



JUDICIAL COUNCIL
OF CALIFORNIA

RULES AND PROJECTS
COMMITTEE

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RULES AND PROJECTS COMMITTEE

EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING

June 1, 2015

Teleconference

RUPRO Members Present: Hon. Harry E. Hull (chair), Hon. Brian L. McCabe (vice-chair), Hon. Brian J. Back, Mr. Richard D. Feldstein, Mr. James P. Fox, Hon. David E. Gunn, Ms. Debra Elaine Pole, Hon. David Rosenberg, Hon. Martin J. Tangeman, and Hon. Joan P. Weber.

RUPRO Members Absent: Hon. David De Alba.

E&P Members Present: Hon. Douglas P. Miller (chair), Hon. Marla O. Anderson, Hon. Judith Ashmann-Gerst, Hon. James R. Brandlin, Hon. Morris D. Jacobson, Ms. Donna D. Melby, Hon. Marsha Slough, Hon. Dean T. Stout, Ms. Mary Beth Todd, and Hon. Charles D. Wachob.

E&P Members Absent: Hon. David M. Rubin (vice-chair).

Others Present: Mr. Cliff Alumno, Hon. Mark Borrell, Ms. Deborah Brown, Ms. Nancy Carlisle, Mr. Arturo Castro, Ms. Roma Cheadle, Ms. Shelley Curran, Ms. Audrey Fancy, Mr. Bob Fleshman, Ms. Cristina Foti, Mr. Martin Hoshino, Ms. Camilla Kieliger, Mr. Patrick O'Donnell, Ms. Claudia Ortega, Ms. Jody Patel, Mr. Curt Soderlund, Mr. Zlatko Theodorovic, Mr. Courtney Tucker, and Ms. Julia Weber.

DISCUSSION AND ACTION ITEMS

Item 1

Traffic Procedures: Appearance without Deposit of Bail in Infraction Cases (adopt rule 4.105)
(Action Required – Recommend for Judicial Council action)

RUPRO Action: The Rules and Projects Committee approved the proposal as drafted with the following amendments:

Rule 4.105(d): Change the implementation date from August 15 to September 15; and

For clarification, add to the Advisory Comment:

Subdivision (a). The rule is intended to apply only to a traffic infraction violation of the Vehicle Code for which the defendant has received a written

notice to appear and has appeared by the appearance date or an approved extension of that date.

Subdivision (c)(2). As used in this subdivision, the phrase “written promise to appear as required by the court” refers to a signed promise, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.

The Rules and Projects Committee recommended approval on the Judicial Council’s June 8, 2015, discussion agenda to be effective immediately.

E&P Action: The Executive and Planning Committee approved the proposal for the Judicial Council June 8, 2015, discussion agenda.

Item 2

Addition of Joint Subcommittees to Annual Agendas: Child Support Commissioner and Family Law Facilitator Program Allocation Methodology Joint Subcommittee and the Juvenile Dependency: Court-Appointed-Counsel Funding Allocation Methodology Joint Subcommittee
(Action Required)

Action: The Executive and Planning Committee approved the addition of two subcommittees and the necessary update to the 2015 Family and Juvenile Law Advisory Committee Annual Agenda and the 2015 Trial Court Budget Advisory Committee Annual Agenda.

A D J O U R N M E N T

There being no further business, the meeting was adjourned.

Approved by the Rules and Projects Committee on July 30, 2015.

Approved by the Executive and Planning Committee on [enter date].



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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF CLOSED MEETING

Thursday, June 25, 2015
10:00 a.m. to 1:30 p.m.

Advisory Body Members Present: Judge David M. Rubin (Vice Chair); Justice Judith Ashmann-Gerst; Judges Marla O. Anderson, James R. Brandlin, Morris D. Jacobson, Marsha G. Slough, Dean T. Stout, Charles D. Wachob; and Ms. Donna D. Melby (by phone) and Ms. Mary Beth Todd

Advisory Body Members Absent: Justice Douglas P. Miller (Chair)

Committee Staff Present: No staff present.

CLOSED SESSION

Call to Order and Roll Call

The vice chair, as acting chair for this meeting, called the meeting to order at 10:00 a.m. and took roll call.

Approval of Minutes

The advisory body reviewed and approved the minutes of the June 15, 2015, meeting, and June 17, 2015, e-mail action of the Executive and Planning Committee.

Item 1

Pursuant to California Rules of Court, rule 10.75(d)(1)

Advisory Body Appointments

The committee reviewed nominations for vacancies on the following advisory bodies:

- Advisory Committee on Civil Jury Instructions
- Advisory Committee on Criminal Jury Instructions
- Advisory Committee on Providing Access and Fairness
- Appellate Advisory Committee
- Civil and Small Claims Advisory Committee
- Collaborative Justice Courts Advisory Committee
- Court Executives Advisory Committee
- Court Interpreters Advisory Panel
- Court Security Advisory Committee
- Court Technology Advisory Committee

- Criminal Law Advisory Committee
- Family and Juvenile Law Advisory Committee
- Governing Committee of the Center for Judicial Education and Research
- Judicial Branch Workers Compensation Advisory Committee
- Legal Services Trust Fund Commission
- Probate & Mental Health Advisory Committee
- Traffic Advisory Committee
- Trial Court Budget Advisory Committee
- Trial Court Facility Modifications Advisory Committee
- Tribal Court-State Court Forum
- Workload Assessment Advisory Committee

Action: The committee deferred until August submission of its recommendations to the Chief Justice regarding vacancies on the advisory bodies listed above.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:30 p.m.

Approved by the advisory body on [insert date].



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EXECUTIVE AND PLANNING COMMITTEE

MINUTES OF OPEN MEETING

Wednesday, July 15, 2015
12:10 to 1:10 p.m.
Teleconference

Advisory Body Members Present: Justice Douglas P. Miller (Chair); Justice Judith Ashmann-Gerst; Judges James R. Brandlin, Marsha G. Slough, Dean T. Stout, Charles D. Wachob; and Ms. Donna D. Melby and Ms. Mary Beth Todd

Advisory Body Members Absent: Judge David M. Rubin (Vice Chair); and Judges Marla O. Anderson and Morris D. Jacobson

Invited Guests Present: Judge Laurie M. Earl, Superior Court of California, County of Sacramento

Committee Staff Present: Ms. Jody Patel

Staff Present: Mr. Cliff Alumno, Mr. Patrick Ballard, Ms. Deborah Brown, Ms. Roma Cheadle, Ms. Shelley Curran, Mr. Edward Ellistad, Ms. Cristina Foti, Ms. Anna Maves, Ms. Susan McMullan, Mr. Douglas Miller, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Curt Soderlund, Ms. Nancy Taylor, and Mr. Zlatko Theodorovic

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 12:10 p.m. and committee staff took roll call.

DISCUSSION AND ACTION ITEMS

Agenda Setting for the July 28, 2015, Judicial Council Meeting

The committee reviewed available draft reports and set the agenda for the Judicial Council meeting in July.

Action: *The committee approved the following items, in the order listed, for placement on the July Judicial Council business meeting agenda:*

- **Civil Practice and Procedure: Adjustment of Maximum Amount of Imputed Liability of Parent or Guardian for Tort of a Minor (Action Required)**
- **Probate: Court Fee Waivers in Decedents' Estates, Guardianships, and Conservatorships and for Wards and Conservatees Participating in Civil Actions (Action Required)**

- ***Child Support: Revise Base Funding Allocation for Fiscal Year 2015–2016 for the Family Law Facilitator Program (Action Required)***
- ***Collaborative Justice: Funding for Parolee Reentry Court Programs through the California Department of Corrections and Rehabilitation (Action Required)***
- ***Judicial Branch Administration: Final Report on Directive 125 (Action Required)***
- ***Report to the Legislature: Findings from Senate Bill 678 (California Community Corrections Performance Incentives Act of 2009) Program (Action Required)***
- ***Summit Report to Promote Diversity in the California Judiciary (Action Required)***
- ***Budget: Fiscal Year 2016–2017 Budget Request for the Trial Courts (Action Required)***
- ***Trial Court Allocations: Funding for General Court Operations and Specific Costs in Fiscal Year 2015–2016 (Action Required)***
- ***Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 2) (Information Only)***

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 12:20 p.m.

Approved by the advisory body on [insert date].

Language Access Plan Implementation Task Force
Annual Agenda—2015 (Draft 7/28/15)
Approved by E&P: _____

I. ADVISORY BODY INFORMATION

Chair:	Hon. Mariano-Florentino Cuéllar		
Staff:	Dianne Bolotte, Douglas G. Denton, Elizabeth Tam-Helmuth		
<p>Advisory Body’s Charge: The Judicial Council's Language Access Plan Implementation Task Force advises the Chief Justice and Judicial Council on implementation of the recommendations, issued by the Joint Working Group for California's Language Access Plan (2013–2015), in the <i>Strategic Plan for Language Access in the California Courts</i> (adopted by the Judicial Council on January 22, 2015). The Task Force includes representatives of key stakeholders in the provision of language access services in the courts, including, but not limited to, judicial officers, court administrators, court interpreters, legal services providers, and community representatives. The Task Force's charge is to turn the Language Access Plan into a practical roadmap for courts by creating an implementation plan for full implementation in all 58 superior courts. Additional responsibilities of the task force include:</p> <ul style="list-style-type: none"> • Create an implementation plan for the Language Access Plan to present to the Judicial Council and to guide the work of the Task force and the courts to make the strategic plan a reality; • Develop estimates of the costs of implementing the recommendations; • Assess the feasibility of the phasing process outlined in the plan based upon resources available and adjust where necessary based on operational feasibility and resource availability; • Propose rules of court, forms, and Judicial Council–sponsored legislation for the council and its internal committees to consider; • Create and distribute work products (including bench guides, tool kits, and others); • Coordinate with related advisory groups on implementation efforts where appropriate; and • Develop mechanisms to oversee and monitor the implementation of the plan. 			
<p>Advisory Body’s Membership: There are a total of 26 current Task Force members, representing the following categories:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> • 1 Supreme Court Justice • 4 Appellate Court Justices • 7 Trial Court Judicial Officers • 5 Court Administrators </td> <td style="width: 50%; vertical-align: top;"> <ul style="list-style-type: none"> • 3 Court Interpreters • 3 Legal Services Representatives • 3 Community Representatives </td> </tr> </table>		<ul style="list-style-type: none"> • 1 Supreme Court Justice • 4 Appellate Court Justices • 7 Trial Court Judicial Officers • 5 Court Administrators 	<ul style="list-style-type: none"> • 3 Court Interpreters • 3 Legal Services Representatives • 3 Community Representatives
<ul style="list-style-type: none"> • 1 Supreme Court Justice • 4 Appellate Court Justices • 7 Trial Court Judicial Officers • 5 Court Administrators 	<ul style="list-style-type: none"> • 3 Court Interpreters • 3 Legal Services Representatives • 3 Community Representatives 		
<p>Subgroups/Working Groups: The Task Force has established four ad hoc subcommittees: Budget and LAP Monitoring; Technological Solutions; Translation, Signage and Tools for Courts; and Language Access Education and Standards.</p>			

Advisory Body’s Key Objectives for 2015:

The [*Strategic Plan for Language Access in the California Courts*](#) (hereafter “Language Access Plan” or “LAP”) contains 75 recommendations that enumerate the policies and operational changes that will need to take place to make comprehensive language access a reality in the California courts. 47 of the LAP recommendations are designated as Phase 1 recommendations (meaning that the recommendation should already be in place or work to implement it should commence in 2015). The Task Force is coordinating its work with related advisory groups and Judicial Council staff on implementation efforts. In addition to developing and providing cost estimates for the council regarding LAP implementation, the implementation process also includes the monitoring and updating of the plan, as the trial courts and other stakeholders provide information, feedback, suggestions and innovative solutions.

To support implementation of LAP recommendations as quickly and effectively as possible, the Task Force assigned each of the 47 Phase 1 LAP recommendations to one of four Task Force Ad Hoc Subcommittees (additionally, the Task Force assigned certain Phase 1 LAP recommendations regarding court interpreter issues [#9, #43, #69, #70 and #75] to the Court Interpreters Advisory Panel and/or the Court Interpreters Program for implementation). The Task Force met in person on June 17, 2015. During that meeting, the Subcommittees presented their initial plans for priority projects (described in Section II below) drawn from among the LAP Phase 1 recommendations. The following are the major goals for FY 2015–16, organized by Task Force Subcommittee:

- 1. Budget and LAP Monitoring** (Chaired by Judge Steve Austin): This Subcommittee is charged with supporting implementation of Phase 1 LAP recommendations regarding funding and monitoring. A major priority among these is securing adequate funding for expanded use of court interpreters in civil cases. Other key goals include developing tools to allow expanded use of court data to support funding requests; establishing a monitoring system for the LAP; and developing a statewide complaint process. Objectives for FY 2015–16 include recommendations for a 2016–17 Budget Change Proposal (BCP) for presentation to the council that would increase court and Judicial Council funding in the upcoming fiscal year (2016–17) in order to help support ongoing LAP implementation.
- 2. Technological Solutions** (Chaired by Justice Terrence Bruiniers): This Subcommittee is responsible for supporting implementation of Phase 1 LAP recommendations regarding technology, including 1) data collection to identify language access needs, and 2) appropriate use of video-remote technology. Major objectives for FY 2015–16 include a review of case information systems for language service tracking, and the development of a Video Remote Interpreting (VRI) pilot program for use with spoken-language court interpreters. This pilot will help the branch gather data regarding successful VRI court practices (including due process issues, participant satisfaction, and effectiveness of available technologies) and establish minimum technical guidelines for appropriate use of VRI with spoken-language court interpreters.
- 3. * Translation, Signage, and Tools for Courts** (Chaired by Justice Laurie Zelon and Mr. Jose Varela): This Subcommittee will support implementation of Phase 1 LAP recommendations regarding translation, signage and other tools to assist the trial courts and limited English proficient (LEP) court users, including development of templates for multilingual signs and notices, benchcards for judicial officers, and translation protocols. Major objectives for FY 2015-16 include development of a living tool-kit and meaningful website available to all on the California Courts public web page, which will include resources such as I-Speak cards and multilingual signs and templates.

4. Language Access Education and Standards (Chaired by Judge Janet Gaard and Ms. Ana Maria Garcia): This Subcommittee is charged with supporting implementation of Phase 1 LAP recommendations regarding language access education and standards, including education and standards to assist judges, court staff and court interpreters with successful implementation of LAP policies and procedures, and creation of multilingual videos to assist LEP court users with navigating the court system. Major objectives for FY 2015-16 include development and enhancement of existing course content and development of new educational programs and products that will enhance judicial branch training regarding the Language Access Plan.

* The Language Access Plan recommended that the Judicial Council create a translation committee to develop and formalize a translation protocol for Judicial Council translation of forms, written materials, and audiovisual tools (See LAP Recommendation #36). The Task Force's Translation, Signage, and Tools for Courts Subcommittee is serving in and fulfilling that function for Phase 1 of LAP implementation, and the Subcommittee and Task Force Chairs will recommend to the council at a future date whether an ongoing and separate translation committee should be established.

II. ADVISORY BODY PROJECTS

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
1.	<p>Develop and complete a Budget Change Proposal (BCP) for 2016–17 to increase trial court and Judicial Council funding to support LAP implementation.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendations # 8 (Expansion of court interpreters to all civil proceedings); #56 (Advocacy for sufficient funding); #25 (Designation of language access office or representative).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in Court Operations Services and Finance; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 1</p>	September 2015 for 2016–17 BCP; ongoing for future BCPs	Budget Change Proposal for 2016–17.
2.	<p>The court in each county to designate a language access office or representative.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendation #25 (Designation of language access office or representative).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p>	December 2015 for guidance to courts; July 2017 for potential new BCP funding for 12 language access specialists to assist all 58 courts.	The court in each county will have a designated language access office or representative.

¹ All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

² For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>Resources: Judicial Council staff in Court Operations Services and Finance; as needed, Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 1</p>		
3.	<p>Develop and complete a detailed work plan and cost estimates for full LAP implementation.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendations # 8 (Expansion of court interpreters to all civil proceedings); #10 (Provision of qualified interpreters in all court-ordered/court-operated proceedings); #28 (Recruitment of bilingual staff); #56 (Advocacy for sufficient funding); #58 (Pursuit by the Judicial Council of other funding opportunities); #59 (Pursuit by courts of other funding opportunities); #60 (Language Access Implementation Task Force).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in Court Operations Services and Finance; Task Force Consultant (National Center for State Courts).</p>	<p>October 2015 for draft of detailed work plan including costs for full LAP implementation; January 2016 (presentation by Task Force to Judicial Council re: detailed work plan for full LAP implementation, including cost estimates)</p>	<p>Detailed work plan and cost estimates for full LAP implementation to assist with future funding requests.</p>

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: Objective 1		
4.	<p>Develop and complete a template to assist trial courts with collection of language access data including cost reporting to assist with development of funding requests.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendations #6 (Expansion of language services cost reporting); #57 (Use of data for funding requests).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in Court Operations Services and Finance; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 1</p>	December 2015 for template; ongoing for necessary improvements to case management or other data collection systems.	Template for trial courts to collect and report language access data including costs.
5.	<p>Develop and complete a statewide complaint form and process, including interaction with local trial court complaint processes.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendation #62 (Single complaint form); #63 (Complaints at local level regarding language access services).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15)</p> <p>Resources: Judicial Council staff in Court Operations Services; Task Force Consultant (National Center for State Courts).</p>	January 2016	Statewide complaint process regarding language access services provided in courts.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: Objective 1		
6.	<p>Adoption of LAP by the California Courts of Appeal and California Supreme Court.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	1	<p>Judicial Council Direction: LAP Recommendation #67 (Adoption of Language Access Plan by the California Courts of Appeal and California Supreme Court).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in Court Operations Services; California Courts of Appeal and California Supreme Court.</p> <p>Key Objective Supported: Objective 1</p>	June 2016	Adoption of LAP by the California Courts of Appeal and California Supreme Court.
7.	<p>Develop and launch a LAP monitoring database to allow public reporting regarding LAP implementation progress.</p> <p><i>Subcommittee: Budget and LAP Monitoring</i></p>	2	<p>Judicial Council Direction: LAP Recommendation #61 (Compliance and monitoring system).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in Court Operations Services and Information Technology (IT).</p> <p>Key Objective Supported: Objective 1</p>	October 2015 for database; ongoing for LAP monitoring	LAP Monitoring Database.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
8.	<p>Design, plan for and conduct a video remote interpreting (VRI) pilot with spoken-language court interpreters in up to ten courts, and collect relevant data.</p> <p><i>Subcommittee: Technological Solutions</i></p>	1	<p>Judicial Council Direction: LAP Recommendation #16 (Pilot for video remote interpreting).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in IT, Human Resources Office (Labor and Employee Relations Unit) and other offices, as appropriate, with expertise in technology, interpreting (including remote interpreting) and court-wide operations; members of the Court Interpreters Advisory Panel as needed for additional input and consultation.</p> <p>Key Objective Supported: Objective 2</p>	June 2016 for report on pilot progress, including data report.	VRI pilot and report on data collected.
9.	<p>Develop and establish guidelines for VRI with spoken-language court interpreters, including remote interpreting minimum technology requirements.</p> <p><i>Subcommittee: Technological Solutions</i></p>	2	<p>Judicial Council Direction: LAP Recommendations #12 (Preference for in-person interpreters); #13 (Remote interpreting in the courtroom); #14 (Remote interpreting minimum technology requirements); and #15 (Use of video for remote interpreting).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p>	June 2016	VRI for spoken language guidelines, including remote interpreting minimum technology requirements.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>Resources: Judicial Council staff in IT, Human Resources Office (Labor and Employee Relations Unit) and other offices, as appropriate, with expertise in technology, interpreting (including remote interpreting) and court-wide operations; members of the Court Interpreters Advisory Panel as needed for additional input and consultation.</p> <p>Key Objective Supported: Objective 2</p>		
10.	<p>Establish (1) guidelines for courts to early identify language access needs and document the needs in their case management system and/or case record or file; (2) guidelines to track provision or denial of language access services and document same in their case management system and/or case record or file; and (3) protocols for justice partners to early communicate LEP court user language needs to the court.</p> <p><i>Subcommittee: Technological Solutions</i></p>	2	<p>Judicial Council Direction: LAP Recommendations #1 (Language access needs identification); #2 (Requests for language services); #3 (Protocol for justice partners to communicate language needs); and #4 (Mechanisms for LEP court users to self-identify).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in IT; as appropriate, staff in Center for Families, Children & the Courts (CFCC) to help and consult regarding preliminary guidelines or protocols.</p>	June 2016 (guidelines and protocols); likely to require ongoing updates to case management systems including future upgrades.	Guidelines regarding documenting language access needs identification and requests for language services; protocols for justice partners to communicate LEP court user language needs to the court.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: Objective 2		
11.	<p>Create a living tool-kit and meaningful website available to all on the California Courts public web page, including resources such as I-Speak cards and multilingual signs and templates.</p> <p><i>Subcommittee: Translation, Signage and Tools for Courts</i></p>	1	<p>Judicial Council Direction: LAP Recommendations #4 (Mechanisms for LEP court users to self-identify); #5 (Information for court users about availability of language access services); #37 (Statewide multilingual samples and templates); #52 (Benchcards on language access); and #66 (Statewide repository of language access resources).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in CFCC; collaborate with Language Access Education and Standards Subcommittee regarding development of benchcards; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 3</p>	December 2015 to launch website; ongoing for additional resource identification.	Statewide repository of language access resources.
12.	<p>Develop and share translation protocols.</p> <p><i>Subcommittee: Translation, Signage and Tools for Courts</i></p>	2	See LAP Recommendations #36 (Establishment of translation committee); #38 (Posting of translations on web); and #40 (Translation of court orders).	June 2016	Translation protocols.

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in CFCC; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 3</p>		
13.	<p>Establish guidelines regarding use of bilingual volunteers.</p> <p><i>Subcommittee: Translation, Signage and Tools for Courts</i></p>	2	<p>See LAP Recommendations #34 (Use of bilingual volunteers).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in CFCC; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 3</p>	June 2016	Guidelines regarding use of bilingual volunteers.
14.	<p>Develop and enhance existing course content and develop new educational programs that will enhance judicial branch training regarding the Language Access Plan.</p> <p><i>Subcommittee: Language Access Education and Standards</i></p>	1	<p>See LAP Recommendations #19 (Verifying credentials of interpreters); #22 (Avoiding conflicts of interest); #23 (Appointment of minors to interpret); #50 (Judicial branch training regarding LAP).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in</p>	September 2015 for existing course updates; March 2016 for any new educational programs and or products for court staff and judicial officers to enhance their knowledge, skills, and abilities in the area of language access.	Identification of learning needs of judges and court staff; develop training to address those needs; identify preferred delivery methods (e.g., updates to existing online education; adapt the curriculum for the judicial college

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			<p>the Center for Judicial Education and Research (CJER); Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 4</p>		<p>course and put that online.)</p>
15.	<p>Identify multilingual standardized videos to assist court users, and update existing online course (“Interpreter Orientation: Working in the California Courts”) for new and prospective interpreters.</p> <p><i>Subcommittee: Language Access Education and Standards</i></p>	2	<p>See LAP Recommendations #44 (Online orientation for new interpreters); #18 (Creation of multilingual standardized videos).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Judicial Council staff in CJER; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 4</p>	<p>February 2016 for updates to online course for new interpreter orientation and to identify existing video inventory; June 2017 for creation of new multilingual standardized videos.</p>	<p>Identify the existing inventory of the videos throughout the courts and at non-court organizations, and make all of them available to all court users, if possible.</p>
16.	<p>NCSC to conduct a survey of the courts identifying different points of contact at their courts, and the level of service required, to help define language proficiency standards for bilingual staff.</p> <p><i>Subcommittee: Language Access Education and Standards</i></p>	1	<p>See LAP Recommendation #26 (Identification of critical points of contact).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: Task Force Consultant (National Center for State Courts).</p>	<p>December 2015 for survey results and language proficiency standards regarding bilingual staff at different points of contact with the courts.</p>	<p>Survey results and standards of language proficiency for specific points of contact within the courthouse.</p>

#	Project ¹	Priority ²	Specifications	Completion Date/Status	Describe End Product/ Outcome of Activity
			Key Objective Supported: Objective 4		
17.	<p>Define standards for bilingual staff; identify existing and develop new training programs for bilingual staff and court interpreters.</p> <p><i>Subcommittee: Language Access Education and Standards</i></p>	2	<p>See LAP Recommendations #47 (Language proficiency standards for bilingual staff); #48 (Standards and online training for bilingual staff); #45 (Training for prospective interpreters); #46 (Training for interpreters on civil cases and remote interpreting).</p> <p>Origin of Project: Adoption of Language Access Plan (1/22/15).</p> <p>Resources: CJER; Task Force Consultant (National Center for State Courts).</p> <p>Key Objective Supported: Objective 4</p>	June 2016 for identification of existing training programs and development needs for new training programs for bilingual staff and court interpreters.	Based on points of contact and course needs identification, Judicial Council staff to develop new training programs for bilingual staff and court interpreters in FY 2016-17.

III. STATUS OF 2014 PROJECTS: N/A

[List each of the projects that were included in the 2014 Annual Agenda and provide the status for the project.]

DRAFT

IV. Subgroups/Working Groups - Detail

Subgroups/Working Groups: *[For each group listed in Section I, including any proposed “new” subgroups/working groups, provide the below information. For working groups that include members who are not on this advisory body, provide information about the additional members (e.g., from which other advisory bodies), and include the number of representatives from this advisory body as well as additional members on the working group.]*

Subgroup or working group name: Budget and LAP Monitoring Subcommittee

Purpose of subgroup or working group: Supports implementation of Phase 1 LAP recommendations regarding funding and monitoring.

Number of advisory body members on the subgroup or working group: 9

Number and description of additional members (not on this advisory body): 0

Date formed: May 2015

Number of meetings or how often the subgroup or working group meets: 3-4 times per year

Ongoing or date work is expected to be completed: June 2016 for tasks that can be completed within a year and will produce a demonstrable deliverable or end product; upon the conclusion of Phase 1, the Task Force will update the Chief Justice and Judicial Council regarding Phase 1 implementation progress, including any need to adjust the phasing of the Phase 1 recommendations.

Subgroup or working group name: Technological Solutions Subcommittee

Purpose of subgroup or working group: Supports implementation of LAP Phase 1 recommendations regarding technology.

Number of advisory body members on the subgroup or working group: 7

Number and description of additional members (not on this advisory body): 0

Date formed: May 2015

Number of meetings or how often the subgroup or working group meets: 3-4 times per year

Ongoing or date work is expected to be completed: June 2016 for tasks that can be completed within a year and will produce a demonstrable deliverable or end product; upon the conclusion of Phase 1, the Task Force will update the Chief Justice and Judicial Council regarding Phase 1 implementation progress, including any need to adjust the phasing of the Phase 1 recommendations.

Subgroup or working group name: Translation, Signage and Tools for Courts Subcommittee

Purpose of subgroup or working group: Supports implementation of LAP Phase 1 recommendations regarding translation, signage and other tools to assist the trial courts and LEP court users.

Number of advisory body members on the subgroup or working group: 7

Number and description of additional members (not on this advisory body): 1 (additional ad hoc member to be added)

Date formed: May 2015

Number of meetings or how often the subgroup or working group meets: 3-4 times per year

Ongoing or date work is expected to be completed: June 2016 for tasks that can be completed within a year and will produce a demonstrable deliverable or end product; upon the conclusion of Phase 1, the Task Force will update the Chief Justice and Judicial Council regarding Phase 1 implementation progress, including any need to adjust the phasing of the Phase 1 recommendations.

Subgroup or working group name: Language Access Education and Standards

Purpose of subgroup or working group: Supports implementation of LAP Phase 1 recommendations regarding language access education and standards.

Number of advisory body members on the subgroup or working group: 7

Number and description of additional members (not on this advisory body): 0

Date formed: May 2015

Number of meetings or how often the subgroup or working group meets: 3-4 times per year

Ongoing or date work is expected to be completed: June 2016 for tasks that can be completed within a year and will produce a demonstrable deliverable or end product; upon the conclusion of Phase 1, the Task Force will update the Chief Justice and Judicial Council regarding Phase 1 implementation progress, including any need to adjust the phasing of the Phase 1 recommendations.

Upcoming Meetings of the Task Force: *To conduct its charge, including conduct of community outreach meetings regarding LAP implementation, the Task Force would like permission to hold the following in-person meetings in FY 2015-2016:*

- *1st Community Outreach Meeting – to take place in Los Angeles on October 20, 2015*
- *2nd In-Person Meeting – TBD December 2015*
- *2nd Community Outreach Meeting – TBD March or April 2016*
- *3rd In-Person Meeting – TBD April, May or June 2016*

Trial Court Budget Advisory Committee
Annual Agenda—2015
Approved by E&P: April 16, 2015 and June 1¹, 2015

I. ADVISORY BODY INFORMATION

Chair:	Hon. Laurie Earl, Judge of the Superior Court of Sacramento County
Staff:	Mr. Zlatko Theodorovic, Director, Judicial Council Finance office Mr. Steven Chang, Manager, Judicial Council Finance office
<p>Advisory Body's Charge:</p> <ul style="list-style-type: none">• Rule 10.64. Trial Court Budget Advisory Committee<ul style="list-style-type: none">• <u>Area of focus</u> The Trial Court Budget Advisory Committee makes recommendations to the council on the preparation, development, and implementation of the budget for the trial courts and provides input to the council on policy issues affecting trial court funding.• <u>Additional duties</u> In addition to the duties specified in rule 10.34, the committee may make recommendations to the council on:<ul style="list-style-type: none">○ Trial court budget priorities to guide the development of the budget for the upcoming fiscal year;○ The allocation of trial court funding, including any changes to existing methodologies for allocating trial court budget augmentations and reductions; and○ Budget policies and procedures, as appropriate. <p>In addition to the duties described above, the advisory committee may also make recommendations to the council on proposed expenditures from the Trial Court Trust Fund and State Trial Court Improvement and Modernization Fund.</p> <p>The advisory committee currently plans to meet in-person approximately 7 times in 2015 and several more times by teleconference, contingent on available funding.</p>	

¹ The Executive and Planning Committee approved revisions to the committee's annual agenda at a meeting on June 1, 2015.

Advisory Body's Membership:

- Membership
 - The advisory committee consists of an equal number of trial court presiding judges and court executive officers reflecting diverse aspects of state trial courts, including urban, suburban, and rural locales; the size and adequacy of budgets; and the number of authorized judgeships. For purposes of rule 10.64, "presiding judge" means a current presiding judge or an immediate past presiding judge.
 - No more than two members may be from the same court.
 - The chairs of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee serve as ex-officio voting members.
 - Notwithstanding rule 10.31(e), a presiding judge is qualified to complete his or her term on the advisory committee even if his or her term as presiding judge of a trial court ends.
 - The Judicial Council's chief of staff, chief administrative officer, chief operating officer, and director of Finance serve as non-voting members.
- This year marks the first time committee membership has included staggered appointments for one, two, and three year terms and are timed to coincide with Judicial Council roster changes each fall.
- Committee membership requires a commitment of several hours per month on average, but may vary considerably from month to month, depending on the budget issues in any given year.

Subgroups/Working Groups:

- Revenue and Expenditure Subcommittee
- Funding Methodology Subcommittee
- Criminal Justice Realignment Subcommittee
- 2% Funding Request Review Subcommittee*
- 2% Reserve Policy Working Group*
- Benefits Working Group*
- Children's Waiting Room Working Group*
- Court-appointed Dependency Counsel Working Group*
- Security Growth Working Group*
- Joint Subcommittees with the Family and Juvenile Law Advisory Committee
- Joint Working Group with the Judicial Council Technology Committee*

- [Ad Hoc Working Group on Fiscal Planning*](#)

*Indicates advisory bodies established since the last annual agenda was approved.

Advisory Body's Key Objectives for 2015:

- Review allocations from the State Trial Court Improvement and Modernization Fund as well as Trial Court Trust Fund to ensure consistency with Judicial Council goals and objectives and propose solutions to address any structural shortfall in either fund.
- Ongoing review and refinement of the council-approved Workload-based Allocation and Funding Methodology (WAFM) to address unresolved issues.
- Develop definitions and policies governing local assistance and state operations expenditures tied to State Trial Court Improvement and Modernization Fund as well as Trial Court Trust Fund allocations.
- Develop an allocation methodology for Prop. 47 funding.
- Develop new allocation methodology for Court Appointed Dependency Counsel funding.
- Review and consider options to the current allocation methodology for Child Support Commissioner and Family Law Facilitator Program funding.²
- [With the Judicial Council Technology Committee, develop a plan for phasing out branch subsidies for the V3 case management system by June 30, 2019.](#)
- [Develop a proposal to allow a trial court's funds that revert to the Trial Court Trust Fund pursuant to GC 77203 be retained for the benefit of that court for specific one-time costs.](#)

II. ADVISORY BODY PROJECTS

The committee does not have any proposed projects for the year ahead, but is expected to focus on continued efforts indicated in the key objectives section above. Of note:

- As indicated in the charge outlined in the rule, the committee performs an active role in the development of the statewide trial court budget. This includes surveying courts and providing input on trial court budget priorities as well as submitting recommendations to the council, typically in June, on trial court budget change proposals for the upcoming fiscal year.

² The Executive and Planning Committee approved this revision to the committee's annual agenda at a meeting on June 1, 2015.

- In January 2015, the committee conducted new member orientation that was open to Judicial Council members as well as new trial court presiding judges. Due to the significant interest and attendance, the committee intends to follow through with a similar orientation in the next cycle.

III. STATUS OF 2014 PROJECTS:

Not Applicable: The committee did not have specific projects for 2014, but instead addressed a variety of issues throughout the year, including fund balance restrictions, shortfalls in funds supporting trial courts, and funding methodology implementation, among others.

IV. SUBGROUPS/WORKING GROUPS-DETAIL

Subgroups/Working Groups:

- Revenue and Expenditure Subcommittee: This subcommittee, formed in July 2013, includes 13 presiding judges and court executive officers and is staffed by JCC Finance. The primary focus of this group is the ongoing review of allocations supporting trial court projects and programs as well as any systemic cash flow issues affecting the trial courts. In 2015, a subset of this advisory body will develop recommendations for council consideration relating to the definitions and policies governing local assistance and state operations expenditures tied to State Trial Court Improvement and Modernization Fund as well as Trial Court Trust Fund allocations. This subcommittee meets at least twice per year.
- Funding Methodology Subcommittee: This subcommittee, also formed in July 2013, includes 15 presiding judges and court executive officers and is staffed by JCC Finance with support from the Office of Court Research. This group will continue to focus on the ongoing review and refinement of the Workload-based Allocation and Funding Methodology approved by the council in April 2013. This subcommittee is expected to meet at least twice per year.
- Criminal Justice Realignment Subcommittee: This subcommittee, which formed in 2013, includes 11 presiding judges and court executive officers and is staffed by JCC Finance. This group's focus will be funding methodology and allocations relating to criminal justice realignment, specifically Proposition 47 workload. This subcommittee meets at least twice per year.
- 2% Funding Request Review Subcommittee: This subcommittee, formed in October 2014, includes 7 presiding judges and

court executives and is staff by JCC Finance. This group reviews and makes recommendations on court supplemental funding requests received in conjunction with the 2% emergency reserve funding process and that relate to unforeseen emergencies or unanticipated expenses. The group meets as needed.

- 2% Reserve Policy Working Group: This subcommittee, formed in 2014, includes six presiding judges and court executive officers and is staffed by JCC Finance. This group is charged with working with the Court Executive Advisory Committee, Trial Court Presiding Judges Advisory Committee, and the Policy Coordination and Liaison Committee, to recommend proposed amendments to Government Code section 68502.5(c)(2)(B), the statute that establishes the 2 percent reserve, to be included as trailer bill language to the 2015 Budget Act. The working group will meet as needed to develop recommended language and is not expected to continue beyond the current fiscal year.
- Benefits Working Group: This group, formed in 2014, includes 9 presiding judges and executive officers and is staffed by JCC Finance. The working group has been working on various benefit cost and related funding allocation issues over the past several months and is expected to wrap up its duties in the spring of 2015.
- Children’s Waiting Room Working Group: This group, formed in late 2014, includes 6 presiding judges and executive officers and is staffed by JCC Finance. The working group is developing recommendations that include changes and additions to the Judicial Council’s policy regarding children’s waiting room distributions. Work is expected to be completed in spring 2015.
- Court-appointed Dependency Counsel Working Group: This group has existed in one form or another, supporting Judicial Council advisory bodies, for several years. The current iteration, which includes 9 presiding judges and court executive officers and is primarily staffed by the Center for Families, Children & the Courts, is focused on the allocation methodology for court-appointed dependency counsel funding. The group is expected to conclude its work in the current fiscal year.
- Security Growth Working Group: This group, formed in 2014, includes 5 presiding judge and court executive officers and is staffed by JCC Finance. Their focus is to address the growth in non-sheriff, court-provided security costs. The group’s work is expected to run through calendar year 2015.
- Joint Subcommittees with the Family and Juvenile Law Advisory Committee³:
 - To enrich recommendations to the council and avoid duplication of effort, members of the committee will collaborate with members of Family and Juvenile Law Committee, the Workload Assessment Advisory Committee, and representatives from the California Department of Child Support Services to reconsider the AB 1058 funding allocation

³ The Executive and Planning Committee approved this revision to the committee’s annual agenda at a meeting on June 1, 2015.

methodology developed in 1997 and to report back at the February 2016 Judicial Council meeting.

- To enrich recommendations to the council and avoid duplication of effort, members of the committee will collaborate with members of the Family and Juvenile Law Advisory Committee to review the workload model for court-appointed dependency counsel and report back no later than the April 2016 Judicial Council meeting.
- Joint Working Group with the Judicial Council Technology Committee: On April 17, 2015, the Judicial Council approved the phasing out judicial branch subsidies for the V3 case management system by June 30, 2019 and the formation of a joint working group comprised of members of the Judicial Council Technology Committee and Trial Court Budget Advisory Committee to work together on the source of funding for the period July 1, 2016 through June 30, 2019.
- Ad Hoc Working Group on Fiscal Planning: This group, formed in July 2015, will develop fiscal planning and management guidelines, including a proposal to allow a trial court's funds that revert to the Trial Court Trust Fund pursuant to GC 77203 be retained for the benefit of that court for specific one-time costs.



JUDICIAL COUNCIL OF CALIFORNIA MEETINGS

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

Ronald M. George State Office Complex

William C. Vickrey Judicial Council Conference Center

Malcolm M. Lucas Board Room

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

Thursday, August 20, 2015 • 2:30 p.m.–3:45 p.m.

Friday, August 21, 2015 • 8:30 a.m.–2:20 p.m.

Meeting materials will be hyperlinked to agenda titles as soon as possible after receipt by Judicial Council Support. Please check the agenda at [CHECK FOR UPDATED LINK](#) for recent postings of hyperlinked reports.

THURSDAY, AUGUST 20, 2015 AGENDA

OPEN SESSION (RULE 10.6(a))— MEETING AGENDA (ITEMS 1A–1C THROUGH ITEM 3)

2:30–2:35 p.m. Approval of Minutes
Approve minutes of the July 28, 2015, Judicial Council meeting.

2:30–2:35 p.m. Trial Court Facility Modifications and Maintenance

ITEM A1 Court Facilities: Budget Allocations for Statewide Trial Court Facility Modifications and Planning in Fiscal Year 2015–2016 and Related Matters (Action Required)

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends allocations of the \$65 million appropriated by the Legislature for trial court facility modifications in the fiscal year (FY) 2015–2016 budget. The recommended allocations support facility modification planning and facility modifications for emergency and critical needs, but continue to defer funding of almost all planned facility modifications. The Committee also recommends that vigorous efforts be made to obtain additional General Fund money in FY 2016–2017 for Fund 3066, the Trial Court Trust Fund, which pays for utilities, leases, insurance, and routine/preventative maintenance of courthouses. As of June 30, 2016,

NOTE: Time is estimated. Actual start and end times may vary.

all accumulated reserves in Fund 3066 will be gone, and the anticipated costs in FY 2016–2017 for the most minimal level of preventative maintenance and other Fund 3066 expenses will exceed anticipated revenue. The existing pattern of “run to failure” response to known problems will become worse if no additional funds are located for Fund 3066.

ITEM 1B Budget: Fiscal Year 2016–2017 Budget Requests for Trial Court Facilities Operations Needs (Action Required)

The TCFMAC recommends that the Judicial Council approve the proposed FY 2016–2017 budget requests for trial court facilities operations related needs. Submittal of budget change proposals (BCPs) is the standard process for proposing funding adjustments in the State Budget. This year, the BCPs are to be submitted to the state Department of Finance by September 2, 2015.

ITEM 1C Five-Year Master Plan—Deferred Maintenance Report Fiscal Year 2015–2016 (Action Required)

The Facilities Management Unit of Real Estate and Facilities Management has prepared a report of deferred maintenance within branch facilities. This report is requested on an annual basis by Department of Finance. The log shows over 2,500 registered system renovations with a projected rough order of magnitude value of \$2.1 billion. Staff recommends that the Judicial Council approve the log to be submitted to DOF in September 2015.

Speakers: Hon. David E. Power, Chair, Trial Court Facility Modification Advisory Committee
Hon. William Highberger, Vice Chair, Trial Court Facility Modification Advisory Committee
Mr. Curt Soderlund, Chief Administrative Officer
Mr. Zlatko Theodorovic, Finance
Mr. Patrick McGrath, Facilities Operations

3:15–3:25 p.m. ITEM 2

Judicial Branch Administration: Report on California Rules of Court, rule 10.75 (Meetings of Advisory Bodies) (Action Required)

Under California Rules of Court, rule 10.75(p), the Judicial Council must review the rule’s impact within one year of its adoption to determine whether amendments are needed. After considering the issue, the chairs of the Judicial Council’s five internal committees have concluded that there are no amendments needed at this time. There were a total of 293 meetings held during the first year and 149 meetings, 51 percent, were opened to the public. The chairs recommend that the council accept this report and direct that the attached letter to be sent to the Joint Legislative Budget Committee as required by the Supplemental Report of the 2013–2014 Budget Package.

Speakers: Hon. Douglas P. Miller, Chair, Executive and Planning Committee
Hon. David Rubin, Chair, Litigation Management Committee

3:25–3:45 p.m. **ITEM 3**

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (Action Required)

Advisory Committee (CTAC), respectively. The amended rule would implement the Court Technology Governance and Strategic Plan, recommended by the Technology Planning Task Force and adopted by the Judicial Council in 2014, by revising the roles and responsibilities of JCTC and CTAC. It would also change CTAC’s name to the Information Technology Advisory Committee to reflect its broader role and responsibilities as a sponsor of branchwide technology initiatives

Speakers: Hon. James E. Herman, Chair, Judicial Council Technology Committee
 Hon. David De Alba, Vice Chair, Judicial Council Technology Committee

3:45 p.m. **Adjourn**

5:00–6:00 p.m. Judicial Council Distinguished Service Award and the Aranda Access to Justice Award: 2015 Honorees (There are no materials for this item. No action required.)

The Judicial Council honors the recipients of its annual Distinguished Service Award for significant contributions to court administration in California. Additionally, the Judicial Council, California Judges Association, State Bar of California, and Commission on Access to Justice jointly confer the *Aranda Access to Justice Award*, honoring members of the judiciary who have demonstrated a long-term commitment to improving equal access to courts for low- and moderate-income Californians.

2015 Distinguished Service Award Recipients:

- Hon. Maria P. Rivera**, Associate Justice, California Court of Appeal, First Appellate District, Division Four
- Hon. Manuel J. Covarrubias**, Superior Court Judge, Superior Court of California, County of Ventura
- Hon. David Edwin Power**, Superior Court Judge, Superior Court of California, County of Solano
- Mr. David H. Yamasaki**, Court Executive Officer, Superior Court of California, County of Santa Clara

2015 Aranda Access to Justice Award Recipient:

- Hon. Garry T. Ichikawa**, Superior Court Judge, Superior Court of California, County of Solano

NOTE: Time is estimated. Actual start and end times may vary.

FRIDAY, AUGUST 21, 2015 AGENDA

CLOSED SESSION (RULE 10.6(b))—PERSONNEL AND OTHER CONFIDENTIAL MATTERS

8:30–9:15 a.m. **Session**

9:15–9:30 a.m. **Transitional Break**

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

9:30–9:40 a.m. **Chief Justice’s Report**
Chief Justice Tani G. Cantil-Sakauye will report.

9:40–9:50 a.m. **Administrative Director’s Report**
Mr. Martin Hoshino, Administrative Director, will report.

9:50–10:30 a.m. **Judicial Council Committee Presentations**
Executive and Planning Committee
 Hon. Douglas P. Miller, Chair
Policy Coordination and Liaison Committee
 Hon. Kenneth K. So, Chair
Rules and Projects Committee
 Hon. Harry E. Hull, Jr., Chair
Technology Committee
 Hon. James E. Herman, Chair

10:30–11:15 a.m. **Judicial Council Members’ Liaison Reports**
Judicial Council members will report on their liaison work.

11:15–11:45 a.m. **Public Comment**
The Judicial Council welcomes public comment on general matters of judicial administration and on specific agenda items, as it can enhance the council’s understanding of the issues coming before it.

Please see our [public comment procedures](#).

- 1) Submit advance requests to speak by **4:00 p.m., Tuesday, August 18, 2015.**
- 2) Submit written comments for this meeting by **1:00 p.m. on Wednesday, August 19, 2015.**

Contact information for advance requests to speak, written comments, and questions:

E-mail: judicialcouncil@jud.ca.gov

Postal mail or delivery in person:

Judicial Council of California
455 Golden Gate Avenue
San Francisco, California 94102-3688
Attention: Cliff Alumno

11:45 a.m.–12:00 p.m. Break

CONSENT AGENDA (ITEMS A1–A2 THROUGH ITEM G)

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Nancy Carlisle at 415-865-7614 at least 48 hours before the meeting.

ITEMS A1–A2 RULES AND FORMS

Criminal Jury Instructions

Item A1 **Jury Instructions: Revisions to Criminal Jury Instructions (Action Required)**

The Advisory Committee on Criminal Jury Instructions recommends approval of the proposed revisions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes will keep CALCRIM current with statutory and case authority.

Traffic

Item A2 **Trial Courts: Permanent Authorization for Remote Video Proceedings and Implementation of Rule 4.105 in Traffic Infraction Cases (Action Required)**

The Traffic Advisory Committee and the Court Technology Advisory Committee recommend amending rule 4.220 of the California Rules of Court, which authorizes trial courts to establish remote video pilot projects in cases involving traffic infraction violations, and revising corresponding forms to convert the rule into a standing rule of court and to

implement new rule 4.105. To comply with rule 4.105, the effective date of all changes is September 1, 2015.

Item B Judicial Branch Administration: Workers' Compensation Program: Allocations Methodology and Excess Liability Insurance for the Judiciary (Action Required) JCAR AND REPORT TBD – (LINDA COX AS CONTACT) CURRENT EXECUTIVE SUMMARY FROM OLD JCAR

The Judicial Branch Workers' Compensation Program Advisory Committee recommends (1) adopting an allocation methodology that will increase allocations from the participants, with the goal of reducing the current gap between the program's projected liabilities and assets, and (2) renewal of the existing annual excess insurance policy and purchase of an annual excess insurance policy for the judiciary.

Item C Judicial Branch Contract Reporting Requirement: Executed Contracts and Vendor Payments From January 1 through June 30, 2015 (Action Required)

Public Contract Code section 19209 and the Judicial Branch Contracting Manual require that the Judicial Council submit a report semiannually to the Joint Legislative Budget Committee and the State Auditor listing (1) all vendors or contractors receiving payments from any judicial branch entity and their associated distinct contracts, and (2) for every vendor or contractor receiving more than one payment, the amount of the payment, type of service or good provided, and judicial branch entity receiving the good or service. Therefore, the Judicial Council staff recommends submitting this semiannual report, which lists all judicial branch entity contracts that were amended during the reporting period covering January 1 through June 30, 2015.

Item D Court Facilities: Sale of Equity Interest in Banning Courthouse as Surplus Property (Action Required)

In keeping with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Facilities Policies Working Group recommends that the Judicial Council (1) declare as surplus property the Judicial Council's 60.37% equity interest in the Banning Courthouse, and (2) authorize the sale of the Equity Interest to the County of Riverside.

Item E Court Facilities: Naming Request for the Merced–New Los Banos Courthouse (Action Required)

The Court Facilities Advisory Committee recommends that the Judicial Council approve the request for naming the new courthouse under construction in the City of Los Banos as the *Robert M. Falasco Justice Center*.

Item F Court Facilities: Senate Bill 1407 Project Funding Requests and Judicial Branch AB 1473 Five-Year Infrastructure Plan for Fiscal Year 2016–2017 (Action Required)

The Court Facilities Advisory Committee, to meet the state Department of Finance's September 2015 deadline, recommends the submission of funding requests for the next phase of Senate Bill 1407 projects eligible for available SB 1407 funds and of the annual update of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan for Fiscal Year 2016–2017*.

Item G **Judicial Council: Court Public Parking Management Policy (Action Required)**

The Judicial Council controls a number of parking spaces that were either acquired through the Trial Court Facilities Act of 2002 (Sen. Bill 1732; Stats. 2002, ch. 1082) or provided in conjunction with new courthouse construction. Before SB 1732, the counties managed parking spaces, making some available for free and others for a fee. On-site parking provides an expedient feature for the employees, jurors, and other users of courts. The intent of the attached document is to initiate a branchwide policy to implement a methodical approach in developing paid parking at courthouses where feasible.

DISCUSSION AGENDA (ITEMS H–K)

12:00–12:20 p.m. ITEM H

**Judicial Administration: Traffic Tickets/Infractions Amnesty Program (Action Required)
REPORT EXPECTED AUGUST 10 – (BOB FLESHMAN AS CONTACT)**

Judicial Council Finance staff recommends that the council approve the Traffic Tickets/Infractions Amnesty Program Guidelines (guidelines) to be used by court and county collection programs statewide. The guidelines are based on Vehicle Code section 42008.8, which was added to the Vehicle Code by Senate Bill 85 declaring a one-time infractions amnesty program.

Speakers: Ms. Mary Beth Todd, Chair, Court Executives Advisory Committee
 Mr. Cory Jaspersen, Governmental Affairs
 Mr. Bob Fleshman, Finance
 Mr. Courtney Tucker, Criminal Justice Services

12:20–12:50 p.m. Break

12:50–1:40 p.m. ITEM I

Budget: Fiscal Year 2016–2017 Budget Proposals for Supreme Court, Courts of Appeal, Judicial Council, Judicial Branch Facilities Program, Trial Courts, and Habeas Corpus Resource Center (Action Required)

Fiscal year 2016–17 budget proposals for the Supreme Court, Courts of Appeal, Judicial Council, Judicial Council Facility Program, Trial Courts, and Habeas Corpus Resource Center are recommended for approval by the delegated internal committees. In addition, the Judicial Council staff recommends delegating authority to the Administrative Director to make technical changes to any budget proposals, as necessary. Submittal of BCPs is the standard process for proposing funding adjustments in the State Budget, which must be submitted to the state Department of Finance by September 2, 2015.

Speakers: Mr. Curt Soderlund, Chief Administrative Officer
Mr. Zlatko Theodorovic, Finance

1:40–2:00 p.m. ITEM J

Trial Courts: State Trial Court Improvement and Modernization Fund Allocation Adjustments for Fiscal Year 2015–2016 (Action Required)

The TCBAC is recommending adjustments, totaling a net of \$938,823, to FY 2015–2016 allocations made by the Judicial Council in April and June 2015.

Speakers: Hon. Laurie M. Earl, Chair, Trial Court Budget Advisory Committee
Mr. Zlatko Theodorovic, Finance

2:00–2:20 p.m. ITEM K

Subordinate Judicial Officers: Update of Subordinate Judicial Officer Conversions Using More Current Workload Data (Action Required)

At the direction of the Executive and Planning Committee (E&P), which has the authority to confirm subordinate judicial officer (SJO) conversions, the Workload Assessment Advisory Committee has provided an analysis on how the remaining 45 SJO conversions under Government Code section 69615 would be allocated if current workload data were used to identify the courts with SJOs eligible for conversion. E&P recommends that the Judicial Council adopt the recommendation to allocate the remaining conversions using more recent workload data and to direct staff to seek legislation that would update references in the current statute to the list of positions eligible for conversion. Council action is needed so that courts have more certainty about the need to convert positions in light of changes in judicial workload since the original workload analysis was completed in 2007.

Speakers: Hon. Douglas P. Miller, Chair, Executive and Planning Committee
Ms. Leah Rose-Goodwin, Court Operations Services, Office of Court Research

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

INFO 1 Judicial Council: Implementation of Judicial Council Directives on Judicial Council Staff Restructuring

NOTE: Time is estimated. Actual start and end times may vary.

The chair of E&P presents this informational report on the implementation of the Judicial Council Directives on Staff Restructuring, as approved by the Judicial Council on August 31, 2012. The Judicial Council Staff Restructuring Directives specifically direct the Administrative Director to report to E&P before each council meeting on every directive. This informational report provides an update on the progress of implementation efforts.

INFO 2 Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 33)

Government Code section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' regular office hours, and (2) the council to post all such notices on its website and also relay them to the Legislature. This is the 33rd report to date listing the latest court notices received by the council under this statutory requirement; since the previous report, **NUMBER** superior courts—those of **COUNTY NAME(S)**—have issued new notices.

INFO 3 Trial Courts: Annual Investment Report for Fiscal Year 2014–2015

This *Trial Court Annual Investment Report* provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under agenda item 10, Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004, and the report covers the period of July 1, 2014, through June 30, 2015.

INFO 4 Court Facilities: Trial Court Facility Modification Quarterly Activity Report for Quarter 4 of Fiscal Year 2014–2015

The TCFMAC has completed its facility modification funding for the fourth quarter of FY 2014–2015. In compliance with the *Trial Court Facility Modifications Policy*, the advisory body is submitting its *Trial Court Facility Modification Quarterly Activity Report: Quarter 4, Fiscal Year 2014–2015* as information for the council. This report summarizes the activities of the TCFMAC from April 1, 2015, to June 30, 2015.

INFO 5 Trial Courts: Court Realignment Data (Calendar Year 2014)

Pursuant to Penal Code section 13155, commencing January 1, 2013, the Judicial Council must collect information from trial courts regarding the implementation of the 2011 Criminal Justice Realignment Legislation and submit the data annually to the California Department of Finance (DOF), the Board of State and Community Corrections (BSCC), and the Joint Legislative Budget Committee (JLBC), by September 1. This is the third annual court realignment data report to the DOF, BSCC, and the JLBC.

There were no Circulating Orders since the last business meeting.

There were no Appointment Orders since the last business meeting.



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 28, 2015

Title	Agenda Item Type
Court Facilities: Budget Allocations for Statewide Trial Court Facility Modifications and Planning in Fiscal Year 2015–2016 and related matters	Action Required
	Effective Date
	July 28, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	July 1, 2015
Recommended by	Contact
Trial Court Facility Modification Advisory Committee	Patrick McGrath, 916-643-8051
Hon. David Edwin Power, Chair	patrick.mcgrath@jud.ca.gov

Executive Summary

The Trial Court Facility Modification Advisory Committee recommends allocations of the \$65 million appropriated by the Legislature for trial court facility modifications in the fiscal year 2015–2016 budget. The recommended allocations support facility modification planning and facility modifications for emergency and critical needs, but continue to defer funding of almost all planned facility modifications.

The Committee also recommends that vigorous efforts be made to obtain additional General Fund money in FY2016/17 for Fund 3066, the Trial Court Trust Fund, which pays for utilities, leases, insurance, and routine/preventative maintenance of courthouses. As of June 30, 2016, all accumulated reserves in Fund 3066 will be gone, and the anticipated costs in FY2016/17 for the most minimal level of preventative maintenance and other Fund 3066 expenses will exceed

anticipated revenue. The existing pattern of “run to failure” response to known problems will become worse if no additional funds are located for Fund 3066.

Recommendation

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends that the Judicial Council approve allocations of the \$65 million authorized by the Legislature for statewide court facility modifications and planning (“FM”) in fiscal year 2015–2016 as follows:

FM Allocation	Value in Millions	Percentage of Total
Priority 1 Facility Modifications Allocation	\$ 10.0	15%
Priority 2–6 Facility Modifications Allocation	\$ 48.1	74%
Planned Facility Modifications Allocation	\$ 2.9	4%
Statewide Facility Modifications Planning Allocation	\$ 4.0	6%
Total	\$ 65.0	

Previous Council Action

The Trial Court Facility Modification Working Group was established by Judicial Council policy in 2005. The working group first met in April 2006 and operated under the *Trial Court Facility Modifications Policy*,¹ adopted by the Judicial Council in 2005 and revised on July 27, 2012. The primary oversight responsibilities included reviewing statewide facility modification requests and approving facility modification funding.

The working group’s charge was formalized by the Judicial Council on December 14, 2012, and the working group was assigned additional oversight responsibility for the operations and maintenance of existing facilities, noncapital-related real estate transactions, energy management, and environmental management and sustainability. On April 25, 2013, the working group’s status was elevated to that of advisory committee.

The Judicial Council allocated the FY 2014–2015 FM budget of \$65 million at the July 29, 2014 Judicial Council meeting.

The TCFMAC reports previously approved by the Judicial Council are available at www.courts.ca.gov/2567.htm under Research and Reports: Conditions in Our Courts.

Rationale for Recommendation

The TCFMAC developed the FM budget proposal in alignment with the *Trial Court Facilities Modifications Policy*. The charge tasks the TCFMAC with providing recommendations and

¹ As adopted in 2005, the policy was known as the *Prioritization Methodology for Modifications to Court Facilities*. When it was revised in 2012, the name also changed. See www.courts.ca.gov/documents/jc-20120727-itemG.pdf.

advice directly to the Chief Justice, Judicial Council, and the Administrative Director of the Courts.

Allocation strategy

The FM allocation strategy that underlies the recommendations presented in this report is designed to address planned facility modification projects that have been identified as critical needs for the trial courts. For the FY 2014–2015 FM budget the Judicial Council proposed a 10-year increase in authority from the State Court Facilities Construction Fund (SCFCF)—in the amount of \$15 million per year—and four positions, and an ongoing increase of \$12 million per year and three positions from the General Fund for transfer to the Immediate and Critical Needs Account (ICNA) to fund trial court facility modification projects. While the funding of \$15 million was approved the Department of Finance (DOF) declined to provide any additional general funding. DOF acknowledged the need for additional staffing to execute the funding, but again did not provide any General Funds to support the positions.

Based on the minimum industry standard for capital infrastructure reinvestment of 2 percent, there is a total reinvestment need of \$77 million annually. This reflects a current funding shortfall of \$27 million. Currently, there is a backlog of identified projects. The requested funding will address major repairs, system life-cycle replacements, and renovation projects in existing courthouses to provide safe and secure facilities for the benefit of all court users. Beginning in FY 2014-2015 and in compliance with new DOF requirements, this deferred maintenance backlog will be submitted to DOF within the Capital Outlay Five-Year Infrastructure Plan.

The judicial branch submitted a budget change proposal (BCP) for the additional \$27 million to support Planned Facility Modifications project requirements for the 2015-2016 fiscal year, but the DOF declined the request. The council also submitted a General Fund request for \$12 million and three positions to support operations and maintenance services throughout the courts. This request would have brought the current operations and maintenance funding to the Building and Owner's Management Association (BOMA) industry standard level of funding. It was also denied.

The existing budget of \$65 million included in the FY 2015–2016 Budget Act allocated for facility modification projects will be consumed by the continuous emergency and critical needs projects that arise every day in our court facilities.

The strategy proposed by the TCFMAC will allow the branch to address emergency and critical needs FM projects as they arise within the real estate portfolio, at a time when program funding does not meet the overall needs of the trial courts. If this funding were allocated to noncritical work, the result would be increased failure of crucial building support systems. These failures would have an operational impact on the trial courts, including the possible closure of courtrooms and potentially entire facilities.

Some of our FM priorities get set by external forces, such as Air Quality Management District requirements that polluting boilers be replaced even if they are otherwise functional. Most recently, the State Fire Marshal has made a more concerted effort (which we greatly appreciate) to provide thorough inspection of state-owned courthouses. These same buildings were previously inspected by the Counties, which owned them before transfer to the state. Not surprisingly, as the State Fire Marshal begins to take a close look at our existing buildings various problems are found. See the attached list of Planned FY2015/16 FM projects for two examples of expensive code-correction projections required by the State Fire Marshall. We expect similar expenses to arise until such time as all our state-owned buildings get a careful assessment by these fire-safety professionals.

Pervasive Risk Of Seismic Failure

You should also be aware that half of the square footage of existing courthouses remains Level 5 in terms of seismic risk, which means that there is a “substantial” risk of loss of life. For lack of funds, we have no plans to address these vulnerabilities in the foreseeable future. The various counties have agreed to indemnify the branch for tort liability and repair costs in the event of seismic failure in these buildings, but the Counties are doing nothing to retrofit the buildings to improve their seismic durability. The branch has been on notice of these conditions for over a decade. CBS television has run a news report about this problem recently in several markets, and the Los Angeles Times has also made inquiry.

Consequences Of Inadequate O&M Funding

When you have to maintain a car, an airplane or a building, there are some types of preventive maintenance which you should do to get the maximum useful service life for key components. For example, you need to check the oil and change it routinely to avoid premature engine failure. The same is true of many courthouse components which have pumps, filters, switches, brakes, electronic controls and the like. We inherited many poorly maintained courthouses from the counties over the last decade. Our inability to provide an adequate level of preventive maintenance combined with our inability to finance FM overhaul of systems being used far beyond their scheduled service life has caused the overall condition of our existing courthouses to continue to deteriorate under Judicial Council management. This is sad, but true. We are now running from pillar to post providing “run to failure” solutions to emergency problems, not a rational approach to timely remediation of known problems. The lack of adequate preventive maintenance is a key source of the problem because it forces us to let known problems deteriorate until the point of total failure (and thus disruption of court operations) so that the needed work can be justified as a Priority 1 FM or a Priority 2 FM.

Fund 3066, the Court Facilities Trust Fund, is the sole source of funding for major building operation expenses (commonly known as “O&M expenses” as compared to FM spending), specifically utilities, leases, insurance and routine/preventive maintenance. The following chart shows the cost trends for these several categories in recent years.

	FY2010/11	FY2011/12	FY2012/13	FY2013/14	FY2014/15	FY2015/16
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						<i>(projected)</i>
Utilities	39,839,000	43,314,000	44,802,000			
Insurance	1,344,000	1,266,000	1,387,000			
Leases	15,890,000	15,688,000	19,714,000			
Routine Maint'nce	48,422,000	43,669,000	43,906,000			
TOTAL	105,495,000	103,937,000	109,809,000			

The vast bulk of the revenue to pay these expenses comes from the County Facility Payments (“CFP”), in which the prior agreements are fixed and not increased to match inflation.

	FY2010/11	FY2011/12	FY2012/13	FY2013/14	FY2014/15	FY2015/16 <i>(projected)</i>
CFP's	89,711,000	90,192,000	94,500,000			
Night Court Fees	1,791,000	1,723,000	2,393,000			
Rent/space use	3,659,000	5,066,000	4,050,000			
Gen'l Fund	8,053,000	8,053,000	8,053,000			
Total	103,214,000	105,034,000	108,996,000			

You will note from the above that in various years (e.g. FY2012/12, FY___, and FY___) Fund 3066's O&M expenses have exceeded its revenue. Up to now this has been possible because Fund 3066 has carried cash reserves which have allowed it to meet expenses that exceed annual revenues. The year-end reserves in the account have been as follows:

	6/30/11	6/30/12	6/30/13	6/30/14	6/30/15	6/30/16 <i>(projected)</i>
Reserve	\$xx	\$yy	\$zz	\$aa	\$bb	Zero

The inadequacy of O&M funding has been a real problem since at least FY09/10, when the branch got actual responsibility for 15 million square feet of courthouse space. But changes since then have made the problem much worse, and these pressures continue to intensify as the Capital Projects Program brings to completion many more new courthouses. Our utility and lease expenses have incurred inflationary increases and the only line item which can be adjusted downward to reflect the lack of adequate funding is the routine maintenance line. This year, in order to stay in budget, preventive maintenance work will be decreased to minimum code compliance requirements, standby generator maintenance, and annual HVAC filter replacements only. This budget-driven cut in services will result in increased system failures, negative impact to court operations, and overall increased costs to the council, the courts, and the public.

Continued lack of reinvestments in the state's court infrastructure by the General Fund will lead to even higher cuts in FY 2016-2017 in routine and preventative maintenance. At that point, should no additional General Fund be forthcoming, the operations and maintenance budget will suffer an approximate 20% shortfall. This will require the elimination of all non-code compliant preventive maintenance work, decreases or elimination of standard services such as landscaping maintenance and pest control, and most importantly the elimination of building-based technicians. Changing the current support model from building-based technical staff to a roving staff will impact the branch's ability to respond rapidly to emergency system failures. Response times will change from minutes to hours. The increasing system failures and limited response capability of the branch will create court closures, increase mitigation costs, and generate disruptions to the services the branch provides. Public and court satisfaction with the services provided by the Judicial Council will decrease.

It is essential that one or more BCPs for additional funding of O&M expenses from the General Fund be pursued with the utmost possible vigor and clarity as to their importance.

Funding sources and budget

The Facility Modification Program is funded from two sources:

- State Court Facilities Construction Fund (Sen. Bill 1732); and
- Immediate and Critical Needs Account (Sen. Bill 1407).

The total legislative appropriations for facility modifications in FY 2015–2016 is \$65 million, consisting of \$40 million in SCFCF funds and \$25 million in ICNA funds.

Allocation for statewide facility modifications planning

The TCFMAC recommends allocating \$4 million for this category, which targets the costs associated with facility assessments and facility modification planning. This allocation includes the costs of contracts, equipment, and materials to set up operations; development of building-specific facility management plans and procedures; development of hazardous material plans; and continuation of facility analysis using engineers, technicians, and trade professionals to determine the condition of facilities within the Real Estate and Facilities Management portfolio. These tasks are required to identify deferred maintenance requirements, plan future requirements, and ensure proper maintenance, thereby reducing the need for future facility modifications. Most of the needed costs will be used for consultant expenses. The proposed allocation of \$4 million is a \$1 million decrease from the previous year's allocation. This funding is redirected due to the increasing emergency facility modifications which require additional funding.

Allocation for Priority 1 facility modifications

A reserve of \$10 million is recommended for allocation to immediate or potential emergency needs (Priority 1) that may develop in facilities. The allocation is an increase from the FY 2014–2015 based on the:

- Annual number of Priority 1 events over the past three fiscal years;
- Increased cost per event due to continued systems degradation; and
- Continued impact of the Los Angeles portfolio with its extremely large facilities which generally are in poor condition.

Planned facility modifications

The TCFMAC recommends two facility modification projects as planned work. This work is planned as there was insufficient program funding available to fully fund these projects in FY 2014-2015. The funding shortfall was due to the increased demand on emergency funding. These two projects totaling \$2,879,893 are for code required fire alarm renovations for buildings in the Superior Courts of Orange and Los Angeles.

The TCFMAC makes every effort to focus on the priority of each project and its potential impact to the local court, not the facility location or previous funding history. While it is possible that, over a short period of time, one court may receive more funding on a square foot basis than another, this is the result of the facility needs. Over the longer term, these variances will equalize.

Allocation for Priority 2–6 facility modifications

The TCFMAC recommends the allocation of most of the remainder of the budget, \$48.1 million, to this category. The TCFMAC will review all facility modifications and fund those with the highest priority according to the council-approved policy. The TCFMAC approves the funds from this category proportionally over the course of the year, ensuring that funds are available for the highest priorities throughout the year.

The Judicial Council's Real Estate and Facilities Management program will continue to perform energy studies on targeted facilities. These studies have identified a number of operational changes and facility modifications that will reduce on-going utility costs. In an effort to continue to increase the sustainability of courthouse facilities, \$2 million has been allocated to target both energy and water conservation projects for FY 2015-2016. In FY 2014–2015, \$1 million of facility modification funds was allocated to energy efficiency projects. In FY 2013–2014, \$1.3 million of facility modification funds was allocated for these types of projects. The current cumulative return on that investment in the form of utility costs savings is approximately \$1.1 million annually.

Comments from Interested Parties

(PENDING)

Alternatives Considered and Policy Implications

(PENDING)

Implementation Requirements, Costs, and Operational Impacts

The TCFMAC considered various dollar allocations for the different budget categories. The amounts recommended are based on historical data and a very conservative funding plan to allow sufficient funds for critical needs as they are identified by the courts and the Judicial Council staff. This allocation strategy will allow the TCFMAC to have the flexibility to fund the most critical needs throughout the year.

The FY 2015–2016 Facility Modifications Program budget will be allocated as the council approves, including as determined by the TCFMAC under the council-approved policy. There is no cost to the trial courts associated with this proposal.

Attachments

1. List of Planned Facility Modifications for FY 2015–2016



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TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

*Budget Allocations for Statewide Trial Court Facility Modifications
Planned Facility Modifications
FY 2015-2016*

	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	ESTIMATED COST	FACILITY MODIFICATION PROGRAM SHARE OF COST	FACILITY MODIFICATION PROGRAM BUDGET % OF COST
1	FM-0017040	Los Angeles	Compton Courthouse	19-AG1	2	Fire - Phase 2 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 1,834,800	\$ 1,213,353	66.13%
2	FM-0028322	Orange	Central Justice Center	30-A1	2	Fire - Phase 2 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 1,827,947	\$ 1,666,539	91.17%
							\$ 3,662,747	\$ 2,879,893	




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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Budget: Fiscal Year 2016-2017 Budget Requests for Trial Court Facilities Operations Needs	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
 Recommended by	Date of Report
Trial Court Facility Modification Advisory Committee, Hon. David Edwin Power, Chair	July 24, 2015
	Contact
	Patrick McGrath, 916-643-8051 Patrick.McGrath@jud.ca.gov

Executive Summary

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends that the Judicial Council approve the proposed fiscal year 2016-2017 budget requests for trial court facilities operations related needs. Submittal of budget change proposals (BCPs) is the standard process for proposing funding adjustments in the State Budget. This year, the BCPs are to be submitted to the state Department of Finance by September 2, 2015.

Recommendation

The TCFMAC recommends that the Judicial Council, effective August 21, 2015, recommend the preparation and submission of fiscal year (FY) 2016-2017 budget change proposals to the DOF for the following trial court facilities operations programs and needs:

1. Additional funds to support ongoing operations and maintenance in trial courts at a recommended industry standard level;

2. Additional funds for the Facility Modifications program to decrease the growing backlog of Facility Modification system renewals in trial court facilities;
3. Additional funds to support facilities operations in newly constructed trial court facilities;
4. Additional funds to improve the insurance coverage within state trial court facilities;
5. Additional funds for security-related expenses previously supported using IMF funding and to obtain funding to support maintenance and replacement of security systems installed in trial court facilities;
6. New funding to initiate a Green Energy Pilot program to advance energy efficiency and water conservation at multiple trial court facilities across the state;
7. New funding to support necessary renovations within the Los Angeles Superior Court for Antelope Valley Juvenile Court needs; and
8. Transfer of funding for the East County Hall of Justice, Alameda Courthouse Project.

Previous Council Action

The Judicial Council has the statutory authority to approve budget requests on behalf of trial court facility operations needs. The recommendation in this report is consistent with the council's past practice under this authority.

BCPs Recommended for Judicial Council Approval and Rationale for Recommendation

The seven items listed below are recommended for consideration by the Judicial Council for submission of BCPs. They are listed in order of priority. All seven items were approved by the TCFMAC for submittal.

1. ***Facilities Operations Costs Adjustment (\$27,605,000)***. This proposal seeks an ongoing baseline adjustment of \$27.6M from the General Fund for transfer to the Court Facilities Trust Fund (CFTF), which includes \$27M for operations and maintenance, and \$605,000 to fund 4.0 positions, in order to maintain trial court facilities at industry standards. Based on the BOMA standard, the Judicial Council would need \$66M annually to support the costs of maintaining the current portfolio. The current budget for routine maintenance is \$39M, leaving a shortfall of \$27M.
2. ***Trial Court Facilities Modifications Program Augmentation (\$12,610,000)***. This proposal seeks an ongoing appropriation from the General Fund for transfer to the State Court Facilities Construction Fund (SCFCF) in the amount of \$12.6M - \$12.0M for Facility Modifications and \$610,000 to fund 4.0 positions to ensure timely facility modification project implementation. The requested funding will assist in reducing the deferred maintenance on the branch's facilities by addressing major repairs, system lifecycle replacements, and renovation projects in existing courthouses to provide safe and secure facilities for the benefit of all court users.
3. ***Increased Operations Costs for New/Renovated Trial Court Facilities (\$12,409,000)***. This proposal seeks to transfer \$12.4M in FY 16-17 from the General Fund to the Court

Facilities Trust Fund (CFTF) and transfer on an ongoing basis \$12.1M from the General Fund to the CFTF to address the increased facility operating costs for the 22 newly constructed or renovated facilities, and maintain them at the recommended industry standard level of the Building Owners and Managers Association (BOMA).

4. ***Trial Court Facilities – Risk Management Program (\$3,931,000)***. This proposal seeks a \$3.9M General Fund transfer to the CFTF in order to provide facilities related insurance for effective risk management in trial court facilities.
5. ***Trial Court Security System Maintenance, Replacement and Improvements (\$3,900,000)***. This proposal requests \$3.9M in General Funds to allow for the replacement and maintenance of existing systems installed through the Trial Court Security Grant Program and to improve and install systems in trial court facilities without sufficient security systems.
6. ***Augmentation to Support “Green” Pilot Projects (\$5,250,000 FY 2016-17; \$9,400,000 FY 2017-18)***. This proposal will leverage local utility purveyors’ existing efforts to audit utility and water use in judicial branch facilities at their expense by implementing energy efficiency and water conservations measures as identified in the pursuit of renewable energy at each of the six sites in an effort to reach zero-net energy status. Six courthouse facilities will be part of the pilot program, including Marina Courthouse, Barstow Courthouse, San Bernardino Juvenile Dependency Courthouse, Amador County Courthouse, B.T. Collins Sacramento Juvenile Courthouse, and Carol Miller Justice Center in Sacramento. This is a one-time Cap and Trade funding request of \$14,650,000.
7. ***Los Angeles Superior Court – Antelope Valley Juvenile Court Facility Modifications (\$3,500,000)***. This proposal is to augment the Immediate and Critical Needs Account (ICNA) by \$3.5M (one-time) to build out two shelled courtrooms and associated support spaces in the Michael D. Antonovich Courthouse and to perform minor modifications in the Alfred J. McCartney Juvenile Justice Center Courthouse. This project was originally approved by the Judicial Council as one of the initial SB 1407 capital outlay projects and has been referred to the TCFMAC as a Facility Modification project. The intention was to have this project be funded separate and apart from the annual \$25M ICNA appropriation for facility modifications.

An additional proposal was submitted to the TCFMAC as an informational item. This item was not ranked, but is to be submitted to the DOF.

8. ***Transfer of funding for East County Hall of Justice, Alameda Courthouse Project (\$903,000)***. Proposed transfer of \$903,000 annually from the Court Facilities Trust Fund to the Immediate and Critical Needs Account (ICNA) to support the financial plan for the construction of the Alameda County – new East County Hall of Justice. The transfer

would be in place until the loan from the ICNA is fully paid off, which is estimated to occur in 7-8 years, and would not begin until the Gale Schenone lease is terminated.

Comments, Alternatives Considered, and Policy Implications

The TCFMAC reviewed, approved, and ranked all proposals at its July 17, 2015 meeting.

Implementation Requirements, Costs, and Operational Impacts

Not applicable. This item requests the funding to address any increased costs that would be incurred to implement the proposals.

Relevant Strategic Plan Goals and Operational Plan Objectives

The funding proposals requested for the trial courts will address the strategic plan goals of Access, Fairness and Diversity (Goal I); Independence and Accountability (Goal II); Branch-wide Infrastructure for Service Excellence (Goal VI); and Adequate, Stable, and Predictable Funding for a Fully Functioning Branch (Goal VII).



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Five Year Master Plan - Deferred Maintenance Report, Fiscal Year 2015-2016	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
Recommended by	Date of Report
Trial Court Facility Modification Advisory Committee	July 17, 2015
Hon. David Edwin Power, Chair	Contact
	Patrick McGrath, 916-643-8051 patrick.mcgrath@jud.ca.gov

Executive Summary

As of August 22, 2014 via Budget Letter (BL) BL14-20 the Department of Finance (DOF) provided detailed instructions for submitting Major and Minor Capital Outlay Budget Change Proposals (COBCPs), Five-Year Infrastructure Plans, Capital Outlay Concept Papers (COCPs), and deferred maintenance information for all capital outlay projects proposed for the 2015-16 Governor's Budget. Per that direction, the Judicial Council submitted its 5-Year Plan - Deferred Maintenance Request Log to DOF.

Though the JCC has not yet received a budget letter for the COBCPs this year, it is our belief based on discussions with DOF that one will be forthcoming, and the branch will need to provide a complete list of deferred maintenance within branch facilities.

As such, the Facilities Management Unit of Real Estate and Facilities Management has prepared the following report.

The summary is as follows:

For active facilities the Deferred Maintenance Request Log shows a total of 2893 registered

system renovations with a projected rough order of magnitude value of \$2,131,260,000. The Judicial Branch responsible share of which is \$1,662,653,000.

For inactive or facilities targeted for disposal the Deferred Maintenance Request Log shows a total of 716 registered system renovations with a projected rough order of magnitude value of \$279,131,000. The Judicial Branch responsible share of which is \$207,778,000.

Recommendation

Staff recommends the Council approve the report for submittal to Department of Finance in September 2015 in alignment with BL 14-20 and in anticipation that this requirement will be included in the DOF Budget Letter for FY 2015-2016 submittals.

Previous Council Action

This is the first submittal of this report to the Council.

Recommendation Rationale

Methodology

Classification of Projects:

The portfolio of the Judicial Branch is in a state of flux. The Capital Construction program, historical decreases to court operational funding, and court operational changes create two distinct classifications of facilities.

The first classification is court facilities that are fully active and operational and will continued to be used by the courts for the foreseeable future. The majority of these facilities have a significant amount of deferred maintenance and as funding is identified infrastructure systems in these facilities will be targeted for renewal.

The other classification is those facilities that have been:

- a) Closed for public access but are intended to be reoccupied once court operational funding is restored;
- b) Closed for public access and targeted for disposal; or
- c) Targeted for disposal as the result of a Capital Construction project that has either been completed or is in an active construction phase.

This report provides two lists to align with this intent. One list for active facilities and a second list for vacant or facilities targeted for disposal.

While all of these facilities have deferred maintenance, only those listed on the Active Facility list are operationally targeted for system renewals over the course of the fiscal year.

The facilities listed on the second list, Inactive or Facilities Targeted for Disposal, are listed in the branches report solely for the purpose of fully complying with DOF's requirement. The branch has no intention of targeting systems in these facilities for renewal unless that work is required due to an emergency thereby mitigating further degradation of the state's asset.

Prioritization:

DOF requested that this list be targeted by priority. As such, the Trial Court Facilities Modification Advisory Committee (TCFMAC), in conjunction with input from the Trial Court Presiding Judges Advisory Committee and the Court Executive Advisory Committee, developed a prioritized list of building systems that Judicial Council staff should use to support this requirement. Additionally, the TCFMAC directed that the building Facility Condition Index is to be used to target those facilities in need of planned improvements the most.

Taken together these methods target infrastructure renewal in those active facilities for the most critical systems in the building which are in the worst condition.

The vast majority of the systems identified within this report are considered a classification of Priority 5—Beyond Rated Life, But Serviceable. Current budget limitations primarily restrict the branch to funding Priority 1—Immediately or Potentially Critical and Priority 2—Necessary, But Not Yet Critical projects. These projects are identified and funded over the course of the fiscal year as systems fail or deteriorate to the point of imminent failure.

Infrastructure and System Exclusion:

Local area network and phone infrastructure systems are removed from this report. While there may be significant deferred maintenance present within these systems, renovations for these systems are not maintained, funded and managed by the staff of the Judicial Council. These systems are directly managed and controlled locally by the Superior Courts throughout the state.

Shared Cost:

Many court facilities throughout the state share equity ownership between the state and counties. This results in a proportional share of system renewal costs being allocated to the state and county respectively. Upon execution of the various deferred projects the actual value of the county and state share may vary from this report due to rounding functions within the data set.

Organization:

Projects have been identified using the Unifomat II classification methodology, per the National Institute of Standards and Technology.¹ Project titles within the report generally align with Level 3 Elements coding. Chart 5.1 and 5.2 provide detail on the sub-elements within facilities that are associated with Level 3 titling.

Alternatives considered and policy implications

Not applicable.

Comments From Interested Parties

The report was posted publicly from July 10 – July 17, 2015. No comments were received.

Implementation Requirements, Costs, and Operational Impacts

Not applicable.

Relevant Strategic Plan Goals and Operational Plan Objectives

The deferred maintenance report supports the organization’s goals of Independence and Accountability (Goal II) and Branch-wide Infrastructure for Service Excellence (Goal VI).

Attachments

1. Deferred Maintenance Request Log

¹ Charette, Robert P. and Harold E. Marshall, “UNIFORMAT II Elemental Classification for Building Specifications, Cost Estimating, and Analysis” U.S. Department of Commerce, Technology Administration, National Institute of Standards and Technology, NISTIR 6389, October 1999.



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Judicial Branch Administration: Report on California Rules of Court, rule 10.75 (Meetings of Advisory Bodies)	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
Recommended by	Date of Report
Hon. Douglas P. Miller, Chair, Executive and Planning Committee	August 3, 2015
Hon. Harry E. Hull, Jr., Chair, Rules and Projects Committee	Contact
Hon. David Rubin, Chair, Litigation Management Committee	Pam Reynolds, 916-263-1462 pam.reynolds@jud.ca.gov
Hon. Kenneth K. So, Chair, Policy Coordination and Liaison Committee	Laura Speed, 916-323-3121 laura.speed@jud.ca.gov
Hon. James E. Herman, Chair, Technology Committee	

Executive Summary

Under California Rules of Court, rule 10.75(p), the Judicial Council must review the rule's impact within one year of its adoption to determine whether amendments are needed. After considering the issue, the chairs of the Judicial Council's five internal committees have concluded that there are no amendments needed at this time. There were a total of 293 meetings held during the first year and 149 meetings, 51 percent, were opened to the public. The chairs recommend that the council accept this report and direct that the attached letter to be sent to the Joint Legislative Budget Committee as required by the Supplemental Report of the 2013–2014 Budget Package.

Recommendation

The chairs of the five internal committees recommend that the Judicial Council accept the *Report on California Rules of Court, rule 10.75 (Meetings of Advisory Bodies)* and direct Judicial Council staff to submit to the Legislature the *Letter to Joint Legislative Budget Committee reporting on rule 10.75* (Attachment 1).

Previous Council Action

The initial report on the steps underway to develop and implement an open meeting rule was submitted to the Legislature by the Judicial Council on January 1, 2014, as required by the Supplemental Report of the 2013–2014 Budget Package.

The Judicial Council approved Rule 10.75, Meetings of advisory bodies, at its April 24, 2014, meeting and the rule became effective July 1, 2014.

Rationale for Recommendation

Implementation

A significant amount of Judicial Council staff resources has been devoted to the implementation of the rule to ensure consistent application and to assess areas in which advisory bodies needed to modify their procedures to comply with the rule. After the council adopted the rule, Judicial Council members and staff began activities that would assist the chairs and lead staff in the implementation of the rule:

- In addition to comprehensive training for chairs, vice chairs, and lead staff of advisory bodies, council staff developed templates of standard meeting notices, agendas, and minutes for the advisory bodies to use. This standardization assisted with the consistent application of the rule across all advisory bodies.
- Council staff created web pages for all advisory bodies that are subject to the rule. The web pages provide the public with pertinent information about the advisory body and allows for transparency and consistency across the advisory bodies. The web pages contain the following information:
 - Meeting notices and agendas, including for those meetings that are closed under the rule. Notices and agendas are posted five business days before the meeting unless it is an urgent circumstance.
 - Meeting materials for meetings that are open to the public, including draft minutes for previous meetings that were open. Materials are posted three business days before the meeting unless there is an urgent circumstance.
 - Roster of the advisory body members.
 - Information about the purpose of the committee.
 - A listing of the standing subcommittees for each advisory body.
 - Contact information for each advisory body to allow the public to e-mail Judicial Council staff assigned to the advisory body.

Impact of the rule

The implementation of rule 10.75 has provided greater public access to the meetings of internal and advisory committees and similar multimember bodies that the council creates to review issues and report to it. Most of these meetings had previously never been open to the public. Given the notice requirements, the rule has impacted the speed with which the advisory bodies work can be completed and presented to the Judicial Council for consideration and approval.

During the year following the Judicial Council's adoption of the rule, 149 advisory body meetings, out of a total of 293, were open to the public for the first time. About 72 percent of the open meetings held during the first year were conducted entirely by teleconference or other electronic means (e.g., video conference). The public was able to listen to those meetings by joining a conference call line, and was provided the opportunity to submit written comments in advance for consideration. For the few in-person advisory body meetings that occurred in this period, the public also had the option of listening in through a telephone conference line and could attend in-person if the chair concluded security measures permitted.

Of the 149 advisory body meetings that were open to the public, the public attended 95 meetings either in-person or by listening in through a conference call line and 36 percent of the meetings had no public attendance. Of the 33 in-person meetings where the public had the opportunity to attend, public comment was made at 11, 33 percent, of those meetings. Since July 1, 2014, the advisory bodies that had the greatest level of public attendance were:

1. Court Facilities Advisory Committee
2. Court Interpreters Advisory Panel
3. Judicial Council Technology Committee
4. Policy Coordination and Liaison Committee
5. Trial Court Budget Advisory Committee
6. Trial Court Facility Modification Advisory Committee
7. Workload Assessment Advisory Committee

During the first year of the rule, most closed sessions occurred during meetings of the six rule committees. This was consistent with rule 10.75(c)(3), which presumes the meetings of those committees are ordinarily closed due to the nature of the work they conduct, which poses unique ethics challenges for advisory body members who are judges.¹ Rule committee meetings may be open, however, if the chair concludes that a particular agenda item may be addressed in open

¹ See, e.g., Judicial Council of Cal., Judicial Branch Administration: Rule for Public Access to Meetings of Judicial Council Advisory Bodies (Apr. 24, 2014), at pp. 7–8, www.courts.ca.gov/documents/jc-20140425-item1.pdf (discussing this point). Any rule committee budget meetings, however, must occur in open session. (Cal. Rules of Court, rule 10.75(c)(3).

session and six rule committee meetings did include open sessions.² When other advisory bodies closed a meeting, the top reasons were:

1. (d)(1)—The appointment, qualifications, performance, or health of an individual, or other information that, if discussed in public, would constitute an unwarranted invasion of personal privacy.
2. (d)(3)—Negotiations concerning a contract, a labor issue, or legislation.
3. (d)(5)—Security plans or procedures or other matters that if discussed in public would compromise the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data.
4. (d)(10)—Topics that judicial officers may not discuss in public without risking a violation of the California Code of Judicial Ethics, necessitating recusal, or encouraging disqualification motions or peremptory challenges against them, including proposed legislation, rules, forms, standards of judicial administration, or jury instructions.

For all regularly scheduled closed meetings a notice and agenda was posted to the advisory body webpage at least five business days before the meeting with information about the topics to be discussed. This provided the public information about the work of the advisory body.

In the first few months after implementation of the rule, advisory body chairs and council staff had many questions about rule requirements, including about calculation of notice and other time requirements. Proposals often are presented to multiple advisory bodies for comment before they are presented to the council for approval. This consultation process is critical in ensuring that the final proposals are fully developed. However, coordinating the successive meeting dates of the various advisory bodies to permit this multi-staged consultation process is made more challenging by the new notice requirements.

No major concerns regarding the rule have been identified, however, nor has any advisory body suggested rule amendments. As a result, the internal chairs do not recommend any modification to the rule at this time. The internal chairs will continue monitoring the rule and periodically report back to the Judicial Council on the impact to determine if amendments are needed.

Report to the Legislature

The Supplemental Report of the 2013–2014 Budget Package requires for each fiscal year, beginning with the 2014–2015 fiscal year, the Judicial Council to submit to the Joint Legislative Budget Committee a report on an open meetings rule including the text of the rule and specific detail on amendments to the rule adopted in the prior fiscal year. A draft of the required report is included as Attachment A to this memorandum, for the council's approval.

² Any rule committee budget meetings also would have to occur in open session. (*Ibid.*)

Comments, Alternatives Considered, and Policy Implications

The internal committee chairs considered the alternative of recommending amendment to rule 10.75 to address any questions or uncertainty, or to assist in resolving any issues or problems. The rule does not appear to require clarification at present, however, and advisory bodies indicate they have been able thus far to complete their work despite the additional duties and time constraints. Nor have any known problems arisen to date related to public access. Advisory bodies have not, for example, received complaints about access. Although public attendance may fluctuate over time as public awareness grows, and depending on the issues that individual advisory bodies may consider, there is no apparent demand at present to expand access.

Implementation Requirements, Costs, and Operational Impacts

Acceptance of this report and approval of the attached update to the Legislature would not involve any implementation requirements or quantifiable costs. The operational impact would be to preserve the status quo of the existing open meeting requirements described in rule 10.75. The rule has added work for staff in preparing for meetings of advisory bodies and their subcommittees, requiring generation of more documents, for example, and the added variable of public attendance for teleconferences. There are occasional challenges in coordinating the meetings of the various advisory bodies that may consider proposals, as they are developed for Judicial Council approval, and this has meant delay and scheduling adjustments at times. However, these challenges are outweighed by the benefits of expanded public access to Judicial Council advisory bodies, including opportunities for greater public understanding of the work of the judicial branch, and for public participation and contribution to that work.

Attachment

1. *Letter to Joint Legislative Budget Committee reporting on rule 10.75*
2. California Rules of Court, rule 10.75 (Meetings of Advisory Bodies)



JUDICIAL COUNCIL OF CALIFORNIA

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

MARTIN HOSHINO
Administrative Director

August 21, 2015

Hon. Mark Leno
Chair, Joint Legislative Budget Committee
Attn: Ms. Peggy Collins
1020 N Street, Room 553
Sacramento, CA 95814

Subject: Report on California Rule of Court, rule 10.75 (Meetings of Judicial Council
Advisory Bodies)

Dear Senator Leno:

The Supplemental Report of the 2013-14 Budget Package directed the Judicial Council, beginning with the 2014-2015 fiscal year, to report annually on the status of the open meetings rule that it adopted for its advisory bodies. The annual report must include specific detail on any amendments adopted in the prior fiscal year.

California Rules of Court, rule 10.75, titled "Meetings of advisory bodies," was adopted by the Judicial Council and became effective on July 1, 2014. No amendments have been made to Rule 10.75 since its adoption. The full text of the rule is attached.

Hon. Mark Leno
August 21, 2015
Page 2

If you have any questions related to this report please contact Cory Jasperson, Director of the Judicial Council's Governmental Affairs office at (916) 323-3121, or cory.jasperson@jud.ca.gov.

Sincerely,

Martin Hoshino
Administrative Director

Enclosures (1)

cc: Hon. Tani Cantil-Sakauye, Chief Justice of California
Cory Jasperson, Director, Governmental Affairs, Judicial Council



California Rules of Court (Revised July 1, 2015)

Rule 10.75. Meetings of advisory bodies

(a) Intent

The Judicial Council intends by this rule to supplement and expand on existing rules and procedures providing public access to the council and its advisory bodies. Existing rules and procedures provide for circulation of advisory body proposals regarding rules, forms, standards, and jury instructions for public comment, posting of written reports for the council on the California Courts website (www.courts.ca.gov), public attendance and comment during council meetings, real time audio casts of council meetings, and public posting of council meeting minutes. This rule expands public access to advisory body meetings.

(b) Advisory bodies and chairs

- (1) "Advisory bodies," as used in this rule, means any multimember body created by the Judicial Council to review issues and report to the council. For purposes of this rule, subcommittees that are composed of less than a majority of the members of the advisory body are not advisory bodies. However, standing subcommittees that are charged with addressing a topic as a continuing matter are advisory bodies for purposes of this rule irrespective of their composition.
- (2) "Chair," as used in this rule, includes a chair's designee.

(c) Open meetings

(1) Meetings

Advisory body meetings to review issues that the advisory body will report to the Judicial Council are open to the public, except as otherwise provided in this rule. A meeting open to the public includes a budget meeting, which is a meeting or portion of a meeting to discuss a proposed recommendation of the advisory body that the Judicial Council approve an allocation or direct an expenditure of public funds. A majority of advisory body members must not decide a matter included on a posted agenda for an upcoming meeting in advance of the meeting.

(2) Exempt bodies

The meetings of the following advisory bodies and their subcommittees are exempt from the requirements of this rule:

- (A) Advisory Committee on Civil Jury Instructions;
- (B) Advisory Committee on Criminal Jury Instructions; and
- (C) Litigation Management Committee.

(3) Rule committees

With the exception of any budget meetings, the meetings of the rule committees listed in this subdivision and of their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session. Any budget meeting must be open to the public.

- (A) Appellate Advisory Committee;
- (B) Civil and Small Claims Advisory Committee;
- (C) Criminal Law Advisory Committee;
- (D) Family and Juvenile Law Advisory Committee;

(E) Probate and Mental Health Advisory Committee; and

(F) Traffic Advisory Committee.

(d) Closed sessions

The chair of an advisory body or an advisory body subcommittee may close a meeting, or portion of a meeting, to discuss any of the following:

- (1) The appointment, qualifications, performance, or health of an individual, or other information that, if discussed in public, would constitute an unwarranted invasion of personal privacy;
- (2) Claims, administrative claims, agency investigations, or pending or reasonably anticipated litigation naming, or reasonably anticipated to name, a judicial branch entity or a member, officer, or employee of such an entity;
- (3) Negotiations concerning a contract, a labor issue, or legislation;
- (4) The price and terms of payment for the purchase, sale, exchange, or lease of real property for a judicial branch facility before the property has been acquired or the relevant contracts have been executed;
- (5) Security plans or procedures or other matters that if discussed in public would compromise the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data;
- (6) Non-final audit reports or proposed responses to such reports;
- (7) Trade secrets or privileged or confidential commercial and financial information;
- (8) Development, modification, or approval of any licensing or other professional examination or examination procedure;
- (9) Evaluation of individual grant applications; or
- (10) Topics that judicial officers may not discuss in public without risking a violation of the California Code of Judicial Ethics, necessitating recusal, or encouraging disqualification motions or peremptory challenges against them, including proposed legislation, rules, forms, standards of judicial administration, or jury instructions.

(e) Notice of meetings

(1) *Regular meetings*

Public notice must be given of the date and agenda of each meeting that is subject to this rule, whether open or closed, at least five business days before the meeting.

(2) *Urgent circumstances*

A meeting that is subject to this rule may be conducted on 24-hours notice in case of urgent circumstances requiring prompt action. The minutes of such meetings must briefly state the facts creating the urgent circumstances requiring prompt action and the action taken.

(f) Form of notice

- (1) The notice and agenda for a meeting subject to this rule, whether open or closed, must be posted on the California Courts website.
- (2) The notice for meetings subject to this rule must state whether the meeting is open or closed. If a meeting is closed or partially closed, the notice must identify the closed agenda items and the specific subdivision of this rule authorizing the closure.
- (3) For meetings that are open in part or in full, the notice must provide:
 - (A) The telephone number or other electronic means that a member of the public may use to attend the meeting;
 - (B) The time of the meeting, whether the public may attend in person, and, if so, the meeting location; and
 - (C) The e-mail address or other electronic means that the public may use to submit written comments regarding agenda items or requests to make an audio recording of a meeting.

(g) Contents of agenda

The agenda for a meeting subject to this rule, whether open or closed, must contain a brief description of each item to be considered during the meeting. If a meeting is closed or partially closed, the agenda must identify the specific subdivision of this rule authorizing the closure.

(h) Meeting materials

Materials for an open meeting must be posted on the California Courts website at least three business days before the date of the meeting, except in extraordinary circumstances.

(i) Public attendance

The public may attend open sessions of advisory body meetings by telephone or other available electronic means. If the members of an advisory body gather in person at a single location for a meeting, the public may attend in person at that location if the chair concludes security measures permit.

(j) Conduct at meeting

Members of the public who attend open meetings in person must remain orderly. The chair may order the removal of any disorderly person.

(k) Public comment

(1) *Written comment*

The public may submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting.

(2) *In-person comment*

If security measures permit public attendance at an open in-person advisory body meeting, the meeting must include an opportunity for public comment on each agenda item before the advisory body considers the item. Requests to comment on an agenda item must be submitted before the meeting begins, indicating the speaker's name, the name of the organization that the speaker represents, if any, and the agenda item that the public comment will address. The advisory body chair may grant a request to comment on an agenda item that is received after a meeting has begun.

(3) *Reasonable limits and timing*

The advisory body chair has discretion to establish reasonable limits on the length of time for each speaker and the total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting or in advance of the agenda items.

(l) Making an audio recording of a meeting

An advisory body chair may permit a member of the public to make an audio recording of an open meeting, or the open portion of a meeting, if a written request is submitted at least two business days before the meeting.

(m) Minutes as official records

Minutes of each meeting subject to this rule, whether open or closed, must be prepared for approval at a future meeting. When approved by the advisory body, the minutes constitute the official record of the meeting. Approved minutes for the open portion of a meeting must be posted on the California Courts website.

(n) Adjourned meetings

An advisory body chair may adjourn a meeting to reconvene at a specified time without issuing a new notice under (e)(1), provided that, if open agenda items remain for discussion, notice of the adjourned meeting is posted on the California Courts website 24 hours before the meeting reconvenes. The notice must identify any remaining open agenda items to be discussed, the time that the meeting will reconvene, the telephone number that the public may use to attend the meeting, and if the public may attend the reconvened meeting in person, the location. The advisory body may not consider new agenda items when the meeting reconvenes except as permitted under (e)(2).

(o) Action by e-mail between meetings

An advisory body may take action by e-mail between meetings in circumstances specified in this subdivision.

(1) *Circumstances*

An advisory body chair may distribute a proposal by e-mail to all advisory body members for action between meetings if:

- (A) The advisory body discussed and considered the proposal at a previous meeting but concluded additional information was needed; or
- (B) The chair concludes that prompt action is needed.

(2) *Notice*

If an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, the advisory body must provide public notice and allow one complete business day for public comment concerning the proposal before acting on the proposal. The notice must be posted on the California Courts website and must provide an e-mail address to which the public may submit written comments. The advisory body may forego public comment if the chair concludes that prompt action is required.

(3) *Communications*

If an e-mail proposal concerns a matter that otherwise must be discussed in an open meeting, after distribution of the proposal and until the advisory body has acted, advisory body members must restrict their communications with each other about the proposal to e-mail. This restriction only applies to proposals distributed under this subdivision.

(4) *Official record*

Written minutes describing the action taken on an e-mail proposal that otherwise must be discussed in an open meeting must be prepared for approval at a future meeting. The minutes must attach any public comments received. When approved by the advisory body, the minutes constitute the official record of the proposal. Approved minutes for such a proposal must be posted to the California Courts website. The e-mails exchanged concerning a proposal that otherwise would have been considered in a closed meeting will constitute the official record of the proposal.

(p) Review requirement

The Judicial Council will review the impact of this rule within one year of the rule's adoption and periodically thereafter to determine whether amendments are needed. In conducting its review, the council will consider, among other factors, the public interest in access to meetings of the council's advisory bodies, the obligation of the judiciary to comply with judicial ethics standards, and the public interest in the ability of advisory bodies to effectively assist the Judicial Council by offering policy recommendations and alternatives for improving the administration of justice.

Rule 10.75 adopted effective July 1, 2014.

Advisory Committee Comment

Subdivisions (a) and (c)(1). This rule expands public access to Judicial Council advisory bodies. The council recognizes the important public interest in access to those meetings and to information regarding administration and governance of the judicial branch. Meetings of the Judicial Council are open, and notice and materials for those meetings are provided to the public, under rules 10.5 and 10.6. Rules in Division 1 of Title 10 describe the council's advisory bodies and require that proposals for rules, standards, forms, and jury instructions be circulated for public comment. (See Cal. Rules of Court, rules 10.10-10.22, 10.30-10.70.) Reports to the council presenting proposals and recommendations are publicly posted on the California Courts website (www.courts.ca.gov). Internal committee chairs report at each council meeting regarding the activities of the internal committees in the period since the last council meeting, and internal committee meeting minutes also are posted on the California Courts website. This rule expands on those existing rules and procedures to increase public access by opening the meetings of advisory bodies to review issues that the advisory body will report to the council. The rule does not apply to meetings that do not involve review of issues to be reported to the council, such as meetings providing education and training of members, discussion of best practices, or sharing of information of general interest unrelated to advice or reports to the council. Those non-advisory matters are outside the scope of this rule.

Subdivision (b)(1). The definition provided in (b)(1) is intended exclusively for this rule and includes internal committees, advisory committees, task forces, and other similar multimember bodies that the council creates to review issues and report to it. (Cf. Cal. Rules of Court, rule 10.30(a) ["Judicial Council advisory bodies are typically advisory committees and task forces].)

Subdivisions (c)(2), (c)(3), and (d)(10). The Code of Judicial Ethics governs the conduct of judges and is binding upon them. It establishes high standards of conduct that judges must personally observe, maintain, and enforce at all times to promote and protect public confidence in the integrity and impartiality of the judiciary. (See Code of Judicial Ethics, Preamble, canon 1, canon 2A.) Among other things, compliance with these high ethical standards means avoiding conduct that could suggest a judge does not have an open mind in considering issues that may come before the judge. (*Id.*, canon 2A.) Judges also are prohibited from making public comments about a pending or impending proceeding (*id.*, canon 3B(9)), signifying that they may not publicly discuss case law that has not reached final disposition through the appellate process, or pending or anticipated litigation, conduct that would be required to participate in the work covered by the referenced subdivisions. Ethical standards also direct that they hear and decide all matters assigned to them, avoiding extrajudicial duties that would lead to their frequent disqualification. (*Id.*, canons 3B(1), 4A(4).)

The work of the three advisory bodies listed in subdivision (c)(2) exclusively involves discussion of topics that are uniquely difficult or impossible for judges to address while honoring the detailed ethical standards governing the judiciary. For example, as required by rule, the Litigation Management Committee discusses pending or anticipated claims and litigation against judicial officers, courts, and court employees. Jury instruction committees also may discuss decisions or rulings issued in cases that have not reached final resolution through the appellate process.

Thus, opening the meetings of these three committees would result in precluding judges, who are specially learned in the law, from meaningful participation on those committees. Subdivision (c)(2) is added to avoid this result.

The work of the six rule committees listed in subdivision (c)(3) almost always will trigger similar issues. Those bodies focus primarily on developing, and providing input concerning, proposed legislation, rules, forms, and standards of judicial administration. That work necessarily entails a complex interchange of views, consideration of multiple perspectives, and the vetting of opposing legal arguments, which judges cannot undertake in public without risk that their comments will be misunderstood or used as a basis for disqualification or challenge. Service on the referenced committees, and public participation in discussing the referenced topics, may make it difficult for a judge to hear and decide all matters assigned to the judge and conceivably could lead to frequent disqualification of the judge, exposing the judge to risk of an ethical violation. This may create significant practical issues for courts related to judicial workloads, while also deterring individuals specially learned in the law from serving on advisory bodies, in turn depriving the public of the benefits of their training and experience in crafting procedures for the effective and efficient administration of justice. Subdivisions (c)(3) and (d)(10) are intended to prevent such deleterious results by clarifying that meetings of the six rule committees whose work almost entirely focuses on these topics ordinarily will be closed and that meetings of other bodies performing similar functions also will be closed as the chairs deem appropriate, with the exception that any budget meetings must be open.

Subdivision (d)(7). Definitions of the terms "trade secret," "privileged information," and "confidential commercial and financial information," are provided in rule 10.500(f)(10).

Subdivision (k)(1). Due to budget constraints, members' schedules, and the geographic diversity of most committees' membership, advisory body meetings typically are held via teleconference or other method not requiring the members' in person attendance. Because judicial officer and attorney members may have limited time for meetings (e.g., only a lunch hour), the volume of advisory body business to be accomplished in those periods may be considerable, and the costs of coordinating teleconferences that would accommodate spoken comments from the public would be significant in the aggregate, the rule only provides for public comment in writing. To ensure sufficient time for advisory body staff to gather and distribute written comments to members, and for members to review comments before the meeting, the rule requires that comments be submitted one complete business day before the meeting.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title
Judicial Administration: Implementation of
Court Technology Governance and Strategic
Plan

Rules, Forms, Standards, or Statutes Affected
Amend Cal. Rules of Court, rules 10.16 and
10.53

Recommended by
Judicial Council Technology Committee
Hon. James E. Herman, Chair
Hon. David De Alba, Vice-chair

Agenda Item Type
Action Required

Effective Date
September 1, 2015

Date of Report
July 22, 2015

Contact
Jessica Craven, 818-558-3103
jessica.craven@jud.ca.gov

Executive Summary

The Judicial Council Technology Committee (JCTC) recommends amending California Rules of Court, rules 10.16 and 10.53, the rules governing JCTC and the Court Technology Advisory Committee (CTAC), respectively. The amended rule would implement the *Court Technology Governance and Strategic Plan*, recommended by the Technology Planning Task Force and adopted by the Judicial Council in 2014, by revising the roles and responsibilities of JCTC and CTAC. It would also change CTAC's name to the Information Technology Advisory Committee to reflect its broader role and responsibilities as a sponsor of branchwide technology initiatives.

Recommendation

JCTC recommends that the Judicial Council amend, effective September 1, 2015, California Rules of Court, rules 10.16 and 10.53.

The amended rules are attached at pages 9–14.

Previous Council Action

On March 27, 2012, the Judicial Council voted to end the deployment of the California Court Case Management System (CCMS) as a statewide court technology solution. Among other directives, the council instructed the CCMS Internal Committee to work in partnership with the trial courts to establish a judicial branch court technology governance structure that would best serve the implementation of technology solutions. The council later changed the name of the CCMS Internal Committee to JCTC and updated the committee's purpose and charge to reflect its directives.

In February 2013, Chief Justice Tani G. Cantil-Sakauye authorized the creation of the Technology Planning Task Force, a task force on judicial branch technology governance and strategy that would report to JCTC. The Chief Justice charged the task force with defining judicial branch technology governance, developing a strategic plan for technology, and developing recommendations for funding judicial branch technology. Relevant to this rules proposal, the Chief Justice specifically directed the task force to develop—in partnership with the trial courts—a comprehensive branchwide plan for technology governance that would delineate the parameters of state versus local decisionmaking for technology initiatives. The directive also included developing (1) a strategic technology plan that would provide direction and vision for technology within the branch, and (2) a tactical technology plan that would define the steps needed to achieve the goals in the strategic plan. The task force was composed of judicial officers, court executive officers, court information technology officers, and other stakeholders representing the trial and appellate courts, the State Bar, and the public.

Over the next year and a half, the Technology Planning Task Force developed the *Court Technology Governance and Strategic Plan*. The plan includes a “Technology Governance and Funding Model,” a “Strategic Plan for Technology,” and a “Tactical Plan for Technology.” The Judicial Council first voted to approve the plan's concept during its January 2014 meeting based on the information provided in the Executive Summary. The council then adopted the plan, effective September 1, 2014, and later approved an updated plan that included changes related to language access on October 27, 2014.

Rationale for Recommendation

The “Technology Governance and Funding Model” envisioned changing some, but not all, of the governance roles and responsibilities for JCTC and CTAC. To implement these changes, JCTC recommends amending California Rules of Court, rules 10.16 and 10.53, the rules governing JCTC and CTAC, respectively.

Rule 10.16: Judicial Council Technology Committee

In the “Technology Governance and Funding Model,” JCTC continues its oversight, policy, and coordination roles for branchwide technology strategy and branch-level projects on behalf of the Judicial Council. The task force recommended making several changes to JCTC's roles and responsibilities.

Technology policies for the branch. Subdivision (a) of rule 10.16 addresses JCTC's roles and responsibilities in overseeing the council's information technology policies. The rule amendment would amend subdivision (a) by adding language to provide that JCTC's technology policy recommendations should focus on long-term strategic leadership and should align with judicial branch goals.

Strategic and tactical technology plans. The Technology Planning Task Force recommended that the Judicial Council adopt strategic and tactical technology plans to guide branch technology decisions. The task force envisioned the strategic technology plan as a cascading plan based on the overall Judicial Council strategic plan for the branch. The branch's strategic plan and goals would drive a four-year technology strategic plan that, in turn, would drive a detailed two-year tactical plan consisting of individual projects.

This rules proposal would add new subdivision (d) to rule 10.16 to describe the strategic and tactical technology plans and to specify the roles and responsibilities of the internal and advisory committees in the development and oversight of the plans.¹ New subparagraph (d)(1) provides that the strategic technology plan describes the technology goals for the branch. It also allocates responsibility to JCTC, with input from advisory committees and individual courts, for developing and recommending the strategic technology plan.

A new subparagraph (d)(2) would also be added to rule 10.16 to address the tactical technology plan. This new subpart provides that the tactical technology plan outlines the technology initiatives and projects that provide a road map for achieving the goals in the strategic technology plan. Whereas JCTC would provide oversight and prioritization of the tactical technology plan, the advisory committees would develop and recommend the plan, with input from the courts. Subdivision (b) of rule 10.53 would similarly be amended to recognize the advisory committee's responsibility for developing and recommending the tactical technology plan, with input from the individual appellate and trial courts.

Funding and relationships with other committees and advisory bodies. The Technology Planning Task Force found that the organizational flow of funding to courts and projects was inconsistent at times because it was not based on a branchwide model. The plan recommended clarifying the relationship of JCTC with other committees and advisory bodies.

This rules proposal would add new subdivision (g) to rule 10.16 regarding the funding of branchwide technology initiatives and projects. This new subdivision provides that JCTC reviews, prioritizes, and recommends requests for the funding of branchwide technology

¹ Subdivision (d) of rule 10.16 would be relettered to subdivision (e). This subdivision on technology needs, standards, and systems includes a provision that JCTC is responsible for establishing a strategic information technology plan for the judicial branch and the courts. Because this proposal would add a separate provision in new subdivision (d) specifically addressing the strategic and tactical technology plans, this reference to a strategic plan would be deleted as duplicative.

initiatives and projects with input from advisory committees. It also specifies relevant factors that the committee may consider in performing this function. These factors include overall return on investment, business risk, and alignment with the technology goals approved by the council in the strategic technology plan. In response to comments received from the Trial Court Budget Advisory Committee (TCBAC) and the Trial Court Presiding Judges Advisory Committee's (TCPJAC) and Court Executives Advisory Committee's (CEAC) Joint Rules and Joint Technology Subcommittees, this rules amendment would also list "the availability of sufficient funding from an identifiable funding source" as a relevant factor for the committee to consider.

New subdivision (h) would also be added to clarify JCTC's relationship with other committees and advisory bodies. This subdivision provides that other committees and advisory bodies should collaborate or consult with JCTC before making decisions or recommendations on technology policies, standards, and projects. It also provides that other committees and advisory bodies should collaborate or consult with JCTC before recommending funding priorities or making recommendations to approve funding requests for branchwide technology initiatives and projects. Requiring collaboration and consultation with JCTC would reduce the risk of making divergent or inconsistent decisions and recommendations on technology policies, standards, projects, and funding, while still respecting the authority and purview of each committee and advisory body.

Oversight and executive sponsorship of branchwide technology initiatives. Lastly, the rules proposal amends rule 10.16 by relettering subdivisions (e) through (i) and providing that JCTC oversees the branchwide technology initiatives sponsored by the advisory committees and task forces over which it has been assigned oversight by the Chief Justice. New subdivision (f) would also be added to rule 10.16 authorizing JCTC, where appropriate, to act as executive sponsor of branchwide technology initiatives under the workstream model.

Rule 10.53: Information Technology Advisory Committee

The Technology Planning Task Force recommended restructuring CTAC to focus on promoting, coordinating, and providing executive sponsorship for the application of technology to the work of the courts. It also recommended changing the committee name to the Information Technology Advisory Committee.

Renaming of the advisory committee. This rules proposal would rename CTAC as the Information Technology Advisory Committee (ITAC). This change from CTAC to ITAC is intended to highlight the advisory committee's new charge and function and to clarify that its role is focused on information technology for the entire branch. Whereas the current name appears to limit the advisory committee's functions solely to the work of the courts, the proposed name would reflect the advisory committee's role in undertaking projects and initiatives that also support the needs of the broader justice community. The emphasis on information technology signals that the advisory committee's responsibilities do not include facility or other technologies that are the purview of other advisory committees.

Sponsorship of branchwide technology initiatives. The Technology Planning Task Force recommended modifying the advisory committee's structure and charge to include the sponsorship of technology initiatives. While recognizing the advisory committee's success in developing and recommending rules of court and statutes to enable technology adoption, the task force found that the advisory committee's role and activities around developing specific technology solutions have been less defined. To improve IT project oversight, the task force recommended modifying the advisory committee's approach to carrying out technology initiatives.

This rules proposal would amend subdivision (a) of rule 10.53 to include a new area of focus for the advisory committee: promoting, coordinating, and acting as executive sponsor for projects and initiatives that apply technology to the work of the courts. It would also add overseeing branchwide technology initiatives to the advisory committee's duties by amending subdivision (b).

In addition, new subdivision (c) would be added to rule 10.53 to address in greater detail the advisory committee's sponsorship of branchwide technology initiatives. As stated in new subparagraph (c)(1), the advisory committee would be responsible for overseeing all branchwide technology initiatives approved in its annual agenda, either by sponsoring a technology workstream or through its subcommittees. Subparagraph (c)(1) also defines the workstream and subcommittee models. Under the workstream model, committee members would sponsor discrete technology initiatives executed by ad hoc teams of technology experts and experienced project and program managers from throughout the branch. Under the subcommittee model, committee members would serve on subcommittees that carry out technology projects and develop and recommend policies and rules.

New subparagraph (c)(2) states that each technology workstream has a specific charge and duration that align with the object and scope of the technology initiative assigned to the workstream. It provides that the individual tasks necessary to complete the initiative may be carried out by dividing the workstream into separate tracks and clarifies that workstreams are not advisory bodies for purposes of rule 10.75, the rule governing open meetings of the Judicial Council.

The appointment of executive sponsors and their responsibilities would be stated in new subparagraph (c)(3). The advisory committee's chair may appoint up to two members to act as executive sponsors of each technology initiative monitored through the workstream model. In their roles as executive sponsors, the members would assume overall executive responsibility for project deliverables, would periodically provide high-level project status updates to the committee and council, and would be responsible for facilitating work plans for the initiative.

The responsibilities, appointment, and composition of the workstream teams are defined in new subparagraph (c)(4). The workstream team would serve as staff on the initiative and would be responsible for structuring, tracking, and managing the progress of the individual tasks and

milestones necessary to complete the initiative. Members of the workstream team would be recommended by the executive sponsor and appointed by the chair of the advisory committee. Technology experts and experienced project and program managers from throughout the branch would compose the workstream team.

Other advisory committee roles and responsibilities. In addition to its new role as executive sponsor of technology initiatives, the advisory committee would have several new duties. As described above, subdivision (b) of rule 10.53 would be amended to add the advisory committee's duty to develop and recommend the branch's tactical technology plan. Subdivision (b) would also be amended to add the duty of developing and recommending an annual agenda identifying the individual technology initiatives scheduled for the next year, as well as the duty of providing input to JCTC on the technology and business requirements of court technology initiatives and projects in funding requests.

Advisory committee membership. The Technology Planning Task Force did not contemplate a change in the advisory committee's current membership positions. The current membership positions include at least one appellate justice, one trial court judicial officer, one trial court judicial administrator, one appellate court judicial administrator, one member of the Senate, one member of the Assembly, one representative of the executive branch, and one lawyer.

At the same time, the task force recommended increasing the advisory committee's technology subject-matter expertise and strengthening its executive-level sponsorship capabilities by appointing members who have acted in leadership roles and who have technology project or program management backgrounds. Based on this suggestion, and in light of the advisory committee's new structure and focus, JCTC recommends adding a new position for a trial court information technology officer and revising the member selection criteria.

This rules proposal reletters the subdivision on membership from (c) to (d) and adds new subparagraph (d)(5), specifying that at least one of the members must be a trial court information technology officer. In addition, this rules proposal reletters the subdivision on member selection from (d) to (e) and adds language stating that a candidate's technology expertise and experience, and ability to act as lead executive sponsor for technology initiatives, should be considered in appointing all members to the advisory committee, other than the legislative, executive, and lawyer members.

Comments, Alternatives Considered, and Policy Implications

This rules proposal was circulated for public comment for eight weeks on a special cycle ending on July 6, 2015. Three comments were received in response to the Invitation to Comment.

Comments

The Superior Court of Sacramento County notes that this rules proposal would require participating courts to incur costs for staff and travel, while also recognizing that the participation of superior court employees in workstream teams is voluntary. Along with other

courts, the Superior Court of Sacramento County is already participating in workstreams, but it sees that “[t]he larger challenge will be securing participation from smaller courts that may not have the staff or funding available to participate.” JCTC appreciates the court’s comments and agrees that it may be more difficult to engage smaller courts due to insufficient resources.

Two specific changes to the rules proposal are recommended by TCBAC and by TCPJAC’s and CEAC’s Joint Rules and Joint Technology Subcommittees. First, they recommend modifying the proposed new subdivision (g) of rule 10.16, to specify “the availability of sufficient funding from an identifiable funding source” among the factors that JCTC should consider in reviewing, prioritizing, and recommending requests for the funding of branchwide technology initiatives and projects. This recommendation has been incorporated into this rules proposal.

Second, the advisory committee and subcommittees recommend revising proposed new subdivision (h) of rule 10.16. This new subdivision, which would address collaboration and consultation with JCTC, provides as follows:

Other committees and advisory bodies should collaborate or consult with the committee (1) before making decisions or recommendations on technology policies, standards, and projects, and (2) before recommending funding priorities or making recommendations to approve funding requests for branchwide technology initiatives and project.

The advisory committee and subcommittees recommend adding the following language:

Before presentation to the committee, other committees and advisory bodies should also consult with the Trial Court Budget Advisory Committee regarding the availability of sufficient funding from the Trial Court Trust Fund and State Trial Court Improvement and Modernization Fund for any proposed initiative or project which would rely on funding from those sources.

JCTC declines to pursue this recommendation because it is outside the scope of rule 10.16 and this rules proposal, as circulated. The advisory committee and subcommittees may want to recommend a proposal to amend rule 10.64, concerning TCBAC, to incorporate this suggestion.

Alternatives

Last year, the Judicial Council approved the *Court Technology Governance and Strategic Plan*. Because this proposal would implement the Judicial Council’s directives, JCTC did not contemplate any alternatives to this proposal to amend rules 10.16 and 10.53.

Implementation Requirements, Costs, and Operational Impacts

Since the Judicial Council approved the *Court Technology Governance and Strategic Plan* last year, JCTC and its advisory committee have begun implementing its recommendations. Workstreams have already been formed for several technology initiatives—including data

exchanges, e-filing, next-generation hosting, and information security—and are in various stages of deployment. To reduce costs, workstreams have employed cost-saving measures and leveraged existing resources.²

By adopting the *Court Technology Governance and Strategic Plan*, the Judicial Council approved and authorized using the workstream model to sponsor technology initiatives. The workstream model may result in some additional costs to the courts because workstream teams are intended to be staffed by technology experts and experienced project managers from throughout the branch. Individual court executive officers would be responsible for ensuring that their courts have sufficient resources before authorizing their technology experts and program managers to work on branchwide technology projects and initiatives.

Changing the name of CTAC to the Information Technology Advisory Committee would result in minimal costs for the branch.

Attachments and Links

1. Cal. Rules of Court, rules 10.16 and 10.53, at pages 9–14
2. Chart of comments, at pages 15–20
3. Report to the Judicial Council, *Judicial Branch Administration: Update to Court Technology Governance and Strategic Plan* (Oct. 27, 2014), <http://www.courts.ca.gov/documents/jc-20141028-item4.pdf>

² Funding sources for individual technology initiatives must be identified to cover any costs required to carry out the initiative. The *Court Technology Governance and Strategic Plan* identifies existing funding sources and suggests possible funding options.

Rules 10.16 and 10.53 of the California Rules of Court are amended, effective September 1, 2015, to read:

1 **Rule 10.16. Technology Committee**

2
3 **(a) Technology policies**

4
5 The Technology Committee oversees the council’s policies concerning information
6 technology. The committee assists the council by providing technology
7 recommendations focusing on the establishment of policies that emphasize long-
8 term strategic leadership and that align with judicial branch goals. The committee is
9 responsible for determining that council policies are complied with on specific
10 projects approved and funded by the council and that those projects proceed on
11 schedule and within scope and budget.

12
13 **(b) Coordination**

14
15 The committee coordinates the activities of the Administrative Director ~~of the~~
16 ~~Courts~~, council internal committees and advisory committees, the courts, justice
17 partners, and stakeholders on matters relating to court information technology. The
18 committee also, in collaboration or consultation with the Policy Coordination and
19 Liaison Committee, coordinates with other branches of government on information
20 technology issues.

21
22 **(c) Reports**

23
24 The committee seeks reports and recommendations from the Administrative
25 Director, the courts, and stakeholders on information technology issues. It ensures
26 that information technology reports to the council are clear, are comprehensive, and
27 provide relevant options so that the council can make effective final information
28 technology policy decisions.

29
30 **(d) Strategic and tactical technology plans**

31
32 **(1) Strategic technology plan**

33
34 The strategic technology plan describes the technology goals for the branch.
35 With input from advisory committees and individual courts, the committee is
36 responsible for developing and recommending a strategic technology plan for
37 the branch and the courts.

38
39 **(2) Tactical technology plan**

40
41 The tactical technology plan outlines the technology initiatives and projects
42 that provide a road map for achieving the goals in the strategic technology

1 plan. The committee provides oversight approval and prioritization of the
2 tactical technology plan, which is developed and recommended by advisory
3 committees with input from the courts.

4
5 **(d) (e) Technology needs, standards, and systems**

6
7 The committee will, in partnership with the courts, develop timelines and
8 recommendations to the council for:

- 9
10 (1) Establishing an approach and vision for implementing information
11 technology that serves the courts, litigants, attorneys, justice partners, and the
12 public, while considering available resources and information technology
13 needs;
14
15 (2) Improving judicial branch information technology governance to best serve
16 the implementation of technological solutions;
17
18 ~~(3) Establishing a strategic information technology plan for the judicial branch~~
19 ~~and the courts;~~
20
21 ~~(4) (3) Developing~~ Reviewing and recommending information technology
22 standards; and
23
24 ~~(5) (4) Developing standardized requests for proposals, identifying appropriate~~
25 ~~vendors, and Encouraging the courts to leverage their collective economic~~
26 purchasing power in acquiring technological systems.

27
28 **(f) Sponsorship of branchwide technology initiatives**

29
30 The committee may act as executive sponsor of branchwide technology initiatives
31 under the workstream model in rule 10.53(c).

32
33 **(g) Funding of branchwide technology initiatives and projects**

34
35 The committee reviews, prioritizes, and recommends requests for the funding of
36 branchwide technology initiatives and projects with input from advisory
37 committees. Factors to be considered by the committee include overall return on
38 investment, business risk, alignment with the technology goals approved by the
39 council in the strategic technology plan, and the availability of sufficient funding
40 from an identifiable funding source.

41
42 **(h) Collaboration and consultation with the committee**

1 Other committees and advisory bodies should collaborate or consult with the
2 committee (1) before making decisions or recommendations on technology
3 policies, standards, and projects, and (2) before recommending funding priorities or
4 making recommendations to approve funding requests for branchwide technology
5 initiatives and projects.

6
7 **(e) (i) Oversight of advisory committees and task forces**

8
9 For those advisory committees and task forces over which it has been assigned
10 oversight by the Chief Justice, the Technology Committee ensures that the
11 activities of each are consistent with the council's goals and policies. To achieve
12 these outcomes, the committee:

- 13
14 (1) Communicates the council's annual charge to each; ~~and~~
15
16 (2) Reviews an annual agenda for each to determine whether the annual agenda
17 is consistent with its charge and with the priorities established by the
18 council; and
19
20 (3) Oversees the branchwide technology initiatives sponsored by each.

21
22 **Rule 10.53. ~~Court~~ Information Technology Advisory Committee**

23
24 **(a) Areas of focus**

25
26 The committee makes recommendations to the council for improving the
27 administration of justice through the use of technology and for fostering
28 cooperative endeavors to resolve common technological issues with other
29 stakeholders in the justice system. The committee promotes, coordinates, and acts
30 as executive sponsor for projects and initiatives that apply technology to the work
31 of the courts.

32
33 **(b) Additional duties**

34
35 In addition to the duties described in rule 10.34, the committee must:

- 36
37 (1) Oversee branchwide technology initiatives funded in whole or in part by the
38 state;
39
40 (1) (2) Recommend rules, standards, and legislation to ensure compatibility in
41 information and communication technologies in the judicial branch;
42

- 1 ~~(2)~~ (3) Review and comment on requests for the funding of judicial branch
2 technology projects to ensure compatibility with goals established by the
3 council and standards promulgated by the committee; Provide input to the
4 Judicial Council Technology Committee on the technology and business
5 requirements of court technology projects and initiatives in funding requests;
6
7 ~~(3)~~ (4) Review and recommend legislation, rules, or policies to balance the interests
8 of privacy, access, and security in relation to court technology;
9
10 ~~(4)~~ (5) Make proposals for technology education and training in the judicial branch;
11
12 ~~(5)~~ (6) Assist courts in acquiring and developing useful technologies; ~~and~~
13
14 (7) Establish mechanisms to collect, preserve, and share best practices across the
15 state;
16
17 ~~(6)~~ (8) Maintain a long range plan. Develop and recommend a tactical technology
18 plan, described in rule 10.16, with input from the individual appellate and
19 trial courts; and
20
21 (9) Develop and recommend the committee’s annual agenda, identifying
22 individual technology initiatives scheduled for the next year.

23
24 **(c) Sponsorship of branchwide technology initiatives**

25
26 (1) Oversight of branchwide technology initiatives

27
28 The committee is responsible for overseeing branchwide technology
29 initiatives that are approved as part of the committee’s annual agenda. The
30 committee may oversee these initiatives through a workstream model, a
31 subcommittee model, or a hybrid of the two. Under the workstream model,
32 committee members sponsor discrete technology initiatives executed by ad
33 hoc teams of technology experts and experienced project and program
34 managers from throughout the branch. Under the subcommittee model,
35 committee members serve on subcommittees that carry out technology
36 projects and develop and recommend policies and rules.

37
38 (2) Technology workstreams

39
40 Each technology workstream has a specific charge and duration that align
41 with the objective and scope of the technology initiative assigned to the
42 workstream. The individual tasks necessary to complete the initiative may be

1 carried out by dividing the workstream into separate tracks. Technology
2 workstreams are not advisory bodies for purposes of rule 10.75.

3
4 (3) Executive sponsorship of technology workstreams

5
6 The committee chair designates a member or two members of the committee
7 to act as executive sponsors of each technology initiative monitored through
8 the workstream model. The executive sponsor assumes overall executive
9 responsibility for project deliverables and periodically provides high-level
10 project status updates to the advisory committee and council. The executive
11 sponsor is responsible for facilitating work plans for the initiative.

12
13 (4) Responsibilities and composition of technology workstream teams

14
15 A workstream team serves as staff on the initiative and is responsible for
16 structuring, tracking, and managing the progress of individual tasks and
17 milestones necessary to complete the initiative. The executive sponsor
18 recommends, and the chair appoints, a workstream team of technology
19 experts and experienced project and program managers from throughout the
20 branch.

21
22 **(e) (d) Membership**

23
24 The committee must include at least one member from each of the following
25 categories:

- 26
27 (1) Appellate justice;
28
29 (2) Trial court judicial officer;
30
31 (3) Trial court judicial administrator;
32
33 (4) Appellate court judicial administrator;
34
35 (5) Trial court information technology officer;
36
37 ~~(5)~~ (6) Member of the Senate;
38
39 ~~(6)~~ (7) Member of the Assembly;
40
41 ~~(7)~~ (8) Representative of the executive branch; and
42
43 ~~(8)~~ (9) Lawyer.

1 ~~(d)~~ (e) **Member selection**

2
3 The two legislative members are appointed by the respective houses. The executive
4 member is appointed by the Governor. The lawyer member is appointed by the
5 State Bar. In making all other appointments to the committee, factors to be
6 considered include a candidate's technology expertise and experience, as well as an
7 ability to act as lead executive sponsor for technology initiatives.

8
9 ~~(e)~~ (f) **Chair**

10
11 The Chief Justice appoints a judicial officer ~~or justice member~~ to serve as chair.

DRAFT

SP15-04**Judicial Administration: Implementation of Court Technology Governance and Strategic Plan** (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
1.	Superior Court of Sacramento County By Elaine Flores	AM	<p>1. Would the proposal result in any additional costs or cost savings? If so please quantify.</p> <p>a. Yes: Courts that participate in workstreams will incur costs for staff and travel. Quantifying those costs is not possible as the number of workstreams active at any given time may be different.</p> <p>2. What would the implementation requirements be for courts?</p> <p>a. The proposal does not appear to place any new requirements on the courts to support. Participation in the workstreams is voluntary.</p> <p>3. How likely is it that courts could make their technology experts and program managers available to participate in workstreams?</p> <p>a. Courts are already making resources available to participate in the various workstreams. The larger challenge will be securing participation from small courts that may not have the staff or funding available to participate. This court is already participating in the Data Exchange Workstream and has volunteered to participate in the E filing Workstream.</p>	The court's comments are noted.
2.	Trial Court Budget Advisory Committee by Hon. Laurie M. Earl, Chair	AM	<p>On behalf of the Trial Court Budget Advisory Committee (TCBAC) I submit these comments regarding the proposal to amend California Rule of Court (CRC) 10.16 and 10.53.</p> <p>We support the Judicial Council</p>	The advisory committee's support is noted.

SP15-04

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			<p>Technology Committee's efforts to establish oversight and coordination for branchwide technology strategy and branch-level projects. We agree that in order to align with judicial branch technology goals, the approval of technology projects should come through a single committee, the JCTC.</p> <p>In terms of funding of branchwide technology initiatives and projects, we believe one factor that the JCTC should consider before recommending approval of a proposed initiative or project is the availability of sufficient funds from an identifiable funding source. Due to the fiscal instability of the State Trial Court Trust Fund (TCTF) and Improvement and Modernization Fund (IMF) and the potential that funding of branchwide technology initiatives and projects would in part rely on these funds, we believe it would be important that your committee consider available funding as part of your analysis. Thus we propose the following language be included in CRC 10.16(g):</p> <p>10.16 (g) Funding of branchwide technology initiatives and projects</p>	<p>JCTC agrees and recommends amending rule 10.16(g) as follows:</p> <p>(g) Funding of branchwide technology initiatives and projects</p> <p>The committee reviews, prioritizes, and recommends requests for the funding of branchwide technology initiatives and projects with input from advisory committees. Factors to be considered by the committee include overall return on investment, business risk, alignment with the technology goals approved by the council in the strategic technology plan, <u>and the availability of sufficient funding from an identifiable funding source.</u></p>

SP15-04

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			<p>The committee reviews, prioritizes, and recommends requests for the funding of branchwide technology initiatives and projects with input from advisory committees. Factors to be considered by the committee include overall return on investment, business risk, and alignment with the technology goals approved by the council in the strategic technology plan. <u>The committee shall also consider the availability of sufficient funding from an identifiable funding source.</u></p> <p>Additionally, at the April, 2015 Judicial Council meeting the Council adopted the TCBAC's policy recommendation that any new proposal that would rely on TCTF or IMF funding, or add new costs to an existing TCTF or IMF program, be reviewed by TCBAC prior to presentation to the Council. In light of this existing policy, we propose the following language be included in CRC I 0.16(h):</p> <p>10.16 (h) Collaboration and consultation with the committee</p> <p>Other committees and advisory bodies should collaborate or consult with the committee (1) before making decisions</p>	<p>JCTC declines to pursue this recommendation as it is outside the scope of rule 10.16 and this rules proposal, as circulated. TCBAC may want to consider a proposal to amend rule 10.64 to incorporate this recommendation.</p>

SP15-04

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			<p>or recommendations on technology policies, standards, and projects and (2) before recommending funding priorities or making recommendations to approve funding requests for branchwide technology initiatives and projects. <u>Before presentation to the committee, other committees and advisory bodies should also consult with the Trial Court Budget Advisory Committee regarding the availability of sufficient funding from the Trial Court Trust Fund or State Trial Court Improvement & Modernization Fund for any proposed initiative or project which would rely on funding from those sources.</u></p>	
3.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Rules Subcommittee and TCPJAC/CEAC Joint Technology Subcommittee Comment	A	<p>The subcommittees agree that the proposal should be implemented because it clarifies roles and responsibilities of the Judicial Council’s technology committees.</p> <p><u>Suggested modifications</u> The TCPJAC/CEAC Joint Rules Subcommittee recommends the following modifications to Rule 10.16 (see highlighted text):</p> <p>(g) Funding of branchwide technology initiatives and projects</p> <p><u>The committee reviews, prioritizes, and recommends requests for the funding of</u></p>	<p>The subcommittees’ support is noted.</p> <p>Please see the responses above.</p>

SP15-04

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			<p><u>branchwide technology initiatives and projects with input from advisory committees. Factors to be considered by the committee include overall return on investment, business risk, and alignment with the technology goals approved by the council in the strategic technology plan.</u></p> <p><u>The committee shall also consider the availability of sufficient funding from an identifiable funding source.</u></p> <p>(h) Collaboration and consultation with the committee</p> <p><u>Other committees and advisory bodies should collaborate or consult with the committee (1) before making decisions or recommendations on technology policies, standards, and projects and (2) before recommending funding priorities or making recommendations to approve funding requests for branchwide technology initiatives and projects. Before presentation to the committee, other committees and advisory bodies should also consult with the Trial Court Budget Advisory Committee regarding the availability of sufficient funding from the Trial Court Trust Fund and State Trial Court Improvement and Modernization Fund for any proposed initiative or project which would rely on funding from those sources.</u></p> <p>The following are responses to the proposal’s Request for Specific Comments:</p> <p>Does the proposal appropriately address the</p>	<p>The subcommittees’ comments are noted.</p>

SP15-04

Judicial Administration: Implementation of Court Technology Governance and Strategic Plan (amend rules 10.16 and 10.53)

All comments are verbatim unless indicated by an asterisk (*). List by alpha.

	Commentator	Position	Comment	Committee Response
			<p>stated purpose? <i>Yes</i></p> <p>Would the proposal result in any additional costs or cost savings? If so please quantify. <i>None that could easily be identified. This proposal, however, could possibly assist with bringing alignment and focus to courts for technology across the state.</i></p> <p>How likely is it that courts could make their technology experts and program managers available to participate in workstreams? <i>In general, courts with technology experts would likely be available to participate in workstreams given the availability of their resources and if meetings provide for remote participation via WebEx, conference calls, etc.</i></p>	



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 21, 2015

Title	Agenda Item Type
Jury Instructions: Revisions to Criminal Jury Instructions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
<i>Judicial Council of California Criminal Jury Instructions</i>	August 21, 2015
Recommended by	Date of Report
Advisory Committee on Criminal Jury Instructions	July 10, 2015
Hon. Sandy R. Kriegler, Chair	Contact
	Robin Seeley, 415-865-7710
	robin.seeley@jud.ca.gov

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approval of the proposed revisions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes will keep *CALCRIM* current with statutory and case authority.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective August 21, 2015, approve for publication under rule 2.1050 of the California Rules of Court the criminal jury instructions prepared by the committee. Once approved by the Judicial Council, the revised instructions will be published in the next official edition of the *Judicial Council of California Criminal Jury Instructions*.

A table of contents and the proposed revisions to the criminal jury instructions are attached at pages 5–165.

Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the advisory committee and its charge.¹ In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court. Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM*.

The council approved the last *CALCRIM* release at its February 2015 meeting.

Rationale for Recommendation

The committee recommends proposed revisions to the following instructions affected by Proposition 47, which raised threshold amounts for felony prosecution of many theft crimes and reduced other theft crimes to misdemeanors, inter alia: 1700, 1750, 1801, 1802, 1850, 1900, 1957, 1970, 1971, 2304, 2377. The following instructions have proposed revisions unrelated to Proposition 47: 219, 221, 358, 521, 570, 603, 800, 1017, 1018, 1170, 1180, 1252, 1500, 1863, 2100, 2101, 2110, 2111, 2113, 2410, 2902, 2980, 3413, 3450, 3453. The committee proposes one new instruction required by proposition 47: 1703. It also proposes deleting *CALCRIM* No. 2411.

The committee drafted or revised the instructions based on comments or suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law. Below is a summary of a few of the proposed changes.

Because Proposition 47 made many changes in criminal law, the committee had extra levels of review – a special work group of trial judges, the sitting *CALCRIM* work group, and retired Judge Richard Couzens for those revisions, in addition to careful review by the full advisory committee and circulation for public comment.

New Shoplifting instruction (*CALCRIM* No. 1703)

Proposition 47 created Penal Code section 495.5, which defines a new crime, shoplifting. The committee drafted a new instruction for this crime.

Cross-References required to *CALCRIM* Nos. 3100 and 3101 on prior convictions (*CALCRIM* Nos. 1700, 1703, 1750, 1801, 1802, 1850, 1900, 1957, 1970, 2304, and 2377)

To implement the provisions of Proposition 47, the committee added an appropriate version of the following cross-reference to the bench notes of many instructions because disqualifying prior convictions are likely to be an issue for the jury:

¹ Rule 10.59(a) states: “The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.”

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Instruction on threshold amounts per Proposition 47 (CALCRIM Nos. 1750, 1900, 1957, 1970)

[If you find the defendant guilty of receiving stolen property, you must then decide whether the value of the property received was more than \$950.]

Proposition 47 revisions to the Burglary instruction (CALCRIM No. 1700)

The committee added new language to the Burglary instruction for use when factual overlap between burglary and the new shoplifting offense is possible.

Repeal of the instruction on possession of needles or syringes (CALCRIM Nos. 2411)

The legislature repealed Business and Professions Code section 4140 regarding illegal possession of hypodermic needles. Therefore CALCRIM No. 2411, Possession of Hypodermic Needle or Syringe, is no longer needed and the committee proposes deleting it.

Revision of Penal Code section 192 (CALCRIM Nos. 570, 603)

The Legislature added sections 192(f)(1) and (f)(2) to the statute, which state that provocation is not objectively reasonable if it resulted from discovery of, knowledge about, or potential disclosure of the victim's gender identity and gender-related appearance and behavior. The committee revised the bench notes of the voluntary manslaughter and attempted voluntary manslaughter instructions to advise of this change. It did not draft specific provisions for use in an instruction because the court and parties are likely to need and prefer an instruction tailored to the individual circumstances of a given case.

Comments, Alternatives Considered, and Policy Implications

The proposed additions and revisions to *CALCRIM* circulated for comment from May 18 to June 30, 2015. Four commentators submitted comments about the proposal, and all either agreed with the proposal or agreed if modified. Most of the comments were about the revisions required by Proposition 47 and touched on issues that committee members had already discussed at great length. A comment chart is attached at pages 166–169.

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. The proposed revised instructions are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Implementation Requirements, Costs, and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments

1. Full text of revised *CALCRIM* instructions, including table of contents, at pages 5–165
2. Comment chart, at pages 166–169

Instruction Number	Instruction Title
1700, 1703, 1750, 1801, 1802, 1850, 1900, 1957, 1970, 1971, 2304, 2377	Theft, Burglary, and Drug Crime Instructions Affected by Proposition 47
219, 221, 3453	Reasonable Doubt Series, Extension of Commitment as Sexually Violent Predator
358	Evidence of Defendant's Statements
521	First Degree Murder
570, 603	Voluntary Manslaughter: Heat of Passion—Lesser Included Offense, Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense
800	Aggravated Mayhem
1017, 1018	Oral Copulation of an Intoxicated Person
1170	Failure to Register as Sex Offender
1180	Incest
1252	Defense to Child Abduction: Protection from Immediate Injury
1500	Aggravated Arson
1863	Defense to Theft or Robbery: Claim of Right
2100, 2101, 2110, 2111, 2113	Vehicle Offenses, DUI
2410, 2411	Possession of Controlled Substance Paraphernalia, Possession of Hypodermic Needle or Syringe
2902	Damaging Phone or Electrical Line
2980	Contributing to Delinquency of Minor

Instruction Number	Instruction Title
3413	Compassionate Use Defense, Collective/Cooperative Defense
3450	Insanity: Determination, Effect of Verdict

1700. Burglary (Pen. Code, § 459)

The defendant is charged [in Count __] with burglary [in violation of Penal Code section 459].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant entered (a/an) (building/room within a building/locked vehicle/_____ <insert other statutory target>);]

[AND]

2. When (he/she) entered (a/an) (building/room within the building/locked vehicle/_____ <insert other statutory target>), (he/she) intended to commit (theft/ [or] _____ <insert one or more felonies>).

<If the evidence supports a defense theory that the crime was shoplifting as defined by Penal Code section 459.5, give paragraph 3A and the appropriate following optional paragraphs>

[AND]

[3A. The value of the property taken or intended to be taken was more than \$950.00](;/.)]

[OR]

[3B. The structure that the defendant entered was a noncommercial establishment(;/.)]

[OR]

[3C. The structure was a commercial establishment that the defendant entered during non- business hours.]]

To decide whether the defendant intended to commit (theft/ [or] _____ <insert one or more felonies>), please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].

<Give the following bracketed paragraph if the second degree is the only possible degree of the charged crime for which the jury may return a verdict.>

[If you find the defendant guilty of burglary, it is burglary of the second degree.]

A burglary was committed if the defendant entered with the intent to commit (theft/ [or] _____ <insert one or more felonies>). The defendant does not need to have actually committed (theft/ [or] _____ <insert one or more felonies>) as long as (he/she) entered with the intent to do so. [The People do not have to prove that the defendant actually committed (theft/ [or] _____ <insert one or more felonies>).]

[Under the law of burglary, a person *enters a building* if some part of his or her body [or some object under his or her control] penetrates the area inside the building's outer boundary.]

[A building's *outer boundary* includes the area inside a window screen.]
[An attached balcony designed to be entered only from inside of a private, residential apartment on the second or higher floor of a building is inside a building's *outer boundary*.]

[The People allege that the defendant intended to commit (theft/ [or] _____ <insert one or more felonies>). You may not find the defendant guilty of burglary unless you all agree that (he/she) intended to commit one of those crimes at the time of the entry. You do not all have to agree on which one of those crimes (he/she) intended.]

New January 2006; Revised October 2010, February 2012, February 2013 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If the crime charged is shoplifting, give CALCRIM No. 1703 instead of this instruction.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

If second degree burglary is the only possible degree of burglary that the jury may return as their verdict, do not give CALCRIM No. 1701, *Burglary: Degrees*.

Although actual commission of the underlying theft or felony is not an element of burglary (*People v. Montoya* (1994) 7 Cal.4th 1027, 1041–1042 [31 Cal.Rptr.2d 128, 874 P.2d 903]), the court has a **sua sponte** duty to instruct that the defendant must have intended to commit a felony and has a **sua sponte** duty to define the elements of the underlying felony. (*People v. Smith* (1978) 78 Cal.App.3d 698, 706 [144 Cal.Rptr. 330]; see also *People v. Hughes* (2002) 27 Cal.4th 287, 349 [116 Cal.Rptr.2d 401, 39 P.3d 432].) Give all appropriate instructions on theft or the felony alleged.

If the area alleged to have been entered is something other than a building or locked vehicle, insert the appropriate statutory target in the blanks in elements 1 and 2. Penal Code section 459 specifies the structures and places that may be the targets of burglary. The list includes a house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, floating home as defined in Health and Safety Code section 18075.55(d), railroad car, locked or sealed cargo container whether or not mounted on a vehicle, trailer coach as defined in Vehicle Code section 635, house car as defined in Vehicle Code section 362, inhabited camper as defined in Vehicle Code section 243, locked vehicle as defined by the Vehicle Code, aircraft as defined in Public Utilities Code section 21012, or mine or any underground portion thereof. (See Pen. Code, § 459.)

On request, give the bracketed paragraph that begins with “Under the law of burglary,” if there is evidence that only a portion of the defendant’s body, or an instrument, tool, or other object under his or control, entered the building. (See *People v. Valencia* (2002) 28 Cal.4th 1, 7–8 [120 Cal.Rptr.2d 131, 46 P.3d 920]; *People v. Davis* (1998) 18 Cal.4th 712, 717–722 [76 Cal.Rptr.2d 770, 958 P.2d 1083].)

On request, give the bracketed sentence defining “outer boundary” if there is evidence that the outer boundary of a building for purposes of burglary was a window screen. (See *People v. Valencia* (2002) 28 Cal.4th 1, 12–13 [120 Cal.Rptr.2d 131, 46 P.3d 920].)

Whenever a private, residential apartment and its balcony are on the second or higher floor of a building, and the balcony is designed to be entered only from inside the apartment, that balcony is part of the apartment and its railing constitutes the apartment's "outer boundary." (*People v. Yarbrough* (2012) 54 Cal.4th 889, 894 [144 Cal.Rptr.3d 164, 281 P.3d 68].)

If multiple underlying felonies are charged, give the bracketed paragraph that begins with "The People allege that the defendant intended to commit either." (*People v. Failla* (1966) 64 Cal.2d 560, 569 [51 Cal.Rptr. 103, 414 P.2d 39]; *People v. Griffin* (2001) 90 Cal.App.4th 741, 750 [109 Cal.Rptr.2d 273].)

If the defendant is charged with first degree burglary, give CALCRIM No. 1701, *Burglary: Degrees*.

AUTHORITY

- Elements ▶ Pen. Code, §§ 459, 459.5.
- Instructional Requirements ▶ *People v. Failla* (1966) 64 Cal.2d 560, 564, 568–569 [51 Cal.Rptr. 103, 414 P.2d 39]; *People v. Smith* (1978) 78 Cal.App.3d 698, 706–711 [144 Cal.Rptr. 330]; *People v. Montoya* (1994) 7 Cal.4th 1027, 1041–1042 [31 Cal.Rptr.2d 128, 874 P.2d 903].
- Burden for Consent Defense Is to Raise Reasonable Doubt ▶ *People v. Sherow* (2011) 196 Cal.App.4th 1296, 1308–1309 [128 Cal.Rptr.3d 255].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (~~3d~~4th ed. ~~2000~~2012) Crimes Against Property, §§ ~~128-129~~13, 115.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.10 (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Burglary ▶ Pen. Code, §§ 663, 459.
- Tampering With a Vehicle ▶ Veh. Code, § 10852; *People v. Mooney* (1983) 145 Cal.App.3d 502, 504–507 [193 Cal.Rptr. 381] [if burglary of automobile charged].

RELATED ISSUES

Auto Burglary–Entry of Locked Vehicle

Under Penal Code section 459, forced entry of a locked vehicle constitutes burglary. (*People v. Young K.* (1996) 49 Cal.App.4th 861, 863 [57 Cal.Rptr.2d 12].) However, there must be evidence of forced entry. (See *People v. Woods* (1980) 112 Cal.App.3d 226, 228–231 [169 Cal.Rptr. 179] [if entry occurs through window deliberately left open, some evidence of forced entry must exist for burglary conviction]; *People v. Malcolm* (1975) 47 Cal.App.3d 217, 220–223 [120 Cal.Rptr. 667] [pushing open broken wing lock on window, reaching one’s arm inside vehicle, and unlocking car door evidence of forced entry].) Opening an unlocked passenger door and lifting a trunk latch to gain access to the trunk is not an auto burglary. (*People v. Allen* (2001) 86 Cal.App.4th 909, 917–918 [103 Cal.Rptr.2d 626].)

Auto Burglary–Definition of Locked

To lock, for purposes of auto burglary, is “to make fast by interlinking or interlacing of parts ... [such that] some force [is] required to break the seal to permit entry” (*In re Lamont R.* (1988) 200 Cal.App.3d 244, 247 [245 Cal.Rptr. 870], quoting *People v. Massie* (1966) 241 Cal.App.2d 812, 817 [51 Cal.Rptr. 18] [vehicle was not locked where chains were wrapped around the doors and hooked together]; compare *People v. Malcolm* (1975) 47 Cal.App.3d 217, 220–223 [120 Cal.Rptr. 667] [vehicle with locked doors but broken wing lock that prevented window from being locked, was for all intents and purposes a locked vehicle].)

Auto Burglary–Intent to Steal

Breaking into a locked car with the intent to steal the vehicle constitutes auto burglary. (*People v. Teamer* (1993) 20 Cal.App.4th 1454, 1457–1461 [25 Cal.Rptr.2d 296]; see also *People v. Blalock* (1971) 20 Cal.App.3d 1078, 1082 [98 Cal.Rptr. 231] [auto burglary includes entry into locked trunk of vehicle].) However, breaking into the headlamp housings of an automobile with the intent to steal the headlamps is not auto burglary. (*People v. Young K.* (1996) 49 Cal.App.4th 861, 864 [57 Cal.Rptr.2d 12] [stealing headlamps, windshield wipers, or hubcaps are thefts, or attempted thefts, auto tampering, or acts of vandalism, not burglaries].)

Building

A building has been defined for purposes of burglary as “any structure which has walls on all sides and is covered by a roof.” (*In re Amber S.* (1995) 33 Cal.App.4th 185, 187 [39 Cal.Rptr.2d 672].) Courts have construed “building” broadly and found the following structures sufficient for purposes of burglary: a telephone booth, a popcorn stand on wheels, a powder magazine dug out of a hillside, a wire chicken coop, and a loading dock constructed of chain link fence. (*People v. Brooks* (1982) 133 Cal.App.3d 200, 204–205 [183 Cal.Rptr. 773].) However, the definition of building is not without limits and courts have focused on “whether

the nature of a structure's composition is such that a reasonable person would expect some protection from unauthorized intrusions." (*In re Amber S.* (1995) 33 Cal.App.4th 185, 187 [39 Cal.Rptr.2d 672] [open pole barn is not a building]; see *People v. Knight* (1988) 204 Cal.App.3d 1420, 1423–1424 [252 Cal.Rptr. 17] [electric company's "gang box," a container large enough to hold people, is not a building; such property is protected by Penal Code sections governing theft].)

Outer Boundary

A building's outer boundary includes any element that encloses an area into which a reasonable person would believe that a member of the general public could not pass without authorization. Under this test, a window screen is part of the outer boundary of a building for purposes of burglary. (*People v. Valencia* (2002) 28 Cal.4th 1, 12–13 [120 Cal.Rptr.2d 131, 46 P.3d 920].) Whether penetration into an area behind a window screen amounts to an entry of a building within the meaning of the burglary statute is a question of law. The instructions must resolve such a legal issue for the jury. (*Id.* at p. 16.)

Attached Residential Balconies

An attached residential balcony is part of an inhabited dwelling. (*People v. Jackson* (2010) 190 Cal.App.4th 918, 924–925 [118 Cal.Rptr.3d 623] [balcony was "functionally interconnected to and immediately contiguous to . . . [part of] the apartment . . . used for 'residential activities'"]; but see dictum in *People v. Valencia* (2002) 28 Cal.4th 1, 11, fn. 5 [120 Cal.Rptr.2d 131, 46 P.3d 920] ["unenclosed balcony" is not structure satisfying "reasonable belief test"].)

Theft

Any one of the different theories of theft will satisfy the larcenous intent required for burglary. (*People v. Dingle* (1985) 174 Cal.App.3d 21, 29–30 [219 Cal.Rptr. 707] [entry into building to use person's telephone fraudulently]; *People v. Nguyen* (1995) 40 Cal.App.4th 28, 30–31 [46 Cal.Rptr.2d 840].)

Burglarizing One's Own Home—Possessory Interest

A person cannot burglarize his or her own home as long as he or she has an unconditional possessory right of entry. (*People v. Gauze* (1975) 15 Cal.3d 709, 714 [125 Cal.Rptr. 773, 542 P.2d 1365].) However, a family member who has moved out of the family home commits burglary if he or she makes an unauthorized entry with a felonious intent, since he or she has no claim of a right to enter that residence. (*In re Richard M.* (1988) 205 Cal.App.3d 7, 15–16 [252 Cal.Rptr. 36] [defendant, who lived at youth rehabilitation center, properly convicted of burglary for entering his parent's home and taking property]; *People v. Davenport* (1990) 219 Cal.App.3d 885, 889–893 [268 Cal.Rptr. 501] [defendant convicted of burglarizing cabin owned and occupied by his estranged wife and her parents]; *People v. Sears* (1965) 62 Cal.2d 737, 746 [44 Cal.Rptr. 330, 401 P.2d 938], overruled on other grounds by *People v. Cahill* (1993) 5 Cal.4th 478, 494, 510 [20 Cal.Rptr.2d 582, 853 P.2d 1037] [burglary conviction proper where husband had moved out of family home three weeks before and had no right to

enter without permission]; compare *Fortes v. Municipal Court* (1980) 113 Cal.App.3d 704, 712–714 [170 Cal.Rptr. 292] [husband had unconditional possessory interest in jointly owned home; his access to the house was not limited and strictly permissive, as in *Sears*].)

Consent

While lack of consent is not an element of burglary, consent by the owner or occupant of property may constitute a defense to burglary. (*People v. Sherow* (2011) 196 Cal.App.4th 1296, 1302 [128 Cal.Rptr.3d 255]; *People v. Felix* (1994) 23 Cal.App.4th 1385, 1397–1398 [28 Cal.Rptr.2d 860]; *People v. Superior Court (Granillo)* (1988) 205 Cal.App.3d 1478, 1485 [253 Cal.Rptr. 316] [when an undercover officer invites a potential buyer of stolen property into his warehouse of stolen goods, in order to catch would-be buyers, no burglary occurred].) The consent must be express and clear; the owner/occupant must both expressly permit the person to enter and know of the felonious or larcenous intent of the invitee. (*People v. Felix* (1994) 23 Cal.App.4th 1385, 1397–1398 [28 Cal.Rptr.2d 860].) A person who enters for a felonious purpose, however, may be found guilty of burglary even if he or she enters with the owner’s or occupant’s consent. (*People v. Frye* (1998) 18 Cal.4th 894, 954 [77 Cal.Rptr.2d 25, 959 P.2d 183] [no evidence of unconditional possessory right to enter].) A joint property owner/occupant cannot give consent to a third party to enter and commit a felony on the other owner/occupant. (*People v. Clayton* (1998) 65 Cal.App.4th 418, 420–423 [76 Cal.Rptr.2d 536] [husband’s consent did not preclude a burglary conviction based upon defendant’s entry of premises with the intent to murder wife].) The defense of consent is established when the evidence raises a reasonable doubt of consent by the owner or occupant. (*People v. Sherow* (2011) 196 Cal.App.4th 1296, 1309 [128 Cal.Rptr.3d 255]).

Entry by Instrument

When an entry is made by an instrument, a burglary occurs if the instrument passes the boundary of the building and if the entry is the type that the burglary statute intended to prohibit. (*People v. Davis* (1998) 18 Cal.4th 712, 717–722 [76 Cal.Rptr.2d 770, 958 P.2d 1083] [placing forged check in chute of walk-up window of check-cashing facility was not entry for purposes of burglary] disapproving of *People v. Ravenscroft* (1988) 198 Cal.App.3d 639, 643–644 [243 Cal.Rptr. 827] [insertion of ATM card into machine was burglary].)

Multiple Convictions

Courts have adopted different tests for multi-entry burglary cases. In *In re William S.* (1989) 208 Cal.App.3d 313, 316–318 [256 Cal.Rptr. 64], the court analogized burglary to sex crimes and adopted the following test formulated in *People v. Hammon* (1987) 191 Cal.App.3d 1084, 1099 [236 Cal.Rptr. 822] [multiple penetration case]: “ ‘[W]hen there is a pause . . . sufficient to give defendant a reasonable opportunity to reflect upon his conduct, and the [action by the defendant] is nevertheless renewed, a new and separate crime is committed.’ ” (*In re William S.*, *supra*, 208 Cal.App.3d at p. 317.) The court in *In re William S.*

adopted this test because it was concerned that under certain circumstances, allowing separate convictions for every entry could produce “absurd results.” The court gave this example: where “a thief reaches into a window twice attempting, unsuccessfully, to steal the same potted geranium, he could potentially be convicted of two separate counts.” (*Ibid.*) The *In re William S.* test has been called into serious doubt by *People v. Harrison* (1989) 48 Cal.3d 321, 332–334 [256 Cal.Rptr. 401, 768 P.2d 1078], which disapproved of *Hammon*. *Harrison* held that for sex crimes each penetration equals a new offense. (*People v. Harrison, supra*, 48 Cal.3d at p. 329.)

The court in *People v. Washington* (1996) 50 Cal.App.4th 568 [57 Cal.Rptr.2d 774], a burglary case, agreed with *In re William S.* to the extent that burglary is analogous to crimes of sexual penetration. Following *Harrison*, the court held that each separate entry into a building or structure with the requisite intent is a burglary even if multiple entries are made into the same building or as part of the same plan. (*People v. Washington, supra*, 50 Cal.App.4th at pp. 574–579; see also 2 Witkin and Epstein, Cal. Criminal Law (2d. ed. 1999 Supp.) “Multiple Entries,” § 662A, p. 38.) The court further stated that any “concern about absurd results are [sic] better resolved under [Penal Code] section 654, which limits the punishment for separate offenses committed during a single transaction, than by [adopting] a rule that, in effect, creates the new crime of continuous burglary.” (*People v. Washington, supra*, 50 Cal.App.4th at p. 578.)

Room

Penal Code section 459 includes “room” as one of the areas that may be entered for purposes of burglary. (Pen. Code, § 459.) An area within a building or structure is considered a room if there is some designated boundary, such as a partition or counter, separating it from the rest of the building. It is not necessary for the walls or partition to touch the ceiling of the building. (*People v. Mackabee* (1989) 214 Cal.App.3d 1250, 1257–1258 [263 Cal.Rptr. 183] [office area set off by counters was a room for purposes of burglary].) Each unit within a structure may constitute a separate “room” for which a defendant can be convicted on separate counts of burglary. (*People v. O’Keefe* (1990) 222 Cal.App.3d 517, 521 [271 Cal.Rptr. 769] [individual dormitory rooms]; *People v. Church* (1989) 215 Cal.App.3d 1151, 1159 [264 Cal.Rptr. 49] [separate business offices in same building].)

Entry into a bedroom within a single-family house with the requisite intent can support a burglary conviction if that intent was formed only after entry into the house. (*People v. Sparks* (2002) 28 Cal.4th 71, 86–87 [120 Cal.Rptr.2d 508, 47 P.3d 289] [“the unadorned word ‘room’ in section 459 reasonably must be given its ordinary meaning”]; see *People v. McCormack* (1991) 234 Cal.App.3d 253, 255–257 [285 Cal.Rptr. 504]; *People v. Young* (1884) 65 Cal. 225, 226 [3 P. 813].) However, entry into multiple rooms within one apartment or house cannot support multiple burglary convictions unless it is established that each room is a separate dwelling space, whose occupant has a separate, reasonable expectation of

privacy. (*People v. Richardson* (2004) 117 Cal.App.4th 570, 575 [11 Cal.Rptr.3d 802]; see also *People v. Thomas* (1991) 235 Cal.App.3d 899, 906, fn. 2 [1 Cal.Rptr.2d 434].)

Temporal or Physical Proximity—Intent to Commit the Felony

According to some cases, a burglary occurs “if the intent at the time of entry is to commit the offense in the immediate vicinity of the place entered by defendant; if the entry is made as a means of facilitating the commission of the theft or felony; and if the two places are so closely connected that intent and consummation of the crime would constitute a single and practically continuous transaction.” (*People v. Wright* (1962) 206 Cal.App.2d 184, 191 [23 Cal.Rptr. 734] [defendant entered office with intent to steal tires from attached open-air shed].) This test was followed in *People v. Nance* (1972) 25 Cal.App.3d 925, 931–932 [102 Cal.Rptr. 266] [defendant entered a gas station to turn on outside pumps in order to steal gas]; *People v. Nunley* (1985) 168 Cal.App.3d 225, 230–232 [214 Cal.Rptr. 82] [defendant entered lobby of apartment building, intending to burglarize one of the units]; and *People v. Ortega* (1992) 11 Cal.App.4th 691, 695–696 [14 Cal.Rptr.2d 246] [defendant entered a home to facilitate the crime of extortion].

However, in *People v. Kwok* (1998) 63 Cal.App.4th 1236 [75 Cal.Rptr.2d 40], the court applied a less restrictive test, focusing on just the facilitation factor. A burglary is committed if the defendant enters a building in order to facilitate commission of theft or a felony. The defendant need not intend to commit the target crime in the same building or on the same occasion as the entry. (*People v. Kwok, supra*, 63 Cal.App.4th at pp. 1246–1248 [defendant entered building to copy a key in order to facilitate later assault on victim].) The court commented that “the ‘continuous transaction test’ and the ‘immediate vicinity test’ . . . are artifacts of the particular factual contexts of *Wright*, *Nance*, and *Nunley*.” (*Id.* at p. 1247.) With regards to the *Ortega* case, the *Kwok* court noted that even though the *Ortega* court “purported to rely on the ‘continuous transaction’ factor of *Wright*, [the decision] rested principally on the ‘facilitation’ factor.” (*Id.* at pp. 1247–1248.) While *Kwok* and *Ortega* dispensed with the elemental requirements of spatial and temporal proximity, they did so only where the subject entry is “closely connected” with, and is made in order to facilitate, the intended crime. (*People v. Griffin* (2001) 90 Cal.App.4th 741, 749 [109 Cal.Rptr.2d 273].)

1703. Shoplifting (Pen. Code, § 459.5)

The defendant is charged [in Count __] with shoplifting [in violation of Penal Code section 459.5].

To prove that the defendant is guilty of this crime, the People must prove that:

- 1. The defendant entered a commercial establishment;**
- 2. When the defendant entered the commercial establishment, it was open during regular business hours;**

AND

- 3. When (he/she) entered the commercial establishment, (he/she) intended to commit theft.**

To decide whether the defendant intended to commit theft, please refer to the separate instructions that I (will give/have given) you on that crime.

The defendant does not need to have actually committed theft as long as (he/she) entered with the intent to do so.

[A person *enters a building* if some part of his or her body [or some object under his or her control] penetrates the area inside the building's outer boundary.]

[A building's *outer boundary* includes the area inside a window screen.]

New [insert date of council approval]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

To instruct on the necessary intent to commit theft, see CALCRIM No. 1800, *Theft by Larceny*.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Elements ▶ Pen. Code, § 459.5.
- Burden for Consent Defense Is to Raise Reasonable Doubt ▶ *People v. Sherow* (2011) 196 Cal.App.4th 1296, 1308–1309 [128 Cal.Rptr.3d 255].

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2015 Supp.) Crimes Against Property, §14.

1750. Receiving Stolen Property (Pen. Code, § 496(a))

The defendant is charged [in Count ___] with receiving stolen property [in violation of Penal Code section 496(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (bought/received/sold/aided in selling/concealed or withheld from its owner/aided in concealing or withholding from its owner) property that had been (stolen/obtained by extortion);

[AND]

2. When the defendant (bought/received/sold/aided in selling/concealed or withheld/aided in concealing or withholding) the property, (he/she) knew that the property had been (stolen/obtained by extortion)(;/.)

<Give element 3 when instructing on knowledge of presence of property; see Bench Notes.>

[AND]

3. The defendant actually knew of the presence of the property.]

[Property is *stolen* if it was obtained by any type of theft, or by burglary or robbery. [Theft includes obtaining property by larceny, embezzlement, false pretense, or trick.]]

[Property is *obtained by extortion* if: (1) the property was obtained from another person with that person's consent, and (2) that person's consent was obtained through the use of force or fear.]

[To *receive property* means to take possession and control of it. Mere presence near or access to the property is not enough.] [Two or more people can possess the property at the same time.] [A person does not have to actually hold or touch something to possess it. It is enough if the person has [control over it] [or] [the right to control it], either personally or through another person.]

[If you find the defendant guilty of receiving stolen property, you must then decide whether the value of the property received was more than \$950. If you have a reasonable doubt whether the property received has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006; Revised August 2006, June 2007, October 2010, August 2014 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the defendant is also charged with a theft crime, the court has a **sua sponte** duty to instruct that the defendant may not be convicted of receiving stolen property if he is convicted of the theft of the same property. (CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*; see Pen. Code, § 496(a); *People v. Ceja* (2010) 49 Cal.4th 1, 6–7 [108 Cal.Rptr.3d 568, 229 P.3d 995]; *People v. Garza* (2005) 35 Cal.4th 866, 881–882 [28 Cal.Rptr.3d 335, 111 P.3d 310] [upholding dual convictions for receiving stolen property and a violation of Vehicle Code section 10851(a) as a nontheft conviction for post-theft driving].)

If there are factual issues regarding whether the received stolen property was taken with the intent to permanently deprive the owner of possession, the court has a **sua sponte** duty to instruct on the complete definitions of theft. *People v. MacArthur* (2006) 142 Cal.App.4th 275 [47 Cal.Rptr.3d 736]. For instructions defining extortion and the different forms of theft, see Series 1800, Theft and Extortion. On request, the court should give the complete instruction on the elements of theft or extortion.

If substantial evidence exists, a specific instruction must be given on request that the defendant must have knowledge of the presence of the stolen goods. (*People v. Speaks* (1981) 120 Cal.App.3d 36, 39–40 [174 Cal.Rptr. 65]; see *People v. Gory* (1946) 28 Cal.2d 450, 455–456, 458–459 [170 P.2d 433] [possession of narcotics requires knowledge of presence]; see also discussion of voluntary intoxication in Related Issues, below.) Give bracketed element 3 when supported by the evidence.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration

pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Related Instructions

For an instruction about when guilt may be inferred from possession of recently stolen property, see CALCRIM No. 376, *Possession of Recently Stolen Property as Evidence of a Crime*.

AUTHORITY

- Elements. ▶ Pen. Code, § 496(a); *People v. Land* (1994) 30 Cal.App.4th 220, 223 [35 Cal.Rptr.2d 544].
- Extortion Defined. ▶ Pen. Code, § 518.
- Theft Defined. ▶ Pen. Code, §§ 484, 490a.
- Concealment. ▶ *Williams v. Superior Court* (1978) 81 Cal.App.3d 330, 343–344 [146 Cal.Rptr. 311].
- General Intent Required. ▶ *People v. Wielograf* (1980) 101 Cal.App.3d 488, 494 [161 Cal.Rptr. 680] [general intent crime]; but see *People v. Reyes* (1997) 52 Cal.App.4th 975, 985 [61 Cal.Rptr.2d 39] [knowledge element is a “specific mental state”].
- Knowledge Element. ▶ *People v. Reyes* (1997) 52 Cal.App.4th 975, 985 [61 Cal.Rptr.2d 39].
- Possession and Control. ▶ *People v. Land* (1994) 30 Cal.App.4th 220, 223–224 [35 Cal.Rptr.2d 544]; *People v. Zyduck* (1969) 270 Cal.App.2d 334, 336 [75 Cal.Rptr. 616]; see *People v. Gatlin* (1989) 209 Cal.App.3d 31, 44–45 [257 Cal.Rptr. 171] [constructive possession means knowingly having the right of control over the property directly or through another]; *People v. Scott* (1951) 108 Cal.App.2d 231, 234 [238 P.2d 659] [two or more persons may jointly possess property].
- Stolen Property. ▶ *People v. Kunkin* (1973) 9 Cal.3d 245, 250 [107 Cal.Rptr. 184, 507 P.2d 1392] [theft]; see, e.g., *People v. Candiotta* (1960) 183 Cal.App.2d 348, 349 [6 Cal.Rptr. 876] [burglary]; *People v. Siegfried* (1967) 249 Cal.App.2d 489, 493 [57 Cal.Rptr. 423] [robbery].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (~~3d~~4th ed. ~~2000~~2012) Crimes Against Property, §§ 72–~~81~~.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, §§ 143.01[2][c], 143.03, 143.10[2][c], [d] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Receiving Stolen Property. ▶ Pen. Code, §§ 664, 496(d); *People v. Rojas* (1961) 55 Cal.2d 252, 258 [10 Cal.Rptr. 465, 358 P.2d 921] [stolen goods recovered by police were no longer “stolen”]; *People v. Moss* (1976) 55 Cal.App.3d 179, 183 [127 Cal.Rptr. 454] [antecedent theft not a necessary element].

Theft by appropriation of lost property (Pen. Code, § 485) is not a necessarily included offense of receiving stolen property. (*In re Greg F.* (1984) 159 Cal.App.3d 466, 469 [205 Cal.Rptr. 614].)

RELATED ISSUES

Defense of Voluntary Intoxication or Mental Disease

Though receiving stolen property is a general intent crime, one element of the offense is knowledge that the property was stolen, a specific mental state. With regard to the element of knowledge, receiving stolen property is a “specific intent crime” as that term is used in Penal Code sections 29.4(b) and 28(a). (*People v. Reyes* (1997) 52 Cal.App.4th 975, 985 [61 Cal.Rptr.2d 39].) Therefore, the defendant should have the opportunity to introduce evidence and request instructions regarding the lack of requisite knowledge. (*Id.* at p. 986; see *People v. Mendoza* (1998) 18 Cal.4th 1114, 1131 [77 Cal.Rptr.2d 428, 959 P.2d 735]; but see *People v. Atkins* (2001) 25 Cal.4th 76, 96–97 [104 Cal.Rptr.2d 738, 18 P.3d 660] (conc. opn. of Brown, J.) [criticizing *Mendoza* and *Reyes* as wrongly transmuting a knowledge requirement into a specific intent].) See CALCRIM No. 3426, *Voluntary Intoxication*.

Dual Convictions Prohibited

A person may not be convicted of stealing and of receiving the same property. (*People v. Jaramillo* (1976) 16 Cal.3d 752, 757 [129 Cal.Rptr. 306, 548 P.2d 706] superseded by statute on related grounds, as stated in *People v. Hinks* (1997) 58 Cal.App.4th 1157 [68 Cal.Rptr.2d 440]; see *People v. Tatum* (1962) 209 Cal.App.2d 179, 183 [25 Cal.Rptr. 832].) See CALCRIM No. 3516, *Multiple Counts: Alternative Charges For One Event—Dual Conviction Prohibited*.

Receiving Multiple Items on Single Occasion

A defendant who receives more than one item of stolen property on a single occasion commits one offense of receiving stolen property. (See *People v. Lyons* (1958) 50 Cal.2d 245, 275 [324 P.2d 556].)

Specific Vendors

The Penal Code establishes separate crimes for specific persons buying or receiving particular types of stolen property, including the following:

1. Swap meet vendors and persons dealing in or collecting merchandise or personal property. (Pen. Code, § 496(b).)
2. Dealers or collectors of junk metals or secondhand materials who buy or receive particular metals used in providing telephone, transportation, or public utility services. (Pen. Code, § 496a(a).)
3. Dealers or collectors of secondhand books or other literary materials. (Pen. Code, § 496b [misdemeanors].)
4. Persons buying or receiving motor vehicles, trailers, special construction equipment, or vessels. (Pen. Code, § 496d(a).)
5. Persons buying, selling, receiving, etc., specific personal property, including integrated computer chips or panels, electronic equipment, or appliances, from which serial numbers or identifying marks have been removed or altered. (Pen. Code, § 537e(a).)

1801. ~~Theft: Degrees~~Grand and Petty Theft (Pen. Code, §§ 486, 487–488, 490.2, 491)

If you conclude that the defendant committed a theft, you must decide whether the crime was grand theft or petty theft.

[The defendant committed petty theft if (he/she) stole property [or services] worth \$950 or less.]

[The defendant committed grand theft if the value of the property [or services] is more than \$950.]

[Theft of property from the person is grand theft -if the value of the property is more than \$950, no matter what the property is worth. Theft is *from the person* if the property taken was in the clothing of, on the body of, or in a container held or carried by, that person.]

[Theft of (an automobile/a firearm/a horse/ _____ <insert other item listed in statute>) is grand theft if the value of the property is more than \$950.]

[Theft of (fruit/nuts/ _____ <insert other item listed in statute>) worth more than ~~\$250~~ 950 is grand theft.]

[Theft of (fish/shellfish/aquacultural products/ _____ <insert other item listed in statute>) worth more than ~~\$250~~ 950 is grand theft if (it/they) (is/are) taken from a (commercial fishery/research operation).]

[The value of _____ <insert relevant item enumerated in Pen. Code, § 487(b)(1)(B)> may be established by evidence proving that on the day of the theft, the same items of the same variety and weight as those stolen had a wholesale value of more than ~~\$92~~ 50.]

[The value of (property/services) is the fair (market value of the property/market wage for the services performed).]

<Fair Market Value—Generally>

[Fair market value is the highest price the property would reasonably have been sold for in the open market at the time of, and in the general location of, the theft.]

<Fair Market Value—Urgent Sale>

[*Fair market value* is the price a reasonable buyer and seller would agree on if the buyer wanted to buy the property and the seller wanted to sell it, but neither was under an urgent need to buy or sell.]

~~All other theft is petty theft.~~

The People have the burden of proving beyond a reasonable doubt that the theft was grand theft rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of grand theft.

New January 2006; Revised February 2012 [\[insert date of council approval\]](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction if grand theft has been charged.

[When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667\(e\)\(2\)\(C\)\(iv\) or for an offense requiring registration pursuant to subdivision \(c\) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.](#)

If the evidence raises an issue that the value of the property may be inflated or deflated because of some urgency on the part of either the buyer or seller, the second bracketed paragraph on fair market value should be given.

AUTHORITY

- [Determination of ~~Degrees~~ Grand vs. Petty Theft](#) ▶ Pen. Code, §§ 486, 487–488, [490.2](#), 491.
- [Value/Nature of Property/Theft from the Person](#) ▶ Pen. Code, §§ 487(b)-(d), [487a](#).

Secondary Sources

2 Witkin & Epstein, California Criminal Law (~~3d~~ [4th](#) ed. ~~2000~~ [2012](#)) Crimes Against Property §§ [4](#), [8](#).

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property §§ 4, 8](#)

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

RELATED ISSUES

[Proposition 47 \(Penal Code Section 490.2\)](#)

[After the passage of Proposition 47, theft is defined in Penal Code section 487 as a misdemeanor unless the value of the property taken exceeds \\$950. Pen. Code, § 490.2. This represents a change from the way grand theft was defined under Penal Code section 487\(b\)-\(d\) before the enactment of Proposition 47.](#)

Taking From the Person

To constitute a taking from the person, the property must, in some way, be physically attached to the person. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1472 [12 Cal.Rptr.2d 243].) Applying this rule, the court in *Williams* held that a purse taken from the passenger seat next to the driver was not a taking from the person. (*Ibid.* [see generally for court's discussion of origins of this rule].)

Williams was distinguished by the court in *People v. Huggins* (1997) 51 Cal.App.4th 1654, 1656–1657 [60 Cal.Rptr.2d 177], where evidence that the defendant took a purse placed on the floor next to and touching the victim's foot was held sufficient to establish a taking from the person. The victim intentionally placed her foot next to her purse, physically touching it and thereby maintaining dominion and control over it.

Theft of Fish, Shellfish, or Aquacultural Products

~~If fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation producing such products, it is grand theft if the value of the fish or other products exceeds \$250. (Pen. Code, § 487(b)(2).) Fish taken from public waters are not "property of another" within the meaning of Penal Code section 484 and 487; only the Fish and Game Code applies to such takings. (*People v. Brady* (1991) 234 Cal.App.3d 954, 959, 961–962 [286 Cal.Rptr. 19]; see, e.g., Fish & Game Code, § 12006.6 [unlawful taking of abalone].) ~~If the fish are taken from any other private waters or from someone else's possession, the taking falls within the general theft provisions and must exceed \$950 in value to be grand theft. (See Pen. Code, § 487(a).)~~~~

Value of Written Instrument

If the thing stolen is evidence of a debt or some other written instrument, its value is (1) the amount due or secured that is unpaid, or that might be collected in any contingency, (2) the value of the property, title to which is shown in the instrument, or (3) or the sum that might be recovered in the instrument's absence.

(Pen. Code, § 492; see *Buck v. Superior Court* (1966) 245 Cal.App.2d 431, 438 [54 Cal.Rptr. 282] [trust deed securing debt]; *People v. Frankfort* (1952) 114 Cal.App.2d 680, 703 [251 P.2d 401] [promissory notes and contracts securing debt]; *People v. Quiel* (1945) 68 Cal.App.2d 674, 678 [157 P.2d 446] [unpaid bank checks]; see also Pen. Code, §§ 493 [value of stolen passage tickets], 494 [completed written instrument need not be issued or delivered].) If evidence of a debt or right of action is embezzled, its value is the sum due on or secured by the instrument. (Pen. Code, § 514.) Section 492 only applies if the written instrument has value and is taken from a victim. (See *People v. Sanders* (1998) 67 Cal.App.4th 1403, 1414, fn. 16 [79 Cal.Rptr.2d 806].)

1802. Theft: As Part of Overall Plan

If you conclude that the defendant committed more than one theft, you must then decide if the defendant committed multiple petty thefts or a single grand theft. To prove that the defendant is guilty of a single grand theft, the People must prove that:

1. The defendant committed theft of property from the same owner or possessor on more than one occasion;
2. The combined value of the property was over ~~(\$950/\$250)~~;

AND

3. The defendant obtained the property as part of a single, overall plan or objective.

If you conclude that the People have failed to prove grand theft, any multiple thefts you have found proven are petty thefts.

New January 2006; Revised February 2012 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on aggregating the value of the property or services taken if grand theft is charged on that theory.

The total value of the property taken ~~usually~~ must exceed \$950 to be grand theft. (See Pen. Code, § ~~487(a)490.2.~~) ~~For some types of property, however, the property taken need only exceed \$250 in value to constitute grand theft. (See, e.g., Pen. Code, § 487(b)(1) [farm products] & (2) [commercially grown fish, shellfish, or aquacultural products].~~

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

In element 2, select the appropriate value depending on what type of property was taken.

AUTHORITY

- Aggregating Value of Property Taken According to Overall Plan or General Intent ▶ *People v. Bailey* (1961) 55 Cal.2d 514, 518–519 [11 Cal.Rptr. 543, 360 P.2d 39].
- Grand Theft of Property or Services ▶ Pen. Code, § 487(a) [property or services exceeding \$950 in value].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (~~3d~~4th ed. ~~2000~~2012) Crimes Against Property, §§ ~~11, 12~~12, 13.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1][i] (Matthew Bender).

RELATED ISSUES

Multiple Victims

Where multiple victims are involved, there is disagreement about applying the *Bailey* doctrine and cumulating the charges even if a single plan or intent is demonstrated. (See *People v. Brooks* (1985) 166 Cal.App.3d 24, 30 [210 Cal.Rptr. 90] [auctioneer stole proceeds from property belonging to several people during a single auction; conviction for multiple counts of theft was error]; *People v. Columbia Research Corp.* (1980) 103 Cal.App.3d Supp. 33 [163 Cal.Rptr. 455] [series of petty thefts from numerous victims occurring over 10-month period properly consolidated into single grand theft conviction where defendant employed same scheme to defraud victims of money]; but see *People v. Garcia* (1990) 224 Cal.App.3d 297, 307–309 [273 Cal.Rptr. 666] [defendant filed fraudulent bonds at different times involving different victims; multiple convictions proper]; *In re David D.* (1997) 52 Cal.App.4th 304, 309 [60 Cal.Rptr.2d 552] [stating that *Garcia* “articulately criticized” *Brooks* and *Columbia Research*; declined to apply *Bailey* to multiple acts of vandalism].)

Combining Grand Thefts

The *Bailey* doctrine can be asserted by the *defendant* to combine multiple grand thefts committed as part of an overall scheme into a single offense. (See *People v.*

Brooks (1985) 166 Cal.App.3d 24, 31 [210 Cal.Rptr. 90] [multiple grand thefts from single auction fund]; *People v. Gardner* (1979) 90 Cal.App.3d 42, 47–48 [153 Cal.Rptr. 160] [multiple grand theft of hog carcasses]; *People v. Richardson* (1978) 83 Cal.App.3d 853, 866 [148 Cal.Rptr. 120] [multiple attempted grand thefts], disapproved on other grounds in *People v. Saddler* (1979) 24 Cal.3d 671, 682, fn. 8 [156 Cal.Rptr. 871, 597 P.2d 130]; see also *People v. Sullivan* (1978) 80 Cal.App.3d 16, 19 [145 Cal.Rptr. 313] [error to refuse defense instruction about aggregating thefts].)

Theft Enhancement

If there are multiple charges of theft, whether grand or petty theft, the aggregate loss exceeds any of the statutory minimums in Penal Code section 12022.6(a), and the thefts arise from a common scheme or plan, an additional prison term may be imposed. (Pen. Code, § 12022.6(b).) If the aggregate loss exceeds statutory amounts ranging from \$50,000 to \$2.5 million, an additional term of one to four years may be imposed. (Pen. Code, § 12022.6(a)(1)–(4); see *People v. Daniel* (1983) 145 Cal.App.3d 168, 174–175 [193 Cal.Rptr. 277] [no error in refusing to give unanimity instruction].)

1850. Petty Theft With Prior Conviction (Pen. Code, § 666)

If you find the defendant guilty of petty theft, you must then decide whether the People have proved the additional allegation that the defendant has been convicted of a theft offense before and served a term in a penal institution as a result of that conviction. It has already been determined that the defendant is the person named in exhibits _____ *<insert numbers or descriptions of exhibits>*. You must decide whether the evidence proves that the defendant was previously convicted of the alleged crime[s].

To prove this allegation, the People must prove that:

1. The defendant was previously convicted of a theft offense;

AND

2. The defendant served a term in a penal institution for that conviction.

The People allege that the defendant was previously convicted of:

[1.] A violation of _____ *<insert code section violated>*, on _____ *<insert date of conviction>*, in the _____ *<insert name of court>*, in Case Number _____ *<insert docket or case number>*(;/.)

[AND *<Repeat for each prior conviction alleged>*.]

[_____ *<insert name of penal institution>* is a *penal institution*.]

[A *penal institution* includes [a] (city jail/county jail/state prison/any facility, camp, hospital, or institution operated to confine, treat, employ, train, and discipline persons in the legal custody of the Department of Corrections/federal prison/ _____ *<specify other institution>*).]

[Consider the evidence presented on this allegation only when deciding whether the defendant was previously convicted of the crime[s] alleged [or for the limited purpose of _____ *<insert other permitted purpose, e.g., assessing credibility of the defendant>*]. Do not consider this evidence for any other purpose.]

[You must consider each alleged conviction separately.] The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006 *insert date of council approval*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on proof of the alleged prior conviction. (See Pen. Code, § 1025 [on defendant's denial, jury must decide issue of prior convictions]; *People v. Barre* (1992) 11 Cal.App.4th 961, 965 [14 Cal.Rptr.2d 307].)

The prior conviction and incarceration requirement of Penal Code section 666 is a sentencing factor for the trial court and not an element of a section 666 offense. (*People v. Bouzas* (1991) 53 Cal.3d 467, 478–480 [279 Cal.Rptr. 847, 807 P.2d 1076]; *People v. Stevens* (1996) 48 Cal.App.4th 982, 987 [56 Cal.Rptr.2d 13].) Thus, the defendant may stipulate to the convictions. (*People v. Bouzas, supra*, 53 Cal.3d at pp. 478–480; *People v. Stevens, supra*, 48 Cal.App.4th at p. 987; *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41].)

Give this instruction only if the defendant does not stipulate and the court does not grant a bifurcated trial.

If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (Pen. Code, §§ 1025, 1093; see *People v. Bouzas, supra*, 53 Cal.3d at pp. 471–472, 480.)

~~If the court grants a bifurcated trial, give CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.~~

To be convicted of a violation of Penal Code section 666, defendant must have been previously convicted of a crime listed in Penal Code section 667(e)(2)(c), or previously convicted under Penal Code section 368(d) or (e); or be required to register under the Sex Offender Registration Act. If applicable, give CALCRIM No. 3100, *Prior Conviction: NonBifurcated Trial*.

If the court grants a bifurcated trial, on either of the offenses described in the paragraph above or a qualifying prior theft conviction, give CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Enhancement ▶ Pen. Code, § 666; *People v. Bruno* (1987) 191 Cal.App.3d 1102, 1105 [237 Cal.Rptr. 31]; *People v. Bean* (1989) 213 Cal.App.3d 639, 642 [261 Cal.Rptr. 784].
- Convictions From Other States ▶ Pen. Code, § 668; *People v. Perry* (1962) 204 Cal.App.2d 201, 204 [22 Cal.Rptr. 54].
- Prior Incarceration Requirement ▶ *People v. James* (1957) 155 Cal.App.2d 604, 612 [318 P.2d 175] [service of partial term is sufficient]; *People v. Valenzuela* (1981) 116 Cal.App.3d 798, 803 [172 Cal.Rptr. 284] [custody resulting from credit for time served is sufficient]; but see *People v. Cortez* (1994) 24 Cal.App.4th 510, 513–514 [29 Cal.Rptr.2d 445] [participation in work release program alone is insufficient].
- Penal Institution Defined ▶ *Ex parte Wolfson* (1947) 30 Cal.2d 20, 26 [180 P.2d 326] [includes county jail]; *People v. Valenzuela* (1981) 116 Cal.App.3d 798, 803, 804, 807–808 [172 Cal.Rptr. 284] [includes California Rehabilitation Center]; see Pen. Code, §§ 667.5(h) [defining state prison or federal penal institution for purposes of prior prison term enhancement], 969b [prima facie evidence of prior conviction and term served in any state or federal penitentiary, reformatory, or county or city jail], 6081, 6082 [prison defined]; Welf. & Inst. Code, § 851 [excludes juvenile hall].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (~~3d~~4th ed. ~~2000~~2012) Crimes Against Property, § ~~79~~.

3 Witkin & Epstein, California Criminal Law (~~3d~~4th ed. ~~2000~~2012) Punishment, § ~~334417~~.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[3] (Matthew Bender).

LESSER INCLUDED OFFENSES

If the defendant is charged with felony petty theft based on a prior conviction, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the prior conviction has been proved. If the jury finds that the prior conviction has not been proved, then the offense should be set at a misdemeanor.

There is no crime of attempted petty theft with a prior conviction. None of the elements of Penal Code section 666 may be attempted. (*People v. Bean* (1989) 213 Cal.App.3d 639, 642, fn. 4 [261 Cal.Rptr. 784].)

RELATED ISSUES

Jury Findings on Prior Convictions

The jury must determine the truth of the prior conviction unless jury trial is waived or the defendant admits to the prior conviction. If more than one prior conviction is charged, the jury must make a separate finding on each charged prior. (Pen. Code, § 1158; *People v. Barre* (1992) 11 Cal.App.4th 961, 965–966 [14 Cal.Rptr.2d 307].)

Judicial Notice of Prior Conviction

It is error for a trial court to take judicial notice of a defendant's alleged prior conviction when a reasonable juror could only understand the notice to mean that the court conclusively determined the prior-conviction allegation to be true. (*People v. Barre* (1992) 11 Cal.App.4th 961, 965–966 [14 Cal.Rptr.2d 307] .)

1851–1859. Reserved for Future Use

1900. Forgery by False Signature (Pen. Code, § 470(a))

The defendant is charged [in Count ___] with forgery committed by signing a false signature [in violation of Penal Code section 470(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant signed (someone else's name/ [or] a false name) to [a/an] _____ <insert type[s] of document[s] from Pen. Code, § 470(d)>;
2. The defendant did not have authority to sign that name;
3. The defendant knew that (he/she) did not have that authority;

AND

4. When the defendant signed the document, (he/she) intended to defraud.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[The People allege that the defendant forged the following documents:
_____ <insert description of each document when multiple items alleged>.
You may not find the defendant guilty unless all of you agree that the People have proved that the defendant forged at least one of these documents and you all agree on which document (he/she) forged.]

[If you find the defendant guilty of forgery by false signature, you must then decide whether the value of _____ <insert description of document that

was object of the fraud> was more than \$950. If you have a reasonable doubt whether the value of <insert description of document that was object of the fraud> has a value of more than \$950, you must find this allegation has not been proved.]

New January 2006[insert date of council approval]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant forged multiple documents, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the last bracketed paragraph, inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

If the prosecution also alleges that the defendant passed or attempted to pass the same document, give CALCRIM No. 1906, *Forging and Passing or Attempting to Pass: Two Theories in One Count*.

If the charged crime involves an instrument listed in Penal Code section 473(b), use the bracketed language beginning “If you find the defendant guilty . . .”

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Elements ▶ Pen. Code, § 470(a).
- Signature Not Authorized—Element of Offense ▶ *People v. Hidalgo* (1933) 128 Cal.App. 703, 707 [18 P.2d 391]; *People v. Maioli* (1933) 135 Cal.App. 205, 207 [26 P.2d 871].
- Intent to Defraud ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▶ Pen. Code, § 8.
- Unanimity Instruction If Multiple Documents ▶ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].
- [Required Additional Findings ▶ Pen. Code, § 473\(b\).](#)

Secondary Sources

~~[2 Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against Property, §§ 148, 159-168.](#)~~

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property §§ 165, 168-177](#)

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[1][a], [d][2][a] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Forgery ▶ Pen. Code, §§ 664, 470.

RELATED ISSUES

Documents Not Specifically Listed in Penal Code Section 470(d)

A document not specifically listed in Penal Code section 470(d) may still come within the scope of the forgery statute if the defendant “forges the . . . handwriting of another.” (Pen. Code, § 470(b).) “[A] writing not within those listed may fall under the part of section 470 covering a person who ‘counterfeits or forges the . . . handwriting of another’ if, on its face, the writing could possibly defraud anyone. [Citations.] The false writing must be something which will have the effect of defrauding one who acts upon it as genuine.” (*People v. Gaul-Alexander* (1995) 32

Cal.App.4th 735, 741–742 [38 Cal.Rptr.2d 176].) The document must affect an identifiable legal, monetary, or property right. (*Id.* at p. 743; *Lewis v. Superior Court* (1990) 217 Cal.App.3d 379, 398–399 [265 Cal.Rptr. 855] [campaign letter with false signature of President Reagan could not be basis of forgery charge].) See CALCRIM No. 1902, *Forgery of Handwriting or Seal*.

Check Fraud

A defendant who forges the name of another on a check may be charged under either Penal Code section 470 or section 476, or both. (*People v. Hawkins* (1961) 196 Cal.App.2d 832, 838 [17 Cal.Rptr. 66]; *People v. Pearson* (1957) 151 Cal.App.2d 583, 586 [311 P.2d 927].) However, the defendant may not be convicted of and sentenced on both charges for the same conduct. (Pen. Code, § 654; *People v. Hawkins, supra*, 196 Cal.App.2d at pp. 839–840 [one count ordered dismissed]; see also CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.)

Credit Card Fraud

A defendant who forges the name of another on a credit card sales slip may be charged under either Penal Code section 470 or section 484f, or both. (*People v. Cobb* (1971) 15 Cal.App.3d 1, 4.) However, the defendant may not be convicted and sentenced on both charges for the same conduct. (Pen. Code, § 654; see also CALCRIM No. 3516, *Multiple Counts: Alternative Charges for One Event—Dual Conviction Prohibited*.)

Return of Property

Two cases have held that the defendant may present evidence that he or she returned some or all of the property in an effort to demonstrate that he or she did not originally intend to defraud. (*People v. Katzman* (1968) 258 Cal.App.2d 777, 790 [66 Cal.Rptr. 319], disapproved on other grounds in *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 780 fn. 11 [200 Cal.Rptr. 916, 677 P.2d 1206]; *People v. Braver* (1964) 229 Cal.App.2d 303, 307–308 [40 Cal.Rptr. 142].) However, other cases have held, based on the particular facts of the cases, that such evidence was not admissible. (*People v. Parker* (1970) 11 Cal.App.3d 500, 510 [89 Cal.Rptr. 815] [evidence that the defendant made full restitution following arrest not relevant]; *People v. Wing* (1973) 32 Cal.App.3d 197, 202 [107 Cal.Rptr. 836] [evidence of restitution not relevant where defendant falsely signed the name of another to a check knowing he had no authority to do so].) If such evidence is presented, the court may give CALCRIM No. 1862, *Return of Property Not a Defense to Theft*. (*People v. Katzman, supra*, 258 Cal.App.2d at p. 791.) In addition, in *People v. Katzman, supra*, 258 Cal.App.2d at p. 792, the court held that, on request, the defense may be entitled to a pinpoint instruction that evidence of restitution may be relevant to determining if the defendant intended to defraud.

If the court concludes that such an instruction is appropriate, the court may add the following language to the beginning of CALCRIM No. 1862:

If the defendant returned or offered to return [some or all of the] property obtained, that conduct may show (he/she) did not intend to defraud. If you conclude that the defendant returned or offered to return [some or all of the] property, it is up to you to decide the meaning and importance of that conduct.

Inducing Mentally Ill Person to Sign Document

In *People v. Looney* (2004) 125 Cal.App.4th 242, 248 [22 Cal.Rptr.3d 502], the court held that the defendants could not be prosecuted for forgery where the evidence showed that the defendants induced a mentally ill person to sign legal documents transferring property to them. The court concluded that, because the defendants had accurately represented the nature of the documents to the mentally ill person and had not altered the documents after he signed, they did not commit forgery. (*Ibid.*)

1957. Obtaining Money, etc., by Representing Self as Holder of Access Card (Pen. Code, § 484g(b))

The defendant is charged [in Count __] with obtaining something of value by fraudulently representing (himself/herself) as the holder of an access card [in violation of Penal Code section 484g(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) by representing that (he/she) was the holder of an access card;
2. The access card had not, in fact, been issued;
3. The defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) without the consent of the cardholder;

AND

4. When the defendant obtained (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), (he/she) intended to defraud.

An *access card* is a card, plate, code, account number, or other means of account access that can be used, alone or with another access card, to obtain (money[,]/ [or] goods[,]/ [or] services[,]/ [or] anything of value), or that can be used to begin a transfer of funds[, other than a transfer originated solely by a paper document].

[(A/An) _____ <insert description, e.g., ATM card, credit card> is an access card.]

A *cardholder* is someone who has been issued an access card [or who has agreed with a card issuer to pay debts arising from the issuance of an access card to someone else].

A *card issuer* is a company [or person] [or the agent of a company or person] that issues an access card to a cardholder.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[If you find the defendant guilty of obtaining money by access card, you must then decide whether the value of the (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) obtained in any 6-month period was more than \$950. If you have a reasonable doubt whether the value of the (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value) was more than \$950, you must find this allegation has not been proved.]

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In the definition of “access card,” the court may give the bracketed portion that begins with “other than a transfer” at its discretion. This statement is included in the statutory definition of access card. (Pen. Code, § 484d(2).) However, the committee believes it would rarely be relevant.

The court may also give the bracketed sentence stating “(A/An) _____ is an access card” if the parties agree on that point.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

AUTHORITY

- Elements ▶ Pen. Code, § 484g(b).
- Definitions ▶ Pen. Code, § 484d.
- Intent to Defraud ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▶ Pen. Code, § 8.

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property § 2182 ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 193.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[2][c] (Matthew Bender).

COMMENTARY

The committee has written this instruction based on the language of the statute, Penal Code section 484g(b). However, the committee notes that the requirements of the statute appear to be internally inconsistent.

LESSER INCLUDED OFFENSES

- Attempted Use of Access Card ▶ Pen. Code, §§ 664, 484g.

RELATED ISSUES

See the Related Issues sections in CALCRIM No. 1900, *Forgery by False Signature*, and CALCRIM No. 1950, *Sale or Transfer of Access Card or Account Number*.

1958–1969. Reserved for Future Use

1970. Making, Using, etc., Check Knowing Funds Insufficient (Pen. Code, § 476a)

The defendant is charged [in Count __] with (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ [or] draft[,]/ [or] order) [in violation of Penal Code section 476a].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant willfully (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) on a (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) for the payment of money;
2. The defendant acted (for (himself/herself)[,]/ [or] as an agent or representative of someone else[,]/ [or] as an officer of a corporation);
3. When the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ [or] draft[,]/ [or] order), there (were/was) insufficient (funds in/ [or] credit with) the (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) to cover full payment of the (check[,]/ [or] draft[,]/ [or] order) and all other outstanding (checks[,]/ [or] drafts[,]/ [or] orders) on that account;
4. The defendant knew that there (were/was) insufficient (funds/ [or] credit) available in that account;

AND

5. When the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ [or] draft[,]/ [or] order), (he/she) intended to defraud.

(A/An) (*check[,]/ [or] draft[,]/ [or] order*) is a written document directing a (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) to pay the indicated amount to a person named as payee or to someone designated by that person.

A person *makes or draws* (a/an) (check[,]/ [or] draft[,]/ [or] order) when he or she writes it [or causes it to be written] and signs it to authorize payment.

[*Credit*, as used here, is an arrangement or understanding with a (bank or depositary[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) for payment of money authorized by (check[,]/ [or] draft[,]/ [or] order).]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone *intends to defraud* if he or she intends to deceive another person either to cause a loss of (money[,]/ [or] goods[,]/ [or] services[,]/ [or] something [else] of value), or to cause damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[It is not necessary that anyone actually be defrauded or actually suffer a financial, legal, or property loss as a result of the defendant's acts.]

[A person (*uses/ [or] attempts to use*) (a/an) (check[,]/ [or] draft[,]/ [or] order) if he or she represents to someone that the instrument is genuine. The representation may be made by words or conduct and may be either direct or indirect.]

[The People allege that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the following items: _____ <insert description of each instrument when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) at least one of these items and you all agree on which item (he/she) (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use).]

[If you find the defendant guilty of (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ [or] draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ [or] draft[,]/ [or] order) you must also determine whether the defendant was previously convicted of _____ <insert at least three theft crimes specified in Penal Code section 476a(b)>.]

<Defense: Reasonable Expectation of Payment>

[Even if the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) (a/an) (check[,]/ draft[,]/ [or] order) knowing that there were insufficient funds for payment of the (check[,]/ draft[,]/ [or] order), the defendant did not intend to defraud if, at the time (he/she) acted, (he/she) reasonably and actually believed that the (check[,]/ draft[,]/ [or] order) would be paid by the (bank or depository[,]/ [or] person[,]/ [or] firm[,]/ [or] corporation) when presented for payment.

The People have the burden of proving beyond a reasonable doubt that the defendant intended to defraud. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Defendant Informed Payee About Insufficient Funds>

[If, when the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ draft[,]/ [or] order), (he/she) told the person designated to receive payment on the (check[,]/ draft[,]/ [or] order) that there were insufficient funds to allow the (check[,]/ draft[,]/ [or] order) to be paid, then the defendant is not guilty of this crime.

The People have the burden of proving beyond a reasonable doubt that when the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) the (check[,]/ draft[,]/ [or] order), (he/she) did not tell the person designated to receive payment that there were insufficient funds to allow the (check[,]/ draft[,]/ [or] order) to be paid. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006 [*insert date of council approval*](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant made or used multiple checks, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].) Give the bracketed paragraph that begins with “The People allege that the defendant,” inserting the items alleged. (See also Bench Notes to CALCRIM No. 3500, *Unanimity*, discussing when instruction on unanimity is and is not required.)

People v. Pugh (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770], defines the term “utter” as to “use” or “attempt to use” an instrument. The committee has omitted the unfamiliar term “utter” in favor of the more familiar terms “use” and “attempt to use.”

If the prosecution alleges that the defendant made or attempted to use, etc., more than ~~\$200~~ \$950 in checks, give CALCRIM No. 1971, *Making, Using, etc., Check Knowing Funds Insufficient: Total Value of Checks*. If the prosecution alleges that the defendant has a prior forgery-related conviction, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*.

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Give the bracketed sentence that begins with “It is not necessary” if the evidence shows that the defendant did not succeed in defrauding anyone. (*People v. Morgan* (1956) 140 Cal.App.2d 796, 801 [296 P.2d 75].)

[When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667\(e\)\(2\)\(C\)\(iv\) or for an offense requiring registration pursuant to subdivision \(c\) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.](#)

Defenses—Instructional Duty

If there is sufficient evidence to raise a reasonable doubt that the defendant expected the check to be paid, the court has a **sua sponte** duty to give the bracketed option headed “Defense: Reasonable Expectation of Payment.” (*People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].)

If there is sufficient evidence to raise a reasonable doubt that the defendant informed the payee that there were insufficient funds to cash the check, the court has a **sua sponte** duty to give the bracketed option headed “Defense: Defendant Informed Payee About Insufficient Funds.” (*People v. Poyet* (1972) 6 Cal.3d 530, 535–537 [99 Cal.Rptr. 758, 492 P.2d 1150]; *People v. Pugh, supra*, 104 Cal.App.4th at p. 73.)

AUTHORITY

- Elements ▶ Pen. Code, § 476a.
- Intent to Defraud ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gaul-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity ▶ Pen. Code, § 8.
- Use or Attempt to Use ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770]; *People v. Jackson* (1979) 92 Cal.App.3d 556, 561 [155 Cal.Rptr. 89], overruled on other grounds in *People v. Anderson* (1987) 43 Cal.3d 1104, 1122 [240 Cal.Rptr. 585, 742 P.2d 1306].
- Informed Payee About Insufficient Funds ▶ *People v. Poyet* (1972) 6 Cal.3d 530, 535–537 [99 Cal.Rptr. 758, 492 P.2d 1150]; *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].
- Reasonable Expectation of Payment ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 73 [127 Cal.Rptr.2d 770].
- Unanimity Instruction If Multiple Documents ▶ *People v. Sutherland* (1993) 17 Cal.App.4th 602, 619, fn. 6 [21 Cal.Rptr.2d 752].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property §§ 180-187](#) ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 140–147.~~

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.02[2][a][i] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.01[1], [3] (Matthew Bender).

LESSER INCLUDED OFFENSES

This offense is a misdemeanor if the total amount of the checks does not exceed ~~\$200~~ 950, unless the defendant has been previously convicted of three a-specified theft offenses. (Pen. Code, § 476a(b).) If the defendant is charged with a felony, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the total amount of the checks exceeds ~~\$200~~ 950 or if the prior convictions haves or hasve not been

proved. If the jury finds that the amount did not exceed \$~~200~~950 or the prior convictions was/were not proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Multiple Checks Totaling Over \$~~200~~950—Number of Counts

Under Penal Code section 476a(b), the offense is a felony-misdemeanor if the total amount of the checks made or issued exceeds \$~~200~~950. In general, the prosecution may charge a separate count for each check. However, if the individual checks do not meet the statutory amount and the offense is charged as a felony based only on the aggregate value, the prosecution can only charge a single felony count covering all of the checks that total more than \$~~200~~950. (*In re Watkins* (1966) 64 Cal.2d 866, 868–869 [51 Cal.Rptr. 917, 415 P.2d 805].) If, on the other hand, the defendant is charged with felony offenses based on a prior forgery-related conviction, the prosecution may charge each check as a separate felony count. (*People v. Pettit* (1964) 230 Cal.App.2d 397, 398 [41 Cal.Rptr. 42].)

Grand Theft

A defendant who uses a check with insufficient funds to obtain property may be charged under either Penal Code section 476a or section 487, or both. (*People v. Martin* (1962) 208 Cal.App.2d 867, 876–878 [25 Cal.Rptr. 610].) However, the defendant may not be sentenced on both charges for the same conduct. (*Ibid.*; Pen. Code, § 654.)

Return of Property

Two cases have held that the defendant may present evidence that he or she returned some or all of the property in an effort to demonstrate that he or she did not originally intend to defraud. (*People v. Katzman* (1968) 258 Cal.App.2d 777, 790 [66 Cal.Rptr. 319], disapproved on other grounds in *Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 780, fn. 11 [200 Cal.Rptr.916, 677 P.2d 1206]; *People v. Braver* (1964) 229 Cal.App.2d 303, 307–308 [40 Cal.Rptr. 142].) However, other cases have held that, based on the facts of the particular cases, such evidence was not admissible. (*People v. Parker* (1970) 11 Cal.App.3d 500, 510 [89 Cal.Rptr. 815] [evidence of defendant's offer to repay following arrest not relevant]; *People v. Wing* (1973) 32 Cal.App.3d 197, 202 [107 Cal.Rptr. 836] [evidence of restitution not relevant where defendant falsely signed the name of another to a check knowing he had no authority to do so].) If such evidence is presented, the court may give CALCRIM No. 1862, *Return of Property Not a Defense to Theft*. (*People v. Katzman, supra*, 258 Cal.App.2d at p. 791.) In addition, in *People v. Katzman, supra*, 258 Cal.App.2d at p. 792, the court held that, on request, the defense may be entitled to a pinpoint instruction that evidence of restitution may be relevant to determining if the defendant intended to defraud.

If the court concludes that such an instruction is appropriate, the court may add the following to the beginning of CALCRIM No. 1862:

If the defendant returned or offered to return [some or all of] the property obtained, that conduct may show (he/she) did not intend to defraud. If you conclude that the defendant returned or offered to return [some or all of] the property, it is up to you to decide the meaning and importance of that conduct.

1971. Making, Using, etc., Check Knowing Funds Insufficient: Total Value of Checks (Pen. Code, § 476a(b))

If you find the defendant guilty of (making[,]/ [or] drawing[,]/ [or] delivering[,]/ [or] using[,]/ [or] attempting to use) (a/an) (check[,]/ draft[,]/ [or] order) knowing that there were insufficient funds to cover it, you must then decide whether the People have proved either of the following:

1. That at least one (check[,]/ draft[,]/ [or] order) that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) knowing that there were insufficient funds to cover it was for more than **\$~~200~~ 950**;

OR

2. That the total value of the (checks[,]/ [or] drafts[,]/ [or] orders) charged in Count __ that the defendant (made[,]/ [or] drew[,]/ [or] delivered[,]/ [or] used[,]/ [or] attempted to use) knowing that there were insufficient funds to cover them was more than **\$~~200~~ 950**.

The People have the burden of proving this allegation beyond a reasonable doubt. If the People have not met this burden, you must find that this allegation has not been proved.

New January 2006 [*\[insert date of council approval\]*](#)

BENCH NOTES

Instructional Duty

If the defendant is charged with a felony based on the value of the checks, the court has a **sua sponte** duty to instruct on this sentencing factor.

This instruction **must** be given with the appropriate instruction on the other elements of the offense, CALCRIM No. 1970, *Making, Using, etc., Check Knowing Funds Insufficient*.

The court must provide the jury with a verdict form on which the jury will indicate **if-whether** the prosecution has or has not been proved that the value of the checks exceeds **\$~~200~~ 950**. [See Penal Code section 476a\(b\)](#).

AUTHORITY

- Elements ▶ Pen. Code, § 476a(b).

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property § 1802](#) ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, § 140.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.04[3] (Matthew Bender).

RELATED ISSUES

Multiple Checks Totaling Over \$~~200~~ 950—Number of Counts

Under Penal Code section 476a(b), the offense is a felony-misdemeanor if the total amount of the checks made or issued exceeds \$~~200~~ 950. In general, the prosecution may charge a separate count for each check. However, if the individual checks do not meet the statutory amount and the offense is charged as a felony based only on the aggregate value, the prosecution can only charge a single felony count covering all of the checks that total more than \$~~200~~950. (*In re Watkins* (1966) 64 Cal.2d 866, 868–869 [51 Cal.Rptr. 917, 415 P.2d 805].) If, on the other hand, the defendant is charged with felony offenses based on a prior forgery-related conviction, the prosecution may charge each separate check as a separate felony count. (*People v. Pettit* (1964) 230 Cal.App.2d 397, 398 [41 Cal.Rptr. 42].)

1972–1999. Reserved for Future Use

2304. Simple Possession of Controlled Substance (Health & Saf. Code, §§ 11350, 11377)

The defendant is charged [in Count __] with possessing _____ *<insert type of controlled substance>*, a controlled substance [in violation of _____ *<insert appropriate code section[s]>*].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant [unlawfully] possessed a controlled substance;
2. The defendant knew of its presence;
3. The defendant knew of the substance's nature or character as a controlled substance;

<If the controlled substance is not listed in the schedules set forth in sections 11054 through 11058 of the Health and Safety Code, give paragraph 4B and the definition of analog substance below instead of paragraph 4A.>

4A. The controlled substance was _____ *<insert type of controlled substance>*;

4B. The controlled substance was an analog of _____ *<insert type of controlled substance>*;

AND

5. The controlled substance was in a usable amount.

[In order to prove that the defendant is guilty of this crime, the People must prove that _____ *<insert name of analog drug>* is an analog of _____ *<insert type of controlled substance>*. An analog of a controlled substance:

1. Has a chemical structure substantially similar to the structure of a controlled substance;

OR

2. **Has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to or greater than the effect of a controlled substance.]**

A usable amount is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

[The People do not need to prove that the defendant knew which specific controlled substance (he/she) possessed.]

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something, to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy a controlled substance does not, by itself, mean that a person has control over that substance.]

<Defense: Prescription>

[The defendant is not guilty of possessing _____ *<insert type of controlled substance>* if (he/she) had a valid, written prescription for that substance from a physician, dentist, podiatrist, [naturopathic doctor], or veterinarian licensed to practice in California. The People have the burden of proving beyond a reasonable doubt that the defendant did not have a valid prescription. If the People have not met this burden, you must find the defendant not guilty of possessing a controlled substance.]

New January 2006; Revised August 2006, October 2010, February 2014 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration

pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Defenses—Instructional Duty

The prescription defense is codified in Health and Safety Code sections 11350 and 11377. It is not available as a defense to possession of all controlled substances. The defendant need only raise a reasonable doubt about whether his or her possession of the drug was lawful because of a valid prescription. (See *People v. Mower* (2002) 28 Cal.4th 457, 479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].) If there is sufficient evidence, the court has a **sua sponte** duty to give the bracketed paragraph on the defense.

A recent amendment to section 11150 includes a naturopathic doctor in the category of those who may furnish or order certain controlled substances, so that bracketed option should be included in this instruction if substantial evidence supports it.

AUTHORITY

- Elements ▶ Health & Saf. Code, §§ 11350, 11377; *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717].
- Constructive vs. Actual Possession ▶ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Knowledge ▶ *People v. Horn* (1960) 187 Cal.App.2d 68, 74–75 [9 Cal.Rptr. 578].
- Usable Amount ▶ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Prescription ▶ Health & Saf. Code, §§ 11027, 11164, 11164.5.
- Persons Authorized to Write Prescriptions ▶ Health & Saf. Code, § 11150.
- Definition of Analog Controlled Substance ▶ *People v. Davis* (2013) 57 Cal.4th 353, 357, fn. 2 [159 Cal.Rptr.3d 405, 303 P.3d 1179].
- No Finding Necessary for “Expressly Listed” Controlled Substance ▶ *People v. Davis, supra*, 57 Cal.4th at p. 362, fn. 5.

Secondary Sources

~~2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 97-1142 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 77-93.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01[1][a]-[d], [2][b] (Matthew Bender).

2377. Simple Possession of Concentrated Cannabis (Health & Saf. Code, § 11357(a))

The defendant is charged [in Count ___] with [unlawfully] possessing concentrated cannabis, a controlled substance [in violation of Health and Safety Code section 11357(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant [unlawfully] possessed concentrated cannabis;
2. The defendant knew of its presence;
3. The defendant knew of the substance's nature or character as concentrated cannabis;

AND

4. The concentrated cannabis was in a usable amount.

A usable amount is a quantity that is enough to be used by someone as a controlled substance. Useless traces [or debris] are not usable amounts. On the other hand, a usable amount does not have to be enough, in either amount or strength, to affect the user.

Concentrated cannabis means the separated resin, whether crude or purified, from the cannabis plant.

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[Agreeing to buy concentrated cannabis does not, by itself, mean that a person has control over that substance.]

New January 2006; Revised June 2007, February 2015 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

Defenses—Instructional Duty

If a medical marijuana defense applies under the Compassionate Use Act or the Medical Marijuana Program Act (See Health & Saf. Code, §§ 11362.5, 11362.775.), the burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that the conduct was lawful. (*People v. Mower* (2002) 28 Cal.4th 457, 470 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].) If the defendant introduces substantial evidence, sufficient to raise a reasonable doubt that the conduct may have been lawful, the court has a **sua sponte** duty to give the relevant defense instruction: CALCRIM No. 3412, *Compassionate Use Defense*, or CALCRIM No. 3413, *Collective or Cooperative Cultivation Defense*.

“Concentrated cannabis or hashish is included within the meaning of ‘marijuana’ as the term is used in the Compassionate Use Act of 1996.” (86 Ops.Cal.Atty.Gen. 180, 194 (2003).)

If the medical marijuana instructions are given, then, in element 1, also give the bracketed word “unlawfully.”

AUTHORITY

- Elements ▶ Health & Saf. Code, § 11357(a); *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242 [40 Cal.Rptr.2d 722, 893 P.2d 717].
- “Concentrated Cannabis” Defined ▶ Health & Saf. Code, § 11006.5.
- Knowledge ▶ *People v. Romero* (1997) 55 Cal.App.4th 147, 151–153, 157, fn. 3 [64 Cal.Rptr.2d 16]; *People v. Winston* (1956) 46 Cal.2d 151, 158 [293 P.2d 40].

- Constructive vs. Actual Possession ▶ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Usable Amount ▶ *People v. Rubacalba* (1993) 6 Cal.4th 62, 65–67 [23 Cal.Rptr.2d 628, 859 P.2d 708]; *People v. Piper* (1971) 19 Cal.App.3d 248, 250 [96 Cal.Rptr. 643].
- Medical Marijuana ▶ Health & Saf. Code, § 11362.5.
- Burden of Proof for Defense of Medical Use ▶ *People v. Mower* (2002) 28 Cal.4th 457, 460 [122 Cal.Rptr.2d 326, 49 P.3d 1067]; *People v. Frazier* (2005) 128 Cal.App.4th 807, 820–821 [27 Cal.Rptr.3d 336].
- Amount Must Be Reasonably Related to Patient’s Medical Needs ▶ *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550–1551 [66 Cal.Rptr.2d 559].
- Primary Caregiver ▶ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061].
- Defendant’s Burden of Proof on Compassionate Use Defense ▶ *People v. Mentch* (2008) 45 Cal.4th 274, 292-294 [85 Cal.Rptr.3d 480, 195 P.3d 1061] (conc.opn. of Chin, J.). Medical Marijuana Program Act Defense ▶ *People v. Jackson* (2012) 210 Cal.App.4th 525, 538-539 [148 Cal.Rptr.3d 375].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 85-113, 136-151

~~2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, §§ 76-77.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01[1][a]–[d], [3][a], [a.1] (Matthew Bender).

219. Reasonable Doubt in Civil Commitment Proceedings

The fact that a petition to (declare respondent a sexually violent predator/declare respondent a mentally disordered offender/extend respondent's commitment) has been filed is not evidence that the petition is true. You must not be biased against the respondent just because the petition has been filed and this matter has been brought to trial. The Petitioner is required to prove the allegations of the petition are true beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the allegations of the petition are true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the Petitioner has proved the allegations of the petition are true beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the entire trial. Unless the evidence proves the Respondent _____ *<insert what must be proved in this proceeding, e.g., "is a sexually violent predator">* beyond a reasonable doubt, you must find the petition is not true.

New August 2009 [\[insert date of council approval\]](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct jurors on the reasonable doubt standard in civil commitment proceedings relating to sexually violent predators (Welf. & Inst. Code, §§ 6604, 6605) and mentally disordered offenders (Pen. Code, §§ 2966, 2972) as well as extended commitment proceedings for persons found not guilty by reason of insanity (Pen. Code, § 1026.5(b)) and juveniles committed to the Division of Juvenile Facilities (Welf. & Inst. Code, §§ 1800 et seq.). ~~in the reasonable doubt standard, but not in the presumption of innocence. *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1401 [122 Cal.Rptr.2d 384]. That duty extends to not guilty by reason of insanity extended commitment (Pen. Code, § 1026.5(b)) and juvenile delinquency extended commitment (Welf. & Inst. Code, §§ 1800 et seq.) proceedings as well~~

In People v. Beeson (2002) 99 Cal.App.4th 1393, 1411 [122 Cal.Rptr.2d 384], the Court concluded that neither the federal nor the state Constitution compelled an instruction on a presumption that the allegations of a mentally disordered offender (MDO) extension petition are not true. However, no court has addressed whether the respondents in extended insanity commitment and extended juvenile commitment proceedings are entitled to an instruction on the presumption. (Pen. Code, § 1026.5(b)(7); Welf. & Inst. Code, § 1801.5; see also *Hudec v. Superior Court* (2015) 60 Cal.4th 815, 826 [339 P.3d 998, 1004] ["section 1026.5(b)(7) provides respondents in commitment extension hearings the rights constitutionally enjoyed by criminal defendants"] and *In re Luis C.* (2004) 116 Cal.App.4th 1397, 1402-1403 [11 Cal.Rptr.3d 429] [same for Welfare and Institutions Code section 1801.5 juvenile proceedings].)

AUTHORITY

Instructional Requirements ▶ *People v. Beeson* (2002) 99 Cal.App.4th 1393, 1401 [122 Cal.Rptr.2d 384]; Pen. Code, § 1026.5(b)(7); Welf. & Inst. Code, § 1801.5.

Related Instructions

CALCRIM No. 220, *Reasonable Doubt*.

CALCRIM No. 3453, *Extension of Commitment*.

CALCRIM No. 3454, *Commitment as Sexually Violent Predator*.

CALCRIM No. 3454A, Hearing to Determine Current Status Under Sexually Violent Predator Act.

CALCRIM No. 3456, *Initial Commitment of Mentally Disordered Offender As Condition of Parole*.

CALCRIM No. 3457, *Extension of Commitment as Mentally Disordered Offender*.

CALCRIM No. 3458, *Extension of Commitment to Division of Juvenile Facilities*.

Secondary Sources

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment § 774

3 Witkin & Epstein, California Criminal Law (3d ed. 2008 supp.) Punishment, § 640A.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 104, *Parole*, § 104.06 (Matthew Bender).

221. Reasonable Doubt: Bifurcated Trial

The People are required to prove the allegations beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the allegation is true. The evidence does not need to eliminate all possible doubt because everything in life is open to some possible or imaginary doubt.

In deciding whether the People have proved (an/the) allegation beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received during this [phase of the] trial. Unless the evidence proves (an/the) allegation beyond a reasonable doubt, you must find that the allegation has not been proved [and disregard it completely].

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on reasonable doubt in any proceeding in which that standard of proof applies.

This instruction is provided for the court to use **only** in bifurcated trials or special proceedings where the court is required to instruct on reasonable doubt but neither CALCRIM No. 219, *Reasonable Doubt in Civil Commitment Proceedings*, nor CALCRIM No. 220, *Reasonable Doubt*, would apply. **Do not** use this instruction in place of CALCRIM No. 220 in a trial on the substantive crimes charged.

Use this instruction **only** if: (1) the court has granted a bifurcated trial on a prior conviction or a sentencing factor (see CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial* and CALCRIM No. 3251, *Enhancement, Sentencing Factor, or Specific Factual Issue: Template—Bifurcated Trial*); or (2) in the penalty phase of a capital trial when the court is instructing on other violent criminal activity or prior felony convictions offered as aggravation (see CALCRIM No. 764, *Death Penalty: Evidence of Other Violent Crimes* and CALCRIM No. 765, *Death Penalty: Conviction for Other Felony Crimes*).

In the first sentence, the court, at its discretion, may wish to insert a description of the specific allegations that the People must prove.

In the final paragraph, give the bracketed phrase “and disregard it completely” when using this instruction in the penalty phase of a capital trial.

AUTHORITY

- Instructional Requirements ▶ Pen. Code, §§ 1096, 1096a; *People v. Freeman* (1994) 8 Cal.4th 450, 503–504 [34 Cal.Rptr.2d 558, 882 P.2d 249]; ~~*People v. Beeson* (2002) 99 Cal.App.4th 1393, 1409 [122 Cal.Rptr.2d 384] [regarding lack of need to instruct on presumption of innocence for mentally disordered offenders in non-criminal proceedings].~~

Secondary Sources

1 Witkin & Epstein, California Criminal Law (4th ed. 2012), Defenses, § 2.
4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 83, Evidence, § 83.03[1], Ch. 85, Submission to Jury and Verdict, § 85.02[1A][a], [2][a][i] (Matthew Bender).

3453. Extension of Commitment (Pen. Code, § 1026.5(b)(1))

_____ <insert name of respondent> has been committed to a mental health facility. You must decide whether (he/she) currently poses a substantial danger of physical harm to others as a result of a mental disease, defect, or disorder. That is the only purpose of this proceeding. You are not being asked to decide _____ <insert name of respondent>'s mental condition at any other time or whether (he/she) is guilty of any crime.

To prove that _____ <insert name of respondent> currently poses a substantial danger of physical harm to others as a result of a mental disease, defect, or disorder, the People must prove beyond a reasonable doubt that:

1. (He/She) suffers from a mental disease, defect, or disorder;

AND

2. As a result of (his/her) mental disease, defect, or disorder, (he/she) now:

- a. Poses a substantial danger of physical harm to others;

AND

- b. Has serious difficulty in controlling (his/her) dangerous behavior.

[Control of a mental condition through medication is a defense to a petition to extend commitment. To establish this defense, _____ <insert name of respondent> must prove by a preponderance of the evidence that:

1. (He/She) no longer poses a substantial danger of physical harm to others because (he/she) is now taking medicine that controls (his/her) mental condition;

AND

2. (He/She) will continue to take that medicine in an unsupervised environment.

Proof by a preponderance of the evidence is a different burden of proof from proof beyond a reasonable doubt. A fact is proved by a preponderance of the evidence if you conclude that it is more likely than not that the fact is true.]

New January 2006; Revised June 2007, December 2008 [insert date of council approval](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the standard for extending commitment, including the constitutional requirement that the person be found to have a disorder that seriously impairs the ability to control his or her dangerous behavior. (*People v. Sudar* (2007) 158 Cal.App.4th 655, 663 [70 Cal.Rptr.3d 190].).

Give CALCRIM No. [22119](#), *Reasonable Doubt: ~~Bifurcated Trial in Civil Commitment Proceedings~~*, and CALCRIM No. 3550, *Pre-Deliberation Instructions*, as well as any other relevant post-trial instructions, such as CALCRIM No. 222, *Evidence*, or CALCRIM No. 226, *Witnesses*.

The constitutional requirement for an involuntary civil commitment is that the person be found to have a disorder that seriously impairs the ability to control his or her dangerous behavior. (*Kansas v. Crane* (2002) 534 U.S. 407, 412–413 [122 S.Ct. 867, 151 L.Ed.2d 856]; *In re Howard N.* (2005) 35 Cal.4th 117, 128 [24 Cal.Rptr.3d 866, 106 P.3d 305].) This requirement applies to an extension of a commitment after a finding of not guilty by reason of insanity. (*People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1159–1165 [54 Cal.Rptr.3d 873]; *People v. Bowers* (2006) 145 Cal.App.4th 870, 878 [52 Cal.Rptr.3d 74]; *People v. Galindo* (2006) 142 Cal.App.4th 531 [48 Cal.Rptr.3d 241].)

AUTHORITY

- Instructional Requirements ▶ Pen. Code, § 1026.5(b)(1).
- Unanimous Verdict, Burden of Proof ▶ *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 235 [152 Cal.Rptr. 425, 590 P.2d 1] [discussing conservatorship proceedings under the Lanterman-Petris-Short Act and civil commitment proceedings in general].
- Affirmative Defense of Medication ▶ *People v. Bolden* (1990) 217 Cal.App.3d 1591, 1600–1602 [266 Cal.Rptr. 724].

- Serious Difficulty Controlling Behavior ▶ *People v. Sudar* (2007) 158 Cal.App.4th 655, 662–663 [70 Cal.Rptr.3d 190] [applying the principles of *Kansas v. Crane* and *In re Howard N.*].

Secondary Sources

[5 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Criminal Trial §§ 816-819](#)

~~5 Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, § 693.~~

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 86, *Insanity Trial*, § 86.10[7] (Matthew Bender).

RELATED ISSUES

Extension of Commitment

The test for extending a person’s commitment is not the same as the test for insanity. (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 490 [284 Cal.Rptr. 601].) The test for insanity is whether the accused “was incapable of knowing or understanding the nature and quality of his or her act or of distinguishing right from wrong at the time of the commission of the offense.” (Pen. Code, § 25(b); *People v. Skinner* (1985) 39 Cal.3d 765 [217 Cal.Rptr. 685, 704 P.2d 752].) In contrast, the standard for recommitment under Penal Code section 1026.5(b) is whether a defendant, “by reason of a mental disease, defect, or disorder [,] represents a substantial danger of physical harm to others.” (*People v. Superior Court, supra*, 233 Cal.App.3d at pp. 489–490; see *People v. Wilder* (1995) 33 Cal.App.4th 90, 99 [39 Cal.Rptr. 2d 247].)

358. Evidence of Defendant's Statements

You have heard evidence that the defendant made [an] oral or written statement[s] (before the trial/while the court was not in session). You must decide whether the defendant made any (such/of these) statement[s], in whole or in part. If you decide that the defendant made such [a] statement[s], consider the statement[s], along with all the other evidence, in reaching your verdict. It is up to you to decide how much importance to give to the statement[s].

[Consider with caution any statement made by (the/a) defendant tending to show (his/her) guilt unless the statement was written or otherwise recorded.]

New January 2006; Revised June 2007, December 2008, February 2014 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction when there is evidence of an out-of-court oral statement by the defendant.

~~In addition, the court has a sua sponte duty to give~~ Give the bracketed cautionary instruction on request when-if there is evidence of an incriminating out-of-court oral statement made by the defendant. (*People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62].) ~~(*People v. Beagle* (1972) 6 Cal.3d 441, 455–456 [99 Cal.Rptr. 313, 492 P.2d 1].) An exception is that in~~ In the penalty phase of a capital trial, the bracketed paragraph should be given only if the defense requests it. (*People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].)

The bracketed cautionary instruction is not required when the defendant's incriminating statements are written or tape-recorded. (*People v. Gardner* (1961) 195 Cal.App.2d 829, 833 [16 Cal.Rptr. 256]; *People v. Hines* (1964) 61 Cal.2d 164, 173 [37 Cal.Rptr. 622, 390 P.2d 398], disapproved on other grounds in *People v. Murtishaw* (1981) 29 Cal.3d 733, 774, fn. 40 [175 Cal.Rptr. 738, 631 P.2d 446]; *People v. Scherr* (1969) 272 Cal.App.2d 165, 172 [77 Cal.Rptr. 35]; *People v. Slaughter* (2002) 27 Cal.4th 1187, 1200 [120 Cal.Rptr.2d 477, 47 P.3d 262] [admonition to view non-recorded statements with caution applies only to a

defendant's incriminating statements].) If the jury heard both inculpatory and exculpatory, or only inculpatory, statements attributed to the defendant, give the bracketed paragraph. If the jury heard only exculpatory statements by the defendant, do not give the bracketed paragraph.

If the defendant was a minor suspected of murder who made a statement in a custodial interview that did not comply with Penal Code section 859.5, give the following additional instruction:

Consider with caution any statement tending to show defendant's guilt made by (him/her) during _____ <insert description of interview, e.g., interview with Officer Smith of October 15, 2013. >

When a defendant's statement is a verbal act, as in conspiracy cases, this instruction applies. (*People v. Bunyard* (1988) 45 Cal.3d 1189, 1224 [249 Cal.Rptr. 71, 756 P.2d 795]; *People v. Ramirez* (1974) 40 Cal.App.3d 347, 352 [114 Cal.Rptr. 916]; see also, e.g., *Peabody v. Phelps* (1858) 9 Cal. 213, 229 [similar, in civil cases.]; ~~but see *People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057 [13 Cal.Rptr.3d 509] [no sua sponte duty to instruct with CALJIC 2.71 in criminal threat case because "truth" of substance of the threat was not relevant and instructing jury to view defendant's statement with caution could suggest that exercise of "caution" supplanted need for finding guilt beyond a reasonable doubt].)~~)

When a defendant's statement is an element of the crime, as in conspiracy or criminal threats (Pen. Code, § 422), this instruction ~~does not apply~~ still applies. (*People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62], overruling *People v. Zichko* (2004) 118 Cal.App.4th 1055, 1057 [13 Cal.Rptr.3d 509].))

Related Instructions

If out-of-court oral statements made by the defendant are prominent pieces of evidence in the trial, then CALCRIM No. 359, *Corpus Delicti: Independent Evidence of a Charged Crime*, may also have to be given together with the bracketed cautionary instruction.

AUTHORITY

- Instructional Requirements [►] *People v. Diaz* (2015) 60 Cal.4th 1176 [185 Cal.Rptr.3d 431, 345 P.3d 62] [►] ~~*People v. Beagle* (1972) 6 Cal.3d 441, 455-456 [99 Cal.Rptr. 313, 492 P.2d 1]; *People v. Livaditis* (1992) 2 Cal.4th 759, 784 [9 Cal.Rptr.2d 72, 831 P.2d 297].~~

- Custodial Statements by Minors Suspected of Murder ▶ Pen. Code, § 859.5, effective 1/1/2014.

Secondary Sources

5 Witkin & Epstein, California Criminal Law (4th ed. 2012) Criminal Trial §§ 683-686, 723, 724, 733.

1 Witkin, California Evidence (5th ed. 2012), Hearsay §52.

3 Witkin, California Evidence (5th ed. 2012), Presentation at Trial §1275~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Criminal Trial, §§ 614, 641, 650.~~

~~1 Witkin, California Evidence (4th ed. 2000) Hearsay, § 51.~~

~~3 Witkin, California Evidence (4th ed. 2000) Presentation, § 113.~~

2 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 30, *Confessions and Admissions*, § 30.57 (Matthew Bender).

521. First Degree Murder (Pen. Code, § 189)

<Select the appropriate section[s]. Give the final paragraph in every case.>

<Give if multiple theories alleged.>

[The defendant has been prosecuted for first degree murder under (two/___ <insert number>) theories: (1) _____ <insert first theory, e.g., “the murder was willful, deliberate, and premeditated”> [and] (2) _____ <insert second theory, e.g., “the murder was committed by lying in wait”> [_____ <insert additional theories>].

Each theory of first degree murder has different requirements, and I will instruct you on (both/all ___ <insert number>).

You may not find the defendant guilty of first degree murder unless all of you agree that the People have proved that the defendant committed murder. But all of you do not need to agree on the same theory.]

<A. Deliberation and Premeditation>

[The defendant is guilty of first degree murder if the People have proved that (he/she) acted willfully, deliberately, and with premeditation. The defendant acted *willfully* if (he/she) intended to kill. The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the consequences, decided to kill. The defendant *acted with premeditation* if (he/she) decided to kill before completing the act[s] that caused death.

The length of time the person spends considering whether to kill does not alone determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.]

<B. Torture>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered by torture. The defendant murdered by torture if:

1. (He/She) willfully, deliberately, and with premeditation intended to inflict extreme and prolonged pain on the person killed while that person was still alive;
2. (He/She) intended to inflict such pain on the person killed for the calculated purpose of revenge, extortion, persuasion, or any other sadistic reason;
3. The acts causing death involved a high degree of probability of death;

AND

4. The torture was a cause of death.]

[A person commits an act *willfully* when he or she does it willingly or on purpose. A person *deliberates* if he or she carefully weighs the considerations for and against his or her choice and, knowing the consequences, decides to act.

The defendant *acted with premeditation* if (he/she) decided to kill before completing the act[s] that caused death.]

[There is no requirement that the person killed be aware of the pain.]

[A finding of torture does not require that the defendant intended to kill.]

<C. Lying in Wait>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered while lying in wait or immediately thereafter. The defendant murdered by lying in wait if:

1. (He/She) concealed (his/her) purpose from the person killed;
2. (He/She) waited and watched for an opportunity to act;

AND

3. Then, from a position of advantage, (he/she) intended to and did make a surprise attack on the person killed.

The lying in wait does not need to continue for any particular period of time, but its duration must be substantial enough to show a state of mind equivalent to deliberation or premeditation. [*Deliberation* means carefully

weighing the considerations for and against a choice and, knowing the consequences, deciding to act. An act is done with *premeditation* if the decision to commit the act is made before the act is done.]

[A person can conceal his or her purpose even if the person killed is aware of the person's physical presence.]

[The concealment can be accomplished by ambush or some other secret plan.]]

<D. Destructive Device or Explosive>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered by using a destructive device or explosive.]

[An *explosive* is any substance, or combination of substances, (1) whose main or common purpose is to detonate or rapidly combust and (2) which is capable of a relatively instantaneous or rapid release of gas and heat.]

[An *explosive* is [also] any substance whose main purpose is to be combined with other substances to create a new substance that can release gas and heat rapidly or relatively instantaneously.]

[_____ *<insert type of explosive from Health & Saf. Code, § 12000>* is an *explosive.*]

[A *destructive device* is _____ *<insert definition supported by evidence from Pen. Code, § 16460>.*]

[_____ *<insert type of destructive device from Pen. Code, § 16460>* is a *destructive device.*]

<E. Weapon of Mass Destruction>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered by using a weapon of mass destruction.

[_____ *<insert type of weapon from Pen. Code, § 11417(a)(1)>* is a *weapon of mass destruction.*]

[_____ *<insert type of agent from Pen. Code, § 11417(a)(2)>* is a *chemical warfare agent.*]

<F. Penetrating Ammunition>

[The defendant is guilty of first degree murder if the People have proved that when the defendant murdered, (he/she) used ammunition designed primarily to penetrate metal or armor to commit the murder and (he/she) knew that the ammunition was designed primarily to penetrate metal or armor.]

<G. Discharge From Vehicle>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered by shooting a firearm from a motor vehicle. The defendant committed this kind of murder if:

- 1. (He/She) shot a firearm from a motor vehicle;**
- 2. (He/She) intentionally shot at a person who was outside the vehicle;**

AND

- 3. (He/She) intended to kill that person.**

A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.

A *motor vehicle* includes (a/an) (passenger vehicle/motorcycle/motor scooter/bus/school bus/commercial vehicle/truck tractor and trailer/_____ *<insert other type of motor vehicle>*).

<H. Poison>

[The defendant is guilty of first degree murder if the People have proved that the defendant murdered by using poison.

[*Poison* is a substance, applied externally to the body or introduced into the body, that can kill by its own inherent qualities.]]

[_____ *<insert name of substance>* is a *poison*.]

[The requirements for second degree murder based on express or implied malice are explained in CALCRIM No. 520, *First or Second Degree Murder With Malice Aforethought*.]

The People have the burden of proving beyond a reasonable doubt that the killing was first degree murder rather than a lesser crime. If the People have

not met this burden, you must find the defendant not guilty of first degree murder and the murder is second degree murder.

New January 2006; Revised August 2006, June 2007, April 2010, October 2010, February 2012, February 2013, February 2015 *insert date of council approval*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Before giving this instruction, the court must give CALCRIM No. 520, *Murder With Malice Aforethought*. Depending on the theory of first degree murder relied on by the prosecution, give the appropriate alternatives A through H.

The court **must give** the final paragraph in every case.

If the prosecution alleges two or more theories for first degree murder, give the bracketed section that begins with “The defendant has been prosecuted for first degree murder under.” If the prosecution alleges felony murder in addition to one of the theories of first degree murder in this instruction, give CALCRIM No. 548, *Murder: Alternative Theories*, instead of the bracketed paragraph contained in this instruction.

When instructing on torture or lying in wait, give the bracketed sections explaining the meaning of “deliberate” and “premeditated” if those terms have not already been defined for the jury.

When instructing on murder by weapon of mass destruction, explosive, or destructive device, the court may use the bracketed sentence stating, “_____ is a weapon of mass destruction” or “is a chemical warfare agent,” only if the device used is listed in the code section noted in the instruction. For example, “Sarin is a chemical warfare agent.” However, the court may not instruct the jury that the defendant used the prohibited weapon. For example, the court may not state, “the defendant used a chemical warfare agent, sarin,” or “the material used by the defendant, sarin, was a chemical warfare agent.” (*People v. Dimitrov* (1995) 33 Cal.App.4th 18, 25–26 [39 Cal.Rptr.2d 257].)

Do not modify this instruction to include the factors set forth in *People v. Anderson* (1968) 70 Cal.2d 15, 26-27 [73 Cal.Rptr. 550, 447 P.2d 942]. Although those factors may assist in appellate review of the sufficiency of the evidence to support findings of premeditation and deliberation, they neither define the

elements of first degree murder nor guide a jury's determination of the degree of the offense. (*People v. Moon* (2005) 37 Cal.4th 1, 31 [32 Cal.Rptr.3d 894, 117 P.3d 591]; *People v. Steele* (2002) 27 Cal.4th 1230, 1254 [120 Cal.Rptr.2d 432, 47 P.3d 225]; *People v. Lucero* (1988) 44 Cal.3d 1006, 1020 [245 Cal.Rptr. 185, 750 P.2d 1342].)

AUTHORITY

- Types of Statutory First Degree Murder ▶ Pen. Code, § 189.
- Armor Piercing Ammunition Defined ▶ Pen. Code, § 16660.
- Destructive Device Defined ▶ Pen. Code, § 16460.
- For Torture, Act Causing Death Must Involve a High Degree of Probability of Death ▶ *People v. Cook* (2006) 39 Cal.4th 566, 602 [47 Cal.Rptr.3d 22, 139 P.3d 492].
- Mental State Required for Implied Malice ▶ *People v. Knoller* (2007) 41 Cal.4th 139, 143 [59 Cal.Rptr.3d 157, 158 P.3d 731].
- Explosive Defined ▶ Health & Saf. Code, § 12000; *People v. Clark* (1990) 50 Cal.3d 583, 604 [268 Cal.Rptr. 399, 789 P.2d 127].
- Weapon of Mass Destruction Defined ▶ Pen. Code, § 11417.
- Discharge From Vehicle ▶ *People v. Chavez* (2004) 118 Cal.App.4th 379, 386–387 [12 Cal.Rptr.3d 837] [drive-by shooting clause is not an enumerated felony for purposes of the felony murder rule].
- Lying in Wait Requirements ▶ *People v. Stanley* (1995) 10 Cal.4th 764, 794 [42 Cal.Rptr.2d 543, 897 P.2d 481]; *People v. Ceja* (1993) 4 Cal.4th 1134, 1139 [17 Cal.Rptr.2d 375, 847 P.2d 55]; *People v. Webster* (1991) 54 Cal.3d 411, 448 [285 Cal.Rptr. 31, 814 P.2d 1273]; *People v. Poindexter* (2006) 144 Cal.App.4th 572, 582–585 [50 Cal.Rptr.3d 489]; *People v. Laws* (1993) 12 Cal.App.4th 786, 794–795 [15 Cal.Rptr.2d 668].
- Poison Defined ▶ *People v. Van Deleer* (1878) 53 Cal. 147, 149.
- Premeditation and Deliberation Defined ▶ *People v. Pearson* (2013) 56 Cal.4th 393, 443–444 [154 Cal.Rptr.3d 541, 297 P.3d 793]; *People v. Anderson* (1968) 70 Cal.2d 15, 26–27 [73 Cal.Rptr. 550, 447 P.2d 942]; *People v. Bender* (1945) 27 Cal.2d 164, 183–184 [163 P.2d 8]; *People v. Daugherty* (1953) 40 Cal.2d 876, 901–902 [256 P.2d 911].
- Torture Requirements ▶ *People v. Pensinger* (1991) 52 Cal.3d 1210, 1239 [278 Cal.Rptr. 640, 805 P.2d 899]; *People v. Bittaker* (1989) 48 Cal.3d 1046, 1101 [259 Cal.Rptr. 630, 774 P.2d 659], habeas corpus granted in part on other

grounds in *In re Bittaker* (1997) 55 Cal.App.4th 1004 [64 Cal.Rptr.2d 679]; *People v. Wiley* (1976) 18 Cal.3d 162, 168–172 [133 Cal.Rptr. 135, 554 P.2d 881]; see also *People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739] [comparing torture murder with torture].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, § 117.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.01 (Matthew Bender).

LESSER INCLUDED OFFENSES

- Murder ▶ Pen. Code, § 187.
- Voluntary Manslaughter ▶ Pen. Code, § 192(a).
- Involuntary Manslaughter ▶ Pen. Code, § 192(b).
- Attempted First Degree Murder ▶ Pen. Code, §§ 663, 189.
- Attempted Murder ▶ Pen. Code, §§ 663, 187.

RELATED ISSUES

Premeditation and Deliberation—Anderson Factors

~~Evidence in any combination from the following categories suggests premeditation and deliberation: (1) events before the murder that indicate planning; (2) motive, specifically evidence of a relationship between the victim and the defendant; and (3) method of the killing that is particular and exacting and evinces a preconceived design to kill. (*People v. Anderson* (1968) 70 Cal.2d 15, 26–27 [73 Cal.Rptr. 550, 447 P.2d 942].) Although these categories have been relied on to decide whether premeditation and deliberation are present, an instruction that suggests that each of these factors *must* be found in order to find deliberation and premeditation is not proper. (*People v. Lucero* (1988) 44 Cal.3d 1006, 1020–1021 [245 Cal.Rptr. 185, 750 P.2d 1342].) *Anderson* also noted that the brutality of the killing alone is not sufficient to support a finding that the killer acted with premeditation and deliberation. Thus, the infliction of multiple acts of violence on the victim without any other evidence indicating premeditation will not support a first degree murder conviction. (*People v. Anderson, supra*, 70 Cal.2d at pp. 24–25.) However, “[t]he *Anderson* guidelines are descriptive, not normative.” (*People v. Perez* (1992) 2 Cal.4th 1117, 1125 [9 Cal.Rptr.2d 577, 831~~

~~P.2d 1159.) The holding did not alter the elements of murder or substantive law but was intended to provide a “framework to aid in appellate review.” (Ibid.)~~

Premeditation and Deliberation—Heat of Passion Provocation

Provocation may reduce murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7] [provocation raised reasonable doubt about premeditation or deliberation, “leaving the homicide as murder of the second degree; i.e., an unlawful killing perpetrated with malice aforethought but without premeditation and deliberation”]; see *People v. Padilla* (2002) 103 Cal.App.4th 675, 679 [126 Cal.Rptr.2d 889] [evidence of hallucination is admissible at guilt phase to negate deliberation and premeditation and to reduce first degree murder to second degree murder].) There is, however, no sua sponte duty to instruct the jury on this issue. (*People v. Middleton* (1997) 52 Cal.App.4th 19, 31–33 [60 Cal.Rptr.2d 366], disapproved on other grounds in *People v. Gonzalez* (2003) 31 Cal.4th 745, 752 [3 Cal.Rptr.3d 676, 74 P.3d 771].) On request, give CALCRIM No. 522, *Provocation: Effect on Degree of Murder*.

Torture—Causation

The finding of murder by torture encompasses the totality of the brutal acts and circumstances that led to a victim’s death. “The acts of torture may not be segregated into their constituent elements in order to determine whether any single act by itself caused the death; rather, it is the continuum of sadistic violence that constitutes the torture [citation].” (*People v. Proctor* (1992) 4 Cal.4th 499, 530–531 [15 Cal.Rptr.2d 340, 842 P.2d 1100].)

Torture—Instruction on Voluntary Intoxication

“[A] court should instruct a jury in a torture-murder case, when evidence of intoxication warrants it, that intoxication is relevant to the specific intent to inflict cruel suffering.” (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1242 [278 Cal.Rptr. 640, 805 P.2d 899]; see CALCRIM No. 625, *Voluntary Intoxication: Effects on Homicide Crimes*.)

Torture—Pain Not an Element

All that is required for first degree murder by torture is the calculated *intent to cause pain* for the purpose of revenge, extortion, persuasion, or any other sadistic purpose. There is no requirement that the victim actually suffer pain. (*People v. Pensinger* (1991) 52 Cal.3d 1210, 1239 [278 Cal.Rptr. 640, 805 P.2d 899].)

Torture—Premeditated Intent to Inflict Pain

Torture-murder, unlike the substantive crime of torture, requires that the defendant acted with deliberation and premeditation when inflicting the pain. (*People v. Pre* (2004) 117 Cal.App.4th 413, 419–420 [11 Cal.Rptr.3d 739]; *People v. Mincey* (1992) 2 Cal.4th 408, 434–436 [6 Cal.Rptr.2d 822, 827 P.2d 388].)

Lying in Wait—Length of Time Equivalent to Premeditation and Deliberation

In *People v. Stanley* (1995) 10 Cal.4th 764, 794 [42 Cal.Rptr.2d 543, 897 P.2d 481], the court approved this instruction regarding the length of time a person lies in wait: “[T]he lying in wait need not continue for any particular time, provided that its duration is such as to show a state of mind equivalent to premeditation or deliberation.”

Discharge From a Vehicle—Vehicle Does Not Have to Be Moving

Penal Code section 189 does not require the vehicle to be moving when the shots are fired. (Pen. Code, § 189; see also *People v. Bostick* (1996) 46 Cal.App.4th 287, 291 [53 Cal.Rptr.2d 760] [finding vehicle movement is not required in context of enhancement for discharging firearm from motor vehicle under Pen. Code, § 12022.55].)

570. Voluntary Manslaughter: Heat of Passion—Lesser Included Offense (Pen. Code, § 192(a))

A killing that would otherwise be murder is reduced to voluntary manslaughter if the defendant killed someone because of a sudden quarrel or in the heat of passion.

The defendant killed someone because of a sudden quarrel or in the heat of passion if:

- 1. The defendant was provoked;**
- 2. As a result of the provocation, the defendant acted rashly and under the influence of intense emotion that obscured (his/her) reasoning or judgment;**

AND

- 3. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment.**

Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection.

In order for heat of passion to reduce a murder to voluntary manslaughter, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

It is not enough that the defendant simply was provoked. The defendant is not allowed to set up (his/her) own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than from judgment.

[If enough time passed between the provocation and the killing for a person of average disposition to “cool off” and regain his or her clear reasoning and judgment, then the killing is not reduced to voluntary manslaughter on this basis.]

The People have the burden of proving beyond a reasonable doubt that the defendant did not kill as the result of a sudden quarrel or in the heat of passion. If the People have not met this burden, you must find the defendant not guilty of murder.

New January 2006; Revised December 2008, February 2014 [\[insert date of council approval\]](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is “substantial enough to merit consideration” by the jury. (*People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531].)

[If the victim’s gender identity or sexual orientation raises specific issues concerning whether provocation was objectively reasonable, give an instruction tailored to those issues on request. \(Pen. Code, § 192\(f\), amended effective January 1, 2015\).](#)

Related Instructions

CALCRIM No. 511, *Excusable Homicide: Accident in the Heat of Passion*.

AUTHORITY

- Elements ▶ Pen. Code, § 192(a).
- Heat of Passion Defined ▶ *People v. Beltran* (2013) 56 Cal.4th 935, 938, 942, 957 [157 Cal.Rptr. 3d 503, 301 P.3d 1120]; *People v. Breverman* (1998) 19 Cal.4th 142, 163 [77 Cal.Rptr.2d 870, 960 P.2d 1094]; *People v. Valentine* (1946) 28 Cal.2d 121, 139 [169 P.2d 1]; *People v. Lee* (1999) 20 Cal.4th 47, 59 [82 Cal.Rptr.2d 625, 971 P.2d 1001].
- “Average Person” Need Not Have Been Provoked to Kill, Just to Act Rashly and Without Deliberation ▶ (*People v. Beltran* (2013) 56 Cal.4th 935, 938, 942, 957 [157 Cal.Rptr. 3d 503, 301 P.3d 1120]); *People v. Najera* (2006) 138 Cal.App.4th 212, 223 [41 Cal.Rptr.3d 244].

- Gender Identity and Sexual Orientation Not Proper Basis for Finding Provocation Objectively Reasonable ▶ Pen. Code, § 192(f), amended effective January 1, 2015.

Secondary Sources

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person §§ 111, 224, 226-2451 ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, §§ 207-219.~~

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, §§ 85.03[2][g], 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[1][a], [e], [f], [2][a], [3][c] (Matthew Bender).

LESSER INCLUDED OFFENSES

- Attempted Voluntary Manslaughter ▶ *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].

Involuntary manslaughter is *not* a lesser included offense of voluntary manslaughter. (*People v. Orr* (1994) 22 Cal.App.4th 780, 784 [27 Cal.Rptr.2d 553].)

RELATED ISSUES

Heat of Passion: Sufficiency of Provocation—Examples

In *People v. Breverman*, sufficient evidence of provocation existed where a mob of young men trespassed onto defendant’s yard and attacked defendant’s car with weapons. (*People v. Breverman* (1998) 19 Cal.4th 142, 163–164 [77 Cal.Rptr.2d 870, 960 P.2d 1094].) Provocation has also been found sufficient based on the murder of a family member (*People v. Brooks* (1986) 185 Cal.App.3d 687, 694 [230 Cal.Rptr. 86]); a sudden and violent quarrel (*People v. Elmore* (1914) 167 Cal. 205, 211 [138 P. 989]); verbal taunts by an unfaithful wife (*People v. Berry* (1976) 18 Cal.3d 509, 515 [134 Cal.Rptr. 415, 556 P.2d 777]); and the infidelity of a lover (*People v. Borchers* (1958) 50 Cal.2d 321, 328–329 [325 P.2d 97]).

In the following cases, evidence has been found inadequate to warrant instruction on provocation: evidence of name calling, smirking, or staring and looking stone-

faced (*People v. Lucas* (1997) 55 Cal.App.4th 721, 739 [64 Cal.Rptr.2d 282]); calling someone a particular epithet (*People v. Manriquez* (2005) 37 Cal.4th 547, 585-586 [36 Cal.Rptr.3d 340, 123 P.3d 614]); refusing to have sex in exchange for drugs (*People v. Michael Sims Dixon* (1995) 32 Cal.App.4th 1547, 1555–1556 [38 Cal.Rptr.2d 859]); a victim’s resistance against a rape attempt (*People v. Rich* (1988) 45 Cal.3d 1036, 1112 [248 Cal.Rptr. 510, 755 P.2d 960]); the desire for revenge (*People v. Fenenbock* (1996) 46 Cal.App.4th 1688, 1704 [54 Cal.Rptr.2d 608]); and a long history of criticism, reproach and ridicule where the defendant had not seen the victims for over two weeks prior to the killings (*People v. Kanawyer* (2003) 113 Cal.App.4th 1233, 1246–1247 [7 Cal.Rptr.3d 401]). In addition the Supreme Court has suggested that mere vandalism of an automobile is insufficient for provocation. (See *People v. Breverman* (1998) 19 Cal.4th 142, 164, fn. 11 [77 Cal.Rptr.2d 870, 960 P.2d 1094]; *In re Christian S.* (1994) 7 Cal.4th 768, 779, fn. 3 [30 Cal.Rptr.2d 33, 872 P.2d 574].)

Heat of Passion: Types of Provocation

Heat of passion does not require anger or rage. It can be “any violent, intense, high-wrought or enthusiastic emotion.” (*People v. Breverman* (1998) 19 Cal.4th 142, 163–164 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Heat of Passion: Verbal Provocation Sufficient

The provocative conduct by the victim may be physical or verbal, but the conduct must be sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection. (*People v. Lee* (1999) 20 Cal.4th 47, 59 [82 Cal.Rptr.2d 625, 971 P.2d 1001]; *People v. Valentine* (1946) 28 Cal.2d 121, 138–139 [169 P.2d 1].)

Heat of Passion: Defendant Initial Aggressor

“[A] defendant who provokes a physical encounter by rude challenges to another person to fight, coupled with threats of violence and death to that person and his entire family, is not entitled to claim that he was provoked into using deadly force when the challenged person responds without apparent (or actual) use of such force.” (*People v. Johnston* (2003) 113 Cal.App.4th 1299, 1303, 1312–1313 [7 Cal.Rptr.3d 161].)

Heat of Passion: Defendant’s Own Standard

Unrestrained and unprovoked rage does not constitute heat of passion and a person of extremely violent temperament cannot substitute his or her own subjective standard for heat of passion. (*People v. Valentine* (1946) 28 Cal.2d 121, 139 [169 P.2d 1] [court approved admonishing jury on this point]; *People v. Danielly* (1949) 33 Cal.2d 362, 377 [202 P.2d 18]; *People v. Berry* (1976) 18 Cal.3d 509, 515 [134 Cal.Rptr. 415, 556 P.2d 777].) The objective element of this form of voluntary manslaughter is not satisfied by evidence of a defendant’s “extraordinary character

and environmental deficiencies.” (*People v. Steele* (2002) 27 Cal.4th 1230, 1253 [120 Cal.Rptr.2d 432, 47 P.3d 225] [evidence of intoxication, mental deficiencies, and psychological dysfunction due to traumatic experiences in Vietnam are not provocation by the victim].)

Premeditation and Deliberation—Heat of Passion Provocation

Provocation and heat of passion that is insufficient to reduce a murder to manslaughter may nonetheless reduce murder from first to second degree. (*People v. Thomas* (1945) 25 Cal.2d 880, 903 [156 P.2d 7] [provocation raised reasonable doubt about the idea of premeditation or deliberation].) There is, however, no sua sponte duty to instruct the jury on this issue because provocation in this context is a defense to the element of deliberation, not an element of the crime, as it is in the manslaughter context. (*People v. Middleton* (1997) 52 Cal.App.4th 19, 32–33 [60 Cal.Rptr.2d 366], disapproved on other grounds in *People v. Gonzalez* (2003) 31 Cal.4th 745, 752 [3 Cal.Rptr.3d 676, 74 P.3d 771].) On request, give CALCRIM No. 522, *Provocation: Effect on Degree of Murder*.

Fetus

Manslaughter does not apply to the death of a fetus. (*People v. Carlson* (1974) 37 Cal.App.3d 349, 355 [112 Cal.Rptr. 321].) While the Legislature has included the killing of a fetus, as well as a human being, within the definition of murder under Penal Code section 187, it has “left untouched the provisions of section 192, defining manslaughter [as] the ‘unlawful killing of a human being.’ ” (*Ibid.*)

603. Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense (Pen. Code, §§ 21a, 192, 664)

An attempted killing that would otherwise be attempted murder is reduced to attempted voluntary manslaughter if the defendant attempted to kill someone because of a sudden quarrel or in the heat of passion.

The defendant attempted to kill someone because of a sudden quarrel or in the heat of passion if:

- 1. The defendant took at least one direct but ineffective step toward killing a person;**
- 2. The defendant intended to kill that person;**
- 3. The defendant attempted the killing because (he/she) was provoked;**
- 4. The provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than from judgment;**

AND

- 5. The attempted killing was a rash act done under the influence of intense emotion that obscured the defendant's reasoning or judgment.**

Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection.

In order for a sudden quarrel or heat of passion to reduce an attempted murder to attempted voluntary manslaughter, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote provocation is not sufficient. Sufficient provocation may occur over a short or long period of time.

It is not enough that the defendant simply was provoked. The defendant is not allowed to set up (his/her) own standard of conduct. You must decide whether the defendant was provoked and whether the provocation was sufficient. In

deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than judgment.

[If enough time passed between the provocation and the attempted killing for a person of average disposition to “cool off” and regain his or her clear reasoning and judgment, then the attempted murder is not reduced to attempted voluntary manslaughter on this basis.]

The People have the burden of proving beyond a reasonable doubt that the defendant attempted to kill someone and was not acting as a result of a sudden quarrel or in the heat of passion. If the People have not met this burden, you must find the defendant not guilty of attempted murder.

New January 2006; Revised August 2009, April 2010, April 2011 [*insert date of council approval*]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on attempted voluntary manslaughter on either theory, heat of passion or imperfect self-defense, when evidence of either is “substantial enough to merit consideration” by the jury. (See *People v. Breverman* (1998) 19 Cal.4th 142, 153–163 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing charge of completed murder]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531] [same].)

If the victim’s gender identity or sexual orientation raises specific issues concerning whether provocation was objectively reasonable, give an instruction tailored to those issues on request. (Pen. Code, § 192(f), amended effective January 1, 2015).

Related Instructions

CALCRIM No. 511, *Excusable Homicide: Accident in the Heat of Passion*.

CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

CALCRIM No. 604, *Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

AUTHORITY

- Attempt Defined ▶ Pen. Code, §§ 21a, 664.
- Manslaughter Defined ▶ Pen. Code, § 192.
- Attempted Voluntary Manslaughter ▶ *People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].
- [Gender Identity and Sexual Orientation Not Proper Basis for Finding Provocation Objectively Reasonable ▶ Pen. Code, § 192\(f\), amended effective January 1, 2015..](#)

Secondary Sources

[1 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against the Person § 224](#) ~~[Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against the Person, § 208.](#)~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 141, *Conspiracy, Solicitation, and Attempt*, §§ 141.20[2], 141.21; Ch. 142, *Crimes Against the Person*, §§ 142.01[3][e], 142.02[2][a] (Matthew Bender).

RELATED ISSUES

Specific Intent to Kill Required

An attempt to commit a crime requires an intention to commit the crime and an overt act towards its completion. Where a person intends to kill another person and makes an unsuccessful attempt to do so, his intention may be accompanied by any of the aggravating or mitigating circumstances which can accompany the completed crimes. In other words, the intent to kill may have been formed after premeditation or deliberation, it may have been formed upon a sudden explosion of violence, or it may have been brought about by a heat of passion or an unreasonable but good faith belief in the necessity of self-defense.

(*People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824 [217 Cal.Rptr. 581] [citation omitted].)

No Attempted Involuntary Manslaughter

There is no crime of attempted *involuntary* manslaughter. (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

See the Related Issues section to CALCRIM No. 570, *Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

800. Aggravated Mayhem (Pen. Code, § 205)

The defendant is charged [in Count ___] with aggravated mayhem [in violation of Penal Code section 205].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant unlawfully and maliciously (disabled or disfigured someone permanently/ [or] deprived someone else of a limb, organ, or part of (his/her) body);
2. When the defendant acted, (he/she) intended to (permanently disable or disfigure the other person/ [or] deprive the other person of a limb, organ, or part of (his/her) body);

AND

3. Under the circumstances, the defendant's act showed extreme indifference to the physical or psychological well-being of the other person.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else.

[A disfiguring injury may be *permanent* even if it can be repaired by medical procedures.]

[The People do not have to prove that the defendant intended to kill.]

New January 2006 [*\[insert date of council approval\]*](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 1, give the first option if the defendant was prosecuted for permanently disabling or disfiguring the victim. Give the second option if the defendant was

prosecuted for depriving someone of a limb, organ, or body part. (See Pen. Code, § 205.)

The bracketed sentence regarding “permanent injury” may be given on request if there is evidence that the injury may be repaired by medical procedures. (*People v. Hill* (1994) 23 Cal.App.4th 1566, 1574–1575 [28 Cal.Rptr.2d 783] [not error to instruct that an injury may be permanent even though cosmetic repair may be medically feasible].)

The bracketed sentence stating that “The People do not have to prove that the defendant intended to kill,” may be given on request if there is no evidence or conflicting evidence that the defendant intended to kill someone. (See Pen. Code, § 205.)

AUTHORITY

- Elements ▶ Pen. Code, § 205.
- Malicious Defined ▶ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- Permanent Disability ▶ See, e.g., *People v. Thomas* (1979) 96 Cal.App.3d 507, 512 [158 Cal.Rptr. 120] [serious ankle injury lasting over six months], overruled on other grounds *People v. Kimble* (1988) 44 Cal.3d 480, 498 [244 Cal.Rptr. 148, 749 P.2d 803].
- Permanent Disfigurement ▶ See *People v. Hill* (1994) 23 Cal.App.4th 1566, 1571 [28 Cal.Rptr.2d 783]; see also *People v. Newble* (1981) 120 Cal.App.3d 444, 451 [174 Cal.Rptr. 637] [head is member of body for purposes of disfigurement].
- Specific Intent to Cause Maiming Injury ▶ *People v. Ferrell* (1990) 218 Cal.App.3d 828, 833 [267 Cal.Rptr. 283]; *People v. Lee* (1990) 220 Cal.App.3d 320, 324–325 [269 Cal.Rptr. 434].

Secondary Sources

[1 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against the Person §§89-91](#) ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 87.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.16 (Matthew Bender).

LESSER INCLUDED OFFENSES

- [Simple Mayhem](#) ▶ *People v. Robinson* (2014) 232 Cal.App.4th 69, 77-80 [180 Cal.Rptr.3d 796].
- Attempted Aggravated Mayhem ▶ Pen. Code, §§ 205, 663.
- Assault ▶ Pen. Code, § 240.
- Battery with Serious Bodily Injury ▶ Pen. Code, § 243(d); *People v. Ausbie* (2004) 123 Cal.App.4th 855 [20 Cal.Rptr.3d 371].
- Battery ▶ Pen. Code, § 242.

Assault with force likely to produce great bodily injury (Pen. Code, § 245(a)(1)) is not a lesser included offense to mayhem. (*People v. Ausbie* (2004) 123 Cal.App.4th 855, 862-863 [20 Cal.Rptr.3d 371].)

RELATED ISSUES

Victim Must Be Alive

A victim of mayhem must be alive at the time of the act. (*People v. Kraft* (2000) 23 Cal.4th 978, 1058 [99 Cal.Rptr.2d 1, 5 P.3d 68]; see *People v. Jentry* (1977) 69 Cal.App.3d 615, 629 [138 Cal.Rptr. 250].)

Evidence of Indiscriminate Attack or Actual Injury Constituting Mayhem Insufficient to Show Specific Intent

“Aggravated mayhem . . . requires the specific intent to cause the maiming injury. [Citation.] Evidence that shows no more than an ‘indiscriminate attack’ is insufficient to prove the required specific intent. [Citation.] Furthermore, specific intent to maim may not be inferred solely from evidence that the injury inflicted actually constitutes mayhem; instead, there must be other facts and circumstances which support an inference of intent to maim rather than to attack indiscriminately. [Citation.]” (*People v. Park* (2000) 112 Cal.App.4th 61, 64 [4 Cal.Rptr.3d 815].)

**1017. Oral Copulation of an Intoxicated Person (Pen. Code, § 288a(a),
(i))**

The defendant is charged [in Count ___] with oral copulation of a person while that person was intoxicated [in violation of Penal Code section 288a(i)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of oral copulation with another person;
2. An (intoxicating/anesthetic/controlled) substance prevented the other person from resisting;

AND

3. The defendant knew or reasonably should have known that the effect of an (intoxicating/anesthetic/controlled) substance prevented the other person from resisting.

Oral copulation is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.

A person is *prevented from resisting* if he or she is so intoxicated that he or she cannot give legal consent. In order to give legal consent, a person must be able to exercise reasonable judgment. In other words, the person must be able to understand and weigh the physical nature of the act, its moral character, and probable consequences. Legal consent is consent given freely and voluntarily by someone who knows the nature of the act involved.

[_____ <If appropriate, insert controlled substance> (is/are) [a] controlled substance[s].]

<Defense: Reasonable Belief Capable of Consent>

[The defendant is not guilty of this crime if (he/she) actually and reasonably believed that the person was capable of consenting to oral copulation, even if the defendant's belief was wrong. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman was capable of consenting. If the People have not met this burden, you must find the defendant not guilty.]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

A space is provided to identify controlled substances if the parties agree that there is no issue of fact.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of reasonable belief the person was capable of consent if there is sufficient evidence to support the defense. (See *People v. Giardino* (2000) 82 Cal.App.4th 454, 472 [98 Cal.Rptr.2d 315].)

Related Instructions

CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements ▶ Pen. Code, § 288a(a), (i).
- Consent Defined ▶ Pen. Code, § 261.6.
- Controlled Substances ▶ Health & Safety Code, §§ 11054–11058; see *People v. Avila* (2000) 80 Cal.App.4th 791, 798, fn. 7 [95 Cal.Rptr.2d 651].
- Anesthetic Effect ▶ See *People v. Avila* (2000) 80 Cal.App.4th 791, 798–799 [95 Cal.Rptr.2d 651] [in context of sodomy].
- Oral Copulation Defined ▶ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].
- “Prevented From Resisting” Defined ▶ See *People v. Giardino* (2000) 82 Cal.App.4th 454, 465–466 [98 Cal.Rptr.2d 315] [rape of intoxicated woman].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency §§ 35-37, 39, 178~~2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33, 35.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation ▶ Pen. Code, §§ 663, 288a.

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

[A defendant may be convicted of both oral copulation of an intoxicated person and oral copulation of an unconscious person. \(*People v. Gonzalez* \(2014\) 60 Cal.4th 533, \[179 Cal.Rptr.3d 1, 335 P.3d 1083\]; Pen. Code, §§ 288a\(f\), \(i\).\)](#)

1018. Oral Copulation of an Unconscious Person (Pen. Code, § 288a(a), (f))

The defendant is charged [in Count ___] with oral copulation of a person who was unconscious of the nature of the act [in violation of Penal Code section 288a(f)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of oral copulation with another person;
2. The other person was unable to resist because (he/she) was unconscious of the nature of the act;

AND

3. The defendant knew that the other person was unable to resist because (he/she) was unconscious of the nature of the act.

Oral copulation is any contact, no matter how slight, between the mouth of one person and the sexual organ or anus of another person. Penetration is not required.

A person is *unconscious of the nature of the act* if he or she is (unconscious or asleep/ [or] not aware that the act is occurring/ [or] not aware of the essential characteristics of the act because the perpetrator tricked, lied to, or concealed information from the person/ [or] not aware of the essential characteristics of the act because the perpetrator fraudulently represented that the oral copulation served a professional purpose when it served no professional purpose).

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

CALCRIM No. 1016, *Oral Copulation in Concert*, may be given in conjunction with this instruction, if appropriate.

AUTHORITY

- Elements ▶ Pen. Code, § 288a(a), (f).
- Oral Copulation Defined ▶ *People v. Grim* (1992) 9 Cal.App.4th 1240, 1242–1243 [11 Cal.Rptr.2d 884].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency §§ 35-37, 39, 1782 ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 31–33, 35.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[1][c], [5] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

COMMENTARY

The statutory language describing unconsciousness includes “was not aware, knowing, perceiving, or cognizant that the act occurred.” (See Pen. Code, § 288a(f)(2)–(4).) The committee did not discern any difference among the statutory terms and therefore used “aware” in the instruction. If there is an issue over a particular term, that term should be inserted in the instruction.

LESSER INCLUDED OFFENSES

- Attempted Oral Copulation ▶ Pen. Code, §§ 663, 288a.

RELATED ISSUES

See the Related Issues Section to CALCRIM No. 1015, *Oral Copulation by Force, Fear, or Threats*.

A defendant may be convicted of both oral copulation of an intoxicated person and oral copulation of an unconscious person. (*People v. Gonzalez* (2014) 60 Cal.4th 533, [179 Cal.Rptr.3d 1, 335 P.3d 1083]; Pen. Code, §§ 288a(f), (i).)

1170. Failure to Register as Sex Offender (Pen. Code, § 290(b))

The defendant is charged [in Count __] with failing to register as a sex offender [in violation of Penal Code section 290(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant was previously (convicted of/found to have committed) _____ <specify the offense for which the defendant is allegedly required to register>;
2. The defendant resided (in _____ <insert name of city>, California/in an unincorporated area or a city with no police department in _____ <insert name of county> County, California/on the campus or in the facilities of _____ <insert name of university or college>in California);
3. The defendant actually knew (he/she) had a duty under Penal Code section 290 to register as a sex offender [living at _____ <insert specific address or addresses in California] and that (he/she) had to register within five working days of _____ <insert triggering event specified in Penal Code section 290(b)>;

AND

<Alternative 4A—change of residence>

- [4. The defendant willfully failed to register as a sex offender with the (police chief of that city/sheriff of that county/the police chief of that campus or its facilities) within five working days of (coming into/ [or] changing (his/her) residence within) that (city/county/campus).]

<Alternative 4B—birthday>

- [4. The defendant willfully failed to annually update (his/her) registration as a sex offender with the (police chief of that city/sheriff of that county/the police chief of that campus) within five working days of (his/her) birthday.]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

[Residence means one or more addresses where someone regularly resides, regardless of the number of days or nights spent there, such as a shelter or structure that can be located by a street address. A residence may include, but is not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.]

New January 2006; Revised August 2006, April 2010, October 2010, February 2013, February 2014, August 2014 *insert date of council approval*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. This instruction is based on the language of the statute effective January 1, 2006. The instruction may not be appropriate for offenses that occurred before that date. Note also that this is an area where case law is developing rapidly. The court should review recent decisions on Penal Code section 290 before instructing.

In element 1, if the specific offense triggering the registration requirement is spousal rape, the instruction must include the requirement that the offense involved the use of “force or violence.” (*People v. Mason* (2013) 218 Cal.App.4th 818, 822-827 [160 Cal.Rptr.3d 516].)

In element 3, choose the option “living at _____ <*insert specific address in California*> if there is an issue whether the defendant actually knew that a place where he or she spent time was a residence triggering the duty to register. (*People v. Cohens* (2009) 178 Cal.App.4th 1442, 1451 [101 Cal.Rptr.3d 289]; *People v. LeCorno* (2003) 109 Cal.App.3d 1058, 1068-1069 [135 Cal.Rptr.2d 775].)

In element 4, give alternative 4A if the defendant is charged with failing to register within five working days of changing his or her residence or becoming homeless. (Pen. Code, § 290(b).) Give alternative 4B if the defendant is charged with failing to update his or her registration within five working days of his or her birthday. (Pen. Code, § 290.012.)

If the defendant is charged with a prior conviction for failing to register, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction. (See *People v. Merkley* (1996) 51 Cal.App.4th 472, 476 [58 Cal.Rptr. 2d 21]; *People v. Bouzas* (1991) 53 Cal.3d 467, 477–480 [279 Cal.Rptr. 847, 807 P.2d 1076]; *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].)

For the charge of failure to register, it is error to give an instruction on general criminal intent that informs the jury that a person is “acting with general criminal intent, even though he may not know that his act or conduct is unlawful.” (*People v. Barker* (2004) 34 Cal.4th 345, 360 [18 Cal.Rptr.3d 260, 96 P.3d 507]; *People v. Edgar* (2002) 104 Cal.App.4th 210, 219 [127 Cal.Rptr.2d 662].) The court should consider whether it is more appropriate to give CALCRIM No. 251, *Union of Act and Intent: Specific Intent or Mental State*, or to give a modified version of CALCRIM No. 250, *Union of Act and Intent: General Intent*, as explained in the Related Issues section to CALCRIM No. 250.

AUTHORITY

- Elements. ▶ Pen. Code, §§ 290(b) [change in residence], 290.012 [birthday]; *People v. Garcia* (2001) 25 Cal.4th 744, 752 [107 Cal.Rptr.2d 355, 23 P.3d 590].
- Spousal Rape Not Registerable Offense Absent Force or Violence. ▶ *People v. Mason* (2013) 218 Cal.App.4th 818, 825-826 [160 Cal.Rptr.3d 516].
- Definition of Residence. ▶ Pen. Code, § 290.011(g); *People v. Gonzales* (2010) 183 Cal.App.4th 24, 35 [107 Cal.Rptr.3d 11].
- Willfully Defined. ▶ Pen. Code, § 7(1); see *People v. Barker* (2004) 34 Cal.4th 345, 360 [18 Cal.Rptr.3d 260, 96 P.3d 507].
- Actual Knowledge of Duty Required. ▶ *People v. Garcia* (2001) 25 Cal.4th 744, 752 [107 Cal.Rptr.2d 355, 23 P.3d 590].
- Continuing Offense. ▶ *Wright v. Superior Court* (1997) 15 Cal.4th 521, 527–528 [63 Cal.Rptr.2d 322, 936 P.2d 101].
- General Intent Crime. ▶ *People v. Barker* (2004) 34 Cal.4th 345, 360 [18 Cal.Rptr.3d 260, 96 P.3d 507]; *People v. Johnson* (1998) 67 Cal.App.4th 67, 72 [78 Cal.Rptr.2d 795].
- No Duty to Define Residence. ▶ *People v. McCleod* (1997) 55 Cal.App.4th 1205, 1219 [64 Cal.Rptr.2d 545].
- Registration is Not Punishment. ▶ *In re Alva* (2004) 33 Cal.4th 254, 262 [14 Cal.Rptr.3d 811, 92 P.3d 311].
- Jury May Consider Evidence That Significant Involuntary Condition Deprived Defendant of Actual Knowledge. ▶ *People v. Sorden* (2005) 36 Cal.4th 65, 72 [29 Cal.Rptr.3d 777, 113 P.3d 565].

- People Must Prove Defendant Was California Resident at Time of Offense. ▶ *People v Wallace* (2009) 176 Cal.App.4th 1088, 1102-1104 [98 Cal.Rptr.3d 618].
- Defendant Must Have Actual Knowledge That Location is Residence for Purpose of Duty to Register. ▶ (*People v. Aragon* (2012) 207 Cal.App.4th 504, 510 [143 Cal.Rptr.3d 476]; *People v. LeCorno* (2003) 109 Cal.App.4th 1058, 1067-1070 [135 Cal.Rptr.2d 775].

Secondary Sources

~~3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment §§ 136-1493; Witkin & Epstein, California Criminal Law (3d ed. 2000) Punishment, §§ 184-188.~~

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 93, *Disabilities Flowing From Conviction*, § 93.04[2] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.20[1][a], Ch. 142, *Crimes Against the Person*, § 142.21 (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

RELATED ISSUES

Other Violations of Section 290

This instruction applies to violations under Penal Code sections 290(b) and 290.012. Section 290 imposes numerous other duties on persons convicted of sex offenses. For example, a registered sex offender must:

1. Notify the agency where he or she was *last* registered of any new address or location, whether inside or outside California, or any name change. (See Pen. Code, §§ 290.013–290.014; *People v. Smith* (2004) 32 Cal.4th 792, 800–802 [11 Cal.Rptr.3d 290, 86 P.3d 348] [under former Pen. Code, § 290(f), which allowed notice of change of address in writing, there is sufficient notice if defendant mails change of address form even if agency does not receive it]; *People v. Annin* (2004) 116 Cal.App.4th 725, 737–740 [10 Cal.Rptr.3d 712] [discussing meaning of “changed” residence]; *People v. Davis* (2002) 102 Cal.App.4th 377, 385 [125 Cal.Rptr.2d 519] [must instruct on requirement of actual

knowledge of duty to notify law enforcement when moving out of jurisdiction]; see also *People v. Franklin* (1999) 20 Cal.4th 249, 255–256 [84 Cal.Rptr.2d 241, 975 P.2d 30] [construing former Pen. Code, § 290(f), which did not specifically require registration when registrant moved outside California].)

2. Register multiple residences wherever he or she regularly resides. (See Pen. Code, § 290.010; *People v. Edgar* (2002) 104 Cal.App.4th 210, 219–222 [127 Cal.Rptr.2d 662] [court failed to instruct that jury must find that defendant actually knew of duty to register multiple residences; opinion cites former section 290(a)(1)(B)]; *People v. Vigil* (2001) 94 Cal.App.4th 485, 501 [114 Cal.Rptr.2d 331].)
3. Update his or her registration at least once every 30 days if he or she is “a transient.” (See Pen. Code, § 290.011.)

A sexually violent predator who is released from custody must verify his or her address at least once every 90 days and verify any place of employment. (See Pen. Code, § 290.012.) Other special requirements govern:

1. Residents of other states who must register in their home state but are working or attending school in California. (See Pen. Code, § 290.002.)
2. Sex offenders enrolled at, employed by, or carrying on a vocation at any university, college, community college, or other institution of higher learning. (See Pen. Code, § 290.01.)

In addition, providing false information on the registration form is a violation of section 290.018. (See also *People v. Chan* (2005) 128 Cal.App.4th 408 [26 Cal.Rptr.3d 878].)

Forgetting to Register

If a person actually knows of his or her duty to register, “just forgetting” is not a defense. (*People v. Barker* (2004) 34 Cal.4th 345, 356–357 [18 Cal.Rptr.3d 260, 96 P.3d 507].) In reaching this conclusion, the court stated, “[w]e do not here express an opinion as to whether forgetfulness resulting from, for example, an *acute psychological condition*, or a *chronic deficit of memory or intelligence*, might negate the willfulness required for a section 290 violation.” (*Id.* at p. 358 [italics in original].)

Registration Requirement for Consensual Oral Copulation With Minor

Penal Code section 290 requires lifetime registration for a person convicted of consensual oral copulation with a minor but does not require such registration for

a person convicted of consensual sexual intercourse with a minor. (Pen. Code, § 290(c).) The mandatory registration requirement for consensual oral copulation with a minor ~~is does not deny equal protection of laws. (*People v. Johnson* (2015) 60 Cal.4th 871[183 Cal.Rptr.3d 96, 341 P.3d 1075][overruling unenforceable because this disparity denies equal protection of the laws. (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1191, 1205–1206 [39 Cal.Rptr.3d 821, 129 P.3d 29].) A defendant convicted of consensual oral copulation with a minor might, however, be required to register pursuant to judicial discretion under [former] section 290(a)(2)(E) (after October 13, 2007 section 290.006). (*Id.* at p. 1208.)~~

Moving Between Counties—Failure to Notify County Leaving and County Moving To Can Only Be Punished as One Offense

A person who changes residences a single time, failing to notify both the jurisdiction he or she is departing from and the jurisdiction he or she is entering, commits two violations of Penal Code section 290 but can only be punished for one. (*People v. Britt* (2004) 32 Cal.4th 944, 953–954 [12 Cal.Rptr.3d 66, 87 P.3d 812].) Further, if the defendant has been prosecuted in one county for the violation, and the prosecutor in the second county is aware of the previous prosecution, the second county cannot subsequently prosecute the defendant. (*Id.* at pp. 955–956.)

Notice of Duty to Register on Release From Confinement

No reported case has held that the technical notice requirements are elements of the offense, especially when the jury is told that they must find the defendant had actual knowledge. (See former Pen. Code, § 290(b), after October 13, 2007, section 290.017; *People v. Garcia* (2001) 25 Cal.4th 744, 754, 755–756 [107 Cal.Rptr.2d 355, 23 P.3d 590] [if defendant willfully and knowingly failed to register, *Buford* does not require reversal merely because authorities failed to comply with technical requirements]; see also *People v. Buford* (1974) 42 Cal.App.3d 975, 987 [117 Cal.Rptr. 333] [revoking probation for noncompliance with section 290, an abuse of discretion when court and jail officials also failed to comply].) The court in *Garcia* did state, however, that the “court’s instructions on ‘willfulness’ should have required proof that, in addition to being formally notified by the appropriate officers as required by section 290, in order to willfully violate section 290 the defendant must actually know of his duty to register.” (*People v. Garcia, supra*, 25 Cal.4th at p. 754.)

1171–1179. Reserved for Future Use

1180. Incest (Pen. Code, § 285)

The defendant is charged [in Count ___] with incest [in violation of Penal Code section 285].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant had sexual intercourse with another person;
2. When the defendant did so, (he/she) was at least 14 years old;
3. When the defendant did so, the other person was at least 14 years old;

AND

4. The defendant and the other person are related to each other as ~~(parent and child/[great-]grandparent and [great-]grandchild/[half] brother and [half] sister/uncle and niece/aunt and nephew~~ <insert description of relationship from Family Code section 2200>.

Sexual intercourse means any penetration, no matter how slight, of the vagina or genitalia by the penis. [Ejaculation is not required.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised June 2007, October 2010, February 2012 [<insert date of council approval>](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

This instruction focuses on incestuous sexual intercourse with a minor, which is the most likely form of incest to be charged. Incest is also committed by intercourse between adult relatives within the specified degree of consanguinity, or by an incestuous marriage. (See Pen. Code, § 285.)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

AUTHORITY

- Elements ▶ Pen. Code, § 285.
- Incestuous Marriages ▶ Fam. Code, § 2200.
- Sexual Intercourse Defined ▶ See Pen. Code, § 263; *People v. Karsai* (1982) 131 Cal.App.3d 224, 233–234 [182 Cal.Rptr. 406], disapproved on other grounds by *People v. Jones* (1988) 46 Cal.3d 585 [250 Cal.Rptr. 635, 758 P.2d 1165].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Sex Offenses and Crimes Against Decency §§ 140-143, 1782](#) ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Offenses and Crimes Against Decency, §§ 138–142.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.21[3] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

LESSER INCLUDED OFFENSES

- Attempted Incest ▶ Pen. Code, §§ 664, 285.

RELATED ISSUES

Accomplice Instructions

A minor is a victim of, not an accomplice to, incest. Accomplice instructions are not appropriate in a trial for incest involving a minor. (*People v. Tobias* (2001) 25 Cal.4th 327, 334 [106 Cal.Rptr.2d 80, 21 P.3d 758]; see *People v. Stoll* (1927) 84 Cal.App. 99, 101–102 [257 P. 583].) An exception may exist when two minors engage in consensual sexual intercourse, and thus both are victims of the other's crime. (*People v. Tobias, supra*, 25 Cal.4th at p. 334; see *In re T.A.J.* (1998) 62 Cal.App.4th 1350, 1364–1365 [73 Cal.Rptr.2d 331] [minor perpetrator under Pen. Code, § 261.5].) An adult woman who voluntarily engages in the incestuous act is an accomplice, whose testimony must be corroborated. (See *People v. Stratton* (1904) 141 Cal. 604, 609 [75 P. 166].)

Half-Blood Relationship

Family Code section 2200 prohibits sexual relations between brothers and sisters of half blood, but not between uncles and nieces of half blood. (*People v. Baker* (1968) 69 Cal.2d 44, 50 [69 Cal.Rptr. 595, 442 P.2d 675] [construing former version of § 2200].) However, sexual intercourse between persons the law deems to be related is proscribed. A trial court may properly instruct on the conclusive presumption of legitimacy (see Fam. Code, § 7540) if a defendant uncle asserts that the victim's mother is actually his half sister. The presumption requires the jury to find that if the defendant's mother and her potent husband were living together when the defendant was conceived, the husband was the defendant's father, and thus the defendant was a full brother of the victim's mother. (*People v. Russell* (1971) 22 Cal.App.3d 330, 335 [99 Cal.Rptr. 277].)

Lack of Knowledge as Defense

No reported cases have held that lack of knowledge of the prohibited relationship is a defense to incest. (But see *People v. Patterson* (1894) 102 Cal. 239, 242–243 [36 P. 436] [dictum that party without knowledge of relationship would not be guilty]; see also *People v. Vogel* (1956) 46 Cal.2d 798, 801, 805 [299 P.2d 850] [good faith belief is defense to bigamy].)

**1252. Defense to Child Abduction: Protection From Immediate Injury
(Pen. Code, § 278.7(a) and (b))**

The defendant did not maliciously deprive a (lawful custodian of a right to custody/ [or] person of a right to visitation) if the defendant:

1. Had a right to custody of the child when (he/she) abducted the child;
2. Had a good faith and reasonable belief when abducting the child that the child would suffer immediate bodily injury or emotional harm if left with the other person;
3. Made a report to the district attorney's office in the county where the child lived within a reasonable time after the abduction;
4. Began a custody proceeding in an appropriate court within a reasonable time after the abduction;

AND

5. Informed the district attorney's office of any change of address or telephone number for (himself/herself) and the child.

To *abduct* means to take, entice away, keep, withhold, or conceal.

The *right to custody* means the right to physical care, custody, and control of the child because of a court order or under the law.

~~Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.~~

[One way a child may suffer *emotional harm* is if he or she has a parent who has committed domestic violence against the parent accused of abducting the child. Acts of "domestic violence" include, but are not limited to (1) sexual assault; (2) causing or attempting to cause bodily injury, either intentionally or recklessly; or (3) causing a person to reasonably fear imminent serious bodily injury to himself or herself or another.]

[The report to the district attorney must include the defendant’s name, the defendant’s or child’s current address and telephone number, and the reasons the child was abducted.]

[A reasonable time within which to make a report to the district attorney’s office is at least 10 days from when the defendant took the child.]

[A reasonable time to begin a custody proceeding is at least 30 days from the time the defendant took the child.]

The People have the burden of proving beyond a reasonable doubt that the defendant maliciously deprived a (lawful custodian of a right to custody/ [or] person of a right to visitation). If the People have not met this burden, you must find the defendant not guilty of _____ <insert crime charged>.

New January 2006 [insert date of council approval]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on this defense if the defendant is relying on it, or if there is substantial evidence supporting the defense and the defense is not inconsistent with the defendant's theory of the case. (See [People v. Neidinger \(2006\) 40 Cal.4th 67, 75, 79 \[51 Cal.Rptr.3d 45\]](#) [defendant must raise a reasonable doubt]; [People v. Mehaisin \(2002\) 101 Cal.App.4th 958, 965 \[124 Cal.Rptr.2d 683\]](#); [People v. Sedeno \(1974\) 10 Cal.3d 703, 715–716 \[112 Cal.Rptr. 1, 518 P.2d 913\]](#) [duty to instruct on defenses], disapproved on other grounds in [People v. Flannel \(1979\) 25 Cal.3d 668, 684–685, fn. 12 \[160 Cal.Rptr. 84, 603 P.2d 1\]](#) and in [People v. Breverman \(1998\) 19 Cal.4th 142, 163, fn. 10, 164–178 \[77 Cal.Rptr.2d 870, 960 P.2d 1094\]](#).)

[People v. Mehaisin \(2002\) 101 Cal.App.4th 958, 965](#) holds that the "defendant was not entitled to a section 278.7 defense because he did not report the taking to the Sacramento District Attorney and did not commence a custody proceeding" [People v. Neidinger \(2006\) 40 Cal.4th 67, 73 fn.4, 79](#) explains that "the section 278.7(a) defense provides a specific example of when the person does not act maliciously. "

Give on request the bracketed paragraph regarding “emotional harm” and “domestic violence” if there is evidence that the defendant had been a victim of domestic violence committed by the other parent. (See Pen. Code, §§ 278.7(b), 277(j); Fam. Code, §§ 6203, 6211.)

AUTHORITY

- Elements of Defense ▶ Pen. Code, § 278.7.
- Abduct Defined ▶ Pen. Code, § 277(k).
- Court Order or Custody Order Defined ▶ Pen. Code, § 277(b).
- Domestic Violence Defined ▶ Pen. Code, § 277(j); see Fam. Code, §§ 6203, 6211.
- Person Defined ▶ Pen. Code, § 277(i) [includes parent or parent’s agent].
- Right to Custody Defined ▶ Pen. Code, § 277(e); see *People v. Mehaisin* (2002) 101 Cal.App.4th 958, 964 [124 Cal.Rptr.2d 683] [liberal visitation period does not constitute right to custody].
- Pen. Code § 278.7, subdivision (a), Is Specific Example of Proving Absence of Malice. (*People v. Neidinger* (2006) 40 Cal.4th 67, 79 [51 Cal.Rptr.3rd 45].)

Secondary Sources

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person § 331~~1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 292.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14[2][a] (Matthew Bender).

1253–1299. Reserved for Future Use

1500. Aggravated Arson (Pen. Code, § 451.5)

If you find the defendant guilty of arson [as charged in Count[s] ___], you must then decide whether[, for each crime of arson,] the People have proved the additional allegation that the arson was aggravated. [You must decide whether the People have proved this allegation for each crime of arson and return a separate finding for each crime of arson.]

To prove this allegation, the People must prove that:

1. The defendant acted willfully, maliciously, deliberately, and with premeditation;

[AND]

2. The defendant acted with intent to injure one or more persons, or to damage property under circumstances likely to injure one or more persons, or to damage one or more structures or inhabited dwellings(;/.)

[AND]

<Alternative 3A—loss exceeding ~~\$5.657~~ million>

[3A. The fire caused property damage and other losses exceeding ~~\$5.657~~ million[, including the cost of fire suppression].]

[OR]

<Alternative 3B—destroyed five or more inhabited structures>

[3B. The fire damaged or destroyed five or more inhabited structures.]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the

consequences, decided to commit the arson. The defendant acted with *premeditation* if (he/she) decided to commit the arson before committing the act that caused the arson.

[The length of time the person spends considering whether to commit arson does not alone determine whether the arson is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to commit arson made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to commit arson can be reached quickly. The test is the extent of the reflection, not the length of time.]

[A (dwelling/ [or] structure) is *inhabited* if someone lives there and either is present or has left but intends to return.]

[A (dwelling/ [or] structure) is *inhabited* if someone used it as a dwelling and left only because a natural or other disaster caused him or her to leave.]

[A (dwelling/ [or] structure) is not *inhabited* if the former residents have moved out and do not intend to return, even if some personal property remains inside.]

[A *dwelling* includes any (structure/garage/office/_____) that is attached to the house and functionally connected with it.]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the sentencing factor if the defendant is charged with aggravated arson.

| If the prosecution alleges that the fire caused more than ~~5.657~~ million dollars in damage, give alternative A in element 3. If the prosecution alleges that the fire damaged five or more inhabited structures, give alternative B in element 3.

If the prosecution alleges that the defendant was previously convicted of arson within ten years of the current offense, give elements 1 and 2 only. The court must also give either CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.

The definitions of “deliberation” and “premeditation” and the bracketed paragraph that begins with “The length of time” are derived from the first degree murder instruction because no recorded case construes their meaning in the context of Penal Code section 451.5. (See CALCRIM No. 521, *Murder: Degrees*.)

Give the bracketed definitions of inhabited dwelling or structure if relevant.

If there is an issue as to whether the fire *caused* the property damage, give CALCRIM No. 240, *Causation*.

AUTHORITY

- Enhancement. ▶ Pen. Code, § 451.5.
- Inhabitation Defined. ▶ Pen. Code, § 459.
- House Not Inhabited Means Former Residents Not Returning ▶ *People v. Cardona* (1983) 142 Cal.App.3d 481, 483 [191 Cal.Rptr. 109].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property §§ 268-273](#)

~~[2 Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against Property, § 239.](#)~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1515, *Arson*.

1863. Defense to Theft or Robbery: Claim of Right (Pen. Code, § 511)

If the defendant obtained property under a claim of right, (he/she) did not have the intent required for the crime of (theft/ [or] robbery).

The defendant obtained property under a claim of right if (he/she) believed in good faith that (he/she) had a right to the specific property or a specific amount of money, and (he/she) openly took it.

In deciding whether the defendant believed that (he/she) had a right to the property and whether (he/she) held that belief in good faith, consider all the facts known to (him/her) at the time (he/she) obtained the property, along with all the other evidence in the case. The defendant may hold a belief in good faith even if the belief is mistaken or unreasonable. But if the defendant was aware of facts that made that belief completely unreasonable, you may conclude that the belief was not held in good faith.

[The claim-of-right defense does not apply if the defendant attempted to conceal the taking at the time it occurred or after the taking was discovered.]

[The claim-of-right defense does not apply to offset or pay claims against the property owner of an undetermined or disputed amount.]

[The claim-of-right defense does not apply if the claim arose from an activity commonly known to be illegal or known by the defendant to be illegal.]

If you have a reasonable doubt about whether the defendant had the intent required for (theft/ [or] robbery), you must find (him/her) not guilty of _____ <insert specific theft crime>.

New January 2006; Revised October 2010 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

There is a split in authority about whether the trial court must instruct sua sponte on the defense of claim of right. (See ~~When a claim of right is supported by substantial evidence, the trial court must instruct sua sponte on the defense.~~ *People v. Russell* (2006) 144 Cal.App.4th 1415, 1429 [51 Cal.Rptr.3d 263]; *People v. Creath* (1995) 31 Cal.App.4th 312, 319 [37 Cal.Rptr.2d 336])[sua sponte

duty when claim of right supported]; see *People v. Barnett* (1998) 17 Cal.4th 1044, 1145 [74 Cal.Rptr.2d 121, 954 P.2d 384] [no substantial evidence supporting inference of bona fide belief.] but see *People v. Hussain* (2014) 231 Cal.App.4th 261, 268-269 [179 Cal.Rptr.3d 679][no sua sponte duty to instruct on claim of right], following *People v. Anderson* (2011) 51 Cal.4th 989, 998 [125 Cal.Rptr.3d 408, 252 P.3d 968][no sua sponte duty to instruct on accident].)

AUTHORITY

- Defense. ▶ Pen. Code, § 511; *People v. Tufunga* (1999) 21 Cal.4th 935, 952, fn. 4 [90 Cal.Rptr.2d 143, 987 P.2d 168]; *People v. Romo* (1990) 220 Cal.App.3d 514, 517, 518 [269 Cal.Rptr. 440].
- Good Faith Belief. ▶ *People v. Stewart* (1976) 16 Cal.3d 133, 139–140 [127 Cal.Rptr. 117, 544 P.2d 1317]; *People v. Navarro* (1979) 99 Cal.App.3d Supp. 1, 4, 10–11 [160 Cal.Rptr. 692].
- No Concealment of Taking. ▶ *People v. Wooten* (1996) 44 Cal.App.4th 1834, 1848–1849 [52 Cal.Rptr.2d 765].
- Not Available to Recover Unliquidated Claims. ▶ *People v. Holmes* (1970) 5 Cal.App.3d 21, 24–25 [84 Cal.Rptr. 889].
- Not Available to Recover From Notoriously or Known Illegal Activity. ▶ *People v. Gates* (1987) 43 Cal.3d 1168, 1181–1182 [240 Cal.Rptr. 666, 743 P.2d 301].
- Claim of Right Defense Available to Aiders and Abettors ▶ *People v. Williams* (2009) 176 Cal.App.4th 1521, 1529 [98 Cal.Rptr.3d 770].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 36, 382 ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Property, §§ 32, 34.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.10[1][b], Ch. 143, *Crimes Against Property*, § 143.01[1][d] (Matthew Bender).

1864–1899. Reserved for Future Use

**2100. Driving a Vehicle or Operating a Vessel Under the Influence
Causing Injury (Veh. Code, § 23153(a))**

The defendant is charged [in Count ___] with causing injury to another person while (driving a vehicle/operating a vessel) under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] [in violation of Vehicle Code section 23153(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (drove a vehicle/operated a vessel);
2. When (he/she) (drove a vehicle/operated a vessel), the defendant was under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug].
3. While (driving a vehicle/operating a vessel) under the influence, the defendant also (committed an illegal act/ [or] neglected to perform a legal duty);

AND

4. The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.

A person is *under the influence* if, as a result of (drinking [or consuming] an alcoholic beverage/ [and/or] taking a drug), his or her mental or physical abilities are so impaired that he or she is no longer able to (drive a vehicle/operate a vessel) with the caution of a sober person, using ordinary care, under similar circumstances.

[An *alcoholic beverage* is a liquid or solid material intended to be consumed that contains ethanol. Ethanol is also known as ethyl alcohol, drinking alcohol, or alcohol. [An *alcoholic beverage* includes _____ <insert type[s] of beverage[s] from Veh. Code, § 109 or Bus. & Prof. Code, § 23004, e.g., wine, beer>.]

[A *drug* is a substance or combination of substances, other than alcohol, that could so affect the nervous system, brain, or muscles of a person that it would appreciably impair his or her ability to (drive a vehicle/operate a vessel) as an ordinarily cautious person, in full possession of his or her faculties and using

reasonable care, would (drive a vehicle/operate a vessel) under similar circumstances.]

[If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent or more at the time of the chemical analysis, you may, but are not required to, conclude that the defendant was under the influence of an alcoholic beverage at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of **Health Services****Public Health**.

[The People allege that the defendant committed the following illegal act[s]: _____ <list name[s] of offense[s]>.

To decide whether the defendant committed _____ <list name[s] of offense[s]>, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while (driving the vehicle/operating the vessel): (the duty to exercise ordinary care at all times and to maintain proper control of the (vehicle/vessel)/_____ <insert other duty or duties alleged>).]

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>

[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>

[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

[An act causes bodily injury to another person if the injury is the direct, natural, and probable consequence of the act and the injury would not have

happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all the circumstances established by the evidence.]

[There may be more than one cause of injury. An act causes bodily injury to another person only if it is a substantial factor in causing the injury. A *substantial factor* is more than a trivial or remote factor. However, it need not be the only factor that causes the injury.]

[It is not a defense that the defendant was legally entitled to use the drug.]

[If the defendant was under the influence of (an alcoholic beverage/ [and/or] a drug), then it is not a defense that something else also impaired (his/her) ability to (drive a vehicle/operate a vessel).]

New January 2006; Revised June 2007, April 2008, December 2008 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra*, 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of “ordinary care.”

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the “direct, natural, and probable” language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the “substantial factor” definition. (See *People v. Autry* (1995) 37

Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that the defendant’s blood alcohol level was 0.08 percent” explains a rebuttable presumption created by statute. (See Veh. Code, § 23610; Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that the defendant’s blood alcohol level was 0.08 percent” if there is no evidence that the defendant’s blood alcohol level was at or above 0.08 percent at the time of the test. In addition, if the test falls within the range in which no presumption applies, 0.05 percent to just below 0.08 percent, do not give this bracketed sentence. (*People v. Wood* (1989) 207 Cal.App.3d Supp. 11, 15 [255 Cal.Rptr. 537].) The court should also consider whether there is sufficient evidence to establish that the test result exceeds the margin of error before giving this instruction for test results of 0.08 percent. (Compare *People v. Campos* (1982) 138 Cal.App.3d Supp. 1, 4–5 [188 Cal.Rptr. 366], with *People v. Randolph* (1989) 213 Cal.App.3d Supp. 1, 11 [262 Cal.Rptr. 378].)

The statute also creates a rebuttable presumption that the defendant was not under the influence if his or her blood alcohol level was less than 0.05 percent. (*People v. Gallardo* (1994) 22 Cal.App.4th 489, 496 [27 Cal.Rptr.2d 502].) Depending on the facts of the case, the defendant may be entitled to a pinpoint instruction on this presumption. It is not error to refuse an instruction on this presumption if the prosecution’s theory is that the defendant was under the combined influence of drugs and alcohol. (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1250 [32 Cal.Rptr.2d 442].)

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with “In evaluating any test results in this case.” (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Give the bracketed sentence stating that “it is not a defense that something else also impaired (his/her) ability to drive” if there is evidence of an additional source of impairment such as an epileptic seizure, inattention, or falling asleep.

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra*, 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [79 Cal.Rptr.2d 690].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the “imminent peril/sudden emergency” doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

Related Instructions

CALCRIM No. 2101, *Driving With 0.08 Percent Blood Alcohol Causing Injury*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements ▶ Veh. Code, § 23153(a); *People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641].
- Alcoholic Beverage Defined ▶ Veh. Code, § 109, Bus. & Prof. Code, § 23004.
- Drug Defined ▶ Veh. Code, § 312.
- Presumptions ▶ Veh. Code, § 23610; Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Under the Influence Defined ▶ *People v. Schoonover* (1970) 5 Cal.App.3d 101, 105–107 [85 Cal.Rptr. 69]; *People v. Enriquez* (1996) 42 Cal.App.4th 661, 665–666 [49 Cal.Rptr.2d 710].
- Must Instruct on Elements of Predicate Offense ▶ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care ▶ Pen. Code, § 7, subd. 2; Restatement Second of Torts, § 282; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243] [ordinary negligence standard applies to driving under the influence causing injury].
- Causation ▶ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Legal Entitlement to Use Drug Not a Defense ▶ Veh. Code, § 23630.
- Unanimity Instruction ▶ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].
- Prior Convictions ▶ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Public Peace and Welfare §§272-277.](#)

~~2 Witkin, California Evidence (5th ed. 2012), Demonstrative, Experimental, and Scientific Evidence § 56.2~~
~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 205–210.~~

~~2 Witkin, California Evidence (4th ed. 2000) Demonstrative Evidence, § 54.~~

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.36 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

LESSER INCLUDED OFFENSES

- Misdemeanor Driving Under the Influence or With 0.08 Percent ▸ Veh. Code, § 23152(a) & (b); *People v. Capetillo* (1990) 220 Cal.App.3d 211, 220 [269 Cal.Rptr. 250].
- Driving Under the Influence Causing Injury is not a lesser included offense of vehicular manslaughter without gross negligence ▸ *People v. Binkerd* (2007) 155 Cal.App.4th 1143, 1148–1149 [66 Cal.Rptr.3d 675].

RELATED ISSUES

DUI Cannot Serve as Predicate Unlawful Act

“[T]he evidence must show an unlawful act or neglect of duty *in addition to* driving under the influence.” (*People v. Minor* (1994) 28 Cal.App.4th 431, 438 [33 Cal.Rptr.2d 641] [italics in original]; *People v. Oyaas* (1985) 173 Cal.App.3d 663, 668 [219 Cal.Rptr. 243].)

Act Forbidden by Law

The term “ ‘any act forbidden by law’ . . . refers to acts forbidden by the Vehicle Code” (*People v. Clenney* (1958) 165 Cal.App.2d 241, 253 [331 P.2d 696].) The defendant must commit the act when driving the vehicle. (*People v. Capetillo* (1990) 220 Cal.App.3d 211, 217 [269 Cal.Rptr. 250] [violation of Veh. Code, § 10851 not sufficient because offense not committed “when” defendant was driving the vehicle but by mere fact that defendant was driving the vehicle].)

Neglect of Duty Imposed by Law

“In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of [the Vehicle Code] was violated.” (Veh. Code, § 23153(c); *People v. Oyaas* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243].) “[The] neglect of duty element . . . is satisfied by evidence which establishes that the defendant’s conduct amounts to no more than

ordinary negligence.” (*People v. Oyaas, supra*, 173 Cal.App.3d at p. 669.) “[T]he law imposes on any driver [the duty] to exercise ordinary care at all times and to maintain a proper control of his or her vehicle.” (*Id.* at p. 670.)

Multiple Victims to One Drunk Driving Accident

“In *Wilkoff v. Superior Court* [(1985) 38 Cal.3d 345, 352 [211 Cal.Rptr. 742, 696 P.2d 134]] we held that a defendant cannot be charged with multiple counts of felony drunk driving under Vehicle Code section 23153, subdivision (a), where injuries to several people result from one act of drunk driving.” (*People v. McFarland* (1989) 47 Cal.3d 798, 802 [254 Cal.Rptr. 331, 765 P.2d 493].) However, when “a defendant commits vehicular manslaughter with gross negligence[,] . . . he may properly be punished for [both the vehicular manslaughter and] injury to a separate individual that results from the same incident.” (*Id.* at p. 804.) The prosecution may also charge an enhancement for multiple victims under Vehicle Code section 23558.

See also the Related Issues section in CALCRIM No. 2110, *Driving Under the Influence*.

2101. Driving With 0.08 Percent Blood Alcohol Causing Injury (Veh. Code, § 23153(b))

The defendant is charged [in Count __] with causing injury to another person while driving with a blood alcohol level of 0.08 percent or more [in violation of Vehicle Code section 23153(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant drove a vehicle;
2. When (he/she) drove, the defendant's blood alcohol level was 0.08 percent or more by weight;
3. When the defendant was driving with that blood alcohol level, (he/she) also (committed an illegal act/ [or] neglected to perform a legal duty);

AND

4. The defendant's (illegal act/ [or] failure to perform a legal duty) caused bodily injury to another person.

[If the People have proved beyond a reasonable doubt that a sample of the defendant's (blood/breath) was taken within three hours of the defendant's [alleged] driving and that a chemical analysis of the sample showed a blood alcohol level of 0.08 percent or more, you may, but are not required to, conclude that the defendant's blood alcohol level was 0.08 percent or more at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of **Public Health** ~~Health~~ **Services**.]

[The People allege that the defendant committed the following illegal act[s]: _____ <list name[s] of offense[s]>.

To decide whether the defendant committed _____ <list name[s] of offense[s]>, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].]

[The People [also] allege that the defendant failed to perform the following legal (duty/duties) while driving the vehicle: (the duty to exercise ordinary care at all times and to maintain proper control of the vehicle/ _____ <insert other duty or duties alleged>).]

[You may not find the defendant guilty unless all of you agree that the People have proved that the defendant (committed [at least] one illegal act/[or] failed to perform [at least] one duty).

<Alternative A—unanimity required; see Bench Notes>

[You must all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

<Alternative B—unanimity not required; see Bench Notes>

[But you do not have to all agree on which (act the defendant committed/ [or] duty the defendant failed to perform).]

[Using *ordinary care* means using reasonable care to prevent reasonably foreseeable harm to someone else. A person fails to exercise ordinary care if he or she (does something that a reasonably careful person would not do in the same situation/ [or] fails to do something that a reasonably careful person would do in the same situation).]

[An act causes bodily injury to another person if the injury is the direct, natural, and probable consequence of the act and the injury would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of injury. An act causes bodily injury to another person only if it is a substantial factor in causing the injury. A *substantial factor* is more than a trivial or remote factor. However, it need not be the only factor that causes the injury.]

New January 2006; Revised August 2006, April2008 *insert date of council approval*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under element 3 that the defendant committed an act forbidden by law, the court has a **sua sponte** duty to specify the predicate offense alleged and to instruct on the elements of that offense. (*People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].)

If the prosecution alleges under element 3 that the defendant neglected to perform a duty imposed by law, the court has a **sua sponte** duty to instruct on the duty allegedly neglected. (See *People v. Minor, supra*, 28 Cal.App.4th at pp. 438–439.) If the prosecution alleges that the defendant neglected the general duty of every driver to exercise ordinary care (see *People v. Oyass* (1985) 173 Cal.App.3d 663, 669 [219 Cal.Rptr. 243]), the court should give the bracketed definition of “ordinary care.”

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of injury, the court should give the first bracketed paragraph on causation, which includes the “direct, natural, and probable” language. If there is evidence of multiple causes of injury, the court should also give the second bracketed paragraph on causation, which includes the “substantial factor” definition. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

There is a split in authority over whether there is a **sua sponte** duty to give a unanimity instruction when multiple predicate offenses are alleged. (*People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30] [unanimity instruction required], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735] [unanimity instruction not required but preferable]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438] [unanimity instruction not required]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906] [unanimity instruction not required, failure to give harmless error if was required].) If the court concludes that a unanimity instruction is appropriate, give the unanimity alternative A. If the court concludes that unanimity is not required, give the unanimity alternative B.

The bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that a sample of” explains a rebuttable presumption created by statute. (See Veh. Code, § 23152(b); Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that a sample of” if there is evidence that the defendant’s blood alcohol level was below 0.08 percent at the time of the test.

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with “In evaluating any test results in this case.” (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra*, 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2110, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [78 Cal.Rptr.2d 809].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

Defenses—Instructional Duty

On request, if supported by the evidence, the court must instruct on the “imminent peril/sudden emergency” doctrine. (*People v. Boulware* (1940) 41 Cal.App.2d 268, 269–270 [106 P.2d 436].) The court may use the bracketed instruction on sudden emergency in CALCRIM No. 590, *Gross Vehicular Manslaughter While Intoxicated*.

Related Instructions

CALCRIM No. 2100, *Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

CALCRIM No. 595, *Vehicular Manslaughter: Speeding Laws Defined*.

AUTHORITY

- Elements ▶ Veh. Code, § 23153(b); *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 265–266 [198 Cal.Rptr. 149, 673 P.2d 732].
- Partition Ratio ▶ Veh. Code, § 23152(b); *People v. Bransford* (1994) 8 Cal.4th 885, 890 [35 Cal.Rptr.2d 613, 884 P.2d 70].
- Presumptions ▶ Veh. Code, § 23153(b); Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Must Instruct on Elements of Predicate Offense ▶ *People v. Minor* (1994) 28 Cal.App.4th 431, 438–439 [33 Cal.Rptr.2d 641]; *People v. Ellis* (1999) 69 Cal.App.4th 1334, 1339 [82 Cal.Rptr.2d 409].
- Negligence—Ordinary Care ▶ Pen. Code, § 7(2); Restatement Second of Torts, § 282.
- Causation ▶ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Unanimity Instruction ▶ *People v. Gary* (1987) 189 Cal.App.3d 1212, 1218 [235 Cal.Rptr. 30], overruled on other grounds in *People v. Flood* (1998) 18 Cal.4th 470, 481 [76 Cal.Rptr.2d 180, 957 P.2d 869]; *People v. Durkin* (1988) 205 Cal.App.3d Supp. 9, 13 [252 Cal.Rptr. 735]; *People v. Mitchell* (1986) 188 Cal.App.3d 216, 222 [232 Cal.Rptr. 438]; *People v. Leffel* (1988) 203 Cal.App.3d 575, 586–587 [249 Cal.Rptr. 906].

- Statute Constitutional ▶ *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 273 [198 Cal.Rptr. 145, 673 P.2d 732].
- Prior Convictions ▶ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 272-2772 ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 205-210.~~

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.36 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

LESSER INCLUDED OFFENSES

- Misdemeanor Driving Under the Influence or With 0.08 Percent ▶ Veh. Code, § 23152(a) & (b); *People v. Capetillo* (1990) 220 Cal.App.3d 211, 220 [269 Cal.Rptr. 250].

RELATED ISSUES

See the Related Issues section in CALCRIM No. 2111, *Driving With 0.08 Percent Blood Alcohol* and CALCRIM No. 2100, *Driving a Vehicle or Operating a Vessel Under the Influence Causing Injury*.

2102–2109. Reserved for Future Use

2110. Driving Under the Influence (Veh. Code, § 23152(a))

The defendant is charged [in Count ___] with driving under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug] [in violation of Vehicle Code section 23152(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant drove a vehicle;

AND

2. When (he/she) drove, the defendant was under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug].

A person is *under the influence* if, as a result of (drinking [or consuming] an alcoholic beverage/ [and/or] taking a drug), his or her mental or physical abilities are so impaired that he or she is no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances.

The manner in which a person drives is not enough by itself to establish whether the person is or is not under the influence of (an alcoholic beverage/ [or] a drug) [or under the combined influence of an alcoholic beverage and a drug]. However, it is a factor to be considered, in light of all the surrounding circumstances, in deciding whether the person was under the influence.

[An *alcoholic beverage* is a liquid or solid material intended to be consumed that contains ethanol. Ethanol is also known as ethyl alcohol, drinking alcohol, or alcohol. [An *alcoholic beverage* includes _____ <insert type[s] of beverage[s] from Veh. Code, § 109 or Bus. & Prof. Code, § 23004, e.g., wine, beer>.]

[A *drug* is a substance or combination of substances, other than alcohol, that could so affect the nervous system, brain, or muscles of a person that it would appreciably impair his or her ability to drive as an ordinarily cautious person, in full possession of his or her faculties and using reasonable care, would drive under similar circumstances.]

[If the People have proved beyond a reasonable doubt that the defendant's blood alcohol level was 0.08 percent or more at the time of the chemical analysis, you may, but are not required to, conclude that the defendant was under the influence of an alcoholic beverage at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of Public Health~~Health~~ Services.]

[It is not a defense that the defendant was legally entitled to use the drug.]

[If the defendant was under the influence of (an alcoholic beverage/ [and/or] a drug), then it is not a defense that something else also impaired (his/her) ability to drive.]

New January 2006; Revised June 2007, April 2008 [*insert date of council approval*](#)

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Give this instruction if the defendant is charged with a misdemeanor or a felony based on prior convictions.

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition, either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington, supra*, 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [78 Cal.Rptr.2d 809].)

The bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that the defendant’s blood alcohol level was 0.08 percent” explains a rebuttable presumption created by statute. (See Veh. Code, § 23610; Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that the defendant’s blood alcohol level was 0.08 percent” if there is no substantial evidence that the defendant’s blood alcohol level was at or above 0.08 percent at the time of the test. In addition, if the test falls within the range in which no presumption applies, 0.05 percent to just below 0.08 percent, do not give this bracketed sentence. (*People v. Wood* (1989) 207 Cal.App.3d Supp. 11, 15 [255 Cal.Rptr. 537].) The court should also consider whether there is sufficient evidence to establish that the test result exceeds the margin of error before giving this instruction for test results of 0.08 percent. (Compare *People v. Campos* (1982) 138 Cal.App.3d Supp. 1, 4–5 [188 Cal.Rptr. 366], with *People v. Randolph* (1989) 213 Cal.App.3d Supp. 1, 11 262 Cal.Rptr. 378].)

The statute also creates a rebuttable presumption that the defendant was not under the influence if his or her blood alcohol level was less than 0.05 percent. (*People v. Gallardo* (1994) 22 Cal.App.4th 489, 496 [27 Cal.Rptr.2d 502].) Depending on the facts of the case, the defendant may be entitled to a pinpoint instruction on this presumption. It is not error to refuse an instruction on this presumption if the prosecution’s theory is that the defendant was under the combined influence of drugs and alcohol. (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1250 [32 Cal.Rptr.2d 442].)

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with “In evaluating any test results in this case.” (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayan* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Give the bracketed sentence stating that “it is not a defense that something else also impaired (his/her) ability to drive” if there is evidence of an additional source of impairment such as an epileptic seizure, inattention, or falling asleep.

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

Related Instructions

CALCRIM No. 2111, *Driving With 0.08 Percent Blood Alcohol*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

AUTHORITY

- Elements ▶ Veh. Code, § 23152(a).
- Alcoholic Beverage Defined ▶ Veh. Code, § 109; Bus. & Prof. Code, § 23004.
- Drug Defined ▶ Veh. Code, § 312.
- Driving ▶ *Mercer v. Dept. of Motor Vehicles* (1991) 53 Cal.3d 753, 768 [280 Cal.Rptr. 745, 809 P.2d 404].
- Presumptions ▶ Veh. Code, § 23610; Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Mandatory Presumption Unconstitutional Unless Instructed as Permissive Inference ▶ *People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].
- Under the Influence Defined ▶ *People v. Schoonover* (1970) 5 Cal.App.3d 101, 105–107 [85 Cal.Rptr. 69]; *People v. Enriquez* (1996) 42 Cal.App.4th 661, 665–666 [49 Cal.rptr.2d 710].
- Manner of Driving ▶ *People v. Weathington* (1991) 231 Cal.App.3d 69, 84 [252 Cal.Rptr. 170]; *People v. McGrath* (1928) 94 Cal.App. 520, 524 [271 P. 549].
- Legal Entitlement to Use Drug Not a Defense ▶ Veh. Code, § 23630.
- Prior Convictions ▶ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [252 Cal.Rptr. 170].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Public Peace and Welfare §§272-277.](#)

[2 Witkin, California Evidence \(5th ed. 2012\), Demonstrative, Experimental, and Scientific Evidence § 562](#) ~~[Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against Public Peace and Welfare, §§ 205–210.](#)~~

~~[2 Witkin, California Evidence \(4th ed. 2000\) Demonstrative Evidence, § 54.](#)~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

LESSER INCLUDED OFFENSES

If the defendant is charged with felony driving under the influence based on prior convictions, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the prior convictions have been proved. If the jury finds that the prior convictions have not been proved, then the offense should be set at a misdemeanor.

- Attempted Driving Under the Influence ▶ Pen. Code, § 664; Veh. Code, § 23152(a); *People v. Garcia* (1989) 214 Cal.App.3d Supp.1, 3–4 [262 Cal.Rptr. 915].

RELATED ISSUES

Driving

“[S]ection 23152 requires proof of volitional movement of a vehicle.” (*Mercer v. Dept. of Motor Vehicles* (1991) 53 Cal.3d 753, 768 [280 Cal.Rptr. 745, 809 P.2d 404].) However, the movement may be slight. (*Padilla v. Meese* (1986) 184 Cal.App.3d 1022, 1029 [229 Cal.Rptr. 310]; *Henslee v. Dept. of Motor Vehicles* (1985) 168 Cal.App.3d 445, 450–453 [214 Cal.Rptr. 249].) Further, driving may be established through circumstantial evidence. (*Mercer, supra*, 53 Cal.3d at p. 770; *People v. Wilson* (1985) 176 Cal.App.3d Supp. 1, 9 [222 Cal.Rptr. 540] [sufficient evidence of driving where the vehicle was parked on the freeway, over a mile from the on-ramp, and the defendant, the sole occupant of the vehicle, was found in the driver’s seat with the vehicle’s engine running].) See CALCRIM No. 2241, *Driver and Driving Defined*.

PAS Test Results

The results of a preliminary alcohol screening (PAS) test “are admissible upon a showing of either compliance with title 17 or the foundational elements of (1)

properly functioning equipment, (2) a properly administered test, and (3) a qualified operator” (*People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203].)

Presumption Arising From Test Results—Timing

Unlike the statute on driving with a blood alcohol level of 0.08 percent or more, the statute permitting the jury to presume that the defendant was under the influence if he or she had a blood alcohol level of 0.08 percent or more does not contain a time limit for administering the test. (Veh. Code, § 23610; *People v. Schrieber* (1975) 45 Cal.App.3d 917, 922 [119 Cal.Rptr. 812].) However, the court in *Schrieber, supra*, noted that the mandatory testing statute provides that “the test must be incidental to both the offense and to the arrest and . . . no substantial time [should] elapse . . . between the offense and the arrest.” (*Id.* at p. 921.)

2111. Driving With 0.08 Percent Blood Alcohol (Veh. Code, § 23152(b))

The defendant is charged [in Count __] with driving with a blood alcohol level of 0.08 percent or more [in violation of Vehicle Code section 23152(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant drove a vehicle;

AND

2. When (he/she) drove, the defendant's blood alcohol level was 0.08 percent or more by weight.

[If the People have proved beyond a reasonable doubt that a sample of the defendant's (blood/breath) was taken within three hours of the defendant's [alleged] driving and that a chemical analysis of the sample showed a blood alcohol level of 0.08 percent or more, you may, but are not required to, conclude that the defendant's blood alcohol level was 0.08 percent or more at the time of the alleged offense.]

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of ~~Public Health~~**Health Services**.]

New January 2006; Revised August 2006, June 2007, April 2008 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Give this instruction if the defendant is charged with a misdemeanor or a felony based on prior convictions.

If the defendant is charged with one or more prior convictions for driving under the influence, the defendant may stipulate to the convictions. (*People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].) In addition,

either the defendant or the prosecution may move for a bifurcated trial. (*People v. Calderon* (1994) 9 Cal.4th 69, 77–78 [36 Cal.Rptr.2d 333, 885 P.2d 83]; *People v. Cline* (1998) 60 Cal.App.4th 1327, 1334–1336 [71 Cal.Rptr.2d 41]; *People v. Weathington*, *supra*, 231 Cal.App.3d at p. 90.) If the defendant does not stipulate and the court does not grant a bifurcated trial, give CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*. If the court grants a bifurcated trial, give CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*. If the defendant stipulates to the truth of the convictions, the prior convictions should not be disclosed to the jury unless the court admits them as otherwise relevant. (See *People v. Hall* (1998) 67 Cal.App.4th 128, 135 [78 Cal.Rptr.2d 809].)

The bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that a sample of” explains a rebuttable presumption created by statute. (See Veh. Code, § 23152(b); Evid. Code, §§ 600–607.) The California Supreme Court has held that a jury instruction phrased as a rebuttable presumption in a criminal case creates an unconstitutional mandatory presumption. (*People v. Roder* (1983) 33 Cal.3d 491, 497–505 [189 Cal.Rptr. 501, 658 P.2d 1302].) In accordance with *Roder*, the instructions have been written as permissive inferences.

The court **must not** give the bracketed paragraph that begins with “If the People have proved beyond a reasonable doubt that a sample of” if there is no substantial evidence that the defendant’s blood alcohol level was at or above 0.08 percent at the time of the test.

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the bracketed sentence that begins with “In evaluating any test results in this case.” (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

Related Instructions

CALCRIM No. 2110, *Driving Under the Influence*.

CALCRIM No. 2125, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions*.

CALCRIM No. 2126, *Driving Under the Influence or With 0.08 Percent Blood Alcohol: Prior Convictions—Bifurcated Trial*.

AUTHORITY

- Elements ▶ Veh. Code, § 23152(b); *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 265–266 [198 Cal.Rptr. 145, 673 P.2d 732].
- Partition Ratio ▶ Veh. Code, § 23152(b); *People v. Bransford* (1994) 8 Cal.4th 885, 890 [35 Cal.Rptr.2d 613, 884 P.2d 70].
- Presumptions ▶ Veh. Code, §§ 23152(b), 23610; Evid. Code, § 607; *People v. Milham* (1984) 159 Cal.App.3d 487, 503–505 [205 Cal.Rptr. 688].
- Statute Constitutional ▶ *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 273 [198 Cal.Rptr. 145, 673 P.2d 732].
- Prior Convictions ▶ *People v. Weathington* (1991) 231 Cal.App.3d 69, 90 [282 Cal.Rptr. 170].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Public Peace and Welfare §§ 272-277](#)
~~[2 Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against Public Peace and Welfare, §§ 205–210.](#)~~

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02 (Matthew Bender).

LESSER INCLUDED OFFENSES

If the defendant is charged with felony driving under the influence based on prior convictions, then the misdemeanor offense is a lesser included offense. The court must provide the jury with a verdict form on which the jury will indicate if the prior convictions have been proved. If the jury finds that the prior convictions have not been proved, then the offense should be set at a misdemeanor.

RELATED ISSUES

Partition Ratio

In 1990, the Legislature amended Vehicle Code section 23152(b) to state that the “percent, by weight, of alcohol in a person’s blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.”

Following this amendment, the Supreme Court held that evidence of variability of breath-alcohol partition ratios was not relevant and properly excluded. (*People v. Bransford* (1994) 8 Cal.4th 885, 890–893 [35 Cal.Rptr.2d 613, 884 P.2d 70].)

See the Related Issues section in CALCRIM No. 2110, *Driving Under the Influence*.

2113. Driving With 0.05 Percent Blood Alcohol When Under 21 (Veh. Code, § 23140(a))

The defendant is charged [in Count __] with driving when under the age of 21 years with a blood alcohol level of 0.05 percent or more [in violation of Vehicle Code section 23140(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant drove a vehicle;
2. When (he/she) drove, the defendant's blood alcohol level was 0.05 percent or more by weight;

AND

3. At that time, the defendant was under 21 years old.

[In evaluating any test results in this case, you may consider whether or not the person administering the test or the agency maintaining the testing device followed the regulations of the California Department of ~~Public Health~~
~~Health Services~~.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime. Note that this offense is an infraction. (Veh. Code, §§ 40000.1, 40000.15.) However, this instruction has been included because this offense may serve as a predicate offense for gross vehicular manslaughter while intoxicated or vehicular manslaughter while intoxicated. (Pen. Code, §§ 191.5, 192(c)(3); see *People v. Goslar* (1999) 70 Cal.App.4th 270, 275–276 [82 Cal.Rptr.2d 558].)

If the evidence demonstrates that the person administering the test or agency maintaining the testing device failed to follow the title 17 regulations, give the

bracketed sentence that begins with “In evaluating any test results in this case.” (*People v. Adams* (1976) 59 Cal.App.3d 559, 567 [131 Cal.Rptr. 190] [failure to follow regulations in administering breath test goes to weight, not admissibility, of the evidence]; *People v. Williams* (2002) 28 Cal.4th 408, 417 [121 Cal.Rptr.2d 854, 49 P.3d 203] [same]; *People v. Esayian* (2003) 112 Cal.App.4th 1031, 1039 [5 Cal.Rptr.3d 542] [results of blood test admissible even though phlebotomist who drew blood not authorized under title 17].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

On request, give CALCRIM No. 2241, *Driver and Driving Defined*.

AUTHORITY

- Elements ▶ Veh. Code, § 23140(a); *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 265–266 [198 Cal.Rptr. 145, 673 P.2d 732].
- Statute Constitutional ▶ See *Burg v. Municipal Court* (1983) 35 Cal.3d 257, 273 [198 Cal.Rptr. 145, 673 P.2d 732]; *People v. Goslar* (1999) 70 Cal.App.4th 270, 275–276 [82 Cal.Rptr.2d 558].

Secondary Sources

~~2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare §§ 272-277~~
~~2 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, §§ 205–210.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.02[1A][a] (Matthew Bender).

RELATED ISSUES

See the Related Issues section in CALCRIM No. 2111, *Driving With 0.08 Percent Blood Alcohol*.

2114–2124. Reserved for Future Use

2410. Possession of Controlled Substance Paraphernalia (Health & Saf. Code, § 11364)

The defendant is charged [in Count ___] with possessing an object that can be used to unlawfully inject or smoke a controlled substance [in violation of Health and Safety Code section 11364].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant [unlawfully] possessed an object used for unlawfully injecting or smoking a controlled substance;
2. The defendant knew of the object's presence;

AND

3. The defendant knew- it to be an object used for unlawfully injecting or smoking a controlled substance.

[Two or more people may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

[The People allege that the defendant possessed the following items:
_____ <insert each specific item of paraphernalia when multiple items alleged>. You may not find the defendant guilty unless you all agree that the People have proved that the defendant possessed at least one of these items and you all agree on which item (he/she) possessed.]

<Defense: Authorized Possession for Personal Use>

[The defendant did not unlawfully possess [a] hypodermic (needle[s]/ [or] syringe[s]) if (he/she) was legally authorized to possess (it/them). The defendant was legally authorized to possess (it/them) if:

1. (He/She) possessed the (needle[s]/ [or] syringe[s]) for personal use;

[AND]

2. (He/She) obtained (it/them) from **an authorized source**
<insert source authorized by Health & Safety Code section 11364(c)> (;/.)]

[AND

3. ~~(He/She) possessed no more than 10 (needles/ [or] syringes).]~~

The People have the burden of proving beyond a reasonable doubt that the defendant was not legally authorized to possess the hypodermic (needle[s]/ [or] syringe[s]). If the People have not met this burden, you must find the defendant not guilty of this crime.]

New January 2006; Revised October 2010, April 2011 [insert date of council approval]

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If the prosecution alleges under a single count that the defendant possessed multiple items, the court has a **sua sponte** duty to instruct on unanimity. (See *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483]; *People v. Rowland* (1999) 75 Cal.App.4th 61, 65 [88 Cal.Rptr.2d 900].) Give the bracketed paragraph that begins with “The People allege that the defendant possessed,” inserting the items alleged.

Defenses—Instructional Duty

~~In 2004, the Legislature created the Disease Prevention Demonstration Project. (Health & Saf. Code, § 121285.) The purpose of this project is to evaluate “the long term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.” (Health & Saf. Code, § 121285(a).) In a city or county that has authorized participation in the project, a pharmacist may provide up to 10 hypodermic needles and syringes to an individual for personal use. (Bus. & Prof. Code, § 4145(a)(2).) Similarly, in a city or county that has authorized participation in the project, Health and Safety Code section 11364(a) “shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.” (Health & Saf. Code, § 11364(e).) Section 11364 does not apply to possession of hypodermic needles or syringes for personal use if acquired from an authorized~~

source. The defendant need only raise a reasonable doubt about whether his or her possession of these items was lawful. (See *People v. Mower* (2002) 28 Cal.4th 457, 479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].) If there is sufficient evidence, the court has a **sua sponte** duty to instruct on this defense. (See *People v. Fuentes* (1990) 224 Cal.App.3d 1041, 1045 [274 Cal.Rptr. 17] [authorized possession of hypodermic is an affirmative defense]); *People v. Mower*, *ibid.* at pp. 478–481 [discussing affirmative defenses generally and the burden of proof].) Give the bracketed word “unlawfully” in element 1 and the bracketed paragraph on that defense.

AUTHORITY

- Elements ▶ Health & Saf. Code, § 11364.
- Statute Constitutional ▶ *People v. Chambers* (1989) 209 Cal.App.3d Supp. 1, 4 [257 Cal.Rptr. 289].
- Constructive vs. Actual Possession ▶ *People v. Barnes* (1997) 57 Cal.App.4th 552, 556 [67 Cal.Rptr.2d 162].
- Unanimity ▶ *People v. Wolfe* (2003) 114 Cal.App.4th 177, 184–185 [7 Cal.Rptr.3d 483].
- ~~Disease Prevention Demonstration Project ▶ Health & Saf. Code, § 121285; Bus. & Prof. Code, § 4145(a)(2).~~
- ~~Possession Permitted Under Project~~ Authorized Possession Defense ▶ Health & Saf. Code, § 11364(c).

Secondary Sources

~~2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare § 1552~~ Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against Public Peace and Welfare, § 116.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.04[2][a] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01[1][a], [b] (Matthew Bender).

RELATED ISSUES

Marijuana Paraphernalia Excluded

Possession of a device for smoking marijuana, without more, is not a crime. (*In re Johnny O.* (2003) 107 Cal.App.4th 888, 897 [132 Cal.Rptr.2d 471].)

2411. Possession of Hypodermic Needle or Syringe (Bus. & Prof. Code, § 4140)

The defendant is charged [in Count __] with possessing [a] hypodermic (needle[s]/ [or] syringe[s]) [in violation of Business and Professions Code section 4140].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant [unlawfully] possessed [a] hypodermic (needle[s]/ [or] syringe[s]);
2. The defendant knew of (its/their) presence;

AND

3. The defendant knew that the object[s] (was/were) [a] hypodermic (needle[s]/ [or] syringe[s]).

[Two or more persons may possess something at the same time.]

[A person does not have to actually hold or touch something to possess it. It is enough if the person has (control over it/ [or] the right to control it), either personally or through another person.]

<Defense: Authorized Possession for Personal Use>

[The defendant did not unlawfully possess [a] hypodermic (needle[s]/ [or] syringe[s]) if (he/she) was legally authorized to possess (it/them). The defendant was legally authorized to possess (it/them) if:

1. (He/She) possessed the (needle[s]/ [or] syringe[s]) for personal use;

[AND]

2. (He/She) obtained (it/them) from an authorized source(;/.)

[AND]

3. (He/She) possessed no more than 10 (needles/ [or] syringes).]

The defense must produce evidence tending to show that (his/her) possession of [a] (needle[s]/ [or] syringe[s]) was lawful. If you have a reasonable doubt about whether the defendant's possession of [a] (needle[s]/ [or] syringe[s]) was unlawful, you must find the defendant not guilty.]

New January 2006; Revised June 2007

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Defenses—Instructional Duty

Business and Professions Code section 4140 allows for the lawful possession of a hypodermic needle or hypodermic syringe when “acquired in accordance with this article.” (*People v. Fuentes* (1990) 224 Cal.App.3d 1041, 1045 [274 Cal.Rptr. 17] [authorized possession affirmative defense].) The defendant need only raise a reasonable doubt about whether his or her possession of these items was lawful . (See *People v. Mower* (2002) 28 Cal.4th 457, 479 [122 Cal.Rptr.2d 326, 49 P.3d 1067].) If there is sufficient evidence, the court has a **sua sponte** duty to instruct on the defense. (See *ibid.* at pp. 478–481 [discussing affirmative defenses generally and the burden of proof].) Give the bracketed word “unlawfully” in element 1 and the bracketed paragraph on that defense. See also *People v. Frazier* (2005) 128 Cal.App.4th 807, 820–821 [27 Cal.Rptr.3d 336].

In 2004, the Legislature created the Disease Prevention Demonstration Project. (Health & Saf. Code, § 121285.) The purpose of this project is to evaluate “the long-term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.” (Health & Saf. Code, § 121285(a).) In a city or county that has authorized participation in the project, a pharmacist may provide up to 10 hypodermic needles and syringes to an individual for personal use. (Bus. & Prof. Code, § 4145(a)(2).) If there is sufficient evidence that the defendant acquired the hypodermic needle or syringe in accordance with this project, the court has a **sua sponte** duty to instruct on the defense. Give the bracketed word “unlawfully” in element 1 and the bracketed paragraph on the defense of authorized possession.

AUTHORITY

- Elements ▶ Bus. & Prof. Code, § 4140.
- Authorized Possession Defense ▶ *People v. Fuentes* (1990) 224 Cal.App.3d 1041, 1045 [274 Cal.Rptr. 17]; *People v. Mower* (2002) 28 Cal.4th 457, 478–481 [122 Cal.Rptr.2d 326, 49 P.3d 1067].
- Disease Prevention Demonstration Project ▶ Health & Saf. Code, § 121285; Bus. & Prof. Code, § 4145(a)(2).

Secondary Sources

2 Witkin & Epstein, *California Criminal Law* (3d ed. 2000), Crimes Against Public Peace and Welfare, § 381.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 85, *Submission to Jury and Verdict*, § 85.04[2][a] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 144, *Crimes Against Order*, § 144.02; Ch. 145, *Narcotics and Alcohol Offenses*, § 145.01[1][a], [b] (Matthew Bender).

2902. Damaging Phone or Electrical Line (Pen. Code, § 591)

The defendant is charged [in Count __] with (taking down[,]/ [or] removing [,]/ [or] damaging[,]/ **[or] disconnecting/ [or] cutting/**[or] obstructing/severing/making an unauthorized connection to) a (telegraph/telephone/cable television/electrical) line [in violation of Penal Code section 591].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative 1A—removed, damaged, or obstructed>

[1. The defendant unlawfully (took down[,]/ [or] removed[,]/ [or] damaged[,]/ [or] obstructed/ **[or] disconnected/ [or] cut**) [part of] a (telegraph/telephone/cable television/electrical) line [or mechanical equipment connected to the line];]

<Alternative 1B—severed>

[1. The defendant unlawfully severed a wire of a (telegraph/telephone/cable television/electrical) line;]

<Alternative 1C—unauthorized connection>

[1. The defendant unlawfully made an unauthorized connection with [part of] a line used to conduct electricity [or mechanical equipment connected to the line];]

AND

2. The defendant did so maliciously.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to annoy or injure someone else.

[As used here, *mechanical equipment* includes a telephone.]

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

The statute uses the term “injure.” (Pen. Code, § 591.) The committee has replaced the word “injure” with the word “damage” because the word “injure” generally refers to harm to a person rather than to property.

The statute uses the phrase “appurtenances or apparatus.” (Pen. Code, § 591.) The committee has chosen to use the more understandable “mechanical equipment” in place of this phrase.

Give the bracketed sentence that states “*mechanical equipment* includes a telephone” on request. (*People v. Tafoya* (2001) 92 Cal.App.4th 220, 227 [111 Cal.Rptr.2d 681]; *People v. Kreiling* (1968) 259 Cal.App.2d 699, 704 [66 Cal.Rptr. 582].)

AUTHORITY

- Elements ▶ Pen. Code, § 591.
- Maliciously Defined ▶ Pen. Code, § 7, subd. 4; *People v. Lopez* (1986) 176 Cal.App.3d 545, 550 [222 Cal.Rptr. 101].
- Applies to Damage to Telephone ▶ *People v. Tafoya* (2001) 92 Cal.App.4th 220, 227; *People v. Kreiling* (1968) 259 Cal.App.2d 699, 704 [66 Cal.Rptr. 582].
- “Obstruct” Not Unconstitutionally Vague ▶ *Kreiling v. Field* (9th Cir. 1970) 431 F.2d 502, 504.
- Applies to Theft of Service ▶ *People v. Trieber* (1946) 28 Cal.2d 657, 661 [171 P.2d 1].

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Crimes Against Property §§ 304, 3052](#) ~~[Witkin & Epstein, California Criminal Law \(3d ed. 2000\) Crimes Against Property, § 258.](#)~~

2903–2914. Reserved for Future Use

2980. Contributing to Delinquency of Minor (Pen. Code, § 272)

The defendant is charged [in Count __] with contributing to the delinquency of a minor [in violation of Penal Code section 272].

To prove that the defendant is guilty of this crime, the People must prove that:

<Alternative A—caused or encouraged minor to come under jurisdiction of juvenile court>

1. The defendant (committed an act/ [or] failed to perform a duty);

AND

2. In (doing so/ [or] failing to do so)[,] the defendant (caused[,]/ [or] encouraged[,]/ [or] contributed to (causing/ [or] encouraging)) a minor to become [or continue to be] a (dependent /delinquent) child of the juvenile court.]

<Alternative B—induced minor to come or remain under jurisdiction of juvenile court or not to follow court order>

[The defendant by (act[,]/ [or] failure to act[,]/ [or] threat[,]/ [or] command[,]/ [or] persuasion) induced or tried to induce a (minor/delinquent child of the juvenile court/dependent child of the juvenile court) to do either of the following:

1. Fail or refuse to conform to a lawful order of the juvenile court;

OR

2. (Do any act/Follow any course of conduct/Live in a way) that would cause or obviously tend to cause that person to become or remain a (dependent /delinquent) child of the juvenile court.]

In order to commit this crime, a person must act with [either] (general criminal intent/ [or] criminal negligence).

[In order to act with *general criminal intent*, a person must not only commit the prohibited act [or fail to do the required act], but must do so intentionally

or on purpose. However, it is not required that he or she intend to break the law.]

[*Criminal negligence* involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:

1. He or she acts in a reckless way that creates a high risk of death or great bodily injury;

AND

2. A reasonable person would have known that acting in that way would create such a risk.

In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.]

A *minor* is a person under 18 years old.

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

[A parent [or legal guardian] has a duty to exercise reasonable care, supervision, protection, and control over his or her minor child.]

[A *guardian* means the legal guardian of a child.]

<A. *Dependent Child Defined: Physical Abuse*>

[A minor may become a *dependent child* if his or her parent [or guardian] has intentionally inflicted serious physical harm on him or her, or there is a substantial risk that the parent [or guardian] will do so.]

[The manner in which a less serious injury, if any, was inflicted, any history of repeated infliction of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian may be relevant to whether the child is at substantial risk of serious physical harm.]

[*Serious physical harm* does not include reasonable and age-appropriate spanking of the buttocks when there is no evidence of serious physical injury.]

<B. Dependent Child Defined: Neglect>

[A minor may become a *dependent child* if he or she has suffered, or is at substantial risk of suffering, serious physical harm or illness as a result of [one of the following]:

[1.] [The failure or inability of his or her parent [or guardian] to adequately supervise or protect the child(;/.)]

[OR]

[(1/2).] [The willful or negligent failure of his or her parent [or guardian] to provide the child with adequate food, clothing, shelter, or medical treatment(;/.)]

[OR]

[(1/2/3).] [The inability of his or her parent [or guardian] to provide regular care for the child due to the parent's [or guardian's] (mental illness[,]/ [or] developmental disability[,]/ [or] substance abuse).]

[A minor cannot become a dependent child based only on the fact that there is a lack of emergency shelter for the minor's family.]

[Deference must be given to a parent's [or guardian's] decision to give medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by one of its accredited practitioners. A minor cannot be found to be a dependent child unless such a finding is necessary to protect the minor from suffering serious physical harm or illness. The following factors may bear on such a determination:

- 1. The nature of the treatment proposed by the parent [or guardian];**
- 2. The risks, if any, to the child posed by the course of treatment or nontreatment proposed by the parent [or guardian];**
- 3. The risks, if any, of any alternative course of treatment being proposed for the child by someone other than the parent [or guardian];**

AND

4. The likely success of the course of treatment or nontreatment proposed by the parent [or guardian].]

[A minor may be a dependent child only as long as necessary to protect him or her from the risk of suffering serious physical harm or illness.]]

<C. *Dependent Child Defined: Serious Emotional Damage*>

[A minor may become a *dependent child* if (his or her parent's [or guardian's] conduct[,]/ [or] the lack of a parent [or guardian] who is capable of providing appropriate care[,]) has caused the minor to suffer serious emotional damage or to face a substantial risk of suffering serious emotional damage. *Serious emotional damage* may be shown by severe anxiety, depression, withdrawal, or unruly, aggressive behavior toward himself, herself, or others. [However, a minor cannot become a *dependent child* on this basis if the parent [or guardian] willfully fails to provide mental health treatment to the minor based on a sincerely held religious belief and a less-intrusive intervention is available.]]

<D. *Dependent Child Defined: Sexually Abused*>

[A minor may become a *dependent child* if he or she:

1. Has been sexually abused;
2. Faces a substantial risk of being sexually abused by (his or her (parent/ [or] guardian)/ [or] a member of his or her household);

OR

3. Has a parent [or guardian] who has failed to adequately protect him or her from sexual abuse when the parent [or guardian] knew or reasonably should have known that the child was in danger of sexual abuse.]

<E. *Dependent Child Defined: Severe Physical Abuse Under Age Five*>

[A minor may become a *dependent child* if he or she is under five years old and has suffered severe physical abuse by a parent or by any person known by the parent if the parent knew or reasonably should have known that the person was physically abusing the child.

As used here, the term *severe physical abuse* means any of the following:

1. A single act of abuse that causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death;
2. A single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling;
3. More than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness;

OR

4. The willful, prolonged failure to provide adequate food.]

<F. Dependent Child Defined: Parent or Guardian Caused Death>

[A minor may become a *dependent child* if his or her parent [or guardian] caused the death of another child through abuse or neglect.]

<G. Dependent Child Defined: Left Without Support>

[A minor may become a *dependent child* if he or she has been left without any provision for support.]

[A minor may become a *dependent child* if he or she has been voluntarily surrendered according to law and has not been reclaimed within the 14-day period following that surrender.]

[A minor may become a *dependent child* if his or her parent [or guardian] has been incarcerated or institutionalized and cannot arrange for the child's care.]

[A minor may become a *dependent child* if his or her relative or other adult custodian with whom he or she resides or has been left is unwilling or unable to provide care or support for the child, the parent's whereabouts are unknown, and reasonable efforts to locate the parent have been unsuccessful.]

<H. Dependent Child Defined: Freed for Adoption>

[A minor may become a *dependent child* if he or she has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights, or an adoption petition has not been granted.]

<I. *Dependent Child Defined: Acts of Cruelty*>

[A minor may become a *dependent child* if he or she has been subjected to an act or acts of cruelty by (his or her (parent/ [or] guardian)/ [or] a member of his or her household), or the parent [or guardian] has failed to adequately protect the child from an act or acts of cruelty when the parent [or guardian] knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.]

<J. *Dependent Child Defined: Sibling Abused*>

[A minor may become a *dependent child* if his or her sibling has been abused or neglected, as explained above, and there is a substantial risk that the child will be abused or neglected in the same way. The circumstances surrounding the abuse or neglect of the sibling, the mental condition of the parent [or guardian], and other factors may bear on whether there is a substantial risk to the child.]

<Delinquent Child Defined>

[A *delinquent child* is a minor whom a court has found to have committed a crime.]

[A *delinquent child* is [also] a minor who has violated a curfew based solely on age.]

[A *delinquent child* is [also] a minor who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parent [or guardian or custodian], or who is beyond the control of that person.]

[A *delinquent child* is [also] a minor who _____ <insert other grounds for delinquency from Welf. & Inst. Code, § 601>.]

<Sexual Abuse Defined>

[*Sexual abuse* includes (rape[,]/ [and] statutory rape[,]/ [and] rape in concert[,]/ [and] incest[,]/ [and] sodomy[,]/ [and] lewd or lascivious acts on a child[,]/ [and] oral copulation[,]/ [and] sexual penetration [,]/ [and] child molestation[,]/ [and] employing a minor to perform obscene acts[,]/ [and] preparing, selling, or distributing obscene matter depicting a minor).]

To decide whether the (parent/guardian/_____ <insert description of person alleged to have committed abuse>) committed (that/one of those) crime[s], please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s].

[*Sexual abuse* also includes, but is not limited to, the following:

- [Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not semen is emitted(;/.)]
- [Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person(;/.)]
- [Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose[, unless it is done for a valid medical purpose](;/.)]
- [The intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks), or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification(;/.) [However, *sexual abuse* does not include touching that may be reasonably construed as normal caretaker responsibilities, interactions with, or demonstrations of affection for the child, or acts performed for a valid medical purpose(;/.)]]
- [The intentional masturbation of the perpetrator's genitals in the child's presence(;/.)]
- [Conduct by (someone who knows that he or she is aiding, assisting, employing, using, persuading, inducing, or coercing/a person responsible for a child's welfare who knows that he or she is permitting or encouraging) a child to engage in[, or assist others to engage in,] (prostitution[,]/ [or] a live performance involving obscene sexual conduct[,]/ [or] posing or modeling, alone or with others, for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction involving obscene sexual conduct)(;/.) [A *person responsible for a child's welfare* is a (parent[,]/ [or] guardian[,]/ [or] foster parent[,]/ [or] licensed administrator or employee of a public or private residential home, residential school, or other residential institution)(;/.)]]
- [**Photographing**[**Depicting a child in [or]**] (**(K/k)nowingly** (**developing**[,] **duplicating**[,] **printing**[,] **downloading**[,] **streaming**[,] **accessing through electronic or digital media**[,] **depicting**, [or] **exchanging**,) any (film[,] photograph[,] videotape[,]

video recording/[.] negative/[.] [or] slide) knowing that it shows a child engaged in an act of obscene sexual conduct. [However, *sexual abuse* does not include (conduct by a person engaged in legitimate medical, scientific, or educational activities[;]/ [or] lawful conduct between spouses[;]/ conduct by a person engaged in law enforcement activities[;]/ [or] conduct by an employee engaged in work for a commercial film developer while acting within the scope of his or her employment and as instructed by his or her employer, provided that the employee has no financial interest in the commercial developer who employs him or her).]]]

New January 2006 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If more than one act is alleged as a basis for the charge, the court has a **sua sponte** duty to give a unanimity instruction. (*People v. Madden* (1981) 116 Cal.App.3d 212, 215–216 [171 Cal.Rptr. 897].) Give CALCRIM No. 3500, *Unanimity*. A unanimity instruction is not required if the acts “constitute a continuing course of conduct.” (*Ibid.*) See the discussion in the Bench Notes for CALCRIM No. 3500. (See also *People v. Schoonderwood* (1945) 72 Cal.App.2d 125, 127 [164 P.2d 69] [continuous course of conduct exception applied to charge of contributing to delinquency of a minor]; *People v. Dutra* (1946) 75 Cal.App.2d 311, 321–322 [171 P.2d 41] [exception did not apply].)

If the case involves allegations of child molestation and the evidence has been presented in the form of “generic testimony” about recurring events without specific dates and times, the court should determine whether it is more appropriate to give CALCRIM No. 3501, *Unanimity: When Generic Testimony of Offense Presented*. (*People v. Jones* (1990) 51 Cal.3d 294, 321–322 [270 Cal.Rptr. 611, 792 P.2d 643].) See discussion in the Related Issues section of CALCRIM No. 3500, *Unanimity*.

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

The remaining bracketed paragraphs should be given on request if relevant.

AUTHORITY

- Elements and Definitions ▶ Pen. Code, § 272.
- Willfully Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Sexual Abuse Defined ▶ Pen. Code, § 11165.1.
- Delinquent/Ward of Court Defined ▶ Welf. & Inst. Code, §§ 601–602.
- Dependent Child Defined ▶ Welf. & Inst. Code, § 300.
- Minor Defined ▶ Pen. Code, § 270e; Fam. Code, § 6500.

Secondary Sources

[2 Witkin & Epstein, California Criminal Law \(4th ed. 2012\) Sex Offenses and Crimes Against Decency § 1542](#) ~~Witkin & Epstein, California Criminal Law (3d ed. 2000) Sex Crimes and Crimes Against Decency, § 153.~~

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.20[8], Ch. 144, *Crimes Against Order*, § 144.10[1] (Matthew Bender).

RELATED ISSUES

Lesser Offense of Rape or Lewd Acts

There is disagreement regarding whether a violation of Penal Code section 272 is a necessarily lesser included offense of rape or lewd and lascivious acts. The Supreme Court concluded that it was in *People v. Greer* (1947) 30 Cal.2d 589, 597–598 [184 P.2d 512], overruled on other grounds in *People v. Fields* (1996) 13 Cal.4th 289, 308, fn. 6 [52 Cal.Rptr.2d 282, 914 P.2d 832]. However, in *People v. Bobb* (1989) 207 Cal.App.3d 88, 92 [254 Cal.Rptr. 707], disapproved on other grounds by *People v. Barton* (1995) 12 Cal.4th 186, 198, fn. 7 [47 Cal.Rptr.2d 569, 906 P.2d 531], the Court of Appeal expressly declined to follow *Greer*, concluding that “the calculus has been altered” by an intervening amendment to Welfare and Institutions Code section 601 and further faulting *Greer* for failing to analyze the elements of the lesser included offenses.

3413. Collective or Cooperative Cultivation Defense (Health & Saf. Code, § 11362.775)

(Planting[,] [or]/ cultivating[,] [or]/ harvesting[,] [or]/ drying[,] [or]/ processing) marijuana is lawful if authorized by the Medical Marijuana Program Act. The Medical Marijuana Program Act allows qualified patients [and their designated primary caregivers] to associate within the State of California to collectively or cooperatively cultivate marijuana for medical purposes, for the benefit of its members, but not for profit.

In deciding whether a collective meets these legal requirements, consider the following factors:

- 1. The size of the collective's membership;**
- 2. The volume of purchases from the collective;**
- 3. The level of members' participation in the operation and governance of the collective;**
- 4. Whether the collective was formally established as a nonprofit organization;**
- 5. Presence or absence of financial records;**
- 6. Accountability of the collective to its members;**
- 7. Evidence of profit or loss.**

There is no limit on the number of persons who may be members of a collective.

Every member of the collective does not need to actively participate in the cultivation process. It is enough if a member provides financial support by purchasing marijuana from the collective.

A *qualified patient* is someone for whom a physician has previously recommended or approved the use of marijuana for medical purposes. [¶]

***Collectively* means involving united action or cooperative effort of all members of a group.**

***Cooperatively* means working together or using joint effort toward a common end.**

***Cultivate* means to foster the growth of a plant.**

[A *primary caregiver* is someone who has consistently assumed responsibility for the housing, health, or safety of a patient who may legally possess or cultivate marijuana.]

The People have the burden of proving beyond a reasonable doubt that the defendant was not authorized to (plant[,] [or]/ cultivate[,] [or]/ harvest[,] [or]/ dry[,] [or]/ process) marijuana for medical purposes. If the People have not met this burden, you must find the defendant not guilty of this crime.]

New February 2015 [insert date of council approval](#)

BENCH NOTES

Instructional Duty

A collective or cooperative cultivation defense under the Medical Marijuana Program Act may be raised to certain marijuana charges. (See Health & Saf. Code, § 11362.775) The burden is on the defendant to produce sufficient evidence to raise a reasonable doubt that possession was lawful. (*People v. Jackson* (2012) 210 Cal.App.4th 525, 529-531, 538-539 [148 Cal.Rptr.3d 375].

AUTHORITY

- Elements ▶ Health & Saf. Code, § 11362.775.
- ~~Size of Collective and Member's Role in Cultivation Not~~ Factors To Consider ▶ *People v. Jackson* (2012) 210 Cal.App.4th 525 [148 Cal.Rptr.3d 375].~~[192 Cal.Rptr. 674].~~
- Primary Caregiver ▶ *People v. Mentch* (2008) 45 Cal.4th 274, 282–292 [85 Cal.Rptr.3d 480, 195 P.3d 1061]; *People v. Mitchell* (2014) 225 Cal.App.4th 1189, 1205-1206 [170 Cal.Rptr.3d 825].
- Defendant's Burden of Proof on Medical Marijuana Program Act Defense ▶ *People v. Jackson* (2012) 210 Cal.App.4th 525, 529-531, 538-539 [148 Cal.Rptr.3d 375].
- All Members Need Not Participate in Cultivation ▶ *People v. Anderson* (2015) 232 Cal.App.4th 1259 [182 Cal.Rptr.3d 276].

Secondary Sources

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Public Peace and Welfare, § 147.

3414–3424. Reserved for Future Use

3450. Insanity: Determination, Effect of Verdict (Pen. Code, §§ 25, 29.8)

You have found the defendant guilty of _____ <insert crime[s]>. Now you must decide whether (he/she) was legally insane when (he/she) committed the crime[s].

The defendant must prove that it is more likely than not that (he/she) was legally insane when (he/she) committed the crime[s].

The defendant was legally insane if:

1. When (he/she) committed the crime[s], (he/she) had a mental disease or defect;

AND

2. Because of that disease or defect, (he/she) was incapable of knowing or understanding the nature and quality of (his/her) act or was incapable of knowing or understanding that (his/her) act was morally or legally wrong.

Do not base a finding of not guilty by reason of insanity solely on the basis of
None of the following qualify a mental disease or defect for purposes of an
insanity defense: a personality disorder, adjustment disorder, seizure disorder, or an abnormality of personality or character made apparent only by a series of criminal or antisocial acts.

[Special rules apply to an insanity defense involving drugs or alcohol. Addiction to or abuse of drugs or intoxicants, by itself, does not qualify as legal insanity. This is true even if the intoxicants cause organic brain damage or a settled mental disease or defect that lasts after the immediate effects of the intoxicants have worn off. Likewise, a temporary mental condition caused by the recent use of drugs or intoxicants is not legal insanity.]

[If the defendant suffered from a settled mental disease or defect caused by the long-term use of drugs or intoxicants, that settled mental disease or defect combined with another mental disease or defect may qualify as legal insanity. A *settled mental disease or defect* is one that remains after the effect of the drugs or intoxicants has worn off.]

You may consider any evidence that the defendant had a mental disease or defect before the commission of the crime[s]. If you are satisfied that (he/she) had a mental disease or defect before (he/she) committed the crime[s], you may conclude that (he/she) suffered from that same condition when (he/she) committed the crime[s]. You must still decide whether that mental disease or defect constitutes legal insanity.

[If you find the defendant was legally insane at the time of (his/her) crime[s], (he/she) will not be released from custody until a court finds (he/she) qualifies for release under California law. Until that time (he/she) will remain in a mental hospital or outpatient treatment program, if appropriate. (He/She) may not, generally, be kept in a mental hospital or outpatient program longer than the maximum sentence available for (his/her) crime[s]. If the state requests additional confinement beyond the maximum sentence, the defendant will be entitled to a new sanity trial before a new jury. Your job is only to decide whether the defendant was legally sane or insane at the time of the crime[s]. You must not speculate as to whether (he/she) is currently sane or may be found sane in the future. You must not let any consideration about where the defendant may be confined, or for how long, affect your decision in any way.]

[You may find that at times the defendant was legally sane and at other times was legally insane. You must determine whether (he/she) was legally insane when (he/she) committed the crime.]

[If you conclude that the defendant was legally sane at the time (he/she) committed the crime[s], then it is no defense that (he/she) committed the crime[s] as a result of an uncontrollable or irresistible impulse.]

If, after considering all the evidence, all twelve of you conclude the defendant has proved that it is more likely than not that (he/she) was legally insane when (he/she) committed the crime[s], you must return a verdict of not guilty by reason of insanity.

New January 2006; Revised April 2008, October 2010, August 2014 *[insert date of council approval]*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on insanity when the defendant has entered a plea of not guilty by reason of insanity. (Pen. Code, § 25.)

Give the bracketed paragraph that begins with “Special rules apply” when the sole basis of insanity is the defendant’s use of intoxicants. (Pen. Code, § 29.8; *People v. Robinson* (1999) 72 Cal.App.4th 421, 427–428 [84 Cal.Rptr.2d 832].) If the defendant’s use of intoxicants is not the sole basis or causative factor of insanity, but rather one factor among others, give the bracketed paragraph that begins with “If the defendant suffered from a settled mental.” (*Id.* at p. 430, fn. 5.)

Do **not** give CALCRIM No. 224, *Circumstantial Evidence: Sufficiency of Evidence*, or CALCRIM No. 225, *Circumstantial Evidence: Intent or Mental State*. These instructions have “no application when the standard of proof is preponderance of the evidence.” (*People v. Johnwell* (2004) 121 Cal.App.4th 1267, 1274 [18 Cal.Rptr.3d 286].)

There is no sua sponte duty to inform the jury that an insanity verdict would result in the defendant’s commitment to a mental hospital. However, this instruction must be given on request. (*People v. Moore* (1985) 166 Cal.App.3d 540, 556 [211 Cal.Rptr. 856]; *People v. Kelly* (1992) 1 Cal.4th 495, 538 [3 Cal.Rptr.2d 677, 822 P.2d 385].)

If the court conducts a bifurcated trial on the insanity plea, the court **must** also give the appropriate post-trial instructions such as CALCRIM No. 3550, *Pre-Deliberation Instructions*, CALCRIM No. 222, *Evidence*, and CALCRIM No. 226, *Witnesses*. (See *In re Ramon M.* (1978) 22 Cal.3d 419, 427, fn. 10 [149 Cal.Rptr. 387, 584 P.2d 524].) These instructions may need to be modified.

AUTHORITY

- Instructional Requirements. ▶ Pen. Code, §§ 25, 29.8; *People v. Skinner* (1985) 39 Cal.3d 765 [217 Cal.Rptr. 685, 704 P.2d 752].
- Burden of Proof. ▶ Pen. Code, § 25(b).
- Commitment to Hospital. ▶ Pen. Code, §§ 1026, 1026.5; *People v. Moore* (1985) 166 Cal.App.3d 540, 556 [211 Cal.Rptr. 856]; *People v. Kelly* (1992) 1 Cal.4th 495, 538 [3 Cal.Rptr.2d 677, 822 P.2d 385].
- Excluded Conditions. ▶ Pen. Code, § 29.8.
- Anti-Social Acts. ▶ *People v. Fields* (1983) 35 Cal.3d 329, 368–372 [197 Cal.Rptr. 803, 673 P.2d 680]; *People v. Stress* (1988) 205 Cal.App.3d 1259, 1271 [252 Cal.Rptr. 913].
- Long-Term Substance Use. ▶ *People v. Robinson* (1999) 72 Cal.App.4th 421, 427 [84 Cal.Rptr.2d 832].

Secondary Sources

~~1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Defenses, §§ 9-16, 18-201; Witkin & Epstein, California Criminal Law (3d ed. 2000) Defenses, §§ 7-16.~~

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 73, *Defenses and Justifications*, § 73.02 (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 86, *Insanity Trial*, § 86.01A (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 124, *Jurisdiction and Disposition Hearings*, § 124.04 (Matthew Bender).

RELATED ISSUES

Bifurcated Proceedings

The defendant has a right to bifurcated proceedings on the questions of sanity and guilt. (Pen. Code, § 1026.) When the defendant enters *both* a “not guilty” and a “not guilty by reason of insanity” plea, the defendant must be tried first with respect to guilt. If the defendant is found guilty, he or she is then tried with respect to sanity. The defendant may waive bifurcation and have both guilt and sanity tried at the same time. (Pen. Code, § 1026(a).)

Extension of Commitment

The test for extending a person’s commitment is not the same as the test for insanity. (*People v. Superior Court (Williams)* (1991) 233 Cal.App.3d 477, 490 [284 Cal.Rptr. 601].) The test for insanity is whether the accused “was incapable of knowing or understanding the nature and quality of his or her act or of distinguishing right from wrong at the time of the commission of the offense.” (Pen. Code, § 25(b); *People v. Skinner* (1985) 39 Cal.3d 765, 768 [217 Cal.Rptr. 685, 704 P.2d 752].) In contrast, the standard for recommitment under Penal Code section 1026.5, subdivision (b), is whether a defendant, “by reason of a mental disease, defect, or disorder represents a substantial danger of physical harm to others.” (*People v. Superior Court, supra*, 233 Cal.App.3d at pp. 489–490; *People v. Wilder* (1995) 33 Cal.App.4th 90, 99 [39 Cal.Rptr.2d 247].)

Legal and Moral Wrong

The wrong contemplated by the two-part insanity test refers to both the legal wrong and the moral wrong. If the defendant appreciates that his or her act is criminal but does not think it is morally wrong, he or she may still be criminally

insane. (See *People v. Skinner* (1985) 39 Cal.3d 765, 777–784 [217 Cal.Rptr. 685]; see also *People v. Stress* (1988) 205 Cal.App.3d 1259, 1271–1274 [252 Cal.Rptr. 913].)

Temporary Insanity

The defendant's insanity does not need to be permanent in order to establish a defense. The relevant inquiry is the defendant's mental state at the time the offense was committed. (*People v. Kelly* (1973) 10 Cal.3d 565, 577 [111 Cal.Rptr. 171, 516 P.2d 875].)

Instruction	Commentator	Comment	Response
CALCRIM Nos. 1700, 1750, 1801, 1802, 1850, 1900, 1957, 1970, 1971, 2304, 2377, 219, 221, 3454, 358, 521, 570, 603, 800, 1017, 1018, 1170, 1180, 1252, 1500, 1863, 2100, 2101, 2110, 2111, 2113, 2410, 2411, 2902, 2980, 3413, 3450	Ashleigh Aitken, President, Orange County Bar Association, on behalf of that association	Agree with all proposed changes.	No response required.
CALCRIM Nos. 1703, 1750, 1801, 1802, 1900, 1957, 1970, 1971, 2304, 2377, 219, 221, 3453, 358, 521, 570, 603, 1017, 1018, 1170, 1180, 1252, 1500, 1863, 2100-2113, 2410, 2411, 2902, 3413, 3450.	Assistant Public Defender Mark Brown on behalf of Orange County Public Defender's Office	Agree with all proposed changes.	No response required.
CALCRIM No. 1700	Assistant Public Defender Mark Brown on behalf of Orange County Public Defender's Office	<p>The prosecution is required to prove each element beyond a reasonable doubt. Therefore, delete the following language: "If the evidence supports a defense theory that the crime was shoplifting as defined by Penal Code section 459.5, give the following paragraph and appropriate following language."</p> <p>If the above provision is not deleted, what is</p>	The committee agrees to clarify the introduction to paragraphs 3A, 3B, and 3C. It disagrees with deleting the other introductory language, however, because the commentator's suggestion may not be sufficient to explain the necessary distinction between "shoplifting" and burglary.

Instruction	Commentator	Comment	Response
		<p>“the following paragraph” referred to in that provision?</p> <p>In the alternative, replace the above provision with the following: “If the evidence indicates the defendant entered a building, give the appropriate paragraphs below.”</p> <p>Elements 3B and 3C refer to “the structure,” which is not used earlier in the instruction. Therefore, replace “The structure” with “The building.”</p>	<p>The committee disagrees with this specific suggestion but has made its own revision.</p> <p>The committee disagrees with this comment because under the language of the statute, a taco truck could be a commercial establishment. Therefore, the term “building” is too limiting.</p>
CALCRIM No. 1703	Ashleigh Aitken, President, Orange County Bar Association, on behalf of that association	Penal Code § 459.5 also requires “the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950)”. Subdivision (b) does not permit the charging of burglary where shoplifting is charged. For this reason the statutory requirement of “the value of the property that is taken or intended to be taken does not exceed nine hundred fifty dollars (\$950)” should be listed as the 4th element in this instruction where the additional use of CALCRIM 1700 is inappropriate.	The committee disagrees with this comment because the District Attorney must choose whether to charge a violation of Penal Code section 459 or 459.5. There is no upper limit on the value of a 459.5 if charged.
CALCRIM Nos. 1750, 1900, 1957	Hon. W. Kent Hamlin, Superior Court of California, County of Fresno	To be consistent with other instructions where the People have alleged a special allegation and the jury is asked to determine whether the allegation has been proven, the proposed change to Instruction 1750 (PC496(a)) needs the following language after the final paragraph advising that the jury is to further determine whether the value of the involved property exceeds \$950:	The committee has modified CALCRIM Nos. 1750, 1900, and 1957 using some of the suggested language, but deleted the sentence about reasonable doubt in proving the “allegations.” There is only one allegation in each of these instructions, but several elements, so the reference is potentially confusing, and they must all be proved beyond a reasonable doubt.

Instruction	Commentator	Comment	Response
		<p>“The People have the burden of proving each allegation beyond a reasonable doubt. If you have a reasonable doubt whether the property received has a value of more than \$950, you must find this allegation has not been proved.”</p> <p>A similar paragraph (substituting the appropriate language in place of “property received”) needs to be made to Instructions 1900 (PC470(a)) and 1957 (PC484g(b)).</p>	
CALCRIM No. 1801	Mike Roddy, Executive Officer, on behalf of the Superior Court of California, County of San Diego	The specific examples of theft (i.e. from the person, of an automobile/firearm/horse, fruits/nuts, fish/shellfish/aquacultural products), and the “taking from the person” portion of the “related issues” section are superfluous once you specify that petty theft is any theft under \$950 and grand theft is any theft over \$950.	The committee disagrees with this comment because these are unique categories of theft and should still be specified to the jury.
CALCRIM No. 1850	Assistant Public Defender Mark Brown on behalf of Orange County Public Defender’s Office	<p>A defendant may now be convicted of PC 666 only if the prosecution proves the defendant has been previously convicted of at least one of the enumerated theft offenses AND has been previously convicted of at least one of the enumerated serious or violent felonies, is required to register pursuant to the Sex Offender Registration Act, OR has previously been convicted of PC 368(d) or (e). Since each of these are elements of the offense, CALCRIM 1850 should be modified as follows:</p> <p>If you find the defendant guilty of petty theft, you must then decide whether the</p>	<p>The committee disagrees with this comment and prefers the cross-reference to “qualifying offenses” for two reasons:</p> <ol style="list-style-type: none"> 1. To avoid confusion with the prior theft element, and 2. Because the “qualifying offenses” are not an element of the crime, but a prerequisite to charging the crime.

Instruction	Commentator	Comment	Response
		<p>People have proved the following additional allegations:</p> <p>1. The defendant has been convicted of at least one theft offense before and served a term in a penal institution as a result of that conviction.</p> <p>AND</p> <p>2A.The defendant has been convicted of a violation of _____ <insert applicable serious or violent code provision or PC 368 section violated>, on _____ <insert date of conviction>, in the _____ <insert name of court>, in Case Number _____ <insert docket or case number>(;/.)</p> <p>OR</p> <p>2B.The defendant is required to register pursuant to the Sex Offender Registration Act.</p> <p>It has already been determined that the defendant is the person named in exhibits _____ <insert numbers or descriptions of exhibits>.</p> <p>Since a prior conviction of at least one of the enumerated serious or violent felonies is a requirement to register pursuant to the Sex Offender Registration Act, or a prior</p>	

Instruction	Commentator	Comment	Response
		<p>conviction of PC 368(d) or (e) is an element of the offense, the following new provision in CALCRIM 1850 should be modified as follows:</p> <p>To be convicted of a violation of Penal Code section 666, defendant must (1) have been previously convicted of a crime listed in Penal Code section 667(e)(2)(c)(iv), or previously convicted under Penal Code section 368(d) or (e); or be required to register under the Sex Offender Registration Act.</p>	
CALCRIM No. 1970	Mike Roddy, Executive Officer, on behalf of the Superior Court of California, County of San Diego	In the element (first new) paragraph about finding prior convictions of offenses listed in PC 476a(b), perhaps it will be handled by the verdict forms, but looks like the jurors must actually find three or more violations of those listed code sections, so just wondering if the element should state that; (2) in the “lesser included offense” it looks like this paragraph too needs to reference three or more prior theft violations, not just a single prior theft violation.	The committee agrees with this comment and has revised the instruction accordingly.
CALCRIM No. 2980	Assistant Public Defender Mark Brown on behalf of Orange County Public Defender’s Office	<p>Section 11165.1(c)(3) requires the person to knowingly develop[,] duplicate[,] print [,] download[,] stream[,] access through electronic or digital media[,] [or] exchange, any film[,] photograph[,] videotape[,] video recording...</p> <p>Add the word “knowingly.”</p>	The committee agrees with this comment and has made an appropriate revision.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 21, 2015

Title

Trial Courts: Permanent Authorization for Remote Video Proceedings and Implementation of Rule 4.105 in Traffic Infraction Cases

Agenda Item Type

Action Required

Effective Date

September 1, 2015

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.220; revise forms TR-500-INFO, TR-505, and TR-510

Date of Report

July 22, 2015

Recommended by

Traffic Advisory Committee
Hon. Mark S. Borrell, Chair
Court Technology Advisory Committee
Hon. Terence L. Bruiniers, Chair

Contact

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Executive Summary

The Traffic Advisory Committee and the Court Technology Advisory Committee recommend amending rule 4.220 of the California Rules of Court, which authorizes trial courts to establish remote video pilot projects in cases involving traffic infraction violations, and revising corresponding forms to convert the rule into a standing rule of court and to implement new rule 4.105. To comply with rule 4.105, the effective date of all changes is September 1, 2015.

Recommendation

The Traffic Advisory Committee and the Court Technology Advisory Committee recommend:

1. Amending rule 4.220 to allow trial courts to continue conducting remote video proceedings in eligible traffic cases after January 1, 2016, when the rule would otherwise sunset, and to implement rule 4.105; and

2. Revising *Instructions to Defendant for Remote Video Proceeding* (form TR-500-INFO), *Notice and Waiver of Rights and Request for Remote Video Arraignment and Trial* (form TR-505), and *Notice and Waiver of Rights and Request for Remote Video Proceeding* (form TR-510) to implement rule 4.105.

The text of the amended rule is attached at pages 9–11; the revised forms are attached at pages 12–14.

Previous Council Action

The Judicial Council adopted rule 4.220 and corresponding forms, effective from February 1, 2013, to January 1, 2016. The Traffic Advisory Committee and Court Technology Advisory Committee recommended rule 4.220 based on a suggestion from the Superior Court of Fresno County. Seeking to ameliorate the impact of multiple court closures on the public, the court saw remote video proceedings (RVP) as an effective way to continue offering services to outlying areas.

In trial courts that institute RVP pilot projects under rule 4.220, defendants in eligible cases may elect to appear at trial by two-way video from remote locations designated by the court. Under the rule, RVP is authorized in cases involving alleged infractions of the Vehicle Code or any local ordinance adopted under the Vehicle Code, excluding alcohol and drug infractions under article 2, chapter 12, division 11 of the Vehicle Code and cases filed with an informal juvenile and traffic court under Welfare and Institutions Code sections 255 and 256. Participation in the RVP pilot project is voluntary; the defendant must request to proceed by RVP and submit a signed notice of rights and waiver form to the court (form TR-505 or form TR-510).

The Superior Court of Fresno County applied for and received council approval for an RVP pilot project under rule 4.220. It then adopted a local rule, effective March 1, 2013, establishing the pilot project. The court began offering RVP in April at remote sites in Mendota and Coalinga. To date, the Superior Court of Fresno County is the only court to have requested and received council authorization for an RVP pilot project.

On June 8, 2015, the Judicial Council adopted rule 4.105 on an urgency basis to address concerns about court procedures for deposit of bail when defendants challenge infraction citations in court. Rule 4.105 states that courts must allow traffic infraction defendants to appear for arraignment and trial without the deposit of bail, unless a specified exception applies. It also requires courts to inform traffic infraction defendants of the option to appear in court without the deposit of bail in any instructions or other materials provided to the public that relate to bail for traffic infractions, including written instructions and forms. Implementation of the rule's notice requirements is to occur "as soon as reasonably possible, but no later than September 15, 2015."

Rationale for Recommendation

This rules proposal has two components: (1) amendments to rule 4.220 and revisions to form TR-500-INFO that would convert the rule to a standing rule of court and (2) additional amendments to the rule and revisions to forms TR-500-INFO, TR-505, and TR-510 that would implement new rule 4.105.

Because the council has required that all changes to written instructions and forms implementing rule 4.105 be in effect by September 1, 2015, these amendments and revisions were not circulated for public comment.

Permanent authorization for RVP

The Superior Court of Fresno County has submitted four semiannual reports describing its experience under the pilot project. RVP usage has steadily increased since the court initiated the pilot project, although these cases still represent a small fraction of the total number of citations issued near the remote sites. Technical issues have been infrequent and minor, and they have been resolved promptly by onsite court staff. Postappearance surveys reflect the participants' overall high satisfaction with RVP and the quality of the services provided. Based on its positive experience under the pilot project, the Superior Court of Fresno County has requested that rule 4.220 be amended to allow the court to continue offering RVP in eligible cases after January 1, 2016.

Unless rule 4.220 is amended, the Superior Court of Fresno County and other trial courts would no longer be authorized to offer RVP in traffic infraction cases after January 1, 2016. This proposal is necessary to allow courts to continue conducting RVP in eligible cases. It would make no substantive changes to the rule's procedural requirements or the scope of RVP proceedings.

Eliminate sunset and convert to standing rule of court. This proposal eliminates the sunset language in rule 4.220 and converts the rule into a standing rule. Trial courts could offer RVP in eligible cases after they have adopted a local rule permitting RVP and have notified the Judicial Council. Trial courts would no longer be required to request and receive council authorization for pilot projects implementing RVP.

Specifically, subdivision (q), which currently provides the effective dates for the rule, is removed, as are other references to effective dates in subdivisions (a)(1) and (c). In addition, subdivision (a), which provides the authorization for RVP, is amended by removing subpart (2) because this subpart requires that courts request and receive council authorization to conduct pilot projects. Other "pilot project" and "trial project" references are also stricken from subdivisions (a), (c), (e), (o), and (p). In addition, language is added to subdivision (p) to provide that courts must notify the council that they will begin offering RVP under the rule.

Retain current reporting requirement. Under subdivision (p), trial courts “must institute procedures as required by the Judicial Council for collecting and evaluating information about that court’s pilot project and must prepare semiannual reports to the Judicial Council that include an assessment of the costs and benefits of the project.” The reporting requirement in subdivision (p) is retained.

Under the current guidelines, these reports contain information about the number and types of RVP conducted for arraignments, trials, and other proceedings; the locations and facilities used to conduct RVP; the type of technology used to conduct RVP; the number of appeals from RVP and the outcome of those appeals; and the number of cases where the law enforcement officer appeared at court instead of at the remote location with the defendant. The reports also include information that would help the council evaluate whether it should modify rule 4.220 or expand RVP to other case types.

Retaining this semiannual reporting requirement will enable the council to continue monitoring the use of this new technology in the courts. This information and data will provide valuable feedback to the council as it considers whether to expand RVP to other case types.

Retain current procedural requirements and scope. This proposal makes no substantive changes to the procedural requirements under the rule for implementing RVP at the trial courts; nor does it expand RVP to other case types. The Superior Court of Fresno County has expressed its satisfaction with the current requirements and has sought no modification to the RVP procedure stated in the rule. Its semiannual reports reflect no issues with the implementation of this procedure.

Make minor changes to form TR-500-INFO. Form TR-500-INFO provides information and instructions to defendants about RVP, including how to request RVP, how to appeal the court’s ruling, and which rights the defendant will be waiving by requesting to appear in RVP. This proposal makes the language of the form consistent with the amendments to rule 4.220 by removing references to a “pilot project.”

Implementation of rule 4.105

Rule 4.105(b) provides that courts must allow a defendant to appear for arraignment and trial without the deposit of bail, unless one of three exceptions applies: (1) courts must require the deposit of bail when the defendant elects a statutory procedure¹ that requires the deposit of bail; (2) courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court; and (3) courts may require a deposit of bail before trial if the court finds, based on the circumstances of a particular case, that the defendant is unlikely to

¹ For example, Vehicle Code section 40519(a) authorizes defendants who have received a written notice to appear to declare their intention to plead not guilty and deposit bail before the notice-to-appear date for purposes of electing to schedule an arraignment and trial on the same date or on separate dates.

appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. (Cal. Rules of Court, rule 4.105(c).)

In addition, rule 4.105(d) provides that courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials that courts provide for the public and that relate to bail for traffic infractions, including any written instructions and forms.

Amend rule 4.220 to cross-reference rule 4.105. This proposal contains one proposed amendment to rule 4.220 related to implementing rule 4.105. Subdivision (f) of rule 4.220 governs the deposit of bail for RVP. This proposal replaces the language in subdivision (f) describing the applicable procedures for depositing bail with a cross-reference to rule 4.105. Adding the cross-reference—in lieu of incorporating language from rule 4.105 directly into subdivision (f)—facilitates any future amendments to the procedures for depositing bail. Any amendments to rule 4.105 would automatically apply to the deposit of bail in RVP, thereby guaranteeing uniform bail procedures irrespective of whether the defendant appears in court or by remote video.

Make implementing changes to forms TR-500-INFO, TR-505, and TR-510. This proposal also implements rule 4.105 by making changes to forms TR-500-INFO, TR-505, and TR-510. Proposed are revisions to all three forms to notify defendants of their rights to appear for arraignment without depositing bail and to request that a court trial be scheduled without bail.

In addition, form TR-500-INFO provides information and instructions to defendants about RVP. The proposed changes revise form TR-500-INFO to inform defendants that the court may require the deposit of bail to schedule a trial and that bail should accompany the request for RVP as ordered by the court.

Form TR-505 is required when defendants request to appear by RVP for arraignment and trial on the same day. It is used to notify defendants of their rights and for defendants to waive certain rights. This proposal revises form TR-505 to require the defendant to waive the “right to appear in person in court on separate days for arraignment without deposit of bail and for trial without deposit of bail unless ordered by the court.”

This proposal also makes implementing changes to form TR-510, which is required when defendants request to appear for arraignment or trial on separate days. It is used to notify defendants of their rights and for defendants to waive certain rights. This proposal adds a space to form TR-510 where the court, if it decides to require bail for trial, must specify its reasons. This revision implements subdivision (c)(3) of rule 4.105, which provides that courts must state its reasons for requiring the deposit of bail before trial.

Lastly, this proposal makes minor revisions to forms TR-500-INFO, TR-505, and TR-510 to incorporate the comments received by the Superior Court of Fresno County, as described below.

Comments, Alternatives Considered, and Policy Implications

Only part of this rules proposal was circulated for public comment. Because rule 4.105 was adopted by the Judicial Council on an urgent basis and requires that implementing changes be in effect by September 1, 2015, those implementing changes were not circulated for public comment.

Comments

The circulated rules proposal addressed only changes related to converting rule 4.220 to a standing rule of court. Five comments were received in response to the circulated rules proposal. Four commentators stated their support of the proposal without amendment.

The Superior Court of Riverside County agreed with the proposal with modification. It stated that courts “should have the discretion to implement without needing approval of the Judicial Council” because approval “makes implementation more burdensome and time consuming” and “eliminates discretion of [the] trial court.” The committee agrees that council approval would be burdensome for trial courts. Nevertheless, the committee has not modified this proposal given that it already addresses the court’s concerns. The proposed amendments eliminate the requirement that courts request and receive council approval before implementing RVP. Instead, courts would only have to notify the council. The committees reasoned that providing notice would not unduly burden the courts while ensuring that the council remains apprised of any courts that decide to offer RVP in traffic infraction cases.

In response to the proposed changes to implement rule 4.105, the Superior Court of Fresno County reviewed and recommended additional amendments to rule 4.220 and revisions to forms TR-500-INFO, TR-505, and TR-510. These included amending subdivision (e)(2) of rule 4.220 to replace references to “arraignment on a date that is separate from a trial date” with “arraignment only.” The committees decided not to pursue this recommendation because the current language in the rule is more consistent with the formatting and language of the Vehicle Code and is less susceptible to confusion.

In addition, the Superior Court of Fresno County recommended replacing the phrase “at court” with “in court” on form TR-500-INFO and advising defendants of additional possible consequences for failing to appear under item 2.e. of forms TR-505 and TR-510. The committees agreed with the court’s recommended revisions to the forms, but slightly modified the suggested language on forms TR-505 and TR-510 to clarify that if a defendant fails to appear, a court may either issue an arrest warrant or impose a civil assessment, but cannot do both.

Alternatives

Because rule 4.105 requires implementing changes, the Traffic Advisory Committee and Court Technology Advisory Committee did not consider alternatives to the proposed amendments and form revisions related to rule 4.105. The committees did, however, consider three alternatives related to converting rule 4.220 to a standing rule of court.

Alternative 1: Eliminate notice and semiannual reporting requirements. The first alternative would have amended rule 4.220 by removing not only the sunset language, but also any requirement that trial courts provide notice and semiannual reports to the Judicial Council. This alternative would have had the benefit of reducing the time that trial courts must spend preparing and submitting notices and semiannual reports to the council—and that the council and its staff must devote to reviewing them. The advisory committees specifically requested comments regarding the costs and benefits of retaining the semiannual reporting requirement, and whether subdivision (p) of rule 4.220 should be amended to include a sunset provision, such that courts would be required to submit semiannual reports only for a certain period of years. No comments were submitted in response to this request.

Implementing the first alternative would have limited the council's oversight of RVP at the trial court level. The council and its staff would have had no effective means of knowing which trial courts were conducting RVP or of gathering information and data about the implementation of RVP by trial courts, including any issues, concerns, or creative solutions. Such information and data presented in the semiannual reports could have proved useful to the advisory committees as they reviewed possibilities for expanding RVP at the trial courts.

Alternative 2: Extend pilot project. The second alternative would have amended rule 4.220 by extending the effective date for an additional period of years, but not eliminating the sunset language, thereby continuing the provisional nature of the rule. This option would have given the council an opportunity to carefully review each court's request for a pilot project. In comparison with the above proposal, however, this alternative would have resulted in an additional cost to trial courts because they would have needed to prepare and present an application to the Judicial Council for council approval before they could have started offering RVP in traffic infraction cases. It would also have required that the council and its staff spend time reviewing these applications and, if desired, amend the rule to extend or eliminate the effective date at a later time. The benefit of this additional oversight would have been minimal in light of the notice and semiannual reporting requirements required in this proposal.

Alternative 3: Allow rule to sunset. The last alternative would have sought no amendment to the rule and would have allowed it to sunset. Weighing in favor of this approach is the fact that only one trial court has requested and implemented an RVP pilot project since rule 4.220 was adopted two years ago. So far, no other courts have expressed to the advisory committees or Judicial Council staff an interest in establishing a pilot project. Yet, this alternative would have effectively ended the Superior Court of Fresno County's RVP program on January 1, 2016. The Superior Court of Fresno County has successfully implemented the pilot project, has reported its overall satisfaction with the project, and has expressed an interest in continuing to offer these services in outlying areas. Moreover, this alternative would have prevented other courts from conducting RVP in traffic cases in the future. As trial courts are forced to close courthouses in the face of budget constraints, they may wish to follow the Superior Court of Fresno County's lead and elect to offer RVP in remote locations in an effort to increase public access.

Implementation Requirements, Costs, and Operational Impacts

Implementation of this proposal will allow the Superior Court of Fresno County to continue offering RVP, which has preserved access to the public in outlying areas and resulted in efficiencies and cost savings for the court. It will require the court to make revised forms available to the public, which may incur minor costs. Otherwise, it will have no effect on the court because the court is currently preparing and submitting semiannual reports.

For other trial courts that may decide to offer RVP under the rule, the implementation costs will decrease slightly. These courts will no longer be required to apply for and receive Judicial Council approval before offering RVP in eligible cases under the rule. Instead, they will only need to notify the council. Otherwise, implementation and its associated costs will remain the same as they are under the current rule. Collaboration between courts, local cities and counties, law enforcement, and members of the public will be required.

Planning and allocating resources—including physical locations, technology, and staffing—will be necessary. There will also be a need to train public employees to act as deputy clerks, provide security for the remote video trials at the local community facilities, and provide information to the public. These additional expenses may be offset by savings for the courts in terms of reduced maintenance of court facilities, and for the public and law enforcement in terms of reduced travel time and expense. Because implementation is voluntary, each court will determine if the benefits outweigh the costs in deciding whether to offer RVP.

Attachments and Links

1. Cal. Rules of Court, rule 4.220, at pages 9–11
2. Forms TR-500-INFO, TR-505, and TR-510, at pages 12–14
3. Comments chart, at page 15

Rule 4.220 of the California Rules of Court is amended, effective September 1, 2015, to read:

1 **Rule 4.220. Remote video proceedings in traffic infraction cases**

2
3 **(a) Authorization for ~~pilot project~~ remote video proceedings**

4
5 ~~(1) With the approval of the Judicial Council, a~~ A superior court may establish by
6 local rule a ~~pilot project through December 31, 2015, to~~ permit arraignments, trials,
7 and related proceedings concerning the traffic infractions specified in (b) to be
8 conducted by two-way remote video communication methods under the conditions
9 stated below.

10
11 ~~(2) To obtain approval of the Judicial Council to conduct a pilot project for~~
12 ~~remote video proceedings under this rule, a court must submit an application~~
13 ~~to the council that includes details on what procedures and forms the court~~
14 ~~intends to institute for processing cases in the pilot project.~~

15
16 **(b) * * ***

17
18 **(c) Application**

19
20 This rule establishes the minimum procedural requirements and options for courts
21 that conduct a ~~pilot project for~~ remote video proceedings for cases in which a
22 defendant is charged with an infraction as defined in (b) and the defendant's
23 requests to proceed according to this rule ~~is for a trial or related proceeding that is~~
24 ~~set for a date after January 31, 2013.~~

25
26 **(d) * * ***

27
28 **(e) ~~Scope of court pilot project~~ Required procedures and forms and request by**
29 **defendant**

30
31 A court that conducts remote video proceedings under this rule must comply with
32 the ~~The~~ following procedures and use the required forms in this section ~~must be~~
33 ~~included in the court's pilot project for remote video proceedings.~~ In addition to
34 following the standard provisions for processing traffic infraction cases, the
35 defendant may request to proceed by remote video proceeding as provided below.

36
37 (1)–(2) * * *

38
39 (3) *Trial on a date that is separate from the date of arraignment*

40
41 The following procedures apply to a remote video proceeding when the court

1 grants a defendant's request at arraignment to have a trial set for a date that is
2 separate from the date of the arraignment:

3
4 (A) * * *

5
6 (B) To proceed by remote video trial, the defendant must sign and file a
7 *Notice and Waiver of Rights and Request for Remote Video Proceeding*
8 (form TR-510) with the clerk by the appearance date indicated on the
9 *Notice to Appear* or a continuation of that date granted by the court and
10 must deposit bail with the form as required by the court under section
11 (f).

12
13 (C) * * *

14
15 (4) *Judicial Council forms for remote video proceedings*

16
17 The following forms must be made available by the court and used by the
18 defendant to implement the procedures that are required by a court's pilot
19 project under this rule:

20
21 (A)–(C) * * *

22
23 **(f) Deposit of bail**

24
25 (1) ~~If a defendant requests to proceed by remote video arraignment and trial as~~
26 ~~provided in section (e)(1), the defendant must deposit bail, at the same time~~
27 ~~the request is filed, in the amount established in the uniform traffic penalty~~
28 ~~schedule under Vehicle Code section 40310.~~

29
30 (2) ~~If a defendant requests to proceed by remote video proceeding for a trial as~~
31 ~~provided in section (e)(3), the judicial officer may require deposit of bail, at~~
32 ~~the same time the request for remote video proceeding is filed, in the amount~~
33 ~~established in the uniform traffic penalty schedule under Vehicle Code~~
34 ~~section 40310.~~

35
36 Procedures for deposit of bail to process requests for remote video proceedings
37 must follow rule 4.105.

38
39 **(g)–(l) * * ***

40
41 **(m) Noncompliance**

1 If the defendant fails to comply with this rule (including depositing the bail amount
2 when required, signing and filing all required forms, and complying with all time
3 limits and due dates), the court may deny a request for a remote video proceeding
4 and may proceed as otherwise provided by statute.
5

6 (n) * * *

7
8 (o) **Local rules and forms**
9

10 A court establishing a remote video ~~trial project~~ proceedings under this rule may
11 adopt such local rules and additional forms as may be necessary or appropriate to
12 implement the rule and the court's local procedures not inconsistent with this rule.
13

14 (p) **Notice and collection of information and reports on remote video proceedings**
15 **pilot project**
16

17 Each court that establishes a ~~pilot project~~ local rule authorizing remote video
18 proceedings under this rule must notify the Judicial Council, institute procedures as
19 required by the ~~Judicial~~ council for collecting and evaluating information about that
20 court's ~~pilot project~~ program, and ~~must~~ prepare semiannual reports to the ~~Judicial~~
21 council that include an assessment of the costs and benefits of ~~the project~~ remote
22 video proceedings at that court.
23

24 (q) **~~Effective dates~~**
25

26 ~~This rule is adopted effective February 1, 2013, and remains in effect only until~~
27 ~~January 1, 2016, and as of that date is repealed, unless a rule adopted before~~
28 ~~January 1, 2016, repeals or extends that date.~~

INSTRUCTIONS TO DEFENDANT FOR REMOTE VIDEO PROCEEDING

A court **may by local rule** permit remote video arraignments and trials for traffic infraction cases. (Cal. Rules of Court, rule 4.220.) If the court where your case is filed **permits remote video proceedings (RVP)**, you may be able to appear by video as allowed by local rule at a remote location designated by the court without having to appear in person **in court**. **RVP are** available in cases involving Vehicle Code infractions or local ordinances adopted under the Vehicle Code. The procedure does not apply to traffic offenses that involve drugs or alcohol or are filed in Informal Juvenile and Traffic Court. The procedure provides a convenient process for resolving cases by consideration of disputed facts and evidence with the use of two-way audiovisual communication between the court and a local facility. Defendants who **request** to appear by RVP must waive (give up) certain rights that apply to trial of criminal offenses, including traffic infractions. The instructions below explain procedures for requesting RVP for traffic infraction cases:

1. To request arraignment and trial on the same day, you may file a *Notice and Waiver of Rights and Request for Remote Video Arraignment and Trial* (form TR-505). To request RVP for arraignment or trial on separate days, you may file a *Notice and Waiver of Rights and Request for Remote Video Proceeding* (form TR-510).
2. Return the completed and signed form to the clerk with payment of bail as ordered by the court. A completed form TR-505 or TR-510 with a deposit of the required bail payment must be received by the clerk by the appearance date on the Notice to Appear citation or continuation date granted by the court. If the form is received after the due date or without deposit of bail as required, the court may require a court appearance or bail deposit to schedule **a trial**. **Failure to file the form and deposit bail as required by the due date may subject you to other charges, penalties, assessments, and actions, including a civil assessment under Penal Code section 1214.1 of up to \$300 and a hold on your driver's license.**
3. When the clerk receives a timely request for RVP with payment of the **bail as ordered** by the court, the court will rule on the request and provide notice of the court's decision on eligibility for RVP. If the court denies the request, the court may order you to respond within 10 court days of the notice of the order to schedule an arraignment or trial or appear in court. If the court approves the request, the court will notify you and the officer of the extended date and location to appear. The court may grant a request by the officer **who** issued the ticket and any other witnesses to appear in court to testify and be cross-examined while you appear at the remote location.
4. After a remote video trial is completed, if you are dissatisfied with the court's judgment, you may file an appeal under California Rules of Court, rules 8.901–8.902 within 30 days of the judgment. A new trial (“trial de novo”) is not allowed. Always include your citation number in any correspondence with the court.
5. **IMPORTANT:** You have the right to appear in court for an in-person arraignment **without deposit of bail** and trial at the court. If you appear in court for your case, your rights include:
 - The right to be represented by an attorney employed by you;
 - The right to request court orders without cost to subpoena and compel the attendance of witnesses and the production of evidence on your behalf;
 - The right to appear in person in court before a judicial officer for an arraignment to be informed of the charges against you, to be advised of your rights, and to enter a plea **without deposit of bail**;
 - The right to request that a **court** trial be scheduled **without bail** for a date that is after your arraignment in court;
 - The right to have a speedy trial;
 - The right to be physically present in court at all stages of the proceedings including, but not limited to, presentation of testimony and evidence and arguments on questions of law at trial and sentencing; and
 - The right to have the witnesses testify under oath in court and to confront and cross-examine witnesses in court.

By voluntarily requesting to appear for arraignment and/or trial by RVP, you will agree to waive (give up):

- Your right to appear in person in court before a judicial officer for arraignment and/or trial;
- Your right to a speedy trial within 45 days; and
- Your right to be physically present in court for trial and sentencing and all stages of the proceedings, including, but not limited to, presentation of testimony and evidence and arguments on questions of law, and confrontation and cross-examination in person of the officer **who** issued the ticket and other witnesses.

NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT (Name):	
NOTICE AND WAIVER OF RIGHTS AND REQUEST FOR REMOTE VIDEO ARRAIGNMENT AND TRIAL (Veh. Code, §§ 40901 and 40519(a))	CITATION NUMBER/CASE NUMBER: BAIL AMOUNT: DUE DATE (For Filing Form):

1. Notice to Defendant of Rights

- You have the right to appear in person in court before a judicial officer for arraignment, to be informed of the charges against you, to be advised of your rights, and to enter a plea **without deposit of bail**.
- You have the right to request **at arraignment** that a **court** trial be scheduled for a date after your arraignment.
- You have the right to a speedy trial within 45 days of submitting your request for a trial.
- You have the right to be physically present in court for trial and sentencing and all other stages of the proceedings, including, but not limited to, presentation of testimony and evidence and arguments on questions of law.
- You have the right to have witnesses testify under oath in court and to confront and cross-examine them in court.

2. Waiver of Rights and Request for Remote Video Arraignment and Trial with Deposit of Bail:

a. I, (print name): _____, am the defendant in this traffic infraction case and understand that my rights include those listed above and also the right to hire an attorney and subpoena witnesses. I understand that a remote video proceeding (RVP) uses two-way electronic audiovisual communication between the court and me at the remote location instead of having me physically appear in the courtroom. By requesting RVP, I agree to appear at the designated off-site location and agree that the court may order me to appear in my case by RVP for any related proceedings. By requesting that the court allow me to proceed without being physically present in the courtroom and **to** appear for all proceedings by RVP, I voluntarily elect to waive (give up) the following rights:

INITIALS

- My right to appear in person in court **on separate days** for arraignment **without deposit of bail** and **for** trial **without deposit of bail unless ordered by the court;**
- My right to a speedy trial within 45 days; and
- My right to be physically present in the court for trial and sentencing and all other stages of the proceedings, including, but not limited to, presentation of testimony and evidence and arguments on questions of law, and confrontation and cross-examination of witnesses in court.

I have read the *Instructions to Defendant for Remote Video Proceeding* (form TR-500-INFO) and request to appear by RVP in this case. I understand that the court may permit the officer that issued the ticket and any other witnesses to appear in court to testify and be cross-examined while I appear at the remote location and may deny my request at any time and order me to be present in the courtroom for any proceedings conducted in this case.

- b. I enclose bail of \$_____.
- c. I need an interpreter: Yes No (language): _____
- d. I have an attorney to represent me: Yes No (name of attorney): _____

e. I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct. I promise to appear for all proceedings ordered by the court in this case. I understand that if I do not appear as promised, the court may **forfeit any bail that I posted; hold the trial in my absence;** impose a civil assessment of up to \$300 under Penal Code 1214.1, **or issue a warrant for my arrest;** and report the failure to appear to the Department of Motor Vehicles for a hold on my license.

Date: _____ ▶ _____
DEFENDANT'S SIGNATURE

_____ (Defendant's Phone Number) _____ (Defendant's Street Address/City/State/ZIP) _____ (Defendant's E-mail Address)

Please return this form to the court clerk in person or mail to:

[Court location]

TO BE COMPLETED BY CLERK

Date: _____ Approved by: _____
DEPUTY CLERK

Hearing set for (type of hearing): _____ on (date): _____ at (time): _____

Location: [off-site location] [off-site location]

NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT (Name):	CITATION NUMBER/CASE NUMBER:
NOTICE AND WAIVER OF RIGHTS AND REQUEST FOR REMOTE VIDEO PROCEEDING (Veh. Code, § 40901)	Is Bail Required By Court? <input type="checkbox"/> Yes <input type="checkbox"/> No DUE DATE (For Form):

1. Notice to Defendant of Rights

- You have the right to appear in person in court before a judicial officer **without deposit of bail** for an arraignment to be informed of the charges against you, be advised of your rights, enter a plea, **and request that a trial be scheduled without deposit of bail.**
- You have the right to request **with deposit of bail** that a trial be scheduled for the same date as your arraignment.
- You have the right to a speedy trial within 45 days of submitting your request for a trial.
- You have the right to be physically present in court for trial and sentencing and all other stages of the proceedings including, but not limited to, presentation of testimony and evidence and arguments on questions of law.
- You have the right to have witnesses testify under oath in court and to confront and cross-examine them in court.

2. Waiver of Rights and Request for Remote Video Arraignment or Trial Under Rule: _____

a. I, (print name): _____, am the defendant in this traffic infraction case and understand that my rights include those listed above and also the right to hire an attorney and subpoena witnesses. I understand that a remote video proceeding (RVP) uses two-way electronic audiovisual communication between the court and me at the remote location instead of having me physically appear in the courtroom. By requesting RVP I agree to appear at the designated off-site location and agree that the court may order me to appear in my case by RVP for any related proceedings. By requesting that the court allow me to proceed without being physically present in court and appear for all proceedings by RVP, I voluntarily elect to waive (give up) the following rights for (check one) arraignment trial:

INITIALS

- My right to appear for arraignment in person in court before a judicial officer and have a trial on the same day;
- My trial right to a speedy trial within 45 days; and
- My trial right after arraignment to be physically present in the court for trial and sentencing and all other stages of the proceedings, including, but not limited to, presentation of testimony and evidence and arguments on questions of law, and confrontation and cross-examination of witnesses in court.

I have read the *Instructions to Defendant for Remote Video Proceedings* (form TR-500-INFO) and request to appear by RVP in this case. I understand that the court may permit the officer who issued the ticket and any other witnesses to appear in court to testify and be cross-examined while I appear at the remote location and may deny my request at any time and order me to be present in the courtroom for any proceedings conducted in this case.

b. If bail is required for trial: \$_____ is enclosed. **Reason for bail:** _____

c. I need an interpreter: Yes No (language): _____

d. I have an attorney to represent me: Yes No (name of attorney): _____

e. I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct. I promise to appear for all proceedings ordered by the court in this case. I understand that if I do not appear as promised the court may **forfeit any bail that I posted; hold the trial in my absence;** impose a civil assessment of up to \$300 under Penal Code 1214.1 **or issue a warrant for my arrest;** and report the failure to appear to the Department of Motor Vehicles for a hold on my license.

Date: _____ ▶ _____
(Defendant's Phone Number) (Defendant's Street Address/City/State/ZIP) (Defendant's E-mail Address)

Please return this form to the court clerk in person or mail to:

[Court location]

TO BE COMPLETED BY CLERK

Date: _____ Approved by: _____
DEPUTY CLERK

Hearing set for (type of hearing): _____ on (date): _____ at (time): _____

Location: [off-site location] [off-site location]

SPR15-31**Trial Courts: Permanent Authorization for Remote Video Proceedings in Traffic Infraction Cases** (amend rule 4.220; revise form TR-500-INFO)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Law Offices of Azar Elihu Azar Elihu, Attorney Los Angeles	A	No narrative comments submitted.	
2.	Orange County Bar Association By Ashleigh Aitken, President Newport Beach	A	No narrative comments submitted.	
3.	Superior Court of Los Angeles Los Angeles	A	No narrative comments submitted.	
4.	Superior Court of Riverside County By Marita Ford Riverside	AM	Court's should have the discretion to implement without needing approval of the Judicial Council; makes implementation more burdensome and time consuming; eliminates discretion of trial court.	CTAC and TAC agree. In fact, this rules proposal would eliminate this requirement. Superior courts would not need Judicial Council approval before implementing RVP in traffic infraction cases. Instead, courts would only have to notify the council, which would be less burdensome and time consuming for the courts.
5.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer San Diego	A	No narrative comments submitted.	



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Court Facilities: Sale of Equity Interest in Banning Courthouse as Surplus Property	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
Recommended by	Date of Report
Facilities Policies Working Group	July 27, 2015
Hon. Douglas P. Miller, Chair	Contact
Hon. Marla O. Anderson, Vice-chair	Eunice Calvert-Banks, 415-865-4048 eunice.calvert-banks@jud.ca.gov
	Leslie Miessner, 415-865-4056 leslie.miessner@jud.ca.gov

Executive Summary

In keeping with the Judicial Council's authority and responsibility to dispose of surplus court facilities under Government Code section 70391(c) and rule 10.183 of the California Rules of Court, the Facilities Policies Working Group recommends that the Judicial Council (1) declare as surplus property the Judicial Council's 60.37% equity interest in the Banning Courthouse, and (2) authorize the sale of the Equity Interest to the County of Riverside.

Recommendation

The Facilities Policies Working Group (FPWG) recommends that the Judicial Council, effective August 21, 2015:

1. Declare the Judicial Council's equity interest in the Banning Courthouse to be surplus property;
2. Authorize the sale of the equity interest to the County of Riverside;

3. Direct staff to negotiate an Equity Rights Purchase Agreement and any other documents necessary to complete this transaction; and
4. Delegate to the Administrative Director the authority to sign such documents.

Previous Council Action

The Judicial Council has disposed of equity interests in court facilities in other contexts. In a few instances in the Judicial Council's capital program, Judicial Council equity in a court facility has been the consideration given to a county in exchange for land or site improvements for a new courthouse.

In November 2012 and again in September 2013, the Judicial Council executive office approved dispositions of equity interests in two closed court facilities in county-owned buildings.¹ In each of these cases, the counties had also ceased operations in the buildings that housed the court facilities and are now selling the buildings as surplus county property with the Judicial Council entitled to its share of the proceeds.²

Most recently at the June 26, 2015 Judicial Council meeting, the Judicial Council approved the disposition of state equity in the Chino Courthouse (San Bernardino County) and the Inyo Historic Courthouse (Inyo County).

Rationale for Recommendation

In 2007, as part of the Senate Bill 1732 (Stats. 2002, ch. 1082) transfer process, the Judicial Council entered into (1) a Transfer Agreement for the Transfer of Responsibility for Court Facility (Transfer Agreement), and (2) a Joint Occupancy Agreement (JOA) with the county. Under the Transfer Agreement, the Judicial Council accepted responsibility for the court facility which represented a 60.37% equity interest in the Banning Courthouse, while the County of Riverside retained title to the land and building.³ The Superior Court of Riverside County vacated the facility and commenced operations in the new Banning Justice Center in May 2015.

The court is supportive of staff efforts to dispose of the Judicial Council's equity interest in the old facility, and would like staff to move forward as quickly as possible with a sale of the equity interest to the county.

¹ Memorandum re: Disposition of Portola Courthouse (Plumas County), dated November 6, 2012, and signed by Curtis L. Child on November 13, 2012; and Memorandum re: Disposition of Willits Court Facility (Mendocino County), dated September 16, 2013, and signed by Curt Soderlund on September 20, 2013.

² These transactions are of the same kind as the proposed Banning Courthouse disposition. The proceeds will be deposited into the State Court Facilities Construction Fund. (See footnote 10 below, and accompanying text.)

³ Under authority of Gov. Code § 70323(b)(1). All future statutory references are to the Government Code unless otherwise indicated.

Although the facility has been vacated, the council continues to remain responsible for the costs of operations and maintenance under the provisions of section 70343(a)(2).⁴ Once the facility is disposed of, the judicial branch will realize financial savings on maintenance costs (utilities, landscaping, vandalism prevention/cleanup, etc.).

The Facilities Policies Working Group (FPWG)⁵ reviewed the status of the courthouse and determined that this facility was not being used by the court and since the court had moved into the new replacement courthouse, the old facility would not be used for court operations. The court is in favor of having the council declare the council's equity interest in the facility as surplus and sell the equity interest back to the county at fair market value in accordance with statute. The FPWG voted to recommend that the council declare the equity interest in the Banning Courthouse as surplus and authorize the sale of the equity interest to the County of Riverside.

Equity in the Trial Court Facilities Act

"Equity" is an important concept in the Trial Court Facilities Act of 2002, SB 1732 (Escutia), codified in Government Code sections 70301 through 70404, as amended (the Act), though it is nowhere defined and is specifically mentioned in only four places:

- The uncodified Legislative Findings and Declarations of the Act include a list of "guiding principles" for carrying out the transfer of responsibility of court facilities from the counties to the states, one of which is "the preservation of the respective equity interests of the county and the state in a joint-use or historic facility."⁶
- Another guiding principle for the transfers in section (d)(6) of the Legislative Findings and Declarations is that "[c]ounties shall not be entitled to compensation for any equity value of court facilities transferred to the state."

⁴ Section 70343(a)(2) provides as follows:

(2) Unless otherwise specifically provided by agreement between the Judicial Council and the county, the Judicial Council and the county shall share operation and maintenance costs in a shared use building as follows:

(A) Each entity is responsible for the operation and normal day-to-day maintenance costs of that space in the building exclusively used by the entity.

(B) Each entity shall share the operating and normal day-to-day maintenance costs for the common space in the building based on the proportionate amount of space exclusively used by each entity.

(C) Each entity shall share the major building repairs and maintenance affecting the entire building, including, but not limited to, common areas, based on the proportionate amount of space exclusively used by each entity.

⁵ The FPWG supports the Judicial Council's Executive and Planning Committee in its role of overseeing the council's policies and procedures regarding court facilities under rule 10.11(c) of the California Rules of Court.

⁶ Ch. 1082, Stats. 2002, § 1(d)(4).

- In section 70325, which addresses transfers of buildings subject to bonded indebtedness, the Act provides that “during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or ownership rights, in, to, or with respect to, the court facility.”⁷
- Section 70344 addresses the narrow situation of a shared-use building where either the court or the county occupies 80% or more of the building. In that case, the majority occupant can require the other party to vacate the building upon reasonable notice and compensation “for its equity in the facility and for relocation costs at the fair market value.”⁸

The provisions of the Act addressing administration of shared-use buildings (§§ 70341–70342) rely on the concept of equity without actually using that word. Read together, these sections of the Act make clear that an equity interest in a shared-use building is an ownership interest that is exclusive, permanent, and without payment of rent or other occupancy charges to the other party, regardless of how title is held. If the court/Judicial Council or county vacates or otherwise fails to use its exclusive use area, the rights and obligations of the parties under the JOA continue in full force and effect unless they agree to another arrangement memorialized in a subsequent agreement that supersedes the JOA. Any such arrangement, whether voluntary or, in the case of a 20% or less equity interest, involuntary, must involve compensation for the vacated exclusive use area and corresponding equity interest at its fair market value.

Disposition of a closed court facility in which the Judicial Council holds only an equity interest in county-owned building

The Judicial Council has previously declared surplus an equity interest in the Chino courthouse, another shared-use court facility where title is held by a county.

Authority. Government Code section 70391 vests in the Judicial Council the authority to dispose of surplus court facilities acquired through the transfer process under the Act, in compliance with section 11011.

Section 70391 states, in pertinent part:

The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law: [¶] . . . [¶]

⁷ Section 70325(c).

⁸ Section 70344(b).

- (c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:
 - (1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011

Because section 70391(c) applies to court facilities following a “transfer of responsibility,” it applies to (A) those court facilities in which the Judicial Council has taken both (i) transfer of responsibility and (ii) title to the land and building, as well as to (B) those court facilities in which the Judicial Council has taken a (i) transfer of responsibility but only (ii) an equity interest in the land and building (while the county continues to retain title under section 70323(b)(1)). The court facility in the Chino Courthouse is an example of the latter.

The court facility as “surplus” under section 70391(c). By generally requiring compliance with section 11011, section 70391(c) imposes on the Judicial Council the obligation to determine whether a given closed court facility is “surplus” and thus eligible for disposal under its authority. This lack of a specific definition of “surplus” is mitigated by reference to the three nonexclusive examples listed in sections 11011(a)(1)–(3) of lands that would be “in excess of” an agency’s foreseeable needs:

- (1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.
- (2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.
- (3) Land not identified by the state agency within its master plans for facility development.

Since section 11011 provides the general statutory framework and process for disposition of excess *state-owned* property⁹ by the Department of General Services (DGS), the requirements set forth in section 11011 (such as reporting to the Legislature as surplus and subsequent legislative authorization to dispose of the property) are not directly applicable here. However, the examples listed in sections 11011(a)(1)–(3) are useful here for guidance on whether the Banning Courthouse should be declared surplus. Under this standard, the Judicial Council must declare as surplus property any court facility that is not being utilized, is underutilized, or is not identified within the judicial branch’s master plans for facility development.

⁹ Section 11011 addresses “proprietary state lands.” (See § 11011(a).)

In this case, the Superior Court of Riverside County vacated the Banning Courthouse, moved into the newly constructed Banning Justice Center, and commenced operations there as of May 4, 2015. Prior to construction of the new courthouse, the old Banning Courthouse was identified for disposition within the judicial branch’s facility master plans. Accordingly, the Judicial Council must declare the courthouse to be surplus property.

Deposit of Proceeds into State Court Facilities Construction Fund. Section 70391(c) identifies the State Court Facilities Construction Fund, subject to limited exceptions not relevant here, as the fund in which to deposit any money received for surplus court facilities.¹⁰

County’s right of first refusal

Under section 70391(c)(2), the Judicial Council is required to consult with the county concerning the disposition of the Banning Courthouse, and the county has the right to request that the facility be offered to the county at fair market value before being offered to another government agency. Section 70391(c)(2) provides:

The Judicial Council shall consult with the county concerning the disposition of the facility. Notwithstanding any other law, including Section 11011, when requested by the transferring county, a surplus facility shall be offered to that county at fair market value prior to being offered to another state agency or local government agency.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Riverside County in which the court (1) confirmed it has no plans to reoccupy the Banning Courthouse, and (2) indicated it fully supports the permanent disposition of the council’s equity interest in the facility.

Alternative actions considered

One alternative action would be for the Judicial Council to retain its interest in the Banning Courthouse in its vacant state, and continue to be responsible for its share of ongoing operation and maintenance costs. Although the Banning Courthouse is not occupied, the Judicial Council continues to be responsible for its share of expenses such as utilities, landscaping, and trash removal. This alternative is not recommended.

Another alternative action would be for the Judicial Council staff to try to lease or license the court space in the Banning Courthouse to another user. There is not a high demand for

¹⁰ Although article III, section 9, of the California Constitution also addresses where to deposit the proceeds of surplus property, and would trump any irreconcilable statute, there is no conflict as the constitutional provision does not apply here. (Cf. *People v. Navarro* (1972) 7 Cal.3d 248, 260 [where a statute and constitutional provision conflict, the constitutional provision controls].) Article III, section 9, requires that “the proceeds from the sale of surplus *state property*” must be used to pay the principal and interest on bonds issued under the 2004 Economic Recovery Bond Act. (Cal. Const., art. III, § 9, italics added.) Accordingly, the constitutional provision does not apply where, as here, the court facilities are located in county-owned, shared-use buildings.

commercial space in the City of Banning, especially space that is built out for court use and shared with the County of Riverside. The Judicial Council would continue to incur ongoing operations and maintenance costs while this former court facility stands empty during the marketing of the space to potential lessees or licensees. This alternative is not recommended.

Implementation Requirements, Costs, and Operational Impacts

In moving forward with the disposition of a surplus court facility, staff will, in compliance with section 70391(c)(2), consult with the County of Riverside concerning the disposition. If requested by the county, the equity interest in the facility shall be offered to the county at fair market value before being offered to any other state or local government agency. In discussions with the county, staff has been informed that the county is very interested in reacquiring the equity interest in the facility. If for some reason the county changes its position and is no longer interested in reacquiring the equity interest in the facility, the equity interest will then be offered to other state and local government agencies before staff considers other methods of disposition. The costs relating to the disposition of the equity in the building would be shared with the County of Riverside on a pro rata basis.

Attachments and Links

1. [Cal. Rules of Court, rule 10.183:](http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183)
http://www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_183.
2. [Government Code section 70391:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391.
3. [Government Code section 11011:](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011)
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=11011.



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 20 OR 21, 2015

Title	Agenda Item Type
Court Facilities: Naming Request for the Merced – New Los Banos Courthouse	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 20 OR 21, 2015
Recommended by	Date of Report
Court Facilities Advisory Committee	July 24, 2015
Hon. Brad R. Hill, Chair	Contact
Hon. Patricia M. Lucas, Vice-chair	William J. Guerin, 415-865-7510 william.guerin@jud.ca.gov
	Kelly Quinn, 818-558-3078 kelly.quinn@jud.ca.gov

Executive Summary

The Court Facilities Advisory Committee recommends that the Judicial Council approve the request for naming the new courthouse under construction in the City of Los Banos as the *Robert M. Falasco Justice Center*.

Recommendation

The Court Facilities Advisory Committee recommends that the Judicial Council, effective August 20 OR 21, 2015, take the following action:

1. Approve the request for naming the new courthouse under construction in the City of Los Banos as the *Robert M. Falasco Justice Center*.

Previous Council Action

The council has taken no previous action on this courthouse naming request.

In April 2014, the council adopted its revised *Courthouse Naming Policy* available at www.courts.ca.gov/documents/jc-20140425-itemJ.pdf.

Rationale for Recommendation

Currently, the Superior Court of California, County of Merced's existing courthouse in the City of Los Banos is named the *Robert M. Falasco Justice Center*. This existing facility is planned for replacement by the new courthouse capital project that is currently under construction in the City of Los Banos. The superior court requests that the name be shifted from the existing courthouse to the new courthouse (see Attachment A). The local community supports this request, as expressed by both the City of Los of Banos and the County of Merced (see Attachments B and C). The completion of this new courthouse capital project is expected in fall 2016, and in order to incorporate the requested name into the signage for the new courthouse, council approval now is timely for staff to prepare the signage design submittal for fabrication in fall 2015.

The advisory committee reviewed the naming request against section III.B.b of the council's *Courthouse Naming Policy* and found it complies with all requirements with one exception: the Hon. Robert M. Falasco has been deceased for about three years, while the naming policy allows naming of a courthouse after individuals that have been deceased for a minimum of 10 years. The advisory committee recommends that the council approve this request with the exception, because doing so simply shifts the name of the existing courthouse to the new courthouse.

Comments, Alternatives Considered, and Policy Implications

Council staff did not solicit comments on the recommended council action. No alternatives to the recommended action were considered.

Per the council's naming policy, requests involving names of persons for court facilities require evaluation by the advisory committee's Subcommittee on Courthouse Names, with a recommendation to the full advisory committee. At this time, the position of chair of the Subcommittee on Courthouse Names is vacant and why the naming request was taken up directly by the full advisory committee at its meeting on July 16, 2015. In advance of that advisory committee meeting, this naming request was posted for public comment on July 13, 2015, and no public comments were received.

Implementation Requirements, Costs, and Operational Impacts

The costs associated with the design and fabrication of the signage for the new courthouse planned in the City of Los Banos are paid from the project's Senate Bill 1407 capital-outlay budget.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachments

1. Attachment A: Courthouse naming request from the Superior Court of California, County of Merced, July 2, 2015
2. Attachment B: Letter supporting the naming request from the City of Los Banos, June 29, 2015
3. Attachment C: Letter supporting the naming request from the County of Merced, June 25, 2015



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FROM THE CHAMBERS
OF

BRIAN L. McCABE

PRESIDING JUDGE

July 2, 2015

Hon. Samuel K. Feng, Chair
Trial Court Facilities Subcommittee
445 Golden Gate Avenue
San Francisco, CA 94102

RE: Courthouse Names

Dear Honorable Feng,

As you are aware, we recently held the groundbreaking ceremony for our new Los Banos Courthouse, which will be completed in the fall of 2016. The present Los Banos County Courthouse facility is named after one of our former Superior Court judges, Judge Robert Falasco. He was instrumental in the building of the current courthouse in 1980.

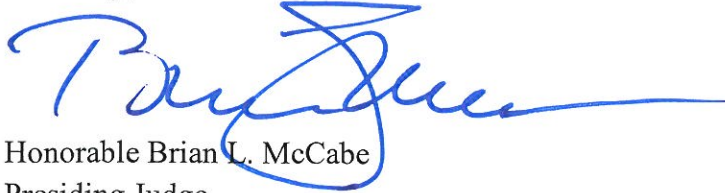
The Superior Court Judicial Officers, together with the Merced County Board of Supervisors and City of Los Banos, respectfully request that his name be transferred to the new Los Banos courthouse. Judge Falasco, was a native of Los Banos. He graduated from Santa Clara law school in 1951. He was elected to the Justice Court in 1958 and served in that capacity until 1977. In 1977 he was appointed to the Municipal Court bench until 1982. He was appointed to the Superior Court bench and finished his 26 continuous years as a judge in 1985. He served on various boards in the Los Banos community. He is credited for mentoring many jurists, attorneys and law enforcement officers throughout his career.

Judge Falasco passed away in 2012. He was revered by all who had the honor to know him. We realize that the policy on naming a courthouse states that the person must have been deceased for at least ten years. However, we would request that the committee make an exception to this policy and allow his name to remain on our new state courthouse.

Attached for your review are letters of support from the County Board of Supervisors and the City of Los Banos.

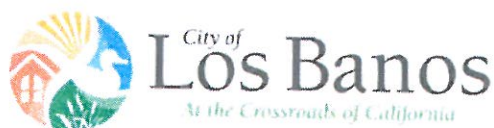
Thank you in advance for your consideration of this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brian McCabe", with a long horizontal flourish extending to the right.

Honorable Brian L. McCabe
Presiding Judge

Cc: Trial Court Facilities Subcommittee Members
Merced Superior Court Executive Committee
Linda Romero Soles, Court Executive Officer
Merced County Board of Supervisors
Michael Villalta, Mayor, City of Los Banos



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520 J Street
Los Banos, CA 93635

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June 29, 2015

The Honorable Brian McCabe
Presiding Judge, Merced County Superior Court
627 West 21st Street
Merced, CA 95340

RE: NAMING OF LOS BANOS SUPERIOR COURTHOUSE

Dear Judge McCabe:

The City of Los Banos would like to express our support for the new Los Banos Superior Courthouse, currently under construction, to retain the name of "Robert M. Falasco Justice Center."

Robert Falasco, a retired superior court judge and Los Banos native, could always be relied upon to provide fair-minded and knowledgeable rulings. He served as a mentor, respected leader and a loyal friend and touched the lives of many in the San Joaquin Valley.

Some of his many accomplishments include 26 years as a judge, a trustee for the Los Banos Elementary School, a veteran of the U.S. Army Air Corps, director of the Merced County Fair Board, and being named a Papal Knight of the Order of St. Gregory by Pope John Paul VI. He was also instrumental in building both Our Lady of Fatima Catholic School and the Los Banos Memorial Hospital. His life's work culminated in 2008, when the Los Banos Division of the Merced County Superior Court was named after him.

Judge Falasco led an extraordinary life filled with compassion, stewardship, and a deep appreciation for the law, and the City of Los Banos believes it would be appropriate to keep his name on the new Los Banos Courthouse facility.

Thank you for your consideration in this matter.

Sincerely,

Mayor Michael Villalta
City of Los Banos



June 25, 2015

The Honorable Brian McCabe
 Presiding Judge, Merced County Superior Court
 627 West 21st Street
 Merced, CA 95340

RE: NAMING OF LOS BANOS SUPERIOR COURTHOUSE

Dear Judge McCabe:

With construction of the new Los Banos Superior Courthouse underway, the Merced County Board of Supervisors would like to express its support for the new facility to retain the name of "Robert M. Falasco Justice Center."

Robert Falasco, a retired superior court judge and Los Banos native, was a true role model for the community. He exemplified compassion, fairness and toughness in the courtroom. Outside the courtroom, he was a family man with a witty sense of humor and a modest personality.

Some of his accomplishments include 26 years as a judge, a trustee for the Los Banos Elementary School, a veteran of the U.S. Army Air Corps, director of the Merced County Fair Board, and being named a Papal Knight of the Order of St. Gregory by Pope John Paul VI. His life's work culminated in 2008, when the Los Banos Division of the Merced County Superior Court was named after him.

For his actions inside and outside the courtroom, the Merced County Board of Supervisors believes it would be appropriate to keep his name on the new Los Banos courthouse facility.

Your consideration in this matter is greatly appreciated.

Sincerely,

John Pedrozo, Chairman
 Merced County Board of Supervisors

Board of Supervisors

John Pedrozo
 Supervisor, District One

Hubert "Hub" Walsh, Jr.
 Supervisor, District Two

Daron McDaniel
 Supervisor, District Three

Deidre F. Kelsey
 Supervisor, District Four

Jerry O'Banion
 Supervisor, District Five

James L. Brown
 County Executive Officer

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 20 OR 21, 2015

Title	Agenda Item Type
Court Facilities: Senate Bill 1407 Project Funding Requests and <i>Judicial Branch AB 1473 Five-Year Infrastructure Plan</i> for Fiscal Year 2016–2017	Action Required
	Effective Date
	August 20 OR 21, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	July 24, 2015
Recommended by	Contact
Court Facilities Advisory Committee Hon. Brad R. Hill, Chair Hon. Patricia M. Lucas, Vice-Chair Hon. Jeffrey W. Johnson, Chair of the Courthouse Cost Reduction Subcommittee	William J. Guerin, 415-865-7510 william.guerin@jud.ca.gov Kelly Quinn, 818-558-3078 kelly.quinn@jud.ca.gov

Executive Summary

The Court Facilities Advisory Committee, to meet the state Department of Finance's September 2015 deadline, recommends the submission of funding requests for the next phase of Senate Bill 1407 projects eligible for available SB 1407 funds and of the annual update of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for fiscal year (FY) 2016–2017.

Recommendation

The Court Facilities Advisory Committee recommends that the Judicial Council, effective August 20 OR 21, 2015, take the following action:

1. Submit to meet the state Department of Finance's (DOF's) September 2015 deadline funding requests for the next phase of SB 1407 projects eligible for available SB 1407 funds (see table 1 [p. 10] of the attached plan) and the attached annual update of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for FY 2016–2017.

2. Delegate to the Administrative Director the authority to make technical changes to the FY 2016–2017 SB 1407 project funding requests and the five-year plan document for submission to the DOF, subject to the review and approval of the chair and vice-chair of the Court Facilities Advisory Committee and the chair of the advisory committee’s Courthouse Cost Reduction Subcommittee.

Previous Council Action

Capital-outlay project funding requests and the accompanying five-year plan are submitted annually to meet DOF deadlines, which tend to be set approximately one year in advance from the passage of the next fiscal year’s state budget. On August 22, 2014, and to meet the DOF’s September 2014 submission deadline, the council directed its staff to submit funding requests for the next phase of SB 1407 projects eligible for available SB 1407 funds and the annual update of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for FY 2015–2016.

Rationale for Recommendation

SB 1407 Project Funding Requests for FY 2016–2017

To advance the progress of the SB 1407 courthouse construction program next fiscal year, the advisory committee recommends that SB 1407 projects move forward as presented in table 1 (p. 10) of the attached plan. With available funding requested in FY 2016–2017 for 8 courthouse capital projects, 2 projects would be reauthorized for Working Drawings, 2 projects would start Working Drawings, and 4 projects would start Construction. In July 2015, the advisory committee reviewed this proposal in the context of capital-outlay project funding received in FY 2015–2016 through the enactment of the 2015 Budget Act (FY 2015–2016).

Judicial Branch AB 1473 Five-Year Infrastructure Plan

The Trial Court Facilities Act of 2002 (Gov. Code, §§ 70301–70403) specifies the Judicial Council’s authority and responsibility to exercise policymaking authority over appellate and trial court facilities including, but not limited to, planning, construction, and acquisition, and to “[r]ecommend to the Governor and the Legislature the projects to be funded by the State Court Facilities Construction Fund.” (Gov. Code, § 70391(1)(3).) Council staff assists the council in meeting its responsibilities by, among other things, annually submitting an updated five-year plan to the state Department of Finance, which includes capital-outlay plans for the superior courts and the Courts of Appeal, including the Supreme Court of California.¹ The Judicial Council is the authority responsible for adopting annual updates to the five-year plan and for directing its staff to submit the five-year plan to the DOF. The five-year plan provides the

¹ This five-year plan conveys the judicial branch’s funding needs for new courthouse construction only; funding for improvements to existing facility infrastructure is not considered part of the judicial branch’s planned capital outlay. At the direction of the Judicial Council, all modifications to existing facilities are addressed through the trial court facility modifications program and in accordance with the *Trial Court Facility Modifications Policy*, available at www.courts.ca.gov/documents/jc-20141212_tcfmp-update.pdf.

executive and legislative branches with a context for annual capital-outlay project funding requests.²

Table 1 (p. 10) of the attached plan identifies each of the projects, relevant phases, and phase amounts associated with the continuation-funding requests for FY 2016–2017. The estimated cost of each phase is determined from project schedules that factor in funding made available in FY 2015–2016 through the enactment of the 2015 Budget Act. To prepare the final version for submission to the DOF, technical revisions to table 1 and other sections of the attached plan may be necessary in the process described in recommendation 2.

Trial Court Capital-Outlay Plan

The Trial Court Capital-Outlay Plan, which is included in Appendix A of the attached plan, has been modified based on updating project budgets to 2015 dollars. The capital-outlay plan continues to present a total of 100 projects that have never received funding, as well as 10 projects that were funded by SB 1407 but were indefinitely delayed by the council in October 2012 and January 2013, due to ongoing redirection of over \$100 million in SB 1407 construction funds. These 110 trial court capital-outlay projects are categorized as follows: 55 are new construction projects to replace obsolete existing court facilities, 35 are renovations to existing court facilities, and 20 are expansions of existing or future court facilities. Of these 110 projects, 16 are in the Immediate Need Priority Group and 18 are in the Critical Need Priority Group. Each update of the capital-outlay plan presents only projects without an identified funding source. This capital-outlay plan for FY 2016–2017 is dated August 20 OR 21, 2015, is sorted by both total score and court, and is shown in unescalated January 2015 dollars. A summary of the capital-outlay plan—including its current, unescalated total budget of \$7.3 billion (in January 2015 dollars)—is provided in table 5 (p. 26) of the attached plan.

Comments, Alternatives Considered, and Policy Implications

In advance of the advisory committee meeting on July 16, 2015, council staff presented the proposed FY 2016–2017 funding requests (i.e., table 1 [p. 10] of the attached plan) as an information item to the Joint Court Facilities Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees on July 1, 2015. Also in advance of the advisory committee meeting on July 16, 2015, the FY 2016–2017 funding requests and attached plan was posted for public comment on July 13, 2015, and no public comments were received. No alternatives to the recommended action were considered.

² Assembly Bill 1473 (Hertzberg; Stats. 1999, ch. 606), codified at Government Code sections 13100–13104, requires the Governor to submit annually to the Legislature (1) a proposed five-year plan addressing the infrastructure needs of state executive branch agencies, schools, and postsecondary institutions; and (2) a proposal for funding the needed infrastructure. Because the Judicial Council of California is not an executive branch agency, its projects are not technically required to be included in the Governor’s five-year infrastructure plan under AB 1473. However, because Government Code section 13103 empowers the Governor to order *any entity* of state government to assist in preparation of the infrastructure plan, the Judicial Council on a voluntary basis has historically submitted an annual infrastructure plan to the state Department of Finance to facilitate executive branch approval of judicial branch capital-outlay project funding requests.

Implementation Requirements, Costs, and Operational Impacts

No costs are involved in implementing the recommended council action, because it is performed on behalf of the council by its staff.

The *Status of Judicial Branch Courthouse Construction Program* is available at www.courts.ca.gov/documents/SB1407-courthouse-projects.pdf.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III (Modernization of Management and Administration) and Goal VI (Branchwide Infrastructure for Service Excellence).

Attachment

1. *Judicial Branch AB 1473 Five-Year Infrastructure Plan FY 2016–2017, August 2015*

Judicial Branch
AB 1473 Five-Year
Infrastructure Plan
Fiscal Year 2016–2017

SUPREME COURT OF CALIFORNIA
CALIFORNIA COURTS OF APPEAL
SUPERIOR COURTS OF CALIFORNIA

ADOPTED BY THE JUDICIAL COUNCIL:
AUGUST 20 OR 21, 2015

SUBMITTED TO THE
STATE DEPARTMENT OF FINANCE:
SEPTEMBER 2, 2015



JUDICIAL COUNCIL
OF CALIFORNIA

Judicial Branch
AB 1473
Five-Year Infrastructure Plan
Fiscal Year 20165–20176

Supreme Court of California
California Courts of Appeal
Superior Courts of California

| Adopted by the Judicial Council on August **20 OR 21**, 20154
Including Subsequent Technical Revisions
| Submitted to the State Department of Finance on ~~January~~ September 25,
2015

Purpose and Acknowledgments

This report has been prepared by the Capital Program office of the Judicial Council of California. At the direction of the Judicial Council, it is updated annually for submission to the state Department of Finance along with funding requests for courthouse capital-outlay projects.

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Contents

I.	Introduction.....	1
A.	Legislative Framework: Structural Changes to the Responsibility for the Court System	3
B.	Judicial Council of California.....	3
C.	Trial and Appellate Courts.....	4
D.	Completed Transfers of Trial Court Facilities	5
E.	Court Facilities Advisory Committee—Advisory Committee to the Judicial Council	5
F.	California’s Court Facilities.....	6
G.	Map of California Court Jurisdictions	9
II.	Summary of Fiscal Year 2016–2017 Funding Requests and Capital-Outlay Needs for SB 1407 Trial Court Projects	10
III.	Appellate Courts Five-Year Infrastructure Plan	13
A.	Purpose of and Services Provided by the Supreme Court	13
B.	Summary of Existing Supreme Court Facilities	13
1.	Supreme Court of California – San Francisco and Los Angeles	14
2.	Supreme Court of California – San Francisco and Los Angeles, <i>continued</i>	15
C.	Purpose of and Services Provided by the Courts of Appeal	15
D.	Planning for Future Appellate Court Facilities	15
E.	Summary of Appellate Court Projects	17
F.	Summary, Inventory, and Evaluation of Existing Appellate Court Facilities.....	18
1.	First Appellate District – San Francisco	18
2.	Second Appellate District – Los Angeles and Ventura.....	18
3.	Third Appellate District – Sacramento	19
4.	Fourth Appellate District – San Diego, Riverside, and Santa Ana	20
5.	Fifth Appellate District – Fresno	21
6.	Sixth Appellate District – San Jose.....	22
IV.	Trial Court Five-Year Infrastructure Plan.....	23
A.	Summary of Trial Court Capital Planning Process.....	23
1.	Task Force on Court Facilities.....	23
2.	Facility Master Plans for 58 Trial Courts	24
3.	Prioritization of Trial Court Capital Projects Identified in Master Plans.....	25
4.	Trial Court Capital-Outlay Plan: Updated Budgets and Project Priority Groups.....	25
5.	Judicial Projections as a Basis for Planning.	27
6.	FY 2015–2016 Trial Court Capital-Outlay Projects Authorized for Funding.	27
B.	Drivers of Need.....	28
1.	Lack of Security, Severe Overcrowding, and Poor Physical Conditions.....	28
2.	Current Need for Additional Judges	31
3.	Consolidation of Facilities	33
4.	Improved Access to the Courts / Access 3D.....	33
C.	Inventory of Trial Court Space	34
D.	Unmet Trial Court Facilities Needs	34

Contents, *continued*

E.	Alternative Approaches to Meeting Unmet Trial Court Facilities Needs.....	35
F.	Facilities to Meet Trial Court Unmet Needs and Proposed Trial Court Five-Year Infrastructure Plan	35
G.	Consequences of Not Addressing Identified Needs.....	37
	1. In-Custody Movement Costs Remain High.....	37
	2. Unsafe Conditions Will Persist.....	37
	3. Facilities Will Continue to Deteriorate	37
	4. Funding Needs for Facility Modifications Will Increase.....	37
	5. Scattered and Unconsolidated Facilities Must Be Maintained	38
	6. Space for New Judges Will Be Provided in Nonconsolidated Facilities, and Access to Court Services Will Continue to Be Limited.	38
H.	Reconciliation to Previous Plan	39
V.	Staff to the Judicial Council.....	40
A.	Purpose of the Staff to the Judicial Council.....	40
	1. Executive Office.	41
	2. Governmental Affairs.	41
	3. Leadership Services Division.	41
	4. Operations and Programs Division.	42
	5. Administrative Division.....	43
B.	Summary, Inventory, and Evaluation of Existing Judicial Council Facilities	43
	1. San Francisco (Headquarters).....	44
	2. Sacramento	45
	3. Burbank.....	46
	4. Field Offices	47
Appendix A.....		A-1

- August 201~~5~~⁴ Judicial Council Report: Senate Bill 1407 Project Funding Requests and *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for fiscal year 201~~6~~⁵–201~~7~~⁶
- ~~10~~¹ *Indefinitely Delayed SB 1407 Trial Court Capital-Outlay Projects: Sorted by Alphabetical Order*, August 20 OR 21, 201~~5~~⁴
- *Trial Court Capital-Outlay Plan*, August 20 OR 21, 201~~5~~⁴: Sorted by Total Score and by Court (January 201~~5~~⁴ dollars)

I. Introduction

For the first 100 years of statehood, county court facilities stood—figuratively and often quite literally as well—at the center of civic life, monuments to the democratic ideals of early Californians. The courthouse remains, now as then, a tangible symbol of the rule of law. It is a central point of contact between Californians and their government and is a key component in the administration of justice. The primary constitutional duty of the courts is to provide an accessible, fair, and impartial forum for the resolution of disputes. Court facilities are public resources that need to be managed in the most effective way to serve the public.

California’s court system is the largest in the world, with over 8.5 million filings annually, 10 million Californians called to jury service, and service to a population of more than 38 million people. As the primary point of contact between the public and the judicial branch, court facilities—housing more than 2,000 judicial officers and 19,000 branch employees statewide—play a central role in access to and delivery of justice. Today, however, California’s court buildings are in a state of significant disrepair, and they require substantial improvements to ensure the safety and security of court users, greater court efficiency, and equal access for all.

Assembly Bill 1473 (Hertzberg; Stats. 1999, ch. 606), codified at Government Code sections 13100–13104, requires the Governor to submit annually to the Legislature (1) a proposed five-year plan addressing the infrastructure needs of state executive branch agencies, schools, and postsecondary institutions; and (2) a proposal for funding the needed infrastructure. Because the Judicial Council of California is not an executive branch agency, its projects are not technically required to be included in the Governor’s five-year infrastructure plan under AB 1473. However, because Government Code section 13103 empowers the Governor to order *any entity* of state government to assist in preparation of the infrastructure plan, the Judicial Council on a voluntary basis has historically submitted an annual infrastructure plan to the state Department of Finance (DOF) to facilitate executive branch approval of judicial branch capital project funding requests. This annual infrastructure plan—the *Judicial Branch AB 1473 Five-Year Infrastructure Plan*—conveys the judicial branch’s funding needs for capital-outlay projects only, including new courthouse construction and major renovations to existing courthouses, because funding for improvements to existing facility infrastructure is not considered part of the judicial branch’s planned capital outlay.¹ The Judicial Council is the authority responsible for adopting annual updates to this five-year plan and for directing its staff to submit this five-year plan to the DOF.²

¹ At the direction of the Judicial Council, all modifications to existing facilities are addressed through the trial court facility modifications program and in accordance with the *Trial Court Facility Modifications Policy* available at www.courts.ca.gov/documents/jc-20141212_tcfmp-update.pdf ~~www.courts.ca.gov/documents/jc-20120727-itemG.pdf~~.

² Staff to the Judicial Council assists the council in meeting its responsibilities by, among other things, annually submitting to the DOF an updated *Judicial Branch AB 1473 Five-Year Infrastructure Plan*, which includes capital-outlay plans for the superior courts and the Courts of Appeal, including the Supreme Court of California. The *Judicial Branch AB 1473 Five-Year Infrastructure Plan* provides the executive and legislative branches with a context for annual courthouse capital project funding requests.

The state's court facilities require a renewed and continuing investment to ensure that they serve the public safely, efficiently, and effectively and that they provide equal access to the law and the judicial system. The *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for fiscal year (FY) 2006–2007 established a program for improvement of the court facilities of the State of California. Since the approval of that document by the Judicial Council on June 1, 2005, its staff has made significant progress toward accomplishing various aspects of this program. This *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for FY 201~~65~~–201~~76~~ represents an update to its predecessor, documenting a multibillion-dollar program for improvement of the state's court facilities.

The passage of Senate Bill 1407 (Perata; Stats. 2008, ch. 311) established special revenues to support up to \$5 billion in lease-revenue bonds for trial court facility improvements and enabled the branch to make great strides toward improving the trial courts across the state. However, since 2009, \$1.~~75~~ billion in Senate Bill 1732 (Stats. 2002, ch. 1082) and SB 1407 funds have been loaned, redirected to offset trial court funding cuts, or swept to offset the ongoing state General Fund deficit.³ Consequently, the judicial branch no longer has sufficient funding to do everything the Judicial Council had directed since SB 1407 was enacted.

In FY 2011–2012 alone, over \$540 million was loaned, redirected, or swept from SB 1407 funds—requiring the cancellation of two SB 1407 projects, the delay of others' moving into their next phases, and the reduced budgets of all active projects. In FY 2012–2013, the Judicial Council indefinitely delayed seven projects for the Superior Courts of Kern, Los Angeles, Monterey, Placer, and Plumas Counties resulting from the enactment of the 2012 Budget Act (FY 2012–2013)—which redirected over \$240 million in SB 1407 funds, of which \$50 million became an ongoing, annual redirection to offset trial court General Fund reductions.

In January 2013, the Judicial Council took additional steps due to enactment of the Governor's Budget for FY 2013–2014 that included payment for the New Long Beach Courthouse (Governor George Deukmejian Courthouse) from SB 1407 funds rather than the General Fund, the deferred repayment of a \$90 million loan (to the state General Fund) from SB 1407 construction funds, and the redirection of \$200 million in SB 1407 funds to trial court operations. As a result, the Judicial Council determined that four more projects—in Fresno, Los Angeles, Nevada, and Sacramento—were indefinitely delayed.⁴

³ This total capital-outlay deficit continues to increase each year by \$50 million because of ongoing redirection of facilities funds to trial court operations.

⁴ In January 2013, the Judicial Council determined that the Sacramento–New Sacramento Criminal Courthouse project move forward with its site acquisition, to seek necessary funding and acquisition approvals for its preferred site; however, work on its pre-design and design was suspended and indefinitely delayed. Site acquisition was completed and approved by the State Public Works Board on July 18, 2014, and on July 29, 2014, the council determined it would sponsor legislation to appropriate funds for the project's preliminary plans and working drawings phases. [In September 2014, one-time funds for those phases of the project were authorized through Assembly Bill 1476 \(Committee on Budget; Stats. 2014, ch. 663\), and its status is no longer indefinitely delayed because it is currently in design.](#)

When the 2014 Budget Act (FY 2014–2015) was enacted in June 2014, a one-time General Fund augmentation of \$40 million was included to reduce—from \$50 million to \$10 million—the required annual amount of SB 1407 funds redirected to support trial court operations. This General Fund augmentation was not continued in the 2015 Budget Act (FY 2015–2016). However, funding established for courthouse construction by SB 1732 and SB 1407—even without redirection of funds—remains inadequate to meet all infrastructure needs. The unmet funding requirement for courthouse construction is expressed and summarized in table 5 of this five-year plan, which presents the total Trial Court Capital-Outlay Plan budget of \$7.3 billion in January 20154 dollars.⁵

A. Legislative Framework: Structural Changes to the Responsibility for the Court System

The Lockyer-Isenberg Trial Court Funding Act of 1997 shifted responsibility for funding trial court operations from the counties to the state and established the Task Force on Court Facilities (Task Force) to identify facility needs and possible funding alternatives. It was the overarching recommendation of the Task Force that responsibility for trial court facilities funding and operation be shifted from the counties to the state. The Task Force recommended that the judicial branch, which is wholly responsible for all court functions, should also be responsible for the facilities in which it operates.

In 2002, the Trial Court Facilities Act (Sen. Bill 1732; and subsequent modifying language) was enacted. The act provides for the shift of responsibility for trial court facilities—including operations, maintenance, facility modifications, and capital-outlay projects—from county to state governance, under the direction of the Judicial Council. The act was the final step in restructuring the courts into an integrated judicial branch and built on three earlier pieces of legislation intended to unify the courts: the Trial Court Funding Act (1997), which provided for state funding of the court system; Proposition 220 (1998), which allowed for the voluntary unification of the state’s superior and municipal courts into a single trial court in each county; and the Trial Court Employment Protection and Governance Act (2000), which at the time made the courts independent employers of the more than 20,000 trial court workers. It is within the context of these changes to the funding and organization of the California court system as well as the mandate of the Trial Court Facilities Act that this five-year infrastructure plan for the California court system has been developed.

B. Judicial Council of California

The judicial branch is one of the three branches of California state government, along with the executive and legislative branches. The Judicial Council of California, chaired by the Chief Justice, is the governing body that provides policy guidelines to this branch of government and all the California courts.

⁵ The capital-outlay plan’s budget is presented in current dollars, defined for this plan as January 20154 dollars.

Structural changes in the judicial branch that began in the late 1990s, such as unification of the superior and municipal courts and state funding of the court system, have significantly increased the Judicial Council's roles and responsibilities. In August 2012, the Judicial Council voted unanimously to restructure its staff, and a new organizational structure was implemented on October 1, 2012. Today, the Judicial Council has a staff of approximately XXX led by an Executive Office that oversees Governmental Affairs in Sacramento and three divisions with staff in San Francisco, Sacramento, and Burbank.

Staff to the Judicial Council is housed in four main facilities, in addition to field offices in commercial leased space and space in existing court facilities. The field offices support facilities management of various local courts. The headquarters is located in San Francisco, in the state-owned Hiram W. Johnson State Office Building of the Ronald M. George State Office Complex. In Sacramento, the staff office and the office of Governmental Affairs are located in commercial leased space, as is the office in Burbank. In section V.A. of this report, detailed descriptions have been provided of the Judicial Council staff's three divisions and the offices that they comprise, its four main facilities, and its field offices.

To fulfill the responsibilities of the Trial Court Facilities Act, the Judicial Council, in August 2003, established an office to manage trial court transfers (all of which were successfully completed by December 2009); to strategically plan for capital outlay, design, and construction of court facilities; and to facilitate real estate management of facilities for its staff and the Supreme Court, Courts of Appeal, and superior courts statewide. The office responsible for planning and executing the capital-outlay program is called Capital Program.⁶

C. Trial and Appellate Courts

Trial courts are the primary point of contact between California's residents and the judicial system. These courts, which are funded by the state and operated by local court officers and employees, determine the facts of a particular case and initially decide the applicable law. California's trial courts are used by millions of visitors: victims, witnesses, attorneys, police and sheriff personnel, jurors, and defendants both in custody and out of custody.

The Courts of Appeal review trial court interpretation and application of the law and devote themselves exclusively to the law—its application and development. The appellate courts function more simply than the trial courts, without the participation of the litigating parties, witnesses, and juries. Lawyers generally are the only individuals present in court sessions, and hearings typically take no more than a few days per month, focusing on oral argument supplementing the written briefs and records. The Supreme Court, the highest California court, has jurisdiction in proceedings for extraordinary relief. It may elect to review cases previously

⁶ As part of Judicial Council staff restructuring in fall 2012, the Judicial Council's Office of Court Construction and Management, which was established to implement the Trial Court Facilities Act of 2002, was divided into two new offices: the Judicial Branch Capital Program Office and the Office of Real Estate and Facilities Management. Effective July 29, 2014, the council renamed these offices Capital Program and Real Estate and Facilities Management, respectively.

decided by the Courts of Appeal and, by law, must review all those cases in which a judgment of death has been pronounced by a trial court.

California's appellate court facilities are currently the responsibility of the state. The responsibility for trial or superior court facilities was transferred from the counties to the state under the mandate of the Trial Court Facilities Act of 2002. This undertaking and its timeline are summarized in section D. below.

D. Completed Transfers of Trial Court Facilities

Under the Trial Court Facilities Act, negotiations for transfer of responsibility of all trial court facilities from the counties to the state began July 1, 2004, and continued through June 30, 2007. During that time period, approximately 120 trial court facilities were addressed under transfer agreements. On April 23, 2008, Assembly Bill 1491 (Jones; Stats. 2008, ch. 9) was enacted to extend the facility transfers deadline to December 31, 2009. On December 29, 2009, the last trial court facility transfer was completed, resulting in over 500 facilities transferred and under the responsibility of the state. The facility transfer process—involving the participation of all 58 counties—was the foundation for creating a single, comprehensive infrastructure program for courthouses statewide.

E. Court Facilities Advisory Committee—Advisory Committee to the Judicial Council

In July 2011, Chief Justice Tani G. Cantil-Sakauye established the Court Facilities Advisory Committee (formerly, the Court Facilities Working Group) as a standing advisory committee to the Judicial Council to provide ongoing oversight of the judicial branch capital construction program for trial and appellate courts throughout the state. The committee oversees the work of Judicial Council staff in its effort to implement the judicial branch's statewide capital improvement program and makes recommendations to the Judicial Council for action.

Committee members are drawn from the trial and appellate courts throughout the state—including justices, judges, and court executives—in addition to private attorneys, design and facilities professionals, and a local government administrator. In evaluating courthouse projects as well as facility policies, this committee solicits input from the affected courts and from the public. To date, the full committee has met 16~~4~~ times.

Since April 2012, the committee met five times specifically to review how one-time and ongoing enacted or proposed redirection of SB 1407 funds would affect the ability of the judicial branch to move all SB 1407 projects forward as planned and to develop recommendations to the Judicial Council. These meetings—in April, July, September, and December of 2012, and in February of 2013—resulted in action by the Judicial Council at its meetings in April and October of 2012 and in January and February of 2013. During this period, the SB 1407 courthouse construction program and its overall schedule were modified each time the Judicial Council took action.⁷

⁷ Complete details of the Judicial Council's actions are in the Judicial Council reports in Appendix A of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan: Fiscal Year 2013–2014*.

In October 2011, the committee formed its Courthouse Cost Reduction Subcommittee with the purpose of proposing further cost reductions to the SB 1407 courthouse construction program. In October 2012, the Judicial Council directed that the subcommittee oversee and have direct implementation authority to mandate project cost reductions for all capital-outlay projects in design (preliminary plans and working drawings) managed by the judicial branch. The subcommittee's primary goal is to reduce expenditure of public funds on the judicial branch's capital-outlay projects without compromising safety, security, and functionality for the public and the courts. To date, this subcommittee has managed to reduce the budgets of the 28 SB 1407 projects it has reviewed by approximately \$380 million.⁸

F. California's Court Facilities

The Judicial Council's real property portfolio includes all property leased or owned for the benefit of its staff, the Supreme Court, the Courts of Appeal, the Habeas Corpus Resource Center, the Commission on Judicial Performance, and all superior courts. The real estate portfolio currently comprises approximately 360 active expense and revenue leases and 400 owned properties,⁹ totaling approximately 14 million usable square feet (USF)¹⁰ exclusively occupied by Judicial Council staff, the courts, and other judicial branch entities. On the whole, the building area under Judicial Council responsibility and management has gradually increased to what is now approximately 20 million square feet of facility space.¹¹

The Supreme Court occupies just over 100,000 USF of space between two facilities: the Earl Warren Building of the Ronald M. George State Office Complex in San Francisco and the Ronald Reagan State Building in Los Angeles. The other appellate courts, occupying a total of just over 500,000 square feet of space in 10 facilities, serve six regional districts: the first appellate district, in San Francisco; the second appellate district, in Los Angeles and Ventura; the third appellate district, in Sacramento; the fourth appellate district, in San Diego, Riverside, and Santa Ana; the fifth appellate district, in Fresno; and the six appellate district, in San Jose.

⁸ Judicial Council mandates on reducing costs of SB 1407 projects are listed in the April and October 2012 reports contained in Appendix A of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan: Fiscal Year 2013–2014*.

⁹ These properties are owned either by the judicial branch or by counties but their management has transferred to the Judicial Council under the provisions of SB 1732. The owned property portfolio includes buildings, parking lots and structures, and new courthouse sites.

¹⁰ *Usable square feet* (USF) is defined by the Task Force as component gross area or square feet, which represents all net areas assigned to a given component, as well as related internal circulation, interior partitions and columns, chases serving the space, and other areas incidental to the component's spatial organization or construction, plus the corridors connecting the components. It expresses the amount of "usable" area for a specific use. Component gross area excludes the area required for public circulation and lobbies, mechanical and electrical spaces and distribution shafts, stairs, elevators, and other common building elements.

¹¹ The square footage under responsibility includes all court-exclusive areas in the transferred facilities, including their percentages of common space, and the gross square footage of any building for which the Judicial Council is the managing party (i.e., responsible for the entirety of the building's operations and maintenance). Also included under responsibility is rentable square footage for any leased facility.

California’s trial court facilities—totaling the approximately 500 that transferred to the state by December 29, 2009—vary considerably in size, age, and condition. The largest trial court facility is the Stanley Mosk Courthouse in downtown Los Angeles, with 100 courtrooms. Some rural and mountainous areas are served by one- or two-courtroom facilities. Although a few court facilities are new or quite old and historic, the inventory is generally aging, with approximately 70 percent of all court facilities in California built before 1980. In most cases, these older facilities serve neither the public nor the court well, owing to physical conditions and designs rendered obsolete by modern court operations and caseload demands. During the past decade, some counties invested in their court facilities but many could not, because of insufficient funding and competing priorities.

Although the facility transfer process has successfully concluded, California’s trial court facilities remain in a state of significant disrepair. Based on Task Force on Court Facilities data, approximately 90 percent of California’s trial court facilities require significant renovation, repair, or maintenance. Over 80 percent were constructed before the 1988 seismic codes took effect, 23 court facilities are in temporary buildings or trailers, and 25 percent lack space to assemble jurors.¹² These facilities are in extremely poor condition, lack any type of security, are functionally insufficient to support court operations, and are sometimes inaccessible.

Court facilities serving California’s trial courts were initially built and maintained by each of California’s 58 county governments. Historically, court facility needs were assessed at the county level, and both funding and approval for construction, maintenance, and renovation projects had been the responsibility of each county’s board of supervisors, until such time as facility transfers were executed. As a result, the trial courts were often “subject to the vagaries of local fiscal health and relationships,”¹³ and significant inequities grew between courts in terms of facilities operations and maintenance.

In addition to local priorities, other reasons for historic inequality in county funding were related to limited funding, including Proposition 13’s limits on property taxes; severe recessions in the late 1980s and early 1990s; and the shift from the counties to the state of funding that supports school districts.¹⁴ As a result, many California trial court facilities became deficient for court operations, suffering from deferred maintenance and lacking adequate security, compliance with life and health safety or seismic codes, and accessibility for people with disabilities.¹⁵ Several courts with high caseload growth still occupy leased offices or modular buildings to meet the need for additional courtrooms and public service areas, which results in unconsolidated court

¹² State of California, Task Force on Court Facilities, *Final Report of the Task Force on Court Facilities* (Oct. 1, 2001).

¹³ Ronald M. George, Chief Justice of California, State of the Judiciary, address to a joint session of the California Legislature (Sacramento, Mar. 2003).

¹⁴ Capital Center for Government Law and Policy, University of the Pacific McGeorge School of Law, *Proposition 13 at Twenty-Five* (May 2004).

¹⁵ State of California, Task Force on Court Facilities, *supra*.

operations that are inefficient to operate and inadequate in meeting the full, functional needs of the public and the superior court.

G. Map of California Court Jurisdictions

Figure 1 presents a map showing the geographical jurisdiction of each of the six appellate court districts and each of the 58 superior courts.

Figure 1: State of California Superior and Appellate Court Jurisdictions



II. Summary of Fiscal Year 201~~65~~-201~~76~~ Funding Requests and Capital-Outlay Needs for SB 1407 Trial Court Projects

To further Judicial Council goals of modernization of management and branchwide infrastructure for service excellence, the Judicial Council is requesting funding authorization in FY 201~~65~~-201~~76~~ (201~~65~~ Budget Act) for initial and subsequent phases of all ~~12~~-eight trial court capital-outlay projects shown below in table 1. Their funding is from SB 1407.

(PLEASE NOTE: The information in the table below is placeholder at this time and subject to change.)

Table 1: Funding Requests for Court Capital Projects for FY 201~~65~~-201~~76~~

<u>Project</u>	<u>\$ (in millions)</u>	<u>Phases¹</u>	<u>Funding Source²</u>
El Dorado, New Placerville Courthouse.....	\$ 4.918	W	ICNA
Imperial, New El Centro Courthouse	39.714	C	PBCF (ICNA)
Mendocino, New Ukiah Courthouse ³	6.068	W	ICNA
Riverside, New Indio Juvenile and Family Courthouse	44.463	C	PBCF (ICNA) <u>ICNA</u>
Riverside, New Mid-County Civil Courthouse	5.666	W	ICNA
Shasta, New Redding Courthouse	136.705	C	PBCF (ICNA)
Stanislaus, New Modesto Courthouse ³	15.252	W	ICNA
Tuolumne, New Sonora Courthouse.....	55.955	C	PBCF (ICNA)
Trial Court Capital Projects Total	\$ 308.741		

Table Footnotes:

- ~~A = Land Acquisition; P = Preliminary Plans~~; W = Working Drawings; C = Construction.
- ICNA = Immediate and Critical Needs Account (SB 1407 [Perata]); PBCF (ICNA) = Public Building Construction Fund (to be repaid from the ICNA).
- Funding for this project has been requested as a reappropriation of previously authorized funds as shown.

Judicial Council staff submitted an initial *Capital-Outlay Concept Paper* to the state Department of Finance in August 2009 for all trial court capital-outlay projects to be funded by SB 1407 during the five-year plan period. Presented below in table 2 is the updated need for the remaining fiscal years of the SB 1407 trial court capital projects program, including all funded projects as well as the ~~101~~ unfunded SB 1407 projects indefinitely delayed by the Judicial Council because of funding redirections and General Fund loans. Note that funding for any additional projects is likely to be secured after FY 202~~10~~–202~~21~~, so their funding requirements have not been estimated in table 2. The estimated annual funding requirements to implement the entire SB 1407 program are presented in table 8, section IV.F., of this five-year plan.

(PLEASE NOTE: The information in the table below is placeholder at this time and subject to change.)

**Table 2: Updated Capital-Outlay Needs for All Funded and Unfunded SB 1407 Trial Court Projects—
Fiscal Years 201~~76~~–201~~87~~ through 202~~10~~–202~~21~~**

<u>Project</u>	<u>Initial FY Request</u>	<u>Estimated FY Total \$ (in millions)</u>
SB 1407 Capital Projects	FY 2017–2018	<u>624.0</u>
SB 1407 Capital Projects	FY 2018–2019	<u>80.0</u>
SB 1407 Capital Projects	FY 2019–2020	<u>20.0</u>
SB 1407 Capital Projects	FY 2020–2021	<u>53.0</u>
<u>SB 1407 Capital Projects</u>	<u>FY 2021–2022</u>	<u>1,068.0</u>

The map in figure 2 highlights the California counties that have one or more trial court projects fully funded through either SB 1732 or SB 1407 revenues. This map—highlighting 36 of the 58 counties—represents the judicial branch’s most urgently needed trial court capital projects for which funding is available after substantial one-time and ongoing redirection of construction funds from 2009 to 2012.

With the exception of the Sacramento–New Sacramento Criminal Courthouse project, which completed site acquisition in July 2014 and ~~can~~has ~~proceeded~~ed with design (preliminary plans and working drawings) in FY 2014–2015 using one-time funds, ~~once Judicial Council-sponsored legislation is enacted,~~ figure 2 does not account for the seven SB 1407 projects that were indefinitely delayed by the Judicial Council in October 2012 and the four that were indefinitely delayed in January 2013.

Figure 2: 36 Superior Courts Benefiting from State-Funded Trial Court Projects



III. Appellate Courts Five-Year Infrastructure Plan

The five-year plan for the appellate courts of California does not include any projects submitted for funding consideration in FY 201~~65~~–201~~75~~76.

Five appellate court projects have recently been completed. Each project is summarized below in section III.E., and in table 4, with a more complete description provided under its respective appellate court district in section III.F., Summary, Inventory, and Evaluation of Existing Appellate Court Facilities.

A. Purpose of and Services Provided by the Supreme Court

The Supreme Court of California has discretion to review decisions of the Courts of Appeal, the Public Utilities Commission, the State Bar of California, and the Commission on Judicial Performance. It is required to review all death penalty judgments from the superior courts. In addition, the court has original jurisdiction in proceedings for “extraordinary relief,” such as petitions seeking writs of certiorari, mandate, prohibition, and habeas corpus.

The Supreme Court consists of a Chief Justice and six associate justices, each serving 12-year terms as mandated by the California Constitution. The justices are appointed by the Governor and confirmed by the Commission on Judicial Appointments. The court is located in the Earl Warren Building of the Ronald M. George State Office Complex in San Francisco, with additional chambers in Sacramento and Los Angeles. The court hears oral argument four times a year in San Francisco, four times a year in Los Angeles, and twice a year in Sacramento. Occasionally, special oral argument sessions are held elsewhere.

Except for death penalty cases, which are guaranteed an automatic appeal, the Supreme Court has discretion to decide whether it will review any case. Consequently, the court’s space requirements do not change dramatically over time. When a majority of the justices agree to hear a case, the Chief Justice will order the matter set for oral argument. After oral argument, the justices confer and issue a written decision within the statutory time of 90 days.

B. Summary of Existing Supreme Court Facilities

The Supreme Court headquarters are in the Earl Warren Building of the Ronald M. George State Office Complex on San Francisco’s Civic Center Plaza. The court also maintains small office suites in the Ronald Reagan State Building in Los Angeles and the Stanley Mosk Library and Courts Building in Sacramento, which is included in this report as part of the inventory for the Court of Appeal, Third Appellate District.

1. Supreme Court of California – San Francisco and Los Angeles

Existing Facility:	<i>Supreme Court of California – San Francisco</i> <i>350 McAllister Street, San Francisco – 1st, 4th, 5th & 6th Floors</i> <i>455 Golden Gate Avenue, San Francisco – 6th Floor</i>		
	<ul style="list-style-type: none">• 98,155 USF• State-owned historic Earl Warren Building (1923) – part of the Ronald M. George State Office Complex• Justices – 7		
Current Status:	The Earl Warren Building of the Ronald M. George State Office Complex is the headquarters of the California Supreme Court, which occupies the 1st, 4th, 5th, and 6th floors of this building. The court shares the building with the Court of Appeal, First Appellate District, which occupies part of the 1st, 2nd, and 3rd floors. A total restoration including a seismic retrofit of this building was completed in 1998.		
Needs:	Required Space.....	98,155	USF
	Current Space	98,155	USF
	Net Current Need	0	USF
Proposal:	This facility adequately meets the needs of this court.		

2. Supreme Court of California – San Francisco and Los Angeles, *continued*

Existing Facility:	<i>Supreme Court of California – Los Angeles</i> <i>300 South Spring Street, Los Angeles – 2nd, 3rd & 4th Floors</i>		
	<ul style="list-style-type: none">• 7,598 USF• State-owned Ronald Reagan State Building (1990)		
Current Status:	The Supreme Court shares a courtroom with the Court of Appeal, Second Appellate District, to hold oral argument four times a year. On December 31, 2009, and due to budgetary restrictions, the Supreme Court Clerk’s Office in this building was closed, and the available space—approximately 1,981 USF formerly occupied by three staff persons—was subsequently occupied by the Court of Appeal, Second Appellate District. On the third and fourth floors of the building, the Supreme Court occupies judicial chambers and associated staff spaces.		
Needs:	Required Space	7,598	USF
	Current Space.....	7,598	USF
	Net Current Need	0	USF
Proposal:	This facility adequately meets the needs of this court.		

C. Purpose of and Services Provided by the Courts of Appeal

The Courts of Appeal must respond to all appeals to decisions made by the trial courts and will need additional justices over time to meet an increased caseload.

The Courts of Appeal decide questions of law, such as whether the superior court judge applied the law correctly in a case. The court makes its decision based on review of the record of the original trial, not by hearing testimony or retrying cases. Consequently, appellate courts are not high-traffic facilities. Each of the nine appellate court facilities requires only one courtroom to accommodate a panel of justices. Appellate court facilities do not require holding cells or space for jurors. Courts of Appeal handle large volumes of paper, including multiple copies of briefs and trial court records that vary in size based on case complexity.

D. Planning for Future Appellate Court Facilities

A comprehensive evaluation of all appellate court facilities in California was completed by the Task Force on Court Facilities. As part of the study, the Task Force developed facility guidelines for appellate courts, identified current space needs, projected future needs, inspected and evaluated all appellate court facilities, and developed capital planning options for each. This five-year plan summarizes the Task Force findings, which recommended replacing leased facilities with state-owned facilities designed specifically for the Courts of Appeal. Given the

state budget climate, money from the state General Fund has not been authorized for replacing the leased facilities with state-owned facilities in Ventura, San Diego, and San Jose.

Table 3 below presents the current number of authorized justices for the appellate courts.

Table 3: Summary of Current Number of Authorized Justices for the Appellate Courts

<u>District – Court Location</u>	<u>Current Authorized Justices¹</u>
First – San Francisco	20
Second – Los Angeles, Ventura	32
Third – Sacramento	11
Fourth – San Diego, Riverside, Santa Ana	25
Fifth – Fresno	10
Sixth – San Jose.....	<u>7</u>
Total	105

Table Footnote:

1. Current authorized justices are derived from the latest version of the court statistics report, *201~~5~~4 Court Statistics Report, Statewide Caseload Trends: 200~~4~~3–200~~5~~4 Through 201~~3~~2–201~~4~~3*.

E. Summary of Appellate Court Projects

As presented in table 4, five appellate court projects have been completed. The new Fifth Appellate District Courthouse in Fresno was completed in August 2007. For both the Fourth Appellate District, Division One, in San Diego and the Sixth Appellate District in San Jose, projects to expand the courts into adjacent space in their current leased facilities were completed— San Jose’s in November 2008 and San Diego’s in July 2009. The new Fourth Appellate District, Division Three, courthouse in Orange County was completed in August 2009. And a renovation of the Third Appellate District Courthouse in Sacramento was completed in April 2013.

Space requirements for appellate court facilities are based on the *Appellate Court Facilities Guidelines*. These guidelines were developed by the Task Force and were adopted by the Judicial Council, effective July 1, 2002.

Table 4: Summary of Appellate Court Facilities and Capital-Outlay Projects

<u>Appellate District</u>	<u>Division</u>	<u>City</u>	<u>State-Owned</u>	<u>Existing Commercial Lease</u>	<u>Capital-Outlay Project Approved or Planned</u>
First	1–5	San Francisco	×		—
Second	1–5, 7 & 8	Los Angeles	×		—
Second	6	Ventura		×	—
Third	—	Sacramento	×		Completed in April 2013
Fourth	1	San Diego		×	Completed in July 2009 ¹
Fourth	2	Riverside	×		—
			(lease to own)		
Fourth	3	Santa Ana	×		Completed in August 2009
Fifth	—	Fresno	×		Completed in August 2007
Sixth	—	San Jose		×	Completed in November 2008 ¹

Table Footnote:

1. This project was funded to expand court leased space in lieu of constructing a new courthouse.

F. Summary, Inventory, and Evaluation of Existing Appellate Court Facilities

Each of the Courts of Appeal in California is described below. Three courts are currently located in leased space. The Court of Appeal, Fourth Appellate District, in Riverside is located in a lease-to-own facility and, as such, is treated as a state-owned building.

1. First Appellate District – San Francisco

Existing Facility:	<i>San Francisco – Divisions 1–5</i> <i>350 McAllister Street, San Francisco – 1st, 2nd & 3rd Floors</i> <i>455 Golden Gate Avenue, San Francisco – 4th Floor</i>	
	<ul style="list-style-type: none">• 82,716 USF• Ronald M. George State Office Complex: State-owned historic Earl Warren Building (1923) and adjoining new state-owned high rise, Hiram W. Johnson State Office Building (1998)	
Current Status:	The existing facility now adequately meets the needs of the court, requiring no additional area or modifications at this time.	
Needs:	Required Space	82,716 USF
	Current Space	82,716 USF
	Net Current Need	0 USF
Proposal:	This facility adequately meets the needs of this court.	

2. Second Appellate District – Los Angeles and Ventura

Existing Facility:	<i>Los Angeles – Divisions 1–5, 7 & 8</i> <i>300 South Spring Street, Los Angeles – 2nd, 3rd & 4th Floors</i>	
	<ul style="list-style-type: none">• 119,137 USF• State-owned Ronald Reagan State Building (1990)	
Current Status:	The appellate district gained the available space in the building (approximately 1,981 USF) that was formerly occupied by the Supreme Court Clerk’s Office, which was closed on December 31, 2009. The existing facility adequately meets the needs of the court, requiring no additional area or modifications at this time.	
Needs:	Required Space	119,137 USF
	Current Space	119,137 USF
	Net Current Need	0 USF
Proposal:	This facility adequately meets the needs of this court.	

2. Second Appellate District – Los Angeles and Ventura, *continued*

Existing Facility:	<i>Ventura – Division 6</i> <i>200 East Santa Clara Street, Ventura</i>	
	<ul style="list-style-type: none"> • 23,329 USF (excludes 800 USF for storage) • Commercial leased standalone building 	
Current Status:	The existing facility now adequately meets the needs of the court, requiring no additional area or modifications at this time.	
Needs:	Required Space	23,329 USF
	Current Space	23,329 USF
	Net Need	0 USF
Proposal:	This facility adequately meets the needs of this court.	

3. Third Appellate District – Sacramento

Existing Facility:	<i>Sacramento</i> <i>914 Capitol Mall, Sacramento – 1st, 2nd, 4th & 5th Floors</i>	
	<ul style="list-style-type: none"> • 55,821 USF • State-owned historic Stanley Mosk Library and Courts Building (1929) 	
Current Status:	A renovation to the courthouse was completed in April 2013. This renovation resolved security, accessibility, and numerous preexisting deficiencies as well as providing additional space (approximately 15,827 USF) to consolidate all operations previously housed in the state-owned Library and Courts Annex Building (900 N Street). This facility adequately meets the needs of the court, requiring no additional area or modifications at this time.	
Needs:	Required Space	55,821 USF
	Current Space	55,821 USF
	Net Current Need	0 USF
Proposal:	This renovated courthouse adequately meets the court’s facility needs.	

4. Fourth Appellate District – San Diego, Riverside, and Santa Ana

Existing Facility:	<i>San Diego – Division 1</i> <i>750 B Street, Suite 300, San Diego – 2nd, 3rd, 4th & 5th Floors</i>	
	<ul style="list-style-type: none"> • 50,349 USF • Commercial leased Symphony Towers high rise 	
Current Status:	The court is located on four floors in a commercial building in downtown San Diego. A new state-owned court facility—to replace this leased facility—was proposed for funding in FY 2008–2009, but this project was not included in the January Governor’s Budget. However, in July 2009 Judicial Council staff completed a project to accommodate the court’s expansion into adjacent space in this facility on the second, third, fourth, and fifth floors.	
Needs:	Required Space	50,349 USF
	Current Space	50,349 USF
	Net Current Need	0 USF
Proposal:	This facility adequately meets the needs of this court.	

Existing Facility:	<i>Riverside – Division 2</i> <i>3389 Twelfth Street, Riverside</i>	
	<ul style="list-style-type: none"> • 35,034 USF • Lease-to-own standalone building (1998) leased from the County of Riverside 	
Current Status:	The existing facility adequately meets the needs of the court, requiring no additional area or modifications at this time. However, future expansion of this facility will be necessary, due to projected caseload growth and the need for space to accommodate projected new justices.	
Needs:	Required Space	51,034 USF
	Current Space	35,034 USF
	Net Need	16,000 USF
Proposal:	To secure a site large enough for future expansion, a funding request for acquisition of the county-owned parcel adjacent to the existing facility was proposed in FY 2008–2009. However, this project was not included in the Governor’s January Budget.	

4. Fourth Appellate District – San Diego, Riverside, and Santa Ana, *continued*

Existing Facility:	<i>Santa Ana – Division 3</i> <i>601 West Santa Ana Boulevard, Santa Ana</i> <ul style="list-style-type: none">• 52,000 USF• State-owned Fourth Appellate District courthouse (2009)
Current Status:	A new courthouse was constructed in August 2009, replacing two former leased facilities. This facility adequately meets the needs of the court, requiring no additional area or modifications at this time.
Needs:	Required Space 52,000 USF Current Space 52,000 USF Net Need 0 USF
Proposal:	This new courthouse adequately meets the court’s facility needs.

5. Fifth Appellate District – Fresno

Existing Facility:	<i>Fresno</i> <i>2424 Ventura Street, Fresno</i> <ul style="list-style-type: none">• 51,000 USF• State-owned Fifth Appellate District courthouse (2007)
Current Status:	A new courthouse was constructed in August 2007, replacing two former leased facilities. This facility adequately meets the needs of the court, requiring no additional area or modifications at this time.
Needs:	Required Space 51,000 USF Current Space 51,000 USF Net Need 0 USF
Proposal:	This facility adequately meets the needs of this court.

6. Sixth Appellate District – San Jose

Existing Facility:	<i>San Jose</i> <i>333 West Santa Clara Street, San Jose – 10th & 11th Floors</i> <ul style="list-style-type: none">• 39,000 USF• Commercial leased space in high-rise building
Current Status:	The court has been located in this high-rise commercial building since 1988. A new state-owned court facility—to replace this leased facility—was proposed for funding in FY 2008–2009, but this project was not included in the Governor’s January Budget. However in November 2008, Judicial Council staff completed a project to accommodate the court’s expansion into adjacent space in this facility.
Needs:	Required Space 39,000 USF Current Space 39,000 USF Net Need 0 USF
Proposal:	This facility adequately meets the needs of this court.

IV. Trial Court Five-Year Infrastructure Plan

The five-year plan for the trial courts is presented here in the context of a multiyear planning process with interim steps that have been directed by policy adopted by the Judicial Council. Although some funding for court capital projects has been proposed by the Governor, this Trial Court Capital-Outlay Plan presents the funding requirements (in current dollars) for all proposed court capital improvement projects.

A. Summary of Trial Court Capital Planning Process

Since 1998, the Judicial Council has been engaged in a process of planning for capital improvements to California's court facilities. This planning work has been undertaken in the context of the transition toward state responsibility for court facilities. The planning initiatives, beginning with the creation of the Task Force, have gradually moved from a statewide overview to county-level master planning and to project-specific planning efforts.

In 2012, the judicial branch continued to face difficult planning decisions—for example, how to move forward with the SB 1407 program given the diversion of \$240 million from SB 1407 funds. In 2013, this situation continued in the 2013 Governor's Budget (FY 2013–2014), which included deferred repayment of a \$90 million loan (to the state General Fund) from SB 1407 construction funds and the redirection of \$200 million in SB 1407 funds to trial court operations. The Court Facilities Advisory Committee, appointed by Chief Justice Cantil-Sakauye and described above in section I.E., examined this problem throughout 2012, as well as in early 2013, to develop a series of recommendations to the Judicial Council. The committee's recommendations were formally adopted by the Judicial Council on April 24 and October 26, 2012, and on January 17 and February 26, 2013.¹⁶

Below is a summary of the planning process undertaken to develop the Trial Court Capital-Outlay Plan—the prioritized list of trial court capital projects from which the Judicial Council selects projects to be funded by either SB 1732 or SB 1407 funding sources.

1. Task Force on Court Facilities. The capital planning process began with the passage of the Lockyer-Isenberg Trial Court Funding Act of 1997, which transferred responsibility for funding trial court operations from the counties to the state and established the Task Force on Court Facilities to identify facility needs and possible funding alternatives. Over two and a half years, the Task Force developed a set of findings and recommendations contained in its final report, dated October 1, 2001. The Task Force surveyed the superior court facilities to identify the functional and physical problems of each facility. Many of the Task Force's key findings are referred to in this document.

¹⁶ Complete details of the Judicial Council's actions are contained within the Judicial Council reports in Appendix A of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan: Fiscal Year 2013–2014*.

The Task Force projected space requirements based on correcting current deficiencies and meeting future growth needs. A broad estimate of the cost to meet these needs was then developed, including the extent to which the existing facilities could be reused. The options developed were painted with a very broad brush, did not consider changes to how a court might deliver services at various locations, and were based on limited involvement of the local courts or the justice community.

2. Facility Master Plans for 58 Trial Courts. The Judicial Council undertook the next step in the capital planning process in June 2001 with the initiation of a two-and-a-half-year effort to develop a facility master plan for each of the 58 trial courts in California. By December 2003, the Judicial Council completed a facility master plan for each of the 58 courts. Each master plan was guided by a steering committee or project team composed of members of the local court, county administration, county justice partners, and staff to the Judicial Council. The planning horizon for the master plans is 20 years. The master plans confirmed the Task Force's findings related to the physical and functional condition of each court facility, refined the caseload projections for each court, considered how best to provide court services to the public, developed a judgeship and staffing projection for each court location, and examined development options for how best to meet goals related to court service, operational efficiency, local public policy, and cost-effectiveness.

The facility requirements for the superior courts were based on several guidelines or guiding principles:

- A methodology adopted by the Judicial Council to project and standardize statewide judicial needs based on a set of judicial workload standards was applied to census-based population demographics and historical caseload data to estimate future caseload by type, at five-year planning intervals. In turn, the data was used to project the needs of each court for future judgeships. Associated staffing requirements were extrapolated from the judgeship projections.
- *Trial Court Facilities Guidelines*, developed by the Task Force and later adopted by the Judicial Council in July 2002, were used as a basis for developing space requirements based on judgeship and staff projections.¹⁷ Application of these guidelines resulted in 8,500 to 10,000 USF per courtroom. The requisite increase to building gross square feet (BGSF) included circulation and building structure as well, which resulted in 11,900 to 14,000 BGSF when basement-level sallyports and secure holding were included. Analysis of the 58 facility master plans confirmed the high side of the Task Force's analysis, with the statewide average USF per courtroom calculated at 10,160 USF or 14,225 BGSF.

¹⁷ These guidelines were superseded by the *California Trial Court Facilities Standards*, which were adopted by the Judicial Council in April 2006.

- Local superior court public service objectives, including how best to serve the public, were examined in each master plan. The distribution of court facilities and the types of cases that are heard at each location vary from county to county. The master plan process determined which court services could be expanded to more locations or, conversely, which court facilities and services could be consolidated and how access to court services could be best provided in the county.

After space requirements were developed and existing building condition and capacity were confirmed by the master plan team, the team examined how best to meet the service delivery goals of the court. A master plan solution to the capital needs of each court—including the types and amounts of space required, the time frame in which construction or renovation projects should be initiated and completed, and the estimated cost of each project in 2002 dollars—is presented in each facility master plan. Capital projects include building new court facilities, renovating existing court facilities, and expanding existing facilities.

3. Prioritization of Trial Court Capital Projects Identified in Master Plans. The third step in the capital planning process was to prioritize individual projects identified in the 58 master plans and then consolidate these projects into a statewide plan. A procedure to accomplish this prioritization was adopted by the Judicial Council in August 2003.¹⁸ This prioritization methodology sought to prioritize these projects consistently and without bias. The methodology evaluated 201 capital projects identified in the master plans to be initiated in the second quarter of 2010 or earlier. The resulting Trial Court Five-Year Capital-Outlay Plan, a first in the state of California, was approved by the Judicial Council for submission to the state Department of Finance in February 2004.

Beginning in 2005, Judicial Council staff, guided by the advising bodies of the Court Facilities Transitional Task Force and the Interim Court Facilities Panel, reevaluated the prioritization methodology. As a result, the methodology was simplified and then adopted on August 25, 2006, by the Judicial Council. Through its application, a new list of trial court capital projects—the Trial Court Capital-Outlay Plan—was developed, presenting five project priority groups: Immediate, Critical, High, Medium, and Low. As a result of the passage of SB 1407 (Perata), which was enacted on September 26, 2008, and authorizes \$5 billion in lease-revenue bonds for trial court facility construction, the methodology was further revised and then adopted by the Judicial Council on October 24, 2008. The methodology and the Trial Court Capital-Outlay Plan are the framework for all trial court capital project funding requests.¹⁹

4. Trial Court Capital-Outlay Plan: Updated Budgets and Project Priority Groups.

The most recently updated capital-outlay plan was adopted by the Judicial Council on August 20

¹⁸ The *Five-Year Trial Court Capital-Outlay Plan: Prioritization Procedure and Forms* can be referenced as Appendix A of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan Fiscal Year 2006–2007*.

¹⁹ The latest Trial Court Capital-Outlay Plan is contained in Appendix A of this five-year plan. The latest *Prioritization Methodology for Trial Court Capital-Outlay Projects* is contained in Appendix A of the *Judicial Branch AB 1473 Five-Year Infrastructure Plan: Fiscal Year 2010–2011*.

OR 212, 20154. The capital-outlay plan for FY 20165–20176 presents project budgets in January 20154 dollars, has a current total budget of \$7.3 billion (in January 20154 dollars), and contains a total of 100 capital projects, all of which are without an identified funding source.²⁰ Table 5 below presents a summary of the complete capital-outlay plan, which is provided in Appendix A. Because of the (a) passage of **almost more than** a decade since the first iteration of the plan was submitted to the state Department of Finance, (b) ongoing population shifts in various regions of the state, and (c) consolidation and relocation of many trial court operations owing to budget reductions that superior courts were forced to make as a result of the state’s ongoing fiscal crisis, review of the remaining projects will be necessary to determine whether a change to the scope or location of various listed projects is needed. This process will be undertaken before actual funding is sought for specific projects. The current plan reflects the best available information as of the date of this submission.

(PLEASE NOTE: The information in the table below is placeholder at this time and subject to change.)

**Table 5: Summary of Trial Court Capital-Outlay Plan,
Project Priority Groups and Budget
(January 20154 Dollars)**

Project Priority Group	Number of Projects¹	Total Current Need Budget (in billions of 20154 dollars)²
Immediate Need	8	\$0.51
Critical Need	16	\$1.18
High Need	27	\$2.58
Medium Need	31	\$1.56
Low Need	18	\$0.72
Total Number of Projects and Total Budget for Current Needs	100	\$6.55
Total Statewide Budget for New Judgeships		\$0.72
Total Trial Court Capital- Outlay Plan Budget		\$7.27

²⁰ As has been standard, the plan does not include escalation to the projects’ construction midpoints. At the time a specific capital project funding request is prepared, its cost estimate will include escalation to the construction midpoint.

Table Footnotes:

1. Of the capital-outlay plan's 100 total trial court projects, 46 are new construction projects to replace obsolete existing court facilities, 34 are renovations to existing court facilities, and 20 are expansions of existing or future court facilities. All 100 projects are without an identified funding source.
2. The total cost of implementing the entire Trial Court Capital-Outlay Plan will be higher than the capital-outlay plan's total budget in January 201~~5~~⁴ dollars, due to escalation to the midpoint of construction, as well as to regional variations in actual land acquisition costs and other project development costs.

5. Judicial Projections as a Basis for Planning. A key input to the development of the size and scope of each capital-outlay project is the number of courtrooms. Project feasibility reports and studies—prepared to define project scopes and budgets, explore project development options, and confirm site requirements for new construction—typically include a description of the number of existing courtrooms and the number of judicial officers for the building or buildings being replaced by the proposed capital-outlay project.

The number of current and projected judicial position equivalents (JPEs) is used to determine the number of judicial officers and, consequently, the number of courtrooms for each project.²¹ Each trial court capital project's size and budget are generally derived from these factors. Although the facility master plans developed JPE projections, these projected-JPE figures are not used as a basis for planning the number of courtrooms in a facility. The California Judicial Needs Assessment Project—which is based on a combination of population and workload drivers—is used as a basis for the judicial branch to request funding for new judgeships. Proposed capital-outlay projects typically include courtrooms for existing JPEs and for JPEs planned to be assigned to the project from the next 100 new judgeships requested by the Judicial Council for funding authorization: 50 per AB 159 (Stats. 2007, ch. 722) and another 50 identified but still to be attached to legislation. To date, facility space for 56 new judgeships of the next 100 new judgeships has been budgeted in the trial court capital projects funded by the state General Fund, SB 1732, and SB 1407.

6. FY 201~~5~~⁴–201~~6~~⁵ Trial Court Capital-Outlay Projects Authorized for Funding. As shown below in table 6, initial and continuation funding was authorized in the 201~~5~~⁴ Budget Act (FY 201~~5~~⁴–201~~6~~⁵) for a total of 13 trial court capital-outlay projects. The funding for these projects is from SB 1407.

²¹ JPEs reflect authorized judicial positions adjusted for vacancies, assistance rendered by a court to other courts, and assistance received by a court from assigned judges, temporary judges, commissioners, and referees.

Table 6: Funding Authorized for Courthouse Capital-Outlay Projects for FY 2015~~4~~–2016~~5~~

Project	\$ (in millions)	Phases¹	Funding Source²
El Dorado, New Placerville Courthouse ³	\$ 4.780	A, P	ICNA
<u>Glenn, Renovate and Addition to Willows Courthouse³</u>	<u>34.793</u>	<u>C</u>	<u>PBCF (ICNA)/ICNA</u>
Inyo, New Inyo County Courthouse ³	1.930	A, P	ICNA
Lake, New Lakeport Courthouse	40.803	C	PBCF (ICNA)
Los Angeles, New Eastlake Juvenile Courthouse ³	13.772	A	ICNA
Mendocino, New Ukiah Courthouse ⁴	<u>14.084</u>	<u>A, P, W</u>	ICNA
Riverside, New Mid-County Civil Courthouse ³	4.673	A, P	ICNA
Santa Barbara, New Santa Barbara Criminal Courthouse	6.294	W, C	ICNA
Shasta, New Redding Courthouse	8.849	W, C	ICNA
Siskiyou, New Yreka Courthouse.....	56.936	C	PBCF (ICNA)
Sonoma, New Santa Rosa Criminal Courthouse	11.252	W	ICNA
Stanislaus, New Modesto Courthouse	15.252	W	ICNA
Tuolumne, New Sonoma Courthouse.....	4.066	W	ICNA
Trial Court Capital Projects Total	\$ <u>217.484</u>		

Table Footnotes:

1. A = Land Acquisition; P = Preliminary Plans; W = Working Drawings; C = Construction.
2. ICNA = Immediate and Critical Needs Account (SB 1407 [Perata]); PBCF (ICNA) = Public Building Construction Fund (to be repaid from the ICNA).
3. Funding for this project has been authorized as a reappropriation of previously authorized funds as shown.
- 2-4. This project’s authorization includes \$8.016 million reappropriated for land acquisition and preliminary plans and \$6.068 million new funds for working drawings.

B. Drivers of Need

Several drivers of need underlie the Trial Court Capital-Outlay Plan. They are described below.

1. Lack of Security, Severe Overcrowding, and Poor Physical Conditions. The conditions of California’s court facilities are both the primary driver of need for capital improvement and the basis for this five-year plan. These conditions include poor security; a significant shortfall in space; poor functional conditions, including those that result in unsafe facilities; and inadequate physical conditions.

The lack of investment to improve and to operate and maintain existing courthouses exacerbates all facility conditions and stresses limited available funding resources. When trial court capital-outlay projects are indefinitely delayed—because of funds loaned, redirected, or swept to offset the ongoing state General Fund deficit—an even greater strain is placed on existing resources for

funding facility modifications as well as operations and maintenance of existing facilities. Each capital-outlay project that is not completed requires ongoing funding resources for the operations of the existing, deficient court facility or facilities (most projects consolidate more than one facility) it would have replaced. Due to the current General Fund shortfall, to date the judicial branch has been unsuccessful in receiving approval of new General Fund resources to fund these costs, which increase over time.

The *Final Report of the Task Force on Court Facilities* provides compelling information about the need for improving existing court space and providing additional space for California's trial courts, as listed below.

- a. *Lack of Security.* A significant number of court facilities and courtrooms are not secure. Movement of in-custody defendants through public areas of court facilities presents a real risk to public safety, given that more than 2 million in-custody defendants are walked through California's courthouses each year.

Over half of all buildings were rated by the Task Force as either marginal or deficient for judicial/staff circulation, secure circulation, and building security. As many as 15 percent of all courtrooms have deficient in-custody defendant holding or access areas. The types of security problems identified by the Task Force include the following:

1. *No entrance screening for weapons.* Many courts, particularly those located in historic or small buildings, lack the physical capacity to accommodate the magnetometer, x-ray machine, and staff required to operate a weapons screening station. Other court facilities have multiple entrances, making weapons screening stations difficult to implement at a reasonable cost.
2. *Lack of holding cells.* Many court facilities lack on-site holding cells for in-custody defendants transferred from the jail for court appearances. As a result, some courts must hold in-custody defendants in rooms not designed for in-custody holding, monitored by several security staff. In other courts, in-custody defendants are brought to the court facility in small groups and held in the courtroom or hallway while being monitored by deputy sheriffs.
3. *Lack of hallway space and waiting areas.* Many courts lack sufficient hallway and waiting areas to allow for reasonable separation between defendants, victims, jurors, and the public. As a result, court security staff is needed to keep order in public areas outside the courtroom.
4. *Unsafe circulation areas.* Many court facilities lack adequate separate and secure circulation areas for moving inmates, judges, and staff. As a result, the security staff uses unsafe paths to transport in-custody inmates. The internal circulation patterns for a court facility in which in-custody cases are heard should include three separate and distinct zones for public, private, and secured circulation. The public circulation zone provides

access to each public area of the building. The private circulation zone provides to court staff, judicial officers, escorted jurors, and security personnel limited-access corridors between specific functions. The secured circulation zone for in-custody defendants should be completely separate from the public and staff circulation zones, providing access between the secured in-custody entrance (sally port), central holding and intake areas, attorney interview rooms, courtroom holding areas, and courtrooms. In a secure courthouse, the courtroom is the only place where in-custody defendants, the public, judges, and court staff would interact.

- b. *Severe Overcrowding.* Many courthouses are severely overcrowded—either fully or partially—which negatively affects how well the courts operate and how well the public is served. Currently, and in addition to operating out of permanent buildings, the superior courts operate out of 31 trailers or modular buildings, providing space for staff office functions as well as for public assembly through 19 courtrooms. These types of facilities—provided to address staff and public service space needs temporarily—have been operating for years beyond their intended use. Hence, most of these temporary facilities are in extremely poor condition and lack any type of security or planned functionality, including accessibility, to support court operations and service to the public in the long term.
- c. *Poor Physical Conditions.* The need for facility modifications in most existing courthouses in California is documented and substantial. As courthouse capital-outlay projects are indefinitely delayed due to the redirection of SB 1407 funds, the need increases for facility modifications to existing, deficient facilities—the very same facilities that would otherwise be replaced through the construction of capital-outlay projects. With limited funding, only the most urgently needed facility modifications can proceed, leaving unaddressed significant system replacements—to roofs and mechanical and electrical systems, for example—that often result in more costly repairs in future years.
 1. California’s court facilities are not fully accessible, and many buildings do not fully meet Americans with Disabilities Act (ADA) requirements. More than half of all court facilities require moderate renovation or replacement of ADA features, and one-third require major renovation or replacement of such features. These conditions lead to reduced access to the courts for many Californians.
 2. Many court facilities need substantial seismic improvements. Even though the Task Force made preliminary findings on the need for seismic improvements, the findings were generic and based only on structure type and age. In 2003, Judicial Council staff prepared more thorough seismic safety assessments of court buildings under the Trial Court Facilities Act, section 70327. About half of the court facilities statewide were exempted from evaluation.²² Of the 225 court buildings assessed, 162 have been assigned

²² The Trial Court Facilities Act requires seismic assessment as part of the transfer process but exempts certain buildings and allows other discretionary exemptions. The Judicial Council did not evaluate relatively new or recently upgraded buildings; leased, abandoned, modular, or storage facilities; some facilities used only part time as

unacceptable seismic safety ratings, as defined by the Trial Court Facilities Act of 2002. These unacceptable buildings contain about 65 percent of all court space in the state.

3. The infrastructure systems of many buildings are not up to modern health and life safety requirements. Major improvements are needed in fire protection, life safety, plumbing, electrical, communications, heating, ventilation, and air conditioning systems. The systems deficiencies adversely affect the safety of staff and the public and the efficiency of court operations.
4. California's courts are aging. Over 70 percent of the court area statewide is housed in buildings that are more than 20 years old. Approximately 24 percent of the court area statewide is in buildings more than 40 years old. The age of buildings and of their major systems is a fundamental reason for the need for substantial renovation of the state's court facilities.
5. Space shortfalls in court facilities for most counties range from 40 to 65 percent of required space if all space were reused, based on application of the *Trial Court Facilities Guidelines*. Staff areas are crowded, and many administrative and support spaces are inadequately sized. Many courtrooms are undersized. Three-fifths of all of California's courtrooms (i.e., more than 2,100 courtrooms in total) are smaller than the minimum Task Force guideline area of 1,500 USF.²³ One-third of all courtrooms are less than 1,200 USF in area. Undersized courtrooms result in unsafe conditions due to crowding in the well areas; inadequate waiting room for litigants, victims, and witnesses; inadequate jury boxes; and lack of accessibility for disabled persons.

The Task Force found significant area shortfalls in court administration, trial court support, in-custody holding/access, court security, family court services, and jury assembly areas. Crowding and unmet demand for space affect the courts' ability to serve the public. Crowding is a logical consequence of additional judicial officers, assigned judges, commissioners, hearing officers, and court staff employed to meet the workload of California's courts.

2. Current Need for Additional Judges. A secondary, but still important, underlying driver of need for major capital investment in the California trial court system is the need for space to accommodate additional judgeships currently required to adequately serve the public. Each new judgeship requires approximately 8,000 USF or 11,500 BGSF to provide adequate space for a courtroom and associated support space for both staff and courtroom functions, such as jury facilities, public meeting space, clerk and filing counters, and in-custody holding. If

courts; or facilities whose area was both less than 10,000 square feet and a minimal portion of the total building area.

²³ More than three-fifths of all of California's courtrooms are smaller than the minimum courtroom size of 1,600 USF as defined by the *California Trial Court Facilities Standards*. These standards were adopted by the Judicial Council in April 2006.

California does not prepare to provide space for new judges in consolidated, state-owned facilities, but rather leases commercial office space for conversion into court facilities, the state's court facilities will be even more scattered and disparate. In addition, leasing space for court facilities is relatively expensive because of the requirements for secure circulation and holding cells.

A 2004 report to the Judicial Council, *Update of Judicial Needs Study*—following up on the California Judicial Needs Assessment Project of 2001—identified a statewide need for 355 new judgeships in California's trial courts. The 2001 study was conducted by the National Center for State Courts, the nation's leader in state court research, consulting, and education. The study involved a two-month analysis of 337 judicial officers to determine the amounts of time required for case processing. Although the project identified a need for approximately 355 judgeships, the Judicial Council approved a request for only the most critically needed 150 judgeships over the next three years, in consideration of the state's ongoing fiscal crisis. The first 50 of these 150 new judgeships were approved for one month of funding in FY 2006–2007.

In February 2007, the Judicial Council approved an update to the California Judicial Needs Assessment, including an allocation of the next 100 proposed new judgeships. The total statewide need for new judgeships became adjusted from 355 to 361. The Judicial Council adopted another update in October 2008.²⁴ This update further adjusted the total statewide need from 361 to 327, taking into account a slight increase in assessed judicial need less 50 authorized and funded judicial positions through the passage of Senate Bill 56 (Dunn; Stats. 2006, ch. 390) and 50 newly authorized judicial positions through the passage of AB 159. At that time, the Judicial Council also memorialized a list of the last 50 of the 150 most critically needed new judgeships still requiring legislative authorization for planning purposes for future facilities and adopted a priority ranking for requesting future funding authorization for 100 new judgeships beyond them. In October 2010, and to adhere to the legislative reporting requirement, the Judicial Council reported in the *Need for New Judgeships in the Superior Courts: Report to the Legislature Under Government Code Section 69614(C)* that the total statewide need for new judgeships was adjusted from 327 to 330. In October 2012, and to adhere to the legislative reporting requirement, the Judicial Council reported in the *Need for New Judgeships in the Superior Courts: 2012 Update of the Judicial Needs Assessment* that the total statewide need for new judgeships was adjusted from 330 to 264. In December 2014, and to adhere to the legislative reporting requirement, the Judicial Council reported in the *Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* that the total statewide need for new judgeships was adjusted from 264 to 270.

Although 27064 now represents the current statewide need for new judgeships, the Judicial Council recognizes statewide budget constraints and has requested only the next 100 new

²⁴ Government Code section 69614(c) requires the Judicial Council to report to the Legislature and the Governor on or before November 1 of every even-numbered year on the need for new judgeships in each superior court. This need is determined using the uniform criteria for allocation of judgeships described in Government Code section 69614(b).

judgeships for funding authorization: 50 per AB 159 and another 50 identified but still to be attached to legislation. Over the next 10 years, additional judgeships will be required to adequately serve the public.

Overall, the planning of facility growth for future court expansion has been limited in the trial court construction program. ~~About half~~ of the ~~31-25~~ active trial court capital projects—funded by the state General Fund, SB 1732, and SB 1407—address only current space needs of the superior courts, with ~~the balance providing~~ only a modest amount of space ~~included in the others~~ for ~~new judgeships 29~~ (i.e., ~~approximately 27~~ of the ~~next~~ 100 ~~next~~ new judgeships described above). Although no funding for new judgeships has been authorized by the Legislature since FY 2006–2007, planning for new judgeships in California’s judicial branch facilities is a prudent approach given the results of the judicial needs assessment.

3. Consolidation of Facilities. In addition to facility condition and the need for new judgeships, the Task Force and facility master plans identified opportunities to consolidate facilities to improve service to the public, avoid duplication of services, and improve efficient delivery of court services in the state. Opportunities for consolidation result from several conditions. Before the completion of the trial court facility transfer process in December 2009, some counties had historically lacked funds or the political will to provide consolidated facilities to meet additional court space requirements. Moreover and rather than expand or replace existing court facilities, some counties had leased commercial office space or acquired temporary modular buildings that were not always physically connected to existing court facilities. Opportunities for consolidation of court facilities resulted from trial court unification, and some courts that still operate several former municipal court facilities have recognized that consolidating a number of small facilities into one larger facility offers various service-delivery and operational benefits.

When the ~~31-25~~ active trial court capital projects funded by the state General Fund, SB 1732, and SB 1407 are completed, approximately ~~121+5~~ facilities will be consolidated into ~~31-25~~ new, renovated, or expanded courthouses.²⁵ Of the ~~12-18~~ already completed trial court capital projects, ~~34-45~~ facilities have been consolidated into ~~12-18~~ new or renovated courthouses.

4. Improved Access to the Courts / Access 3D. Expanding access to justice is a goal of the Judicial Council and is one of four criteria used to establish relative priority among trial court capital-outlay projects. The facility master plans completed in 2002–2003 identified a number of areas in the state where access to justice could be increased by construction of a new court facility or expansion of an existing court facility. And, more recently, the Chief Justice announced her Access 3D initiative to expand the public’s physical, remote, and equal access to the courts. Physical access includes providing safe, secure, accessible, and cost-effective courthouses.

²⁵ Since January 2013, the Judicial Council has determined that a total of ~~10+~~ SB 1407 projects are indefinitely delayed and no longer considered active. These trial court capital projects will be considered active again once their funding is fully restored.

C. Inventory of Trial Court Space

The key findings from the Task Force's inventory and evaluation process characterize the existing state of trial court facilities. Most of California's trial court facilities are housed in mixed-use buildings, and the courts and court-related agencies (such as the public defender, the district attorney, and probation) are the dominant uses in such buildings. The Task Force reported a 2001 inventory in California of 451 facilities, including over 2,100 courtrooms and 10 million USF. As of December 2009 and resulting from the completion of the trial court facility transfer process, the inventory now totals approximately 500 trial court facilities. Moreover, the building area under Judicial Council responsibility and management has increased to approximately 20 million USF, including the responsibility for more than 2,100 courtrooms.

The Task Force found the following functional and physical problems with California's trial court facilities:

- Only 45 percent of all usable court area is located in buildings rated functionally and physically adequate; 22 percent is located in buildings that have serious functional problems.
- Approximately 21 percent of all courtrooms were rated deficient for their current use, principally due to deficient holding, security, or in-custody access.
- Security-related deficiencies strongly affect the ability of courts to ensure the safety of court participants and the public. In many court facilities, the lack of adequate in-custody defendant holding and secure circulation requires sheriff personnel to move shackled defendants through public hallways, which is a labor-intensive and therefore costly practice.

D. Unmet Trial Court Facilities Needs

Additional space is required to meet current needs and space requirements for new judgeships. The unmet need for space in California's trial courts is presented below in table 7. Space requirements assume that approximately 8,000 USF or 11,500 BGSF is required for each new judgeship, although some new judgeships have been accommodated in existing court space, within new modular buildings, or within new leased space. Given the limited fiscal resources of the state, space required for new judgeships is presented as a range.

Table 7: Unmet Trial Court Facility Needs

	USF (in millions)	Assumptions
Total Current Space Needs	15.00	Task Force Final Report
<i>Plus</i> Space Required for Current Need for Additional Judges	0.80 to 2.1 64	100 to 270 64 Judges at 8,000 USF per Courtroom ¹
<i>Less</i> Total Current Space Occupied	14.00	Judicial Council Leases and Owned-Property Portfolio
Total Unmet Facility Needs	1.80 to 3.164 USF (2.52 to 4.4235 BGSF)	

Table Footnote:

1. This range is from the 100 new judgeships currently sought for funding (50 in Assem. Bill 159 and 50 confirmed by the Judicial Council but still requiring legislative authorization) to the total overall need of 270~~64~~, which resulted from the latest adjustment to the total net need for new judgeships reported to the Legislature and the Governor by the council in ~~October~~ December 201~~4~~2.

E. Alternative Approaches to Meeting Unmet Trial Court Facilities Needs

Starting with the planning analysis completed by the Task Force for each of the 58 courts, the facility master plans examined several factors in developing a capital-outlay plan for each county. Each facility master plan considered how best to provide court services to the county, in the context of the recent consolidation of the superior and municipal courts, local demographic trends, court operational goals, the constraints and opportunities of the existing court facilities, and the Judicial Council–adopted *California Trial Court Facilities Standards*. Service goals resulted in consolidating courts to increase operational efficiency or expanding court services in underserved parts of counties. Each master plan solution consequently determines how best to meet the unmet trial court facility needs for each of the 58 trial courts in California.

F. Facilities to Meet Trial Court Unmet Needs and Proposed Trial Court Five-Year Infrastructure Plan

The proposed five-year plan for the trial courts is based on the SB 1407 courthouse construction program, whose funding plan is represented below in table 8. Funding for the Trial Court Capital-Outlay Plan—a proposed list of 100 new construction, renovation, and expansion capital-outlay projects—has not yet been identified. Funding for this capital-outlay plan is most likely to be secured after FY 20~~21~~18–20~~22~~19, and therefore, table 8 does not present a funding plan for these projects. The Trial Court Capital-Outlay Plan is presented in summary in table 5 and in full in Appendix A.

The five-year plan for the trial courts is also based on the unmet funding need for 10~~1~~ SB 1407 projects that were *indefinitely delayed* through Judicial Council action in October 2012 and January 2013. These courthouse capital projects were indefinitely delayed because of the one-time and ongoing redirections of SB 1407 trial court construction funds described in the

Introduction to this report. They are identified in a list—presented in Appendix A—separate from the Trial Court Capital-Outlay Plan because their funding source originally identified as SB 1407 remains identifiable and tied to SB 1407, unlike the projects listed in the Trial Court Capital-Outlay Plan, which have no identifiable funding source. Because table 8 represents a complete funding plan for the SB 1407 courthouse construction program, estimated funding for these 104 indefinitely delayed SB 1407 capital projects is accounted for in outlying fiscal years.

Table 8 presents the FY 2009–2010 through FY 20154–20165 funding requirements based on actual, authorized expenditures for initial and continuation project phases.²⁶ The total funding requirements for fiscal years 20165–20176 through 20219–20224 represent the amount of funding estimated for authorization, based on project schedules and funding requirements and including the budgets of the 104 unfunded SB 1407 projects indefinitely delayed by the Judicial Council.

(PLEASE NOTE: The information in the table below is placeholder at this time and subject to change.)

Table 8: Estimated Annual Funding Requirements to Implement the SB 1407 Program—Funded and Unfunded Trial Court Projects

<u>Fiscal Year</u>	<u>Annual Funding (in billions)</u>
2009–2010	\$ 0.119
2010–2011	0.121
2011–2012	0.062
2012–2013	0.556
2013–2014	0.507
2014–2015	0.152
2015–2016	0.262
2016–2017	0.309
2017–2018	0.624
2018–2019	0.080
2019–2020	0.020
2020–2021	0.053
<u>2021–2022</u>	<u>1.068</u>
Total Funding Need	\$ 3.933

²⁶ Initial funding for the first 15 SB 1407 projects was authorized in the FY 2009–2010 Budget Act, enacted in July 2009, and the remaining 26 projects were authorized between November 2009 and July 2010, through a continuous appropriation process specified by Senate Bill X2 12, Special Session (Steinberg; Stats. 2009, ch. 10).

G. Consequences of Not Addressing Identified Needs

California's court buildings will only continue to deteriorate if facilities problems are not addressed. If improvements are delayed, the problems' scope and cost to correct will increase dramatically, and as the state population continues to grow, both the public and the justice system will suffer from increasingly overtaxed, unsafe, and inefficient court buildings. Major funding is needed to permit the judicial branch to move quickly to correct these significant problems, thus supporting the branch's role as a national leader in innovative court programming and its commitment to equal access for all Californians.

Several specific consequences could result if the unmet facility needs of California's trial courts are not addressed.

1. In-Custody Movement Costs Remain High. Given that over half of all court buildings were rated by the Task Force as either marginal or deficient for judicial/staff circulation, secure circulation, and building security, the court system will continue to bear the cost for sheriff personnel to directly escort in-custody defendants in and throughout court facilities unless these conditions are corrected. Every court facility that does not have secure circulation from the holding cell area (if one exists) to a courtroom requires sworn deputies to escort in-custody defendants through public and staff/judicial corridors.

In a modern court facility, in-custody defendants are transported throughout a building using elevators and hallways devoted to secure movement, which reduces the number of sheriff personnel required for supervised in-custody movement. Given the fact that more than two million in-custody defendants are walked through California's court facilities each year, the lack of secure circulation in criminal court facilities is a functional problem throughout the state and a major budgetary issue to rectify. With updated facilities that address these issues, many courts would be able to redeploy existing security staff more efficiently for the potential to operate at a lower cost.

2. Unsafe Conditions Will Persist. Given the lack of secure circulation and other life safety conditions at many California court facilities, unsafe conditions will persist unless the Trial Court Capital-Outlay Plan is implemented. These conditions include the lack of fire alarm systems, safe emergency egress paths, secure circulation (described above), and seismically sound building structures.

3. Facilities Will Continue to Deteriorate. California's courts are aging, and continued lack of investment in court facilities will lead to continued deterioration of buildings, including roofs, mechanical and electrical systems, and other basic building components.

4. Funding Needs for Facility Modifications Will Increase. For each capital-outlay project that is not completed, ongoing funding resources are needed for the operation and maintenance of the existing, deficient court facility or facilities (since most projects consolidate more than one facility) it would have replaced. The need for facility modifications—[which](#)

largely reflect deferred maintenance needs—has increased since 104 projects were indefinitely delayed because of the redirection of SB 1407 funds designated for these projects to replace or renovate a total of 139 existing buildings. Facility modification requirements for these facilities are now even more urgent due to the deliberate deferral of preventive maintenance and all but emergency repairs. There are also challenges in trying to improve court facilities that remain under local county ownership. For example, and because of their historical significance, approximately 17 courthouses did not transfer to the state and remain in county ownership. These facilities, however, require a range of improvements to be made safe and secure. Currently, no funding mechanism is in place for the state to improve county-owned facilities such as these.

In February 2013, the Judicial Council authorized the submission of a FY 2013–2014 funding request to the state Department of Finance for \$10 million ongoing to be allocated to facility modifications from SB 1732 resources—specifically the State Court Facilities Construction Fund—to bring the average annual budget for facility modifications of both SB 1407 and SB 1732 funding sources to \$60 million. This funding request was denied by DOF. The 2014 Budget Act (FY 2014–2015) budget provided an annual \$15 million appropriation increase from the ~~Immediate and Critical Needs Account~~ State Court Facilities Construction Fund for a 10-year period. However, gaining this funding still does not close the gap between the need for facility modifications and proposed resources; in fact, a budget of \$65 million annually for a 10-year period for facility modifications still falls tens of millions of dollars short of what is needed to maintain existing courthouses in California.

5. Scattered and Unconsolidated Facilities Must Be Maintained. Implementing this five-year plan will consolidate former municipal courts into full-service superior courts. Although some remote court locations offer access to court services for residents of less populous areas of the state, maintaining small leased court facilities and temporary modular buildings hinders courts' ability to provide accessible and efficient service to the public. Consolidation of criminal functions also results in operational savings for the broader criminal justice system of district attorneys, sheriffs, correctional institutions, and public defenders. The consolidation of criminal court functions would be the result of some 45 court projects.

6. Space for New Judges Will Be Provided in Nonconsolidated Facilities, and Access to Court Services Will Continue to Be Limited. Implementing this five-year plan will provide space for some new judges in consolidated facilities. California is a growing state, and additional judges are required to provide proper service to its residents. If California does not prepare to provide space for new judges in consolidated, state-owned facilities but, rather, leases and converts commercial office space into court facilities, the state's court facilities will become even more scattered and disparate. In addition, leasing space for criminal court facilities is relatively expensive because of the requirements for secure circulation and holding cells. In reference to the Access 3D initiative, physical access to justice can be achieved only by providing safe, secure, accessible, and cost-effective courthouses to improve access to court services for Californians.

H. Reconciliation to Previous Plan

This plan proposes a continuation of projects that were initially authorized from November 2009 to July 2011 and have been moving forward—with some delays due to redirection of construction funds.

The primary difference between this five-year plan and the five-year plan for FY 201~~54~~–201~~65~~ results from the following:

1. The list of funding requests for FY 201~~65~~–201~~76~~, which is presented in table 1 of this five-year plan and is consistent with the Court Facilities Advisory Committee’s recommendations adopted by the Judicial Council in August 201~~54~~;
- ~~1.2.~~ The estimated funding requirements presented in table 8 of this five-year plan include the budgets of the 10 unfunded SB 1407 projects indefinitely delayed by the Judicial Council;
- ~~2.3.~~ An update to the ~~104~~ unfunded SB 1407 projects indefinitely delayed by the Judicial Council, based on updating project budgets to 201~~54~~ dollars; and
- ~~3.4.~~ An update to the unescalated cost of the Trial Court Capital-Outlay Plan, based on updating project budgets to 201~~54~~ dollars. Therefore, and at the direction of the Judicial Council in August 201~~54~~, the capital-outlay plan continues to present a total of 100 projects. This capital-outlay plan is dated August **20 OR 21**, 201~~54~~, is sorted by both total score and court, is shown in January 201~~54~~ dollars, and presents only those projects for which funding is still required and has yet to be secured. A summary of the capital-outlay plan is shown in table 5 above, including its current total budget of \$7.3 billion (in January 201~~54~~ dollars) and is presented in full in Appendix A.

Additional technical revisions have been made to the previous fiscal year’s five-year plan, to update it to reflect FY 201~~65~~–201~~76~~ needs and to prepare it for submission to the DOF in September 201~~54~~ along with all project-funding requests for consideration in the Governor’s January Budget for FY 201~~65~~–201~~76~~.

V. Staff to the Judicial Council

A. Purpose of the Staff to the Judicial Council

The Judicial Council of California, which oversees the administration of the state judicial system, established its staff agency in 1960. Historically, staff performed specialized functions for the Judicial Council, operating within a highly centralized management environment. Judicial Council staff was primarily responsible for the Judicial Council rule-making process and the direct management of administrative support for appellate courts in such areas as personnel, budget, and technology systems support. That role has evolved significantly over the course of the last decade as California's judicial system has undergone changes in response to increasing public expectations as well as evolving statutory requirements. These major changes have considerably altered Judicial Council staff's responsibilities to the council, the courts, and the public, resulting in a transformation in organization, function, and the means of providing services.

Today, the Judicial Council has approximately XXX staff members, who provide services to more than 2,000 judicial officers and 19,000 branch employees of the trial and appellate courts in 65 courts at approximately 450 locations. The Judicial Council works in collaboration with 5 internal committees, 254 advisory committees and, 32 task forces, and 1 working group—comprising representatives from the courts, the State Bar, and the general public—that address important issues facing the judicial system.

In August 2012, the Judicial Council voted unanimously to approve recommendations to restructure its staff and endorse a plan for monitoring the implementation of the recommendations. The recommendations were developed by the Judicial Council's Executive and Planning Committee and are based on the Chief Justice's Strategic Evaluation Committee (SEC) report, presented to the Judicial Council at its meeting in June 2012.²⁷ By Judicial Council direction, the new organizational structure was implemented on October 1, 2012, and its Executive Office was modified to include four positions: Administrative Director, Chief of Staff, Chief Operating Officer, and Chief Administrative Officer. Moreover, the previous nine divisions became offices, with their directors reporting to one of the new Executive Office positions. On July 29, 2014, the Judicial Council voted to simplify the names of these offices.

Judicial Council staff—led by an Executive Office that oversees Governmental Affairs and three divisions—is described below:

²⁷ Soon after taking office in 2011, the Chief Justice appointed the SEC to conduct an in-depth review of its staff agency (formerly known as the Administrative Office of the Courts), with a view toward promoting transparency, accountability, and efficiency. The request from the Chief Justice required the SEC to undertake a thorough and objective examination of the role, functions, organizational structure, methods of operation, and staffing of the agency and to make recommendations to improve the manner in which it performs core functions and provides services to the courts and the public.

1. Executive Office. Serving the Judicial Council and the California courts, the Administrative Director provides the highest level of policy and programmatic leadership. The Executive Office has oversight responsibility for the development and implementation of programs in furtherance of Judicial Council policies and priorities. The office works with Judicial Council staff, the courts, the Legislature, the Governor’s Office, and all other external stakeholders to coordinate and facilitate timely handling of judicial administration issues. Additionally, the office sets direction for development and implementation of goals, objectives, policies, procedures, and work standards and, together with management, works to develop and implement appropriate strategies to meet the agency’s needs. The Chief of Staff, Chief Operating Officer, and Chief Administrative Officer all report to the Administrative Director and together make up the Executive Office.

2. Governmental Affairs. Governmental Affairs, in Sacramento, represents and advocates for the Judicial Council on legislative, policy, and budget matters.

3. Leadership Services Division. The Chief of Staff leads the Leadership Services Division. This division provides support directly to the Judicial Council and the Trial Court Presiding Judges and Court Executives Advisory Committees. This division is composed of the following six offices:

- a. *Audit Services.* Audit Services conducts risk assessments, develops audit programs, performs audits of judicial branch entities, assists state and external auditors, and recommends improvements based on audit results, thereby playing a key role in meeting the branch’s fiscal oversight responsibilities.
- b. *Communications.* Communications is responsible for communications planning and implementation to further the goals of the Judicial Council and its priority programs. The office also supports branchwide communications through the California Courts Connected initiative.
- c. *Judicial Council Support.* Judicial Council Support ensures that Judicial Council business meetings focus on well-planned and well-prepared policy issues; supports the nomination process of Judicial Council and advisory committee members; maintains records of circulating orders and Judicial Council member and advisory committee member appointments; organizes orientations for Judicial Council members and advisory committee chairs; prepares minutes of Judicial Council business meetings; and maintains the Judicial Council calendar.
- d. *Legal Services.* Legal Services provides quality, timely, and ethical legal advice and services to the Chief Justice, the Judicial Council and its staff, the Judicial Council’s advisory committees and task forces, and the appellate and trial courts. The office has two major functions: house counsel, and rules and projects.

- e. *Special Projects*. Special Projects administers significant special projects for the organization through the provision of analytical and project management services under the leadership and direction of the Chief of Staff.
- f. *Trial Court Liaison*. The Trial Court Liaison office establishes and maintains effective working relationships with the trial courts to accomplish the strategic and operational goals of the Judicial Council.

4. Operations and Programs Division. The Chief Operating Officer leads the Operations and Programs Division. This division houses activities and programs that support court operations, programs, and services. This division is composed of the following six offices, each of which is temporarily reporting to either the Administrative Director or the Chief of Staff while the Chief Operating Officer position is vacant:

- a. *Appellate Court Services*. Appellate Court Services is responsible for facilitating and coordinating quality and timely service to the California Supreme Court and Courts of Appeal, and for providing lead staff support to the administrative presiding justices and clerk/administrators of the appellate courts.
- b. *Capital Program*. Capital Program enhances the administration of justice by providing responsible and efficient management of California's facilities construction program of capital-outlay projects and promotes equal access to justice by providing leadership in the design, construction, and renovation of California courthouses.
- c. *Center for Families, Children & the Courts*. The Center for Families, Children & the Courts is dedicated to improving the quality of justice and services to meet the diverse needs of children, youth, parents, families, and other users of the California courts.
- d. *Center for Judiciary Education and Research*. The Center for Judiciary Education and Research staff and volunteers lead and support continuing professional development for each individual in the California judicial branch, to enhance the administration of justice.
- e. *Court Operations Services*. Court Operations Services provides direct services, resources, and program support to the California courts to facilitate access to justice for the people of the state. The division is organized into ~~seven~~ six functional areas: Administration and Planning, Assigned Judges Program, Court Language Access Support Program, Divisional Budgeting/Appellate Court Services, Office of Court Research, ~~Office of Security~~, and Special Services Program Support.
- f. *Criminal Justice Services*. Criminal Justice Services oversees and coordinates multidivisional efforts related to community corrections, the 2011 Criminal Justice Realignment, and other criminal justice activities to improve efficiencies and assistance to the courts, justice partners, and the public.

5. Administrative Division. The Chief Administrative Officer leads the Administrative Division. This division houses traditional administrative services for Judicial Council staff and the judicial branch. This division is composed of the following six offices:

- a. *Administrative Support.* Administrative Support is an internal service organization that provides all Judicial Council staff divisions and offices with logistical support services, including oversight of conference center operations, facilitation of local ground transportation, friendly and helpful reception, professional off-site conference and meeting planning, mail and shipping, records management, document digitization, and commercial-quality copy and print production.
- b. *Finance.* Finance facilitates and enhances the administration of justice by providing timely and effective fiscal, contract, and procurement services to the judicial branch in a proactive, flexible, and service-oriented environment, consistent with all applicable laws, rules, and regulations.
- c. *Human Resources.* To California judicial branch employees and judicial officers, Human Resources provides timely, responsive, and professional human resource management services reflecting best practices, with the overarching goal of developing the California judicial branch as an employer of choice.
- d. *Information Technology.* Information Technology is responsible for assisting the courts in achieving the Judicial Council’s technology objectives. This office is directly responsible for the development, acquisition, implementation, and support of automated systems in the appellate courts and staff offices of the Judicial Council and for the planning and coordination of technological developments in the trial courts.
- e. *Real Estate and Facilities Management.* Real Estate and Facilities Management is responsible for managing the state judiciary’s property portfolio for the courts and people of California. This office manages ongoing operational needs for more than 500 court and other judicial branch facilities, as well as site selection and acquisition for capital projects managed by the Capital Program office. This office also contains the Office of Security.
- f. *Trial Court Administrative Services.* Trial Court Administrative Services manages and implements the Phoenix System (financial and human resources automated systems) in trial courts throughout the state.

B. Summary, Inventory, and Evaluation of Existing Judicial Council Facilities

Judicial Council staff is adequately housed in its present facilities. Details of each of the facilities are provided below.

1. San Francisco (Headquarters)

The headquarters is located in San Francisco, in the state-owned Hiram W. Johnson State Office Building of the Ronald M. George State Office Complex.

Existing Facility:	<i>Headquarters – San Francisco</i> <i>455 Golden Gate Avenue, San Francisco – 1st, 3rd, 4th, 5th, 6th & 8th Floors</i> <ul style="list-style-type: none">• 179,924 USF• State-owned Hiram W. Johnson State Office Building (1999) – part of the Ronald M. George State Office Complex• Staff – XXX
Current Status:	In January 2013, and owing to restructuring, staff relocated within floors 3–6 and 8 to conserve space and lease costs. During this process, Judicial Council staff vacated the 7th floor, reducing its usable area by 38,576 USF for at least the next 30 to 36 months . Space is adequate.
Needs:	Required Space 179,924 USF Current Space 179,924 USF Net Need 0 USF
Proposal:	No additional space is required at this time.

2. Sacramento

In Sacramento, the staff office and Governmental Affairs are both located in commercial leased space.

Existing Facility:	<i>Governmental Affairs</i> <i>770 L Street, Suite 1240, Sacramento – 12th Floor</i> <ul style="list-style-type: none">• 6,578 USF• Commercial leased space in high-rise building• Staff – XX
Current Status:	Governmental Affairs is the Judicial Council’s liaison to the executive and legislative branches and is necessarily located near the state capitol. In February 2012, Governmental Affairs moved suites within the same building to reduce space and lease costs. Space is adequate.
Needs:	Required Space 6,578 USF Current Space 6,578 USF Net Current Need 0 USF
Proposal:	No additional space is required at this time.

Existing Facility:	<i>Sacramento</i> <i>2850 Gateway Oaks Drive, Suite 300, Sacramento – 3rd Floor</i> <i>2860 Gateway Oaks Drive, Suite 400, Sacramento – 4th Floor</i> <ul style="list-style-type: none">• 57,963 USF• Commercial leased space• Staff – XXX
Current Status:	Since February 2012, Judicial Council staff vacated the 4th floor of 2850 Gateway Oaks Drive, reducing its usable area by 6,668 USF. Space is adequate.
Needs:	Required Space 57,963 USF Current Space 57,963 USF Net Current Need 0 USF
Proposal:	No additional space is required at this time.

3. Burbank

The staff office in Burbank is located in commercial leased space.

Existing Facility:	<i>Burbank</i> <i>2255 North Ontario Street, Suite 200, Burbank – 2nd Floor</i>						
	<ul style="list-style-type: none">• 10,666 USF• Commercial lease spaced• Staff – XX						
Current Status:	Judicial Council staff moved into new leased space in June 2013, reducing its usable area by 26,681 USF. Space is adequate.						
Needs:	<table><tr><td>Required Space</td><td>10,666 USF</td></tr><tr><td>Current Space</td><td>10,666 USF</td></tr><tr><td>Net Current Need</td><td>0 USF</td></tr></table>	Required Space	10,666 USF	Current Space	10,666 USF	Net Current Need	0 USF
Required Space	10,666 USF						
Current Space	10,666 USF						
Net Current Need	0 USF						
Proposal:	No additional space is required at this time.						

4. Field Offices

~~Seven-Six~~ field offices, all in commercial leased space (shown below) and space in existing court facilities, provide close-proximity facilities management support to various local courts.

Existing Facility:	<i>Real Estate and Facilities Management Field Office – District 31 (Sonoma County) 2880 Cleveland Avenue, Suite 7, Santa Rosa</i>	
	<ul style="list-style-type: none"> • 658 USF • Commercial leased space • Staff – 1 	
Current Status:	Real Estate and Facilities Management began to lease space on June 1, 2009, for its regional facilities staff servicing the Superior Court of Sonoma County.	
Needs:	Required Space	658 USF
	Current Space	658 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

Existing Facility:	<i>Real Estate and Facilities Management Field Office – District 10 (Shasta County) 2400 Washington Avenue, Suite 300, Redding</i>	
	<ul style="list-style-type: none"> • 670 USF • Commercial leased space • Staff – 1 	
Current Status:	Real Estate and Facilities Management began to lease space on July 1, 2008, for its regional facilities staff servicing the Superior Court of Shasta County.	
Needs:	Required Space	670 USF
	Current Space	670 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

4. Field Offices, *continued*

Existing Facility:	<i>Real Estate and Facilities Management Field Office – District 20 (San Bernardino County) 1776 West Park Avenue, Suite 136, Redlands</i>	
	<ul style="list-style-type: none"> • 896 USF • Commercial leased space • Staff – 3 	
Current Status:	Real Estate and Facilities Management began to lease space on December 17, 2008, for its regional facilities staff servicing the Superior Court of San Bernardino County.	
Needs:	Required Space	896 USF
	Current Space	896 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

Existing Facility:	<i>Real Estate and Facilities Management Field Office—District 21 (Kern County) 930 Truxtun Avenue, Suite 107, Bakersfield</i>	
	<ul style="list-style-type: none"> • 250 USF • Commercial leased space • Staff—2 	
Current Status:	Real Estate and Facilities Management began to lease space on June 15, 2009, for its regional facilities staff servicing the Superior Court of Kern County.	
Needs:	Required Space	250 USF
	Current Space	250 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

4. Field Offices, *continued*

Existing Facility:	<i>Real Estate and Facilities Management Field Office – District 21 (Santa Barbara County) 2601 Skyway Drive, Suite A2, Santa Maria</i>	
	<ul style="list-style-type: none"> • 1,882 USF • Commercial leased space • Staff – 1 	
Current Status:	Real Estate and Facilities Management began to lease space on August 1, 2009, for its regional facilities staff servicing the Superior Court of Santa Barbara County.	
Needs:	Required Space	1,882 USF
	Current Space	1,882 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

Existing Facility:	<i>Real Estate and Facilities Management Field Office – District 22 (Los Angeles County) 333 East Foothill Boulevard, Suite 101, San Dimas</i>	
	<ul style="list-style-type: none"> • 1,000 USF • Commercial leased space • Staff – 3 	
Current Status:	Real Estate and Facilities Management began to lease space on February 1, 2009, for its regional facilities staff servicing the Superior Court of Los Angeles County.	
Needs:	Required Space	1,000 USF
	Current Space	1,000 USF
	Net Current Need	0 USF
Proposal:	No additional space is required at this time.	

4. Field Offices, *continued*

Existing Facility: *Real Estate and Facilities Management Field Office – District 23
(San Diego County)
12396 World Trade Drive, Suite 218, San Diego*

- 990 USF
- Commercial leased space
- Staff – 2

Current Status: Real Estate and Facilities Management began to lease space on May 1, 2009, for its regional facilities staff servicing the Superior Court of San Diego County.

Needs:	Required Space	990 USF
	Current Space	990 USF
	Net Current Need	0 USF

Proposal: No additional space is required at this time.

Appendix A

August 201~~5~~4 Judicial Council Report: Senate Bill 1407 Project Funding Requests and
Judicial Branch AB 1473 Five-Year Infrastructure Plan for fiscal year 201~~5~~5–201~~7~~6

~~101~~ *Indefinitely Delayed SB 1407 Trial Court Capital-Outlay Projects: Sorted by Alphabetical
Order*, August ~~20 OR 212~~, 201~~5~~4

Trial Court Capital-Outlay Plan, August ~~20 OR 212~~22, 201~~5~~4: Sorted by Total Score and by
Court (January 201~~5~~4 dollars)

Final Version of
August Judicial Council Report
to be Inserted Here

**10 Indefinitely Delayed SB 1407 Trial Court Capital-Outlay Projects:
Sorted by Alphabetical Order
August 20 OR 21, 2015**

County	Project Name ¹	Project Priority Group	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Date of Indefinite Delay by Judicial Council	Project Phase When Indefinitely Delayed	Estimated Total Project Budget ⁵
Fresno	Renovate Fresno County Courthouse ²	Immediate	18	5	3	5	5	January 2013	Preliminary Plans	\$69,080,000
Kern	New Delano Courthouse ³	Immediate	15	2	3	5	5	October 2012	Site Acquisition	\$43,613,000
Kern	New Mojave Courthouse ³	Immediate	16.5	5	4	5	2.5	October 2012	Site Acquisition	\$46,066,000
Los Angeles	New Glendale Courthouse ³	Immediate	14.5	4	3	5	2.5	October 2012	Site Acquisition	\$132,595,000
Los Angeles	New Santa Clarita Courthouse ³	Immediate	16	3	3	5	5	October 2012	Site Acquisition	\$66,442,000
Los Angeles	New Southeast Los Angeles Courthouse ²	Immediate	15	2	3	5	5	January 2013	Site Acquisition	\$131,579,000
Monterey	New South Monterey County Courthouse ³	Immediate	17	5	4	3	5	October 2012	Preliminary Plans	\$50,393,000
Nevada	New Nevada City Courthouse ⁴	Critical	13	4	4	5	0	January 2013	Site Acquisition	\$107,633,000
Placer	New Tahoe Area Courthouse ³	Immediate	17	4	5	3	5	October 2012	Site Acquisition	\$23,545,000
Plumas	New Quincy Courthouse ³	Critical	14	5	4	5	0	October 2012	Site Acquisition	\$36,289,000
Total Estimated Projects Budgets										\$707,235,000

Footnotes:

1. These projects are sorted by alphabetical order of county names and then by project names.
2. This project was indefinitely delayed by the Judicial Council in January 2013.
3. This project was indefinitely delayed by the Judicial Council in October 2012.
4. This project was indefinitely delayed by the Judicial Council in January 2013. Its scope will be confirmed—as it may become a renovation project—if its funding is restored.
5. These estimated total project budgets, which reflect Judicial Council-mandated cost reductions, are current as of January 2015.

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Score

County	Project Name¹	Project Priority Group²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs³	Parking Structure Budget for Current Needs⁴
San Joaquin	New South San Joaquin County Courthouse	Immediate	17	4	3	5	5	\$57,500,000	
Fresno	New Selma Regional Justice Center	Immediate	16	5	3	3	5	\$65,400,000	
Tulare	Renovation and Addition to Visalia Courthouse	Immediate	16	5	3	5	3	\$73,300,000	\$5,500,000
Contra Costa	New North Concord Courthouse	Immediate	16	4	3	5	4	\$65,400,000	
Riverside	New Corona Courthouse (W Reg)	Immediate	16	4	2	5	5	\$34,500,000	
Fresno	New Clovis Courthouse	Immediate	15	5	3	2	5	\$11,500,000	
Ventura	New Ventura East County Courthouse	Immediate	15	4	1	5	5	\$98,100,000	
Sonoma	New Santa Rosa Family and Civil Courthouse	Immediate	14.5	5	3	5	1.5	\$87,200,000	\$11,000,000
Riverside	New Temecula Courthouse (Mid-Cnty Reg)	Critical	14	5	3	1	5	\$11,500,000	
San Bernardino	New High Desert Courthouse	Critical	14	1	3	5	5	\$137,800,000	
Solano	Renovation and Addition to Solano Court Complex	Critical	13.5	3	3	5	2.5	\$58,200,000	
Lake	New Clearlake Courthouse	Critical	13.5	2	4	5	2.5	\$11,500,000	
Imperial	Renovation and Addition to El Centro Courthouse	Critical	13	5	3	5	0	\$26,700,000	
Kern	New Ridgecrest Courthouse	Critical	13	5	4	1	3	\$23,000,000	
Sacramento	New Sacramento Civil Courthouse	Critical	13	5	3	5	0	\$127,200,000	\$16,500,000
Santa Clara	New Mountain View Courthouse	Critical	13	5	3	5	0	\$106,000,000	\$13,750,000
Sonoma	Renovate Santa Rosa Hall of Justice	Critical	13	5	3	5	0	\$0	\$0
San Diego	Addition to Vista (North County) Courthouse	Critical	13	4	3	5	1	\$76,300,000	\$9,630,000
Riverside	Addition to Riverside Juvenile Courthouse (W Reg)	Critical	13	3	4	1	5	\$0	
Riverside	New Western Regional Traffic and Small Claims Courthouse (W Reg)	Critical	13	3	3	2	5	\$23,000,000	
San Diego	Renovate San Diego South County Regional Center	Critical	13	3	3	5	2	\$10,000,000	
Santa Barbara	Addition to Santa Maria Lewellen Justice Center	Critical	12.5	5	2	5	0.5	\$23,000,000	\$2,750,000
San Luis Obispo	New San Luis Obispo Courthouse	Critical	12.5	4	3	5	0.5	\$148,400,000	\$19,250,000
Kern	Renovation and Addition to Bakersfield Courthouse	Critical	12.5	3	3	5	1.5	\$296,800,000	\$38,500,000

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Score

County	Project Name¹	Project Priority Group²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs³	Parking Structure Budget for Current Needs⁴
Mono	Renovate Bridgeport Courthouse	High	12	5	4	3	0	\$1,000,000	
San Diego	Renovation and Addition to San Diego Meadowlark Juvenile Courthouse	High	12	5	4	3	0	\$6,800,000	
Los Angeles	New Downtown Los Angeles Civil and Family Courthouse (C)	High	12	4	3	5	0	\$949,400,000	\$138,880,000
Los Angeles	New Los Angeles Central Juvenile Courthouse (JDel)	High	12	4	3	5	0	\$57,500,000	\$6,880,000
Los Angeles	Renovate Burbank Courthouse (NC)	High	12	4	3	5	0	\$9,800,000	
Mariposa	New Mariposa Courthouse	High	12	4	5	3	0	\$23,000,000	
Orange	New South County Courthouse	High	12	4	1	2	5	\$46,000,000	
Santa Cruz	Addition to Santa Cruz Courthouse	High	12	3	3	5	1	\$23,000,000	
Kern	New Taft Courthouse	High	11.5	2	4	2	3.5	\$23,000,000	
Riverside	New Indio Courthouse (Desert Reg)	High	11.5	1	2	5	3.5	\$76,300,000	
San Bernardino	Renovate Joshua Tree Courthouse	High	11	4	2	5	0	\$4,200,000	
Los Angeles	Addition to New East Los Angeles Criminal Courthouse (E)	High	11	3	3	5	0	\$137,800,000	\$17,880,000
Modoc	Addition to Alturas Barclay Justice Center	High	11	3	3	5	0	\$11,500,000	
San Diego	New San Diego Traffic/Small Claims Courthouse	High	11	3	3	5	0	\$65,400,000	
San Francisco	New San Francisco Criminal Courthouse	High	11	3	3	5	0	\$225,600,000	
Monterey	Addition to Salinas Courthouse	High	10.5	3	2	3	2.5	\$0	
Santa Clara	Renovation and Addition to San Jose Criminal and Juvenile Courthouse	High	10.5	2	3	5	0.5	\$219,200,000	\$24,750,000
Stanislaus	Addition to Modesto Juvenile Courthouse	High	10.5	2	4	2	2.5	\$0	
Yuba	New Marysville Courthouse	High	10.5	2	2	5	1.5	\$65,400,000	
Nevada	New Truckee Courthouse	High	10	5	3	2	0	\$23,000,000	
Alameda	Addition to Wiley W. Manuel Courthouse	High	10	4	1	5	0	\$148,400,000	\$19,250,000
Del Norte	Addition to Crescent City Courthouse	High	10	4	3	2	1	\$0	
Humboldt	New Eureka Courthouse	High	10	3	3	3	1	\$106,000,000	\$13,750,000
San Luis Obispo	New South County Courthouse	High	10	3	5	2	0	\$11,500,000	\$1,380,000
Los Angeles	Renovate Metropolitan Courthouse (C)	High	10	2	3	5	0	\$54,500,000	
Los Angeles	Renovate Santa Monica Courthouse (W)	High	10	2	3	5	0	\$35,200,000	
Los Angeles	Renovate Torrance Courthouse (SW)	High	10	2	3	5	0	\$34,300,000	

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Score

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
Orange	Renovate Newport Beach Courthouse	Medium	9	4	3	2	0	\$15,400,000	Included in budget
San Mateo	Renovation and Addition to Central San Mateo Courthouse	Medium	9	4	3	2	0	\$2,200,000	
Los Angeles	New Downtown Los Angeles Criminal Courthouse (C)	Medium	9	2	2	5	0	\$87,200,000	\$11,000,000
Los Angeles	New East District Criminal Courthouse (E)	Medium	9	2	2	5	0	\$116,600,000	\$15,130,000
Los Angeles	Renovate Clara Shortridge Foltz Criminal Justice Center (C)	Medium	9	2	2	5	0	\$116,300,000	
Los Angeles	Renovate Pomona Courthouse South (E)	Medium	9	2	2	5	0	\$36,800,000	
Los Angeles	Renovation and Addition to Alhambra Courthouse (NE)	Medium	9	2	2	5	0	\$40,800,000	\$2,750,000
San Diego	Renovation and Addition to El Cajon Courthouse	Medium	9	2	2	5	0	\$57,700,000	\$2,750,000
Santa Clara	New San Jose Traffic and Small Claims Courthouse	Medium	9	2	2	5	0	\$46,000,000	\$5,500,000
Merced	Addition to New Merced Courthouse	Medium	9	1	2	1	5	\$11,500,000	
San Bernardino	Addition to Rancho Cucamonga Courthouse	Medium	9	1	1	2	5	\$11,500,000	\$1,380,000
Fresno	New Fresno Criminal Courthouse	Medium	8.5	2	2	1	3.5	\$235,000,000	\$34,380,000
San Mateo	Renovation and Addition to South San Francisco Courthouse	Medium	8	4	2	2	0	\$29,000,000	
Trinity	New Weaverville Courthouse	Medium	8	4	3	1	0	\$23,000,000	
Fresno	New Fresno Juvenile Dependency Courthouse	Medium	8	3	3	2	0	\$46,000,000	
Humboldt	New Eureka Juvenile Delinquency Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Humboldt	New Garberville Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Marin	New Marin Civic Center Courthouse - North	Medium	8	3	3	2	0	\$169,600,000	
Santa Barbara	New Santa Barbara Juvenile Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Humboldt	New Hoopa Courthouse	Medium	8	1	4	3	0	\$11,500,000	
Los Angeles	Addition to Pasadena Main Courthouse (NE)	Medium	8	1	2	5	0	\$57,500,000	
Los Angeles	New Compton Courthouse (SC)	Medium	8	1	2	5	0	\$87,200,000	\$11,000,000
Los Angeles	New West Los Angeles Criminal Courthouse (W)	Medium	8	1	2	5	0	\$57,500,000	\$6,880,000
Los Angeles	Renovate Compton Courthouse (SC)	Medium	8	1	2	5	0	\$37,800,000	
Los Angeles	Renovate El Monte Courthouse (E)	Medium	8	1	2	5	0	\$40,100,000	
Los Angeles	Renovate Los Angeles Airport Courthouse (SW)	Medium	8	1	2	5	0	\$13,000,000	
Los Angeles	Renovate Whittier Courthouse (SE)	Medium	8	1	2	5	0	\$15,900,000	
Placer	Addition to New Roseville Courthouse	Medium	8	1	1	1	5	\$0	
Riverside	Addition to Riverside Family Law Courthouse (W Reg)	Medium	8	1	1	1	5	\$0	\$0
Riverside	Addition to Southwest Justice Center (Mid-Cnty Reg)	Medium	8	1	1	1	5	\$0	
Ventura	Renovate Ventura Hall of Justice	Medium	8	1	2	5	0	\$67,700,000	Included in budget

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Score

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
San Francisco	New San Francisco Family Courthouse	Low	7	3	3	1	0	\$106,000,000	\$13,750,000
San Francisco	Renovate San Francisco Civic Center Courthouse	Low	7	3	3	1	0	\$2,100,000	
San Mateo	Renovate Redwood City Courthouse	Low	7	3	3	1	0	\$60,000,000	
Los Angeles	Renovation and Addition to Van Nuys Courthouse East (NW)	Low	7	2	2	3	0	\$68,500,000	
Riverside	New Blythe Courthouse (Desert Reg)	Low	7	2	4	1	0	\$23,000,000	
Sacramento	Complete Sacramento Carol Miller Justice Center	Low	7	2	3	1	1	\$0	\$0
Orange	Addition to Santa Ana Courthouse	Low	6.5	2	2	2	0.5	\$180,200,000	\$23,380,000
Monterey	New Monterey Bay Civil and Family Courthouse	Low	6	2	2	2	0	\$76,300,000	
Alameda	Renovate Hayward Hall of Justice	Low	6	1	2	3	0	\$16,200,000	
Tulare	Renovate Visalia Juvenile Courthouse	Low	6	1	2	1	2	\$3,000,000	
Sacramento	Complete Sacramento William Ridgeway Family Courthouse	Low	5.5	1	1	1	2.5	\$0	
Colusa	New Colusa Courthouse - North	Low	5	1	3	1	0	\$23,000,000	
Placer	New Auburn Courthouse	Low	5	1	3	1	0	\$0	
Riverside	Addition to Riverside Hall of Justice (W Reg)	Low	5	1	2	1	1	\$0	
Los Angeles	Renovate Bellflower Courthouse (SE)	Low	4	1	2	1	0	\$7,600,000	
Los Angeles	Renovate San Fernando Courthouse (NV)	Low	4	1	2	1	0	\$13,900,000	
San Diego	Renovate San Diego Hall of Justice	Low	4	1	2	1	0	\$2,600,000	
Los Angeles	New Los Angeles Juvenile Dependency Courthouse (JD)	Low	3	1	1	1	0	\$87,200,000	\$11,000,000

Total Project Budget for Current Needs⁵ \$6,067,000,000 \$478,550,000

Total Parking Structure Budget for Current Needs⁶ \$478,550,000

Total Budget for Current Needs⁷ **\$6,545,550,000**

Statewide Budget for Court Facility Space for New Judgeships⁸ \$643,100,000

Statewide Budget for Parking Structures for New Judgeships⁹ \$81,125,000

Total Statewide Budget for New Judgeships¹⁰ **\$724,225,000**

Total Trial Court Capital-Outlay Plan Budget¹¹ **\$7,269,775,000**

PLEASE NOTE: The scope of each capital project is confirmed prior to submission of a funding request to the state Department of Finance. The Total Trial Court Capital-Outlay Plan Budget is presented in January 2015 dollars and does not include escalation to construction midpoint. At the time a specific capital project funding request is prepared, its project budget will include escalation to the construction midpoint.

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Notes to Sorted by Score

(Notes 2–13 are identical to Notes to Sorted by Court)

1. **Projects** are sorted by project priority group, then by total score, then by security score, and then in alphabetical order by county.
2. **Project Priority Group** based on application of the *Prioritization Methodology for Trial Court Capital-Outlay Projects*.
3. **Project Budget for Current Needs** calculated based on current need courtrooms (defined as current courtrooms or Judicial Position Equivalents (JPEs), including SB 56 judgeships allocated to project). Projects with a current need budget of \$0 are for future growth only at this time; the budgets for these projects will be augmented, as appropriate, to accommodate new judgeships at the time funding requests are prepared.

Each project's Budget for Current Needs is calculated as follows:

(1) For all *New Construction and Addition* projects, the project budget is calculated by multiplying current need courtrooms by the average unescalated project budget per courtroom in January 2015 dollars from the corresponding range in the table shown below. The project-budget-per-courtroom ranges in the table below are derived from unescalated 2014/2015 total project budgets of SB 1407 new construction projects submitted to the state Department of Finance for funding in FY 2014–2015/FY 2015–2016. These unescalated 2014/2015 total project budgets—reflecting Judicial Council-mandated cost reductions—were then grouped according to number of courtrooms, averaged, and multiplied by an escalation factor to provide the average unescalated budgets per courtroom in current year dollars shown in the table below.

New Construction and Additions Project Budgets for Current Needs: Average Unescalated Project-Budget-Per-Courtroom Ranges	
1–5 Courtrooms (Jan. 2015 dollars)	\$11,500,000
6–9 Courtrooms (Jan. 2015 dollars)	\$10,900,000
10–20 Courtrooms (Jan. 2015 dollars)	\$10,600,000
More than 20 Courtrooms (Jan. 2015 dollars)	\$9,400,000

(2) For all *Renovation* projects and for all projects that *Complete* construction of unfinished space, the project budget is the master plan budget escalated to January 2015 dollars. Renovation budgets may change substantially, depending on specific conditions in each building and on further study at the time a project feasibility study is completed, which is prior to the submission of the capital project's funding request.

(3) For all *Renovation and Addition* projects, a blended budget is determined using a combination of the methods described under nos. 1 and 2 above.

4. **Parking Structure Budget for Current Needs** was calculated only for projects in which 2002/2003 facility master plans identified a need for structured parking. The budget is calculated by multiplying the number of current need courtrooms by 25 parking spaces per courtroom and then by \$55,000 total project budget per parking space (January 2015 dollars). The January 2015 budget of \$55,000 per parking space was based on the average budget per parking space of three funded trial court capital project parking structures. A budget of \$0 indicates there was a parking structure identified in the master plan but that it serves only future growth and not current needs.
5. **Total Project Budget for Current Needs** is the sum total of each individual project budget for current needs.
6. **Total Parking Structure Budget for Current Needs** is the sum total of each individual parking structure budget for current needs.
7. **Total Budget for Current Needs** is the sum of the Total Project Budget for Current Needs and the Total Parking Structure Budget for Current Needs.
8. **Statewide Budget for Court Facility Space for New Judgeships** is for increments of facility space to accommodate 59 of the unfunded 100 new judgeships. It is calculated by multiplying \$10.9 million per courtroom—based on the budget per courtroom in January 2015 dollars for *New Construction and Addition* projects ranging from 6–9 courtrooms (shown in the table above)—by 59 unfunded new judgeships. To date, facility space for 41 of the unfunded 100 new judgeships has been budgeted in funded and indefinitely-delayed trial court capital projects. The allocation (to trial courts) of these unfunded 100 new judgeships was last updated based on the 2014 Judicial Needs Assessment approved by the Judicial Council in December 2014.
9. **Statewide Budget for Parking Structures for New Judgeships** is for facility increments of space within a parking structure to accommodate a total of 25 parking spaces for each of the 59 of the unfunded 100 new judgeships. This budget is calculated by multiplying 59 new judgeships (at one judgeship per courtroom) by a total of 25 parking spaces and then by \$55,000 total budget per parking space (January 2015 dollars). (Note: See footnote No. 4 for explanation of the total budget per parking space.)
10. **Total Statewide Budget for New Judgeships** is the sum of the Statewide Budget for Court Facility Space for New Judgeships and the Statewide Budget for Parking Structures for New Judgeships. Funds in this budget will be allocated to a specific project as needed to accommodate facility and parking capital-outlay costs for 44 of the unfunded 100 new judgeships, as appropriate at the time a funding request is prepared for that project.
11. **Total Trial Court Capital-Outlay Plan Budget** is the sum of the Total Budget for Current Needs and the Total Statewide Budget for New Judgeships in January 2015 dollars.

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Court

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
Alameda	Addition to Wiley W. Manuel Courthouse	High	10	4	1	5	0	\$148,400,000	\$19,250,000
Alameda	Renovate Hayward Hall of Justice	Low	6	1	2	3	0	\$16,200,000	
Colusa	New Colusa Courthouse - North	Low	5	1	3	1	0	\$23,000,000	
Contra Costa	New North Concord Courthouse	Immediate	16	4	3	5	4	\$65,400,000	
Del Norte	Addition to Crescent City Courthouse	High	10	4	3	2	1	\$0	
Fresno	New Selma Regional Justice Center	Immediate	16	5	3	3	5	\$65,400,000	
Fresno	New Clovis Courthouse	Immediate	15	5	3	2	5	\$11,500,000	
Fresno	New Fresno Criminal Courthouse	Medium	8.5	2	2	1	3.5	\$235,000,000	\$34,380,000
Fresno	New Fresno Juvenile Dependency Courthouse	Medium	8	3	3	2	0	\$46,000,000	
Humboldt	New Eureka Courthouse	High	10	3	3	3	1	\$106,000,000	\$13,750,000
Humboldt	New Eureka Juvenile Delinquency Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Humboldt	New Garberville Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Humboldt	New Hoopa Courthouse	Medium	8	1	4	3	0	\$11,500,000	
Imperial	Renovation and Addition to El Centro Courthouse	Critical	13	5	3	5	0	\$26,700,000	
Kern	New Ridgecrest Courthouse	Critical	13	5	4	1	3	\$23,000,000	
Kern	Renovation and Addition to Bakersfield Courthouse	Critical	12.5	3	3	5	1.5	\$296,800,000	\$38,500,000
Kern	New Taft Courthouse	High	11.5	2	4	2	3.5	\$23,000,000	
Lake	New Clearlake Courthouse	Critical	13.5	2	4	5	2.5	\$11,500,000	
Los Angeles	New Downtown Los Angeles Civil and Family Courthouse (C)	High	12	4	3	5	0	\$949,400,000	\$138,880,000
Los Angeles	New Los Angeles Central Juvenile Courthouse (JDel)	High	12	4	3	5	0	\$57,500,000	\$6,880,000
Los Angeles	Renovate Burbank Courthouse (NC)	High	12	4	3	5	0	\$9,800,000	
Los Angeles	Addition to New East Los Angeles Criminal Courthouse (E)	High	11	3	3	5	0	\$137,800,000	\$17,880,000
Los Angeles	Renovate Metropolitan Courthouse (C)	High	10	2	3	5	0	\$54,500,000	
Los Angeles	Renovate Santa Monica Courthouse (W)	High	10	2	3	5	0	\$35,200,000	
Los Angeles	Renovate Torrance Courthouse (SW)	High	10	2	3	5	0	\$34,300,000	
Los Angeles	New Downtown Los Angeles Criminal Courthouse (C)	Medium	9	2	2	5	0	\$87,200,000	\$11,000,000
Los Angeles	New East District Criminal Courthouse (E)	Medium	9	2	2	5	0	\$116,600,000	\$15,130,000

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Court

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
Los Angeles	Renovate Clara Shortridge Foltz Criminal Justice Center (C)	Medium	9	2	2	5	0	\$116,300,000	
Los Angeles	Renovate Pomona Courthouse South (E)	Medium	9	2	2	5	0	\$36,800,000	
Los Angeles	Renovation and Addition to Alhambra Courthouse (NE)	Medium	9	2	2	5	0	\$40,800,000	\$2,750,000
Los Angeles	Addition to Pasadena Main Courthouse (NE)	Medium	8	1	2	5	0	\$57,500,000	
Los Angeles	New Compton Courthouse (SC)	Medium	8	1	2	5	0	\$87,200,000	\$11,000,000
Los Angeles	New West Los Angeles Criminal Courthouse (W)	Medium	8	1	2	5	0	\$57,500,000	\$6,880,000
Los Angeles	Renovate Compton Courthouse (SC)	Medium	8	1	2	5	0	\$37,800,000	
Los Angeles	Renovate El Monte Courthouse (E)	Medium	8	1	2	5	0	\$40,100,000	
Los Angeles	Renovate Los Angeles Airport Courthouse (SW)	Medium	8	1	2	5	0	\$13,000,000	
Los Angeles	Renovate Whittier Courthouse (SE)	Medium	8	1	2	5	0	\$15,900,000	
Los Angeles	Renovation and Addition to Van Nuys Courthouse East (NW)	Low	7	2	2	3	0	\$68,500,000	
Los Angeles	Renovate Bellflower Courthouse (SE)	Low	4	1	2	1	0	\$7,600,000	
Los Angeles	Renovate San Fernando Courthouse (NV)	Low	4	1	2	1	0	\$13,900,000	
Los Angeles	New Los Angeles Juvenile Dependency Courthouse (JD)	Low	3	1	1	1	0	\$87,200,000	\$11,000,000
Marin	New Marin Civic Center Courthouse - North	Medium	8	3	3	2	0	\$169,600,000	
Mariposa	New Mariposa Courthouse	High	12	4	5	3	0	\$23,000,000	
Merced	Addition to New Merced Courthouse	Medium	9	1	2	1	5	\$11,500,000	
Modoc	Addition to Alturas Barclay Justice Center	High	11	3	3	5	0	\$11,500,000	
Mono	Renovate Bridgeport Courthouse	High	12	5	4	3	0	\$1,000,000	
Monterey	Addition to Salinas Courthouse	High	10.5	3	2	3	2.5	\$0	
Monterey	New Monterey Bay Civil and Family Courthouse	Low	6	2	2	2	0	\$76,300,000	
Nevada	New Truckee Courthouse	High	10	5	3	2	0	\$23,000,000	
Orange	New South County Courthouse	High	12	4	1	2	5	\$46,000,000	
Orange	Renovate Newport Beach Courthouse	Medium	9	4	3	2	0	\$15,400,000	Included in budget
Orange	Addition to Santa Ana Courthouse	Low	6.5	2	2	2	0.5	\$180,200,000	\$23,380,000
Placer	Addition to New Roseville Courthouse	Medium	8	1	1	1	5	\$0	
Placer	New Auburn Courthouse	Low	5	1	3	1	0	\$0	

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Court

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
Riverside	New Corona Courthouse (W Reg)	Immediate	16	4	2	5	5	\$34,500,000	
Riverside	New Temecula Courthouse (Mid-Cnty Reg)	Critical	14	5	3	1	5	\$11,500,000	
Riverside	Addition to Riverside Juvenile Courthouse (W Reg)	Critical	13	3	4	1	5	\$0	
Riverside	New Western Regional Traffic and Small Claims Courthouse (W Reg)	Critical	13	3	3	2	5	\$23,000,000	
Riverside	New Indio Courthouse (Desert Reg)	High	11.5	1	2	5	3.5	\$76,300,000	
Riverside	Addition to Riverside Family Law Courthouse (W Reg)	Medium	8	1	1	1	5	\$0	\$0
Riverside	Addition to Southwest Justice Center (Mid-Cnty Reg)	Medium	8	1	1	1	5	\$0	
Riverside	New Blythe Courthouse (Desert Reg)	Low	7	2	4	1	0	\$23,000,000	
Riverside	Addition to Riverside Hall of Justice (W Reg)	Low	5	1	2	1	1	\$0	
Sacramento	New Sacramento Civil Courthouse	Critical	13	5	3	5	0	\$127,200,000	\$16,500,000
Sacramento	Complete Sacramento Carol Miller Justice Center	Low	7	2	3	1	1	\$0	\$0
Sacramento	Complete Sacramento William Ridgeway Family Courthouse	Low	5.5	1	1	1	2.5	\$0	
San Bernardino	New High Desert Courthouse	Critical	14	1	3	5	5	\$137,800,000	
San Bernardino	Renovate Joshua Tree Courthouse	High	11	4	2	5	0	\$4,200,000	
San Bernardino	Addition to Rancho Cucamonga Courthouse	Medium	9	1	1	2	5	\$11,500,000	\$1,380,000
San Diego	Addition to Vista (North County) Courthouse	Critical	13	4	3	5	1	\$76,300,000	\$9,630,000
San Diego	Renovate San Diego South County Regional Center	Critical	13	3	3	5	2	\$10,000,000	
San Diego	Renovation and Addition to San Diego Meadowlark Juvenile Courthouse	High	12	5	4	3	0	\$6,800,000	
San Diego	New San Diego Traffic/Small Claims Courthouse	High	11	3	3	5	0	\$65,400,000	
San Diego	Renovation and Addition to El Cajon Courthouse	Medium	9	2	2	5	0	\$57,700,000	\$2,750,000
San Diego	Renovate San Diego Hall of Justice	Low	4	1	2	1	0	\$2,600,000	
San Francisco	New San Francisco Criminal Courthouse	High	11	3	3	5	0	\$225,600,000	
San Francisco	New San Francisco Family Courthouse	Low	7	3	3	1	0	\$106,000,000	\$13,750,000
San Francisco	Renovate San Francisco Civic Center Courthouse	Low	7	3	3	1	0	\$2,100,000	
San Joaquin	New South San Joaquin County Courthouse	Immediate	17	4	3	5	5	\$57,500,000	
San Luis Obispo	New San Luis Obispo Courthouse	Critical	12.5	4	3	5	0.5	\$148,400,000	\$19,250,000
San Luis Obispo	New South County Courthouse	High	10	3	5	2	0	\$11,500,000	\$1,380,000

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Sorted by Court

County	Project Name ¹	Project Priority Group ²	Total Score	Security	Over-crowding	Physical Condition	Access to Court Services	Project Budget for Current Needs ³	Parking Structure Budget for Current Needs ⁴
San Mateo	Renovation and Addition to Central San Mateo Courthouse	Medium	9	4	3	2	0	\$2,200,000	
San Mateo	Renovation and Addition to South San Francisco Courthouse	Medium	8	4	2	2	0	\$29,000,000	
San Mateo	Renovate Redwood City Courthouse	Low	7	3	3	1	0	\$60,000,000	
Santa Barbara	Addition to Santa Maria Lewellen Justice Center	Critical	12.5	5	2	5	0.5	\$23,000,000	\$2,750,000
Santa Barbara	New Santa Barbara Juvenile Courthouse	Medium	8	3	3	2	0	\$11,500,000	
Santa Clara	New Mountain View Courthouse	Critical	13	5	3	5	0	\$106,000,000	\$13,750,000
Santa Clara	Renovation and Addition to San Jose Criminal and Juvenile Courthouse	High	10.5	2	3	5	0.5	\$219,200,000	\$24,750,000
Santa Clara	New San Jose Traffic and Small Claims Courthouse	Medium	9	2	2	5	0	\$46,000,000	\$5,500,000
Santa Cruz	Addition to Santa Cruz Courthouse	High	12	3	3	5	1	\$23,000,000	
Solano	Renovation and Addition to Solano Court Complex	Critical	13.5	3	3	5	2.5	\$58,200,000	
Sonoma	New Santa Rosa Family and Civil Courthouse	Immediate	14.5	5	3	5	1.5	\$87,200,000	\$11,000,000
Sonoma	Renovate Santa Rosa Hall of Justice	Critical	13	5	3	5	0	\$0	\$0
Stanislaus	Addition to Modesto Juvenile Courthouse	High	10.5	2	4	2	2.5	\$0	
Trinity	New Weaverville Courthouse	Medium	8	4	3	1	0	\$23,000,000	
Tulare	Renovation and Addition to Visalia Courthouse	Immediate	16	5	3	5	3	\$73,300,000	\$5,500,000
Tulare	Renovate Visalia Juvenile Courthouse	Low	6	1	2	1	2	\$3,000,000	
Ventura	New Ventura East County Courthouse	Immediate	15	4	1	5	5	\$98,100,000	
Ventura	Renovate Ventura Hall of Justice	Medium	8	1	2	5	0	\$67,700,000	Included in budget
Yuba	New Marysville Courthouse	High	10.5	2	2	5	1.5	\$65,400,000	

Total Project Budget for Current Needs⁵ **\$6,067,000,000** **\$478,550,000**

Total Parking Structure Budget for Current Needs⁶ **\$478,550,000**

Total Budget for Current Needs⁷ **\$6,545,550,000**

Statewide Budget for Court Facility Space for New Judgeships⁸ **\$643,100,000**

Statewide Budget for Parking Structures for New Judgeships⁹ **\$81,125,000**

Total Statewide Budget for New Judgeships¹⁰ **\$724,225,000**

Total Trial Court Capital-Outlay Plan Budget¹¹ **\$7,269,775,000**

PLEASE NOTE: The scope of each capital project is confirmed prior to submission of a funding request to the state Department of Finance. The Total Trial Court Capital-Outlay Plan Budget is presented in January 2015 dollars and does not include escalation to construction midpoint. At the time a specific capital project funding request is prepared, its project budget will include escalation to the construction midpoint.

Trial Court Capital-Outlay Plan
August 20 OR 21, 2015
Notes to Sorted by Court

(Notes 2–13 are identical to Notes to Sorted by Score)

1. **Projects** are sorted by alphabetical order of county names, then by total score, and then by security score.
2. **Project Priority Group** based on application of the *Prioritization Methodology for Trial Court Capital-Outlay Projects*.
3. **Project Budget for Current Needs** calculated based on current need courtrooms (defined as current courtrooms or Judicial Position Equivalents (JPEs), including SB 56 judgeships allocated to project). Projects with a current need budget of \$0 are for future growth only at this time; the budgets for these projects will be augmented, as appropriate, to accommodate new judgeships at the time funding requests are prepared.

Each project's Budget for Current Needs is calculated as follows:

(1) For all *New Construction* and *Addition* projects, the project budget is calculated by multiplying current need courtrooms by the average unescalated project budget per courtroom in January 2015 dollars from the corresponding range in the table shown below. The project-budget-per-courtroom ranges in the table below are derived from unescalated 2014/2015 total project budgets of SB 1407 new construction projects submitted to the state Department of Finance for funding in FY 2014–2015/FY 2015–2016. These unescalated 2014/2015 total project budgets—reflecting Judicial Council-mandated cost reductions—were then grouped according to number of courtrooms, averaged, and multiplied by an escalation factor to provide the average unescalated budgets per courtroom in current year dollars shown in the table below.

New Construction and Additions Project Budgets for Current Needs: Average Unescalated Project-Budget-Per-Courtroom Ranges	
1–5 Courtrooms (Jan. 2015 dollars)	\$11,500,000
6–9 Courtrooms (Jan. 2015 dollars)	\$10,900,000
10–20 Courtrooms (Jan. 2015 dollars)	\$10,600,000
More than 20 Courtrooms (Jan. 2015 dollars)	\$9,400,000

(2) For all *Renovation* projects and for all projects that *Complete* construction of unfinished space, the project budget is the master plan budget escalated to January 2015 dollars. Renovation budgets may change substantially, depending on specific conditions in each building and on further study at the time a project feasibility study is completed, which is prior to the submission of the capital project's funding request.

(3) For all *Renovation and Addition* projects, a blended budget is determined using a combination of the methods described under nos. 1 and 2 above.

4. **Parking Structure Budget for Current Needs** was calculated only for projects in which 2002/2003 facility master plans identified a need for structured parking. The budget is calculated by multiplying the number of current need courtrooms by 25 parking spaces per courtroom and then by \$55,000 total project budget per parking space (January 2015 dollars). The January 2015 budget of \$55,000 per parking space was based on the average budget per parking space of three funded trial court capital project parking structures. A budget of \$0 indicates there was a parking structure identified in the master plan but that it serves only future growth and not current needs.

5. **Total Project Budget for Current Needs** is the sum total of each individual project budget for current needs.

6. **Total Parking Structure Budget for Current Needs** is the sum total of each individual parking structure budget for current needs.

7. **Total Budget for Current Needs** is the sum of the Total Project Budget for Current Needs and the Total Parking Structure Budget for Current Needs.

8. **Statewide Budget for Court Facility Space for New Judgeships** is for increments of facility space to accommodate 59 of the unfunded 100 new judgeships. It is calculated by multiplying \$10.9 million per courtroom—based on the budget per courtroom in January 2015 dollars for *New Construction and Addition* projects ranging from 6–9 courtrooms (shown in the table above)—by 59 unfunded new judgeships. To date, facility space for 41 of the unfunded 100 new judgeships has been budgeted in funded and indefinitely-delayed trial court capital projects. The allocation (to trial courts) of these unfunded 100 new judgeships was last updated based on the 2014 Judicial Needs Assessment approved by the Judicial Council in December 2014.

9. **Statewide Budget for Parking Structures for New Judgeships** is for facility increments of space within a parking structure to accommodate a total of 25 parking spaces for each of the 59 of the unfunded 100 new judgeships. This budget is calculated by multiplying 59 new judgeships (at one judgeship per courtroom) by a total of 25 parking spaces and then by \$55,000 total budget per parking space (January 2015 dollars). (Note: See footnote No. 4 for explanation of the total budget per parking space.)

10. **Total Statewide Budget for New Judgeships** is the sum of the Statewide Budget for Court Facility Space for New Judgeships and the Statewide Budget for Parking Structures for New Judgeships. Funds in this budget will be allocated to a specific project as needed to accommodate facility and parking capital-outlay costs for 44 of the unfunded 100 new judgeships, as appropriate at the time a funding request is prepared for that project.

11. **Total Trial Court Capital-Outlay Plan Budget** is the sum of the Total Budget for Current Needs and the Total Statewide Budget for New Judgeships in January 2015 dollars.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 21, 2015

Title	Agenda Item Type
Judicial Council: Court Public Parking Management Policy	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 21, 2015
Recommended by	Date of Report
Facilities Policies Working Group	July 24, 2015
Hon. Douglas P. Miller, Chair	Contact
	Gerald Pfab, 916-263-1956, gerald.pfab@jud.ca.gov

Executive Summary

The Judicial Council controls a number of parking spaces that were either acquired through the Trial Court Facilities Act of 2002 (Sen. Bill 1732; Stats. 2002, ch. 1082) or provided in conjunction with new courthouse construction. Before SB 1732, the counties managed parking spaces, making some available for free and others for a fee. On-site parking provides an expedient feature for the employees, jurors, and other users of courts. The intent of the attached document is to initiate a branchwide policy to implement a methodical approach in developing paid parking at courthouses where feasible.

Recommendation

Adopt the *Court Public Parking Management Policy* in order to institute a statewide approach to paid public parking at courthouses, effective July 1, 2015. The program will be managed by the Facilities Management Unit of Real Estate and Facilities Management. The courts may review and comment on plans or proposals to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces.

Please see the attached policy for full scope and implications.

Previous Council Action

The council controls a number of parking spaces that were either acquired through SB 1732 or provided in conjunction with new courthouse construction. Lot size and access vary based on original construction requirements and historical availability of parking within the local environs surrounding the court. Before SB 1732, the counties constructed and managed parking spaces, making some available for free and others for a fee.

Currently the Judicial Council manages 8,356 paid parking slots at 17 courthouses in three counties: Los Angeles, Santa Barbara, and Sacramento. Fourteen of the lots were transferred to the state as paid lots; three have been converted with the support of the local court since that time. The majority charge a flat daily rate of between \$5 and \$10 a day. Several offer monthly parking rates.

This is the first statewide public parking policy to be considered for implementation.

Rationale for Recommendation

The policy will set forth a reasonable, consistent methodology for the management of branch-owned and/or -managed parking spaces. The branch benefits by generating revenue via paid public parking where feasible. The following sections of the Government Code provide authority for the policy.

Section 70391 provides that the Judicial Council shall “[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state.” The “[c]ourt facilities” definition in section 70301(d) includes “[p]arking spaces historically made available to one or more users of court facilities.” Absent legal authority to the contrary, the owner of real property has the ability to license and lease property that it owns. In this case, charging for parking would be considered a license to use the property. We have found no authority that limits the Judicial Council’s authority as an owner to license court facilities.

The most appropriate fund for any revenue received from paid parking would be the Court Facilities Trust Fund as that fund is for purposes of operation, repair, and maintenance of court facilities. The agreements that generate this revenue are with parking management vendors that assist in the operation and management of the parking facilities on behalf of the Judicial Council.

In addition, this fund is most closely analogous to the Property Acquisition Law Money Account, which is where the Department of General Services deposits its parking revenue. Further, some parking revenue was in lieu of a county facilities payment that would have been deposited in the Court Facilities Trust Fund. Because the revenue is in lieu of a portion of the county facilities payment in some counties and is collected in conjunction with the management and operations of court facilities, it should probably be deposited into the Court Facilities Trust Fund.

Comments, Alternatives Considered, and Policy Implications

The Facilities Policies Working Group (FPWG) discussed the policy at three of its meetings and, at its meeting on May 19, 2015, recommended the policy to move forward for adoption by the Judicial Council. During FPWG discussion, the following two alternatives for the approval and oversight of changes were presented:

1. As proposed in the recommended policy, the Judicial Council would consider all actions related to parking based on recommendations of the Real Estate and Facilities Management staff.
2. The Judicial Council would delegate to the Trial Court Facility Modification Advisory Committee (TCFMAC) the authority to consider and determine all actions related to parking based on recommendations of the Real Estate and Facilities Management staff. This option was determined by Legal Services to not be an appropriate item to delegate to the TCFMAC.

The policy was also reviewed, at the suggestion of Executive & Planning, by the Trial Court Presiding Judges Advisory Committee/Court Executive Officer Court Facilities Subcommittee at its July 1, 2015 meeting. The subcommittee suggested strengthening the language that provides for court approval for parking usage and oversight for dispute resolution. These suggestions have been added to the policy and the subcommittee concurred with the revisions.

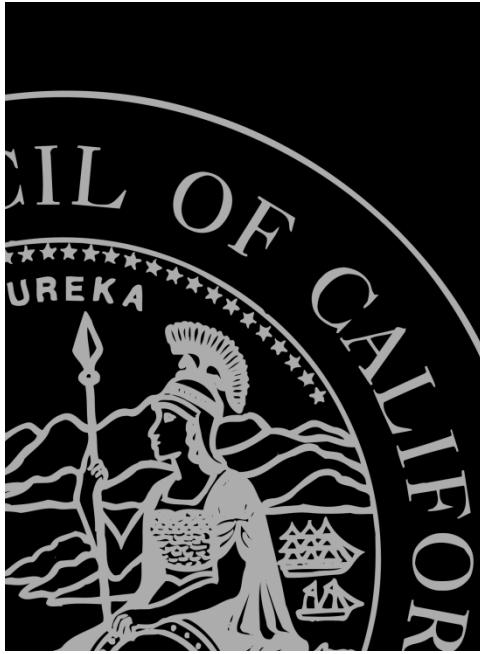
Annual revenues after expenses of operating the lots are about \$2.5 million. Revenues generated from parking spaces are deposited in the Court Facilities Trust Fund to be used for the operation, maintenance, utility service, insurance, rent, and non-capital repairs to court facilities throughout the state. The majority of this comes from lots transferred as paid lots. The anticipated revenue from these lots was a deduction from the county facility payments. Failure to continue operating the lots as paid lots would have a significant impact on the Judicial Council's ability to maintain the existing court facilities. No other options were considered.

Implementation Requirements, Costs, and Operational Impacts

There will be very minimal cost to implement this policy. With the exception of the approval authority being moved from Real Estate and Facilities Management to the Judicial Council, the policy reflects current operational procedures. The only cost incurred will be staff cost to prepare recommendations to the council for any future changes. Other options considered would have the same impact.

Attachments

1. *Court Public Parking Management Policy*



Court Public Parking Management Policy

EFFECTIVE AUGUST 21, 2015

DRAFT



JUDICIAL COUNCIL
OF CALIFORNIA

TABLE OF CONTENTS

1. Scope..... 1

2. Exceptions..... 1

3. Background..... 1

4. Authority for Policy 2

5. Purpose..... 2

6. Management Practices 3

7. Role of the Judicial Council..... 3

8. Role of Judicial Council Staff..... 4

9. Role of Courts 4

10. Determination of Parking Rates..... 4

DRAFT

1. Scope

With the exceptions indicated below, this policy applies to parking lots and garages open to the public (collectively “parking spaces”) located within the boundaries of court properties owned or managed by the Judicial Council (Council).

2. Exceptions

The policy is not applicable to:

- a. those public parking lots and garages located near court facilities that are managed by various county agencies on behalf of the Council and courts;
- b. parking lots or garages or portions thereof located at court facilities that are owned or managed by the Council but that are not open to the public (e.g. reserved and secured parking for judicial officers);
- c. Council-owned or -managed parking lots or garages on the property of closed court facilities, which may or may not be accessible to the general public;
- d. Council-owned land that may be safely and securely utilized for parking until such time as required for use during a capital construction project or the commencement of court operations;
- e. parking for court-approved third-party uses or off-site events or activities occurring during non-business hours; and
- f. the Long Beach parking structure located at 101 Magnolia Avenue, Long Beach, California, during the term of the existing agreement between the Judicial Council and Long Beach Judicial Partners, LLC. Said agreement defines binding terms of service to be provided to the public during the term.

3. Background

The Council controls a number of parking spaces that were either acquired through the Trial Court Facilities Act of 2002 (Sen. Bill 1732; Stats. 2002, ch. 1082) or provided in conjunction with new courthouse construction. Lot size and access vary based on original construction requirements and historical availability of parking within the local environs surrounding the court. Before SB 1732, the counties constructed and managed parking spaces, making some available for free and others for a fee.

Revenues generated from parking spaces are deposited in the Court Facilities Trust Fund to be used for the operation, maintenance, utility service, insurance, rent, and non-capital repairs to court facilities throughout the state.

On-site parking provides an expedient feature for the employees, jurors, and other users of courts.

4. Authority for Policy

The Judicial Council may both license and charge for the use of parking spaces under the broad language in Government Code section 70391(a), which provides that the Council shall exercise “full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities.” The definition of “[c]ourt facilities” in Government Code section 70301(d) includes “[p]arking spaces historically made available to one or more users of court facilities.”

Under Government Code section 70391(g), the Judicial Council is responsible for managing court facilities in consultation with the courts. Under rule 10.182(b)(1)(A) of the California Rules of Court, the Judicial Council staff is required to take action on the operation of court facilities, including the day-to-day operation of a building and maintenance of a facility.

Under Government Code section 70392, the Judicial Council staff has the responsibility to, among other things, “provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts” and to “[c]arry out the Judicial Council’s policies with regard to . . . court facilities”

The Judicial Council may both license and charge for the use of parking spaces under the broad language in Government Code section 70391(a), as quoted at the beginning of this section of the policy.

5. Purpose

- a. To set forth a reasonable, consistent methodology for the management of branch-owned and/or -managed parking spaces.
- b. To provide guidance on when parking spaces may be provided for free and when they may be provided for a fee, including the establishment of a process and methodology for determining: (i) whether to convert either existing free parking

spaces to paid parking spaces, or existing paid parking spaces to free parking spaces, and (ii) the amount to be charged for any paid parking spaces.

- c. To define the respective roles of courts, Council staff, various facilities-related committees, and the Council relative to parking operations.

6. Management Practices

- a. Available parking spaces and structures (as appropriate) shall be maintained in a condition that provides for a reasonable level of safe and secure access and operation, including regular maintenance and renovation of facility parking equipment and infrastructure systems.
- b. Available parking spaces and structures (as appropriate) shall be operated to allow for access to the court and public, as needed and based on both local operational requirements and the requirements for supporting special community-based events.
- c. Where applicable, parking spaces and associated parking space allocations shall be maintained in accordance with requirements set forth in transfer-related Joint Occupancy Agreements or Memoranda of Understanding.
- d. Where applicable, parking rates for parking spaces shall be determined on the basis of commercial parking rates charged by comparable lots or structures.
- e. The Council may contract with one or more vendors to manage court parking operations (collectively “parking vendors”). Solicitations for parking vendors will be conducted in accordance with Council contracting policies and practices.
- f. Any contracts with vendors for special events will include post-event cleanup prior to the beginning of the next day.

7. Role of the Judicial Council

- a. The Council will review and update this policy as needed.
- b. The Council will consider and act on any parking-related issues based on recommendations made by Council staff.

8. Role of Judicial Council Staff

- a. The Council staff is responsible for managing both paid and unpaid parking spaces.
- b. The Council staff is responsible for providing active management and oversight of parking vendors. Management and oversight includes solicitation and award of contracts to parking vendors; ensuring accurate revenue collection; providing oversight of parking vendors to ensure that the parking vendors comply with the terms of the contract; and conducting performance management reviews of parking vendors.
- c. Council staff will coordinate parking hours of operation with the courts. Usage for special events will be discussed and coordinated with the courts. Courts' consent must be obtained prior to approval being given for special events."
- d. Council staff will coordinate changes to parking services with court leadership prior to submission to the Council for consideration.
- e. Council staff will review and act on recommendations of courts regarding parking issues not requiring further review and consideration.
- f. Council staff will prepare reports or proposals for consideration by one or more of the following, as appropriate: court staff, Council senior management, various facilities-related committees, the Executive and Planning Committee, and the Judicial Council. Proposals may include facility modification projects, such as restriping to reconfigure parking lots to add or delete spaces; changing paid parking rates in one or multiple parking facilities, converting unpaid parking to paid parking, and amending this policy.

9. Role of Courts

- a. Courts may provide input on the performance of parking vendor services.
- b. Where applicable, the courts will coordinate with parking vendors and their staff regarding providing free jury parking within any paid parking spaces (e.g. coordination with respect to providing permits to be used by jurors in paid parking areas, etc.).
- c. The courts may review and comment on plans or proposals to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces. If the courts and the JCC do not agree, council staff is required to prepare a report in compliance with section 10.c.ii and provide it

along with court comment and input to the appropriate advisory to the appropriate working group or advisory committee of the council. The courts may choose to present a separate report to said committee in conjunction with the council staff report.

10. Determination of Parking Rates

- a. Council staff shall periodically initiate an evaluation of parking charges based on local market factors for the potential to (i) convert existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces, and (ii) make adjustments to parking rates.
- b. The evaluation will consist of the following components:
 - i) parking studies based on local market conditions and practices, a survey of parking facilities including identification of paid and free parking facilities, data on comparable parking rates, supply and demand characteristics, and other industry and customary practices;
 - ii) analysis of local economic and business conditions, including potential impacts to public customers, the adjacent businesses, and the local economy; and
 - iii) recommendations with regard to charges, facility modification, etc., depending on comparable charges and usage statistics for the area.
- c. Proposals for changes in parking operations will be shared and reviewed with courts with a view to evaluation of potential local and branch impacts.
 - i) If both the court and Council staff concur that a proposal to convert either existing free parking spaces to paid parking spaces, or existing paid parking spaces to free parking spaces, is in the best interest of the branch, Council staff will prepare a recommendation to the appropriate Council working group or advisory committee(s).
 - ii) In the event court and Council staff does not agree on the nature of the lot or the rate to be paid, council staff must bring the issue to the attention of the appropriate working group or advisory committee(s) of the Council for a determination.



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 21, 2015

Title	Agenda Item Type
Trial Courts: State Trial Court Improvement and Modernization Fund Allocation	Action Required
Adjustments for Fiscal Year 2015–2016	Effective Date
	August 21, 2015
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	July 24, 2015
Recommended by	Contact
Trial Court Budget Advisory Committee	Steven Chang, 415-865-7195
Hon. Laurie M. Earl, Chair	steven.chang@jud.ca.gov

Executive Summary

The Trial Court Budget Advisory Committee is recommending adjustments, totaling a net of \$938,823, to fiscal year (FY) 2015–2016 allocations made by the Judicial Council in April and June 2015.

Recommendation

On August 5, 2015, the Trial Court Budget Advisory Committee (TCBAC) adopted the following recommendation for consideration by the Judicial Council:

1. Allocate a net adjustment of \$938,823 from the State Trial Court Improvement and Modernization Fund (IMF) in FY 2015–2016, as follows:
 - a) a \$5.509 million augmentation to the allocation of \$10.65 million for the Telecommunications Support (LAN/WAN) program,
 - b) a \$145,600 augmentation to the allocation of \$715,600 for the California Courts Protective Order Registry program,

- c) a one-time reduction of \$375,186 to the allocation of \$12,496,300 for the Phoenix program,
- d) a one-time reduction of \$1,952,231 to the allocation of \$10,487,200 for the California Courts Technology Center, and
- e) a one-time reduction of \$2,388,360 to the allocation of \$5,220,500 for the Enterprise Policy and Planning program.

Previous Council Action

At its April 2015 and June 26, 2015 meetings, the council approved \$66.277 million in allocations from the IMF for various programs and projects (see Attachment 1).

At its August 23, 2013 business meeting, the council exercised its authority provided by statute and delegated to the Administrative Director the limited authority to transfer allocations between projects and programs that are funded from the IMF, subject to the following criteria:

- 1. The sum of allocation transfers cannot exceed 20 percent of the allocation to be reduced or 20 percent of the allocation to be augmented.
- 2. The Administrative Director must notify the chair of the council’s Executive and Planning Committee and the chair of the TCBAC in advance of any transfer.
- 3. The Administrative Director must report back to the council on the rationale for and amounts of any approved adjustments after the end of the fiscal year.

Rationale for Recommendations

Pending.

Comments

Pending.

Alternatives Considered

Pending.

Attachments

- 1. Attachment 1: 2015–2016 State Trial Court Improvement and Modernization Fund Council-Approved Allocations

**Attachment A: 2015-16 State Trial Court Improvement and Modernization Fund Council-
Approved Allocations**

#	Project/Program Title	JCC Office	Approved Allocations for 2015-16 ¹	TCBAC Recommended Adjustment	Recommended Allocation
1	CFCC Educational Programs	CFCC	67,000		67,000
2	Interactive Software - Self-Rep Electronic Forms	CFCC	60,000		60,000
3	CFCC Publications	CFCC	20,000		20,000
4	Domestic Violence - Family Law Interpreter Program	CFCC	17,000		17,000
5	Self-Help Center	CFCC	5,000,000		5,000,000
6	Self-represented Litigants Statewide Support	CFCC	100,000		100,000
7	Distance Learning	CJER	138,000		138,000
8	Essential/Other Education for Court Management	CJER	20,000		20,000
9	Essential/Other Education for Court Personnel	CJER	140,000		140,000
10	Faculty and Curriculum Development	CJER	250,000		250,000
11	Mandated, Essential & Other Education for JOs	CJER	654,000		654,000
13	CIP - Testing, Development, Recruitment and Education	COSSO	143,000		143,000
14	JusticeCorps (Court Access and Education)	COSSO	347,600		347,600
15	Trial Court Performance Measures Study	COSSO	13,000		13,000
17	Budget Focused Training and Meetings	Finance	50,000		50,000
18	Treasury Services - Cash Management	Finance	238,000		238,000
19	Trial Court Procurement	Finance	122,000		122,000
21	Trial Court Labor Relations Academies and Forums	HR	25,700		25,700
24	Audit Services	AS	660,000		660,000
26	Data Integration	IT	3,849,600		3,849,600
28	Adobe LiveCycle Reader Service Extension	IT	141,000		141,000
29	California Courts Technology Center (CCTC)	IT	10,487,200	(1,952,231)	8,534,970
30	CCPOR (ROM)	IT	715,600	145,600	861,200
31	Civil, Small Claims, Probate and Mental Health (V3) CMS ²	IT	5,658,100		5,658,100
32	Enterprise Policy/Planning (Statewide Development)	IT	5,220,500	(2,388,360)	2,832,140
33	Interim Case Management Systems ²	IT	1,246,800		1,246,800
34	Jury Management System	IT	465,000		465,000
35	Telecommunications Support	IT	10,650,000	5,509,000	16,159,000
37	Uniform Civil Fees	IT	366,000		366,000
40	Judicial Performance Defense Insurance	LSO	966,600		966,600
41	Jury System Improvement Projects	LSO	19,000		19,000
42	Litigation Management Program	LSO	4,000,000		4,000,000
43	Regional Office Assistance Group	LSO	1,460,000		1,460,000
45	Trial Courts Transactional Assistance Program	LSO	451,000		451,000
46	Court-Ordered Debt Task Force	TCAS	19,000		19,000
47	Phoenix Program	TCAS	12,496,300	(375,186)	12,121,114
48	Total		66,277,000	938,824	67,215,824

1. The allocations for education programs managed by CJER reflect the CJER Governing Committee's most recent allocation. The council authorized the committee to allocate and reallocate a total of \$1.202 million among the five categories as needed.

2. Will be reduced, up to 10 percent, to maintain a \$300,000 fund balance in the IMF if the projected year-end 2015-16 IMF fund balance falls below \$300,000.



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 21, 2015

Title

Subordinate Judicial Officers: Update of Conversions Using More Current Workload Data

Agenda Item Type

Action Required

Effective Date

August 24, 2015

Rules, Forms, Standards, or Statutes Affected

N/A

Date of Report

July 31, 2015

Recommended by

Executive and Planning Committee
Justice Douglas P. Miller, Chair
Judicial Council staff
Leah Rose-Goodwin, Manager
Court Operations Services

Contact

Leah Rose-Goodwin, 415-865-7708
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Executive Summary

At the direction of the Executive and Planning Committee (E&P), which has the authority to confirm subordinate judicial officer (SJO) conversions, the Workload Assessment Advisory Committee has provided an analysis on how the remaining 45 SJO conversions under Government Code section 69615 would be allocated if current workload data were used to identify the courts with SJOs eligible for conversion. E&P recommends that the Judicial Council adopt the recommendation to allocate the remaining conversions using more recent workload data and to direct staff to seek legislation that would update references in the current statute to the list of positions eligible for conversion. Council action is needed so that courts have more certainty about the need to convert positions in light of changes in judicial workload since the original workload analysis was completed in 2007.

Recommendation

The Executive and Planning Committee recommends that the Judicial Council, effective August 24, 2015:

1. Allocate the remaining 45 subordinate judicial officer conversions authorized under Government Code section 69615 using updated workload data;
2. Seek legislation that would update references in the current statute to the list of positions eligible for conversion;
3. Assess whether to periodically update the list of positions eligible for conversion until all conversions are completed; and

Previous Council Action

At its February 23, 2007, meeting, the Judicial Council approved the methodology for identifying courts in which SJO positions should be converted to judgeships.¹ At its December 7, 2007, meeting, the council then approved a methodology for allocating conversions among the courts eligible for conversions and delegated to E&P the authority and responsibility to confirm the conversion of SJO positions to judgeships.

Rationale for Recommendation

Government Code section 69615 provides for the conversion of subordinate judicial officer positions to judgeships to ensure sufficient numbers of judges are handling judge-appropriate work in the trial courts. The methodology in use to identify the number of conversions needed and the courts in need of converting SJO positions was approved by the Judicial Council in 2007; at present, 117 out of an identified 162 positions have been converted under this authority. Even though the council delegated authority to E&P to confirm conversions, the council retains authority over the policies that govern conversions. Changes in filings since the 2007 study and an updated judicial workload study completed in 2011 make it timely for the council to ensure that the remaining conversions match the workload needs in the courts. Doing so would be consistent with the recent council decision to update the allocation list for the second set of 50 judgeships that were authorized by the Legislature based on updated filings data. The updated judge allocation list, and the principle of using the most recent workload data to inform judicial allocations, was approved by the Judicial Council in December 2013.

The impetus for this update was a series of requests by courts with and without SJO positions on the conversion list—courts that believed that more current workload data might change their status and either not require that they convert a position previously identified as in need of conversion or authorize a previously unauthorized conversion. E&P directed the Workload

¹The council report is available at www.courts.ca.gov/documents/022307item9.pdf and the minutes of the meeting at www.courts.ca.gov/documents/min0207.pdf.

Assessment Advisory Committee (WAAC), whose judicial workload study formed the basis of the 2007 methodology used to identify the number of SJO positions needed to handle SJO-appropriate workload, to provide E&P with information on how the remaining conversions might be allocated if more current workload data were used.

SJO conversion legislation and 2007 methodology

Government Code section 69615 (see Attachment A) provides the statutory framework for the conversion of subordinate judicial officers. The goal of the conversions was to address the disproportionate growth in the number of SJO positions versus new judgeships. Absent new judge resources, some courts found it necessary to hire SJOs to meet growing judicial workload need. The conversion legislation aimed to ensure that there were enough judicial officers of each classification (judges and subordinate judicial officers) by measuring the SJO-appropriate work and the full-time equivalents (FTEs) needed to carry it out.

The methodology used in the 2007 study to measure the appropriate workload for SJOs and the courts in need of conversion was based on a 2002 report by the Subordinate Judicial Officer Working Group called *Subordinate Judicial Officers: Duties and Titles*.² That report identified the type of judicial work that SJOs had the authority to perform or that otherwise was appropriately categorized as subordinate judicial officer duties, as follows:

- All workload in small claims and infractions cases
- Portions of the workload in the following casetypes:
 - **Criminal cases:**
 - Arraignments—Authority to conduct arraignments and accept *not guilty* pleas
 - Penal Code Section 1269c Bail Determinations—Authority subject to review by a judge
 - Bench Warrants—Same authority as a judge
 - Discovery Motions—Authority subject to review by a judge
 - Contempt Power—Same contempt powers as a judge on all matters within the scope of the SJO’s authority (not including matters an SJO hears as a temporary judge)
 - **Family law:** Adjudicated by judges, except for child support cases heard by child support commissioners per Family Code section 4251
 - **Juvenile cases:** Heard by judges, except for truancy matters and some minor delinquency matters that do not result in imprisonment
 - **Civil cases:**
 - Uncontested Civil Matters

² The 2007 study methodology is described in this report to the Judicial Council: www.courts.ca.gov/documents/022307item9.pdf. The 2002 report of the Subordinate Judicial Officer Working Group is available at www.courts.ca.gov/documents/sjowgfinal.pdf.

- Discovery Motions
- Pretrial Motions—Only those that cannot terminate the litigation
- Settlement Conferences/Mediation

To measure the workload need for SJOs, the 2007 study used data elements from the 2001 judicial workload study, which was based on a time study of judicial officers from 11 courts. Those data elements included caseweights and the judicial year value.³ *Caseweights* are time estimates, per casetype, that quantify the average amount of judicial time, in minutes, needed per filing. When caseweights are multiplied by a three-year average of filings and then divided by the judicial year value, the result is an estimate of judicial officer need, expressed in full-time equivalents.

The Subordinate Judicial Officer Working Group had previously determined that 100 percent of small claims and infractions work was appropriate for SJOs. Therefore, to estimate SJO need in those casetypes, staff of the Judicial Council Office of Court Research (OCR) multiplied the 2001 Judicial Workload Assessment caseweights for those casetypes by a three-year average of recent filings and divided by the judicial year value.

A different approach was taken to estimate the need for SJOs in the casetypes where the 2002 report deemed that only a portion of the work was appropriate to SJOs. The Judicial Workload Assessment does not provide data at a level of detail to determine the need for SJOs at the event or hearing level. For example, though the SJO Working Group determined that civil discovery motions were appropriate for SJOs to handle, the branch lacks the statewide data needed to estimate the average number of discovery motions per case or the average amount of time per motion.

However, the Judicial Workload Assessment data does provide estimates of time reported by phase of case—pretrial, trial/nontrial disposition, and postdisposition—and by the classification of the judicial officer performing the work—judge or subordinate judicial officer. Most of the hearing work that the SJO Working Group identified as appropriate for SJOs takes place in the pretrial phase, so staff used the SJO-reported time in the time study for the pretrial phase to create an “SJO work caseweight.” They then multiplied these SJO-specific caseweights by the three-year average filings and divided by the judge year value to estimate the number of subordinate judicial officers needed to manage the workload that the 2002 report deemed appropriate for handling by SJOs.

Based on the above methodology, the 2007 study showed a need for 259 FTE subordinate judicial officers, compared to 423 authorized SJO positions. To next identify the number of SJO positions in each court that were appropriate for conversion, staff compared authorized SJO positions in each court to the assessed need for SJOs. The difference between the two

³ The amount of time that judicial officers have to hear cases, subtracting weekends, holidays, and time needed for training and other administrative duties.

represented the number of conversions needed to ensure that enough judges were assigned to handle the judge-appropriate workload. With some adjustments made for rounding to whole numbers, the total number of SJO positions that were deemed appropriate for conversion was 162 FTEs.

Conversions completed to date

Table 1 summarizes the conversions that have taken place in each fiscal year (FY), the courts and positions still eligible for conversion, and the courts that have completed their conversions. At present, 117 conversions have taken place, with 45 conversions remaining.

Table 1: Summary of SJO Conversions

	Positions Eligible for Conversion	Conversions								Total Conversions to Date	Positions Remaining to Convert	
		07-08	08-09	09-10	10-11	11-12*	12-13	13-14	14-15			
Courts Still Eligible for SJO Conversions												
Contra Costa	6	3	0	1	0	0	0				4	2
Kern	2	0	1	0	0	0	0				1	1
Los Angeles	78	4	5	7	7	8	6	7	7		51	27
Napa	1	0	0	0	0	0	0				0	1
Placer	1	0	0	0	0	0	0				0	1
San Diego	7	2	0	0	0	0	1	1			4	3
San Francisco	9	1	0	1	0	0	0				2	7
San Luis Obispo	2	1	0	0	0	0	0				1	1
San Mateo	2	0	0	0	0	0	0				0	2
Courts That Have Completed Their SJO Conversions												
Alameda	6	0	0	1	2	3	0				6	0
El Dorado	2	0	1	0	1	0	0				2	0
Fresno	3	0	1	0	1	0	0	1			3	0
Imperial	1	0	0	0	1	0	0				1	0
Marin	2	0	0	0	0	1	1				2	0
Merced	2	0	1	0	0	1	0				2	0
Orange	14	1	2	2	2	3	2	2			14	0
Riverside	6	1	1	0	0	1	3				6	0
Sacramento	5	1	2	0	0	2	0				5	0
Santa Barbara	2	0	0	2	0	0	0				2	0
Santa Cruz	1	0	0	0	0	1	0				1	0
Solano	3	1	2	0	0	0	0				3	0
Sonoma	2	0	0	1	1	0	0				2	0
Stanislaus	1	0	0	0	1	0	0				1	0
Tulare	2	0	0	1	0	0	0			1	2	0
Yolo	2	1	0	0	0	0	0	0	1		2	0
Total	162	16	16	16	16	20	13	11	9		117	45

Last Updated: June 23, 2015

* Note that total conversions in FY 2011-2012 exceed 16 because of the enactment of Senate Bill 405, which increased the number of allowable conversions in specific circumstances for this fiscal year.

Shaded rows represent courts that have completed all of the conversions for which they are eligible.

Methodology used for SJO conversion allocation update

At the direction of E&P, staff to the Workload Assessment Advisory Committee prepared an analysis of how conversions might be allocated with more updated workload data, using more current filings data and data from the 2011 judicial workload study. When E&P requested this update, the expectation was that only filings and SJO caseweights would be updated and that the underlying assumptions about the type of work appropriate that SJOs conduct would continue to be based on the 2002 report of the Subordinate Judicial Officer Working Group.

Consistent with that approach, the workload need for SJOs in small claims and infractions cases, where SJOs can perform 100 percent of the judicial duties, was calculated using the 2011 judicial caseweights for those casetypes, multiplied by a three-year average of filings (FY 2010–2011 through FY 2012–2013) and divided by the judicial year value.

However, changes in how the 2011 time study data were reported necessitated some minor adjustments to the methodology used to estimate workload need for SJOs in the casetypes where SJOs perform a portion of the overall workload. In the 2011 judicial workload study update, subordinate judicial officers were asked to record the amount of time they spent on each phase of a case (as with the 2001 study) for each casetype *when acting either as a judge pro tem or as an SJO*. This distinction allowed for a more accurate assessment of SJO-appropriate workload. Given that time reported serving as a judge pro tem was tracked elsewhere, the total amount of time reported by SJOs per casetype, across all phases of a case, could be used to create an SJO-specific caseweight for those casetypes for which SJOs perform a portion of judicial work. This slight change in the study methodology is consistent with the premise of the 2007 study. As with the calculations performed for calculating SJO need in small claims and infractions, the SJO-specific caseweights for the work performed in other casetypes were multiplied by a three-year average of filings and divided by the judicial year value.

Attachment B summarizes the data elements used in the analysis. Based on the updated workload data, about 231 FTE SJOs are needed to handle the SJO-appropriate workload (see column G of Attachment B). Existing judicial resources—the number of authorized judges and subordinate judicial officers—in each court are identified in the far-left columns (columns A through E).⁴ Authorized AB 1058 commissioner FTEs are exempted from consideration for conversion and therefore are reported separately on the authorized resource side (column C) and removed from the judicial need side (column H).

Columns F through H show the judicial need in each court. Column F shows results from the 2014 Judicial Needs Assessment, which estimates judicial officer (both judges and SJOs) need in each of the courts based on a three-year average of filings and caseweights approved by the Judicial Council in 2011. The 2014 Judicial Needs Assessment, which was approved for transmittal to the Legislature by the Judicial Council at its December 12, 2014, meeting, is based on filings from FY 2010–2011 through FY 2012–2013. Column H shows the SJO need with the AB 1058 authorized commissioner FTEs removed. As mentioned above, since authorized AB 1058 commissioner FTEs are not subject to conversion, they must be removed from the analysis.

The remaining columns (I through L) show how the updated workload data might modify the list of SJO positions that would be appropriate for conversion, as described more fully in the next section, with column L displaying the remaining conversions under the current methodology.

⁴ In preparing the analysis, WAAC determined that some courts had made changes in the number of authorized subordinate judicial officer FTEs, which needed to be confirmed by E&P. E&P confirmed those changes at its October 9, 2014, meeting, and those modifications have been incorporated into this table and report.

Updated SJO conversion allocation results

In 2007, when the conversion analysis was first completed, 259 SJO FTEs were needed to manage the workload that was deemed appropriate for subordinate judicial officers. Based on the updated workload data, the workload need for SJOs is 230.9 FTEs statewide. With authorized AB 1058 commissioner positions taken out of the analysis, the statewide FTE need becomes 179. The decline in statewide need for SJOs may partially reflect changes in the caseweights used to measure judicial workload between the 2001 and 2011 judicial time studies and also the decline in statewide filings since FY 2009–2010 in many casetypes, but particularly in infractions and small claims—where most of the SJO-appropriate workload is concentrated.

Comparing that number to the number of authorized SJO positions (also with AB 1058 commissioner FTEs removed) in column B of Attachment B and rounding down to whole numbers yields an initial number of conversions using the updated workload data: 56 FTEs (see column I). However, the direction from E&P was to use updated workload data to determine how *remaining* conversions should be allocated. Two steps are necessary to finalize an updated list of positions appropriate for conversion.

First, an adjustment should be made to address policy issues that weren't considered when the original SJO conversion study was done. The 2007 study and the policy decisions made about the conversions at that time did not anticipate changes in judicial workload need as a result of filings declines. Since peaking in FY 2009–2010, statewide filings counts have declined about 10 percent per year. Although statewide more judicial officers are needed than currently authorized, a small number of courts that are recommended to convert one or more positions currently have more authorized *judges* than their assessed judicial need. These courts already have an appropriate number of judges performing judge work, and converting SJO positions in those courts would not further the goals of the conversion legislation. Therefore, the analysis has been adjusted to eliminate any courts from converting an SJO position when the court has more judges than its 2014 assessed judicial need, resulting in a list of 52 FTE SJOs appropriate for conversion in ten courts (see table 2).

In addition to changes in workload need, the Workload Assessment Advisory Committee also became aware of changes in the number of authorized subordinate judicial officer FTEs in some courts since the 2007 study. A statewide survey went out in September 2014 so that all courts had the opportunity to confirm their SJO FTEs. Several courts made permanent changes to their authorized subordinate judicial officer FTEs, which were confirmed by E&P in October 2014. Those changes affected the positions deemed appropriate for conversion.

Also, some courts identified as having an SJO position eligible for conversion may have fewer filled SJO positions than authorized. After several years of budget cuts, some courts have laid off commissioners and otherwise used salary and benefits savings from vacant commissioner positions to manage the fiscal crisis—something that had not been anticipated when the SJO policy was first developed. The SJO positions have not been permanently eliminated; they are

simply currently unfilled. Because those positions could be filled at any time, the status of an SJO position—filled or unfilled—should not be used as the basis for identifying conversions.

Prioritization of conversions

Although updated workload data identify 52 positions that are appropriate for conversion, 45 conversions remain under the existing statute. Staff of the Judicial Council Office of Court Research used methodology similar to the one used to prioritize new judgeships to identify positions that are most appropriate for conversion. The underlying policy assumption of the methodology, consistent with the overall goals of the conversion legislation, is that conversions should be prioritized where the biggest gap between assessed SJO need and authorized SJO FTE exists. To identify those positions, the difference between SJO need and authorized SJOs was calculated for each court with eligible conversions; then a formula was applied that assigns a ranking score to each position eligible for conversion. A second adjustment accounts for the relative “value” or contribution of each conversion toward narrowing the gap between SJO need and authorized SJO FTE in courts with multiple positions eligible for conversion. The ranking scores for each SJO position eligible for conversion were classified in descending order and the first 45 positions were prioritized for conversion. Those positions are shown in the far-right column of table 2 (and in column K of attachment B).

Table 2: Conversions Based on Updated Workload Data

Court	Positions Remaining to Convert (as of June 2014) Using 2007 Workload Data	Number of SJO Positions Appropriate for Conversion Based on Updated Workload Data	Recommended SJO Conversions Based on Updated Workload Data
Contra Costa	2	3	3
Kern	1	0	0
Los Angeles	27	34	28
Napa	1	1	1
Orange	0	3	3
Placer	1	2	2
Sacramento	0	1	1
San Diego	3	4	3
San Francisco	7	0	0
San Luis Obispo	1	1	1
San Mateo	2	2	2
Santa Cruz	0	1	1
Total	45	52	45

All of the positions prioritized for conversion using updated workload data are from courts that were previously identified in the 2007 analysis as having positions eligible for conversion. Using updated workload data, three courts (in Contra Costa, Los Angeles, and Placer Counties) would

be required to convert 1 position in addition to remaining conversions under the 2007 workload analysis. Three courts that had completed their conversions under the 2007 analysis are now slated to convert additional positions: 3 FTEs in Orange County and 1 FTE each in Sacramento and Santa Cruz Counties. Two courts that were previously slated to convert positions—in Kern and San Francisco Counties—no longer have positions eligible for conversion. The status of four courts (in Napa, San Diego, San Luis Obispo, and San Mateo Counties) remains unchanged.

Comments, Alternatives Considered, and Policy Implications

The council's policies concerning SJO conversions directly affect the trial courts. Recently, several courts have contacted Judicial Council staff to find out whether updated workload data would change their need to convert positions. Council action is needed so that courts have more certainty about the need to convert positions in light of changes in judicial workload since 2007.

Comments received

Judge Lorna Alksne, chair of the Workload Assessment Advisory Committee, presented this item to the Executive and Planning Committee at its July 8, 2014, public meeting. Although no public comments were made about the item, a (now former) member of E&P raised two questions.⁵ One was about whether the types of matters that should be heard by subordinate judicial officers should be updated in light of changes in the law and case processing practices since the 2002 report of the Subordinate Judicial Officer Working Group. The scope of work for the present analysis was limited to retaining the assumptions made in the 2002 report; however, the Judicial Council may wish to direct staff to update this analysis at some future time. The second issue raised by the E&P member concerned updating the number of authorized judicial positions (both judge and SJO) in each court. That suggestion was undertaken and incorporated into the present analysis.

After the number of authorized SJOs was updated in fall 2014, the updated analysis was presented to WAAC at its January 21, 2015, meeting (an open meeting held via teleconference). No public comments were received.

OCR staff presented this item to the Trial Court Presiding Judges Advisory Committee Executive Committee at its June 3, 2015, meeting. Attendees requested that staff defer taking this recommendation to the Judicial Council at the August Judicial Council meeting.

This item has not circulated for public comment.

Alternatives

E&P is asking the council to approve a recommendation to update the remaining conversions using new workload data. Updating the list would be consistent with previous council direction to use the most recent workload data when making decisions concerning allocation of judicial

⁵ The member was unable to attend the July meeting and submitted her questions to the chair of E&P via e-mail before the meeting.

positions. The council would also need to amend the statute to avoid tying the list of courts eligible for conversions to those identified by the council in February 2007, as the current statute does.

Alternately, the council could opt to maintain the status quo and complete the remaining 45 SJO conversions using the conversion list that was established in 2007. However, there are known changes in filings volumes, case mixes, and time required for judicial officers to handle certain matters. Taking this approach would mean that some courts would have to convert SJO positions to judgeships in excess of the court's judge need (measured by the 2014 Judicial Needs Assessment) or in excess of currently authorized SJO positions. In terms of the latter, how this might be carried out is unclear.

Other considerations

The council should consider whether the conversion list should be updated regularly to account for changes in workload. Any future changes in the number of authorized commissioner FTEs and changes in judicial workload could modify the number of positions to be converted in the future and suggest the need for periodic updates to the analysis. Making periodic updates ensures that the workload-based models used by the Judicial Council to implement policy are based on the most current data available, which is consistent with previous council action on related matters, such as the priority ranking for new judgeships based on judicial workload need.

Implementation Requirements, Costs, and Operational Impacts

The Judicial Council will incur no direct costs to implement this proposal, other than staff time required to secure legislation needed to revise the list of courts eligible to convert a position, to carry out the policy, and to maintain the records. As for the trial courts that convert positions under this authority, no new funding is provided for the conversions; the cost of the SJOs is deducted from their allocations to address the cost of the judgeships.

If the council decides to direct staff to make regular updates to the conversion list, implementing the resulting new workload would incur modest staff costs.

Attachments and Links

1. Attachment A: Government Code Section 69615
2. Attachment B: Table showing authorized judicial resources, judicial need, and SJO conversions

Government Code Section 69615

(a) It is the intent of the Legislature in enacting this section to restore an appropriate balance between subordinate judicial officers and judges in the trial courts by providing for the conversion, as needed, of subordinate judicial officer positions to judgeships in courts that assign subordinate judicial officers to act as temporary judges. The Legislature finds that these positions must be converted to judgeships in order to ensure that critical case types, including family, probate, and juvenile law matters, can be heard by judges.

(b) (1) The Legislature finds that because of the unique nature of family and juvenile law matters, including the long-lasting impact of decisions in these cases, particularly on vulnerable children, whenever possible, these cases should be presided over by judges, who are accountable to the public.

(2) The Legislature also finds that a Judicial Council study concluded that public trust and confidence in the courts are strongest when the public believes that the decisionmaking processes used by the court are fair and allow each litigant a reasonable opportunity to be heard by the court. In order to improve the public perception of procedural fairness in family law and juvenile law matters, it is necessary that cases be heard by judges whenever possible.

(3) It is therefore the intent of the Legislature, in allowing the conversion of up to 10 additional subordinate judicial officer positions, as provided in subparagraph (C) of paragraph (1) of subdivision (c), to expedite the timeline for ensuring that family and juvenile law matters are presided over by judges.

(c) (1) (A) Sixteen subordinate judicial officer positions in eligible superior courts, as determined and approved by the Judicial Council on February 23, 2007, pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraph (2).

(B) Upon subsequent authorization by the Legislature, 146 subordinate judicial officer positions in eligible superior courts, as determined by the Judicial Council pursuant to uniform criteria for determining the need for converting existing subordinate judicial officer positions to superior court judgeships, shall be converted to judgeships as set forth in paragraphs (2) and (3), except that no more than 16 subordinate judicial officer positions may be converted in any fiscal year.

(C) Notwithstanding subparagraph (B), up to 10 additional subordinate judicial officer positions in eligible superior courts may be converted to superior court judgeships in any fiscal year. Each additional position may be converted to a judgeship only if the conversion will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial

officer. The additional conversions authorized by this subparagraph are subject to the requirements of paragraph (3).

(2) The positions for conversion shall be allocated each fiscal year pursuant to uniform allocation standards to be developed by the Judicial Council for factually determining the relative judicial need for conversion of a subordinate judicial officer position that becomes vacant to a superior court judgeship position.

(3) Beginning in the 2010–11 fiscal year, a subordinate judicial officer position shall be converted to a judgeship when all of the following conditions are met:

(A) A vacancy occurs in a subordinate judicial officer position in an eligible superior court as determined by the uniform allocation standards described in paragraph (2).

(B) The Judicial Council files notice of the vacancies and allocations with the Chairperson of the Senate Committee on Rules, the Speaker of the Assembly, and the Chairpersons of the Senate and Assembly Committees on Judiciary.

(C) Except for proposed actions authorized pursuant to subparagraph (C) of paragraph (1), the proposed action is ratified by the Legislature, either in the annual Budget Act or by statutory enactment. Because of the unique nature of the need for judges as expressed in subdivision (b), a proposed action under subparagraph (C) of paragraph (1) shall be ratified by the Legislature by statutory enactment other than the annual Budget Act.

(4) Section 12011.5 shall apply to an appointment to a superior court judgeship converted from a subordinate judicial officer position.

(d) For purposes of this section, “subordinate judicial officer” means an officer appointed under the authority of Section 22 of Article VI of the California Constitution. This section shall not apply to a subordinate judicial officer position established by Section 4251 of the Family Code.

(e) It is the intent of the Legislature that no subordinate judicial officer shall involuntarily lose his or her position solely due to operation of this section. This section does not change the employment relationship between subordinate judicial officers and the trial courts established by law.

(f) This section does not limit the authority of the Governor to appoint a person to fill a vacancy pursuant to subdivision (c) of Section 16 of Article VI of the California Constitution.

(g) This section does not entitle a court to an increase in funding.

(h) The operation of this section shall neither increase nor decrease the number of judicial and subordinate judicial officer positions and court support positions for which a county is responsible by law.

(Amended by Stats. 2010, Ch. 690, Sec. 2. Effective January 1, 2011.)

	A	B	C	D	E	F	G	H	I	J	K	L
COUNTY	Authorized Resources					Judicial Need			Determining SJO Conversions			Positions remaining to convert using 2007 workload data
	Authorized Judges (as of June 2013, plus SJO conversions through January 1, 2015)	Authorized SJOs (without AB 1058 child support commissioners)	Authorized AB 1058 child support commissioners	Authorized SJOs (as of June 2013, reported in CSR, minus conversions through June 1, 2015)	Total Authorized Judicial Officers	2014 Assessed Judicial Need	SJO Need (from updated SJO workload analysis)	SJO need minus authorized AB 1058 positions (G-C)	Workload-based SJO need compared to authorized SJOs: number of SJOs appropriate for conversion (B-H)	SJOs appropriate for conversion, removing any SJO conversions in excess of judicial need. If A is greater than F, result is "0", else I	Final list of recommended conversions based on updated workload data	
STATEWIDE	1,715	246.2	51.9	298.1	2,013.1	2,171.3	230.9	179.0	56	52	45	45
Alameda	75	8.1	1.9	10.0	85.0	70.1	8.6	6.7	1	-	-	-
Alpine	2	0.0	0.3	0.3	2.3	0.2	0.0	--	-	-	-	-
Amador	2	0.0	0.3	0.3	2.3	2.7	0.2	--	-	-	-	-
Butte	12	1.5	0.5	2.0	14.0	14.2	1.4	0.9	-	-	-	-
Calaveras	2	0.0	0.3	0.3	2.3	2.8	0.2	--	-	-	-	-
Colusa	2	0.0	0.3	0.3	2.3	1.6	0.2	--	-	-	-	-
Contra Costa	39	6.5	1.5	8.0	47.0	42.5	4.8	3.3	3	3	3	2
Del Norte	3	0.5	0.3	0.8	3.8	3.7	0.3	--	-	-	-	-
El Dorado	8	0.7	0.3	1.0	9.0	9.9	1.0	0.7	-	-	-	-
Fresno	47	3.7	2.3	6.0	53.0	60.7	5.5	3.2	-	-	-	-
Glenn	2	0.0	0.3	0.3	2.3	2.0	0.3	--	-	-	-	-
Humboldt	7	0.7	0.3	1.0	8.0	10.6	0.9	0.6	-	-	-	-
Imperial	10	1.0	0.3	1.3	11.3	13.8	1.8	1.5	-	-	-	-
Inyo	2	0.0	0.3	0.3	2.3	1.6	0.3	--	-	-	-	-
Kern	39	5.1	1.9	7.0	46.0	58.0	6.2	4.3	-	-	-	1
Kings	8	1.3	0.3	1.6	9.6	11.4	1.0	0.7	-	-	-	-
Lake	4	0.3	0.4	0.7	4.7	5.2	0.4	--	-	-	-	-
Lassen	2	0.0	0.3	0.3	2.3	3.2	0.3	--	-	-	-	-
Los Angeles	483	94.5	8.8	103.3	586.3	629.5	68.3	59.5	34	34	28	27
Madera	10	0.0	0.3	0.3	10.3	10.9	1.0	0.7	-	-	-	-
Marin	12	0.4	0.3	0.7	12.7	11.8	1.4	1.1	-	-	-	-
Mariposa	2	0.0	0.3	0.3	2.3	1.3	0.1	--	-	-	-	-
Mendocino	8	0.1	0.3	0.4	8.4	7.3	0.6	0.3	-	-	-	-
Merced	12	1.5	0.5	2.0	14.0	16.7	1.8	1.3	-	-	-	-
Modoc	2	0.0	0.3	0.3	2.3	0.8	0.1	--	-	-	-	-
Mono	2	0.0	0.3	0.3	2.3	1.1	0.2	--	-	-	-	-
Monterey	20	1.7	0.5	2.2	22.2	21.8	2.1	1.6	-	-	-	-
Napa	6	1.7	0.3	2.0	8.0	8.2	0.7	0.4	1	1	1	1
Nevada	6	1.3	0.3	1.6	7.6	5.4	0.6	0.3	1	-	-	-
Orange	125	17.2	2.8	20.0	145.0	155.6	16.8	14.0	3	3	3	-
Placer	12	4.1	0.4	4.5	16.5	19.4	1.8	1.4	2	2	2	1
Plumas	2	0.0	0.3	0.3	2.3	1.4	0.1	--	-	-	-	-
Riverside	69	10.9	3.1	14.0	83.0	127.4	13.7	10.6	-	-	-	-
Sacramento	68	9.2	1.3	10.5	78.5	81.8	9.1	7.8	1	1	1	-
San Benito	2	0.0	0.3	0.3	2.3	2.8	0.2	--	-	-	-	-
San Bernardino	78	12.4	2.6	15.0	93.0	143.0	14.7	12.1	-	-	-	-
San Diego	132	18.9	3.1	22.0	154.0	153.3	17.8	14.7	4	4	3	3
San Francisco	52	2.8	1.1	3.9	55.9	53.8	5.4	4.3	-	-	-	7
San Joaquin	32	3.3	1.2	4.5	36.5	42.3	3.8	2.6	-	-	-	-
San Luis Obispo	12	2.7	0.3	3.0	15.0	17.9	1.6	1.3	1	1	1	1
San Mateo	26	6.5	0.5	7.0	33.0	31.1	4.2	3.7	2	2	2	2
Santa Barbara	21	2.2	0.8	3.0	24.0	23.4	2.5	1.7	-	-	-	-
Santa Clara	79	8.1	1.9	10.0	89.0	69.6	7.4	5.5	2	-	-	-
Santa Cruz	11	2.2	0.3	2.5	13.5	14.2	1.4	1.1	1	1	1	-
Shasta	11	1.4	0.6	2.0	13.0	16.4	1.3	0.7	-	-	-	-
Sierra	2	0.0	0.3	0.3	2.3	0.2	0.0	--	-	-	-	-
Siskiyou	4	0.7	0.3	1.0	5.0	3.4	0.4	0.1	-	-	-	-
Solano	21	2.4	0.6	3.0	24.0	25.0	2.4	1.8	-	-	-	-
Sonoma	21	2.3	0.75	3.0	24.0	26.1	2.7	1.9	-	-	-	-
Stanislaus	23	2.1	0.95	3.0	26.0	32.6	2.9	1.9	-	-	-	-
Sutter	5	0.0	0.3	0.3	5.3	6.7	0.6	0.3	-	-	-	-
Tehama	4	0.0	0.3	0.3	4.3	5.8	0.6	0.3	-	-	-	-
Trinity	2	0.0	0.3	0.3	2.3	1.6	0.1	--	-	-	-	-
Tulare	22	2.0	1.0	3.0	25.0	25.9	2.5	1.5	-	-	-	-
Tuolumne	4	0.5	0.3	0.8	4.8	4.3	0.4	0.1	-	-	-	-
Ventura	29	2.7	1.3	4.0	33.0	40.4	4.7	3.4	-	-	-	-
Yolo	12	1.1	0.3	1.4	13.4	11.2	1.0	0.7	-	-	-	-
Yuba	5	0.0	0.3	0.3	5.3	5.6	0.5	0.2	-	-	-	-



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REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 21, 2015

Title	Agenda Item Type
Trial Courts: Annual Investment Report for Fiscal Year 2014-2015	Information Only
Submitted by	Date of Report
Judicial Council	July 31, 2015
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Executive Summary

This *Trial Court Annual Investment Report* provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under agenda item 10, Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004, and the report covers the period of July 1, 2014, through June 30, 2015.

Previous Council Action

On February 27, 2004, the Judicial Council approved several resolutions on investment activities for the trial courts. The resolutions direct that the Judicial Council develop an investment program for the trial courts, name the director of the Judicial Council's Finance Division¹ as the treasurer of invested trial court funds, and authorize the investment of trial court funds into (1) the State of California's Local Agency Investment Fund (LAIF), (2) Bank of America, N.A., investment funds, (3) or other investments as approved by the Judicial Council Administrative Director. They also provide for quarterly reporting of investment results by the director of the

¹ Effective October 1, 2012, the Judicial Council's Finance Division was renamed the Fiscal Services Office and was part of the Judicial and Court Administrative Services Division. The office has since been renamed Finance and remains in the (renamed) Administrative Division.

Judicial Council’s Finance office to the Judicial Council, the Administrative Director, and the senior manager of the Judicial Council’s Audit Services.²

On June 1, 2009, the Judicial Council’s Executive and Planning Committee, acting on behalf of the council, approved the investment of trial court monies in any share class of the two previously approved money market funds—the Bank of America Cash Reserves Fund (CRF; formerly Columbia Cash Reserves Fund) and the Bank of America Treasury Reserves Fund (TRF; formerly Columbia Treasury Reserves Fund)—and the addition of another money market fund, the Bank of America Government Reserves Fund (GRF; formerly Columbia Government Reserves Fund).

Summary of Findings

In table 1, CRF is the capital share class of the Bank of America Cash Reserves money market fund, TRF is the capital share class of the Bank of America Treasury Reserves money market fund, LAIF is the Local Agency Investment Fund, and PFIC (Public Funds Interest Checking) represents the Bank of America PFIC accounts.

Funds held in the judicial branch treasury: total investment portfolio

As of the close of business on June 30, 2015, total investment balances held by the trial courts purchased from bank accounts—directly managed by the Judicial Council’s Trust and Treasury Unit of Finance—were as specified in table 1.

Table 1. Trial Court Investment Balances Managed by the Finance Office

Investment Description	CRF	TRF	LAIF	PFIC	Total
All dollar amounts reported in thousands (\$000)					
Section A, Book Values					
Beginning Balance–07/01/14	\$134,745	\$0	\$144,983	\$146,738	\$426,466
Net Purchases/(Sales) ³	306	163,390	52,664	(146,881)	69,479
Interest Paid ⁴	63	10	683	143	899
Total Change	369	163,400	53,347	(146,738)	70,378
Ending Balance–06/30/15	\$135,114	\$163,400	\$198,330	\$0	\$496,844

² As of February 2013, the Judicial Council’s Audit Services is no longer part of Finance and is now a separate office in the Leadership Services Division.

³ “Net Purchases/(Sales)” is the net amount of court investment principal purchases and sales completed during the annual period.

⁴ “Interest Paid” is the total amount of interest paid to the investment account during the annual period and is included in the Ending Balance.

Investment Description (cont.)	CRF	TRF	LAIF	PFIC	Total
Section B, Fair Values— 06/30/15					
Ending Balance	\$135,114	\$163,400	\$198,405	\$0	\$496,919
Net Unrealized Gain/(Loss) in Fair Value ⁵	0	0	75	0	75
Ending Balance Plus Unpaid Interest Earned ⁶	\$135,114	\$163,400	\$198,564	\$0	\$497,078
Section C, Earnings and Statistics					
Interest Earned ⁷	\$63	\$10	\$842	\$143	\$1,058
Unpaid Interest Earned ⁸	\$0	\$0	\$159	\$0	\$159
Average Yield ⁹	0.04%	0.01%	0.26%	0.23% ¹⁰	0.12%
Dollar-Weighted Maturity (Days)	28	6	239	N/A	105
Credit Quality	First Tier ¹¹	First Tier ¹¹	GC 16430 ¹²	N/A	
Percentage of Investment Portfolio ¹³	27.19%	32.89%	39.92%	0.00%	100.00%

⁵ “Net Unrealized Gain/(Loss)” is the difference between the investment balance’s book value and its fair value at the end of the period. The net gain or loss is “unrealized” because the valuation at fair value is only for assets held by the fund at the end of the period. This Net Unrealized Gain/(Loss) would be “realized” or become an actual gain or loss only in the event that all participants’ holdings in each portfolio were liquidated by the end of the period. *Realized* gains and losses are included in the Average Yield of the investment for the period.

⁶ “Ending Balance Plus Unpaid Interest Earned” is the ending balance at fair value plus interest earned that is unpaid as of the end of the period. This figure represents the liquidation value including unpaid interest earned only in the event all participants’ holdings in each portfolio were liquidated at the end of the period.

⁷ “Interest Earned” is the total amount of interest earned during the annual reporting period.

⁸ “Unpaid Interest Earned” is the amount of interest earned during the period that is unpaid as of the end of the annual reporting period.

⁹ “Average Yield” is the simple average of the 30-day yields for each calendar month during the period, including any realized gains and losses, net of the investment’s operating expenses. The total Average Yield is a dollar-weighted average of the investment components.

¹⁰ The interest rate earned on the PFIC accounts was 0.25 percent per annum through October 2014 and 0.15 percent per annum for November 2014, which was the last month PFIC interest rates applied. Since PFIC account balances are insured by the Federal Deposit Insurance Corporation (FDIC), they are subject to FDIC insurance assessments of 0.13 percent per annum. As a result, PFIC balances earned a net rate return per annum after FDIC assessments of 0.12 percent through October 2014 and 0.02 percent for November 2014.

¹¹ “First Tier” money market debt securities receive a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations.

¹² LAIF may invest the fund money only in debt obligations as prescribed in Government Code (GC) section 16430.

¹³ The portfolio balance percentages are calculated using the book values at the end of the annual period.

The ratio of each investment's fair value to its book value (Fair Value Factor) as of June 30, 2015, was as follows:

CRF	1.000000000
TRF	1.000000000
LAIF	1.000375979
PFIC	1.000000000

The Fair Value Factor is 1.000 for CRF and TRF because all holdings in CRF and TRF are valued at fair value daily, and fair value is the price for all daily redemptions and reinvestment transactions. Because LAIF's operating rules permit the redemption, at any time, of all or a portion of any participating court's LAIF balance at its original purchase price, the court's redemption price is not affected by unrealized gains or losses.

Section A of table 1 provides the investment balances and activity for the period at book value or at original cost, plus or minus the straight-line amortization of any applicable discount or premium.

Section B provides the investment balances at their fair value at the end of the period. *Fair Value* is defined as the value at which an asset could be bought or sold in a current transaction between willing parties, other than in a liquidation.

Section C provides the investment earnings, the dollar-weighted average maturity, the credit quality, and each investment's percentage of the total investment portfolio.

The investment balances presented in the table include the combined balances of both trial court operating funds and agency funds.¹⁴

Investment portfolio components

CRF. The CRF is an overnight money market mutual fund registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 and operated in accordance with Commodity and Securities Exchanges, 17 Code of Federal Regulations part 270.2a-7. Investment purchases and redemptions of capital shares are transacted when Bank of America's system reviews the account balance daily at 1:30 p.m. PST and invests or returns funds as appropriate to maintain the bank account's established target balance. A purchase transaction takes place if the cash balance in the account exceeds the target balance, and a redemption transaction takes place when the cash balance is less than the target balance.

¹⁴ "Agency funds" are balances held in trust pending resolution of civil or criminal court proceedings, as well as funds held on behalf of state and local agencies before their statutory distribution. Agency funds include the following categories: civil trust, criminal bail trust, Uniform Civil Fees, and criminal fines, fees, and penalties.

In accordance with the aforementioned Code of Federal Regulations, the CRF must maintain a dollar-weighted average maturity consistent with its objective of maintaining a stable net asset value per share, not to exceed 60 days, and must contain only “First Tier” money market debt obligations receiving a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations.

The CRF invests only in high-quality money market instruments, which include bank obligations (including certificates of deposit and time deposits issued by domestic and foreign banks or their subsidiaries or branches), commercial paper, corporate bonds, extendible commercial notes, asset-backed securities, funding agreements, municipal securities, repurchase agreements, and other high-quality, short-term obligations. As of June 30, 2015, the CRF portfolio composition was as shown in table 2.

Table 2. CRF Portfolio Composition as of June 30, 2015

High-Quality Instruments	Percentage of Portfolio
Certificate of deposit	28.84
Asset-backed commercial paper	16.99
Financial company commercial paper	13.89
U.S. treasury repurchase agreement	10.61
Other repurchase agreement	10.08
Other note	9.97
U.S. government agency repurchase agreement	4.15
Other commercial paper	3.50
Variable-rate demand note	1.42
U.S. government agency debt	0.41
Other municipal debt	0.07
Investment company	0.06

Bank of America has determined that iMoneyNet’s Prime Category Average money market mutual fund is a good proxy of the CRF portfolio composition and performance. Included as Attachment A is the monthly fact sheet for the Bank of America Cash Reserves capital class shares reported as of June 30, 2015.

TRF. Effective December 1, 2014, the master trust account was converted from a PFIC account to a noninterest-bearing account and the funds were invested in the capital share class of the TRF. Like the CRF, the TRF is an overnight money market mutual fund registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940 and

operated in accordance with Commodity and Securities Exchanges, 17 Code of Federal Regulations part 270.2a-7. Investment purchases and redemptions of capital shares are transacted when Bank of America’s system reviews the account balance daily at 1:30 p.m. PST and invests or returns funds as appropriate to maintain the bank account’s established target balance. A purchase transaction takes place if the cash balance in the account exceeds the target balance, and a redemption transaction takes place when the cash balance is less than the target balance.

In accordance with the aforementioned Code of Federal Regulations, the TRF must maintain a dollar-weighted average maturity consistent with its objective of maintaining a stable net asset value per share, not to exceed 60 days, and must contain only “First Tier” money market debt obligations receiving a short-term rating from a nationally recognized statistical rating organization in the highest short-term rating category for debt obligations. The TRF is in the highest fund rating category of Moody’s at Aaa-mf, S&P at AAAM, and Fitch at AAAMmf.

The TRF invests only in high-quality money market instruments and invests at least 80 percent of its net assets in U.S. Treasury obligations and repurchase agreements secured by U.S. Treasury obligations. As of June 30, 2015, the TRF portfolio composition was as shown in table 3.

Table 3. TRF Portfolio Composition as of June 30, 2015

High-Quality Instruments	Percentage of Portfolio
U.S. treasury repurchase agreement	82.67
U.S. treasury debt	12.33
U.S. government agency repurchase agreement	5.00

Bank of America has determined that iMoneyNet’s Government Category Average money market mutual fund is a good proxy of the TRF portfolio composition and performance. Included as Attachment B is the monthly fact sheet for the Bank of America Treasury Reserves capital class shares reported as of June 30, 2015.

LAIF. LAIF is a money market fund held and managed by the State Treasurer’s Office and is part of the Pooled Money Investment Account (PMIA). The PMIA is the short-term investment pool for the state General Fund; special funds held by state agencies; and monies deposited by cities, counties, and other entities into the LAIF. LAIF is a voluntary program created by statute; it began in 1977 as an investment alternative for California’s local governments and special districts. The enabling statute for the LAIF is section 16429.1 et seq. of the Government Code.

By law, PMIA moneys can be invested only in the following categories: U.S. government securities; securities of federally sponsored agencies; domestic corporate bonds; interest-bearing time deposits in California banks, savings and loan associations, and credit unions; prime-rated

commercial paper; repurchase and reverse repurchase agreements; security loans; bankers' acceptances; negotiable certificates of deposit; and loans to various bond funds.

LAIF's primary objectives are to maintain the safety of principal and provide daily liquidity. These objectives are met by investing in high-credit-quality debt instruments, maintaining an average maturity between 120 days and 18 months, and providing daily availability of the entire invested balance. LAIF's investment yield is consistent with these very conservative objectives.

The *LAIF Performance Report*—including the portfolio's composition as of June 30, 2015, as reported by the State Treasurer's Office—is included as Attachment C. The State Treasurer's Office has not identified a money market fund suitable for benchmark comparison to LAIF.

PFIC. As of November 1, 2014, Bank of America reduced the interest rate on the PFIC account from 0.25 percent per annum to 0.15 percent per annum. This resulted in the PFIC account earning a net return of 0.02 percent per annum, net of the applicable FDIC¹⁵ assessment rate of 0.13 percent per annum. Before this reduction in the PFIC rate, the net return was 0.12 percent per annum (0.25 percent less the FDIC assessment of 0.13 percent). Offering PFIC accounts has become uneconomic for the bank due to the combination of greater reserve requirements all banks are required to implement under new U.S. Federal Reserve requirements based on Basel III¹⁶, in addition to the existing collateralization requirements for all public deposits under Government Code 53652. Accordingly, investment of the master trust account balance was moved effective December 1, 2014, to the capital class shares of the TRF currently earning 0.01 percent per annum. FDIC assessment fees did not apply to the trust investment balance after November 30, 2014, because the trust balance was invested in the TRF outside of a bank deposit account.

Public Funds Interest Checking accounts are Bank of America interest-bearing checking accounts. PFIC accounts are insured by the FDIC and are fully collateralized at 110 percent of PFIC balances with securities (per Gov. Code, § 53651), purchased by Bank of America, and held in a collateral pool pledged to public deposits. Since PFIC accounts are FDIC insured, they are subject to FDIC insurance assessments of 0.13 percent per annum.¹⁷

¹⁵ Federal Deposit Insurance Corporation (FDIC) assessment rate applies to all insured bank deposits, including deposits in interest-bearing bank accounts. The FDIC assessment rate is 0.13 percent per annum applied to the monthly average ledger balance on deposit with the bank.

¹⁶ Basel III (or the Third Basel Accord) is a global, voluntary regulatory standard on bank capital adequacy, stress testing, and market liquidity risk. It was agreed upon by the members of the Basel Committee on Banking Supervision in 2010–2011. The U.S. Federal Reserve announced in December 2011 that it would implement substantially all of the Basel III rules.

¹⁷ The FDIC assessment fee is the direct result of maintaining PFIC balances on deposit with Bank of America. FDIC fees are assessed on the average PFIC balance for the period.

Attachments

1. Attachment A: *BofA Cash Reserves: Capital Class Shares as of June 30, 2015*
2. Attachment B: *BofA Treasury Reserves: Capital Class Shares as of June 30, 2015*
3. Attachment C: *PMIA and LAIF Performance Reports as of June 30, 2015*

DRAFT

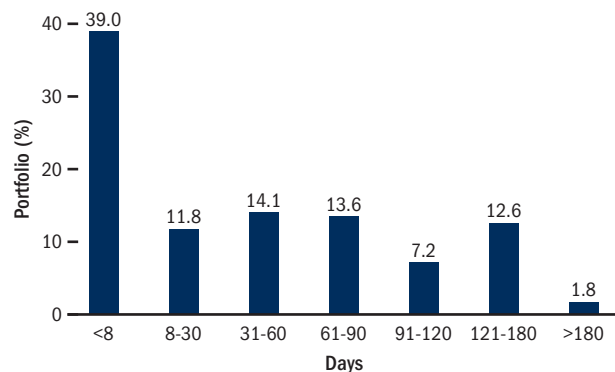
BofA Cash Reserves

Capital class shares as of June 30, 2015

ATTACHMENT A

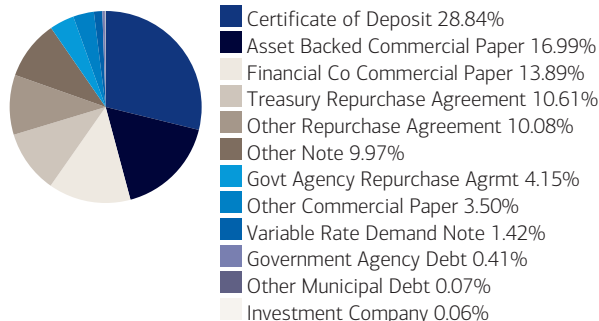
BofA® Global Capital Management

Maturity Distribution



Due to rounding, totals may not equal 100.

Portfolio Composition



Fund Objective:

The fund seeks current income, consistent with capital preservation and maintenance of a high degree of liquidity.

Investment Strategy:

The fund invests in high-quality money market instruments, including primarily short-term debt securities of U.S. and foreign issuers. The fund purchases only first-tier securities, which include bank obligations (including certificates of deposit and time deposits issued by domestic or foreign banks or their subsidiaries or branches), commercial paper, corporate bonds, extendible commercial notes, asset-backed securities, funding agreements, municipal securities, repurchase agreements and other high-quality, short-term obligations. These securities may have fixed, floating or variable rates of interest.

Fund Performance versus Index

	7-Day Yield						30-Day Yields						
	06/30/15	Jun-15	May-15	Apr-15	Mar-15	Feb-15	Jan-15	Dec-14	Nov-14	Oct-14	Sep-14	Aug-14	Jul-14
Current	0.05	0.06	0.06	0.06	0.05	0.04	0.04	0.03	0.03	0.02	0.02	0.02	0.02
Unsubsidized	-0.02	-0.02	-0.02	-0.02	-0.03	-0.04	-0.05	-0.05	-0.06	-0.06	-0.06	-0.06	-0.06
Benchmark†	—	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.02	0.01	0.02	0.02

†iMoneyNet Prime Category Average

The 7-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last seven days of investment as of the date listed.

The 30-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last 30 days of investment as of the dates listed.

The current yield reflects any voluntary waivers or reimbursement of fund expenses by the advisor or its affiliates. Absent of these waivers or reimbursement arrangements, performance would have been lower.

The unsubsidized yield is the gross yield that does not reflect any waivers or reimbursement arrangements.

Performance data quoted represents past performance and current performance may be lower or higher. Past performance is no guarantee of future results. The investment return and principal value will fluctuate so that shares, when redeemed, may be worth more or less than the original cost. Please visit www.bofacapital.com for daily and most recent month-end performance updates.

Must be preceded or accompanied by a prospectus.

Fund Facts:

Inception date	10/10/90
CUSIP number	097100853
Ticker symbol	CPMXX
Fund number	4576
Weighted average maturity (days)	28
Weighted average life (days)	47
Total assets (all share classes)	\$10,211m

Portfolio holdings and characteristics are subject to change periodically and may not be representative of current holdings and characteristics. Current and future holdings are subject to risk, including, but not limited to, market and credit risk.

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NOT BANK ISSUED	No Bank Guarantee

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Please see the prospectuses for a complete discussion of the risks of investing in money market mutual funds.

Source: iMoneyNet, Inc. is an independent mutual fund performance monitor. The iMoneyNet, Inc. averages are not intended to represent the past performance of the funds, but do represent the past performance of funds managed in a similar manner and having similar investment objectives and policies. The iMoneyNet Prime Category Average includes all Prime Retail and Prime Institutional funds.

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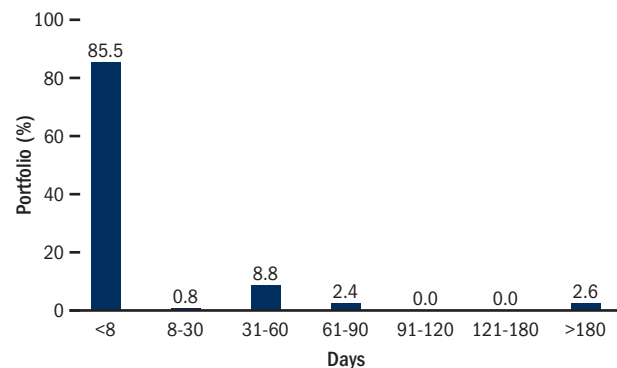
BofA Treasury Reserves

Capital class shares as of June 30, 2015

ATTACHMENT B

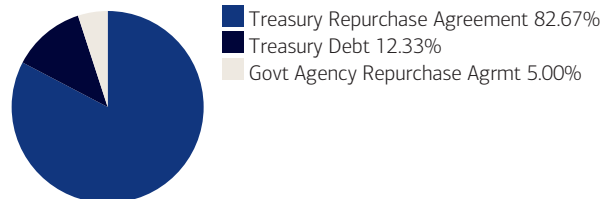
BofA® Global Capital Management

Maturity Distribution



Due to rounding, totals may not equal 100.

Portfolio Composition



Fund Objective:

The fund seeks current income, consistent with capital preservation and maintenance of a high degree of liquidity.

Investment Strategy:

The fund invests in high-quality money market instruments. The fund invests at least 80% of its net assets in U.S. Treasury obligations and repurchase agreements secured by U.S. Treasury obligations.

Fund Facts: NAIC-Listed ¹

Inception date	01/11/91
CUSIP number	097101307
Ticker symbol	CPLXX
Fund number	4232
Weighted average maturity (days)	6
Weighted average life (days)	16
Total assets (all share classes)	\$11,102m
Moody's Investors Service*	Aaa-mf
Standard & Poor's*	AAAm
Fitch*	AAAmf

Portfolio holdings and characteristics are subject to change periodically and may not be representative of current holdings and characteristics. Current and future holdings are subject to risk, including, but not limited to, market and credit risk.

Fund Performance versus Index

	7-Day Yield			30-Day Yields									
	06/30/15	Jun-15	May-15	Apr-15	Mar-15	Feb-15	Jan-15	Dec-14	Nov-14	Oct-14	Sep-14	Aug-14	Jul-14
Current	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Unsubsidized	-0.18	-0.18	-0.19	-0.17	-0.18	-0.20	-0.20	-0.19	-0.20	-0.20	-0.20	-0.19	-0.19
Benchmark [†]	—	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

[†]iMoneyNet Government Category Average

The 7-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last seven days of investment as of the date listed.

The 30-day current yield is net of all fees and expenses and represents an annualization of dividends declared and payable to shareholders for the last 30 days of investment as of the dates listed.

The current yield reflects any voluntary waivers or reimbursement of fund expenses by the advisor or its affiliates. Absent of these waivers or reimbursement arrangements, performance would have been lower.

The unsubsidized yield is the gross yield that does not reflect any waivers or reimbursement arrangements.

Performance data quoted represents past performance and current performance may be lower or higher. Past performance is no guarantee of future results. The investment return and principal value will fluctuate so that shares, when redeemed, may be worth more or less than the original cost. Please visit www.bofacapital.com for daily and most recent month-end performance updates.

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Please see the prospectuses for a complete discussion of the risks of investing in money market mutual funds.

¹ The National Association of Insurance Commissioners (NAIC) is the organization of insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. The NAIC provides a forum for the development of uniform policy when uniformity is appropriate. A fund listed on the NAIC List of Approved Mutual Funds meets conditions in the Purposes and Procedures Manual of the NAIC Securities Valuation Office, qualifying them for more favorable reserve treatment.

* The credit quality ratings represent those of Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's Corporation ("S&P") or Fitch, Inc. ("Fitch") credit ratings. The ratings represent their opinions as to the quality of the securities they rate. Ratings are relative, subjective and are not absolute standards of quality. The security's credit quality does not eliminate risk. According to Moody's, Aaa money market ratings are judged to be of the best quality. AAAm is the highest principal stability fund rating assigned by S&P. AAAmf ratings denote extremely strong capacity to achieve a money market fund's investment objective of preserving principal and providing shareholder liquidity through limiting credit, market, and liquidity risk by Fitch. For information regarding the methodology used to calculate the ratings, please visit Moody's at www.moody.com, S&P at www.standardandpoors.com or Fitch at www.fitchratings.com.

Source: iMoneyNet, Inc. is an independent mutual fund performance monitor. The iMoneyNet, Inc. averages are not intended to represent the past performance of the funds, but do represent the past performance of funds managed in a similar manner and having similar investment objectives and policies. The iMoneyNet Government Category Average includes all retail and institutional funds: Treasury, Treasury and Repo, Government and Government Agencies.

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**JOHN CHIANG
TREASURER
STATE OF CALIFORNIA**



PMIA Performance Report

Date	Daily Yield*	Quarter to Date Yield	Average Maturity (in days)
07/02/15	0.32	0.32	245
07/03/15	0.32	0.32	244
07/04/15	0.32	0.32	244
07/05/15	0.32	0.32	244
07/06/15	0.32	0.32	243
07/07/15	0.32	0.32	240
07/08/15	0.32	0.32	239
07/09/15	0.32	0.32	238
07/10/15	0.32	0.32	239
07/11/15	0.32	0.32	239
07/12/15	0.32	0.32	239
07/13/15	0.32	0.32	238
07/14/15	0.32	0.32	237
07/15/15	0.32	0.32	238

*Daily yield does not reflect capital gains or losses

LAIF Performance Report

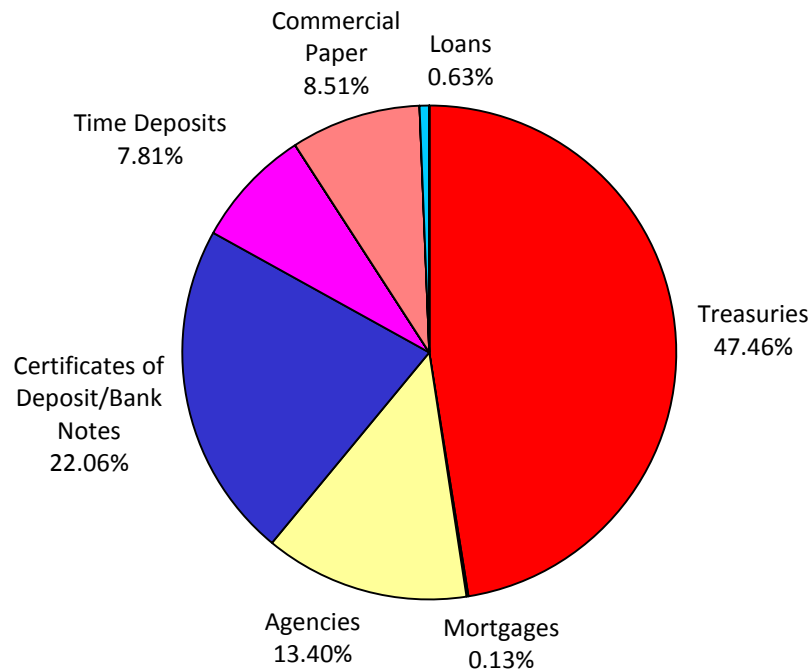
Quarter Ending 06/30/15

Apportionment Rate: 0.28%
 Earnings Ratio: 0.00000776875573384
 Fair Value Factor: 1.000375979
 Daily: 0.31%
 Quarter to Date: 0.29%
 Average Life: 239

PMIA Average Monthly Effective Yields

JUN 2015 0.299%
 MAY 2015 0.290%
 APR 2015 0.283%

**Pooled Money Investment Account
Portfolio Composition
\$69.6 billion
6/30/15**





Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 20–21, 2015

Title	Agenda Item Type
Court Facilities: Trial Court Facility Modification Quarterly Activity Report for Quarter 4 of Fiscal Year 2014–2015	Information Only
Submitted by	Date of Report
Trial Court Facility Modification Advisory Committee	July 1, 2015
Hon. David Edwin Power, Chair	Contact
	Patrick McGrath, 916-643-8051 patrick.mcgrath@jud.ca.gov

Executive Summary

The Trial Court Facility Modification Advisory Committee has completed its facility modification funding for the fourth quarter of fiscal year 2014–2015. In compliance with the *Trial Court Facility Modifications Policy*, the advisory body is submitting its *Trial Court Facility Modification Quarterly Activity Report: Quarter 4, Fiscal Year 2014–2015* as information for the council. This report summarizes the activities of the TCFMAC from April 1, 2015 to June 30, 2015.

Previous Council Action

The Trial Court Facility Modification Working Group was established by Judicial Council policy in 2005. The working group first met in April 2006 and operated under the *Trial Court Facility Modifications Policy*,¹ adopted by the Judicial Council in 2005 and revised on December 12, 2014. The working group's primary oversight responsibilities included reviewing statewide facility modification requests and approving facility modification funding.

¹ As adopted in 2005, the policy was known as the *Prioritization Methodology for Modifications to Court Facilities*. When it was revised in 2012, the name also changed. See www.courts.ca.gov/documents/jc-20120727-itemG.pdf.

The working group's charge was formalized by the Judicial Council on December 14, 2012, and the working group was assigned additional oversight responsibility for the operations and maintenance of existing facilities, noncapital-related real estate transactions, energy management, and environmental management and sustainability. On April 25, 2013, the working group's status was elevated to that of advisory committee.

An updated Court-Funded Facilities Request (CFR) approval process was submitted and approved by the Judicial Council on August 23, 2013, requiring all CFRs to be reviewed and approved by the TCFMAC. These submittals may include lease-related costs (e.g., lease payments and operating costs, repairs, or modifications required by a lease); allowable court operations expenditures under rule 10.810 of the California Rules of Court (e.g., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage); and other facility improvements that are not allowable court operations expenditures under rule 10.810 (e.g., facilities operations, maintenance, repairs, and modifications, but not capital projects), if they would improve a court's functioning or reduce ongoing court operating costs.

Reports previously approved by the Judicial Council are available at www.courts.ca.gov/2567.htm under Research and Reports: Conditions in Our Courts.

Methodology and Process

Funding decisions were based on the prioritization and ranking methodologies in accordance with the *Trial Court Facility Modifications Policy*. Facility modifications are assigned one of six priority categories: Priority 1—Immediate or Potentially Critical; Priority 2—Necessary, But Not Yet Critical; Priority 3—Needed; Priority 4—Does Not Meet Current Codes or Standards; Priority 5—Beyond Rated Life, But Serviceable; and Priority 6—Hazardous Materials, Managed But Not Abated. These categories are based on methods commonly used by private-sector facility management firms. Facility modifications that are determined to be Priority 1 are to be addressed immediately and regardless of whether the court occupies a shared-use facility. With current budget constraints, the TCFMAC predominantly approves facility modification projects at the Priority 1 and Priority 2 levels. Delaying TCFMAC approval of these projects would cause continued court closures, operational failures, and undue risk to continued court operations.

Policy and Cost Implications

During the fourth quarter of fiscal year 2014–2015, the TCFMAC reviewed and approved a total of 254 facility modifications for a total projected cost of \$7,794,202. The Facility Modification Program's share of these projects totals \$6,761,502. These approved projects are limited to Priority 1 emergency projects and Priority 2 critical needs projects. One Priority 3 – Needed project was approved based on its significant energy conservation value. Among other urgently needed projects, the committee approved two building alarm system renovations for design phase work – one at Compton Courthouse in Los Angeles County and one at Central Justice Center in Orange County – in order to comply with State Fire Marshal notifications. These projects will ensure fire and life safety at two large and heavily used courthouses in the state. The

committee also ratifies emergency projects, for instance, the replacement of flush valves at the San Mateo Hall of Justice in order to prevent regular flooding requiring the replacement of ceiling tiles, sheet rock and carpet. Please see Attachment A for a detailed list of all approved projects during the fourth quarter of fiscal year 2014–2015.

During this quarter, six projects required additional funds in excess of \$50,000 from their original estimates. The Facility Modification Program’s share of these cost increases totals \$575,330. Projects that require excess costs of this magnitude are typically projects where either project managers encountered unforeseen site conditions or there existed excessive deferred maintenance.

The committee reviewed and approved one project during the fourth quarter of fiscal year 2014–2015, designed to improve the lighting energy efficiency at Gordon Schaber Courthouse in Sacramento, with a total potential cost of \$180,000, which due to a combination of rebates and energy savings has a return on investment of 13 months.

During this quarter, two Court-Funded Facilities Requests (CFRs) were reviewed and approved by the TCFMAC, from Tulare and Los Angeles Superior Courts. These CFR projects will use funding from fiscal year 2015-2016 and as such were not subject to the earlier CFR cut-off for work funded with this year moneys. As stated above, CFR submittals may include lease-related costs, allowable court operations expenditures under rule 10.810 of the California Rules of Court, and other facility improvement costs that are not allowable under rule 10.810. See Attachment B for a detailed list of CFRs approved by the TCFMAC during the fourth quarter of fiscal year 2014–2015.

Implementation Efforts

The TCFMAC conducted two in-person meetings – one in Sacramento on April 13, 2015 and one in Los Angeles at the Van Nuys Courthouse East on May 22, 2015 – to review facility modification funding requests and to discuss the topics below. The committee thanks the Los Angeles Superior Court, and especially Presiding Judge Carolyn B. Kuhl and Court Executive Officer Sherri R. Carter for the opportunity to visit the three largest courthouses in the state as well as for the use of facilities for the meeting.

- The committee conducted its regular review of facility modification projects lists: A (Emergency and Priority 1), B (FMs Under \$50K), C (Cost Increases Over \$50K), D (FMs Over \$50K Eligible for Funding), E (Funded FMs On Hold), and F (Court-Funded Facilities Requests);
- The committee toured the public and non-public areas of the Stanley Mosk Courthouse, Clara Shortridge Foltz Criminal Justice Center, and Van Nuys Courthouse East and West in Los Angeles;
- The committee received a status report on the Trial Court Facility Maintenance Pilot Program for Window Washing that ended this year;

- The committee reviewed elevator entrapment trends at two large courthouses that underwent elevator renovation projects – Compton Courthouse in Los Angeles and Gordon Schaber Courthouse in Sacramento. Both have shown significant entrapment reductions since the projects were completed;
- The committee provided support and approval for the Water Conservation Policy scheduled to be submitted to the Judicial Council for adoption;
- The committee reviewed anticipated budget allocations for operations and maintenance and facility modification funding for fiscal year 2015–2016.

Completed Courthouse Project Spotlights

Emergency Project – Flood Water Remediation (interior and exterior) at Santa Maria Courts Campus (Building G) – FM-0052984

A faulty water membrane on the north exterior wall of the facility resulted in a major leak into the building, causing significant damage in the men’s and women’s public restroom, the secured stairwell, and the surrounding exterior of the building. Microbial spores also necessitated abatement and environmental testing. Judicial Council Facilities Management staff immediately began remediation efforts, keeping the Court apprised of work progression and timelines. Work crews worked diligently to make all affected areas functional once again. Final project cost was \$214,576.



Above: the faulty membrane on the exterior of the building as it looked at time of failure (with dirt excavated).

Near Right: Repair effort on the membrane.

Far Right: The restored men’s restroom.



Priority 2 Project – Fire Pump Replacement at Wiley Manuel Courthouse, Oakland, CA – FM-0050281

During a Preventive Maintenance round, it was discovered that both fire pumps in the facility were leaking water from bad seals. Additionally, testing would require draining the entire system, causing a loss of several thousand gallons of water per test. The project manager determined that a complete replacement and installation of a closed loop metering system to save water during testing would be best. The committee approved a total estimate of \$220,000 and final costs came in under budget at \$186,086. The project satisfied the requirements of all parties involved.



Above (left): One of the old fire pumps. Notice the evidence of leaking seals just above the date stamp on the main pump shaft.
Above (right): A new fire pump, installed.

Next Steps

The *Trial Court Facility Modification Quarterly Activity Report: Quarter 1, Fiscal Year 2015–2016* will be submitted to the Judicial Council in December 2015.

Attachments

1. Attachment A: *TCFMAC Funded Project List: Quarter 4, Fiscal Year 2014–2015*
2. Attachment B: *Court-Funded Facilities Requests (CFR): Quarter 4, Fiscal Year 2014–2015*

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JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
1	FM-0017040	Los Angeles	Compton	19-AG1	2	Fire - Phase 1 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 818,000	\$ 540,943	66.13
2	FM-0028322	Orange	Central Justice Center	30-A1	2	Fire - Phase 1 - Building alarm system is not code compliant and must be renovated to comply with State Fire Marshal notice to comply.	\$ 913,973	\$ 833,269	91.17
3	FM-0041559	Merced	Old Court	24-A1	2	Interior Finishes - Replace failed courtroom seats (168) and carpet as required to facilitate new seating installation. Chairs are 60 years old and replacement parts are not available. Chair failure rate is increasing and creating safety risks to the public.	\$ 105,000	\$ 105,000	100
4	FM-0047553	Los Angeles	San Fernando Courthouse	19-AC1	2	Exterior Shell - Fencing and Gates - Furnish and install new 4-foot high steel tube fence with spikes on top, attached to existing retaining wall at 2nd floor patio area to prevent access from outside and install alarmed Panic Bars at the egress gates from the patio. New fence to match existing as close as possible. Provide and install required supports and welds to fasten steel tube fence to existing retaining wall. Provide boom lift to lift and install new steel tube fence. Furnish and install new privacy screen welded to new steel tube fence. Prime and paint steel tube fence and privacy screen. Security issue in response to an incident and report.	\$ 30,944	\$ 30,944	100
5	FM-0051196	Los Angeles	Alhambra Courthouse	19-11	2	HVAC - Install new refrigerant monitoring system and modify the exhaust and supply air for chiller room, required as part of the monitoring system. There is currently no refrigerant monitoring in this room which is required by code.	\$ 28,027	\$ 24,104	86
6	FM-0051815	Merced	Old Court	24-A1	2	Roof - Renovate 1,400 sq. ft of exterior corridor roof, fascia and 200 square feet of exterior window ledge. Concrete is spalling and leaking. Work to include application of elastomeric roof coating, installation of additional pressure treated plywood and single membrane insulation, PVC patch and painting as required. Concrete spalling could fall onto passers-by below.	\$ 104,100	\$ 104,100	100
7	FM-0053006	Los Angeles	Bellflower Courthouse	19-AL1	2	Roof - Remove and replace existing roof with new PVC roof system - Due to roof currently being in poor condition, recommended removal and replacement of existing roof will bring entire system to good condition.	\$ 667,498	\$ 520,248	77.94



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
8	FM-0054053	Santa Barbara	Santa Barbara Jury Assembly Bldg.	42-G1	2	Interior Finishes - Construct three (3) Attorney/Client Meeting Rooms - Required to Facilitate move of juvenile proceedings to this location.	\$ 75,654	\$ 75,654	100
9	FM-0054490	Los Angeles	Alhambra Courthouse	19-I1	2	Fire Protection - Replace 4" Pre-Action Fire Valve assembly (UL listed). Connect to 120 volt power supply for Fire valve assembly and connect Pre-Action valve to fire panel. Correct deficiency from State Fire Marshal Report; Replace pre-action system with one that is UL listed and approved to fire department safety standards.	\$ 86,170	\$ 74,106	86
10	FM-0054578	Los Angeles	Norwalk Courthouse	19-AK1	1	Elevators, Escalators, & Hoists - Judge's Elevator #6 replaced Sheave and Bearing Assembly. Due to wear and tear and an elevator state inspector issued preliminary order to repair the sheave assembly, the sheave assembly on the judge's elevator #6 car top needs to be replaced.	\$ 40,774	\$ 34,670	85.03
11	FM-0054579	Los Angeles	Torrance Courthouse	19-C1	2	Interior Finishes - Sand & polish marble walls in elevator lobby's on floors 2, 3, 4 & 5. There is currently graffiti on multiple marble walls in elevator lobby's on multiple floors which could cause safety concerns for the public.	\$ 8,686	\$ 7,395	85.14
12	FM-0054581	Los Angeles	Alhambra Courthouse	19-I1	2	Vandalism - Sand and paint restroom walls & partitions to match existing and replace vandalized faucets. Multiple walls and partitions as well as faucets in the Women's public restrooms have been vandalized. Second and fourth floor women's public restrooms.	\$ 4,962	\$ 4,267	86
13	FM-0054583	Los Angeles	Norwalk Courthouse	19-AK1	2	Vandalism - Scrape and paint partition walls, doors and door frames inside public restrooms on multiple floors and replace broken locks on stalls. There is currently graffiti engraved into multiple door frames, doors and partition walls in public restrooms as well as multiple broken locks on the restroom stalls.	\$ 4,381	\$ 3,725	85.03
14	FM-0054584	Los Angeles	Compton Courthouse	19-AG1	2	Plumbing - Replace existing Cla-val DC 8" backflow with new Wilkins 350 DA 8" backflow assembly. Current backflow device has failed testing & is beyond repair, replacement is code required.	\$ 13,592	\$ 8,988	66.13



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
15	FM-0054585	Los Angeles	Pasadena Courthouse	19-J1	1	HVAC - Failed and Failing Valves - Remove and replace two (2) butterfly isolation valves on the AHUs hot water pipe, valve is bypassing hot water in the closed position. Remove and replace three (3) 3-way heating control valves and six (6) on bypass piping to restore heating. AHU #5 is not supplying heating to the 5th floor. Existing heating control valves of AHU #5 are non-operational, internal parts of heating control valve are seized. Body of heating control valve is leaking hot water due to deterioration.	\$ 15,076	\$ 10,455	69.35
16	FM-0054586	Los Angeles	Santa Clarita Courthouse	19-AD1	2	Interior Finishes - Replace existing door closer with new Doromatic 2520 RH Closer & adjust exit hard to work with new closer. Entrance door into Dept. 1 is not currently working properly, a new door closer must be installed to prevent security issues.	\$ 2,941	\$ 2,941	100
17	FM-0054587	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	HVAC - Replace return shaft and related components, pulleys, belts, bearings, and motor on air handler unit. The return shaft on air handler unit 4-1 is broken, shaft and multiple related components need to be replaced to make the unit operational.	\$ 46,910	\$ 32,269	68.79
18	FM-0054588	Contra Costa	Arnason Justice Center	07-E3	2	Electrical - Replace a total of 30 light bulbs with LED light bulbs; 14 have failed; lights are 25 feet off the floor and require a lift; requires off hour installation - LEDs will last longer, save energy and maintenance costs.	\$ 4,555	\$ 4,555	100
19	FM-0054589	Los Angeles	Beverly Hills Courthouse	19-AQ1	1	Electrical - Replace defective door operator and safety edge. Material Used (115 V Power master door operator with 3/4, HP motor, Drive chain, Manual Hand Chain, Safety Edge 13 10, Take up reel 16, Receiver and, Bypass pulley). Restore normal operations to Judge's roll-up gate. Judge's roll-up gate is not operating and currently in the closed position, clutch is jammed.	\$ 5,560	\$ 4,421	79.52
20	FM-0054590	Butte	Butte County Courthouse	04-A1	1	Roof - Roof Leaks - Cut back damaged roof areas and patch in the roof where the leaks are causing water intrusion in courtroom 3, Judges Chambers, main public corridor, and public transaction area.	\$ 4,072	\$ 4,072	100
21	FM-0054591	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	HVAC - Water remediation, set up containment, dry leak affected areas, replace failed pressure release piping. Water is leaking into the sheriff's locker room, coming from steamer pressure release piping.	\$ 9,550	\$ 6,569	68.79



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
22	FM-0054592	Los Angeles	Santa Monica Courthouse	19-AP1	2	Vandalism - Apply wood filler, then sand and stain wooden dividers & doors as well as replace glass and add anti-graffiti film to phone booth windows. There is currently heavy vandalism carved into the wood and glass of phone booths in public hallways on multiple floors.	\$ 13,668	\$ 10,728	78.49
23	FM-0054593	Los Angeles	Beverly Hills Courthouse	19-AQ1	2	Interior Finishes - Remove existing graffiti damaged window film, install solar window film on approx. (128) windows. There is currently graffiti on existing window film and it is also faded and cracking.	\$ 9,932	\$ 7,898	79.52
24	FM-0054595	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Electrical - Replace defective 2500 AMP breaker. The 2500 AMP breaker that feeds the mechanical equipment in the building has tripped causing all HVAC equipment to be inoperable. Installed a temporary 2500 AMP breaker for 5 days until the 2500A AMP breaker arrived for install.	\$ 45,000	\$ 31,496	69.99
25	FM-0054596	Los Angeles	Whittier Courthouse	19-AO1	1	Plumbing - Set up ACM containment, create 16 SF opening in the wall, and replace copper pipe. There is currently a leak coming from a 1-1/4" domestic copper water supply line located in the pipe chase between the basement and first floor. Work also included the removal and replacement of 25 SF of wall tile.	\$ 13,637	\$ 13,637	100
26	FM-0054597	Los Angeles	Pomona Courthouse South	19-W1	1	Electrical - Restore operation to the magnetic starter. The magnetic starter coil that serves the supply fan motor VFD of AHU #4 is not energizing causing the supply fan to be inoperable.	\$ 4,963	\$ 4,523	91.14
27	FM-0054598	Los Angeles	Van Nuys Courthouse East	19-AX1	2	Vandalism - Resurface and refinish wood benches, replace (2) wood doors near jury area, and replace (2) porcelain sinks in public restroom. Currently there are multiple wood benches, wood doors, and porcelain sinks throughout the public areas of the courthouse that have been vandalized.	\$ 9,296	\$ 8,342	89.74
28	FM-0054599	Los Angeles	Van Nuys Courthouse East	19-AX1	2	Vandalism - Grounds and Parking - Remove and replace (9) exterior recessed wall light fixtures, (5) bollard light posts, and multiple missing covers for hose bibs. Currently there are multiple light posts, light fixtures, hose bibs, walls, and walkways around the exterior of the facility that have been vandalized and could become a safety issue for the public.	\$ 6,530	\$ 5,860	89.74
29	FM-0054603	San Diego	East County Regional Center	37-11	2	Interior Finishes - Leak Remediation - Replace damaged drywall and tile behind toilets, replace bottom plates and tie new partial studs into existing studs. The metal framing has been compromised due to a minor undetectable leak over several years. The leak has settled in a metal framing track and has dripped down through an enclosed plumbing shaft.	\$ 3,652	\$ 2,473	67.71



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
30	FM-0054604	Los Angeles	Parking Structure Lot 48 Van Nuys Court Complex	19-AX6	2	Electrical - Failed UPS System - Remove and replace the failed UPS System that supports the way finding and egress lighting in the parking garage. System is non-operational and is required as emergency power for egress lighting.	\$ 13,149	\$ 11,800	89.74
31	FM-0054606	San Diego	Kearny Mesa - Traffic Court KM3 Trailer	37-C2	2	HVAC - Replace Bard wall mount package unit, thermostat, electrical connections and condensate piping. Existing Bard A/C unit needs to be replaced, evaporator has deteriorated and is not working.	\$ 12,791	\$ 12,791	100
32	FM-0054608	Madera	Sierra Courthouse	20-D1	2	Exterior Shell - Spot treat infected wood and beams at the main entrance of the building for wood boring beetles and fabricate 6 copper sleeves to prevent further damage from happening - Currently the beams have been temporarily sealed and painted, with the beams being exposed to the weather year around these types of repairs will have to be done every year.	\$ 10,239	\$ 6,963	68
33	FM-0054612	Los Angeles	Torrance Courthouse	19-C1	1	Exterior Shell - Replace defective locking clips and straighten link rods. Sheriff's roll up gate was stuck in the open position.	\$ 10,467	\$ 8,912	85.14
34	FM-0054613	Los Angeles	Whittier Courthouse	19-AO1	1	Roof - Set up ACM containment, dry leak affected areas, and replace damaged roof materials. There is currently rain water leaking into the 1st floor public defenders office coming from a damaged area of the roof.	\$ 13,869	\$ 13,869	100
35	FM-0054614	Los Angeles	Pomona Courthouse South	19-W1	1	Roof - Water remediation, set up ACM containment and drying equipment to expedite the drying process. Water leaked through a section of deteriorated roof under the cooling towers. Water leaked through the ceiling tiles in the 7th floor secured hallway. No offices are affected only the 7th floor secured hallway.	\$ 12,811	\$ 12,811	100
36	FM-0054616	San Diego	Juvenile Court	37-E1	2	Fire Protection - Replace failed/obsolete server room 159 and 160 halon suppression system. The project will include new FM-200 Clean Agent system, demolition of existing piping and electrical components, connection and programming to the existing Notifier 640 fire panel, control relays, modules, fittings, PAM relay, and final testing and certification. Work will be performed after hours.	\$ 41,785	\$ 31,180	74.62



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
37	FM-0054618	Humboldt	Humboldt County Courthouse (Eureka)	12-A1	2	Electrical - Add E- power outlet in closet - install 1 - e power outlet in Telecom closet, during last earthquake power was lost to essential building equipment.	\$ 2,087	\$ 2,087	100
38	FM-0054619	Mendocino	County Courthouse	23-A1	2	Interior Finishes - Fabricate and install aluminum handrail transition pieces due to numerous trip and falls on the existing steps. One each at 68" aluminum handrail and components and one each at 15' aluminum intermediate handrail and components.	\$ 8,428	\$ 5,699	67.62
39	FM-0054620	Contra Costa	Family Law Center	07-A14	2	HVAC - IT Room's Split System is Down - Remove and replace one failed compressor and one filter dryer - Excessive heat in the IT Room will damage computer equipment causing disruption to Court activities.	\$ 3,329	\$ 3,329	100
40	FM-0054621	Los Angeles	Chatsworth Courthouse	19-AY1	2	Vandalism - Sand, scrape, prep, and paint walls & partitions; install approx. 100 sq. ft. of anti graffiti film on mirrors. There is currently graffiti on multiple walls and partitions inside the public restrooms which could cause a safety issue for the public; mirrors currently do not have anti graffiti film leaving them exposed to vandalism.	\$ 4,215	\$ 3,532	83.8
41	FM-0054624	Los Angeles	Metropolitan Courthouse	19-T1	2	HVAC - Replace existing circuit setters with new spool pieces and install (2) new Hoffmann air bleeds on suction. Current circuit setters are starving the hot water pumps, restricting water flow, which could cause the pumps to fail.	\$ 3,506	\$ 3,315	94.54
42	FM-0054625	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	2	Vandalism - Install (13) new anti-graffiti mirrors, (1) new partition door, (10) new partition stall door locks, and sand & paint multiple partitions and walls in public restrooms. There is currently graffiti on mirrors, walls, and stalls as well as vandalized fixtures in multiple public restrooms which is a safety hazard for the public.	\$ 8,143	\$ 5,699	69.99
43	FM-0054626	Santa Clara	Hall of Justice (East)	43-A1	2	Interior Door Hardware- Replace (1) failed Crash bar on the main entrance courtroom/Dept 34 - Adjust and check the operation.	\$ 2,561	\$ 2,561	100
44	FM-0054627	Sonoma	3055 Cleveland Avenue	49-B2	2	HVAC - Replace failed hot gas assembly.	\$ 4,678	\$ 4,678	100
45	FM-0054629	San Joaquin	Manteca Branch Court	39-C1	2	Plumbing - Dig up area to access valve remove failed valve with new ball valve - Old valve is leaking.	\$ 2,589	\$ 2,589	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
46	FM-0054630	San Diego	County Courthouse	37-A1	1	Elevators, Escalators, & Hoists - Replaced Run Timer Board and Predictor Board. Elevator #7 was not functioning and was caught between Lobby and second floor.	\$ 3,281	\$ 3,281	100
47	FM-0054634	Los Angeles	Torrance Courthouse	19-C1	2	Exterior Shell - Install waterproofing membrane & protection board, caulk & seal cracks, and apply urethane coating to waterproof front planter area. The front planter area is currently allowing water to penetrate into the basement hallway next to the lock up which caused a P1 water intrusion addressed by SWO 1369635 and could cause further damage.	\$ 4,263	\$ 3,630	85.14
48	FM-0054635	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Electrical - Install new conduit and controls for generator cooling system and replace (1) 225 AMP transfer control module. The cooling tower is not responding due to failed wiring.	\$ 13,825	\$ 9,510	68.79
49	FM-0054636	Los Angeles	Torrance Courthouse	19-C1	1	Elevators, Escalators, & Hoists - Replace starter coil relay. Judge's elevator #5 has a bad starter coil relay, causing elevator to not operate correctly.	\$ 8,227	\$ 7,004	85.14
50	FM-0054637	San Diego	North County Regional Center - Vista Center	37-F2	2	HVAC - Replace failed, leaking chilled water coils on AHU-4,12. Work will include, but not limited to ACM testing and abatement if required, new valves, pressure gauges, crane to remove old and place new custom coil units on roof top with after hours execution.	\$ 57,302	\$ 38,530	67.24
51	FM-0054640	Los Angeles	Metropolitan Courthouse	19-T1	2	Fire Protection - Replace Fire doors, add panic hardware, magnetic hold open, and smoke detectors with relay modules and tie into the fire alarm system to close upon activation. Fire Marshall corrections for the Fire Rated doors located on Level A, B, and C.	\$ 76,882	\$ 72,684	94.54
52	FM-0054641	Riverside	Larson Justice Center	33-C1	2	HVAC - Cooling Tower - Remove and replace the sand filtration system and the associated piping of the BAC cooling tower with a new centrifugal separator. Current system has failed and is not efficient and is costly to maintain. Each time the system is back flushed it removes the water treatment chemicals. The replacement system will save in maintenance costs, reduce health risks, maximize equipment life and minimize downtime through elimination of back flushing.	\$ 95,486	\$ 77,162	80.81
53	FM-0054646	Lassen	New Susanville Courthouse	18-C1	1	HVAC- Replace failed/faulty Leibert unit on rooftop. Isolate and remove the existing condensing unit (OM00037053) & install a new like for like model condensing unit. Unit is not in operation at this time. This unit serves to cool the court IT room.	\$ 21,257	\$ 21,257	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
54	FM-0054648	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Plumbing - Replace failing institutional grade plumbing hardware in Holding cell D-106-2 - Work to be performed after hours.	\$ 4,216	\$ 4,216	100
55	FM-0054649	San Mateo	Hall of Justice	41-A1	1	Plumbing - Flush Valves - Replace 30 failed angle stops and Flush Body Valves. In the evenings the toilets continually run and overflow onto the floor flooding the court and file room damaging files, and the court space. This is to avoid another costly flood that led to remediation and replacement of ceiling tiles, sheet rock, and carpet.	\$ 38,737	\$ 38,737	100
56	FM-0054650	San Diego	Juvenile Court	37-E1	2	Electrical - Install a new electrical circuit to re-feed (6) bollard light fixtures and install a photocell on the electrical panel to operate the bollard light fixtures. Install new ballasts and lamps in these (6) bollard light fixtures. Install new underground conduit and wiring to restore power to (2) bollard light fixtures. In (1) additional bollard light fixture, replace ballast and lamp. 75% of the northwest public bollard sidewalk lights are not illuminated. This is a safety issue.	\$ 5,195	\$ 3,877	74.62
57	FM-0054651	Santa Clara	Downtown Superior Court	43-B1	1	Interior finishes - Toilet seals have failed causing extensive water damage to surrounding plaster walls - Disconnect and remove 6ea wall hung toilets and flush valves - Set up all required containment for ACM removal - Remove approx 150 sqft ACM - This includes 9 X 9 floor tiles and under laying mastic - Remove and dispose of 300 sqft of wall plaster material - Remove containment and properly dispose of. Re-install 300 SqFt of button board, lathe and plaster where removed - match existing.	\$ 63,372	\$ 63,372	100
58	FM-0054652	Santa Clara	Downtown Superior Court	43-B1	2	Plumbing - Replace 2(qty.) failed boiler #3 isolation valves - Replace 1(qty.) failed emergency pressure relief valve - Replace 1(qty.) failed bearing assembly - Restore water pressure and fill boiler system - Verify proper operation of boiler Shut down and isolate boiler system - Drain water.	\$ 4,608	\$ 4,608	100
59	FM-0054653	Lake	South Civic Center	17-B1	2	Vandalism - Remove Graffiti - Remove graffiti on exterior wallet front entrance, parking lot and utility box. Approx 250 sqft.	\$ 3,989	\$ 3,989	100
60	FM-0054654	Santa Clara	Old Courthouse	43-B2	2	Leak Damage - Replace plaster ceiling in Dept 22 conference room (10X 20 area) Ceiling has a 2' x 2' hole with plaster hanging down, and several long cracks throughout. The complete ceiling will be cleaned, patched and painted to match.	\$ 9,787	\$ 9,787	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
61	FM-0054655	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Flood Remediation, Approximately 6,500 SF over four floors. Replace flush valve in restroom, contain leaking, and set up containments in Dept.72 Courtroom, Dept.68 Courtroom and Judge's Chamber Room 711C. Water extraction, clean-up, and environmental testing. Water leaked from a stuck flush valve inside a private restroom on the 8th floor. The water penetrated to the 6th floor.	\$ 13,657	\$ 13,657	100
62	FM-0054656	Los Angeles	Parking Structure-Edelman Court	19-Q2	1	Elevators, Escalators, & Hoists - Reline Elevator #1 brakes, take brakes to machine shop to be relined. Install brakes and return elevator to service. Elevator breaks are worn, causing elevator to not level properly on floors. This is a tripping hazard and safety issue.	\$ 15,883	\$ 11,117	69.99
63	FM-0054657	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	1	Electrical- Replace defective 150Hp power supply fan motor and 150Hp VFD. There is a ground fault in the electrical distribution system that supports all of the HVAC mechanical equipment that is causing circuit breakers to trip.	\$ 13,809	\$ 9,665	69.99
64	FM-0054658	Los Angeles	Compton Courthouse	19-AG1	1	Plumbing - Cracked drain line cause water fountain leak. Removed/replaced cracked 1½in P-trap and fittings to the drinking fountains drain line. Set up 10x10 containment. Environmental testing.	\$ 13,859	\$ 13,859	100
65	FM-0054659	Los Angeles	El Monte Courthouse	19-O1	1	Electrical - Install a new 400 A, Automatic Transfer Switch, 600 V to restore electrical power. The original ATS #2 failed to switch back to building power and caused a partial power outage in the building. There was no power to the elevators, stairwell lighting, and the air handler units. This issue occurred after a rain storm caused a power outage in the building.	\$ 27,498	\$ 15,982	58.12
66	FM-0054660	Los Angeles	Van Nuys Courthouse West	19-AX2	1	HVAC - Approx. 38 VAV universal volume controls for the damper actuator need to be replaced, No pneumatic control. Temperature is too hot in some areas and too cold in other areas.	\$ 11,750	\$ 11,750	100
67	FM-0054661	Los Angeles	Van Nuys Courthouse West	19-AX2	1	HVAC - 3rd flr AHU is nonoperational and there is no cold air supply, hot air supply or return air. Replace 3 VFDs - Hot deck supply 7.5hp motor drive and return 10hp drive, cold deck 30hp drive.	\$ 15,595	\$ 15,595	100
68	FM-0054662	Los Angeles	Van Nuys Courthouse East	19-AX1	2	Grounds - Broken and Missing Walkway Tiles - Provide temporary barricade, remove loose and broken tiles, prep the surface, and install new tiles. Currently the sidewalk between the East & West buildings has missing and/or damaged tiles in multiple areas totaling approx. 68 sq. ft. Loose tiles in the sidewalk are a tripping hazard for all pedestrian traffic.	\$ 4,702	\$ 4,220	89.74



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69	FM-0054664	Los Angeles	Santa Monica Courthouse	19-AP1	2	Vandalism - Replace anti-graffiti film on (42) windows & install anti-graffiti film on restroom mirrors. There is currently graffiti scratched into the existing anti-graffiti film on the ground floor windows; mirrors in public restroom currently do not have anti-graffiti film leaving them exposed to vandalism.	\$ 4,130	\$ 3,242	78.49
70	FM-0054665	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	Electrical - Automatic Transfer Switch - Replace failed Automatic Transfer Switch - ATS02. While performing the Preventative Maintenance on ATS02, power transferred from Edison to the generator but would not transfer back to Edison. The issue is with the control cards and the cards are no longer available.	\$ 10,144	\$ 8,110	79.95
71	FM-0054667	Los Angeles	Compton Courthouse	19-AG1	2	Vandalism - Sand, scrape, prep, and paint restroom walls & replace vandalized fixtures; replace anti-graffiti film on (19) mirrors & (22) windows. There is currently graffiti on multiple walls as well as multiple vandalized fixtures inside the public restrooms.	\$ 4,907	\$ 3,245	66.13
72	FM-0054668	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	2	Grounds and Parking Lot - Install (2) new heavy duty 18 gauge hollow metal doors on trash enclosure, mounted with HD full surface hinges & panic hardware. Trash enclosure is currently missing fire rated doors and hardware which could cause a security issue.	\$ 5,604	\$ 3,855	68.79
73	FM-0054669	Santa Clara	Hall of Justice (West)	43-A2	2	HVAC - Cooling tower fan motor has failed - Replace failed #2 fan motor - Test and return unit to full service (CTW02 OM00028638).	\$ 4,179	\$ 4,179	100
74	FM-0054670	Los Angeles	Bellflower Courthouse	19-AL1	2	Vandalism - Scrape, sand & paint partition walls, install new mirrors with anti-graffiti film, install new locks on stall doors, and replace glass panels for the directories on multiple floors. There is currently graffiti engraved into mirrors & partition walls in the public restrooms as well as broken locks on the stall doors.	\$ 5,195	\$ 4,049	77.94
75	FM-0054671	Los Angeles	Compton Courthouse	19-AG1	2	Vandalism - Replace vandalized faucets, soap dispensers, toilet seat covers, re-paint walls & partitions and also install new anti-graffiti film. Inside the public restrooms many items have been vandalized and some items have been broken.	\$ 9,863	\$ 6,522	66.13
76	FM-0054672	Los Angeles	Norwalk Courthouse	19-AK1	1	Plumbing - Water remediation, contained leaking, environmental testing, dried leak affected areas and cleared drain lines in RR. A sink overflowed, flooded the deliberation room men's RR in the 4th flr Courtroom K. Water seeped thru floor and leaked into the 3rd flr Courtroom F.	\$ 9,842	\$ 8,369	85.03



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
77	FM-0054673	Contra Costa	Wakefield Taylor Courthouse	07-A2	2	Interior finishes - Earthquake - Install 20 feet ceiling grid on the second floor; Build scaffolding to reach 18 feet. Anchor support bracket to steel beam. Install 60 interlocking one foot square steel ceiling tiles; Install insulation above the ceiling. Install glass guide in room 303 - Hole in the ceiling due to the earthquake.	\$ 3,279	\$ 3,279	100
78	FM-0054674	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Install new drive chain and replace damaged washer on non-reversal device in escalator 1-2. The escalator drive chain is currently stretched and is hitting the access cover which could cause the chain to come off and the escalator to stop moving.	\$ 6,616	\$ 6,616	100
79	FM-0054675	San Diego	County Courthouse	37-A1	2	Electrical - Set up full containment 30'x30'; ACM testing. Replace 200 lights and burnt ballasts. Courtroom is too dim, lights are out and need to be replaced.	\$ 7,173	\$ 7,173	100
80	FM-0054676	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevator - Installation of two P.I. driver boards and one input/output board on the freight elevator. Failure of #1 freight elevator in-car floor indicator panel creating a safety issue.	\$ 7,166	\$ 6,970	97.26
81	FM-0054678	Los Angeles	Downey Courthouse	19-AM1	2	Electrical - Replace the fuel tank controller in the diesel tank. The existing fuel tank controller has shorted out and is no longer functional. Work is code required.	\$ 3,744	\$ 3,134	83.7
82	FM-0054679	Alameda	Hayward Hall of Justice	01-D1	1	HVAC - Replace failed gas pressure regulating valve on boiler.	\$ 8,954	\$ 8,954	100
83	FM-0054680	Los Angeles	Downey Courthouse	19-AM1	1	Elevators, Escalators, & Hoists - Replace control switch and seal for elevator #4. The control switch malfunctioned and caused the elevator to stop and not respond causing an entrapment and safety issue. Also a worn shaft seal went out causing oil to leak out onto the floor causing a slip hazard.	\$ 13,179	\$ 13,179	100
84	FM-0054681	Los Angeles	Downey Courthouse	19-AM1	2	Fire Protection - Remove existing halon tank and replace failed seals. Certify tank, recharge and reinstall per code.	\$ 3,179	\$ 2,661	83.7
85	FM-0054684	Los Angeles	Downey Courthouse	19-AM1	2	Vandalism - Sand & paint multiple walls, doors, frames, and partitions; sand and polish stainless steel; replace multiple damaged fixtures & mirrors with new anti graffiti type. Public restrooms on floors 1-4 currently have graffiti on walls, doors, frames, partitions and mirrors as well as multiple damaged fixtures.	\$ 15,083	\$ 12,624	83.7



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
86	FM-0054685	Los Angeles	Stanley Mosk Courthouse	19-K1	2	Vandalism - Scrape, sand, and paint walls in approx. (20) restrooms to match existing. Multiple public restrooms on floors 2 through 9 currently have vandalism on the walls which could be a safety concern for the public.	\$ 22,470	\$ 21,854	97.26
87	FM-0054688	Napa	Historical Courthouse	28-B1	2	HVAC - Correct oil leak on air compressor #1. - Oil leaking from compressor head causing fire and safety hazard.	\$ 2,707	\$ 2,544	93.99
88	FM-0054689	San Francisco	Civic Center Courthouse	38-A1	2	Vandalism - To remove damaged (graffiti) security film and replace with new graffiti film on 3 elevator panes in elevators 1, 3 and 4. Three panes total at 22" X 101" each.	\$ 1,297	\$ 1,297	100
89	FM-0054690	Los Angeles	East Los Angeles Courthouse	19-V1	1	Plumbing - Hot domestic water pipe leaked inside a wall in women's public RR, 2nd flr affecting (2) rooms. Water damage remediation in rm G13 & Public women's RR. Remove/replaced 180sq.ft. ceramic tile to access leak source. Replace 4ft of Copper Piping on Domestic Water Line. Environmental testing, Remediation work performed under positive ACM/Lead conditions.	\$ 35,000	\$ 27,202	77.72
90	FM-0054691	Monterey	Salinas Courthouse-North Wing	27-A1	1	Plumbing - Replace (1) failed vacuum pump.	\$ 3,051	\$ 3,051	100
91	FM-0054692	Los Angeles	Norwalk Courthouse	19-AK1	1	Plumbing - Leak Mitigation - Removed and replaced a 3' section of 2" cracked drain line, the source of the leak is a cracked drain pipe above the ceiling in Courtroom B. Water leaked through the ceiling tiles of Courtroom B. Performed water remediation in Courtroom B. Set up containment, drying equipment, and remove ACM fireproofing over spray from a drain pipe.	\$ 14,181	\$ 14,181	100
92	FM-0054693	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Water remediation - Set up containments, and dry leak affected areas (approximately 2,000 SF), clean up, and restore main drain line. 5th floor Public Men's Restroom main drain line is backed up, urinals overflowed. Water went down pipe chase 3rd floor to 1st floor. Elevators #5 & #9 have water on top of cabs and in elevator pits.	\$ 13,856	\$ 13,856	100
93	FM-0054694	Orange	West Justice Center	30-D1	2	HVAC - Replace an old malfunctioning exhaust fan in the basement HVAC mechanical room. Current issues with the exhaust fan are critical including: " Failing bearings "Bent shaft " Out of balance causing excessive noise " Missing the proper motor belt adjusters " Damaged blower wheel " Parts not available due to old age.	\$ 5,294	\$ 4,801	90.68



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
94	FM-0054695	Imperial	Imperial County Courthouse	13-A1	2	Ground and Parking Lot - Remove and replace approximately 120sf of concrete sidewalk in front of the court house. Concrete is cracked, chipped, and uneven in many areas creating a trip hazard for court staff and the public. Court has reported public and staff tripping.	\$ 2,435	\$ 2,435	100
95	FM-0054697	San Mateo	Traffic/Small Claims Annex	41-A2	1	Parking lot - Remediate rain related flood damage caused by blocked sump pump drain which limited flow through system drains. Install drain screens to mitigate future issues. Areas impacted by flood water are courtroom, chambers, public lobby, file area.	\$ 14,663	\$ 14,663	100
96	FM-0054698	Los Angeles	Torrance Courthouse	19-C1	1	Elevators, Escalators, & Hoists - Install newly fabricated Selector Tape Deflector Sheaves. Elevator #5 Selector Tape Bearing worn out and requires replacement.	\$ 35,558	\$ 35,558	100
97	FM-0054699	Los Angeles	Inglewood Juvenile Court	19-E1	2	Electrical - Install 1 furniture power whip from existing receptacles. Install 10ft of conduit/Panduit for voice/data cables to the new counter location. Electrical & Data work is a necessity because the court installed 3 transaction windows.	\$ 4,500	\$ 3,635	80.78
98	FM-0054700	Alameda	Wiley W. Manuel Courthouse	01-B3	2	Fire Protection - Replace the failed main fire suppression water supply tamper switch located in the fire pump room.	\$ 2,613	\$ 2,190	83.8
99	FM-0054701	Los Angeles	Stanley Mosk Courthouse	19-K1	2	Elevator / Repair door armature and replace micro switch for Elevator #5. Doors do not properly opening resulting in 5 people being entrapped in the elevator.	\$ 3,717	\$ 3,615	97.26
100	FM-0054702	Los Angeles	Van Nuys Courthouse West	19-AX2	1	HVAC - Failing Chiller #1 - Chiller #1 requires the replacement of the failed Vane Assembly, the actuator is not functioning which is creating a very hot situation for the entire courthouse.	\$ 11,865	\$ 9,549	80.48
101	FM-0054703	Contra Costa	Wakefield Taylor Courthouse	07-A2	2	HVAC - Replace (1) failed Refrigerant Leak Detector Sensor; Replace (1) Failed Monitoring Station, and (1) CO2 Sensors; Run 30 feet or control wiring. - System failed during annual testing and could not be calibrated.	\$ 23,586	\$ 23,586	100
102	FM-0054704	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing - Water remediation, containments, environmental testing, emergency clean up, 4th Floor leak on 1 1/4 Black Iron Pipe Chilled Water Supply Line and a 2 1/2 cold/chilled water pipe. Water system is/was completely drained down to the 4th floor. Replacement parts included: 8 of 1 1/4 Cooper Pipe, (1) 1 1/4 MIP, (1) 1 1/4 Union, (1) 1 1/4 Coupling , (1) 1 1/4 Ball Valve.	\$ 35,000	\$ 35,000	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
103	FM-0054705	San Diego	Kearny Mesa Traffic Court	37-C1	2	HVAC - Installed new 3 ton Condensing unit. Split air conditioner is not cooling the server room and needs replacement, as the equipment may overheat and fail.	\$ 6,270	\$ 6,270	100
104	FM-0054706	Madera	Madera County Superior Court	20-A1	1	HVAC-100 ton rooftop Chiller is operating at 50% capacity due to malfunctioning solenoid valves. Chiller is currently shutting down on low pressure due to the valves not opening to allow refrigerant to flow so that the chiller can cool the courthouse. The Chillers current state does not have the capacity to cool the building in warmer temperatures 75 degrees and above. Replacement valves are essential for the chiller to reach its full operating potential.	\$ 3,000	\$ 3,000	100
105	FM-0054707	Santa Clara	Palo Alto Courthouse	43-D1	2	HVAC - Replace failed leaking hot gas isolation valve and return charge to factory specs . An active refrigerant leak has been located on circuit B - CLR02 OM00018899.	\$ 6,392	\$ 4,221	66.04
106	FM-0054708	Los Angeles	Chatsworth Courthouse	19-AY1	2	HVAC - Replace (23) burner's assemblies tubes & replace (2) surface igniters with new. Boiler #2 currently has cracked burners and malfunctioning surface igniters which will prevent proper heating to the building.	\$ 4,925	\$ 4,127	83.8
107	FM-0054709	Los Angeles	Michael D. Antonovich Antelope Valley Courthouse	19-AZ1	2	Electrical - Restore lighting to public parking lot, replace lights and ballasts. Parking lot is too dark, 50% of the lights are out (187 lights) and need to be replaced. This is a safety hazard.	\$ 4,999	\$ 3,675	73.51
108	FM-0054710	Orange	North Justice Center	30-C1	2	HVAC - Replace motor cooling solenoid valve on circuit B of Carrier Chiller #1 (model #30HXC161R-640AA/Serial # 3002Q01842). Work to include Lock out/Tag out of circuit, Recovery of Freon from circuit, Install new solenoid and valve, Charge and evacuate circuit with Freon, Start up and test operation.	\$ 2,723	\$ 2,459	90.31
109	FM-0054711	Santa Clara	Hall of Justice (East)	43-A1	2	Vandalism - Damaged Toilet Accessories - Remove graffiti from multiple toilet accessories, work will require sanding, priming and painting to remove extensive graffiti. Accessories needing replacement are a cracked vanity mirror and broken vanity faucet. Basement men's public restroom.	\$ 11,118	\$ 11,118	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
110	FM-0054713	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	2	Electrical - Re-seal water manifolds with new gaskets & seals, replace valve cover gaskets, replace coolant temp gauge & temp sender, re-seal oil reservoir with new gaskets. The emergency generator currently has multiple leaks preventing normal operation.	\$ 3,559	\$ 2,448	68.79
111	FM-0054714	Sacramento	Juvenile Courthouse	34-C2	2	HVAC - Cooling Tower - Remove failed Dolphin water treatment system and demo piping and electrical unit from cooling tower area. Remove all electrical back to panel and supporting structures and terminate for safety. Install new fabricated 5' x8" pipe in place of dolphin housing on condenser water supply line. Install new cover over chemical treatment pump and controller. Paint new piping to match existing condenser lines. Dolphin system has been abandoned on water line due to poor functionality and ineffectiveness to treat hard mineral water. Dolphin needs to be removed to prevent blockage on condenser piping.	\$ 8,213	\$ 8,213	100
112	FM-0054715	Kern	Bakersfield Juvenile Center	15-C1	2	Grounds and Parking Lot - Demo concrete and trench pipe to expose fractured line. Replace line and re-pour concrete pad adjacent to employee entrance West. Fractured 6" water line for stand pipe observed through puddling in lawn. Trench area to expose pipe and replace.	\$ 10,069	\$ 6,722	66.76
113	FM-0054716	Solano	Hall of Justice	48-A1	2	Vandalism - Interior door - Replace damaged Courtroom door and automatic flush-bolt damaged by litigant crashing through door.	\$ 6,467	\$ 6,467	100
114	FM-0054717	San Diego	County Courthouse	37-A1	1	HVAC - Replaced 4' section of galvanized steel 2.5" chilled water return line. The chilled water return line for AHU SBM-2 failed causing a leak.	\$ 6,322	\$ 4,894	77.42
115	FM-0054718	Contra Costa	George D. Carroll Courthouse	07-F1	2	Grounds and Parking lot - Replace 20' of re-enforced Sidewalk Curb and 1 Wheel Stop in the North Parking Lot that have been damaged. The broken concrete and exposed rebar are a safety hazard.	\$ 5,245	\$ 3,933	74.99
116	FM-0054719	Del Norte	Del Norte County Superior Court	08-A1	2	Electrical - Replace failed lighting to include surface ceiling mounted area fixture with LED fixture attached (4). Replace recessed can with LED equivalent (5). Recessed light will need an adapter ring to match existing hole size. Replace existing wall pack fixture with LED wall pack (6). Replace spot light fixture with LED flood light (10), per map provided. Replace 16 existing wall mounted up/down lights with LED fixture attached.	\$ 14,012	\$ 8,585	61.27
117	FM-0054720	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Elevators, Escalators, & Hoists - Replaced brakes. Escalator 3-2 was tagged out by state inspector and needed brake replacement.	\$ 9,252	\$ 7,446	80.48



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
118	FM-0054721	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Replaced four rail anchor bolts, realigned the rail and counterweight guides. Freight elevator #1 was out of service due to a scraping noise on the side railing when the car was traveling.	\$ 2,427	\$ 2,361	97.26
119	FM-0054722	Del Norte	Del Norte County Superior Court	08-A1	2	Plumbing - Replace 2 failing sump pumps - Replace 2 pumps with new 1/2 hp sump pumps, including main disconnect and connection to E Power Circuit in basement file storage area.	\$ 29,106	\$ 17,833	61.27
120	FM-0054724	San Bernardino	San Bernardino Courthouse - Annex	36-A2	2	COUNTY MANAGED - HVAC- Replace (1) Cooling Tower and related systems with (1) new energy efficient Cooling Tower. Scope includes Isolation valves, piping, new concrete pier extensions, electrical controls, and all structural and mechanical equipment. The existing Cooling Tower has failed and is beyond repair.	\$ 168,033	\$ 168,033	100
121	FM-0054725	Butte	Butte County Courthouse	04-A1	2	Roof - The stucco embedded metal flashing system has failed on 2 south facing parapet walls permitting water intrusion into courtroom 3 above the Judge's bench, ceiling in the Judge's Chambers, and above the restricted hallway behind courtroom 3. The work: Installation of 38 square yards of 60 mil single-ply roofing to cover and seal the affected parapet wall areas, install 450 LF of painted galvanized steel cap at the top of each parapet wall. Replace 150 LF metal roof flashing over public hall.	\$ 36,836	\$ 36,836	100
122	FM-0054726	Stanislaus	Modesto Main Courthouse	50-A1	2	HVAC - To replace failing Baltimore Aircoil Cooling Tower CTW01 (OM00003271) located in the east penthouse - The shell of Cooling Tower CTW01 has severe corrosion damage. There are several locations on the tower that have rusted through leaving too many holes to effectively repair. The base of the tower is also severally corroded and must be replaced.	\$ 280,000	\$ 217,896	77.82
123	FM-0054736	Orange	Central Justice Center	30-A1	2	HVAC - Replace hot water supply and return line to AHU-10 and 11. The project will include replacement line from butterfly valve to AHUs, check valves, unions, seismic flex, and balancing valve. Work is needed due to pipe breaking, causing a basement garage and mechanical room to flood. Currently there is no hot water being supplied to AHUs to balance cold air being supplied to the court areas.	\$ 18,528	\$ 16,892	91.17



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
124	FM-0054737	Los Angeles	Metropolitan Courthouse	19-T1	2	Electrical - Replace 54 burnt-out exterior perimeter lamps with LED lamps (250w mercury vapor equivalent). Currently the exterior building perimeter lamps are burnt out and the insufficient lighting is creating a safety situation.	\$ 20,192	\$ 19,090	94.54
125	FM-0054738	Santa Clara	Downtown Superior Court	43-B1	1	HVAC - Isolate and drain existing condenser water valves - Replace two (2) failed condenser plates and two (2) gaskets - 80% of the condenser tubes were plugged with calcium/mineral build-up affecting the water flow, Chiller at 40% capacity and not cooling the building affecting the Courtroom Operations.	\$ 20,942	\$ 20,942	100
126	FM-0054744	Los Angeles	San Fernando Courthouse	19-AC1	2	HVAC - Replace leaking seals on condenser water pump. Currently the condenser water pump is leaking and is causing the chiller to shut down.	\$ 4,998	\$ 4,169	83.41
127	FM-0054745	Orange	Central Justice Center	30-A1	2	Electrical - Replace non-functioning FAA required rooftop aircraft warning light. The project will include specialty aerial work.	\$ 9,672	\$ 8,818	91.17
128	FM-0054746	San Bernardino	New San Bernardino Courthouse	36-R1	1	Plumbing - Replace failed No-Hub coupling. Water remediation, set up containments in S-24 and the women's public restrooms on the 6th, 7th, 8th, 9th, and 10th floors in order to expedite the drying process. Apply biocide to and extract water from approx. 100SF of carpet in S-24. Utilize approx. 16 fans and 6 dehumidifiers in affected areas to completely dry them out. Water damage caused by a leak in the 10th floor pipe chase of the women's public restroom.	\$ 11,288	\$ 11,288	100
129	FM-0054747	San Diego	County Courthouse	37-A1	2	Plumbing - Install a Pressure Regulating Valve and a Butterfly Isolation Valve to reduce the operating pressure to the Domestic Hot Water Tank (DHWT). The current DHWT has too high of water pressure and is at risk of blowing the relief valve as well as damaging plumbing fixtures.	\$ 4,984	\$ 4,984	100
130	FM-0054748	Los Angeles	Metropolitan Courthouse	19-T1	2	Electrical - Currently the lighting fixture has a short causing the light to be out in level A of the underground parking structure. Install 200 of 3/4 EMT and 1000 of #10 THHN stranded wire to replace failed wiring. Security issue.	\$ 3,737	\$ 3,533	94.54
131	FM-0054749	Solano	Hall of Justice	48-A1	2	HVAC - Air Handler - Replace failed VFD drive and control circuit board for supply fan #3. Unit is temporarily operating on manual bypass mode.	\$ 14,429	\$ 10,507	72.82
132	FM-0054750	Napa	Criminal Court Building	28-A1	2	Security - Failing Courtroom Entrance Doors - Remove doors (6 pairs, 3'0" x 9'0" x 2 3/4") at courtrooms to public halls; replace failing hinges; replace brush seals. Unable to secure doors due to failed hinges causing door sag.	\$ 9,501	\$ 9,501	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
133	FM-0054751	Humboldt	Humboldt County Courthouse (Eureka)	12-A1	2	HVAC - Make changes to air duct system to better office air balance. Switch return air and supply air register one. Remove and replace two (2) supply diffusers to better control air from blowing directly on employee desks in Court Operations.	\$ 1,078	\$ 1,078	100
134	FM-0054752	Los Angeles	Compton Courthouse	19-AG1	2	HVAC - Install pneumatic isolation valves and new Speedair electric two stage air compressor. Air compressor #1 has a failed weld on the Compressor Tank, the welds on the motor mounting bracket have come apart and is constantly leaking air at the main air tank receiver. Second stage compressor valves have failed and will not allow it to compress air into main air tank receiver.	\$ 14,211	\$ 9,398	66.13
135	FM-0054756	Napa	Criminal Court Building	28-A1	2	Electrical - Provide four (4) new lighting circuits at courtroom conference rooms (8); separate from occupancy control for courtrooms; add breakers and home run supplies to panels; label as required - Conference rooms repurposed as Court Staff offices due to functional relocations from Historic Courthouse closure (Earthquake).	\$ 7,102	\$ 7,102	100
136	FM-0054757	Alameda	Hayward Hall of Justice	01-D1	2	HVAC - Building Automation System - Replace five (5) failed controller backup batteries and re-configure and calibrate five (5) sensors for correct display values.	\$ 4,877	\$ 4,306	88.3
137	FM-0054758	Kings	Corcoran Court	16-D1	2	Roof - Prime and 3-course the sump/wall area of failed NE drain sump. Reseal the tops of all 35 roof jacks and install missing clamps. Remove all old caulking and mastic at parapet coping joints, apply new caulking, pop rivet laps together and seal the top lap with caulking. Reseal with caulking the stabilizer bar around the perimeter of the parapet and apply caulking on all the screw heads. At the five visible cuts in the roofing, secure roofing with screws and plates; 3-course the cuts and seal.	\$ 10,344	\$ 9,061	87.6
138	FM-0054760	Tulare	Tulare Division	54-B1	2	Roof - Remove loose mastic from around two leaking drains, overflows, and wall corners; prime roofing at cleaned areas (10' x 10') at each drain using Garland VOC Primer. 3-course around overflows/wall corners with flashing bond mastic and Garland GarMesh webbing. Install Energizer K Plus FR at a rate of 5 gallons per 100 square feet. Broadcast white granules into the energizer to fully cover each affected area. Caulk tops of pre-cast panel joints (6" x 4' ea) using Tuff Stuff Caulking.	\$ 4,886	\$ 3,420	70



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
139	FM-0054761	Los Angeles	Beverly Hills Courthouse	19-AQ1	2	Electrical - Remove and replace 300 amp Automatic Transfer Switch (ATS). ATS coil that transfers power from emergency to normal has failed.	\$ 25,083	\$ 19,946	79.52
140	FM-0054762	Del Norte	Del Norte County Superior Court	08-A1	2	Grounds and Parking Lot - Generator Security Fence -Remove 72 lf of old decaying wood fence and replace with new 7 foot chain link fence, installing new post where needed, work will also include a new water spigot.	\$ 10,088	\$ 6,181	61.27
141	FM-0054764	Los Angeles	West Covina Courthouse	19-X1	1	COUNTY MANAGED - Flooding occurred due to a broken water pump in the basement mechanical room. Millwrights replaced broken pump shaft assembly of the water pump.	\$ 9,713	\$ 9,713	100
142	FM-0054765	Los Angeles	Pasadena Courthouse	19-J1	2	Interior Finishes - Environmental testing, set up containment, remove & dispose of 120 sq. ft. of 12 x 12 inch VCT tiles, scrape mastic, install approx. (130) new floor tiles. Currently the vinyl floor tiles in the Department M secure hallway are delaminating which is causing a tripping hazard.	\$ 7,734	\$ 7,734	100
143	FM-0054766	Contra Costa	George D. Carroll Courthouse	07-F1	2	Vandalism - Replace 14 fixed wooden seats in the public hallway. Seats are covered with profanity and other graffiti which has been etched into the wood.	\$ 5,409	\$ 4,056	74.99
144	FM-0054767	Los Angeles	Metropolitan Courthouse	19-T1	1	Plumbing - Pinhole water leak from a 3/4" Domestic Hot Water Copper supply line penetrated 8th floor ceiling, affecting room 801A. Removed/replaced approx. 30ft of 3/4" copper pipe due to various locations for pitting and oxidation. Two (2) containments set up, 12'x10'x11' and 8'x6'x9.5' w/air machines. ACM Positive, Remediation and Environmental testing.	\$ 25,110	\$ 23,739	94.54
145	FM-0054768	Contra Costa	Wakefield Taylor Courthouse	07-A2	2	HVAC - Install vents in the bottom of four (4) IT closet doors; Install one exhaust fan with thermostat in the second floor IT Room - IT Closets. Court IT has distributed their equipment throughout the building. Cooling these closets will eliminate the need to add an expensive split system in the main IT room.	\$ 4,194	\$ 4,194	100
146	FM-0054769	Los Angeles	East Los Angeles Courthouse	19-V1	2	HVAC - Install new isolation valves on chillers #1 and #2. Chillers currently do not have isolation valves for oil return filters which are required for the recovery and changing of refrigerant.	\$ 10,284	\$ 7,993	77.72



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
147	FM-0054770	Los Angeles	East Los Angeles Courthouse	19-V1	2	HVAC - Remove and rebuild pump motor and replace main seals; re-install and provide two (2) new gaskets. Cooling tower pump motor is currently leaking from a shaft seal and needs to be rebuilt to ensure proper operation.	\$ 9,650	\$ 7,500	77.72
148	FM-0054771	Los Angeles	Santa Monica Courthouse	19-AP1	2	HVAC - Replace damaged and worn out chilled water and hot water piping insulation at the roof along with several sections of hot water piping in the air handler located on the roof. Pipes are exposed and sweating, affecting the performance and overall efficiency of the HVAC equipment at the roof.	\$ 6,640	\$ 5,212	78.49
149	FM-0054772	Los Angeles	Airport Courthouse	19-AU1	2	Elevators, Escalators, & Hoists - Install one (1) new presence sensing electronic door edge. Elevator #2 does not currently have an electronic door edge that re-opens when an obstruction is detected which is a safety hazard.	\$ 3,573	\$ 2,757	77.17
150	FM-0054774	Los Angeles	Santa Monica Courthouse	19-AP1	2	Elevators - Install new pump flange on cars #1 and #2 then return them back to service. Elevators #1 & #2 have worn out pump flanges that are currently leaking oil which is a safety hazard and could affect elevator operation.	\$ 10,069	\$ 7,903	78.49
151	FM-0054775	Los Angeles	Compton Courthouse	19-AG1	2	HVAC - Replace isolation base, springs, and utility supply fan unit #1. Supply fan unit currently has excessive vibration while running and is beyond repair. The supply fan feeds the sally port and needs to be replaced before it causes damage to surrounding area.	\$ 11,153	\$ 7,375	66.13
152	FM-0054776	Los Angeles	Torrance Courthouse	19-C1	2	Interior Finishes - Removal and disposal of loose and flaky plaster on cafeteria walls (2,600 sqft). Patch, sand, and then fully prime and apply new coat of finish. Work is needed to prevent health hazard and to eliminate potential toxic substance from public area.	\$ 4,475	\$ 3,810	85.14
153	FM-0054780	Los Angeles	Santa Monica Courthouse	19-AP1	2	HVAC - Replace fan motor, fan belt, fan shaft and bearings. Cooling Tower #2 has a bad motor, deficiencies found during PM SWO 2462088. Deficiencies need to be corrected before it affects the building HVAC system.	\$ 15,326	\$ 12,029	78.49



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
154	FM-0054781	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Replace approx. 10' of 3" cast iron pipe & fitting; install 2' sq. access panel in ceiling of storage room; install approx. (20) 12" x 12" new ceiling tiles; clean & disinfect leak affected areas, perform final environmental testing. A 3" main cast iron drain pipe located under the 2nd floor deputy locker room & in the ceiling of the 1st floor storage room clogged & cracked, leaking into first floor storage room causing moisture issues on walls & ceiling.	\$ 24,833	\$ 24,833	100
155	FM-0054782	Los Angeles	Pasadena Courthouse	19-J1	1	Plumbing - Set up containment & drying equipment, dry leak affected areas in chilled water pump room(180 sq. ft.), main entrance(672 sq. ft.), front of emergency generator room (125 sq. ft.), boiler room(180 sq. ft.), & South hallway (54 sq. ft.); replace approx. 5' of 1" copper pipe. There is a water leak coming from a 1" copper chill water bleed line located inside the basement mechanical room leaking into multiple areas in the basement.	\$ 15,675	\$ 15,675	100
156	FM-0054783	Los Angeles	Airport Courthouse	19-AU1	2	Graffiti Removal - Elevator#3; 3rd floor windows; Evacuation signs on all floors.	\$ 5,000	\$ 3,859	77.17
157	FM-0054785	Los Angeles	Torrance Courthouse	19-C1	1	Plumbing - Set up containment (5x5x12) and dehumidifier, dry leak affected areas using hepa vac & extractor/carpet cleaner & verify with thermal camera. Replaced 5 damaged ceiling tiles. An overflowing toilet caused by an inmate created a water leak in the 5th floor lock up flooding 2 cells and water leaked down to the 4th floor Department P courtroom.	\$ 7,033	\$ 5,988	85.14
158	FM-0054786	San Diego	East County Regional Center	37-I1	1	Plumbing - Isolate 4th, 3rd, 2nd and 1st floor sprinkler lines. Drain 2nd floor sprinkler line. Remove and replace 2' of sprinkler pipe. Fire sprinkler pipe burst above the Administrative Office Conference Room causing water to leak through to the area below.	\$ 2,431	\$ 2,431	100
159	FM-0054787	San Diego	Kearny Mesa Traffic Court	37-C1	2	Plumbing - Remove approx. 8SF of drywall immediately above a shower drain pan under full containment as the drywall joint compound contains ACM. Remove drain pan, cut out approx. 9SF of concrete and replace a failed P-trap. Re-pour concrete, install new shower insert, and rebuild wall to match existing. Environmental testing has been done. Shower and break room sink are currently unusable as the P-trap has completely failed and is blocking the drain line, need to replace P-trap.	\$ 17,778	\$ 17,778	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
160	FM-0054788	San Diego	County Courthouse	37-A1	2	Interior Finishes - Replace four damaged ceiling tiles, clean-up of ACM debris and environmental testing. Ceiling tiles are damaged and need to be replaced in Presiding Judge's chambers.	\$ 4,248	\$ 4,248	100
161	FM-0054789	Del Norte	Del Norte County Superior Court	08-A1	2	Exterior - Remove and reinstall five (5) new stainless steel attic hatch accesses. Finished and painted and sealed.	\$ 12,397	\$ 7,596	61.27
162	FM-0054790	Los Angeles	Compton Courthouse	19-AG1	2	HVAC - Replace 40hp supply fan motor with new and test for proper operation. The current supply fan motor in air handler #11 is failing.	\$ 6,888	\$ 4,555	66.13
163	FM-0054791	Los Angeles	Metropolitan Courthouse	19-T1	2	Exterior Shell - Fabricate fence to prevent homeless/public from accessing the parking alcove. This is a safety matter. Currently the homeless/public are sleeping in the employee parking alcove creating a safety issue for employees.	\$ 14,925	\$ 14,110	94.54
164	FM-0054793	Los Angeles	Pomona Courthouse South	19-W1	1	Grounds and Parking Lot - Removed old roll up door and door frame. Installed new side framing for roll up door tracks and replaced Sally Port Door. Sally Port door gate spring was broken and it would not open. The door was opened manually to allow bus access.	\$ 18,987	\$ 18,987	100
165	FM-0054794	Los Angeles	Stanley Mosk Courthouse	19-K1	1	Elevators, Escalators, & Hoists - Replaced Breaker in Electrical Room and replaced "M" Contactor and Starter Coil to Elevator #3. Public Elevator #3 was stuck on the 1st floor, a faulty contactor caused elevator to malfunction. A starter component was also damaged.	\$ 33,486	\$ 32,568	97.26
166	FM-0054795	Los Angeles	Van Nuys Courthouse West	19-AX2	1	Plumbing - Set up containment & drying equipment, perform environmental testing, dry leak affected areas in Room 10-62, replace damaged cast iron drain line. Failed cast iron drain line located above the ceiling on the 10th floor leaking into room 10-62.	\$ 15,349	\$ 15,349	100
167	FM-0054796	Los Angeles	Airport Courthouse	19-AU1	2	Electrical- Replace defective ballasts and lamps in 21 exterior bollards that are not properly illuminating the area during night hours, which is a safety hazard. Replace 20 defective wall mounted override timers, not allowing janitorial to turn on lights at night, which is also a safety hazard.	\$ 4,867	\$ 3,756	77.17
168	FM-0054799	Orange	Central Justice Center	30-A1	2	Plumbing - Replace broken copper pipe in the 3rd floor cafeteria. The leak caused damage to 2nd floor offices and waiting room. Project will include replacement of damaged wall paper, wall material, and paint.	\$ 12,481	\$ 12,481	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
169	FM-0054800	Orange	West Justice Center	30-D1	2	Plumbing - Lining of Sump Pump Station #2 pit is deteriorating and is cracked. Estimated time before reaching critical level is 4-5 months. Project to correct includes: removal of pumps, removal of any and all debris, line the pit with Zebron coating, reinstall pumps, start up and test system.	\$ 21,930	\$ 19,886	90.68
170	FM-0054802	Los Angeles	Van Nuys Courthouse West	19-AX2	2	Fire Protection - Configure wiring from stairwell doors to fire control room, make final connections, install relays to control door locks. Currently the doors in stairwells 1, 2, 3, & 4 are not locking properly; these doors are supposed to remain locked at all times and only unlock during emergencies; these doors must be fixed to eliminate public access to the secured side of the building and to make sure they work properly during an emergency.	\$ 5,516	\$ 4,439	80.48
171	FM-0054803	Los Angeles	Chatsworth Courthouse	19-AY1	2	Plumbing - Install four (4) new non-mercury, wide angle float switches and one (1) epoxy coated float anchor with stainless steel chain; clean pump pit and seal control panel. The floats in the septic tank are not currently working which could lead to tank overflow and health and safety issues.	\$ 6,219	\$ 5,212	83.8
172	FM-0054804	Los Angeles	Burbank Courthouse	19-G1	2	HVAC - Replace Electrical Expansion Valve (EXV) and thermostat on circuit A to the compressor, air cool receptacle chiller supplies cooling to west end of building. Unit is down and not cooling.	\$ 10,370	\$ 9,412	90.76
173	FM-0054805	Sacramento	Juvenile Courthouse	34-C2	2	HVAC - Cooling towers - Remove and replace existing fill material and drift eliminators. The drift eliminators for both cooling towers have filled with mineral deposits. As a result the cooling towers are struggling to maintain design load efficiency.	\$ 34,322	\$ 34,322	100
174	FM-0054806	San Joaquin	Lodi Branch - Dept. 2	39-D2	2	Security - Replace non-functioning stand-alone card-access system on vehicle and man-gate with keypad access system.	\$ 2,558	\$ 2,558	100
175	FM-0054807	Merced	Old Court	24-A1	2	Security - Set-up and install one (1) card reader programming module in the HR office and test for proper operation. Current card reader programming module has malfunctioned creating card programming problems with the access control system.	\$ 2,379	\$ 2,379	100
176	FM-0054808	Los Angeles	Chatsworth Courthouse	19-AY1	2	HVAC - Replace piping on top of cooling towers #1 and #2 with 20 feet of new 8" PVC piping per tower. The piping on cooling towers #1 and #2 is currently old and cracked which could allow a leak that would prevent proper cooling to the entire building.	\$ 14,255	\$ 11,946	83.8



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
177	FM-0054809	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	2	Electrical - Replace cracked right rear water manifold and re-seal with new gaskets and seals; re-seal three (3) other water manifolds with new gaskets and seals; replace valve cover gaskets, and replace coolant temp gauge and temp sender. Emergency generator #2 currently has a cracked water manifold and multiple other issues that could prevent normal operation and cause a safety hazard.	\$ 4,876	\$ 3,354	68.79
178	FM-0054810	Contra Costa	Arnason Justice Center	07-E3	2	Fire Protection - Replace two (2) 4" Butterfly Valves and two (2) Tamper Switches; Devices failed during the Annual Fire Panel PM.	\$ 4,700	\$ 4,700	100
179	FM-0054811	Contra Costa	Danville District Courthouse	07-C1	2	Interior Finish - Replace an 8' x 2 1/2' section of Formica countertop in the break room; Replace sink; work to be done off hours. Counter is falling apart leaving rough edges all around; employees have complained about getting splinters; This is health and safety issue.	\$ 5,313	\$ 5,313	100
180	FM-0054812	Los Angeles	San Pedro Courthouse	19-Z1	2	Plumbing - Build and install a new custom cage for backflow outside of the building. L82" x W24" x H42", and build custom footings 10x10" by 2'. Cage needed to protect backflow from vandalism.	\$ 5,000	\$ 4,758	95.15
181	FM-0054815	Solano	Solano Justice Building	48-B1	2	COUNTY MANAGED - HVAC - Chiller - Replaced aged worn-out mechanical chiller and cooling tower damaged by the August 2014 earthquake.	\$ 308,205	\$ 308,205	100
182	FM-0054819	Los Angeles	Torrance Courthouse	19-C1	1	Plumbing - Remediation, emergency clean up, extract black water and disinfect, environmental testing. An inmate inside Lock Up on the 3rd floor clogged the toilet and caused black water to penetrate multiple floors down to the basement level.	\$ 31,000	\$ 31,000	100
183	FM-0054823	Fresno	B.F. Sisk Federal Courthouse	10-O1	2	Electrical - Replace all 160 batteries in UPS01 and UPS02. Dispose of old batteries per EPA regulations. Existing batteries are now 67 months old (date code September 2009) and beginning to fail, many of the batteries are exhibiting signs of swelling and one battery has completely failed. Batteries need replacing to avoid string failure, battery leaking or exploding, fires, or equipment failure.	\$ 41,315	\$ 41,315	100
184	FM-0054825	Los Angeles	Metropolitan Courthouse	19-T1	1	Electrical - Install temporary Generator and Run 75ft of cable to tie into the Auto Transfer System (ATS) on Level B Parking. Building Emergency Generator taken off line due to metal components found inside the oil pan discovered during annual PM. Evidence that engines piston or bearings are failing & have begun to break down. Per code, Booster Fire pump system is required to be connected to E-power.	\$ 35,000	\$ 33,089	94.54



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
185	FM-0054826	Los Angeles	Santa Monica Courthouse	19-AP1	1	Grounds and Parking Lot - Replace inoperable gate operator w/ one (1) new gate operator, verify all connections & proper operation. The gate operator for the judges' parking lot exit gate is not operating and is beyond repair; operator needs to be replaced to avoid safety and security issues for judges.	\$ 10,132	\$ 7,953	78.49
186	FM-0054827	Humboldt	Humboldt County Courthouse (Eureka)	12-A1	2	Interior Finished - Encapsulation ACM flooring - Float floor where tiles are missing to the level of the remaining floor, install approx. 455 sq ft of floor covering and 80 lin ft of base to encapsulate this ACM flooring in Evidence room.	\$ 5,309	\$ 5,309	100
187	FM-0054828	Los Angeles	Santa Monica Courthouse	19-AP1	1	Plumbing - Water leaked from a galvanized domestic water supply line that runs behind the wall inside the employee men's restroom. Replaced 11 copper pipes and fittings, replaced 2x4 damaged section of wall. Set up 14x6x9 containment and 36x36x80 Decon. Set up drying equipment and performed environmental testing.	\$ 19,860	\$ 15,588	78.49
188	FM-0054829	Los Angeles	Chatsworth Courthouse	19-AY1	1	Plumbing - Dry & sanitize leak affected areas, perform environmental testing, replace approx. 10' of 3" cast iron drain line. A 3" cast iron drain line below the ceiling of the judges' enclosed parking lot has cracked causing approx. Five gallons of water to leak onto the parking structure floor.	\$ 9,850	\$ 9,850	100
189	FM-0054830	Los Angeles	Van Nuys Courthouse West	19-AX2	1	HVAC - Restore A/C to Machine Room. Rebuild the motor blower assembly and replace the shaft. The shaft broke and damaged the motor assembly. AHU 1-11 for Main Elevator Machine Room is not working and currently there is no cooling and the temperature is rising.	\$ 5,485	\$ 4,414	80.48
190	FM-0054834	Solano	Law And Justice Center	48-A2	2	HVAC - Variable Air Volume Box - Replace failed VAV for courtroom 207. Unit is temporarily operating on manual full volume setting; work to be performed during off hours on premium time.	\$ 6,592	\$ 6,592	100
191	FM-0054835	Alameda	Wiley W. Manuel Courthouse	01-B3	1	Plumbing - Water Leak - Replace failed toilet flush-o-meter components and local water supply isolation valve stem packing that were leaking in the jury deliberation room women's restroom. Extract water from floor coverings.	\$ 9,856	\$ 9,856	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
192	FM-0054838	Los Angeles	Compton Courthouse	19-AG1	2	Vandalism - Sand down 200 sq. ft. of marble stall walls and 50 sq. ft. wood entry doors to remove etched graffiti and apply sealer. Currently the stall marble walls have been vandalized by graffiti and etching. Also the entry wooden doors have etching and graffiti issues. This is safety concern since it could cause gang affiliated violence. Twelfth floor men's and women's public restrooms.	\$ 3,479	\$ 2,301	66.13
193	FM-0054839	Orange	Betty Lou Lamoreaux Justice Center	30-B1	2	HVAC - Variable Frequency Drive (VFD) - Remove and replace the existing 60 HP VFD for AHU #8 Supply Fan with a new ABB 60 HP VFD. The existing supply fan VFD caught fire and self-destructed. It is no longer functioning. The VFD controls the Supply Fan for AHU #8 and needs to be replaced to avoid disruption to operations and prolong the life of the equipment.	\$ 12,555	\$ 10,038	79.95
194	FM-0054840	Nevada	Nevada City Courthouse	29-A1	2	COUNTY MANAGED - Interior Finishes - Dividing wall between main entrance screening and exit is unstable (loose and wobbly) from patrons leaning across dividing wall. Remove existing 75"x40" dividing wall and replace with 75" x 90" wall with plexi-glass above 40" to prevent lean over going forward.	\$ 3,600	\$ 3,600	100
195	FM-0054841	Fresno	Fresno County Courthouse.	10-A1	2	Plumbing - Replace failed gaskets on the domestic hot water generator. Drain the water side of the system, shut off the steam side, disassemble the piping, remove the steam bundle, clean the flanges and install new gaskets, re-install the bundle, re-install steam piping, re-fill the tank, start and test the system for proper operation. The generator is leaking from the flanges due to failed gaskets.	\$ 2,411	\$ 2,312	95.91
196	FM-0054842	Los Angeles	Alfred J. McCourtney Juvenile Center	19-AE1	2	County Managed - Interior Finishes - Remove and replace 560 square feet of asbestos floor tiles. The floor tiles in the break room were broken and becoming a health and safety issue.	\$ 7,941	\$ 7,941	100
197	FM-0054843	Los Angeles	Pomona Courthouse South	19-W1	1	Elevators, Escalators, & Hoists - Replaced contactor on judges' elevator #6 to restore operations. Elevator was not responding and was stuck on the 4th floor with the doors closed, no entrapments.	\$ 3,693	\$ 3,366	91.14
198	FM-0054844	Los Angeles	Bellflower Courthouse	19-AL1	2	HVAC - Replace 300' of 3/0 THHN Conductor from MCC in main electrical room to Chiller #2. The main electrical conductors on Chiller #2 are currently burnt out completely and must be replaced so the chiller can operate properly.	\$ 6,517	\$ 5,079	77.94



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
199	FM-0054845	Los Angeles	Norwalk Courthouse	19-AK1	2	HVAC - Replace six (6) actuators, three (3) thermostats, three (3) reversing sensors, and 50 ft. of poly pneumatic tubing and verify operation. Currently the pneumatic VAV box controller is faulty causing inability to control temperature.	\$ 8,332	\$ 7,085	85.03
200	FM-0054846	Los Angeles	Metropolitan Courthouse	19-T1	2	Plumbing - Hydro jet 4" inch main drain to clear obstruction. This will allow waste drain water to flow freely and prevent any waste water to back-up into public sinks and urinals. 4" main drain riser has a restriction and is causing waste water to back-up into public sinks and urinals. Public health and safety issue.	\$ 4,357	\$ 4,119	94.54
201	FM-0054847	Los Angeles	Airport Courthouse	19-AU1	2	Plumbing - Remove and rebuild hot water pump #5, replace seals, clean couplings, and re-install with new fuses. Hot water pump #5 is currently leaking due to a bad seal and not running properly which is a safety hazard and a waste of energy.	\$ 3,079	\$ 2,376	77.17
202	FM-0054851	San Diego	Juvenile Court	37-E1	2	Fire Protection - Fire Safety Corrections Notice - Correct items #2, #3, & #5. Remove two (2) floor stops impeding proper operation of fire doors. Install 82 Lever Action Latch sets on doors in 1st & 2nd floors and 39 sets on doors located in 2nd floor DA Office. Install missing Smoke Seal Gaskets and Door Sweeps on 114 doors in various locations and on 10 doors in 2nd floor DA Office. Install six (6) combination security locks in specified locations. Install 22 missing Occupancy Load signs. (Ref FM ID 0054645).	\$ 105,693	\$ 78,868	74.62
203	FM-0054852	Los Angeles	Airport Courthouse	19-AU1	2	HVAC - Remove defective Variable Frequency Drive (VFD), install new VFD, and integrate the new VFD into the existing system. The VFD that controls air handler #1 motor has failed and the system will not come online unless it is in bypass mode; the VFD needs to be replaced so the motor does not run at full capacity when it doesn't need to.	\$ 18,175	\$ 14,026	77.17
204	FM-0054853	Los Angeles	Whittier Courthouse	19-AO1	2	HVAC - Rebuild Chiller Unit #1 - ACM testing required prior to rebuilding chiller unit #1. While performing the Level IV PM Chiller #1 was found to have refrigerant leaks, a defective shaft seal and the compressor windings were tripping. Work to include the replacement of the oil heater, shaft seal, condenser switch, coolant reservoir and coolant pump.	\$ 59,113	\$ 51,091	86.43
205	FM-0054855	Monterey	Salinas Courthouse- North Wing	27-A1	2	Elevator - Elevator #1 has a severely leaking oil seal and is losing hydraulic fluid. Repack the leaking seal and replace failed oil seal for hydraulic ram.	\$ 6,513	\$ 6,513	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

#	FM NUMBER	LOCATION	FACILITY NAME	BUILDING ID	PRIORITY	SHORT TITLE	PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE OF PRELIMINARY ESTIMATE	FACILITY MODIFICATION PROGRAM SHARE % OF COST
206	FM-0054856	Santa Clara	Downtown Superior Court	43-B1	2	HVAC - Replace two (2) failed 8" valves and bolt kits on condenser water loop that would not fully close to allow isolation.	\$ 10,404	\$ 10,404	100
207	FM-0054857	Solano	Hall of Justice	48-A1	2	Interior finishes - Cut an 18" x 36" notch in the top of the wall between the judge and the clerk in courtroom 103; The wall is 5" thick including 1/2" of Kevlar; Finish the edges of the opening with material from the cutout to assure a good match; Work to be done off-hours. Height of the bench wall between judge and clerk is too high and is causing difficulties and injuries to judge and clerk when passing/retrieving heavy case files. A work comp case has been filed.	\$ 7,536	\$ 7,536	100
208	FM-0054859	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing - Water remediation, environmental testing, dry leak affected area and clean up. Replace ceiling tile and replace leaking 3/4" supply line. One 1'x1' ceiling tile fell due to water damage, 3/4" supply line in ceiling is leaking and needs to be replaced. Leak damage is contained to the 18th floor secured hallway.	\$ 20,350	\$ 20,350	100
209	FM-0054860	Los Angeles	Metropolitan Courthouse	19-T1	2	Vandalism - Install new left door and rixson 27 offset arm. The existing hardware, pivots, and glass will be reused. The door was vandalized by an in-custody and must be replaced for the security of the courtroom.	\$ 4,325	\$ 4,089	94.54
210	FM-0054861	Los Angeles	Metropolitan Courthouse	19-T1	2	Grounds & Parking Lot - Install one (1) Omeron safety photo eye system and one (1) 20'L Miller electric safety edge. There are currently no safety features on the roll up gate in the employee parking lot which is a safety hazard and could cause damage to persons and property.	\$ 2,545	\$ 2,406	94.54
211	FM-0054862	San Bernardino	Barstow Courthouse	36-J1	2	HVAC - Replace leaking service port on refrigerant circuit 1A. This work is necessary as circuit 1A has lost a complete charge and has been locked-out leaving the chiller operating at 50% capacity. Deficiencies identified during the Level VIII PM for CH1 - SWO # 2462574.	\$ 3,882	\$ 3,025	77.93
212	FM-0054863	Alameda	Wiley W. Manuel Courthouse	01-B3	2	HVAC - Replace failed and leaking non-standard sized re-heat hot water coil to include ductwork transitions and heating hot water piping work.	\$ 9,625	\$ 8,066	83.8



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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213	FM-0054864	Orange	West Justice Center	30-D1	2	Plumbing - Complete remediation services required as a result of water damage in the Collections Department due to clogged drain in the 2nd floor mechanical room. Remediation effort included drying out all wet areas with fans and humidifiers, damaged wall and floor material replacement, cover base removal to ensure drywall thoroughly and professionally dried as well as ACM testing.	\$ 9,020	\$ 9,020	100
214	FM-0054865	Madera	Madera County Superior Court	20-A1	2	Security - Multiplexer-1 will be removed from the security system rack and taken into Pelco to have a new hard drive, power module, and mother board installed, once Multiplexer is back to normal operation it will be reinstalled and reprogrammed by tri-signal. Without Multiplexer-1 the security system is at 50% capability and in case of an emergency no footage can be reviewed.	\$ 5,018	\$ 5,018	100
215	FM-0054866	El Dorado	Main St. Courthouse	09-A1	2	HVAC - Restore Chiller Refrigeration system - replace hot gas bypass solenoid. Building needs cooling and chiller is main source of cooling for 09-A1 30 ton air cooled chiller. Chiller is currently shut down due to low refrigerant and off line. Chiller is used seasonally with main cooling season starting usually in May.	\$ 6,306	\$ 6,306	100
216	FM-0054868	Los Angeles	Torrance Courthouse	19-C1	2	HVAC - Replace defective 7.5HP motor (1), replace one (1) B-154 3-banded belt, replace one (1) motor pulley, and align all new parts. The cooling tower motor currently has a bad bearing causing excessive vibration and is beyond repair; if the motor goes out the cooling tower there will be only one motor to support all functions and could cause the cooling tower to malfunction.	\$ 4,708	\$ 4,008	85.14
217	FM-0054869	Solano	Hall of Justice	48-A1	2	Interior finishes - Replace failed VCT flooring in restroom to protect exposed wood subfloor from deterioration and to eliminate an unsanitary condition and an offensive odor due to exposure to liquids.	\$ 7,490	\$ 7,490	100
218	FM-0054870	Sacramento	Carol Miller Justice Center	34-D1	2	HVAC - Replace sump pump - Old sump pump stolen.	\$ 3,466	\$ 3,466	100
219	FM-0054871	Contra Costa	Arnason Justice Center	07-E3	2	Vandalism - Replace one master station, one slave station, and one power supply; Work to be done after hours. Interview phone is non functional after being vandalized.	\$ 2,196	\$ 2,196	100



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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220	FM-0054873	Los Angeles	Alhambra Courthouse	19-I1	2	HVAC - Install new refrigerant rated ball valves, remove oil line on bottom of oil separator, install new swaglock fitting and re-pipe oil line; remove, inspect, and re-attach linear float using new gaskets and O-rings; re-secure shading rings into armature with epoxy. Currently there is a leak on the bottom of the oil separator and oil is pooling up underneath the separator; also the epoxy which secures the shading rings into the stationary armature is cracked and could cause a no-start condition.	\$ 13,777	\$ 11,848	86
221	FM-0054875	Sacramento	Carol Miller Justice Center	34-D1	2	HVAC - Chiller #1 not running - Remove and replace two failed sump heaters, the chiller will not run without heaters.	\$ 2,397	\$ 2,397	100
222	FM-0054876	San Joaquin	Manteca Branch Court	39-C1	2	Interior Finishes - Replace failed flooring in main lobby (chipped epoxy over bare concrete is creating trip hazards in public lobby) with 1,300ft of rubberized floor tile.	\$ 17,963	\$ 17,963	100
223	FM-0054877	Contra Costa	George D. Carroll Courthouse	07-F1	2	Grounds and Parking Lot - Install 125 lf of 6' galvanized fencing to separate the public and court employee parking; Install two new posts with signs indicating restricted parking. The court is concerned about the existing parking. A car was stolen and a car was broken into. This is a security issue and the work is recommended by OERS.	\$ 9,321	\$ 9,321	100
224	FM-0054879	Los Angeles	Inglewood Courthouse	19-F1	2	Elevators, Escalators, & Hoists - Replace ropes on Elevator #3. Install 1,100 feet of new rope, replace five shackles. Existing elevator ropes are worn and damaged. This is a safety issue and the inspector will take elevator out of service if ropes are not replaced.	\$ 38,079	\$ 28,391	74.56
225	FM-0054881	Los Angeles	Chatsworth Courthouse	19-AY1	2	Electrical – Code required lighting - Install power and lights for twelve lighting fixtures with wire guards. Currently the lighting lumens do not meet the code requirements for file storage and puts staff at risk. Family law has relocated to Chatsworth court due to court's ongoing restructuring plan and with this comes the need to relocate the existing files as well.	\$ 20,000	\$ 20,000	100
226	FM-0054882	Los Angeles	Metropolitan Courthouse	19-T1	2	HVAC - Heating Hot Water & Chilled Water Copper pipes between Main isolation & Control valves on floors 3, 5 & 8 are corroding, leaking and deteriorating. Existing isolation valves are non-functional and the building must be drained prior to replacement. Remove/replace 300ft of copper piping, install 12 Isolation Valves, six (6) Control Valves, 12 Balancing Valves, 12 Temperature Gauges & 12 Pressure Gauges.	\$ 183,490	\$ 173,471	94.54



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227	FM-0054883	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	HVAC - Remediation, set up containment, environmental testing, abate ACM pipe insulation from the hot water pipe to access the leak. Replace deteriorated 1 1/4" steel pipe, restore frozen isolation valves. AHU 6-3 has a deteriorated 1 1/4" steel pipe and is leaking hot water in the 6th floor air handler room. The leak has been contained and water is being directed into the floor drain. Both 1 1/4" isolation valves are frozen and will not shut off the leak.	\$ 30,000	\$ 30,000	100
228	FM-0054884	Los Angeles	Inglewood Courthouse	19-F1	2	Elevators, Escalators, & Hoists - Replace defective selector switches and LV ring, re-wire incorrect wiring in compound on generator, and adjust selector. Elevator #3 is stuck on the 4th floor with the doors closed and is not responding; this was caused by a broken selector switch and bad wiring in compound on generator.	\$ 4,746	\$ 3,539	74.56
229	FM-0054885	Los Angeles	San Fernando Courthouse	19-AC1	2	Fire Protection - Replace all 12v failed system batteries, test multiple devices to determine cause of failure, and restore all failed system devices to return active fire monitoring to the building. The fire system is not currently functioning properly due to old batteries, outdated components, and failing devices; system needs to be restored so it can properly monitor the building for fire hazards. Deficiencies found on PM SWO# 2486061.	\$ 4,655	\$ 3,883	83.41
230	FM-0054886	San Joaquin	Lodi Branch - Dept. 2	39-D2	2	HVAC - Replace faulty components of failed Variable Frequency Drive Unit for Air Handler. Asset: OM#00028026	\$ 2,344	\$ 2,344	100
231	FM-0054887	Los Angeles	Airport Courthouse	19-AU1	2	Fire Protection - Replace one (1) 6" butterfly valve downstream of fire pump. The 6" butterfly valve that is downstream of the fire pump is leaking and needs to be replaced in order to prevent further damage and possible safety hazards.	\$ 3,777	\$ 2,915	77.17
232	FM-0054888	Orange	Central Justice Center	30-A1	2	HVAC - Replace duct work located in Sheriff Bus bay damaged by a bus. System supplies sheriff and in custody areas with air conditioning. The project will include control air to repair 8 foot length of duct and place reducing duct work to allow for buses into bus bay without compromising air flow.	\$ 5,498	\$ 5,013	91.17
233	FM-0054889	Los Angeles	Van Nuys Courthouse East	19-AX1	2	Vandalism - Install approx. 274 sq. ft. of 6 mil metal shield film over stainless steel in elevators to cover existing vandalism and prevent further damage. Public elevators 1-4 have deep scratches and scuffs on the stainless steel walls and doors which is a safety concern for the public.	\$ 4,799	\$ 4,307	89.74



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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234	FM-0054890	Orange	North Justice Center	30-C1	2	HVAC - The Magnetic Starter for Return Fan #2 for the HVAC system in Phase II is failing. Replace Magnetic Starter with a 7.5 HP ABB Variable Frequency Drive (VFD). Energy Project eligible for rebate through So Cal Edison Rebate Program.	\$ 5,277	\$ 4,766	90.31
235	FM-0054891	Orange	North Justice Center	30-C1	2	HVAC - The Magnetic Starter for Return Fan #1 for the HVAC system in Phase II is failing. Replace Magnetic Starter with a 7.5 HP ABB Variable Frequency Drive (VFD). Energy Project eligible for rebate through So Cal Edison Rebate Program.	\$ 5,210	\$ 4,705	90.31
236	FM-0054893	Contra Costa	George D. Carroll Courthouse	07-F1	2	HVAC Install two (2) Base Mounted Pumps with 2 HP, Premium Efficient, 208-230/460/3/60 Motors; Install two (2) 2" butterfly valves and new 2"x2" suction diffusers on inlet of each hot water pump; Install two (2) 1-1/2"x2" increaser and 2" triple duty valves on outlet of each hot water pump. Pump #2 has failed and the primary pump is running hot. If it fails, we will not be able to deliver hot water to the heating coils.	\$ 18,013	\$ 13,508	74.99
237	FM-0054894	Los Angeles	Stanley Mosk Courthouse	19-K1	2	Elevators, Escalators, & Hoists - Replace two steps, manufacture and install a new up-thrust track to escalator 8-7. Currently the escalator is out of service to prevent further damage and to prevent passengers from falling into the rotating machinery.	\$ 8,327	\$ 8,099	97.26
238	FM-0054895	Los Angeles	Stanley Mosk Courthouse	19-K1	2	HVAC - Replace supply fan motor with new 7.5 horsepower motor. The supply fan motor that is currently supporting AHU S-21 is not running properly and is near the end of its life cycle. if the motor fails the air handler unit will not be able to provide proper temperatures during courtroom operations.	\$ 4,555	\$ 4,430	97.26
239	FM-0054896	San Diego	East County Regional Center	37-I1	2	Elevators, Escalators, & Hoists - Replaced elevator controller module, adjusted SSDI and compounded elevator. Elevator #3 was having leveling issues on all floors, causing a tripping hazard. Elevator doors were opening too slowly for the passengers.	\$ 2,697	\$ 1,826	67.71
240	FM-0054899	Los Angeles	Airport Courthouse	19-AU1	2	Interior Finishes - Install six (6) new door magnets and holders and one (1) control relay; connect to existing circuit so doors release on alarm condition. Location: 1st floor - entering the cafeteria - two sets of doors. Basement - Corridor hallway on the north side. The doors are currently being held open manually and are not integrated with the fire system which is a safety and security issue.	\$ 11,722	\$ 9,046	77.17



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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241	FM-0054901	Los Angeles	Edmund D. Edelman Children's Court	19-Q1	2	Vandalism - Grind and polish elevator panels and doors, install 10 door alarms to prevent public access to stairwells, and install 120 corner guards on walls to prevent further damage. There is currently graffiti scratched into stainless steel elevators, vandalism in the public stairwells, and damage from carts and strollers on the corners of multiple walls in the public hallways, all of which could cause safety concerns for the public.	\$ 13,200	\$ 9,239	69.99
242	FM-0054902	Los Angeles	Airport Courthouse	19-AU1	2	HVAC - Perform modifications including: Rebuild isolation block, replace oil regulator gasket, 2 bolt flange gasket, refrigerant o-ring, rod spindle, plug pipe, screw spring plunger, purge liquid line isolation valve, two (2) 3/8 elbows, and a defective control keypad panel assembly; check all controls, settings, alignments, and restore operation. Chiller #1 currently has several leaks within the system and is taking in air and moisture which can damage components and lead to environmental hazards.	\$ 21,950	\$ 16,939	77.17
243	FM-0054903	San Bernardino	Victorville Courthouse- Dept. N-1	36-L1	2	COUNTY MANAGED - HVAC- Replace one (1) Air Handler Unit and related systems that has failed. Scope includes removal and installation of units from the roof, modifying mounting curb, electrical, new gas and condensate pipes and air balance. The existing unit is of age, parts are obsolete and are no longer available from the manufacturer.	\$ 149,703	\$ 149,703	100
244	FM-0054904	San Diego	East County Regional Center	37-I1	2	Plumbing - Replace existing domestic booster pump system with new Grundfos Domestic Water Booster Pump Package. Existing booster pump system has only two operational pumps with one pump currently inoperable due to failed controller. Existing pump system has experienced frequent failures and needs to be replaced as it is critical in providing domestic water to the upper floors.	\$ 98,201	\$ 66,492	67.71
245	FM-0054909	Los Angeles	El Monte Courthouse	19-O1	1	Elevators, Escalators, & Hoists - Replace failed brakes on judges' Elevator #5. Rebuild brake assembly with new parts at offsite facility. Return assembly to site and install in elevator. Judges' elevator was stuck in the basement with doors closed and not responding due to a faulty brake assembly.	\$ 28,555	\$ 16,596	58.12



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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246	FM-0054914	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	HVAC - Install one (1) 5" diameter x 4" long sleeve onto the shaft of the air handler unit and install one (1) new bearing. A malfunctioning bearing has cut a groove into the shaft of air handler unit #8-4 which is causing excessive vibration; the air handler unit has been placed out of service so no further damage will be caused.	\$ 6,000	\$ 4,127	68.79
247	FM-0054915	Los Angeles	Hall of Records-County Records Center	19-AV3	1	COUNTY MANAGED - Plumbing - 8" fire sprinkler supply line ruptured causing flooding in areas on the 2nd and 3rd floors. Installation of new 8" water line approx. 180 feet in length.	\$ 78,000	\$ 72,540	93
248	FM-0054916	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing - Floor drain in the 10th floor mechanical room - Set up containment & drying equipment, perform environmental testing, snake floor drain to remove clog, dry leak affected areas, replace approx. five (5) ceiling tiles, perform final clean & clearance testing. The floor drain in the 10th floor mechanical room is clogged causing a flood which leaked into the 9th floor court reporters office room. 9-101; multiple ceiling tiles are damaged & have collapsed to the floor, walls & floor have high moisture levels.	\$ 20,000	\$ 20,000	100
249	FM-0054917	Los Angeles	Clara Shortridge Foltz Criminal Justice Center	19-L1	1	Plumbing - Floor drain in the 8th floor mechanical room - Set up containment & drying equipment, perform environmental testing, snake floor drain to remove clog, dry leak affected areas, replace approx. three (3) 12" x 48" ceiling tiles and twelve (12) 12" x 12" ceiling tiles, perform final clean and clearance testing. The floor drain in the 8th floor mechanical room is clogged causing a flood which leaked into the 7th floor court reporters office room. 7-101; multiple ceiling tiles are damaged and have collapsed to the floor; walls have high moisture levels.	\$ 20,000	\$ 20,000	100
250	FM-0054925	Los Angeles	East Los Angeles Courthouse	19-V1	1	HVAC - Replace a faulty heating control valve (1/2 in. brass valve w/ pneumatic actuator) that leaked hot water above room #301G. The heating control valve serves a HVAC VAV box. Containment size is 7ft. W x 8ft. L x 8ft. H in room #301G. The water damaged three (3) ceiling tiles (24 in. x 24 in. x 5/8 in.). An environmental survey was performed in the leak affected area.	\$ 5,889	\$ 4,577	77.72



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment A

TCFMAC Funded Project List
Quarter 4, Fiscal Year 2014-2015

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251	FM-0054952	Tulare	Visalia Superior Court	54-A1	2	Interior Finishes – Remove all 336 audience chairs in Depts 3, 4, 5, and 6. Remove and abate a total of 2400 sf of vinyl tile flooring and install new vinyl tile flooring. Install 48 new wooden bench seating 12 each x 13 ft long - Existing chairs are failing, beyond repair and have broken upon use. Eight chairs in Dept. 5 are unusable as are several more. This is a safety risk to the public as additional chairs can break at any time causing physical injury.	\$ 225,000	\$ 225,000	100
252	FM-0054954	Santa Cruz	Santa Cruz Jury	44-A3	2	Exterior Shell - Replace failed (2300 SF), leaking roof, (380 SF) deteriorated canopy, (50 LF) rotted gutter, (400 SF) of dry rot deck, (2800 SF) dry rot wooden exterior siding walls, (176 LF) deteriorated leaking window panes. The structure is currently leaking and several areas of the wood deck is rotted creating a structurally unsafe condition.	\$ 225,000	\$ 225,000	100
253	FM-0054955	Los Angeles	Torrance Courthouse	19-C1	2	HVAC - Perform Overhaul on Chiller #2. During Level VIII PM 2462673 on Chiller #2 several refrigerant leaks were found. Refrigerant analysis came back with "High" levels of oil in the refrigerant. Vibration analysis concluded that the chiller motor bearings are in a state of deterioration and a complete unit overhaul is needed.	\$ 116,111	\$ 98,857	85.14
254	FM-0054880	Sacramento	Gordon Schaber Sacramento Superior Court	34-A1	3	Electrical - Remove a total of 5,092 T8 fluorescent lamps and replace them with LED lamps in: (550) single lamp fixtures; (4388) dual lamp fixtures; and (153) 3 lamp fixtures. Replaces 200 aging instant start Ballast - Project will significantly reduce energy consumption and heat load throughout the facility.	\$ 180,000	\$ 180,000	100
							\$ 7,794,202	\$ 6,761,502	



JUDICIAL COUNCIL
OF CALIFORNIA

TRIAL COURT FACILITY MODIFICATION
ADVISORY COMMITTEE

Attachment B

Court-Funded Facilities Requests (CFR)
Quarter 4, Fiscal Year 2014-2015

ITEM #	CFR NUMBER	COUNTY	BUILDING ID	FACILITY NAME	LEASE, LICENSE, OR FM	REQUEST TYPE	CFR DESCRIPTION	CFR TERM	FUND SOURCE	ESTIMATED CURRENT YEAR COSTS (Includes existing costs prior to CFR term)	ESTIMATED BUDGET YEAR COSTS	TOTAL ESTIMATED CFR COMMITMENT (CFR Term)	REVIEW NOTES - OREFM, JBCPO, & FSO
1	54-CFR009	Tulare	54-J1	Visalia Convention Center	Lease Extension	Ongoing	Lease extension 9/2/15 through 9/27/17 for Traffic Court one day a week.	Two Years	TCTF	\$ -00	\$ 10,888	\$ 21,146	Pending
2	19-CFR031	Los Angeles	TBD	312 N. Spring St. Parking Lot	New Lease	Ongoing	New five-year lease (2018-2023) for 31 parking spaces to support parking needs for Judicial Officers and Court Administration. Option for a second five-year term lease is anticipated to begin in 2023 and end in 2028. The cost also includes utilities overtime, security background checks, building access cards, and additional cameras and card readers.	Five Years	TCTF	\$ -00	\$ 109,520	\$ 547,602	Pending



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 20, 2015

Title	Agenda Item Type
Trial Courts: <i>Court Realignment Data</i> (<i>Calendar Year 2014</i>)	Information Only
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 20, 2015
Recommended by	Date of Report
Shelley Curran, Senior Manager Criminal Justice Services	July 23, 2015
	Contact
	Jay Fraser, 415-865-7958 jay.fraser@jud.ca.gov

Executive Summary

Pursuant to Penal Code section 13155, commencing January 1, 2013, the Judicial Council must collect information from trial courts regarding the implementation of the 2011 Criminal Justice Realignment Legislation and submit the data annually to the California Department of Finance (DOF), the Board of State and Community Corrections (BSCC), and the Joint Legislative Budget Committee (JLBC), by September 1. This is the third annual court realignment data report to the DOF, BSCC, and the JLBC. The *Court Realignment Data (Calendar Year 2014)* is included as Attachment A to this report.

Previous Council Action

Pursuant to Penal Code section 13155, the Judicial Council must submit data collected from the trial courts on the implementation of the 2011 Criminal Justice Realignment Legislation to the California Department of Finance (DOF), the Board of State and Community Corrections (BSCC), and the Joint Legislative Budget Committee (JLBC) by September 1, 2013, and annually thereafter. The first annual data report was provided to the Judicial Council by Judicial Council staff at the August 23, 2013 business meeting; the report for calendar year 2013 was

provided to the Judicial Council by Judicial Council staff at the August 20, 2014 business meeting.

Methodology and Process

Penal Code section 13155 (Stats. 2012, ch. 41) states that trial courts shall provide data to the Judicial Council not less frequently than twice a year and that information shall include statistics for each county regarding the dispositions of felonies at sentencing and petitions to revoke probation, postrelease community supervision, mandatory supervision, and, commencing July 1, 2013, parole.

Criminal Justice Realignment Data Working Group

In order to identify and define critical realignment-related data elements, an ad hoc working group of volunteers identified by the Judicial Council's Court Executive Advisory Committee was created. This working group, the Criminal Justice Realignment Data Working Group (CJRDWG), was made up of representatives from the superior courts of Alameda, Fresno, Los Angeles, Napa, Orange, and Ventura counties, and was chaired by Melissa Fowler-Bradley, Court Executive Officer, Superior Court of Shasta County. The CJRDWG originally created a list of 29 data points that track sentencing and disposition information as well as court workload, and determined that the data should be collected quarterly. After feedback from the trial courts, various data points were edited and new data elements created to more clearly track outcomes and court workload. These changes were implemented in quarter four of 2013. No changes to the data elements were made in 2014. A list of current data points is included in Attachment B.

Data Collection and Quality Assurance

Trial courts submit data quarterly to the Judicial Council's Criminal Justice Services using an online survey. The data reporting schedule for 2014 was as follows:

- Quarter 1 2014 (January–March) data due April 30, 2014;
- Quarter 2 2014 (April–June) data due July 31, 2014;
- Quarter 3 2014 (July–September) data due October 31, 2014; and
- Quarter 4 2014 (October–December) data due January 31, 2015.

Judicial Council staff conducts quality assurance to examine the accuracy and reliability of the data collected. Each quarter, staff contacts trial courts to discuss data quality, provide technical assistance regarding data collection, and gather information about local court processes. Data are sometimes revised as a result of these checks. The data presented in the *Court Realignment Data (Calendar Year 2014)* report may be amended in subsequent reports as courts can amend previously submitted data in the event of initial data reporting errors. Data quality has continued to improve as a result of this cooperative effort, and as the courts continue to refine their data reporting systems.

Policy and Cost Implications

In addition to fulfilling a legislative mandate, data collected pursuant to Penal Code section 13155 is used to assist the Trial Court Budget Advisory Committee in determining realignment funding allocations. Approximately 27.6 million dollars have been allocated since FY 2013-2014. The current allocation formula is based on each courts' proportion of the new workload associated with realignment, as measured by the total petitions filed to revoke and/or modify postrelease community supervision and parole. All courts are able to report the data elements currently used to establish funding allocations.

Summary of Findings

Attachment A: *Court Realignment Data (Calendar Year 2014)* summarizes court data collected pursuant to Penal Code section 13155 for calendar year 2014. In the event a court needs to resubmit data before the date the report is submitted to the DOF, BSCC, and JLBC, the *Court Realignment Data (Calendar Year 2014)* may be updated but the format will remain the same.

Next Steps

The Judicial Council's Criminal Justice Services office will submit the second annual data report *Court Realignment Data (Calendar Year 2014)* to the DOF, BSCC, and JLBC by September 1, 2015, and will continue to collect criminal justice realignment data on a quarterly basis from trial courts.

Attachments

1. Attachment A: *Court Realignment Data (Calendar Year 2014)*
2. Attachment B: List of Court Realignment Data Points

Court Realignment Data–Calendar Year 2014

This report fulfills the requirement pursuant to Penal Code section 13155 that the Judicial Council submit data regarding the implementation of the 2011 Criminal Justice Realignment Legislation to the California Department of Finance (DOF), the Board of State and Community Corrections (BSCC), and the Joint Legislative Budget Committee (JLBC).

Please note the following:

- 1) Please see Attachment B for a full description of each data point reported below.
- 2) This report includes data for calendar year 2014. Since the beginning of 2013, courts have improved their data reporting capacity. In quarter one of 2013, 84% of courts reported at least 70% of the data elements. In quarter four of 2014, this had increased to 95% (55 courts).
- 3) The data presented in the tables below may be amended in subsequent reports as courts may amend previously submitted data in the event of initial data reporting errors.

Table 1: Pre and Initial Sentencing

Court	1. Felony Filings (n=57)	2. Warrants issued for FTA -presentencing (n=53)	3. Prison (n=55)	4. Probation (n=55)	5. Jail–straight sentence (n=56)	6. Jail–split sentence (n=56)
Alameda	7,461	976	892	2,647	136	12
Alpine	0**	0**	0**	0**	0**	0**
Amador	566	150	75	93	16	3
Butte	2,210	1,244	402	767	179	30
Calaveras	337	19	13	80	9	7
Colusa	327 ¹	49	34	52	5	11
Contra Costa	5,032 ¹	947	352	1,228	4	203
Del Norte	347	200	42	90	24	33
El Dorado	1,064	296	138	474	29	56
Fresno	10,576	10,936	2,081	4,126	300	843
Glenn	277	23	10	117	13	80
Humboldt	1,669	595	91	422	10	39
Imperial	1,849	363	216	644	106	34
Inyo	219	21	12	83	6	15
Kern	9,795	715	1,443	2,788	853	529
Kings	2,780	Data not available	Data not available	Data not available	Data not available	Data not available
Lake	1,014	211	112	282	85	0
Lassen	516	52	131	86	33	0
Los Angeles	53,847	5,034	8,823	23,246	6,536	335
Madera	1,846	927	267	429	48	22
Marin	892	103	79	302	11	38
Mariposa	204	0	17	72	0	10
Mendocino	1,153	165	123	335	47	27
Merced	2,152***	179***	251***	924***	37***	56***
Modoc	149	30	7	16	2	0
Mono	135	17	11	54	6	1
Monterey	3,433	781	473	1,193	121	112
Napa	1,306	562	65	523	8	58
Nevada	646	124	65	154	15	10
Orange	15,603	1,264	2,319	7,762	856	839
Placer	2,997	1,597	354	1,246	131	72
Plumas	159	24	21	75	8	0

Court	1. Felony Filings (n=57)	2. Warrants issued for FTA-presentencing (n=53)	3. Prison (n=55)	4. Probation (n=55)	5. Jail-straight sentence (n=56)	6. Jail-split sentence (n=56)
Riverside	16,677	6,431	3,510	6,129	904	2,022
Sacramento	10,592	Data not available	Data not available	Data not available	315	238
San Benito	502	219	32	138	8	16
San Bernardino	18,974	6,495	4,880	6,417	4,178	1,663
San Diego	17,140	Data not available	2,617	6,810	1,157	543
San Francisco	3,435	Data not available	204	963	13	78
San Joaquin	4,583	335	921	895	49	213
San Luis Obispo	1,265 ^{1,**}	Data not available	Data not available	Data not available	Data not available	Data not available
San Mateo	3,227 ¹	209	367	1,533	201	119
Santa Barbara	3,277	861	346	1,526	47	108
Santa Clara	9,620	2,533	1,145	4,018	302	420
Santa Cruz	1,752	228	153	1,064	43	51
Shasta	3,544	2,690	576	899	21	206
Sierra	37	6	2	7	1	0
Siskiyou	531	364	69	228	8	15
Solano	3,596	942	311	797	83	75
Sonoma	2,792	663	240	1009	29	160
Stanislaus	6,562	1,719	704	3,625	208	346
Sutter	1,198	266	140	484	36	43
Tehama	1,079 ¹	165	134	241	79	30
Trinity	327	101	9	132	5	4
Tulare	5,262	793	653	1,836	253	245
Tuolumne	844	337	113	251	6	47
Ventura	4,172	1,233	582	1,569	306	83
Yolo	2,087 ¹	396	306	614	223	155
Yuba	812	291	159	329	33	22

** Number is based on two quarters of data.
*** Number is based on three quarters of data.
¹ Felony filings data obtained through JBSIS

Table 2: Felony Probation

Court	7. Petitions to revoke/modify probation (n=54)	8. Felony probation cases revoked and reinstated (n=54)	9. Felony probation cases sentenced to state prison (n=54)	10. Felony probation cases sentenced to jail–straight sentence (n=56)	11. Felony probation cases sentenced to jail–split sentence (n=56)
Alameda	2,124	1,949	75	84	1
Alpine	0**	0**	0**	0**	0**
Amador	342	170	17	34	5
Butte	1,143	797	125	163	18
Calaveras	214	110	8	11	2
Colusa	76	33	8	3	6
Contra Costa	2,395	225	24	1	12
Del Norte	150	135	18	17	9
El Dorado	405	317	29	24	10
Fresno	3,011	3,127	486	304	258
Glenn	118	107	18	29	76
Humboldt	958	589	45	22	50
Imperial	633	342	45	67	3
Inyo	142	80	6	13	0
Kern	6,463	1,137	528	584	162
Kings	Data not available	Data not available	Data not available	Data not available	Data not available
Lake	203	116	27	59	0
Lassen	83	38	5	17	0
Los Angeles	3,831*	3,272*	387*	3,404***	122***
Madera	1,023	496	63	44	1***
Marin	699	471	8	6	10
Mariposa	99	85	3	0	0
Mendocino	468	303	42	39	21
Merced	1,457***	1,233***	135***	61***	15***
Modoc	76	10	1	3	0
Mono	33	20	2	5	0
Monterey	2,127	844	172	126	22
Napa	843	637	25	7	9
Nevada	189	145	3	5	2
Orange	15,383	8,680	443	1,247	54
Placer	1,654	739	59	54	4

Court	7. Petitions to revoke/modify probation (n=54)	8. Felony probation cases revoked and reinstated (n=54)	9. Felony probation cases sentenced to state prison (n=54)	10. Felony probation cases sentenced to jail–straight sentence (n=56)	11. Felony probation cases sentenced to jail–split sentence (n=56)
Plumas	154	31	4	5	0
Riverside	2,235	4,087	139	938	509
Sacramento	Data not available	Data not available	Data not available	90	16
San Benito	200	68	17	9	20
San Bernardino	22,318	2,235	2,424	3,111	349
San Diego	Data not available	7,234	1,112	1,258	90
San Francisco	1,823	161	28	36	19
San Joaquin	291	5***	159	26	21
San Luis Obispo	Data not available	Data not available	Data not available	Data not available	Data not available
San Mateo	759	701	93	136	14
Santa Barbara	3,452	2,389	123	57	23
Santa Clara	3,274	1,658	243	406	28
Santa Cruz	1,232	362	52	18	13
Shasta	1,896	1,183	199	6	70
Sierra	9	4	1	0	0
Siskiyou	472	165	41	0	12
Solano	1,777	867	95	114	49
Sonoma	2,905	1,033	97	22	90
Stanislaus	1,640	1,122	61	49	92
Sutter	484	228	55	49	24
Tehama	463	Data not available	Data not available	6	7
Trinity	53	73	3	2	0
Tulare	1,786	2,588	191	137	48
Tuolumne	326	213	27	5	14
Ventura	11,878	2,917	269	485	46
Yolo	945	336	58	100	86
Yuba	246	98	38	16	3

* Number is based on one quarter of data.
** Number is based on two quarters of data.
*** Number is based on three quarters of data.

Table 3: Mandatory Supervision

Court	12. Petitions to revoke/modify mandatory supervision (n=55)	13. Warrants issued (n=54)	14. Calendar events set on petitions to revoke/modify mandatory supervision (n=54)	15. Evidentiary hearings held on petitions to revoke/modify mandatory supervision (n=49)	16. Mandatory supervision cases revoked and reinstated (n=52)	17. Mandatory supervision cases revoked and terminated (n=54)
Alameda	6	3	17	Data not available	3	2
Alpine	0**	0**	1**	0**	0**	0**
Amador	3	2	26	5	4	2
Butte	82	62	166	0	63	0
Calaveras	6	3	13	1	3	0
Colusa	11	5	14	0	5	3
Contra Costa	249	452	2,110	Data not available	38	0
Del Norte	12	20	134	29	45	4
El Dorado	83	0	699	9	0	59
Fresno	1,174	1,325	3,411	40	701	109
Glenn	40	15	40	39	53	9
Humboldt	266	226	1,048	0	155	78
Imperial	33	21	68	1	23	12
Inyo	10	7	27	0	1	5
Kern	976	413	3,054	7	705	204
Kings	Data not available	Data not available	Data not available	Data not available	Data not available	Data not available
Lake	0	1	0	0	1	0
Lassen	11	4	13	0	10	0
Los Angeles	10*	3*	0*	0*	0*	5*
Madera	80	41	366	1**	28	33
Marin	35	8	110	Data not available	26	18
Mariposa	1	0	4	3	4	5
Mendocino	24	7	94	0	13	0
Merced	142***	151***	504***	0***	Data not available	22***
Modoc	2	0	7	0	0	0
Mono	1	0	1	0	0	0
Monterey	129	0	183	0	42	32
Napa	45	49	124	7	26	17
Nevada	25	20	54	3	13	3
Orange	1,022	715	4,780	Data not available	709	498

Court	12. Petitions to revoke/modify mandatory supervision (n=55)	13. Warrants issued (n=54)	14. Calendar events set on petitions to revoke/modify mandatory supervision (n=54)	15. Evidentiary hearings held on petitions to revoke/modify mandatory supervision (n=49)	16. Mandatory supervision cases revoked and reinstated (n=52)	17. Mandatory supervision cases revoked and terminated (n=54)
Placer	2	4	22	0	0	0
Plumas	0	0	0	0	0	0
Riverside	182	1,547	1,791	0	1,774	542
Sacramento	Data not available	Data not available	Data not available	Data not available	Data not available	Data not available
San Benito	46	3	105	0	21	26
San Bernardino	2,426	225	2,578	5**	697	2,171
San Diego	506	Data not available	1,052	1	247	243
San Francisco	174	2	1,422	0***	111	0***
San Joaquin	298	329	548	41	398	20
San Luis Obispo	Data not available	Data not available	Data not available	Data not available	Data not available	Data not available
San Mateo	114	68	197	4	26	63
Santa Barbara	312	128	1,026	109	Data not available	34
Santa Clara	276	324	1,666	0	254	72
Santa Cruz	94	7	432	9	22	11
Shasta	425	372	3,500	4	184	76
Sierra	0	0	0	0	0	0
Siskiyou	18	11	82	35	18	1
Solano	59	32	297	59	65	18
Sonoma	328	160	468	0	177	62
Stanislaus	470	382	1,505	Data not available	338	72
Sutter	35	17	131	4	11	12
Tehama	24	4	Data not available	Data not available	Data not available	Data not available
Trinity	8	4	0	0	2	4
Tulare	274	27	1,726	2**	235	134
Tuolumne	24	18	97	1	10	2
Ventura	622	111	1,583	0	227	119
Yolo	146	28	335	14	51	18
Yuba	51	68	166	23	16	29

* Number is based on one quarter of data.

** Number is based on two quarters of data.

*** Number is based on three quarters of data.

Table 4: Post Release Community Supervision (PRCS)

Court	18. Petitions to revoke/modify PRCS (n=58)	19. Warrants issued (n=57)	20. Calendar events set on petitions to revoke/modify PRCS (n=58)	21. Evidentiary hearings held on petitions to revoke/modify PRCS (n=51)	22. PRCS cases revoked & reinstated w/o custody time (n=57)	23. PRCS cases revoked & reinstated w/ custody time (n=57)	24. PRCS cases referred to reentry court (n=47)	25. PRCS cases revoked & terminated (n=56)
Alameda	658	313	2,684	Data not available	164	235	36	0
Alpine	0**	0**	0**	0**	0**	0**	0**	0**
Amador	15	19	55	6	0	9	Data not available	1
Butte	151	232	418	4	6	109	0	1
Calaveras	12	4	26	17	1	7	0	2
Colusa	7	5	22	0	0	6	0	1
Contra Costa	212	73	1,167	Data not available	67	134	Data not available	0
Del Norte	35	5	265	18	16	64	0	3
El Dorado	54	27	376	47	11	57	1	4
Fresno	986	805	5,021	42	33	806	Data not available	296
Glenn	17	13	15	13	6	10	0	0
Humboldt	191	165	940	0	1	145	0	27
Imperial	111	53	626	0	0	54	3	9
Inyo	9	1	24	0	1	4	0	1
Kern	1,565	811	2,121	1	72	1,431	0	53
Kings	75	64	132	Data not available	Data not available	Data not available	Data not available	Data not available
Lake	41	30	196	1	0	20	0	11
Lassen	36	11	42	0	0	34	0	2
Los Angeles	8,779	6,749	20,937	293	1**	1,945**	0**	3**
Madera	149	48	921	12	0**	116	0**	1***
Marin	29	4	74	Data not available	2	26	0	1
Mariposa	3	0	2	4	2	124	1	2
Mendocino	67	33	219	1	4	66	0	10
Merced	226***	135***	1,072***	0***	21***	163***	0***	4***
Modoc	4	1	30	0	0	1	0	2
Mono	1	0	1	0	0	0	0	0
Monterey	105	169	506	2	0	49	0	44
Napa	30	27	78	1	1	15	0	0
Nevada	32	25	99	4	0	32	0	0
Orange	1,620	1,038	4,974	Data not available	12	1,469	Data not available	9
Placer	37	87	357	13	1	39	0	7

Court	18. Petitions to revoke/modify PRCS (n=58)	19. Warrants issued (n=57)	20. Calendar events set on petitions to revoke/modify PRCS (n=58)	21. Evidentiary hearings held on petitions to revoke/modify PRCS (n=51)	22. PRCS cases revoked & reinstated w/o custody time (n=57)	23. PRCS cases revoked & reinstated w/ custody time (n=57)	24. PRCS cases referred to reentry court (n=47)	25. PRCS cases revoked & terminated (n=56)
Plumas	2	0	23	0	0	0	0	1
Riverside	2,039	1,413	1,843	19	0	1,878	0	25
Sacramento	332	1,193	394	9	8	314	0	0
San Benito	35	17	132	0	0	34	0	0
San Bernardino	1,672	1,056	2,681	3	985	1,141	Data not available	216
San Diego	1,377	Data not available	1,572	0	0	1,385	18	0
San Francisco	242	27	1,631	19	15	207	0	Data not available
San Joaquin	743	379	1,114	5	4	514	4	3
San Luis Obispo	152	47	230	12	1	128	0	21
San Mateo	102	160	338	5	4	59	Data not available	27
Santa Barbara	173	189	453	42	12	84	0	8
Santa Clara	459	672	2233	0	50	531	12	142
Santa Cruz	104	76	633	5	13	9	0	5
Shasta	190	202	1,846	0	18	89	19	57
Sierra	1	0	1	1	0	0	0	1
Siskiyou	67	50	138	43	5	38	0	2
Solano	238	99	763	34	16	165	0	66
Sonoma	489	190	595	2	237	234	Data not available	14
Stanislaus	390	335	1,230	Data not available	35	275	Data not available	28
Sutter	29	17	51	2	0	34	0	0
Tehama	55	29	109	0	0	0	0	0
Trinity	15	16	46	0	4	3	0	1
Tulare	302	219	1,289	Data not available	13	214	Data not available	70
Tuolumne	22	24	122	1	0	18	0	2
Ventura	949	480	1,398	4	414	79	54	246
Yolo	188	24	404	66	136	226	Data not available	12
Yuba	69	75	196	28	1	51	0	6

** Number is based on two quarters of data.

*** Number is based on three quarters of data.

Table 5: Parole

Court	26. Petitions to revoke/modify parole (n=58)	27. Warrants issued (n=57)	28. Calendar events set on petitions to revoke/modify parole (n=58)	29. Evidentiary hearings held on petitions to revoke/modify parole (n=54)	30. Parole cases revoked & reinstated w/o custody time (n=56)	31. Parole cases revoked & reinstated w/ custody time (n=57)	32. Parole cases referred to reentry court (n=47)	33. Parole cases remanded to CDCR (n=55)
Alameda	831	585***	3,128	Data not available	159	413	15	1
Alpine	1**	0**	1**	1**	1**	1**	0**	0**
Amador	7	12	39	7	3	6	Data not available	0
Butte	184	139	204	5	1	173	0	0
Calaveras	2	0	2	0	0	2	0	0
Colusa	2	3	12	0	0	2	0	0
Contra Costa	282	477	845	64	8	253	Data not available	0
Del Norte	6	1	48	2	1	3	0	2
El Dorado	107	48	517	62	10	52	0	0
Fresno	317	1,715	1,009	9	12	280	Data not available	1
Glenn	7	5	7	0	0	4	0	0
Humboldt	20	99	71	1	0	17	0	0
Imperial	71	80	254	0	0	65	0	1
Inyo	6	8	7	0	2	6	0	0
Kern	407	1,347	453	2	0	408	0	0
Kings	150	147	128	Data not available	Data not available	Data not available	Data not available	Data not available
Lake	30	36	64	2	0	11	0	0
Lassen	17	7	16	0	0	12	0	0
Los Angeles	9,139	5,775	20,159	203	4**	1,403**	0**	5**
Madera	52	118	194	1**	1***	39	0**	0**
Marin	89	36	276	Data not available	13	57	0	0
Mariposa	1	2	2	0	0	0	0	0
Mendocino	77	22	229	0	5	74	0	0
Merced	132***	115***	428***	1***	3***	102***	0***	8***
Modoc	2	0	5	0	0	1	0	0
Mono	2	1	0	0	0	0	0	0
Monterey	163	305	477	9	0	152	0	2
Napa	38	49	108	2	0	34	0	0
Nevada	14	8	27	1	0	12	0	0
Orange	755	1,217	1,216	Data not available	2	718	Data not available	0
Placer	88	10	298	24	1	48	0	0

Court	26. Petitions to revoke/modify parole (n=58)	27. Warrants issued (n=57)	28. Calendar events set on petitions to revoke/modify parole (n=58)	29. Evidentiary hearings held on petitions to revoke/modify parole (n=54)	30. Parole cases revoked & reinstated w/o custody time (n=56)	31. Parole cases revoked & reinstated w/ custody time (n=57)	32. Parole cases referred to reentry court (n=47)	33. Parole cases remanded to CDCR (n=55)
Plumas	1	1***	3	0	0	1	0	0
Riverside	1,785	1,087	815	1	5	909	0	1
Sacramento	805	2,884	1,046	50	85	671	0	0
San Benito	10	0	23	0	0	9	0	0
San Bernardino	2,043	1,462	1,159	11	1,959	220	Data not available	Data not available
San Diego	1,070	Data not available	1,327	44	0	1,129	2	1
San Francisco	405	4	686	22	35	307	0	0
San Joaquin	164	24	412	21	0	87	11	0
San Luis Obispo	115	99	184	3	0	99	0	0
San Mateo	121	248	203	5	0	100	Data not available	0
Santa Barbara	130	316	211	29	9	80	0	0
Santa Clara	215	978	1,117	0	234	295	155	0
Santa Cruz	44	66	164	7	8	21	0	0
Shasta	213	156	292	1	133	45	0	2
Sierra	4	3	5	0	1	2	0	0
Siskiyou	16	0	44	16	0	4	0	0
Solano	337	284	594	22	46	304	0	0
Sonoma	242	2	1,066	4	119	226	Data not available	Data not available
Stanislaus	169	316	234	Data not available	8	152	Data not available	0
Sutter	40	94	51	7	2	35	0	0
Tehama	23	62	37	0	0	0	0	0
Trinity	2	2	12	0	0	2	0	0
Tulare	133	325	237	1*	Data not available	123	Data not available	5***
Tuolumne	2	3	3	0	0	1	0	0
Ventura	614	300	923	14	246	247	3	0
Yolo	69	168	106	22	62	36	Data not available	0
Yuba	145	120	371	15	0	129	0	0

* Number is based on one quarter of data.

** Number is based on two quarters of data.

*** Number is based on three quarters of data.

FINAL (8/30/13) Realignment Data Points – FELONIES ONLY

PRE-SENTENCING

1. Number of **new** felony case filings

A felony filing is defined as the beginning of a case by the court's acceptance of the formal submission of a complaint or other document charging a defendant with a felony offense, or a transfer-in from another jurisdiction. Other documents, such as motions, are not counted as filings for caseload inventory purposes.

- *Each defendant named in the complaint is reported as one case filing.*
 - *Do not count a filing for defendants who are discharged prior to the filing of a complaint.*
 - *Do not count filings for Habeas Corpus.*
 - *Do not include violations of Post Release Community Supervision (PRCS) or parole in this count.*
2. Number of pre-sentence felony warrants issued for Failures to Appear (FTA)

INITIAL SENTENCING

3. Number of cases in which a defendant is sentenced to state prison at initial sentencing

Do not include cases in which a defendant is sentenced to state prison on a violation of felony probation. These cases are counted in data point #9.

4. Number of cases in which a defendant is granted felony probation at initial sentencing

Report all cases in which the defendant is placed on traditional felony probation at initial sentencing.

5. Number of cases in which a defendant is given a straight county jail sentence pursuant to PC 1170(h)(5)(A) at initial sentencing

Report all cases in which the defendant is sentenced under PC 1170(h)(5)(A) at initial sentencing.

6. Number of cases in which a defendant is given a “split” sentence pursuant to PC 1170(h)(5)(B) at initial sentencing

Report all cases in which the defendant is sentenced under PC 1170(h)(5)(B) at initial sentencing.

- *Include cases in which a defendant is sentenced directly to a term of mandatory supervision without first serving a portion of the sentence in county jail.*

VIOLATION/MODIFICATION OF FELONY PROBATION

7. Number of petitions filed or court motions made to revoke/modify felony probation
Petition is defined as any filed instrument/document presented to the court that seeks revocation or modification of a defendant's supervision status. This data element should also include cases where the court on its own motion seeks to modify or revoke supervision.
8. Number of cases in which a felony probationer is found in violation of conditions of felony probation and is reinstated on probation
9. Number of cases in which a felony probationer is sentenced to state prison for a violation of probation
This is a count of all cases in which the defendant is placed on probation and after violating probation is sentenced to prison for the probation violation.
10. Number of cases in which a felony probationer receives a straight sentence to county jail under PC 1170(h)(5)(A) for a violation of probation
This is a count of all cases in which the defendant is placed on probation for a PC 1170(h) felony and after violating probation is sentenced to county jail under PC 1170(h)(5)(A) for the probation violation.
11. Number of cases in which a felony probationer receives a "split" sentence under PC 1170(h)(5)(B) for a violation of probation
This is a count of all cases in which the defendant is placed on probation for a PC 1170(h) felony and after violating probation is sentenced under PC 1170(h)(5)(B) for the probation violation.
 - *Include cases in which a defendant is sentenced directly to a term of mandatory supervision without first serving a portion of the sentence in county jail.*

VIOLATION/MODIFICATION OF MANDATORY SUPERVISION

12. Number of petitions filed or court motions made to revoke/modify mandatory supervision
Petition is defined as any filed instrument/document presented to the court that seeks revocation or modification of a defendant's supervision status. This data element should also include cases where the court on its own motion seeks to modify or revoke supervision.
13. Number of warrants issued for persons on mandatory supervision
Include both arrest and bench warrants.
14. Number of calendar events set on petitions or court motions to revoke/modify mandatory supervision
A calendar event is defined as a court proceeding set in the course of a criminal matter.

15. Number of contested evidentiary hearings held on petitions or court motions to revoke/modify mandatory supervision
A contested evidentiary hearing is defined as a hearing where the factual basis of the petition is contested, and where the parties present oral or documentary evidence in support of or in opposition to the factual allegations of the petition.
- *Contested evidentiary hearings that extend over more than one day are counted as separate hearings for each hearing day.*
 - *Do not report contested evidentiary hearings that are not heard at all and are reset at the request of the parties or on the court's motion. Count these instances under 'Number of calendar events' (data point #14).*
16. Number of cases in which an offender on mandatory supervision is found in violation of conditions of mandatory supervision and is reinstated on mandatory supervision
17. Number of cases in which an offender on mandatory supervision is found in violation of conditions of mandatory supervision and has the supervision term revoked and terminated
Report all cases in which mandatory supervision is permanently revoked as a result of a violation.

VIOLATION/MODIFICATION OF POST RELEASE COMMUNITY SUPERVISION

18. Number of petitions filed or court motions made to revoke/modify Post-Release Community Supervision (PRCS)
Petition is defined as any filed instrument/document presented to the court that seeks revocation or modification of a defendant's supervision status. This data element should also include cases where the court on its own motion seeks to modify or revoke supervision.
19. Number of warrants issued for persons on PRCS
Include both arrest and bench warrants.
20. Number of calendar events set on petitions or court motions to revoke/modify PRCS
A calendar event is defined as a court proceeding set in the course of a criminal matter.
21. Number of contested evidentiary hearings held on petitions or court motions to revoke/modify PRCS
A contested evidentiary hearing is defined as a hearing where the factual basis of the petition is contested, and where the parties present oral or documentary evidence in support of or in opposition to the factual allegations of the petition.
- *Contested evidentiary hearings that extend over more than one day are counted as separate hearings for each hearing day.*

- *Do not report contested evidentiary hearings that are not heard at all and are reset at the request of the parties or on the court's motion. Count these instances under 'Number of calendar events' (data point #20).*

22. Number of cases in which an offender on PRCS is found by the court in violation of conditions of PRCS and is reinstated on PRCS with no custody time ordered.

23. Number of cases in which an offender on PRCS is found by the court in violation of conditions of PRCS, is reinstated on PRCS, and is ordered to serve custody time.
Include cases where an offender on PRCS is given credit for time served.

24. Number of cases in which an offender on PRCS is found by the court in violation of conditions of PRCS, is reinstated on PRCS, and is referred to a reentry court, pursuant to PC 3015
Report all cases in which an offender is referred to a reentry court, as defined in PC 3015, upon a PRCS violation (see PC 3455(a)(3)).

25. Number of cases in which an offender on PRCS is found by the court in violation of conditions of PRCS, and has the PRCS term permanently terminated.

VIOLATION/MODIFICATION OF PAROLE (After July 1, 2013)

26. Number of petitions filed or court motions made to revoke/modify parole
Petition is defined as any filed instrument/document presented to the court that seeks revocation or modification of a defendant's supervision status. This data element should also include cases where the court on its own motion seeks to modify or revoke supervision.

27. Number of warrants issued for persons on parole
Include both arrest and bench warrants.

28. Number of calendar events set on petitions or court motions to revoke/modify parole
A calendar event is defined as a court proceeding set in the course of a criminal matter.

29. Number of contested evidentiary hearings held on petitions or court motions to revoke/modify parole
A contested evidentiary hearing is defined as a hearing where the factual basis of the petition is contested, and where the parties present oral or documentary evidence in support of or in opposition to the factual allegations of the petition.

- *Contested evidentiary hearings that extend over more than one day are counted as separate hearings for each hearing day.*

- *Do not report contested evidentiary hearings that are not heard at all and are reset at the request of the parties or on the court's motion. Count these instances under 'Number of calendar events' (data point #28).*
30. Number of cases in which a parolee is found by the court in violation of conditions of parole and is reinstated on parole with no custody time ordered
 31. Number of cases in which a parolee is found by the court in violation of conditions of parole, is reinstated on parole, and is ordered to serve custody time
Include cases where a parolee is given credit for time served.
 32. Number of cases in which a parolee is found by the court in violation of conditions of parole, is reinstated on parole, and is referred to a reentry court, pursuant to PC 3015
Report all cases in which an offender is referred to a reentry court, as defined in PC 3015, upon a parole violation (see PC 3000.08(f)(3)).
 33. Number of cases in which a parolee is found by the court in violation of law or conditions of parole and is remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration
PC 3000.08(h) states: "Notwithstanding any other provision of law, in any case where Section 3000.1 or paragraph (4) of subdivision (b) of Section 3000 applies to a to a person who is on parole and the court determines that the person has committed a violation of law or violated his or her conditions of parole, the person on parole shall be remanded to the custody of the Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole Hearings for the purpose of future parole consideration."

