



Judicial Council of California
Executive and Planning Committee

www.courts.ca.gov/epmeetings.htm
executiveandplanning@jud.ca.gov

EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING

June 11, 2024

12:10 to 1:00 p.m.

Videoconference

**Advisory Body
Members Present:**

Hon. Maureen F. Hallahan (Vice-chair), Hon. Judith K. Dulcich, Hon. Samuel K. Feng, Hon. Carin T. Fujisaki, Hon. Maria D. Hernandez, Hon. Ann C. Moorman, Ms. Gretchen Nelson, and Mr. David H. Yamasaki

**Advisory Body
Members Absent:**

Hon. Brad R. Hill (Chair)

**Committee Staff
Present:**

Ms. Amber Barnett and Ms. Donna Ignacio

Staff Present:

Ms. Irene Balajadia, Mr. James Barolo, Ms. Deirdre Benedict, Ms. Deborah Brown, Mr. Joseph Carozza, Ms. Sherry Celio, Mr. Lucas Cendejas, Ms. Salena Chow, Mr. Blaine Corren, Ms. Angela Cowan, Ms. Shelley Curran, Ms. Nicole Davis, Mr. Douglas Denton, Ms. Audrey Fancy, Mr. Michael Giden, Ms. Sarah Jacobvitz, Ms. Jamie Lau, Ms. Eunice Lee, Mr. Robert Lower, Mr. Chris Magnusson, Mr. Ray Mata, Ms. Anna Maves, Ms. Pella McCormick, Ms. An McDougall, Ms. Kelly Meehleib, Ms. Fran Mueller, Ms. Donna Newman, Ms. Tiana Osborne-Gauthier, Mr. Robert Oyung, Ms. Brandie Pilapil, Ms. Sarah Rattanasamay, Ms. Lollie Roberts, Ms. Anne Ronan, Ms. Elaine Siega, Ms. Marina Soto, Ms. Laura Speed, Ms. Heather Staton, Ms. Norissa Stewart, Mr. Corby Sturges, Ms. Vida Terry, Mr. Zlatko Theodorovic, Ms. Oksana Tuk, Ms. Sadie Varela, Mr. Don Will, Ms. Martha Wright, and Ms. Carrie Zoller

OPEN MEETING

Call to Order and Roll Call

The vice-chair called the meeting to order at 12:10 p.m. Staff took roll call and made the opening announcements.

Approval of Minutes

The committee reviewed the draft minutes of the following:

- April 11, 2024, open meeting;
- May 6, 2024, action by email;
- May 22, 2024, action by email;
- May 23, 2024, closed meeting;
- May 30, 2024, closed meeting; and
- June 6, 2024, closed meeting.

Action: The committee approved the minutes of the April 11, 2024, open meeting, May 6 and May 22, 2024, actions by email, and May 23, May 30, and June 6, 2024, closed meetings.

DISCUSSION AND ACTION ITEMS

Item 1

Agenda Setting for July 12, 2024, Judicial Council Meeting (Action Required)

Review draft reports and set the agenda for the Judicial Council meeting in July.

Action: The committee set the agenda for the July 12, 2024, Judicial Council meeting by approving reports for placement on the business meeting agenda.

ADJOURNMENT

There being no further business, the meeting was adjourned at 12:28 p.m.

Approved by the committee on _____.



Judicial Council of California

Meeting Agenda

Judicial Council

Please visit
courts website:
www.courts.ca.gov
to view live meeting on
September 20, 2024.

Meeting materials
are available through
the hyperlinks in
this document.

*Open to the Public Unless Indicated as Closed
(Cal. Rules of Court, rule 10.6(a))*

*Requests for ADA accommodation should be directed to
JCCAccessCoordinator@jud.ca.gov*

Friday, September 20, 2024

CLOSED SESSION (RULE 10.6(b))—PLANNING, PERSONNEL, AND DISCUSSION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Session: 9:00 – 10:05 a.m.

OPEN SESSION (RULE 10.6(a)) — MEETING AGENDA

A link to the live videostream will be available in the Meeting Information Center at the start of the open session. If the closed session adjourns late, the start time of the open session may be delayed.

Open Session Begins: 10:20 a.m.

Call to Order

10 minutes

Swearing in of New and Reappointed Judicial Council Members

The Chief Justice will administer the oath of office to new and reappointed council members.

10 minutes

Public Comment

10 minutes

The Judicial Council welcomes public comment on general matters of judicial administration. Written comments are encouraged in advance of the meeting for specific agenda items so council members can consider them prior to the council meeting.

For more information about meeting attendance and public comment procedures, visit:

<http://www.courts.ca.gov/28045.htm>

Submit advance requests to speak and written comments for this meeting by 12:00 p.m. on Thursday, September 19, by email to:

judicialcouncil@jud.ca.gov

Chief Justice's Report

15 minutes

Administrative Director's Report

24-011 Administrative Director's Report

15 minutes

Judicial Council Internal Committee Presentation

24-170 Rules Committee | Rules and Forms Process

Speakers: Hon. Carin T. Fujisaki, Chair

25 minutes

24-018 Written Reports

CONSENT AGENDA

5 minutes

A council member may request an item be moved from the Consent Agenda to the Discussion Agenda. Please notify Josely Yangco-Fronza at 415-865-7626 at least 48 hours before the meeting.

[24-005](#) Minutes of July 12, 2024, Judicial Council Meeting

[24-153](#) Allocations and Reimbursements to Trial Courts | Funding for Court Reporters (Action Required)

Summary: Senate Bill 170 (Stats. 2021, ch. 240), which amended the Budget Act of 2021, included \$30 million ongoing General Fund to the Judicial Council for establishing a methodology to allocate funding to all trial courts to increase the number of court reporters in family law and civil cases. The budget language in the 2022 Budget Act and ongoing expanded the use of this funding but did not affect how these funds are allocated to the courts.

Because of the state's fiscal deficit, the May Revision for the fiscal year (FY) 2024-25 budget proposed reducing the funding from \$30 million to \$20 million; however, the final enacted budget for FY 2024-25 maintained the \$30 million ongoing. The Judicial Council approved the allocations for \$20 million at its July meeting. The Trial Court Budget Advisory Committee now recommends that the Judicial Council approve the court reporter allocations for the remaining \$10 million to the trial courts.

[24-161](#)**Court Facilities | 2023 Edition of the California Trial Court Facilities Standards (Action Required)****Summary:**

The Court Facilities Advisory Committee recommends adoption of the *California Trial Court Facilities Standards 2023 Edition*. Over time, various code provisions and best management practices have changed from the Judicial Council's current trial court facilities standards. Upon adoption, Judicial Council Facilities Services will apply these facilities standards for design and construction of trial court facilities.

[24-166](#)**Equal Access Fund | Distribution of Funds for CARE Act Legal Representation (Action Required)****Summary:**

Judicial Council staff recommend approving the distribution of \$18,761,000 to the Legal Services Trust Fund Commission of the State Bar of California for the implementation of the Community Assistance, Recovery, and Empowerment (CARE) Act as authorized by the Budget Act of 2024. The commission will distribute a portion of these funds through the Equal Access Fund as grants to (1) Qualified legal services projects to provide legal counsel for representation in CARE Act proceedings; (2) County public defender offices or public defender services shared with another county or organization providing public defender services to the county in the event that no qualified legal services project is available to provide representation; (3) Qualified support centers or other entities that have expertise in providing legal training and technical assistance to legal aid providers or public defenders related to the implementation of the CARE Act; and (4) the State Bar of California for administration of this program.

[24-164](#)**Equal Access Fund | Distribution of Funds for IOLTA-Formula Grants and Partnership Grants (Action Required)****Summary:**

Judicial Council staff recommend approving the distribution of up to \$40,487,700 to the Legal Services Trust Fund Commission of the State Bar of California for the Equal Access Fund Interest on Lawyers' Trust Accounts (IOLTA)-Formula Grants and Partnership Grants as authorized by the Budget Act of 2024. The commission will distribute the funds as grants to legal services providers and support centers to be used for legal services in civil matters for indigent persons and self-represented litigants to improve equal access and the fair administration of justice, as authorized by the Budget Act.

[24-165](#)**Equal Access Fund | Distribution of Funds to the California Access to Justice Commission (Action Required)****Summary:**

The Advisory Committee on Providing Access and Fairness recommends approval of a distribution of \$5 million to the California Access to Justice Commission for grants to civil legal aid nonprofits to support the infrastructure and innovations needs of legal services in civil matters for indigent persons. The Judicial Council has been directed by the state Budget Act to take this action since fiscal year 2021-22.

[24-100](#)**Judicial Branch Administration | Judicial Branch Contracting Manual (Action Required)****Summary:**

The Advisory Committee on Audits and Financial Accountability for the Judicial Branch recommends that the Judicial Council adopt proposed revisions to the *Judicial Branch Contracting Manual*. The proposed revisions implement the recommendation from the California State Auditor to add fraud reporting requirements that are substantially similar to *State Administrative Manual* section 20080.

24-124: Judicial Council report pending and will be considered by the Executive and Planning Committee at a later date.

[24-124](#)**Judicial Branch Technology | IT Modernization Funding, Fiscal Year 2024-25 (Action Required)****Summary:**

The Budget Act of 2022 appropriated funding for judicial branch technology modernization. The Judicial Council has directed the Technology Committee to recommend funding allocations and provide regular updates on approved allocations. The recommended allocations would support projects that align with the judicial branch's technology goals, while allowing individual courts to expand their use of technology to best meet their particular business needs.

[24-099](#)**Jury Instructions | Criminal Jury Instructions (2024 Supplement) (Action Required)****Summary:**

Recent developments in the law necessitate revision of the criminal jury instructions to keep them current with statutory and case authority. To that end, the Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. Once approved, the revised instructions will be published in the 2024 supplement of *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

[24-021](#)**Juvenile Law | Fiscal Year 2024-25 Funding Allocation for California Court Appointed Special Advocate Association (Action Required)****Summary:**

The Family and Juvenile Law Advisory Committee recommends approving the allocation of \$20 million in Court Appointed Special Advocate program grant funding, included in the Budget Act of 2024, to the California Court Appointed Special Advocate Association for fiscal year 2024-25.

[24-033](#)**Language Access Plan | Allocations for Signage and Technology Grant Program, Cycle 6, Fiscal Year 2024-25 (Action Required)****Summary:**

The Advisory Committee on Providing Access and Fairness and the Information Technology Advisory Committee recommend approving proposed grant awards for the Language Access Signage and Technology Grant Program of \$2.35 million to expand language access for court users. For Cycle 6 (fiscal year 2024-25), 18 courts applied for and will be awarded grants for signage and technology projects.

[24-146](#)**Rules and Forms | Appellate Procedure: Civil Case Information Statement, Calendar Preference, and Extension of Time (Action Required)****Summary:**

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.100 to require appellants to file the *Civil Case Information Statement* (APP-004) within 15 days after the reviewing court assigns the appeal a case number and revising form APP-004 to allow the appellant to provide a nonstatutory reason why the appeal is eligible for calendar preference. The committee also recommends revising the forms used by parties to request extensions of time to file briefs to make slight substantive and formatting improvements.

[24-149](#)**Rules and Forms | Appellate Procedure: Deadline for Amicus Curiae Briefs (Action Required)****Summary:**

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.200 to provide a deadline for filing an application to file an amicus curiae brief when no respondent's brief has been filed. This proposal is intended to close a gap in the current rule.

[24-148](#)**Rules and Forms | Appellate Procedure: Expanded Clerk's Transcripts in Felony Appeals (Action Required)****Summary:**

The Appellate Advisory Committee recommends amending California Rules of Court, rule 8.320 to authorize the Courts of Appeal to require, by local rule, that the clerk's transcript in felony appeals include additional court records from the superior court file beyond those currently required in rule 8.320(b) or (d)(1). This amendment is intended to help minimize delays in felony appeals occasioned by the need to cure omissions from, or make augmentations to, the clerk's transcript.

[24-147](#)**Rules and Forms | Appellate Procedure: Form Briefs for Use in Limited Civil Appeals (Action Required)****Summary:**

The Appellate Advisory Committee recommends the approval of three optional form briefs that parties can use in limited civil appeals, as well as related information sheets that explain how to use each form brief. Additionally, the committee recommends amending one rule of court and revising one information sheet to address these new forms. The new forms are intended to assist self-represented litigants and attorneys unfamiliar with appellate practice in drafting effective briefs before the appellate division of the superior court.

[24-131](#)**Rules and Forms | CEQA Actions: Initial Case Management Conferences (Action Required)****Summary:**

The Civil and Small Claims Advisory Committee recommends amending rule 3.2226 of the California Rules of Court to implement the provisions of Senate Bill 149 concerning initial case management conferences for actions brought under the California Environmental Quality Act.

[24-168](#)**Rules and Forms | Civil Practice and Procedure: Case Dismissal With Retained Jurisdiction (Action Required)****Summary:**

The Civil and Small Claims Advisory Committee recommends amending California Rules of Court, rule 3.1385 and revising form CIV-110 to implement amended Code of Civil Procedure section 664.6, which allows courts to dismiss cases without prejudice and retain jurisdiction to enforce settlement terms. The rule would be amended to incorporate advisory committee comments clarifying the application of specific subdivisions of the rule depending on whether dismissal under section 664.6 is sought. The recommended form revision would add a new option to request dismissal without prejudice and with retained jurisdiction.

[24-107](#)**Rules and Forms | Civil Practice and Procedure: Memorandum of Costs (Action Required)****Summary:**

The Civil and Small Claims Advisory Committee recommends revising the optional form litigants use for claiming prejudgment costs under Code of Civil Procedure sections 1032 and 1033.5 (form MC-010) to add a certification under penalty of perjury for the costs submitted. The committee also recommends on form MC-010 and its companion worksheet (form MC-011) (1) removing the references to fees for hosting electronic documents as a cost because these fees have sunsetted as an expressly allowable cost and (2) relocating the item “Models, enlargements, and photocopies of exhibits” on the lists of costs. The origins of this proposal are a litigant’s challenge to form MC-010’s verification language, a sunset provision in the statute, and a suggestion from a form user to make parallel the cost items in the two forms.

[24-108](#)**Rules and Forms | Civil Practice and Procedure: Order on Unlawful Use of Personal Identifying Information (Action Required)****Summary:**

The Civil and Small Claims Advisory Committee recommends revising form CIV-165, *Order on Unlawful Use of Personal Identifying Information*, for a judicial officer to identify (1) the business entity at issue in the petition underlying the order and (2) its corresponding file number with the Secretary of State if identified in the petition. The recommendation responds to a request from the Secretary of State’s office for more information to allow it to act on a court’s determination that a petitioner’s personal identifying information was used unlawfully in a business entity filing. The revisions are intended to assist the Secretary of State in locating the offending record so that Secretary of State staff can perform the steps necessary to comply with the court’s order granting relief to a petitioner.

24-145: Judicial Council report pending and will be considered by the Executive and Planning Committee at a later date.

[24-145](#)**Rules and Forms | Civil Practice and Procedure: Rule and Forms to Implement Assembly Bill 1119 (Action Required)****Summary:**

Assembly Bill 1119 (Stats. 2023, ch. 562), enacted October 8, 2023, requires the Judicial Council to adopt and revise forms as necessary to implement a new procedure for debtors’ examinations used to enforce judgments concerning consumer

debts. To implement AB 1119, the Civil and Small Claims Advisory Committee recommends revising six forms and adopting six mandatory forms and one rule.

[24-130](#)**Rules and Forms | Civil Practice and Procedure: Tentative Rulings (Action Required)****Summary:**

Rule 3.1308 of the California Rules of Court requires courts that offer tentative rulings in civil law and motion matters to make all tentative rulings available by telephone. The Civil and Small Claims Advisory Committee recommends amending the rule to eliminate that requirement, given the variety of different court practices necessitated by individual court circumstances.

[24-036](#)**Rules and Forms | Court Interpreters: Implementation of Assembly Bill 1032 (Action Required)****Summary:**

Recent statutory changes were enacted by Assembly Bill 1032 (Pacheco; Stats. 2023, ch. 556), relating to provisionally qualified court interpreters. The Court Interpreters Advisory Panel recommends the amendment of rule 2.893 of the California Rules of Court and revisions to four forms to conform with those changes.

[24-144](#)**Rules and Forms | Criminal Law and Family Law: Changes to Form MIL-100 (Action Required)****Summary:**

The Family and Juvenile Law Advisory Committee and Criminal Law Advisory Committee recommend revising form MIL-100. The Family and Juvenile Law Advisory Committee recommends revising form MIL-100 to implement the requirements of Family Code section 211.5, which was added by Senate Bill 1182 (Stats. 2022, ch. 385). The changes allow the court to comply with section 211.5 when the form is filed in a family law case involving a veteran. The Criminal Law Advisory Committee recommends additional revisions to form MIL-100 to clarify procedures under Penal Code section 858 when the form is filed in a criminal case and to reference treatment options for pretrial diversion under Penal Code section 1001.80. The committees also recommend updating and reformatting the information in the form for improved readability and usefulness.

[24-132](#)**Rules and Forms | Criminal Law: Firearm and Body Armor Prohibitions (Action Required)****Summary:**

The Criminal Law Advisory Committee recommends revising six criminal forms to incorporate firearm and body armor prohibitions enacted in recent legislation. The committee also recommends revisions to the plea and firearm relinquishment forms to reflect new procedures on firearm relinquishment, clarify prohibited items and relinquishment requirements, and refer to the possibility of a lifetime prohibition on firearm possession for misdemeanor domestic violence offenses. Finally, the committee recommends additional revisions to the felony plea form based on other statutory changes, and to the criminal protective order forms based on stakeholder suggestions.

[24-037](#)**Rules and Forms | Criminal Law: Parole Period Advisement
(Action Required)****Summary:**

The Criminal Law Advisory Committee recommends amending rule 4.433 of the California Rules of Court to add a reference to the parole periods described in Penal Code section 3000.01. The recommended addition to the rules is to the provision on the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence. The proposed amendment reflects a legislative change and is intended to guide sentencing judges in accurately informing defendants of relevant parole periods.

[24-154](#)**Rules and Forms | Family and Juvenile Law: Recognition and Enforcement of Tribal Court Child Custody Orders
(Action Required)****Summary:**

The Tribal Court-State Court Forum and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council approve two new forms and revise four existing forms to clarify that the requirement to recognize and enforce child custody orders under the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (found in Family Code sections 3400-3465) applies to custody orders issued by a tribal court. Tribal court judges report that they have experienced problems having their child custody orders registered and enforced because the existing form refers only to out-of-state custody orders and does not reference tribal court orders.

[24-162](#)**Rules and Forms | Family and Juvenile Law: Technical Changes
(Action Required)****Summary:**

Judicial Council staff have noted minor errors in five forms and recommend revising them to make nonsubstantive technical changes and corrections to improve their accuracy and to avoid causing confusion for court users, clerks, and judicial officers.

24-160: Judicial Council report pending and will be considered by the Executive and Planning Committee at a later date.

24-160**Rules and Forms | Family Law: Adoption Forms (Action Required)****Summary:**

The Family and Juvenile Law Advisory Committee recommends adopting one new form and revising six forms to simplify, clarify, and provide additional guidance necessary during the adoption process for all adopting parents, and their counsel if represented. The committee further recommends revising the adoption request form to conform to Assembly Bill 1650 (Patterson; Stats. 2023, ch.76), which requires that the petitioner inform the court, in writing, whether the petitioner has entered, or has agreed to enter, into a postadoption contact agreement.

[24-113](#)**Rules and Forms | Judicial Branch Education: Fairness and Access Requirements (Action Required)****Summary:**

Rule 10.469 of the California Rules of Court has generated some confusion about fairness and access education requirements for judicial officers. Therefore, the Center for Judicial Education and Research Advisory Committee proposes adopting rule 10.465 and amending rule 10.469 to clarify those education requirements. The proposal also makes related technical changes to rules 10.461 and 10.462.

24-150: Judicial Council report pending and will be considered by the Executive and Planning Committee at a later date.

24-150**Rules and Forms | Juvenile Law: Harm of Removal (Action Required)****Summary:**

To implement recent legislation creating new factors to be considered by the juvenile court at a detention hearing, the Family and Juvenile Law Advisory Committee proposes amending three rules and revising one Judicial Council form, effective January 1, 2025. Senate Bill 578 (Ashby; Stats. 2023, ch. 618) amended Welfare and Institutions Code section 319 to require the court to consider the impact on the child when being separated from their parent or guardian at a detention hearing. The proposal would amend rules and revise a form related to the detention hearing to address the new reporting requirements and clarify the court's role in mitigating harm to the child related to removal from their home.

[24-159](#)**Rules and Forms | Juvenile Law: Restraining Orders (Action Required)****Summary:**

The Family and Juvenile Law Advisory Committee recommends amending several California Rules of Court, and revising several forms to conform to recent statutory changes that impact juvenile restraining orders. Assembly Bill 1621 (Gipson; Stats. 2022, ch. 76) redefines "firearm precursor parts" and Assembly Bill 92 (Connolly; Stats. 2023, ch. 232) specifies that a person who is prohibited from possessing firearms is also prohibited from possessing, owning, or buying body armor. The committee also proposes a new notice of hearing form that is separate from the temporary restraining order forms and a new rule clarifying the requirement that the juvenile court that has jurisdiction of a child or youth must hear requests for restraining orders initiated by or brought against the child or youth.

24-136: Judicial Council report pending and will be considered by the Executive and Planning Committee at a later date.

24-136**Rules and Forms | Probate Conservatorship: Care Plan (Action Required)****Summary:**

To implement recent legislation, the Probate and Mental Health Advisory Committee recommends revising one form and adopting one form for mandatory use by a probate conservator of the person to prepare and file the conservatorship care plan required by Probate Code section 2351.2, effective January 1, 2025. As required by Probate Code section 2352.5, the revised form also includes the conservator's determination of the conservatee's level of care.

[24-155](#)**Rules and Forms | Probate Conservatorship: Confidential Declaration Forms (Action Required)****Summary:**

The Probate and Mental Health Advisory Committee recommends adopting one form, revising one form, and revoking and replacing one form for use as declarations regarding the abilities and capacities of a probate conservatee or proposed conservatee. This recommendation updates the forms to conform to the law as amended by recent legislation, including Assembly Bill 1194 (Stats. 2021, ch. 417) and Assembly Bill 1663 (Stats. 2022, ch. 894), and makes the forms easier for professional declarants to use to communicate their conclusions to the court.

[24-151](#)**Rules and Forms | Probate Guardianship: Participation of a Minor Ward in Court (Action Required)****Summary:**

The Probate and Mental Health Advisory Committee recommends amending rule 7.1016 of the California Rules of Court to conform to Senate Bill 654 (Stats. 2021, ch. 768, § 2), which amended Family Code section 3042 to place additional conditions on a minor child's participation in court or testimony in proceedings, including probate *guardianships of the person*, that address child custody or visitation. The committee also recommends amending the rule to conform more closely to statute by limiting its application to specified proceedings and expanding its protections to apply to wards who are parties, as well as to express its requirements more clearly.

[24-157](#)**Rules and Forms | Protective Orders: Implementation of Body Armor Restrictions Under AB 92 (Action Required)****Summary:**

Effective January 1, 2024, under Assembly Bill 92 (Stats. 2023, ch. 232) a person prohibited from possessing firearms under state law is also prohibited from possessing, owning, or buying body armor. To implement AB 92, the Family and Juvenile Law Advisory Committee recommends revisions to several domestic violence restraining order forms to include body armor prohibitions.

[24-156](#)**Rules and Forms | Protective Orders: Implementation of SB 459 (Action Required)****Summary:**

To implement Senate Bill 459 (Stats. 2023, ch. 874), the Family and Juvenile Law Advisory Committee recommends the adoption of a new series of domestic violence restraining order forms to allow either party to request to change or end a domestic violence restraining order. The proposal also recommends changes to existing family law forms and a family law rule of court to reflect the new proposed process. The recommended changes will help parties, attorneys, and court professionals understand the procedures to modify or terminate orders made in a domestic violence restraining order.

[24-167](#)**Rules and Forms | Protective Orders: Revisions to Civil Forms to Implement New Law (Action Required)****Summary:**

The Civil and Small Claims Advisory Committee recommends the revision of numerous protective order forms to implement three significant changes to the law. First, changes are needed to all the restraining order form series, including the Gun Violence, Civil Harassment, Elder Abuse, Workplace Violence, and Private Post-Secondary School Violence forms, to implement a new law prohibiting the possession of body armor by those who are prohibited from possessing firearms. Second, further changes are needed to gun violence restraining order forms to reflect a new law that permits the acquisition of body armor to be considered as evidence in determining whether to issue such a restraining order. Finally, additional changes are needed to certain workplace violence restraining order forms to implement new laws that add harassment as a basis for such orders, permit collective bargaining representatives to petition for orders, and allow the employee who suffered the harassment, violence, or threat of violence to opt out of being named in orders.

[24-140](#)**Rules and Forms | Traffic: Ability-to-Pay Request Form and Court Order (Action Required)****Summary:**

The Traffic Advisory Committee recommends revising two ability-to-pay forms to incorporate options currently offered through the court's online ability-to-pay tool, MyCitations. Multiple stakeholders have requested the same options as MyCitations. Specifically, stakeholders have requested the ability to offer a plea on the form, instead of requiring litigants to go to court.

[24-143](#)**Rules and Forms | Traffic: Instructions for Notice to Appear and Related Forms (Action Required)****Summary:**

The Traffic Advisory Committee recommends revising the manual of instructions for the notice to appear and related forms (form TR-INST) to improve clarity and consistency. The revisions include technical amendments and corrections and respond to suggestions from forms users.

[24-142](#)**Rules and Forms | Traffic: Mandatory Reminder Notices--Infraction Cases (Action Required)****Summary:**

The Traffic Advisory Committee recommends amending a rule of court to clarify the procedures for sending infraction reminder notices. The committee also recommends adding an exception to the mandatory notice procedures when (1) the defendant does not have a valid physical mailing address or (2) the court does not have the necessary information (a litigant's email address or mobile number) or the technological capability to send a notice electronically. Additionally, the committee recommends amendments to the rule to improve readability and to comply with current law.

[24-101](#)**Trial Courts | Standard 2.2 Diversion Reporting (Action Required)****Summary:**

The Court Executives Advisory Committee recommends amending standard 2.2 of the California Standards of Judicial Administration, which gives guidance to trial courts on the types of matters that remove a case from court control for purposes of calculating computation of time related to case disposition time goals. Standard 2.2(m)(2)(C) specifies that felony or misdemeanor cases in diversion programs under Penal Code section 1000 et seq. should be excluded from time computation, but the standard is unclear as to whether only drug diversion or all diversion programs under the Penal Code should be excluded. Revising the language in the standard is intended to increase clarity, ensure consistent data reporting, and support council goals related to operational efficiency and improved caseload management

DISCUSSION AGENDA**24-163****Judicial Branch Education | Environmental Law
(No Report. No Action Required.)****Summary:**

This presentation will provide an introduction to the importance of environmental law as an emerging area. It will include an overview of environmental law and climate change, and the role of the California judiciary as a thought leader and leader in judicial education.

Speakers:

Hon. Ronald B. Robie, Court of Appeal, Third Appellate District
Hon. Stacy E. Boulware Eurie, Court of Appeal, Third Appellate District
Hon. Brian L. McCabe, Superior Court of Merced County

15 minutes

24-139**Court Facilities | Sustainability Efforts in Facilities Services
(No Report. No Action Required.)****Summary:**

The "Facilities Services Sustainability Overview" will outline current sustainability efforts within Facilities Services, focusing on key projects and initiatives that enhance energy efficiency, reduce emissions, conserve water, and improve waste management. It will highlight major initiatives like the Deep Energy Retrofit Study, Statewide Solar, EV charger installations, and discuss future goals, long-term planning, and collaboration benefits for judicial infrastructure and the community.

Speakers:

Hon. Eric J. Wersching, Superior Court of Orange County
Mr. Tamer Ahmed, Facilities Services

15 minutes

INFORMATION AGENDA (NO ACTION REQUIRED)[24-158](#)**Judicial Council Update | Trial Court Facility Modifications Report for Quarter 4 and Annual Summary for Fiscal Year 2023-24****Summary:**

This informational report to the Judicial Council outlines (1) allocations of facility modification funding made to improve trial court facilities in the fourth quarter (April through June) of fiscal year 2023-24, and (2) a summary of all funding allocations during the fiscal year. To determine allocations, the Trial Court Facility Modification Advisory Committee reviews and approves facility modification requests from across the state in accordance with the council's *Trial Court Facility Modifications Policy*.

[24-152](#)**Report to the Legislature | California Community Corrections Performance Incentives Act of 2009: Findings From the SB 678 Program (2024)****Summary:**

Penal Code section 1232 requires the Judicial Council to submit an annual report to the Legislature on the implementation of the California Community Corrections Performance Incentives Act of 2009 (Stats. 2009, ch. 608). The legislation seeks to alleviate state prison overcrowding by reducing the number of individuals on felony supervision who are sent there. The program is also designed to encourage county probation departments to use evidence-based supervision practices to accomplish these goals. This report includes background information about the act, describes policy changes that impacted the ongoing implementation of the program, and presents findings related to program outcomes. In previous years, the report included recommendations for program improvement. Recommendations have not been included in the past two reports due to those recommendations having been largely implemented.

[24-035](#)**Report to the Legislature | Report on Cash Flow Loans Made to Courts in 2023-24****Summary:**

Under Government Code section 68502.6(d), the Judicial Council is required to report annually to the Legislature and the Department of Finance on all cash flow loans made to the trial courts. There were no loans made in fiscal year 2023-24. On or before August 30, 2024, Judicial Council staff submitted the *Report on Cash Flow Loans Made to Courts in 2023-24*.

Appointment Orders

24-171

Appointment Orders since the last business meeting.**Adjournment**



Judicial Council of California

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Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date

July 23, 2024

Action Requested

Review and Approve

To

Members of the Executive and Planning
Committee

Deadline

August 15, 2024

From

Judicial Council staff
Leah Rose-Goodwin, Principal Manager
Kristin Greenaway, Supervising Research
Analyst
Office of Court Research
Business Management Services

Contact

Mustafa Sagir, Senior Research Analyst
415-865-7553 phone
mustafa.sagir@jud.ca.gov

Subject

Increase in Full-Time Equivalency of
Subordinate Judicial Officer Position in the
Superior Court of Calaveras County

Executive Summary

Office of Court Research staff recommend that the Judicial Council's Executive and Planning Committee (Executive Committee) approve a fractional increase in the workload of the Superior Court of Calaveras County's subordinate judicial officer (SJO) position. The SJO position would change from 0.8 full-time equivalent (FTE) to 1.0 FTE. The Calaveras court has informed council staff that the court has experienced a higher volume in caseloads for the SJO. The court states that with its Community Assistance Recovery and Empowerment (CARE) court's implementation by the end of the calendar year, the Calaveras court anticipates a further workload increase. The Calaveras court indicates that one of the members on the CARE Court Committee would have been the Family Law Facilitator (FLF); however, persistent recruitment and retention challenges for this position have led the court to assign these responsibilities to the

SJO instead. Confirming this request is consistent with established council policy of improving access to justice by providing judicial resources that are proportionate to court workloads.

Recommendation

Office of Court Research staff recommend that the Executive and Planning Committee approve the request by the Superior Court of Calaveras County for an increase in the FTE of the SJO position from 0.8 to 1.0 FTE.

Relevant Previous Council Action

In 2007 the Judicial Council adopted a policy for the review and approval of requests from trial courts to change the number of subordinate judicial officer positions and delegate approval authority to its Executive Committee. Government Code section 71622(a) grants authority to the council to determine the number and type of subordinate judicial officer positions in each trial court.¹

More specifically, the Judicial Council adopted a policy pertaining to changes in the number and status of SJO positions that, for the purposes of the current request, contain the following elements:

1. To establish a new SJO position, permanently eliminate an SJO position, or change the time base of an existing SJO position, a court must request and obtain approval from the Executive Committee. The requesting court must fund and bear all costs associated with an additional or augmented SJO position.
2. If an increase in the number of SJO positions is sought, the court must submit a request in writing to the appropriate Judicial Council regional administrative director.² A request must contain a certification by the presiding judge that the court has sufficient funds in its ongoing budget to cover the cost of any additional or augmented position. Judicial Council staff must provide the Executive Committee with (1) an estimation of the requesting court's ability to fund one-time and ongoing costs resulting from the establishment or augmentation of a new position, and (2) a confirmation of need, both SJO workload and overall judicial need, based on the most recent council-approved Judicial Needs Assessment.
3. The Executive Committee will authorize new or augmented SJO positions only if (1) the court can continuously fund the associated increased costs, and (2) the most recent council-approved Judicial Needs Assessment demonstrates that the requesting court's SJO workload justifies additional SJO positions and cannot be handled with existing judicial resources. The Executive Committee's decision to change the number or type of SJO positions must be in writing and contain an analysis of the factors underlying the decision.

¹ Judicial Council of Cal., mins. (Feb. 23, 2007), item 9, p. 12, and item 10, p. 15, www.courts.ca.gov/documents/min0207.pdf.

² The position of regional administrative director was eliminated in 2012 as a result of the restructuring of the Administrative Office of the Courts (former name of the Judicial Council staff organization).

4. The Executive Committee will eliminate or decrease the time base of an SJO position upon the request of a trial court.

Analysis/Rationale

The request by the Superior Court of Calaveras County for the augmentation³ of the SJO position from 0.8 FTE to 1.0 FTE is based on several factors. Primarily, the court states that it has experienced a higher volume of caseloads for the SJO. Moreover, with the implementation of its CARE court expected by the end of the calendar year, the Calaveras court anticipates a further increase in SJO caseloads. Further, the court also notes that while a Family Law Facilitator (FLF) would typically serve on the CARE Court Committee, the Calaveras court has consistently had difficulty with recruitment and retention for this position. Consequently, the SJO would assume the responsibilities of the FLF.

Although the augmentation requested by the Calaveras court is modest, it could have a significant impact. According to the *2022 Update of the Judicial Needs Assessment*, the court operates with a relatively limited number of judicial officers (2.3 authorized judicial positions, 2.4 judicial positions equivalents).⁴ Even a fractional increase in judicial resources could measurably enhance the court's capacity in its efforts to serve the needs of the residents of Calaveras County.

The Calaveras court confirms that amending the position to 1.0 FTE will add an annual cost difference of \$22,144 plus benefits. This increase is within the court's budget and is expected to be sustainable for the foreseeable future.

Confirming the court's request in this matter is within the scope of the Judicial Council's responsibilities under Government Code section 71622(a),⁵ which delegates authority to the Executive Committee for review and approval of courts' requests to permanently adjust the workload or number of SJOs serving in a court.⁶

Policy implications

Confirming this request for an augmentation of FTE of the present 0.8 FTE SJO position to an FTE of 1.0 is consistent with well-established tenets of council policy on SJO positions.

Comments

This proposal, which is consistent with council policy on the status and funding of SJO positions, did not circulate for comment.

³ In its letter to the Executive Committee, the court used the term "convert" when referencing the requested action the committee should take. That term has a specific meaning related to SJOs and is not used here; instead, the term "augmentation" is used to describe the requested action.

⁴ Update of the Judicial Needs Assessment Study, 2022, www.courts.ca.gov/documents/Report-to-the-Legislature_2022-Update-of-the-Judicial-Needs-Assessment.pdf.

⁵ "Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court." (Gov. Code, § 71622(a).)

⁶ Judicial Council of Cal., mins. (Feb. 23, 2007), item 10, p. 15, www.courts.ca.gov/documents/min0207.pdf.

Alternatives considered

The proposed increase in the time base of the Calaveras court's SJO position is consistent with council policy. On that basis, no alternatives were considered.

Fiscal and Operational Impacts

The Calaveras court has performed the necessary budget analysis to confirm that it has sufficient funds to pay for the costs associated with this request. Implementing the recommendation would generate no fiscal or operational costs to the branch as a whole.

Attachments and Links

1. Attachment A: Letter from Presiding Judge Timothy S. Healy, Superior Court of Calaveras County, to Executive and Planning Committee (June 5, 2024)



Superior Court of California County of Calaveras

400 Government Center Drive
San Andreas, CA 95249
(209) 754-9800 Voice (209) 754-6296 Fax
www.calaveras.courts.ca.gov

Timothy S. Healy
Presiding Judge

David M. Sanders
Asst. Presiding Judge

Margaret L. Smith
Court Executive Officer

June 5, 2024

Executive & Planning Committee
JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue
San Francisco, CA 94102

RE: Request for FTE Increase of Subordinate Judicial Officer Position

Dear Members of the Executive Planning Committee:

Superior Court of California, County of Calaveras is requesting to convert its Subordinate Judicial Officer (SJO) position from a .8 to a 1 FTE.

As anticipated, the Court has experienced a higher volume in caseloads for the SJO. With CARE Court's implementation deadline approaching by the end of the calendar year, the Court anticipates a further increase in calendars. One of the members on the CARE Court Committee would have been the Family Law Facilitator (FLF), but the Court has always had and is currently having a difficult time recruiting and retaining this position. Due to the difficulty of filling the position, these tasks would ultimately fall on the SJO.

This request is to ensure that the community is properly served by the Court.

Please feel free to contact me at (209) 754-6213 or at thealy@calaveras.courts.ca.gov should any member have questions. Thank you.

Sincerely,

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CALAVERAS

Timothy S. Healy
Presiding Judge



CJER Advisory Committee Guidelines on Proposals From Other Advisory Committees and Task Forces That Include Education or Training

Approved by the Executive and Planning
Committee on TBD



Judicial Council of California

Center for Judicial Education &
Research Advisory Committee

CJER Advisory Committee Guidelines on Proposals From Other Advisory Committees and Task Forces That Include Education or Training

Purpose of Guidelines

These guidelines are intended to provide guidance to the Judicial Council, its internal committees, and other advisory committees and task forces regarding proposals that include education or training and to help ensure coordination, consistency, and collaboration in education services for the judicial branch.

Under California Rules of Court, rule 10.50, the Center for Judicial Education and Research Advisory Committee (CJER Advisory Committee) is primarily responsible for making recommendations to the Judicial Council for improving the administration of justice through comprehensive and quality education and training for judicial officers and other judicial branch personnel. The committee is further required under rule 10.50(c)(4) to review and comment on proposals from other advisory committees and task forces that include education and training of judicial officers or court staff to ensure coordination, consistency, and collaboration in education services.

The committee recognizes that issues about the need for education or training will often come up as the other advisory committees and task forces discuss issues within their central purview. These guidelines are not intended to limit that full discussion; they are intended only to provide guidance on how to seek appropriate review and feedback from the CJER Advisory Committee on those education issues before the proposals have been recommended to the Judicial Council for approval.

Considerations in Determining Whether to Propose New Rules on Education

The advisory committee or task force should first consider the Rules Committee's policy on the need for a new rule: "The Judicial Council should exercise restraint in adopting a rule if the problem can be adequately addressed through either judicial branch education or a standard of judicial administration."

Similarly, the CJER Advisory Committee holds a strong preference for other advisory committees and task forces to not recommend adopting a rule if the problem can be adequately addressed through adding coverage of the issue to an existing curriculum, adding coverage of the issue to an existing course or program, or developing a new education product with coverage of the issue. The CJER Advisory Committee oversees nine curriculum committees, which collectively are responsible for regularly maintaining and updating the curricula that cover all the subject areas and audiences in the judicial branch. The CJER Advisory Committee will approve

the overall education plan for the branch, and will be able to refer most of the issues raised by another advisory committee or task force to the appropriate curriculum committee to address.

The judicial branch education rules (Cal. Rules of Court, rules 10.450–10.491) were developed by the CJER Advisory Committee to work as a system. Common approaches were used, individual elements need to work in complementary ways, and specific values underlie the rules. For example, there is an intent underlying the rules that each individual judge can best determine, with the presiding judge, his or her own education needs in the various subject areas, and so the rules are designed to set out more general education requirements and expectations rather than more specific subject matter or hours requirements, or both, that would apply to everyone. Therefore, the CJER Advisory Committee’s strong preference regarding new rules on education proposed by other advisory committees or task forces would be to develop them as a joint proposal with the other advisory committee or task force with agreement by the two bodies on the proposal.

What Proposals Should Be Submitted

Any proposal that is primarily about education or training should be submitted to the CJER Advisory Committee for review and feedback. Examples would include (1) proposed new rules of court on education; (2) proposed new education requirements, expectations, or recommendations; (3) proposed new education products or opportunities; (4) proposals that would require a curriculum or course to include coverage of specified issues; and (5) proposals that would require education or training for a new audience.

Any proposal that contains elements that significantly involve or impact education or training should be submitted for review and feedback on those elements. These proposals or elements of significant impact may raise policy issues or implementation issues, or both. An example of a policy issue would be a proposal to require by rule of court that judges participate in education on ethics. An example of an implementation issue would be a proposal to include education on ethics in an existing course or curriculum on family law. Implementation issues often include resource issues. If the issue involves a significant demand on existing resources or a significant change in existing priorities, the issue may rise to the level of a policy issue. The CJER Advisory Committee will involve staff to the committee in reviewing and analyzing the issues and in preparing feedback.

When Proposals Should Be Submitted

Proposals that are primarily about or significantly involve or impact education should be submitted to the CJER Advisory Committee for review and feedback at the earliest opportunity; rules proposals should be submitted to the committee before circulation for comment. Proposals should be submitted to the committee before they have been recommended to the Judicial Council for approval. By reviewing proposals at an early stage, the committee can provide early comments, which may guide the other advisory committee in further developing the proposal or

in requesting that public comments address particular issues. This early-stage review will also help identify proposals that need to be coordinated with other proposals, either from the CJER Advisory Committee or from another advisory committee.

Both the Executive and Planning Committee and the Rules Committee can help in identifying proposals that come before them from other advisory committees or task forces that include education or training. Both of these Judicial Council internal committees can refer the advisory committee or task force to the CJER Advisory Committee for review and feedback of such proposals.

To Whom Proposals Should Be Submitted

Proposals that involve or impact education should be submitted to the chair of the CJER Advisory Committee and to lead staff to the committee. The submission should indicate any specific issues on which the committee wants review and feedback and should indicate the timeline requested for the review and feedback.



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

Telephone 415-865-4200 · Fax 415-865-4205

M E M O R A N D U M

Date

August 2, 2024

Action Requested

Please Review

To

Members of the Executive and Planning
Committee

Deadline

N/A

From

Shelley Curran
Administrative Director
Judicial Council

Contact

Randie Chance, Principal Manager
916-643-6985

Randie.Chance@jud.ca.gov

Francine Byrne, Director
Criminal Justice Services

Kara Portnow, Supervising Attorney
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Subject

Pretrial Delays in Sexually Violent
Predator Cases

On February 14, 2024, the Judicial Council's Executive and Planning Committee requested the Administrative Director to conduct a review of pretrial delays in sexually violent predator (SVP) cases within six months. This report fulfills that request. It provides background on issues related to SVP case processing delays, describes the SVP commitment process, identifies potential reasons for the delays, and provides suggestions for methods to potentially reduce case processing time.

The causes of delays in SVP cases include discovery issues, treatment progression, case management challenges, difficulties in scheduling experts, and caseload concerns. These causes do not exclusively lie within the control of the judicial branch. However, training about SVP law, case management strategies, and timing standards could help judges take a more proactive role in managing continuance requests and ultimately being able to process these cases more efficiently.

I. Background

In August 2023, the California Supreme Court held that persons facing commitment under the Sexually Violent Predator Act (Welf. & Inst. Code, [§ 6600](#) et seq.)¹ have a due process right to a timely trial. (*Camacho v. Superior Court* (2023) 15 Cal.5th 354, 379.) In *Camacho*, the state had filed a sexually violent predator (SVP) petition in 2006 seeking indefinite commitment.² During the next 15 years, the trial court continued the case over 200 times without trial.³ (*Id.* at pp. 372, 375.) In reviewing this record, the court noted:

Although we find no due process violation in the case before us, we underscore the vital role of trial courts in safeguarding the timely trial right of alleged SVPs. Involuntary commitment entails “a massive curtailment of liberty.” (*Humphrey v. Cady* (1972) 405 U.S. 504, 509.) In the context of SVP proceedings, the deprivation of liberty begins when a court finds probable cause to hold an alleged SVP in state custody pending trial. In making determinations that will affect when trial is held, the trial court must take due account of the individual’s interests in prompt adjudication and take decisive steps to guard against unjustified delay. (*Id.* at p. 368.)

Emphasizing “the vital importance of ensuring adequate procedures are in place to protect the interests of the defendant, the state, and the public,” the court further called on the Judicial Council to “study the issue of pretrial delays in SVP cases with the input of interested persons and consider what, if any, additional safeguards would facilitate timely adjudication of petitions for commitment under the SVP Act.” (*Id.* at p. 395.)

The Judicial Council’s Executive and Planning Committee approved this recommendation to study the issue of pretrial delays in SVP cases and directed the Administrative Director to refer the review of pretrial delays in SVP cases to the Criminal Justice Services office.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² This petition was a recommitment petition; *Camacho* had already been committed as an SVP in 2005 under the former version of the statute that provided a two-year commitment period. (*Camacho, supra*, 15 Cal.5th at p. 368.)

³ In addition to *Camacho*, several recent appellate SVP cases have drawn attention to lengthy pretrial delays. See *People v. Tran* (2021) 62 Cal.App.5th 330, 333 [11 years]; *In re Butler* (2020) 55 Cal.App.5th 614, 625 [13 years]; *People v. DeCasas* (2020) 54 Cal.App.5th 785, 789 [13 years]; *People v. Bradley* (2020) 51 Cal.App.5th 32, 38 [3.25 years]; *People v. Superior Court (Vasquez)* (2018) 27 Cal.App.5th 36 [17 years]. In each of these cases, the appellate courts found the preadjudication delay to be presumptively prejudicial. *Camacho* expressly disapproved of these findings, noting “[t]here is little reason, however, to apply a presumption of trial prejudice in the SVP context.” (*Camacho, supra*, 15 Cal.5th at p. 392.)

II. Statement of the Problem

The SVP Act outlines a civil commitment process in which an individual who meets certain criteria is committed indefinitely to the Department of State Hospitals (DSH) to be housed in a secure facility.⁴ The commitment process is typically lengthy and, after a probable cause finding, includes detention at the DSH secure facility. This process is described below.⁵

According to the 2023 year-end report by the California Sex Offender Management Board (CASOMB),⁶ DSH currently houses approximately 950 individuals under the SVP law.⁷ Of this population, approximately 40 percent are detainees (preadjudication) and 60 percent are committed (postadjudication).⁸ As of 2021, the average preadjudication detention lasted 8 years. For 39 percent of these detainees, their detention lasted more than 10 years.⁹ According to a 2020 report by CASOMB, California is a national outlier because of its high number of detainees and the duration of detainee status.¹⁰

III. The SVP Commitment Process

“Sexually violent predator” is defined as “a person who has been convicted of a sexually violent offense against one or more victims and who has a diagnosed mental disorder that makes the person a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior.” (§ 6600(a)(1).) The latter part of this definition—that the person is likely to engage in sexually violent behavior because of a mental disorder—is often the central focus of these cases.

⁴ Enacted in 1996, the SVP Act originally provided for a two-year commitment period. In 2006, Proposition 83 (also known as Jessica’s Law) replaced the two-year period with an indeterminate term.

⁵ For an overview of the SVP process, see also California Department of State Hospitals, *Sexually Violent Predator (SVP) Conditional Release Program (CONREP)* (Nov. 2021), www.dsh.ca.gov/Treatment/docs/SVP_FactSheetAndProcess.pdf.

⁶ The California Sex Offender Management Board (CASOMB) was created under Assembly Bill 1015 (Stats. 2006, ch. 338) within the Department of Corrections and Rehabilitation to address issues related to the community management of California’s adult sex offender population.

⁷ See CASOMB, *Year End Report* (2023), p. 21, https://casomb.org/pdf/2023_Year_End_Report.pdf.

⁸ These numbers were discussed during a public CASOMB meeting on June 18, 2024.

⁹ California Department of State Hospitals, *supra* note 5, at p. 4.

¹⁰ CASOMB, *Sexually Violent Predator Project: Introduction & Duration of SVP Detainee Status* (Sept. 2020), p. 9, https://casomb.org/docs/CASOMB_SVP_Intro_and_Detainee_Status_FINAL_2021-05.pdf. According to this report, California’s detainee population constitutes nearly half the national total; current detainees have remained at DSH for an average of 5 years, 10 months, and approximately 25 percent of detainees have been there for 11 years. (*Id.* at p. 11.)

A. Screening and Evaluation

The SVP commitment process begins when the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings refer an inmate, who is pending release and who has a qualifying conviction, for screening.¹¹ If the screening indicates that the person is likely to engage in sexually violent behavior, CDCR and the board refer the case to DSH for a full evaluation. (§ 6601(b).) The referral to DSH must take place at least six months before the inmate’s scheduled release date, unless specified exceptions apply. (§ 6601(a)(1).)

After the referral, two DSH psychologists¹² conduct full evaluations to determine whether the person “has a diagnosed mental disorder so that the person is likely to engage in acts of sexual violence without appropriate treatment and custody.” (§ 6601(d).) If only one of the psychologists makes this determination, DSH arranges for further examination by two independent professionals.¹³ (§ 6601(e).) If both independent professionals conclude that the individual likely meets the criteria for being a sexually violent predator, DSH prepares a referral packet for the district attorney in the county of original commitment. (§ 6601(h).)

B. SVP Petition

The district attorney reviews the DSH referral packet to determine whether to file a petition with the court. The district attorney must file a petition before the person is released from CDCR custody; otherwise, jurisdiction is lost. (See § 6601(a).)

When a petition is filed, the person is transferred from CDCR to the local jail. Initially, a judge reviews the petition to “determine whether the petition states or contains sufficient facts that, if true, would constitute probable cause to believe that the [person] is likely to engage in sexually violent predatory criminal behavior upon . . . release.” (§ 6601.5.)

C. Probable Cause Hearing

The next step is a probable cause hearing at which the person is entitled to be represented by counsel. (§ 6602(a).) There is a statutory right to have a probable cause hearing within 10 days of the judge’s review. (§§ 6601.5, 6602(a).) However, the person subject to the petition usually waives this time constraint to allow defense counsel adequate time to review the underlying

¹¹ Only persons serving determinate sentences or whose parole has been revoked can be subject to an SVP petition. (§ 6601(a).)

¹² The statute also authorizes psychiatrists, but according to representatives at DSH, only psychologists currently conduct these evaluations.

¹³ An independent professional is a person who has at least five years of experience in the diagnosis and treatment of mental disorders and is not a state government employee. An independent professional includes psychiatrists and psychologists with a doctoral degree in psychology. (§ 6601(g).)

reports and information, which are often voluminous. Aside from this 10-day right, no other statutory deadline exists.

After a probable cause finding, the judge will order the person to be detained in a secure DSH facility, usually Coalinga State Hospital.¹⁴ Similar to persons already committed as SVPs, detained individuals have access to various services and sex offender treatment counseling, although—in accordance with the risk, needs, and responsivity framework—detainees may not have access to the same level of treatment that committed individuals (postadjudication) can access.¹⁵

D. Commitment Trial

The commitment hearing is a jury trial (or bench trial, if a jury is waived), where a finding must be based on proof beyond a reasonable doubt.¹⁶ (§ 6604.) Unlike a criminal trial, which is about a past event, a commitment hearing focuses on the present mental condition of the detained person.¹⁷ As a result, current mental health evaluations are often the most significant pieces of evidence. However, because evaluators often base their opinion in part on secondary sources—such as probation reports and police reports—that describe previous offense conduct, the prosecutor often must also call victims to testify about any case-specific facts that the evaluator has relied on.¹⁸ In addition to the prosecutor’s witnesses, defense counsel may present their own expert witnesses to rebut the opinions of the DSH evaluators. (See § 6605.) Any request for continuance of a trial date must be supported by good cause, and written notice of the request must be made at least 10 court days before the hearing.¹⁹ (§ 6603(c).)

If found to meet the criteria of an SVP at trial, the person is formally committed to the custody of DSH for an indeterminate period. Participation in programming is optional, and approximately 40 percent of the SVP population choose to engage in treatment specific to sexual offenders.²⁰ DSH must continue to evaluate all persons committed as SVPs on an annual basis. (§ 6604.9(a).)

¹⁴ § 6600.05(a).

¹⁵ CASOMB, *Sexually Violent Predator Project: Conditional Release Program Housing and Community Placement Barriers* (Jan. 2023), p. 1, https://casomb.org/pdf/SVP_CONREP_Housing_and_Community_Placement_Issues_01-2023.pdf.

¹⁶ If a jury trial, a commitment finding must be unanimous. (§ 6603(g).)

¹⁷ Proof of convictions can be shown with documentary evidence. (§ 6600(a)(3).)

¹⁸ See *People v. Sanchez* (2016) 63 Cal.4th 665, 686 [holding that an expert may not testify to “case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception”]; see also *People v. Yates* (2018) 25 Cal.App.5th 474, 476 [applying *Sanchez* to SVP trials].

¹⁹ Good cause must also exist to continue a probable cause hearing. (§ 6602(b).)

²⁰ CASOMB reports the national average is 90 percent. CASOMB, *supra* note 10, at pp. 1, 16.

E. Postcommitment Conditional Release

SVP law outlines two types of postcommitment release: unconditional and conditional. A petition for unconditional release is based on a subsequent determination that the person no longer meets the definition of SVP; a petition for conditional release is based on a finding that “a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community.” (§ 6604.9(d).) In either case, DSH is required to authorize the filing of a petition.²¹ Regardless of whether a person is ultimately released through this process, an SVP finding is a lifetime label for purposes of sex offender registration and restrictive residency requirements. (See Pen. Code, § 290(d)(3)(B).)

If the court finds that the standard for conditional release is met, the court orders the person released into the community under the supervision and treatment of the state’s Conditional Release Program (CONREP).²² This court-ordered release triggers a long and involved placement and housing search that requires community notification and court oversight. CASOMB’s 2023 year-end report describes the multiple barriers and challenges presented by this process:

The CA SVP law requires community notification and public comment prior to the judicial approval for placement; residency restrictions for those with child victims; placement limitations to the county of domicile unless extraordinary circumstances are found; and it does not require completion of the inpatient treatment program. Further, there is no preexisting housing inventory, and housing must be found on a case-by-case basis each instance a person is ordered to CONREP. Open courtrooms, community notice, and public comment provisions trigger high levels of media attention and negative community reactance that have resulted in threats and acts of violence against the SVP individuals, judges, attorneys, landlords, and CONREP program staff. Further, the CONREP approval, housing, and placement process is lengthy.
(CASOMB, *Year End Report* (2023), p. 22.)

Since 1996, only 55 individuals committed as SVPs have been placed in housing through CONREP. Of this number, only some 40 percent have achieved full discharge. Currently, approximately 17 SVP-committed individuals are housed through CONREP and an additional 20

²¹ A person committed as an SVP can also petition the court for conditional release on their own, without DSH authorization. However, when this occurs, the court is not required to take any action until certain conditions are met and can deny the petition without a hearing if the court decides it is based on frivolous grounds. (§ 6608.)

²² Note that CONREP also provides placement for non-SVP individuals.

individuals remain in Coalinga awaiting CONREP placement.²³ Individuals pending release through CONREP wait an average of 300 days for housing placement.²⁴

IV. Analysis

Given the short window to conduct this review, an in-depth analysis informed by data about these cases was not possible. This analysis was developed based on various public reports, CASOMB public meetings, and a series of stakeholder sessions with judges, public defenders, district attorneys, and representatives from DSH. All these sources helped to outline the challenges and ideas summarized below.

The focus of this report is on the preadjudication hearing segment, specifically factors that create delays, and on the actions of the judiciary. However, as described above, the SVP commitment process is complex and presents a variety of challenges at many stages. It is important to note that the prospect of a lifetime commitment also informs defense strategy and often creates incentive for preadjudication delay.

A. Causes of Delay

Based on our interviews, it appears likely that most continuance requests are made by the defense.²⁵ General reasons for continuance requests, which in some circumstances can be asserted by either side, range from discovery issues, the securing and scheduling of expert witnesses, treatment progression, and scheduling difficulties related to case management challenges and caseload concerns.

1. Discovery Issues

Some, but not all, parties interviewed identified discovery issues as potentially challenging and time-consuming. The initial referral packet from DSH contains only the two mental health evaluations from DSH. Other potentially relevant documents include prior police reports, case records from CDCR, juvenile court records, criminal history records, military records, educational records, and medical records. The process for obtaining documents can be time-

²³ CASOMB, *supra* note 7, at p. 21.

²⁴ CASOMB, *supra* note 16, at p. 18. The State Auditor's Office is currently conducting an audit of CONREP (2023-130 Department of State Hospitals—Sexually Violent Predator Conditional Release Program, www.auditor.ca.gov/reports-coming-soon/2023-130/). The anticipated date for this report is fall 2024.

²⁵ Several people interviewed suggested that 90 percent of continuance requests in SVP cases are made by the defense.

consuming and difficult. One individual interviewed stated that federal records, especially military records, can take up to a year to obtain.

Complicating the production of these documents are confidentiality restrictions, including HIPAA and juvenile record protections. These confidentiality restrictions can delay disclosure and have a chilling effect on evaluators who are concerned about liability if they rely on protected information in their reports.

A related issue is inexperience with civil discovery procedures. Because SVP is a type of civil commitment, civil discovery procedures apply. However, judges in criminal assignments (and who may not have had previous civil experience) normally handle SVP cases. Likewise, prosecutors and defense attorneys generally have only criminal law expertise. Unfamiliarity with civil discovery procedures might delay resolution of pretrial issues related to discovery.

2. Expert Witnesses and Evaluations

The defense search for its own expert witness begins after the prosecutor files an SVP petition. However, this search can be challenging, and sometimes defense counsel must retain experts who reside out of state.

For both the defense and the prosecution, evaluators have large workloads and are in high demand. DSH evaluators, in particular, periodically conduct and update evaluations for multiple detainees. At times, replacement evaluations are also required when a particular evaluator is no longer available to testify. To be considered current for purposes of the commitment trial, an evaluation must have been conducted within the preceding 12 months. But, even in the absence of a scheduled trial, a district attorney will typically request updated evaluations to ensure that a detainee continues to meet the criteria of SVP.²⁶ Depending on the number of pending requests, a single evaluation report can take up to four months or more to complete.

3. “Flipping” an Evaluator Through Treatment Progression and Aging

Most interviewees agreed that people facing SVP commitment generally do not want to go to trial; instead, some detainees hope to change the opinion of at least one of the DSH evaluators—an outcome referred to as “flipping.” Because the law requires that two evaluators believe that the person meets the criteria of SVP, getting one evaluator to reverse their opinion is often sufficient to have the petition dismissed.

²⁶ According to a 2020 CASOMB report, each SVP evaluation, whether initial or updated, costs \$3,250; the yearly cost for DSH evaluation services is \$18 million. CASOMB, *supra* note 10, at p. 11.

One way to “flip” an evaluator is through treatment progression. After the probable cause hearing, detainees can access some of the treatment made available at Coalinga State Hospital.²⁷ However, program curriculum changes and staff turnover, especially in recent years, have required detainees to restart the program. As a result, many of these efforts to progress in treatment have either stalled or been delayed.²⁸

The passage of time can be another way to change the outcome of the evaluation. In general, aging tends to reduce the risk of reoffending. Indeed, persons who are 60 years of age and above receive a three-point reduction on the Static-99R, an actuarial risk assessment tool used to predict the likelihood of sexual recidivism.²⁹ Thus, the mere passage of time can increase a detainee’s chance to avoid trial altogether.

4. Scheduling Difficulties

Typically, the court holds multiple status conferences in SVP cases before setting a trial date. Unlike the probable cause hearing and trial, these status conferences do not require good cause to continue. As a result, multiple status conferences often take place over extended periods of time.

The SVP trial itself can last several weeks. Jury selection alone can require extra time because of the inflammatory nature of this case type. As a result, court calendars and case backlog can sometimes pose obstacles to finding an available trial date.

Moreover, reconciling the schedules of various expert witnesses can pose a monumental challenge. The SVP trial often boils down to—as one person described it—“a war of experts.” Many defense expert witnesses handle cases in several states and may reside outside of California. Meanwhile, DSH expert witnesses are responsible for conducting multiple initial and updated evaluations, in addition to being available to testify in numerous SVP cases.

Finding an available trial date that works with the expert witnesses’ schedules is only part of the equation. Public defender reassignments and heavy caseloads affect trial readiness and often lead to scheduling delays. In some instances, interviewees explained that detainees make *Marsden* motions³⁰ either as a delay tactic or otherwise.

²⁷ Persons being released from CDCR custody have likely not participated in sex offender treatment programming because CDCR does not currently provide this programming, except in limited circumstances.

²⁸ Not all detainees engage in treatment. Some have been advised by their attorneys not to participate, out of caution that it could lead to adverse evidence later used against them at trial. Other detainees feel too alienated or are otherwise unable to meet the academic expectations of the program.

²⁹ For more information about the Static-99R risk assessment tool, see <https://saarna.org/static-99/>.

³⁰ *People v. Marsden* (1970) 2 Cal.3d 118, 123–124 [holding that a trial judge must listen to a defendant’s reasons for requesting a change of attorneys].

B. Options for Reducing Case Processing Delays

Judicial Council staff held several discussions with multiple stakeholders, including judges, prosecutors, defense attorneys, and staff of two state agencies that play a role in SVP policy and custody. The interviews found there was uniform agreement that the SVP statutes were outdated, and the program would benefit from reform. Based on those discussions, the following options were identified for the Executive and Planning Committee to consider in order to reduce case processing time.

1. Judicial Training

Specialized training about SVP cases would likely help provide tools for judges to process these cases. Important training topics include the nuances and challenges inherent in SVP proceedings, civil discovery procedures, and recent case law about preadjudication delay.

2. Case Management

Some courts have a team of judges, prosecutors, and defense counsel dedicated to SVP cases. Maintaining continuity of such a team with SVP case experience—although not feasible for all courts—would likely reduce case processing time. Further, judges could be encouraged to scrutinize continuance requests. Holding parties more accountable for delays would likely help to shorten the necessary time for trial readiness. Courts could also consider setting trial dates as soon as feasible after the probable cause hearings to help inform the parties' preparation for trial.

3. Timing Standards

Timing standards that set expectations about when a probable cause hearing and a trial should occur may provide judges with a road map to manage these cases. A rule of court that mandates a certain time frame would likely be overly prescriptive and would limit judicial discretion in these highly complex cases. However, general guidelines, for example, of 6 to 12 months for a probable cause hearing and 3 to 5 years for a trial could be captured in a standard of judicial administration.

4. Legislative Changes

Several of those interviewed indicated that legislative changes to the SVP statutes would be beneficial to address the timely adjudication of commitment petitions. For example, expansion of the 10-day time limit for probable cause hearings to a more realistic time frame and authorization for alternative resolutions of the petition may be helpful in mitigating some of the factors causing delay.

V. Conclusion

The suggestions outlined above will require additional resources to implement. The timing to implement each of the options will vary. The Executive and Planning Committee may wish to explore some combination of the first three options as an initial step before recommending statutory amendments or major program reform to the Legislature.

SC/FB/RC/KP

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