatory?

The task force also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, revising processes and procedures (please describe).
- Would six months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

### Attachments and Links

Cal. Rules of Court, rules 10.951 and 10.952, at page 6

Rules 10.951 and 10.952 of the California Rules of Court would be amended, effective January 1, 2014, to read:

1 **Rule 10.951. Duties of supervising judge of the criminal division**

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3 **(a) Duties**

4 In addition to any other duties assigned by the presiding judge or imposed by these  
5 rules, a supervising judge of the criminal division must assign criminal matters  
6 requiring a hearing or cases requiring trial to a trial department.

7  
8 **(b) Arraignments, pretrial motions, and readiness conferences**

9 The presiding judge, supervising judge, or other designated judge must conduct  
10 arraignments, hear and determine any pretrial motions, preside over readiness  
11 conferences, and, where not inconsistent with law, assist in the disposition of cases  
12 without trial.

13  
14 **(c) Mental health case protocols**

15 The presiding judge, supervising judge, or other designated judge, in conjunction  
16 with the justice partners designated in rule 10.952, should develop local protocols  
17 for cases involving offenders with mental illness or co-occurring disorders to  
18 ensure early identification of and appropriate treatment for offenders with mental  
19 illness or co-occurring disorders with the goals of reducing recidivism, responding  
20 to public safety concerns, and providing better outcomes for those offenders while  
21 utilizing resources responsibly and reducing costs.

22  
23 **~~(e)~~(d) Additional judges**

24 To the extent that the business of the court requires, the presiding judge may  
25 designate additional judges under the direction of the supervising judge to perform  
26 the duties specified in this rule.

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28 **~~(d)~~(e) Courts without supervising judge**

29 In a court having no supervising judge, the presiding judge performs the duties of a  
30 supervising judge.

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32  
33 **Rule 10.952. Meetings concerning the criminal court system**

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35 The supervising judge or, if none, the presiding judge must designate judges of the court  
36 to attend regular meetings to be held with the district attorney, public defender,  
37 representatives of the local bar, probation department, parole, sheriff and police  
38 departments, Conditional Release Program (CONREP), county mental health director or  
39 his or her designee, county director of the California Department of Alcohol and Drug  
40 Programs or his or her designee, court personnel, and other interested persons to identify  
41 and eliminate problems in the criminal court system and to discuss other problems of  
42 mutual concern.