



## JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
September 21, 2016	Recommend for Judicial Council adoption
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Cory T. Jaspersen, Director Governmental Affairs	Laura Speed, 916-323-3121 laura.speed@jud.ca.gov
Subject	
Judicial Council Legislative Policy Summary: 2016	

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#### **Executive Summary**

Governmental Affairs recommends that the Judicial Council adopt the updated Legislative Policy Summary reflecting actions through the 2016 legislative year. Adoption of this updated summary of positions taken on court-related legislation will assist the council in making decisions about future legislation, consistent with strategic plan goals.

#### **Recommendation**

Governmental Affairs recommends that the Judicial Council adopt the updated Legislative Policy Summary reflecting actions through the 2016 legislative year.

The text of the proposed summary is attached under separate cover.

#### **Previous Council Action**

The Judicial Council most recently adopted the Legislative Policy Summary (reflecting actions through the 2015 legislative year) in December 2015.

## **Rationale for Recommendation**

On behalf of the Judicial Council, the Policy Coordination and Liaison Committee (PCLC) takes positions on more than 50 bills each legislative session and monitors more than 1,000 bills. Governmental Affairs (GA) updates the council's Legislative Policy Summary annually, setting forth the council's historical policies on key legislative issues.

GA monitors legislative activity and represents the council before the Legislature and the Governor's Office. GA provides information and advice to advisory committees and PCLC on pending legislation to assist the council in formulating its positions. The Legislative Policy Summary helps ensure that council members, advisory committee members, and staff have a common understanding of council policy on issues presented in proposed legislation. The updated document reflects the council's most recent positions on legislative issues and identifies how those positions are derived from the Judicial Council's strategic plan. The Legislative Policy Summary also defines the Judicial Council's limited purview when considering pending legislation. The document is not a history of every bill on which the council has taken a position, but rather is a sampling of bills that reflect council positions on various types of legislative proposals.

## **Comments, Alternatives Considered, and Policy Implications**

This document was not circulated for public comment.

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

There are no costs, implementation requirements, or operational implications related to the adoption of the summary.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

N/A

## **Attachment**

1. 2016 Legislative Policy Summary is attached under separate cover



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### MEMORANDUM

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Date	Action Requested
August 18, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, (415) 865-4534 kimberly.dasilva@jud.ca.gov
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Tara Lundstrom, (415) 865-7995 tara.lundstrom@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Civil Procedure section 1010.6(a) and (b) to Criminal Actions	

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#### **Executive Summary**

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

## **Recommendation**

ITAC and CLAC recommend that the Judicial Council sponsor legislation enacting new Penal Code section 609.5, effective January 1, 2018.

The text of the new statute is attached at page 11.

## **Previous Council Action**

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since 1999, the Judicial Council has sponsored and supported a number of bills addressing electronic filing and service in the superior courts:

1. Sponsored Senate Bill 367 (Stats. 1999, ch. 514, § 1), which enacted Code of Civil Procedure section 1010.6 to authorize permissive electronic filing and service in the superior courts.<sup>1</sup>
2. Sponsored Assembly Bill 1700 (Stats. 2001, ch. 824, § 10.), which made technical amendments to section 1010.6.
3. Supported AB 496 (Stats. 2005, ch. 300, § 5), which amended section 1010.6 to require courts to keep a summons in its records when electronically transmitting a copy to the requesting party.
4. Sponsored SB 1274 (Stats. 2010, ch. 156, § 1), which amended section 1010.6 to recognize electronic service of documents by transmission and by notification.
5. Supported AB 2073 (Stats. 2012, ch. 320, § 1), which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project, instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions, and allowed superior courts to require mandatory electronic filing by local rule following adoption of the uniform rules.<sup>2</sup>

The council has also sponsored and supported bills to promote the use of technology in criminal courts:

1. Sponsored AB 1004 (Stats. 2013, ch. 460, § 1), which amended Penal Code sections 817 and 1526 to authorize the use of digital and electronic signatures on probable cause declarations and on search and arrest warrants.

## **Rationale for Recommendation**

Code of Civil Procedure section 1010.6 authorizes the electronic filing and service of documents in civil proceedings (see also Cal. Rules of Ct. rule 2.253 (a), which provides that “[a] court may permit parties by local rule to file documents electronically in any types of cases, directly or through approved electronic service providers, subject to the conditions in Code of Civil Procedure section 1010.6...”). No corresponding express authority exists in the Penal Code to

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<sup>1</sup> In 2002, the Judicial Council adopted statewide rules implementing permissive electronic filing and service in the trial courts. (See Cal. Rules of Court, rules 2.250–2.259.)

<sup>2</sup> Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service. (See Cal. Rules of Court, rules 2.250–2.259.)

authorize the electronic filing and service of documents in criminal cases. This proposal will add section 690.5 to part 2 of the Penal Code to expressly apply section 1010.6(a) and (b) to criminal proceedings.

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties consent to electronic filing and service.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal circulated for public comment during the spring 2016 cycle. Three comments were received in response; all three agreed with the proposal. The comments are available in the attached comment chart at pages 12–13.

The committees considered proposing amendments to the criminal rules of the California Rules of Court authorizing electronic filing and service. They concluded that express statutory authority would be clearer.

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

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

### **Attachments**

1. Text of proposed Penal Code section 690.5, at page 11
2. Chart of comments, at pages 12–13

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

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

2

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

5

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

## LEG16-03

### Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association By Todd Friedland President	A		The committees appreciate the support of the Orange County Bar Association
2.	State Bar of California, Standing Committee on the Delivery of Legal Services By Phong S. Wong Chair	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. In an effort to reduce the inefficiencies and economic burdens in our court systems associated with paper filings and hard-copy service of process, the Information Technology Advisory Committee for the Judicial Council is leading a modernization project to facilitate electronic filings and service. Up until now, although the Code of Civil Procedure authorizes electronic filing and service in civil proceedings, there is no corresponding authority in the Penal Code that would authorize such filings in criminal cases.</p> <p>This proposed legislative amendment would authorize such electronic filings in criminal cases, but would not make such electronic process mandatory. Such process would only be permissive and applicable where the courts in a particular jurisdiction have the resources to implement electronic filing and service in criminal matters, and only where the parties consent to electronic filing and service. Given the language in the amendment that requires the affected parties to consent to electronic filing</p>	<p>The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services.</p> <p>No response required.</p> <p>No response required.</p>

**LEG16-03****Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			and service, this amendment would have no impact on persons of low income or other vulnerable populations who may not have access to electronic methods of service: those persons simply would not consent to electronic service of process and would continue to receive hard-copy notices and hard-copy service of process.	
3.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		The committees appreciate the support of the Superior Court of San Diego County.





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# MEMORANDUM

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Date	Action Requested
September 18, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Douglas C. Miller, 818-558-4178 douglas.c.miller@jud.ca.gov
Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair	
Subject	
Proposal for Judicial Council-Sponsored Legislation to Authorize Electronic Delivery of Notices of Hearing in Proceedings Under the Probate Code	

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### **Executive Summary**

The Information Technology Advisory Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council sponsor legislation to modernize the Probate Code and two notice provisions of the Welfare and Institutions Code that are connected to or analogous to probate notice provisions. The proposed legislation would authorize the delivery of notices and other papers in uncontested or not-yet-contested proceedings under the Probate Code to persons by electronic means if the persons to receive notice have consented to electronic notice in the proceeding before the court and have provided electronic addresses.

## **Recommendation**

The Information Technology Advisory Committee and the Probate and Mental Health Advisory Committee recommend that the Judicial Council sponsor legislation to authorize electronic notice in specified Probate and probate-related Welfare and Institutions Code proceedings.

The text of the legislation is attached at pages 21–65.

## **Previous Council Action**

For the past two years, the Information Technology Advisory Committee has been working with the Probate and Mental Health Advisory Committee to develop rules of court and legislation that would facilitate electronic service in all proceedings under the Probate Code. Last year, the two committees developed rule 7.802 of the California Rules of Court, and the Information Technology Advisory Committee recommended adoption of that rule, effective January 1, 2016. On October 27, 2015, the Judicial Council adopted the rule, effective January 1, 2016. Rule 7.802 provides:

The provisions of Code of Civil Procedure section 1010.6 and rules 2.250–2.261 of the California Rules of Court concerning filing and service by electronic means apply to contested proceedings under the Probate Code and the Probate Rules to the same extent as they apply to other contested civil proceedings in each superior court in this state.

In other words, this rule expressly applies the electronic service provisions of Code of Civil Procedure section 1010.6 to contested probate proceedings. This action was a small part of a much larger proposal to revise titles 2, 3, 4, 5, and 8 of the California Rules of Court to modernize the rules by facilitating electronic filing, electronic service, and modern business practices in civil, appellate, juvenile court, and traffic matters.

## **Rationale for Recommendation**

This year, the two committees have prepared legislation that would revise provisions primarily in the Probate Code to permit and provide for electronic service of notices and documents concerning the majority of hearings in probate matters that are not contested or not yet contested. The committees jointly recommend Judicial Council sponsorship of this legislation in the 2017 Legislature.

Probate proceedings are in rem in nature. They are commenced by the filing of a petition, which the court immediately sets for hearing at a specific date, time, and place. Written notice of that date, time, and place must be served, usually by mail, on persons who are likely to be interested in the proceeding. These persons are usually related to the decedent or to the proposed conservatee or ward, are entitled to share in the distribution of the decedent's estate or trust, or have previously filed a written request to be served with notice of the hearing of all petitions filed in the proceeding.

The persons served have a right to appear in the proceeding, file objections or other opposition pleadings, and participate in litigation to resolve the particular issue raised in the petition. This

litigation is conducted similarly to regular civil litigation in non-jury cases. As noted above, the pretrial and trial rules that apply in regular civil litigation also apply to contested probate matters, including the e-filing and e-service provisions of Code of Civil Procedure section 1010.6 (see Prob. Code, § 1000; Cal. Rules of Court, rule 7.802). However, these provisions do not apply to the notices that must be served on interested persons concerning filed petitions that are not contested or not yet contested. This proposal would authorize e-service of notices of hearing in uncontested matters.

Filing a petition in a probate proceeding affects only the particular matter to be resolved in that petition. These proceedings usually involve a number of petitions during the progress of the case to conclusion on distribution of the estate or trust, the death of or restoration of a conservatee to capacity, or a ward's attainment of majority in a guardianship. The complete proceeding may take several years. Notices of the hearing of all petitions filed in the proceeding must be served on the persons entitled to notice, whether or not they chose to participate in litigation to resolve earlier petitions filed by interested persons, and whether or not the noticed petitions themselves are contested. This aspect of probate proceedings means that many notices of hearings must be served on a number of potentially interested persons throughout the progress of the proceeding even if none of the notices lead to contested matters. On the other hand, unlike in regular civil litigation practice, personal service of most notices and petitions is not required.<sup>1</sup> Most service in probate proceedings is by mail, even service on persons who have not previously appeared in the case.

To modernize the procedures for providing notice, this proposal would amend the relevant portions of the Probate Code and two sections of the Welfare and Institutions Code<sup>2</sup> to authorize delivery of notices by electronic means if the person to receive notice has consented to electronic service and has provided an electronic address.

The proposed legislation is lengthy. However, most of it consists of references to the basic notice provision of the Probate Code, section 1215. Amended section 1215(b) would incorporate existing section 1216. The entire amended section would read as follows:

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<sup>1</sup> There are some situations in probate proceedings that do require personal service of petitions or other documents, usually together with a citation, a document similar to a summons or an Order to Show Cause. However, these situations arise infrequently and would not be affected by the proposed legislation.

The Probate Code also permits personal service of any document that must or may be served by mail (Prob. Code, § 1216). Section 1216 would be repealed by this proposal, but its content would be carried into the completely revised section 1215(b).

<sup>2</sup> Welfare and Institutions Code sections 728 and 5362. Section 728, part of the Juvenile Court Law, requires notice from the juvenile court to the court handling an existing probate guardianship that the juvenile court has modified or terminated the probate proceeding. The court in the probate matter is then required to serve notice of this action to the persons interested in the guardianship. Thus the notice under section 728 to the persons interested in the guardianship is actually a notice under the Probate Code. Section 5362 is part of the Lanterman-Petris-Short Act's (LPS) provisions establishing conservatorships for persons gravely disabled by a mental health disorder or chronic alcoholism. Section 5350 applies Probate Code provisions governing probate conservatorships to LPS conservatorships, except as otherwise provided in section 5350. Section 5362 requires 60 days' advance notice of the LPS conservatorship's expiration date from the court to persons and institutions interested in the proceeding. That notice is governed by the notice provisions of the Probate Code.

### **Probate Code section 1215.**

Unless otherwise expressly provided, a notice or other paper that is required or permitted to be delivered to a person shall be delivered by mail as provided in subdivision (a), personally delivered as provided in subdivision (b), or delivered electronically as provided in subdivision (c) of this section.

#### **(a) Mail delivery**

(1) A notice or other paper shall be delivered by mail as follows:

(A) By first-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(B) By international mail if the person's address is not within the United States.<sup>3</sup>

International mail includes first-class mail international, priority mail international, priority mail express international, and global express guaranteed.

(2) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(3) Subject to Section 1212, the notice or other paper shall be addressed to the person at the person's place of business or place of residence.

(4) When the notice or other paper is deposited in the mail, mailing delivery is complete and the period of notice is not extended.

#### **(b) Personal delivery**

(1) A notice or other paper may be delivered personally to that person.

(2) Personal delivery is complete when the notice or other paper is delivered personally to the person who is to receive it.

#### **(c) Electronic delivery**

(1) A notice or other paper may be delivered by electronic means if the person to receive notice has consented to receive electronic delivery in the proceeding before the court and has provided an electronic address.

(2) Electronic delivery is complete when the notice or other paper is sent and the period of notice is not extended.

## **Comments, Alternatives Considered, and Policy Implications**

### **Circulation for Comment and Responses**

This proposal was circulated for public comment by the Probate and Mental Health Advisory Committee (PMHAC) to court leaders and others in the probate bar and community. Six comments were received. All commentators approved the proposal, but there were recommendations for modifications by three of them. A copy of the comment chart on this proposal follows this memorandum, with PMHAC's responses.

Hon. Julia Kelety, Judge of the Superior Court, County of San Diego, made three recommendations for changes, and a request to review and update all proof-of-service forms to

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<sup>3</sup> "International mail" would replace "Airmail," an obsolete term no longer used to describe a class of mail by the United States Postal Service. The new phrase and the types of international mail listed were provided by the postal service.

accommodate e-filing, a review the advisory committee advised her will take place in 2017 so the modified forms would take effect at the same time as the proposed legislation. The third recommendation is merely to correct a typographical error in the proposed revision of Welfare and Institutions Code section 728, which was intended to refer to revised Probate Code section 1215 but instead refers to “section 215.” That correction has been made.

Judge Kelely’s first recommendation was to clarify in revised section 1215 that a party’s consent to e-service must be in the specific matter before the court, not in some other proceeding or in general. PMHAC supported this recommendation. Section 1215(c)(1) has been changed to read:

(1) A notice or other paper may be delivered by electronic means if the person to receive notice has consented in the proceeding before the court to receive electronic delivery and has provided an electronic address. (Emphasis added.)<sup>4</sup>

Judge Kelely’s second recommendation was to amend Cal. Rules of Court, rule 2.503, concerning limits on remote access to court records, because of her belief that electronic service by the court of documents to a person who is not a party (but who is entitled to notice) amounts to giving the person electronic court records subject to the rule. PMHAC did not support this change because the rules regarding remote access to court records, by their own terms, do not apply to parties or other persons entitled to access by statute or rule. The legislation would create a new class of “other persons entitled to access by statute”—persons or organizations that are not parties but are entitled to notice of a hearing in a probate matter.

Michael Roddy, the Executive Officer of the Superior Court of San Diego County, repeated Judge Kelely’s concerns about the effect of rule 2.503 on electronic service on a non-party by the court, but also requested that the committee undertake to develop and propose the adoption of a mandatory form for persons interested in a probate proceeding to consent in writing to electronic service. The committee’s response was to advise that it will propose any necessary or advisable new or revised forms—of which this appears to be one—while the proposed legislation is pending, in 2017.

Ms. Cheryl Siler, of Aderant Holdings, Inc., a national legal software company locally based in Culver City, advises of a potential conflict between the normal rule on service by mail: that the period of notice is not extended by the time necessary for delivery of the mail (current Probate Code section 1215(e), redesignated as section 1215(a)(4) in the revision without change), and a provision in Code of Civil Procedure 1010.6, concerning electronic service, which is incorporated by reference in revised Probate Code section 1215(c). Section 1010.6(a)(4) extends the period of notice by two days if notice of hearing is transmitted by electronic means.

The advisory committee supported Ms. Siler’s recommendation that the lack of an extension of the notice period should also apply for electronic service in uncontested probate matters, and that revised Probate Code section 1215(c)(2) should be changed to clarify that the time of notice is

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<sup>4</sup> The “proceeding before the court” is intended to mean the entire probate proceeding, not merely the specific matter raised by the notice of hearing, the petition, or any responsive pleading.

not extended. The following revision of section 1215(c)(2) was approved to accomplish this change:

Electronic service is complete when the notice or other paper is sent and the period of notice is not extended.

Existing section 1215(e) concludes with the same phrase. It would be retained in amended section 1215(a)(4). The phrase is a reference to Code of Civil Procedure section 1013(a), concerning mailing in contested civil matters, which provides a 5-day extension of the notice period if the notice is mailed.

The parallel provision for electronic service is amended section 1215(c)(2), which would be a reference to the two-day extended notice period of Code of Civil Procedure 1010.6(a)(4) in contested matters. In both situations in uncontested matters, mailed notices under section 1215(a) and e-served notices under section 1215(c) would not extend the period of notice.

Finally, the comment of the Superior Court of Los Angeles County refers to Welfare and Institutions Code section 5362, part of the Lanterman-Petris-Short (LPS) Act, which requires the court clerk to notify the LPS conservator, the conservatee, the conservatee's attorney, the facility where the LPS conservatee is confined, and certain other county officials if the conservator is a private party, of the termination of the conservatorship at least 60 days before the termination date. The court requests that electronic service of this notice be mandated at some point in the future.

PMHAC's response to this comment advises that section 5362 would be amended by the proposed legislation to provide for notification "pursuant to section 1215 of the Probate Code," which would include electronic service.

#### **Post-Public Comment Review Process**

On August 5, 2016, PMHAC met and discussed the above comments and proposals for change. With the changes noted above, the committee voted to recommend the amended legislative proposal for Judicial Council sponsorship.

On August 19, 2016, the Rules & Policy Subcommittee of the Information Technology Advisory Committee met and discussed the comments and actions taken by the probate committee in response. The subcommittee approved those actions and recommended that its full committee support them. On August 25, 2016, the full Information and Technology Advisory Committee met and considered the recommendation of its Rules & Policy Subcommittee. The full committee approved them for review by the Judicial Council Technology Committee as part of the process to develop a recommendation that the Judicial Council sponsor the legislation.

The Judicial Council's Technology Committee reviewed the joint proposal of the Information Technology and Probate and Mental Health Advisory Committees on September 12, 2016, and

unanimously approved it for consideration by the Policy Coordination and Liaison Committee for Judicial Council sponsorship.

### **Attachments**

1. Text of proposed sections is attached at pages 21–65
2. The comment chart, including the responses of the Probate and Mental Health Advisory Committee, is attached at pages 66–77

Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; and Welfare and Institutions Code sections 728 and 5362 would be amended; existing Probate Code section 1265 would be restated as a new section 1266 and a new Probate Code section 1265 enacted; and Probate Code section 1216 would be repealed, effective January 1, 2018, to read:

1 **Probate Code section 331.**

2 (a) This section applies only to a safe deposit box in a financial institution held by the decedent  
3 in the decedent’s sole name, or held by the decedent and others where all are deceased. Nothing  
4 in this section affects the rights of a surviving coholder.

5 (b) \* \* \*

6 (c) \* \* \*

7 (d) \* \* \*

8 (e) The person given access shall deliver all wills found in the safe deposit box to the clerk of the  
9 superior court and ~~mail or~~ deliver pursuant to Section 1215 a copy to the person named in the  
10 will as executor or beneficiary as provided in Section 8200.

11 (f) \* \* \*

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13 **Probate Code section 366.**

14 Notice of a hearing under this part shall be ~~mailed~~ delivered pursuant to Section 1215 at least 15  
15 days before the hearing to each fiduciary and consultant and to the following persons:

16 (a) In the case of a trust, to each known beneficiary, subject to the provisions of Chapter 2  
17 (commencing with Section 15800) of Part 3 of Division 9.

18 (b) In the case of a decedent’s estate, as provided in Section 1220 to both of the following:

19 (1) Each known heir whose interest in the estate would be affected by the proceedings.

20 (2) Each known devisee whose interest in the estate would be affected by the proceedings.

21 (c) In the case of a guardianship or conservatorship estate, as provided in Section 1460.

22 (d) In other cases, to any additional interested persons required by the court to receive notice.

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24 **Probate Code section 453.**

25 (a) On petition of a person required to appear before the probate referee pursuant to this chapter,  
26 the court may make a protective order to protect the person from annoyance, embarrassment, or  
27 oppression. The petitioner shall deliver pursuant to Section 1215 ~~mail~~ notice of the hearing on  
28 the petition to the probate referee and to the personal representative, guardian, conservator, or  
29 other fiduciary at least 15 days before the date set for the hearing. Any subpoena issued by the  
30 probate referee is stayed during the pendency of the petition.

31 (b) On petition of the probate referee, the court may make an order to show cause why a person  
32 who is required, but fails, to appear before the probate referee pursuant to this chapter, should not  
33 be compelled to do so. The probate referee shall deliver pursuant to Section 1215 ~~mail~~ notice of  
34 the hearing on the petition to the person at least 15 days before the date set for the hearing.



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**Probate Code section 711.**

If a document deposited with an attorney is lost or destroyed, the attorney shall give notice of the loss or destruction to the depositor by one of the following methods:

(a) By ~~mailing~~ delivering pursuant to Section 1215 the notice to the depositor’s last known address.

(b) By the method most likely to give the depositor actual notice.

**Probate Code section 715.**

An attorney may give written notice to a depositor, and obtain written acknowledgment from the depositor, in the following form:

NOTICE AND ACKNOWLEDGMENT

To:

\_\_\_\_\_ (Name of depositor) \_\_\_\_\_

\_\_\_\_\_ (Address) \_\_\_\_\_

\_\_\_\_\_ (City, state, and ZIP) \_\_\_\_\_

\_\_\_\_\_ (Electronic Address)

I have accepted your will or other estate planning document for safekeeping. I must use ordinary care for preservation of the document.

You must keep me advised of any change in your addresses shown above. If you do not and I cannot return this document to you when necessary, I will no longer be required to use ordinary care for preservation of the document, and I may transfer it to another attorney, or I may transfer it to the clerk of the superior court of the county of your last known domicile, and give notice of the transfer to the State Bar of California.

\_\_\_\_\_ (Signature of attorney) \_\_\_\_\_

\_\_\_\_\_ (Address of attorney) \_\_\_\_\_

\_\_\_\_\_ (City, state, ZIP) \_\_\_\_\_

\_\_\_\_\_ (Electronic Address)

My addresses shown above ~~is~~ are correct. I understand that I must keep you advised of any change in ~~these~~ addresses.

Dated:

\_\_\_\_\_ (Signature of depositor) \_\_\_\_\_

**Probate Code section 732.**

(a) An attorney may terminate a deposit under this section if the attorney has ~~mailed~~ delivered notice pursuant to section 1215 ~~notice~~ to reclaim the document to the depositor’s last known address and the depositor has failed to reclaim the document within 90 days after the ~~mailing~~ delivery.

(b) Subject to subdivision (f), an attorney may terminate a deposit under this section by transferring the document to another attorney. All documents transferred under this subdivision shall be transferred to the same attorney.

1 (c) Subject to subdivision (f), if an attorney is deceased, lacks legal capacity, or is no longer an  
2 active member of the State Bar, a deposit may be terminated under this section by transferring the  
3 document to the clerk of the superior court of the county of the depositor's last known domicile.  
4 The attorney shall advise the clerk that the document is being transferred pursuant to Section  
5 732.

6 (d) An attorney may not accept a fee or compensation from a transferee for transferring a  
7 document under this section. An attorney may charge a fee for receiving a document under this  
8 section.

9 (e) Transfer of a document by an attorney under this section is not a waiver or breach of any  
10 privilege or confidentiality associated with the document, and is not a violation of the rules of  
11 professional conduct. If the document is privileged under Article 3 (commencing with Section  
12 950) of Chapter 4 of Division 8 of the Evidence Code, the document remains privileged after the  
13 transfer.

14 (f) If the document is a will and the attorney has actual notice that the depositor has died, the  
15 attorney may terminate a deposit only as provided in Section 734.

16  
17 **Probate Code section 733.**

18 (a) An attorney transferring one or more documents under Section 732 shall ~~mail~~ deliver notice  
19 pursuant to Section 1215 ~~notice~~ of the transfer to the State Bar of California. The notice shall  
20 contain all of the following information:

21 (1) The name of the depositor.

22 (2) The date of the transfer.

23 (3) The name, address, and State Bar number of the transferring attorney.

24 (4) Whether any documents are transferred to an attorney, and the name, address, and State Bar  
25 number of the attorney to whom the documents are transferred.

26 (5) Whether any documents are transferred to a superior court clerk.

27 (b) The State Bar shall record only one notice of transfer for each transferring attorney. The State  
28 Bar shall prescribe the form for the notice of transfer. On request by any person, the State Bar  
29 shall give that person information in the notice of transfer. At its sole election, the State Bar may  
30 give the information orally or in writing.

31  
32 **Probate Code section 1050.** The judgment roll in a proceeding under this code consists of the  
33 following papers, where applicable:

34 (a) In all cases:

35 (1) The petition, application, report, or account that initiates a particular proceeding.

36 (2) Any order directing notice of the hearing to be given.

37 (3) Any notice of the hearing, and any order to show cause made in the proceeding, with the  
38 affidavits showing publication, posting, ~~or mailing, or personal~~ delivery pursuant to Section 1215  
39 of the notice or order as may be required by law or court order.

40 (4) Any citation, in case no answer or written opposition is filed by a party entitled, by law or  
41 court order, to notice of the proceeding by citation, with the affidavit or proof of service and, if  
42 service of the citation is made by publication, the affidavit of publication and the order directing  
43 publication.

- 1 (5) Any finding of the court or referee in the proceeding.
- 2 (6) The order or statement of decision made in the proceeding.
- 3 (7) Any letters (as defined in Section 52).
- 4 (b) If an answer, demurrer, written opposition, or counter petition is filed in a proceeding:
- 5 (1) Pleadings and papers in the nature of pleadings.
- 6 (2) Any orders striking out a pleading in whole or in part.
- 7 (3) Any order made on demurrer, or relating to a change of parties, in the proceeding.
- 8 (4) The verdict of the jury, if any.
- 9 (c) If the proceeding is for the probate of a will, the will.
- 10 (d) If the proceeding is a contest of a will, for the revocation of the probate of a will, or for a
- 11 preliminary or final distribution of the estate under a will:
- 12 (1) The will.
- 13 (2) The order admitting the will to probate.
- 14 (e) If the proceeding is for the settlement of the final account of a personal representative or for
- 15 the final distribution of an estate, the affidavit showing publication of notice to creditors.

16  
17 **Probate Code section 1209.**

- 18 (a) Where notice is required to be given to the State of California, the notice shall be given to the
- 19 Attorney General.
- 20 (b) Where notice is required to be given to the Attorney General, the notice shall be ~~mailed~~
- 21 delivered pursuant to Section 1215 to the Attorney General at the office of the Attorney General
- 22 at Sacramento, California.

23  
24 **Probate Code section 1212.**

25 Unless the court dispenses with the notice, if the address of the person to whom a notice or other

26 paper is required to be ~~mailed or~~ delivered pursuant to Section 1215 is not known, notice shall be

27 given as the court may require in the manner provided in Section 413.30 of the Code of Civil

28 Procedure.

29  
30 **Probate Code section 1213.**

- 31 (a) The following persons shall ~~mail~~ deliver pursuant to Section 1215 a notice, as described in
- 32 Section 1211, to a surety who has filed a court bond in a proceeding:
- 33 (1) A person who files a petition to surcharge.
- 34 (2) A person who files an objection to an account.
- 35 (3) A person who files a petition to suspend or remove a guardian, conservator, or personal
- 36 representative.
- 37 (4) An attorney who files a motion to withdraw from representation of a guardian, conservator, or
- 38 personal representative.
- 39 (b) Within five days after entry of an order to suspend or remove a guardian, conservator, or
- 40 personal representative, the person who filed a petition to suspend or remove a guardian or, if the
- 41 order to suspend or remove a guardian, conservator, or personal representative was issued upon a
- 42 motion by the court, the court, shall notify the surety who has filed a court bond of the order ~~by~~
- 43 first class mail, postage prepaid.

1 (c) The notice required by this section shall be ~~mailed~~ delivered to the addressee listed on the  
2 surety bond.

3 (d) Notwithstanding subdivisions (a) and (b), notice is not required to a surety pursuant to this  
4 section if the surety bond is for a guardian, conservator, or personal representative who is not the  
5 subject of the petition, motion, or order described in this section.  
6

7 **Probate Code section 1214.**

8 If a notice or other paper is required or permitted to be ~~mailed, delivered, served, or otherwise~~  
9 ~~given~~ served or delivered pursuant to Section 1215 to a person who is represented by an attorney  
10 of record, the notice or other paper shall also be ~~mailed~~ delivered pursuant to Section 1215 to this  
11 attorney, unless otherwise specified in a request for special notice.  
12

13 **Probate Code section 1215.**

14 Unless otherwise expressly provided: ~~(a) If a notice or other paper is required or permitted to be~~  
15 ~~mailed to a person, the notice or other paper shall be mailed as provided in this section or~~  
16 ~~personally delivered as provided in Section 1216.~~ a notice or other paper that is required or  
17 permitted to be delivered to a person shall be mailed delivered by mail as provided in subdivision  
18 (a), personally delivered as provided in subdivision (b), or delivered electronically as provided in  
19 subdivision (c) of this section.

20 (a) Mail delivery

21 (1) The A notice or other paper shall be sent delivered by mail as follows:

22 ~~(1A*i*)~~ By first-class mail if the person's address is within the United States. First-class mail  
23 includes certified, registered, and express mail.

24 ~~(2B*ii*)~~ Airmail By international mail if the person's address is not within the United States.

25 International mail includes first-class mail international, priority mail international, priority mail  
26 express international, and global express guaranteed.

27 ~~(32*iii*)~~ The notice or other paper shall be deposited for collection in the United States mail, in a  
28 sealed envelope, with postage paid, addressed to the person to whom it is mailed.

29 ~~(43*d*)~~ Subject to Section 1212, the notice or other paper shall be addressed to the person at the  
30 person's place of business or place of residence.

31 ~~(54*e*)~~ When the notice or other paper is deposited in the mail, mailing delivery is complete and  
32 the period of notice is not extended.

33 ~~§ 1216(b).~~ Personal delivery

34 ~~(a1)~~ If a A notice or other paper is required or permitted to be mailed to a person, it may be  
35 delivered personally to that person. Personal delivery as provided in this section satisfies a  
36 provision that requires or permits a notice or other paper to be mailed.

37 (b2) Personal delivery pursuant to this section is complete when the notice or other paper is  
38 delivered personally to the person who is to receive it.

39 (c) Electronic delivery

40 (1) A notice or other paper may be delivered by electronic means if the person to receive notice  
41 has consented to receive electronic delivery in the proceeding before the court and has provided  
42 an electronic address.

1 (2) Electronic delivery is complete when the notice or other paper is sent and the period of notice  
2 is not extended.

3 ~~(3) If notice is required to be sent by certified or registered mail, electronic delivery is complete~~  
4 ~~when the person to receive notice sends an electronic receipt if the receipt is later received by the~~  
5 ~~sender.~~

6  
7 **Probate Code section 1217.**

8 If a notice or other paper is required to be served or otherwise given and no other manner of  
9 giving the notice or other paper is specified by statute, the notice or other paper shall be ~~mailed~~  
10 ~~or personally delivered~~ pursuant to Section 1215 ~~as provided in this chapter.~~

11  
12 **Probate Code section 1220.**

13 (a) When notice of hearing is required to be ~~given~~ delivered as provided in this section:

14 (1) At least 15 days before the time set for the hearing, the petitioner or the person filing the  
15 report, account, or other paper shall cause notice of the time and place of the hearing to be ~~mailed~~  
16 delivered pursuant to Section 1215 to the persons required to be given notice.

17 (2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be  
18 ~~mailed~~ delivered pursuant to Section 1215 to all of the following:

19 (A) The personal representative.

20 (B) All persons who have requested special notice in the estate proceeding pursuant to Section  
21 1250.

22 (3) Subject to Section 1212, the notice shall be ~~addressed~~ delivered pursuant to Section 1215 to  
23 the person required to be given notice at the person's place of business, ~~or~~ place of residence, or  
24 electronic address.

25 (b) Subject to subdivision (c), nothing in this section excuses compliance with the requirements  
26 for notice to a person who has requested special notice pursuant to Chapter 6 (commencing with  
27 Section 1250).

28 (c) The court for good cause may dispense with the notice otherwise required to be given to a  
29 person as provided in this section.

30  
31 **Probate Code section 1250.**

32 (a) At any time after the issuance of letters in a proceeding under this code for the administration  
33 of a decedent's estate, any person interested in the estate, whether as devisee, heir, creditor,  
34 beneficiary under a trust, or as otherwise interested, may in person or by attorney, file with the  
35 court clerk a written request for special notice.

36 (b) The request for special notice shall be so entitled and shall set forth the name of the person  
37 and the address to which notices shall be ~~sent~~ delivered pursuant to Section 1215.

38 (c) Special notice may be requested of one or more of the following matters:

39 (1) Petitions filed in the administration proceeding.

40 (2) Inventories and appraisals of property in the estate, including any supplemental inventories  
41 and appraisals.

42 (3) Objections to an appraisal.

43 (4) Accounts of a personal representative.

1 (5) Reports of status of administration.

2 (d) Special notice may be requested of any matter in subdivision (c) by describing it, or of all the  
3 matters in subdivision (c) by referring generally to “the matters described in subdivision (c) of  
4 Section 1250 of the Probate Code” or by using words of similar meaning.

5 (e) A copy of the request shall be ~~personally~~ delivered pursuant to Section 1215 ~~or mailed~~ to the  
6 personal representative or to the attorney for the personal representative. If personally delivered,  
7 the request is effective when it is delivered. If mailed or electronically delivered, the request is  
8 effective when it is received.

9 (f) When the original of the request is filed with the court clerk, it shall be accompanied by a  
10 written admission or proof of service.

11  
12 **Probate Code section 1252.**

13 (a) Unless the court makes an order dispensing with the notice, if a request has been made  
14 pursuant to Section 1250 for special notice of a hearing, the person filing the petition, report,  
15 account, or other paper shall give written notice of the filing, together with a copy of the petition,  
16 report, account, or other paper, and the time and place set for the hearing, by ~~mail~~ delivering it  
17 pursuant to Section 1215 to the person named in the request at the address set forth in the  
18 request, at least 15 days before the time set for the hearing.

19 (b) If a request has been made pursuant to Section 1250 for special notice of the filing of an  
20 inventory and appraisal of the estate or of the filing of any other paper that does not require a  
21 hearing, the inventory and appraisal or other paper shall be ~~mailed~~ delivered pursuant to Section  
22 1215 not later than 15 days after the inventory and appraisal or other paper is filed with the court.

23  
24 **Probate Code section 1265.**

25 Proof of electronic delivery may be made in the manner prescribed in Section 1013b of the Code  
26 of Civil Procedure.

27  
28 **Probate Code section ~~1265~~ 1266.**

29 Proof of notice, however given, may be made by evidence presented at the hearing.

30  
31 **Probate Code section 1460.**

32 (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the  
33 applicable provision does not fix the manner of giving notice of hearing, the notice of the time  
34 and place of the hearing shall be given at least 15 days before the day of the hearing as provided  
35 in this section.

36 (b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a  
37 person filing a petition, report, or account, shall cause the notice of hearing to be ~~mailed~~  
38 delivered pursuant to Section 1215 to each of the following persons:

39 (1) The guardian or conservator.

40 (2) The ward or the conservatee.

41 (3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, or the  
42 domestic partner of the conservatee, if the conservatee has a domestic partner.

43 (4) Any person who has requested special notice of the matter, as provided in Section 2700.

1 (5) For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to  
2 remove the guardian, the persons described in subdivision (c) of Section 1510.

3 (6) For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to  
4 remove the conservator, the persons described in subdivision (b) of Section 1821.

5 (c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section  
6 1230 if the posting is required by subdivision (c) of Section 2543.

7 (d) Except as provided in subdivision (e), nothing in this section excuses compliance with the  
8 requirements for notice to a person who has requested special notice pursuant to Chapter 10  
9 (commencing with Section 2700) of Part 4.

10 (e) The court for good cause may dispense with the notice otherwise required to be given to a  
11 person as provided in this section.

12  
13 **Probate Code section 1461.**

14 (a) As used in this section, “director” means:

15 (1) The Director of State Hospitals when the state hospital referred to in subdivision (b) is under  
16 the jurisdiction of the State Department of State Hospitals.

17 (2) The Director of Developmental Services when the state hospital referred to in subdivision (b)  
18 is under the jurisdiction of the State Department of Developmental Services.

19 (b) Notice of the time and place of hearing on the petition, report, or account, and a copy of the  
20 petition, report, or account, shall be ~~mailed~~ delivered pursuant to Section 1215 to the director at  
21 the director’s office in Sacramento, California, or to the electronic address designated by the  
22 director for receipt of notice pursuant to this code, at least 15 days before the hearing if both of  
23 the following conditions exist:

24 (1) The ward or conservatee is or has been during the guardianship or conservatorship proceeding  
25 a patient in, or on leave from, a state hospital under the jurisdiction of the State Department of  
26 State Hospitals or the State Department of Developmental Services.

27 (2) The petition, report, or account is filed under any one or more of the following provisions:  
28 Section 1510, 1820, 1861, 2212, 2403, 2421, 2422, or 2423; Article 7 (commencing with Section  
29 2540) of Chapter 6 of Part 4; Section 2580, 2592, or 2620; Chapter 9.5 (commencing with  
30 Section 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of  
31 Part 6. Notice under this section is not required in the case of an account pursuant to Section  
32 2620 if the total guardianship or conservatorship assets are less than one thousand five hundred  
33 dollars (\$1,500) and the gross annual income, exclusive of any public assistance income, is less  
34 than six thousand dollars (\$6,000), and the ward or conservatee is not a patient in, or on leave or  
35 on outpatient status from, a state hospital at the time of the filing of the petition.

36 (c) If the ward or conservatee has been discharged from the state hospital, the director, upon  
37 ascertaining the facts, may file with the court a certificate stating that the ward or conservatee is  
38 not indebted to the state and waive the giving of further notices under this section. Upon the  
39 filing of the certificate of the director, compliance with this section thereafter is not required  
40 unless the certificate is revoked by the director and notice of the revocation is filed with the  
41 court.

42 (d) The statute of limitations does not run against any claim of the State Department of State  
43 Hospitals or the State Department of Developmental Services against the estate of the ward or

1 conservatee for board, care, maintenance, or transportation with respect to an account that is  
2 settled without giving the notice required by this section.

3  
4 **Probate Code section 1461.4.**

5 (a) The petitioner shall ~~mail or personally serve~~ deliver pursuant to Section 1215 a notice of the  
6 hearing and a copy of the petition to the director of the regional center for the developmentally  
7 disabled at least 30 days before the day of the hearing on a petition for appointment in any case in  
8 which all of the following conditions exist:

9 (1) The proposed ward or conservatee has developmental disabilities.

10 (2) The proposed guardian or conservator is not the natural parent of the proposed ward or  
11 conservatee.

12 (3) The proposed guardian or conservator is a provider of board and care, treatment, habilitation,  
13 or other services to persons with developmental disabilities or is a spouse or employee of a  
14 provider.

15 (4) The proposed guardian or conservator is not a public entity.

16 (b) The regional center shall file a written report and recommendation with the court regarding  
17 the suitability of the petitioners to meet the needs of the proposed ward or conservatee in any  
18 case described in subdivision (a).

19  
20 **Probate Code section 1461.5.**

21 Notice of the time and place of hearing on a petition, report, or account, and a notice of the filing  
22 of an inventory, together with a copy of the petition, report, inventory, or account, shall be ~~mailed~~  
23 delivered pursuant to Section 1215 to the office of the Veterans Administration having  
24 jurisdiction over the area in which the court is located at least 15 days before the hearing, or  
25 within 15 days after the inventory is filed, if both of the following conditions exist:

26 (a) The guardianship or conservatorship estate consists or will consist wholly or in part of any of  
27 the following:

28 (1) Money received from the Veterans Administration.

29 (2) Revenue or profit from such money or from property acquired wholly or in part from such  
30 money.

31 (3) Property acquired wholly or in part with such money or from such property.

32 (b) The petition, report, inventory, or account is filed under any one or more of the following  
33 provisions: Section 1510, 1601, 1820, 1861, 1874, 2422, or 2423; Article 7 (commencing with  
34 Section 2540) of Chapter 6 of Part 4; Section 2570, 2571, 2580, 2592, 2610, 2613, or 2620;  
35 Chapter 8 (commencing with Section 2640) of Part 4; Chapter 9.5 (commencing with Section  
36 2670) of Part 4; Section 3080 or 3088; or Chapter 3 (commencing with Section 3100) of Part 6.

37  
38 **Probate Code section 1511.**

39 (a) Except as provided in subdivisions (f) and (g), at least 15 days before the hearing on the  
40 petition for the appointment of a guardian, notice of the time and place of the hearing shall be  
41 given as provided in subdivisions (b), (c), (d), and (e) of this section. The notice shall be  
42 accompanied by a copy of the petition. The court may not shorten the time for giving the notice  
43 of hearing under this section.



1 (b) Notice shall be served in the manner provided in Section 415.10 or 415.30 of the Code of  
2 Civil Procedure, or in any manner authorized by the court, on all of the following persons:

3 (1) The proposed ward if 12 years of age or older.

4 (2) Any person having legal custody of the proposed ward, or serving as guardian of the estate of  
5 the proposed ward.

6 (3) The parents of the proposed ward.

7 (4) Any person nominated as a guardian for the proposed ward under Section 1500 or 1501.

8 (c) Notice shall be ~~given by mail sent~~ delivered pursuant to Section 1215 to their addresses stated  
9 in the petition, or in any manner authorized by the court, to all of the following:

10 (1) The spouse named in the petition.

11 (2) The relatives named in the petition, except that if the petition is for the appointment of a  
12 guardian of the estate only the court may dispense with the giving of notice to any one or more or  
13 all of the relatives.

14 (3) The person having the care of the proposed ward if other than the person having legal custody  
15 of the proposed ward.

16 (d) If notice is required by Section 1461 or Section 1542 to be given to the Director of State  
17 Hospitals or the Director of Developmental Services or the Director of Social Services, notice  
18 shall be ~~mailed~~ delivered pursuant to Section 1215 as so required.

19 (e) If the petition states that the proposed ward is receiving or is entitled to receive benefits from  
20 the Veterans Administration, notice shall be ~~mailed~~ delivered pursuant to Section 1215 to the  
21 office of the Veterans Administration referred to in Section 1461.5.

22 (f) Unless the court orders otherwise, notice shall not be given to any of the following:

23 (1) The parents or other relatives of a proposed ward who has been relinquished to a licensed  
24 adoption agency.

25 (2) The parents of a proposed ward who has been judicially declared free from their custody and  
26 control.

27 (g) Notice need not be given to any person if the court so orders upon a determination of either of  
28 the following:

29 (1) The person cannot with reasonable diligence be given the notice.

30 (2) The giving of the notice would be contrary to the interest of justice.

31 (h) Before the appointment of a guardian is made, proof shall be made to the court that each  
32 person entitled to notice under this section either:

33 (1) Has been given notice as required by this section.

34 (2) Has not been given notice as required by this section because the person cannot with  
35 reasonable diligence be given the notice or because the giving of notice to that person would be  
36 contrary to the interest of justice.

37 (i) If notice is required by Section 1460.2 to be given to an Indian custodian or tribe, notice shall  
38 be mailed as so required.

39  
40 **Probate Code section 1513.2.**

41 (a) To the extent resources are available, the court shall implement procedures, as described in  
42 this section, to ensure that every guardian annually completes and returns to the court a status  
43 report, including the statement described in subdivision (b). A guardian who willfully submits

1 any material information required by the form which he or she knows to be false shall be guilty  
2 of a misdemeanor. Not later than one month prior to the date the status report is required to be  
3 returned, the clerk of the court shall ~~mail~~ deliver pursuant to Section 1215 a notice to the  
4 guardian ~~by first-class mail a notice~~ informing the guardian that he or she is required to complete  
5 and return the status report to the court. The clerk shall enclose with the letter a blank status  
6 report form for the guardian to complete and return. ~~by mail~~. If the status report is not  
7 completed and returned as required, or if the court finds, after a status report has been completed  
8 and returned, that further information is needed, the court shall attempt to obtain the information  
9 required in the report from the guardian or other sources. If the court is unable to obtain this  
10 information within 30 days after the date the status report is due, the court shall either order the  
11 guardian to make himself or herself available to the investigator for purposes of investigation of  
12 the guardianship, or to show cause why the guardian should not be removed.

13 (b) The Judicial Council shall develop a form for the status report. The form shall include the  
14 following statement: "A guardian who willfully submits any material information required by  
15 this form which he or she knows to be false is guilty of a misdemeanor." The form shall request  
16 information the Judicial Council deems necessary to determine the status of the guardianship,  
17 including, but not limited to, the following:

- 18 (1) The guardian's present address and electronic address.
- 19 (2) The name and birth date of the child under guardianship.
- 20 (3) The name of the school in which the child is enrolled, if any.
- 21 (4) If the child is not in the guardian's home, the name, relationship, address, electronic address,
- 22 and telephone number of the person or persons with whom the child resides.
- 23 (5) If the child is not in the guardian's home, why the child was moved.

24 (c) The report authorized by this section is confidential and shall only be made available to  
25 persons who have been served in the proceedings or their attorneys. The clerk of the court shall  
26 implement procedures for the limitation of the report exclusively to persons entitled to its receipt.

27 (d) The Judicial Council shall report to the Legislature no later than December 31, 2004,  
28 regarding the costs and benefits of utilizing the annual status report.

29  
30 **Probate Code section 1516.**

31 (a) In each case involving a petition for guardianship of the person, the petitioner shall ~~mail~~  
32 deliver pursuant to Section 1215 a notice of the hearing and a copy of the petition, at least 15  
33 days prior to the hearing, to the local agency designated by the board of supervisors to investigate  
34 guardianships for the court. The local social services agency providing child protection services  
35 shall screen the name of the guardian for prior referrals of neglect or abuse of minors. The results  
36 of this screening shall be provided to the court.

37 (b) This section does not apply to guardianships resulting from a permanency plan for a  
38 dependent child pursuant to Section 366.25 of the Welfare and Institutions Code.

39  
40 **Probate Code section 1542.**

41 In each case involving a petition for guardianship of the person, the petitioner shall ~~mail~~ deliver  
42 pursuant to Section 1215 a notice of the hearing and a copy of the petition, at least 15 days prior

1 to the hearing, to the Director of Social Services at the director's office in Sacramento and to the  
2 local agency designated by the board of supervisors to investigate guardianships for the court.

3  
4 **Probate Code section 1822.**

5 (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of  
6 the time and place of the hearing shall be given as provided in this section. The notice shall be  
7 accompanied by a copy of the petition. The court may not shorten the time for giving the notice  
8 of hearing under this section.

9 (b) Notice shall be ~~mailed~~ delivered pursuant to Section 1215 to the following persons:

10 (1) The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the  
11 address stated in the petition.

12 (2) The relatives named in the petition at their addresses stated in the petition.

13 (c) If notice is required by Section 1461 to be given to the Director of State Hospitals or the  
14 Director of Developmental Services, notice shall be ~~mailed~~ delivered pursuant to Section 1215 as  
15 so required.

16 (d) If the petition states that the proposed conservatee is receiving or is entitled to receive  
17 benefits from the Veterans Administration, notice shall be mailed to the Office of the Veterans  
18 Administration referred to in Section 1461.5.

19 (e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before  
20 the day of the hearing on the petition, the petitioner shall ~~mail~~ deliver pursuant to Section 1215 a  
21 notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

22 (f) If the petition states that the petitioner and the proposed conservator have no prior relationship  
23 with the proposed conservatee and are not nominated by a family member, friend, or other person  
24 with a relationship to the proposed conservatee, notice shall be ~~mailed~~ delivered pursuant to  
25 Section 1215 to the public guardian of the county in which the petition is filed.

26  
27 **Probate Code section 1826.**

28 a) Regardless of whether the proposed conservatee attends the hearing, the court investigator  
29 shall do all of the following:

30 (1) Conduct the following interviews:

31 (A) The proposed conservatee personally.

32 (B) All petitioners and all proposed conservators who are not petitioners.

33 (C) The proposed conservatee's spouse or registered domestic partner and relatives within the  
34 first degree. If the proposed conservatee does not have a spouse, registered domestic partner, or  
35 relatives within the first degree, to the greatest extent possible, the proposed conservatee's  
36 relatives within the second degree.

37 (D) To the greatest extent practical and taking into account the proposed conservatee's wishes,  
38 the proposed conservatee's relatives within the second degree not required to be interviewed  
39 under subparagraph (C), neighbors, and, if known, close friends.

40 (2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and  
41 effect of the proceeding, and of the right of the proposed conservatee to oppose the proceeding,  
42 to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury,

- 1 to be represented by legal counsel if the proposed conservatee so chooses, and to have legal  
2 counsel appointed by the court if unable to retain legal counsel.
- 3 (3) Determine if it appears that the proposed conservatee is unable to attend the hearing and, if  
4 able to attend, whether the proposed conservatee is willing to attend the hearing.
- 5 (4) Review the allegations of the petition as to why the appointment of the conservator is  
6 required and, in making his or her determination, do the following:
- 7 (A) Refer to the supplemental information form submitted by the petitioner and consider the facts  
8 set forth in the form that address each of the categories specified in paragraphs (1) to (5),  
9 inclusive, of subdivision (a) of Section 1821.
- 10 (B) Consider, to the extent practicable, whether he or she believes the proposed conservatee  
11 suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that  
12 significantly impairs the proposed conservatee's ability to understand and appreciate the  
13 consequences of his or her actions in connection with any of the functions described in  
14 subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.
- 15 (5) Determine if the proposed conservatee wishes to contest the establishment of the  
16 conservatorship.
- 17 (6) Determine if the proposed conservatee objects to the proposed conservator or prefers another  
18 person to act as conservator.
- 19 (7) Determine if the proposed conservatee wishes to be represented by legal counsel and, if so,  
20 whether the proposed conservatee has retained legal counsel and, if not, the name of an attorney  
21 the proposed conservatee wishes to retain.
- 22 (8)(A) Determine if the proposed conservatee is incapable of communicating, with or without  
23 reasonable accommodations, a desire to participate in the voting process, and may be disqualified  
24 from voting pursuant to Section 2208 of the Elections Code.
- 25 (B) The proposed conservatee shall not be disqualified from voting on the basis that he or she  
26 does, or would need to do, any of the following to complete an affidavit of voter registration:
- 27 (i) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of  
28 Section 2150 of the Elections Code.
- 29 (ii) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section  
30 354.5 of the Elections Code.
- 31 (iii) Completes the affidavit of voter registration with the assistance of another person pursuant to  
32 subdivision (d) of Section 2150 of the Elections Code.
- 33 (iv) Completes the affidavit of voter registration with reasonable accommodations.
- 34 (9) If the proposed conservatee has not retained legal counsel, determine if the proposed  
35 conservatee desires the court to appoint legal counsel.
- 36 (10) Determine if the appointment of legal counsel would be helpful to the resolution of the  
37 matter or is necessary to protect the interests of the proposed conservatee in a case where the  
38 proposed conservatee does not plan to retain legal counsel and has not requested the appointment  
39 of legal counsel by the court.
- 40 (11) Report to the court in writing, at least five days before the hearing, concerning all of the  
41 foregoing, including the proposed conservatee's express communications concerning both of the  
42 following:
- 43 (A) Representation by legal counsel.

1 (B) If the proposed conservatee is not willing to attend the hearing, does not wish to contest the  
2 establishment of the conservatorship, and does not object to the proposed conservator or prefers  
3 that another person act as conservator.

4 (12) ~~Mail~~ Deliver pursuant to Section 1215, at least five days before the hearing, a copy of the  
5 report referred to in paragraph (11) to all of the following:

6 (A) The attorney, if any, for the petitioner.

7 (B) The attorney, if any, for the proposed conservatee.

8 (C) The proposed conservatee.

9 (D) The spouse, registered domestic partner, and relatives within the first degree of the proposed  
10 conservatee who are required to be named in the petition for appointment of the conservator,  
11 unless the court determines that the mailing delivery will harm the conservatee.

12 (E) Any other persons as the court orders.

13 (b) The court investigator has discretion to release the report required by this section to the public  
14 conservator, interested public agencies, and the long-term care ombudsman.

15 (c) The report required by this section is confidential and shall be made available only to parties,  
16 persons described in paragraph (12) of subdivision (a), persons given notice of the petition who  
17 have requested this report or who have appeared in the proceedings, their attorneys, and the  
18 court. The court has discretion at any other time to release the report, if it would serve the  
19 interests of the conservatee. The clerk of the court shall provide for the limitation of the report  
20 exclusively to persons entitled to its receipt.

21 (d) This section does not apply to a proposed conservatee who has personally executed the  
22 petition for conservatorship, or a proposed conservatee who has nominated his or her own  
23 conservator, if he or she attends the hearing.

24 (e) If the court investigator has performed an investigation within the preceding six months and  
25 furnished a report thereon to the court, the court may order, upon good cause shown, that another  
26 investigation is not necessary or that a more limited investigation may be performed.

27 (f) An investigation by the court investigator related to a temporary conservatorship also may be  
28 a part of the investigation for the general petition for conservatorship, but the court investigator  
29 shall make a second visit to the proposed conservatee and the report required by this section shall  
30 include the effect of the temporary conservatorship on the proposed conservatee.

31 (g) The Judicial Council shall, on or before January 1, 2009, adopt rules of court and Judicial  
32 Council forms as necessary to implement an expedited procedure to authorize, by court order, a  
33 proposed conservatee's health care provider to disclose confidential medical information about  
34 the proposed conservatee to a court investigator pursuant to federal medical information privacy  
35 regulations promulgated under the federal Health Insurance Portability and Accountability Act of  
36 1996 (Public Law 104-191).

37 (h) A superior court shall not be required to perform any duties imposed pursuant to the  
38 amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature  
39 makes an appropriation identified for this purpose.

40  
41 **Probate Code section 1827.5.**

42 (a) In the case of any proceeding to establish a limited conservatorship for a person with  
43 developmental disabilities, within 30 days after the filing of a petition for limited

1 conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a  
2 regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the  
3 Welfare and Institutions Code. The regional center shall submit a written report of its findings  
4 and recommendations to the court.

5 (b) In the case of any proceeding to establish a general conservatorship for a person with  
6 developmental disabilities, the regional center, with the consent of the proposed conservatee,  
7 may prepare an assessment as provided in Chapter 5 (commencing with Section 4620) of  
8 Division 4.5 of the Welfare and Institutions Code. If an assessment is prepared, the regional  
9 center shall submit its findings and recommendations to the court.

10 (c) A report prepared under subdivision (a) or (b) shall include a description of the specific areas,  
11 nature, and degree of disability of the proposed conservatee or proposed limited conservatee. The  
12 findings and recommendations of the regional center are not binding upon the court.

13 In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or  
14 other services to persons with developmental disabilities or a spouse or employee of a provider,  
15 is not the natural parent of the proposed conservatee or proposed limited conservatee, and is not a  
16 public entity, the regional center shall include a recommendation in its report concerning the  
17 suitability of the petitioners to meet the needs of the proposed conservatee or proposed limited  
18 conservatee.

19 (d) At least five days before the hearing on the petition, the regional center shall ~~mail~~ deliver  
20 pursuant to Section 1215 a copy of the report referred to in subdivision (a) to all of the following:

21 (1) The proposed limited conservatee.

22 (2) The attorney, if any, for the proposed limited conservatee.

23 (3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the  
24 petitioner if the petitioner does not have an attorney.

25 (4) Such other persons as the court orders.

26 (e) The report referred to in subdivisions (a) and (b) shall be confidential and shall be made  
27 available only to parties listed in subdivision (d) unless the court, in its discretion, determines  
28 that the release of the report would serve the interests of the conservatee who is developmentally  
29 disabled. The clerk of the court shall make provision for limiting disclosure of the report  
30 exclusively to persons entitled thereto under this section.

1  
2 **Probate Code section 1830.**

3 (a) The order appointing the conservator shall contain, among other things, the names, addresses,  
4 and telephone numbers of:

- 5 (1) The conservator.  
6 (2) The conservatee's attorney, if any.  
7 (3) The court investigator, if any.

8 (b) In the case of a limited conservator for a developmentally disabled adult, any order the court  
9 may make shall include the findings of the court specified in Section 1828.5. The order shall  
10 specify the powers granted to and duties imposed upon the limited conservator, which powers  
11 and duties may not exceed the powers and duties applicable to a conservator under this code. The  
12 order shall also specify the following:

- 13 (1) The properties of the limited conservatee to which the limited conservator is entitled to  
14 possession and management, giving a description of the properties that will be sufficient to  
15 identify them.  
16 (2) The debts, rentals, wages, or other claims due to the limited conservatee which the limited  
17 conservator is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess  
18 and manage.  
19 (3) The contractual or other obligations which the limited conservator may incur on behalf of the  
20 limited conservatee.  
21 (4) The claims against the limited conservatee which the limited conservator may pay,  
22 compromise, or defend, if necessary.  
23 (5) Any other powers, limitations, or duties with respect to the care of the limited conservatee or  
24 the management of the property specified in this subdivision by the limited conservator which the  
25 court shall specifically and expressly grant.

26 (c) An information notice of the rights of conservatees shall be attached to the order. The  
27 conservator shall ~~mail~~ deliver pursuant to Section 1215 the order and the attached information  
28 notice to the conservatee and the conservatee's relatives, as set forth in subdivision (b) of Section  
29 1821, within 30 days of the issuance of the order. By January 1, 2008, the Judicial Council shall  
30 develop the notice required by this subdivision.

31  
32 **Probate Code section 1842.**

33 In addition to the persons and entities to whom notice of hearing is required under Section 1822  
34 or 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time  
35 and place of the hearing shall be ~~mailed~~ delivered pursuant to Section 1215 at least 15 days  
36 before the hearing to the secretary concerned or to the head of the United States department or  
37 agency concerned, as the case may be. In such case, notice shall also be published pursuant to  
38 Section 6061 of the Government Code in a newspaper of general circulation in the county in  
39 which the hearing will be held.

1  
2 **Probate Code section 1847.**

3 In addition to the persons and entities to whom notice of hearing is required under Section 1822  
4 or 2002, if the proposed conservatee is a person who is missing and whose whereabouts is  
5 unknown:

6 (a) A copy of the petition for appointment of a conservator and notice of the time and place of the  
7 hearing on the petition shall be ~~mailed~~ delivered pursuant to Section 1215 at least 15 days before  
8 the hearing to the proposed conservatee at the last known address of the proposed conservatee.

9 (b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061  
10 of the Government Code in a newspaper of general circulation in the county in which the  
11 proposed conservatee was last known to reside if the proposed conservatee's last known address  
12 is in this state.

13 (c) Pursuant to Section 1202, the court may require that further or additional notice of the hearing  
14 be given.

15  
16 **Probate Code section 1851.**

17 (a)(1) If court review is required pursuant to Section 1850, the court investigator shall, without  
18 prior notice to the conservator except as ordered by the court for necessity or to prevent harm to  
19 the conservatee, visit the conservatee. The court investigator shall inform the conservatee  
20 personally that the conservatee is under a conservatorship and shall give the name of the  
21 conservator to the conservatee. The court investigator shall determine all of the following:

22 (A) If the conservatee wishes to petition the court for termination of the conservatorship.

23 (B) If the conservatee is still in need of the conservatorship.

24 (C) If the present conservator is acting in the best interests of the conservatee. In determining if  
25 the conservator is acting in the best interests of the conservatee, the court investigator's  
26 evaluation shall include an examination of the conservatee's placement, the quality of care,  
27 including physical and mental treatment, and the conservatee's finances. To the extent  
28 practicable, the investigator shall review the accounting with a conservatee who has sufficient  
29 capacity. To the greatest extent possible, the court investigator shall interview individuals set  
30 forth in paragraph (1) of subdivision (a) of Section 1826, in order to determine if the conservator  
31 is acting in the best interests of the conservatee.

32 (D)(i) If the conservatee is incapable of communicating, with or without reasonable  
33 accommodations, a desire to participate in the voting process and may be disqualified from  
34 voting pursuant to Section 2208 or 2209 of the Elections Code.

35 (ii) The conservatee shall not be disqualified from voting on the basis that he or she does, or  
36 would need to do, any of the following to complete an affidavit of voter registration:

37 (I) Signs the affidavit of voter registration with a mark or a cross pursuant to subdivision (b) of  
38 Section 2150 of the Elections Code.

39 (II) Signs the affidavit of voter registration by means of a signature stamp pursuant to Section  
40 354.5 of the Elections Code.

41 (III) Completes the affidavit of voter registration with the assistance of another person pursuant  
42 to subdivision (d) of Section 2150 of the Elections Code.

43 (IV) Completes the affidavit of voter registration with reasonable accommodations.



1 (2) If the court has made an order under Chapter 4 (commencing with Section 1870), the court  
2 investigator shall determine if the present condition of the conservatee is such that the terms of  
3 the order should be modified or the order revoked.

4 (3) Upon request of the court investigator, the conservator shall make available to the court  
5 investigator during the investigation for inspection and copying all books and records, including  
6 receipts and any expenditures, of the conservatorship.

7 (b)(1) The findings of the court investigator, including the facts upon which the findings are  
8 based, shall be certified in writing to the court not less than 15 days before the date of review. A  
9 copy of the report shall be ~~mailed~~ delivered pursuant to Section 1215 to the conservator and to  
10 the attorneys of record for the conservator and conservatee at the same time it is certified to the  
11 court. A copy of the report, modified as set forth in paragraph (2), also shall be ~~mailed~~ delivered  
12 pursuant to Section 1215 to the conservatee's spouse or registered domestic partner, the  
13 conservatee's relatives in the first degree, and if there are no such relatives, to the next closest  
14 relative, unless the court determines that the ~~mailing~~ delivery will harm the conservatee.

15 (2) Confidential medical information and confidential information from the California Law  
16 Enforcement Telecommunications System shall be in a separate attachment to the report and  
17 shall not be provided in copies sent to the conservatee's spouse or registered domestic partner,  
18 the conservatee's relatives in the first degree, and if there are no such relatives, to the next closest  
19 relative.

20 (c) In the case of a limited conservatee, the court investigator shall recommend continuing or  
21 terminating the limited conservatorship.

22 (d) The court investigator may personally visit the conservator and other persons as may be  
23 necessary to determine if the present conservator is acting in the best interests of the conservatee.

24 (e) The report required by this section shall be confidential and shall be made available only to  
25 parties, persons described in subdivision (b), persons given notice of the petition who have  
26 requested the report or who have appeared in the proceeding, their attorneys, and the court. The  
27 court shall have discretion at any other time to release the report if it would serve the interests of  
28 the conservatee. The clerk of the court shall limit disclosure of the report exclusively to persons  
29 entitled to the report under this section.

30 (f) A superior court shall not be required to perform any duties imposed pursuant to the  
31 amendments to this section enacted by Chapter 493 of the Statutes of 2006 until the Legislature  
32 makes an appropriation identified for this purpose.

33  
34 **Probate Code section 2214.**

35 Notice of the hearing shall be given for the period and in the manner provided in Chapter 3  
36 (commencing with Section 1460) of Part 1. In addition, the petitioner shall ~~mail~~ deliver pursuant  
37 to Section 1215 a notice of the time and place of the hearing and a copy of the petition to all  
38 persons required to be listed in the petition at least 15 days before the date set for the hearing.

39  
40 **Probate Code section 2250.**

41 (a) On or after the filing of a petition for appointment of a guardian or conservator, any person  
42 entitled to petition for appointment of the guardian or conservator may file a petition for  
43 appointment of:

- 1 (1) A temporary guardian of the person or estate, or both.  
2 (2) A temporary conservator of the person or estate, or both.  
3 (b) \* \* \*  
4 (c) \* \* \*  
5 (d) \* \* \*  
6 (e) Unless the court for good cause otherwise orders, at least five court days before the hearing  
7 on the petition, notice of the hearing shall be given as follows:  
8 (1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12  
9 years of age or older, to the parent or parents of the proposed ward, and to any person having a  
10 valid visitation order with the proposed ward that was effective at the time of the filing of the  
11 petition. Notice of the hearing shall not be delivered to the proposed ward if he or she is under 12  
12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial  
13 parent has died or become incapacitated, and that the petitioner or proposed guardian is the  
14 nominee of the custodial parent, may constitute good cause for the court to order that this notice  
15 not be delivered.  
16 (2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of  
17 the hearing shall be ~~serve~~ delivered pursuant to Section 1215 on the persons required to be  
18 named in the petition for appointment of conservator. If the petition states that the petitioner and  
19 the proposed conservator have no prior relationship with the proposed conservatee and has not  
20 been nominated by a family member, friend, or other person with a relationship to the proposed  
21 conservatee, notice of hearing shall be ~~serve~~ delivered pursuant to Section 1215 on the public  
22 guardian of the county in which the petition is filed.  
23 (3) A copy of the petition for temporary appointment shall be ~~serve~~ delivered pursuant to  
24 Section 1215 with the notice of hearing.  
25 (f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship  
26 petition is not to be held within 30 days of the granting of the temporary guardianship, the court  
27 shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing  
28 for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511,  
29 except that the court may for good cause shorten the time for the notice of the hearing.  
30 (g) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary  
31 guardianship shall remain in effect, unless for good cause the court orders otherwise.  
32 (h)(1) If a temporary conservatorship is granted ex parte, and a petition to terminate the  
33 temporary conservatorship is filed more than 15 days before the first hearing on the general  
34 petition for appointment of conservator, the court shall set a hearing within 15 days of the filing  
35 of the petition for termination of the temporary conservatorship to reconsider the temporary  
36 conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to  
37 terminate the temporary conservatorship shall be given at least 10 days prior to the hearing.  
38 (2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first  
39 hearing on the general petition for appointment of conservator, the court shall set the hearing at  
40 the same time that the hearing on the general petition is set. Unless the court otherwise orders,  
41 notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this  
42 section shall be given at least five court days prior to the hearing.  
43 (i) \* \* \*

1 (j) \* \* \*

2 (k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes  
3 uniform standards for good cause exceptions to the notice required by subdivision (e), limiting  
4 those exceptions to only cases when waiver of the notice is essential to protect the proposed  
5 conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

6 (l) \* \* \*

7  
8 **Probate Code section 2352.**

9 (a) The guardian may establish the residence of the ward at any place within this state without the  
10 permission of the court. The guardian shall select the least restrictive appropriate residence that is  
11 available and necessary to meet the needs of the ward, and that is in the best interests of the ward.

12 (b) The conservator may establish the residence of the conservatee at any place within this state  
13 without the permission of the court. The conservator shall select the least restrictive appropriate  
14 residence, as described in Section 2352.5, that is available and necessary to meet the needs of the  
15 conservatee, and that is in the best interests of the conservatee.

16 (c) If permission of the court is first obtained, a guardian or conservator may establish the  
17 residence of a ward or conservatee at a place not within this state. Notice of the hearing on the  
18 petition to establish the residence of the ward or conservatee out of state, together with a copy of  
19 the petition, shall be given in the manner required by subdivision (a) of Section 1460 to all  
20 persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of Section  
21 1822.

22 (d)(1) An order under subdivision (c) relating to a ward shall require the guardian either to return  
23 the ward to this state, or to cause a guardianship proceeding or its equivalent to be commenced in  
24 the place of the new residence, when the ward has resided in the place of new residence for a  
25 period of four months or a longer or shorter period specified in the order.

26 (2) An order under subdivision (c) relating to a conservatee shall require the conservator to do  
27 one of the following when the conservatee has resided in the other state for a period of four  
28 months or a longer or shorter period specified in the order:

29 (A) Return the conservatee to this state.

30 (B) Petition for transfer of the conservatorship to the other state under Article 3 (commencing  
31 with Section 2001) of Chapter 8 of Part 3 and corresponding law of the other state.

32 (C) Cause a conservatorship proceeding or its equivalent to be commenced in the other state.

33 (e)(1) The guardian or conservator shall file a notice of change of residence with the court within  
34 30 days of the date of the change. The guardian or conservator shall include in the notice of  
35 change of residence a declaration stating that the ward's or conservatee's change of residence is  
36 consistent with the standard described in subdivision (b).

37 (2) The guardian or conservator shall ~~mail~~ deliver pursuant to section 1215 a copy of the notice  
38 to all persons entitled to notice under subdivision (b) of Section 1511 or subdivision (b) of  
39 Section 1822 and shall file proof of service of the notice with the court. The court may, for good  
40 cause, waive the ~~mailing~~ delivery requirement pursuant to this paragraph in order to prevent  
41 harm to the conservatee or ward.

42 (3) If the guardian or conservator proposes to remove the ward or conservatee from his or her  
43 personal residence, except as provided by subdivision (c), the guardian or conservator shall ~~mail~~

1 deliver pursuant to section 1215 a notice of his or her intention to change the residence of the  
2 ward or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and  
3 subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be ~~mailed~~  
4 delivered at least 15 days before the proposed removal of the ward or conservatee from his or her  
5 personal residence. If the notice is ~~served~~ delivered less than 15 days prior to the proposed  
6 removal of the ward or conservatee, the guardian or conservator shall set forth the basis for the  
7 emergency in the notice. The guardian or conservator shall file proof of ~~service~~ delivery of that  
8 notice with the court.

9 (f) This section does not apply where the court has made an order under Section 2351 pursuant to  
10 which the conservatee retains the right to establish his or her own residence.

11 (g) As used in this section, “guardian” or “conservator” includes a proposed guardian or  
12 proposed conservator and “ward” or “conservatee” includes a proposed ward or proposed  
13 conservatee.

14 (h) This section does not apply to a person with developmental disabilities for whom the Director  
15 of Developmental Services or a regional center, established pursuant to Chapter 5 (commencing  
16 with Section 4620) of Division 4.5 of the Welfare and Institutions Code, acts as the conservator.

17  
18 **Probate Code section 2357.**

19 (a) \* \* \*

20 (b) \* \* \*

21 (c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following  
22 so far as is known to the petitioner at the time the petition is filed:

23 (1)–(6) \* \* \*

24 (7) The name and addresses, so far as they are known to the petitioner, of the persons specified in  
25 subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821  
26 in a conservatorship proceeding.

27 (d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint  
28 the public defender or private counsel under Section 1471, to consult with and represent the ward  
29 or conservatee at the hearing on the petition and, if that appointment is made, Section 1472  
30 applies.

31 (e) Notice of the petition shall be given as follows:

32 (1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a  
33 copy of the petition shall be personally served on the ward, if 12 years of age or older, or the  
34 conservatee, and on the attorney for the ward or conservatee.

35 (2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a  
36 copy of the petition shall be ~~mailed~~ delivered pursuant to Section 1215 to the following persons:

37 (A) The spouse or domestic partner, if any, of the proposed conservatee at the address stated in  
38 the petition.

39 (B) The relatives named in the petition at their addresses stated in the petition.

40 (f) \* \* \*

41 (g) \* \* \*

42 (h) \* \* \*

1 (i) Upon petition of the ward or conservatee or other interested person, the court may order that  
2 the guardian or conservator obtain or consent to, or obtain and consent to, specified medical  
3 treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition  
4 under this subdivision shall be given for the period and in the manner provided in Chapter 3  
5 (commencing with Section 1460) of Part 1.

6  
7 **Probate Code section 2361.**

8 A conservator shall provide notice of a conservatee's death by ~~mailing~~ delivering a copy of the  
9 notice pursuant to Section 1215 to all persons entitled to notice under Section 1460 and by filing  
10 a proof of ~~service~~ delivery with the court, unless otherwise ordered by the court.

11  
12 **Probate Code section 2610.**

13 (a) Within 90 days after appointment, or within any further time as the court for reasonable cause  
14 upon ex parte petition of the guardian or conservator may allow, the guardian or conservator shall  
15 file with the clerk of the court and ~~mail~~ deliver pursuant to Section 1215 to the conservatee and  
16 to the attorneys of record for the ward or conservatee, along with notice of how to file an  
17 objection, an inventory and appraisal of the estate, made as of the date of the appointment of the  
18 guardian or conservator. A copy of this inventory and appraisal, along with notice of how to file  
19 an objection, also shall be ~~mailed~~ delivered to the conservatee's spouse or registered domestic  
20 partner, the conservatee's relatives in the first degree, and, if there are no such relatives, to the  
21 next closest relative, unless the court determines that the mailing will result in harm to the  
22 conservatee.

23 (b) \* \* \*

24 (c) \* \* \*

25 (d) \* \* \*

26 (e) \* \* \*

27  
28 **Probate Code section 2611.**

29 If the ward or conservatee is or has been during the guardianship or conservatorship a patient in a  
30 state hospital under the jurisdiction of the State Department of State Hospitals or the State  
31 Department of Developmental Services, the guardian or conservator shall ~~mail~~ deliver pursuant  
32 to Section 1215 a copy of the inventory and appraisal filed under Section 2610 to the director of  
33 the appropriate department at the director's office in Sacramento not later than 15 days after the  
34 inventory and appraisal is filed with the court. Compliance with this section is not required if an  
35 unrevoked certificate described in subdivision (c) of Section 1461 is on file with the court with  
36 respect to the ward or conservatee.

37  
38 **Probate Code section 2612.**

39 If a timely request is made, the clerk of court shall ~~mail~~ deliver pursuant to Section 1215 a copy  
40 of the inventory and appraisal filed under Section 2610 to the county assessor.

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**Probate Code section 2614.**

(a) Within 30 days after the inventory and appraisal is filed, the guardian or conservator or any creditor or other interested person may file written objections to any or all appraisals. The clerk shall set the objections for hearing not less than 15 days after their filing.

(b) Notice of the hearing, together with a copy of the objections, shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1. If the appraisal was made by a probate referee, the person objecting shall also ~~mail~~ deliver pursuant to Section 1215 notice of the hearing and a copy of the objection to the probate referee at least 15 days before the time set for the hearing.

(c) The court shall determine the objections and may fix the true value of any asset to which objection has been filed. For the purpose of this subdivision, the court may cause an independent appraisal or appraisals to be made by at least one additional appraiser at the expense of the estate or, if the objecting party is not the guardian or conservator and the objection is rejected by the court, the court may assess the cost of any such additional appraisal or appraisals against the objecting party.

**Probate Code section 2683.**

(a) At least 15 days before the hearing on the petition for appointment of a successor conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition.

(b) Notice shall be ~~mailed~~ delivered pursuant to Section 1215 to the persons designated in Section 1460 and to the relatives named in the petition.

(c) If notice is required by Section 1461 to be given to the Director of State Hospitals or the Director of Developmental Services, notice shall be ~~mailed~~ delivered pursuant to Section 1215 as so required.

(d) If notice is required by Section 1461.5 to be given to the Veterans Administration, notice shall be ~~mailed~~ delivered pursuant to Section 1215 as so required.

**Probate Code section 2684.**

Unless the petition states that the conservatee will be present at the hearing, the court investigator shall do all of the following:

(a) Interview the conservatee personally.

(b) Inform the conservatee of the nature of the proceeding to appoint a successor conservator, the name of the person proposed as successor conservator, and the conservatee's right to appear personally at the hearing, to object to the person proposed as successor conservator, to nominate a person to be appointed as successor conservator, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) Determine whether the conservatee objects to the person proposed as successor conservator or prefers another person to be appointed.

1 (d) If the conservatee is not represented by legal counsel, determine whether the conservatee  
2 wishes to be represented by legal counsel and, if so, determine the name of an attorney the  
3 conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

4 (e) Determine whether the appointment of legal counsel would be helpful to the resolution of the  
5 matter or is necessary to protect the interests of the conservatee in any case where the conservatee  
6 does not plan to retain legal counsel and has not requested the appointment of legal counsel by  
7 the court.

8 (f) Report to the court in writing, at least five days before the hearing, concerning all of the  
9 foregoing, including the conservatee's express communications concerning representation by  
10 legal counsel and whether the conservatee objects to the person proposed as successor  
11 conservator or prefers that some other person be appointed.

12 (g) ~~Mail~~ Deliver pursuant to Section 1215, at least five days before the hearing, a copy of the  
13 report referred to in subdivision (f) to all of the following:

14 (1) The attorney, if any, for the petitioner.

15 (2) The attorney, if any, for the conservatee.

16 (3) Such other persons as the court orders.

17  
18 **Probate Code section 2700.**

19 (a) At any time after the issuance of letters of guardianship or conservatorship, the ward, if over  
20 14 years of age or the conservatee, the spouse of the ward or the spouse or domestic partner of  
21 the conservatee, any relative or creditor of the ward or conservatee, or any other interested  
22 person, in person or by attorney, may file with the court clerk a written request for special notice.

23 (b) The request for special notice shall be so entitled and shall set forth the name of the person  
24 and the address to which notices shall be ~~sent~~ delivered pursuant to Section 1215.

25 (c) Special notice may be requested of any one or more of the following matters:

26 (1) Petitions filed in the guardianship or conservatorship proceeding.

27 (2) Inventories and appraisals of property in the estate, including any supplemental inventories  
28 and appraisals.

29 (3) Accounts of the guardian or conservator.

30 (4) Proceedings for the final termination of the guardianship or conservatorship proceeding.

31 (d) Special notice may be requested of:

32 (1) Any one or more of the matters in subdivision (c) by describing the matter or matters.

33 (2) All the matters in subdivision (c) by referring generally to "the matters described in  
34 subdivision (c) of Section 2700 of the Probate Code" or by using words of similar meaning.

35 (e) A copy of the request shall be personally delivered pursuant to Section 1215 ~~or mailed~~ to the  
36 guardian or conservator or to the attorney for the guardian or conservator. If personally delivered,  
37 the request is effective when it is delivered. If mailed or electronically delivered, the request is  
38 effective when it is received.

39 (f) When the original of the request is filed with the court clerk, it shall be accompanied by a  
40 written admission or proof of service.

41

1 **Probate Code section 2702.**

2 (a) Unless the court makes an order dispensing with the notice, if a request has been made  
3 pursuant to this chapter for special notice of a hearing, the person filing the petition, account, or  
4 other paper shall ~~give~~ deliver pursuant to Section 1215 written notice of the filing, together with  
5 a copy of the petition, account, or other paper, and the time and place set for the hearing, ~~by mail~~  
6 to the person named in the request at the address set forth in the request, at least 15 days before  
7 the time set for the hearing.

8 (b) If a request has been made pursuant to this chapter for special notice of the filing of an  
9 inventory and appraisal of the estate or of the filing of any other paper that does not require a  
10 hearing, the inventory and appraisal or other paper shall be ~~mailed~~ delivered pursuant to Section  
11 1215 not later than 15 days after the inventory and appraisal or other paper is filed with the court.  
12

13 **Probate Code section 2804.**

14 At least 30 days before the hearing, the petitioner shall ~~mail~~ deliver pursuant to Section 1215 a  
15 notice of the time and place of the hearing and a copy of the petition to each person required to  
16 be listed in the petition at the address stated in the petition.  
17

18 **Probate Code section 2808.**

19 (a) If the court's order provides for the transfer of all of the property of the estate to the foreign  
20 guardian or conservator, the court, upon settlement of the final account, shall order the  
21 guardianship of the estate or the conservatorship of the estate terminated upon the filing with the  
22 clerk of the court of a receipt for the property executed by the foreign guardian or conservator.

23 (b) Unless notice is waived, a copy of the final account of the guardian or conservator and of the  
24 petition for discharge, together with a notice of the hearing thereon, shall be ~~mailed~~ delivered  
25 pursuant to Section 1215 at least 30 days before the date of the hearing to all persons required to  
26 be listed in the petition for transfer, including the foreign guardian or conservator.  
27

28 **Probate Code section 3088.**

29 (a) \* \* \*

30 (b) \* \* \*

31 (c) \* \* \*

32 (d) \* \* \*

33 (e) \* \* \*

34 (f) The court retains jurisdiction to modify or to vacate an order made under this section where  
35 justice requires, except as to any amount that may have accrued prior to the date of the filing of  
36 the petition to modify or revoke the order. At the request of any interested person, the order of  
37 modification or revocation shall include findings of fact and may be made retroactive to the date  
38 of the filing of the petition to revoke or modify, or to any date subsequent thereto. At least 15  
39 days before the hearing on the petition to modify or vacate the order, the petitioner shall ~~mail~~  
40 deliver pursuant to Section 1215 a notice of the time and place of the hearing on the petition,  
41 accompanied by a copy of the petition, to the spouse who has the management or control of the  
42 community property. Notice shall be given for the period and in the manner provided in Chapter



1 3 (commencing with Section 1460) of Part 1 to any other persons entitled to notice of the hearing  
2 under that chapter.

3 (g) \* \* \*

4  
5 **Probate Code section 3131.**

6 (a) At least 15 days before the hearing on the petition, the petitioner shall cause a notice of the  
7 time and place of the hearing and a copy of the petition to be served upon any nonpetitioning  
8 spouse not alleged to lack legal capacity for the proposed transaction.

9 (b) Service under subdivision (a) shall be made in the manner provided in Section 415.10 or  
10 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court.  
11 If the person to be served is outside this state, service may also be made in the manner provided  
12 in Section 415.40 of the Code of Civil Procedure.

13 (c) At least 15 days before the hearing on the petition, the petitioner shall ~~mail~~ deliver pursuant to  
14 Section 1215 a notice of the time and place of the hearing on the petition to those persons  
15 required to be named in the petition at the addresses set forth in the petition.

16  
17 **Probate Code section 3206.**

18 (a) Not less than 15 days before the hearing, notice of the time and place of the hearing and a  
19 copy of the petition shall be personally served on the patient, the patient's attorney, and the agent  
20 under the patient's power of attorney for health care, if any.

21 (b) Not less than 15 days before the hearing, notice of the time and place of the hearing and a  
22 copy of the petition shall be ~~mailed~~ delivered pursuant to Section 1215 to the following persons:

23 (1) The patient's spouse, if any, at the address stated in the petition.

24 (2) The patient's relatives named in the petition at their addresses stated in the petition.

25 (c) For good cause, the court may shorten or waive notice of the hearing as provided by this  
26 section. In determining the period of notice to be required, the court shall take into account both  
27 of the following:

28 (1) The existing medical facts and circumstances set forth in the petition or in a medical  
29 declaration attached to the petition or in a medical declaration presented to the court.

30 (2) The desirability, where the condition of the patient permits, of giving adequate notice to all  
31 interested persons.

32  
33 **Probate Code section 3602.**

34 (a)–(e) \* \* \*

35 (f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the  
36 petition, shall be ~~mailed~~ delivered pursuant to Section 1215 to the State Director of Health Care  
37 Services, the Director of State Hospitals, and the Director of Developmental Services at the  
38 office of each director in Sacramento at least 15 days before the hearing.

39  
40 **Probate Code section 3704.**

41 (a) Notice of the nature of the proceedings and the time and place of the hearing shall be given by  
42 the petitioner at least 15 days before the hearing date by all of the following means:

1 (1) By ~~mail~~ delivery pursuant to Section 1215, together with a copy of the petition, to all persons  
2 comprising the family of the absentee.

3 (2) By delivery by a method that would be sufficient for service of summons in a civil action,  
4 together with a copy of the petition, to the secretary concerned or to the head of the United States  
5 department or agency concerned.

6 (3) By publication pursuant to Section 6061 of the Government Code in a newspaper of general  
7 circulation in the county in which the proceedings will be held.

8 (b) Whenever notice to an officer or agency of this state or of the United States would be  
9 required under Section 1461 or Section 1822 upon petition for appointment of a conservator, like  
10 notice shall be given of the petition under this chapter.

11  
12 **Probate Code section 3801.**

13 (a) The petition shall be made upon 15 days' notice, by ~~mail or personal~~ delivery pursuant to  
14 Section 1215, to all of the following persons:

15 (1) The personal representative or other person in whose possession the property may be.

16 (2) Persons in this state, known to the petitioner, who are obligated to pay a debt, perform an  
17 obligation, or issue a security to the nonresident or the estate of the nonresident.

18 (b) The petition shall be made upon such additional notice, if any, as the court may order.

19  
20 **Probate Code section 3918.**

21 (a) \* \* \*

22 (b) \* \* \*

23 (c) \* \* \*

24 (d) \* \* \*

25 (e) \* \* \*

26 (f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a  
27 guardian of the person of the minor, the conservator of the minor, or the minor if the minor has  
28 attained the age of 14 years, may petition the court to remove the custodian for cause and to  
29 designate a successor custodian other than a transferor under Section 3904 or to require the  
30 custodian to give appropriate bond.

31 (g) At least 15 days before the hearing on a petition under subdivision (d) or (f), the petitioner  
32 shall ~~serve~~ deliver notice by ~~mail or personal delivery~~ pursuant to Section 1215 ~~on~~ to each of the  
33 following persons:

34 (1) The minor.

35 (2) The parent or parents of the minor.

36 (3) The transferor.

37 (h) \* \* \*

38  
39 **Probate Code section 8100.**

40 The notice of hearing of a petition for administration of a decedent's estate, whether ~~served~~  
41 delivered under Article 2 (commencing with Section 8110) or published under Article 3  
42 (commencing with Section 8120), shall state substantially as follows:

1 NOTICE OF PETITION TO ADMINISTER  
2 ESTATE OF \_\_\_\_\_, ESTATE NO. \_\_\_\_\_

3  
4 To all heirs, beneficiaries, creditors, and contingent creditors of \_\_\_\_\_ and persons who may  
5 be otherwise interested in the will or estate, or both:

6  
7 A petition has been filed by \_\_\_\_\_ in the Superior Court of California, County of  
8 \_\_\_\_\_, requesting that \_\_\_\_\_ be appointed as personal representative to administer the  
9 estate of \_\_\_\_\_ [and for probate of the decedent's will, which is available for examination in  
10 the court file].

11  
12 [The petition requests authority to administer the estate under the Independent Administration of  
13 Estates Act. This will avoid the need to obtain court approval for many actions taken in  
14 connection with the estate. However, before taking certain actions, the personal representative  
15 will be required to give notice to interested persons unless they have waived notice or have  
16 consented to the proposed action. The petition will be granted unless good cause is shown why it  
17 should not be.]

18  
19 The petition is set for hearing in Dept. No.  
20 at \_\_\_\_\_ (Address) \_\_\_\_\_  
21 on \_\_\_\_\_ (Date of hearing) \_\_\_\_\_ at \_\_\_\_\_ (Time of hearing) \_\_\_\_\_ .

22  
23 IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your  
24 objections or file written objections with the court before the hearing. Your appearance may be in  
25 person or by your attorney.

26  
27 IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim  
28 with the court and mail a copy to the personal representative appointed by the court within the  
29 later of either (1) four months from the date of first issuance of letters to a general personal  
30 representative, as defined in subdivision (b) of Section 58 of the California Probate Code, or (2)  
31 60 days from the date of ~~mailing or personal~~ delivery of the notice to you under Section 9052 of  
32 the California Probate Code.

33  
34 YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may  
35 request special notice of the filing of an inventory and appraisal of estate assets or of any petition  
36 or account as provided in Section 1250 of the California Probate Code.

37  
38 \_\_\_\_\_ (Name and address of petitioner or petitioner's attorney) \_\_\_\_\_

39  
40 **Probate Code section 8110.**

41 At least 15 days before the hearing of a petition for administration of a decedent's estate, the  
42 petitioner shall deliver notice of the hearing ~~by mail or personal delivery~~ pursuant to Section  
43 1215 on all of the following persons:

- 1 (a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner.  
2 (b) Each devisee, executor, and alternative executor named in any will being offered for probate,  
3 regardless of whether the devise or appointment is purportedly revoked in a subsequent  
4 instrument.

5  
6 **Probate Code section 8111.**

7 If the decedent's will involves or may involve a testamentary trust of property for charitable  
8 purposes other than a charitable trust with a designated trustee resident in this state, or involves  
9 or may involve a devise for charitable purposes without an identified devisee, notice of hearing  
10 accompanied by a copy of the petition and of the will shall be ~~erved on~~ delivered pursuant to  
11 Section 1215 to the Attorney General as provided in Section 1209.

12  
13 **Probate Code section 8200.**

14 (a) Unless a petition for probate of the will is earlier filed, the custodian of a will shall, within 30  
15 days after having knowledge of the death of the testator, do both of the following:

16 (1) Deliver personally or by registered or certified mail, the will to the clerk of the superior court  
17 of the county in which the estate of the decedent may be administered.

18 (2) ~~Mail a copy~~ Deliver a copy of the will pursuant to Section 1215 of the will to the person  
19 named in the will as executor, if the person's whereabouts is known to the custodian, or if not, to  
20 a person named in the will as a beneficiary, if the person's whereabouts is known to the  
21 custodian.

22 (b) A custodian of a will who fails to comply with the requirements of this section shall be liable  
23 for all damages sustained by any person injured by the failure.

24 (c) The clerk shall release a copy of a will delivered under this section for attachment to a  
25 petition for probate of the will or otherwise on receipt of payment of the required fee and either a  
26 court order for production of the will or a certified copy of a death certificate of the decedent.

27 (d) The fee for delivering a will to the clerk of the superior court pursuant to paragraph (1) of  
28 subdivision (a) shall be as provided in Section 70626 of the Government Code. If an estate is  
29 commenced for the decedent named in the will, the fee for any will delivered pursuant to  
30 paragraph (1) of subdivision (a) shall be reimbursable from the estate as an expense of  
31 administration.

32  
33 **Probate Code section 8203.**

34 If a will has been delivered to the clerk of the superior court in a county in which no proceeding  
35 is pending to administer the testator's estate, that court may order the will transferred to the clerk  
36 of the superior court in a county in which such a proceeding is pending. A petition for the  
37 transfer may be presented and heard without notice, but shall not be granted without proof that a  
38 copy of the petition has been ~~mailed~~ delivered pursuant to Section 1215 to the petitioner and any  
39 persons who have requested special notice in the proceeding in the court to which the will is to  
40 be transferred. The petition and order shall include the case number of the proceeding in the court  
41 to which transfer is prayed. Certified copies of the petition, any supporting documents, and the  
42 order shall be transmitted by the clerk along with the original will, and these copies shall be filed  
43 in the proceeding by the clerk of the recipient court.

1  
2 **Probate Code section 8469.**

3 (a) For good cause, the court may allow the priority given by Section 8461 to a conservator or  
4 guardian of the estate of the decedent serving in that capacity at the time of death that has not  
5 filed a first account, or that is acting as guardian or conservator for another person, or both.

6 (b) If the petition for appointment as administrator requests the court to allow the priority  
7 permitted by subdivision (a), the petitioner shall, in addition to the notice otherwise required by  
8 statute, ~~serve~~ deliver notice of the hearing pursuant to Section 1215 ~~by mail or personal delivery~~  
9 ~~on~~ to the public administrator.

10  
11 **Probate Code section 8522.**

12 (a) If a vacancy occurs in the office of a personal representative and there are no other personal  
13 representatives, the court shall appoint a successor personal representative.

14 (b) Appointment of a successor personal representative shall be made on petition and ~~service~~  
15 delivery of notice ~~on~~ to interested persons in the manner provided in Article 2 (commencing with  
16 Section 8110) of Chapter 2, and shall be subject to the same priority as for an original  
17 appointment of a personal representative. The personal representative of a deceased personal  
18 representative is not, as such, entitled to appointment as successor personal representative.

19  
20 **Probate Code section 8803.**

21 On the filing of an inventory and appraisal or a supplemental inventory and appraisal, the  
22 personal representative shall, pursuant to Section 1252, ~~mail~~ deliver a copy to each person who  
23 has requested special notice.

24  
25 **Probate Code section 8903.**

26 (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in  
27 this section.

28 (b) \* \* \*

29 (c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. Notice of  
30 the hearing on the petition, together with a copy of the petition and a copy of the proposed  
31 inventory and appraisal, shall be given as provided in Sections 1215 and 1220 to all of the  
32 following persons:

33 (1) Each person listed in Section 1220.

34 (2) Each known heir whose interest in the estate would be affected by the waiver.

35 (3) Each known devisee whose interest in the estate would be affected by the waiver.

36 (4) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of  
37 the estate is to escheat to the state and its interest in the estate would be affected by the waiver.

38 (5) The probate referee, if a probate referee has been designated.

39 (d) \* \* \*

40 (e) \* \* \*

41  
42 **Probate Code section 8906.**

43 (a) \* \* \*

1 (b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.  
2 (c) The person objecting shall ~~give~~ deliver notice of the hearing, together with a copy of the  
3 objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person  
4 objecting shall also ~~mail~~ deliver notice of the hearing and a copy of the objection to the probate  
5 referee at least 15 days before the date set for the hearing.

6 (d) \* \* \*

7 (e) \* \* \*

8  
9 **Probate Code section 8924.**

10 (a) The court shall remove the designated probate referee in any of the following circumstances:

11 (1) The personal representative shows cause, including incompetence or undue delay in making  
12 the appraisal, that in the opinion of the court warrants removal of the probate referee. The  
13 showing shall be made at a hearing on petition of the personal representative. The personal  
14 representative shall ~~mail~~ deliver pursuant to Section 1215 notice of the hearing on the petition to  
15 the probate referee at least 15 days before the date set for the hearing.

16 (2) The personal representative has the right to remove the first probate referee who is designated  
17 by the court. No cause need be shown for removal under this paragraph. The personal  
18 representative may exercise the right at any time before the personal representative delivers the  
19 inventory to the probate referee. The personal representative shall exercise the right by filing an  
20 affidavit or declaration under penalty of perjury with the court and ~~mailing~~ delivering a copy to  
21 the probate referee. Thereupon, the court shall remove the probate referee without any further act  
22 or proof.

23 (3) Any other cause provided by statute.

24 (b) Upon removal of the probate referee, the court shall designate another probate referee in the  
25 manner prescribed in Section 8920.

26  
27 **Probate Code section 9052.**

28 The notice shall be in substantially the following form:

29  
30 NOTICE OF ADMINISTRATION OF  
31 ESTATE OF \_\_\_\_\_, DECEDENT

32 Notice to creditors:

33  
34 Administration of the estate of \_\_\_\_\_ (deceased) has been commenced by \_\_\_\_\_  
35 (personal representative) in Estate No. \_\_\_\_\_ in the Superior Court of California, County of  
36 \_\_\_\_\_. You must file your claim with the court and ~~mail~~ deliver a copy pursuant to Section  
37 1215 of the California Probate Code ~~a copy~~ to the personal representative within the last to occur  
38 of four months after \_\_\_\_\_ (the date letters were first issued to a general personal  
39 representative, as defined in subdivision (b) of Section 58 of the California Probate Code), or 60  
40 days after the date this notice was mailed to you or, in the case of personal delivery, 60 days after  
41 the date this notice was delivered to you, or you must petition to file a late claim as provided in  
42 Section 9103 of the California Probate Code. Failure to file a claim with the court and serve a  
43 copy of the claim on the personal representative will, in most instances, invalidate your claim. A

1 claim form may be obtained from the court clerk. For your protection, you are encouraged to file  
2 your claim by certified mail, with return receipt requested.

3  
4 (Date of mailing this notice)

5 (Name and address of personal representative or attorney)

6 **Probate Code section 9153.**

7 A claim form adopted by the Judicial Council shall inform the creditor that the claim must be  
8 filed with the court and a copy ~~mailed or~~ delivered pursuant to Section 1215 to the personal  
9 representative. The claim form shall include a proof of ~~mailing or~~ delivery of a copy of the claim  
10 to the personal representative, which may be completed by the creditor.

11  
12 **Probate Code section 9732.**

13 (a) \* \* \*

14 (b) To obtain an order under this section, the personal representative or any interested person  
15 shall file a petition showing the general condition of the estate and the types of investments that  
16 are proposed to be made.

17 (c) Notice of the hearing on the petition shall be ~~given~~ delivered as provided in Section 1220. In  
18 addition, the petitioner shall cause notice of the hearing and a copy of the petition to be ~~mailed~~  
19 delivered pursuant to Section 1215 to all known devisees of property which is proposed to be  
20 invested. Where the property proposed to be invested is devised to a trust or trustee, notice of the  
21 hearing and a copy of the petition shall be ~~mailed~~ delivered pursuant to Section 1215 to the  
22 trustee or, if the trustee has not yet accepted the trust, to the person named in the will as trustee.  
23 Mailing Delivery pursuant to this subdivision shall be to the person's last known address as  
24 provided in Section 1220.

25 (d) \* \* \*

26  
27 **Probate Code section 9762.**

28 (a) \* \* \*

29 (b) \* \* \*

30 (c) \* \* \*

31 (d) To obtain an order under this section, the personal representative or any interested person  
32 shall file a petition showing that the order requested would be to the advantage of the estate and  
33 in the best interest of the interested persons. Notice of the hearing on the petition shall be given  
34 as provided in Section 1220. In addition, unless the court otherwise orders, the petitioner, not less  
35 than 15 days before the hearing, shall cause notice of hearing and a copy of the petition to be  
36 ~~mailed~~ delivered pursuant to Section 1215 to each of the surviving general partners at his or her  
37 last known address.

38  
39 **Probate Code section 9783.**

40 A person described in Section 9782 may personally deliver or mail a written objection to the  
41 disposition or abandonment to the personal representative on or before the date specified in the  
42 notice as the date on or after which the property will be disposed of or abandoned. Subject to  
43 Section 9788, after receipt of the written objection, the personal representative shall not dispose

1 of or abandon the property without authorization by order of the court obtained under Section  
2 9611.

3  
4 **Probate Code section 9787.**

5 (a) Except as provided in subdivision (b), a person described in Section 9782 who receives notice  
6 of the proposed disposition or abandonment as provided in Section 9782, waives the right to  
7 have the court later review the disposition or abandonment of the property unless the person does  
8 one of the following:

9 (1) Personally delivers or mails a written objection as provided in Section 9783.

10 (2) Serves a restraining order obtained under Section 9784 before whichever of the following is  
11 the later time:

12 (A) The date specified in the notice of proposed disposition or abandonment as the date on or  
13 after which the property will be disposed of or abandoned.

14 (B) The date the property has actually been disposed of or abandoned.

15 (b) Subject to Section 9785, the court may review the disposition or abandonment of the property  
16 upon the motion of a person described in subdivision (a) of Section 9782 who establishes that he  
17 or she did not actually receive notice of the proposed disposition or abandonment before the time  
18 to object expired.

19  
20 **Probate Code section 10585.**

21 (a) The notice of proposed action shall state all of the following:

22 (1) The name, ~~and~~ mailing address, and electronic address of the personal representative.

23 (2) The person, ~~and~~ telephone number, and electronic address, to ~~call~~ contact to get additional  
24 information.

25 (3)-(4) \* \* \*

26 (b) The notice of proposed action may be given using the most current Notice of Proposed Action  
27 form prescribed by the Judicial Council.

28 (c) If the most current form prescribed by the Judicial Council is not used to give notice of  
29 proposed action, the notice of proposed action shall satisfy all of the following requirements:

30 (1) The notice of proposed action shall be in substantially the same form as the form prescribed  
31 by the Judicial Council.

32 (2) The notice of proposed action shall contain the statements described in subdivision (a).

33 (3) The notice of proposed action shall contain a form for objecting to the proposed action in  
34 substantially the form set out in the Judicial Council form.

35  
36 **Probate Code section 10586.**

37 The notice of proposed action shall be ~~mailed or personally~~ delivered to pursuant to Section 1215  
38 each person required to be given notice of proposed action not less than 15 days before the date  
39 specified in the notice of proposed action on or after which the proposed action is to be taken. If  
40 mailed, the notice of proposed action shall be addressed to the person at the person's last known  
41 address. ~~Sections 1215 and 1216 apply to the mailing or delivery of the notice of proposed~~  
42 ~~action.~~



1  
2 **Probate Code section 10587.**

3 (a) Any person entitled to notice of proposed action under Section 10581 may object to the  
4 proposed action as provided in this section.

5 (b) The objection to the proposed action is made by delivering pursuant to Section 1215 ~~or~~  
6 ~~mailing~~ a written objection to the proposed action to the personal representative at the address  
7 stated in the notice of proposed action. The person objecting to the proposed action either may  
8 use the Judicial Council form or may make the objection in any other writing that identifies the  
9 proposed action with reasonable certainty and indicates that the person objects to the taking of  
10 the proposed action.

11 (c) The personal representative is deemed to have notice of the objection to the proposed action if  
12 it is delivered or received at the address stated in the notice of proposed action before whichever  
13 of the following times is the later:

14 (1) The date specified in the notice of proposed action on or after which the proposed action is to  
15 be taken.

16 (2) The date the proposed action is actually taken.  
17

18 **Probate Code section 11601.**

19 Notice of the hearing on the petition shall be ~~given~~ delivered as provided in Section 1220 to all of  
20 the following persons:

21 (a) Each person listed in Section 1220.

22 (b) Each known heir whose interest in the estate would be affected by the petition.

23 (c) Each known devisee whose interest in the estate would be affected by the petition.

24 (d) The Attorney General, at the office of the Attorney General in Sacramento, if any portion of  
25 the estate is to escheat to the state and its interest in the estate would be affected by the petition.

26 (e) The Controller, if property is to be distributed to the state because there is no known  
27 beneficiary or if property is to be distributed to a beneficiary whose whereabouts is unknown. A  
28 copy of the latest account filed with the court shall be ~~served on~~ delivered to the Controller with  
29 the notice.  
30

31 **Probate Code section 13200.**

32 (a) No sooner than six months from the death of a decedent, a person or persons claiming as  
33 successor of the decedent to a particular item of property that is real property may file in the  
34 superior court in the county in which the decedent was domiciled at the time of death, or if the  
35 decedent was not domiciled in this state at the time of death, then in any county in which real  
36 property of the decedent is located, an affidavit in the form prescribed by the Judicial Council  
37 pursuant to Section 1001 stating all of the following:

38 (1) The name of the decedent.

39 (2) The date and place of the decedent's death.

40 (3) A legal description of the real property and the interest of the decedent therein.

41 (4) The name and address of each person serving as guardian or conservator of the estate of the  
42 decedent at the time of the decedent's death, so far as known to the affiant.

43 (5) "The gross value of all real property in the decedent's estate located in California, as shown

1 by the inventory and appraisal attached to this affidavit, excluding the real property described in  
2 Section 13050 of the California Probate Code, does not exceed fifty thousand dollars (\$50,000).”

3 (6) “At least six months have elapsed since the death of the decedent as shown in a certified copy  
4 of decedent’s death certificate attached to this affidavit.”

5 (7) Either of the following, as appropriate:

6 (A) “No proceeding is now being or has been conducted in California for administration of the  
7 decedent’s estate.”

8 (B) “The decedent’s personal representative has consented in writing to use of the procedure  
9 provided by this chapter.”

10 (8) “Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been  
11 paid.”

12 (9) “The affiant is the successor of the decedent (as defined in Section 13006 of the Probate  
13 Code) and to the decedent’s interest in the described property, and no other person has a superior  
14 right to the interest of the decedent in the described property.”

15 (10) “The affiant declares under penalty of perjury under the laws of the State of California that  
16 the foregoing is true and correct.”

17 (b) For each person executing the affidavit, the affidavit shall contain a notary public’s certificate  
18 of acknowledgment identifying the person.

19 (c) There shall be attached to the affidavit an inventory and appraisal of the decedent’s real  
20 property in this state, excluding the real property described in Section 13050. The inventory and  
21 appraisal of the real property shall be made as provided in Part 3 (commencing with Section  
22 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant from  
23 those probate referees appointed by the Controller under Section 400 to appraise property in the  
24 county where the real property is located.

25 (d) If the affiant claims under the decedent’s will and no estate proceeding is pending or has been  
26 conducted in California, a copy of the will shall be attached to the affidavit.

27 (e) A certified copy of the decedent’s death certificate shall be attached to the affidavit. If the  
28 decedent’s personal representative has consented to the use of the procedure provided by this  
29 chapter, a copy of the consent and of the personal representative’s letters shall be attached to the  
30 affidavit.

31 (f) The affiant shall ~~mail~~ deliver pursuant to Section 1215 a copy of the affidavit and attachments  
32 to any person identified in paragraph (4) of subdivision (a).

33  
34 **Probate Code section 13655.**

35 (a) If proceedings for the administration of the estate of the deceased spouse are pending at the  
36 time a petition is filed under this chapter, or if the proceedings are not pending and if the petition  
37 filed under this chapter is not filed with a petition for probate of the deceased spouse’s will or for  
38 administration of the estate of the deceased spouse, notice of the hearing on the petition filed  
39 under this chapter shall be ~~given~~ delivered as provided in Section 1220 to all of the following  
40 persons:

41 (1) Each person listed in Section 1220 and each person named as executor in any will of the  
42 deceased spouse.

43 (2) All devisees and known heirs of the deceased spouse and, if the petitioner is the trustee of a

1 trust that is a devisee under the will of the decedent, all persons interested in the trust, as  
2 determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of  
3 Section 15804.

4 (b) The notice specified in subdivision (a) shall also be ~~mailed~~ delivered as provided in  
5 subdivision (a) to the Attorney General, addressed to the office of the Attorney General at  
6 Sacramento, if the petitioner bases the allegation that all or part of the estate of the deceased  
7 spouse is property passing to the surviving spouse upon the will of the deceased spouse and the  
8 will involves or may involve either of the following:

9 (1) A testamentary trust of property for charitable purposes other than a charitable trust with a  
10 designated trustee, resident in this state.

11 (2) A devise for a charitable purpose without an identified devisee or beneficiary.

12  
13 **Probate Code section 15686.**

14 (a) As used in this section, “trustee’s fee” includes, but is not limited to, the trustee’s periodic  
15 base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but  
16 does not include fees for extraordinary services.

17 (b) A trustee may not charge an increased trustee’s fee for administration of a particular trust  
18 unless the trustee first gives at least 60 days’ written notice of that increased fee to all of the  
19 following persons:

20 (1) Each beneficiary who is entitled to an account under Section 16062.

21 (2) Each beneficiary who was given the last preceding account.

22 (3) Each beneficiary who has made a written request to the trustee for notice of an increased  
23 trustee’s fee and has given an address for receiving notice ~~by mail~~.

24 (c) If a beneficiary files a petition under Section 17200 for review of the increased trustee’s fee or  
25 for removal of the trustee and serves a copy of the petition on the trustee before the expiration of  
26 the 60-day period, the increased trustee’s fee does not take effect as to that trust until otherwise  
27 ordered by the court or the petition is dismissed.

28  
29 **Probate Code section 16061.7.**

30 (a) \* \* \*

31 (b) \* \* \*

32 (c) \* \* \*

33 (d) \* \* \*

34 (e) The notification by trustee shall be ~~served~~ delivered ~~by mail~~ to the last known address,  
35 pursuant to Section 1215, ~~or by personal delivery~~.

36 (f) \* \* \*

37 (g) The notification by trustee shall contain the following information:

38 (1) The identity of the settlor or settlors of the trust and the date of execution of the trust  
39 instrument.

40 (2) The name, ~~mailing~~ address, and telephone number of each trustee of the trust.

41 (3) The address of the physical location where the principal place of administration of the trust is  
42 located, pursuant to Section 17002.

43 (4) Any additional information that may be expressly required by the terms of the trust

1 instrument.

2 (5) A notification that the recipient is entitled, upon reasonable request to the trustee, to receive  
3 from the trustee a true and complete copy of the terms of the trust.

4 (h) If the notification by the trustee is served because a revocable trust or any portion of it has  
5 become irrevocable because of the death of one or more settlors of the trust, or because, by the  
6 express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor  
7 because of a contingency related to the death of one or more of the settlors of the trust, the  
8 notification by the trustee shall also include a warning, set out in a separate paragraph in not less  
9 than 10-point boldface type, or a reasonable equivalent thereof, that states as follows:

10 “You may not bring an action to contest the trust more than 120 days from the date this  
11 notification by the trustee is served upon you or 60 days from the date on which a copy of the  
12 terms of the trust is ~~mailed or personally~~ delivered to you during that 120-day period, whichever  
13 is later.”

14 (i) \* \* \*

15 (j) \* \* \*

16

17 **Probate Code section 16061.8.**

18 No person upon whom the notification by the trustee is served pursuant to this chapter, whether  
19 the notice is served on him or her within or after the time period set forth in subdivision (f) of  
20 Section 16061.7, may bring an action to contest the trust more than 120 days from the date the  
21 notification by the trustee is served upon him or her, or 60 days from the day on which a copy of  
22 the terms of the trust is ~~mailed or personally~~ delivered pursuant to Section 1215 to him or her  
23 during that 120-day period, whichever is later.

24

25 **Probate Code section 16061.9.**

26 (a) A trustee who fails to serve the notification by trustee as required by Section 16061.7 on a  
27 beneficiary shall be responsible for all damages, attorney’s fees, and costs caused by the failure  
28 unless the trustee makes a reasonably diligent effort to comply with that section.

29 (b) A trustee who fails to serve the notification by trustee as required by Section 16061.7 on an  
30 heir who is not a beneficiary and whose identity is known to the trustee shall be responsible for  
31 all damages caused to the heir by the failure unless the trustee shows that the trustee made a  
32 reasonably diligent effort to comply with that section. For purposes of this subdivision,  
33 “reasonably diligent effort” means that the trustee has ~~sent~~ delivered notice pursuant to Section  
34 1215 ~~by first-class mail~~ to the heir at the heir’s last ~~mailing~~ address actually known to the trustee.

35

36 **Probate Code section 16336.6.**

37 Unless expressly prohibited by the governing instrument, a trustee may reconvert the trust from a  
38 unitrust or change the payout percentage of a unitrust.

39 (a) The trustee may make the reconversion or change in payout percentage without a court order  
40 if all of the following conditions are satisfied:

41 (1) At least three years have elapsed since the most recent conversion to a unitrust.

42 (2) The trustee determines that reconversion or change in payout percentage would enable the  
43 trustee to better comply with the provisions of subdivision (b) of Section 16335.

1 (3) One of the following notice requirements is satisfied:

2 (A) In the case of a proposed reconversion, the trustee gives written notice of the trustee's  
3 intention to convert that complies with the requirements of Chapter 5 (commencing with Section  
4 16500) and no beneficiary objects to the proposed action in a writing delivered pursuant to  
5 Section 1215 to the trustee within the period prescribed by subdivision (d) of Section 16502. The  
6 trustee's notice shall include the information described in subdivision (3) and (4) of subdivision  
7 (c) of Section 16336.4.

8 (B) In the case of a proposed change in payout percentage, the trustee gives written notice stating  
9 the new payout percentage that the trustee proposes to adopt, which notice shall comply with the  
10 requirements of Chapter 5 (commencing with Section 16500), and no beneficiary objects to the  
11 proposed action in a writing delivered pursuant to Section 1215 to the trustee within the period  
12 prescribed by subdivision (d) of Section 16502.

13 (b) The trustee may make the reconversion or change in payout percentage at any time pursuant  
14 to court order provided that: (1) the court determines that reconversion or change in payout  
15 percentage will enable the trustee to better comply with the provisions of subdivision (b) of  
16 Section 16335, and (2) in the case of a change in payout percentage, the new payout percentage is  
17 at least 3 percent and no greater than 5 percent. The court may enter an order pursuant to this  
18 subdivision upon the petition of the trustee or any beneficiary.

19  
20 **Probate Code section 16501.**

21 (a) The trustee who elects to provide notice pursuant to this chapter shall ~~mail~~ deliver notice  
22 pursuant to Section 1215 of the proposed action to each of the following:

23 (1) A beneficiary who is receiving, or is entitled to receive, income under the trust, including a  
24 beneficiary who is entitled to receive income at the discretion of the trustee.

25 (2) A beneficiary who would receive a distribution of principal if the trust were terminated at the  
26 time the notice is given.

27 (b) Notice of proposed action is not required to be given to a person who consents in writing to  
28 the proposed action. The consent may be executed at any time before or after the proposed action  
29 is taken.

30 (c) A trustee is not required to provide a copy of the notice of proposed action to a beneficiary  
31 who is known to the trustee but who cannot be located by the trustee after reasonable diligence or  
32 who is unknown to the trustee.

33 (d) Notwithstanding any other provision of this chapter, the trustee may not use a notice of  
34 proposed action in any of the following actions:

35 (1) Allowance of the trustee's compensation.

36 (2) Allowance of compensation of the attorney for the trustee.

37 (3) Settlement of accounts.

38 (4) Preliminary and final distributions and discharge.

39 (5) Sale of property of the trust to the trustee or to the attorney for the trustee.

40 (6) Exchange of property of the trust for property of the trustee or for property of the attorney for  
41 the trustee.

42 (7) Grant of an option to purchase property of the trust to the trustee or to the attorney for the  
43 trustee.

1 (8) Allowance, payment, or compromise of a claim of the trustee, or the attorney for the trustee,  
2 against the trust.

3 (9) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee or  
4 against the attorney for the trust.

5 (10) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee,  
6 or the attorney for the trustee, owing to or in favor of the trust.

7  
8 **Probate Code section 16502.**

9 The notice of proposed action shall state that it is given pursuant to this section and shall include  
10 all of the following:

11 (a) The name, mailing address, and ~~mailing~~ electronic address of the trustee.

12 (b) The name, ~~and~~ telephone number, and electronic address of a person who may be contacted  
13 for additional information.

14 (c) A description of the action proposed to be taken and an explanation of the reasons for the  
15 action.

16 (d) The time within which objections to the proposed action can be made, which shall be at least  
17 45 days from the ~~mailing~~ delivery or receipt of the notice of proposed action.

18 (e) The date on or after which the proposed action may be taken or is effective.

19  
20 **Probate Code section 16503.** Objections to proposed actions by beneficiary; failure to object;  
21 petitions

22 (a) A beneficiary may object to the proposed action by ~~mailing~~ delivering pursuant to Section  
23 1215 a written objection to the trustee at the address stated in the notice of proposed action  
24 within the time period specified in the notice of proposed action.

25 (b) A trustee is not liable to a beneficiary for an action regarding a matter governed by this part if  
26 the trustee does not receive a written objection to the proposed action from a beneficiary within  
27 the applicable period and the other requirements of this section are satisfied. If no beneficiary  
28 entitled to notice objects under this section, the trustee is not liable to any current or future  
29 beneficiary with respect to the proposed action. This subdivision does not apply to a person who  
30 is a minor or an incompetent adult at the time of receiving the notice of proposed action unless  
31 the notice is served on a guardian or conservator of the estate of the person.

32 (c) If the trustee receives a written objection within the applicable period, either the trustee or a  
33 beneficiary may petition the court to have the proposed action taken as proposed, taken with  
34 modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the  
35 burden of proving that the trustee's proposed action should not be taken. A beneficiary who has  
36 not objected is not estopped from opposing the proposed action in the proceeding.

37 (d) If the trustee decides not to implement the proposed action, the trustee shall notify the  
38 beneficiaries of the decision not to take the action and the reasons for the decision, and the  
39 trustee's decision not to implement the proposed action does not itself give rise to liability to any  
40 current or future beneficiary. A beneficiary may petition the court to have the action taken, and  
41 has the burden of proving that it should be taken.

1  
2 **Probate Code section 17203.**

3 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
4 notice of hearing to be ~~mailed~~ delivered pursuant to Section 1215 to all of the following persons:

5 (1) All trustees.

6 (2) All beneficiaries, subject to Chapter 2 (commencing with Section 15800) of Part 3.

7 (3) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of  
8 the Attorney General.

9 (b) At least 30 days before the time set for hearing on the petition, the petitioner shall cause  
10 notice of the hearing and a copy of the petition to be served in the manner provided in Chapter 4  
11 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure on any  
12 person, other than a trustee or beneficiary, whose right, title, or interest would be affected by the  
13 petition and who does not receive notice pursuant to subdivision (a). The court may not shorten  
14 the time for giving notice under this subdivision.

15 (c) If a person to whom notice otherwise would be given has been deceased for at least 40 days,  
16 and no personal representative has been appointed for the estate of that person, and the deceased  
17 person's right, title, or interest has not passed to any other person pursuant to Division 8  
18 (commencing with Section 13000) or otherwise, notice may instead be given to the following  
19 persons:

20 (1) Each heir and devisee of the decedent, and all persons named as executors of the will of the  
21 decedent, so far as known to the petitioner.

22 (2) Each person serving as guardian or conservator of the decedent at the time of the decedent's  
23 death, so far as known to the petitioner.

24  
25 **Probate Code section 17204.**

26 (a) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by  
27 attorney, file with the court clerk where the proceedings are pending a written request stating that  
28 the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or  
29 all of the purposes described in Section 17200 and giving an address for receiving notice by mail.  
30 A copy of the request shall be ~~personally~~ delivered pursuant to Section 1215 ~~or mailed~~ to the  
31 trustee or the trustee's attorney. If personally delivered, the request is effective when it is  
32 delivered. If mailed or electronically delivered, the request is effective when it is received. When  
33 the original of the request is filed with the court clerk, it shall be accompanied by a written  
34 admission or proof of service. A request for special notice may be modified or withdrawn in the  
35 same manner as provided for the making of the initial request.

36 (b)(1) An interested person may request special notice in the same manner as a beneficiary under  
37 subdivision (a), for the purpose set forth in paragraph (9) of subdivision (b) of Section 17200.  
38 The request for special notice shall be accompanied by a verified statement of the person's  
39 interest.

40 (2) For purposes set forth in paragraphs (2), (4) to (6), inclusive, (8), (12), (16), (20), and (21) of  
41 subdivision (b) of Section 17200, an interested person may petition the court for an order for  
42 special notice of proceedings involving a trust. The petition shall include a verified statement of  
43 the creditor's interest and may be served on the trustee or the trustee's attorney by personal

1 delivery or in the manner required by Section 1215. The petition may be made by ex parte  
2 application.

3 (3) For purposes of this subdivision, an “interested person” means only a creditor of a trust or, if  
4 the trust has become irrevocable upon the death of a trustor, a creditor of the trustor.

5 (4) This section does not confer standing on an interested person if standing does not otherwise  
6 exist.

7 (c) Except as provided in subdivision (d), after serving and filing a request and proof of service  
8 pursuant to subdivision (a) or paragraph (1) of subdivision (b), the beneficiary or the interested  
9 person is entitled to notice pursuant to Section 17203. If the petition of an interested person filed  
10 pursuant to paragraph (2) of subdivision (b) is granted by the court, the interested person is  
11 entitled to notice pursuant to Section 17203.

12 (d) A request for special notice made by a beneficiary whose right to notice is restricted by  
13 Section 15802 is not effective.  
14

15 **Probate Code section 17205.**

16 If a trustee or beneficiary has served and filed either a notice of appearance, in person or by  
17 counsel, directed to the petitioner or the petitioner’s counsel in connection with a particular  
18 petition and proceeding or a written request for a copy of the petition, and has given an address to  
19 which notice or a copy of the petition may be ~~mailed or delivered~~ pursuant to Section 1215, the  
20 petitioner shall cause a copy of the petition to be ~~mailed~~ delivered to that person within five days  
21 after service of the notice of appearance or receipt of the request.  
22

23 **Probate Code section 17403.**

24 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
25 notice of the time and place of the hearing to be ~~mailed~~ delivered pursuant to Section 1215 to  
26 each of the persons named in the petition at their respective addresses as stated in the petition.

27 (b) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file  
28 written grounds in opposition to the petition.  
29

30 **Probate Code section 17454.**

31 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
32 notice of the time and place of the hearing to be ~~mailed~~ delivered pursuant to Section 1215 to  
33 each of the persons named in the petition at their respective addresses as stated in the petition.

34 (b) Any person interested in the trust, as trustee, beneficiary, or otherwise, may appear and file  
35 written grounds in opposition to the petition.  
36

37 **Probate Code section 19011.**

38 (a) The Judicial Council may prescribe the form and contents of the petition, notice, claim form,  
39 and allowance or rejection form to be used pursuant to this part. The allowance or rejection form  
40 may be part of the claim form.

41 (b) Any claim form adopted by the Judicial Council shall inform the creditor that the claim must  
42 be filed with the court and a copy ~~mailed or delivered~~ pursuant to Section 1215 to the trustee.

43 The claim form shall include a proof of ~~mailing or~~ delivery of a copy of the claim to the trustee,



1 which may be completed by the claimant.

2

3 **Probate Code section 19024.**

4 At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
5 notice of the time and place of the hearing, together with a copy of the petition, to be ~~mailed~~  
6 delivered pursuant to Section 1215 to each of the following persons who is not a petitioner:

7 (a) All trustees of the trust and of any other trusts to which an allocation of liability may be  
8 approved by the court pursuant to the petition.

9 (b) All beneficiaries affected.

10 (c) The personal representative of the deceased settlor’s estate, if any is known to the trustee.

11 (d) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of  
12 the Attorney General, unless the Attorney General waives notice.

13

14 **Probate Code section 19040.**

15 (a) \* \* \*

16 (b) The caption of the notice, the deceased settlor’s name, and the name of the trustee shall be in  
17 at least 8-point type, the text of the notice shall be in at least 7-point type, and the notice shall  
18 state substantially as follows:

19 NOTICE TO CREDITORS

20 OF \_\_\_\_\_

21 # \_\_\_\_\_

22 SUPERIOR COURT OF CALIFORNIA

23 COUNTY OF \_\_\_\_\_

24

25 Notice is hereby given to the creditors and contingent creditors of the above-named decedent,  
26 that all persons having claims against the decedent are required to file them with the Superior  
27 Court, at \_\_\_\_\_, and ~~mail~~ deliver pursuant to Section 1215 of the California Probate Code a  
28 copy to \_\_\_\_\_, as trustee of the trust dated \_\_\_\_\_ wherein the decedent was the settlor, at \_\_\_\_\_,  
29 within the later of four months after \_\_\_\_\_ (the date of the first publication of notice to creditors)  
30 or, if notice is mailed or personally delivered to you, 60 days after the date this notice is mailed  
31 or personally delivered to you. A claim form may be obtained from the court clerk. For your  
32 protection, you are encouraged to file your claim by certified mail, with return receipt requested.  
33 (name and address of trustee or attorney)

34 (c) \* \* \*

35

36 **Probate Code section 19052.**

37 The notice shall be in substantially the following form:

38 NOTICE TO CREDITORS

39 OF \_\_\_\_\_

40

41 # \_\_\_\_\_

42 SUPERIOR COURT OF CALIFORNIA

43 COUNTY OF \_\_\_\_\_

1 Notice is hereby given to the creditors and contingent creditors of the above-named decedent,  
2 that all persons having claims against the decedent are required to file them with the Superior  
3 Court, at \_\_\_\_\_, and ~~mail or~~ deliver pursuant to Section 1215 of the California Probate Code a  
4 copy to \_\_\_\_\_, as trustee of the trust dated \_\_\_\_\_ wherein the decedent was the settlor, at  
5 \_\_\_\_\_, within the later of four months after \_\_\_\_\_ (the date of the first publication of notice to  
6 creditors) or, if notice is mailed or personally delivered to you, 60 days after the date this notice  
7 is mailed or personally delivered to you, or you must petition to file a late claim as provided in  
8 Section 19103 of the Probate Code. A claim form may be obtained from the court clerk. For your  
9 protection, you are encouraged to file your claim by certified mail, with return receipt requested.

10 \_\_\_\_\_  
11 (Date of mailing this  
12 notice if applicable)

13 \_\_\_\_\_  
14 \_\_\_\_\_  
15 (name and address of  
16 trustee or attorney)

17  
18 **Probate Code section 19150.**

- 19 (a) A claim may be filed by the creditor or a person acting on behalf of the claimant.  
20 (b) A claim shall be filed with the court and a copy shall be ~~mailed~~ delivered pursuant to Section  
21 1215 to the trustee. Failure to ~~mail~~ deliver a copy to the trustee does not invalidate a properly  
22 filed claim, but any loss that results from the failure shall be borne by the creditor.

23  
24 **Probate Code section 19153.**

25 The Judicial Council may adopt a claim form which shall inform the creditor that the claim must  
26 be filed with the court and a copy ~~mailed or~~ delivered pursuant to Section 1215 to the trustee.  
27 Any such claim form shall include a proof of ~~mailing or~~ delivery of a copy of the claim to the  
28 trustee which may be completed by the creditor.

29  
30 **Probate Code section 19323.**

- 31 (a) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
32 notice of the time and place of the hearing and a copy of the petition to be served on the  
33 surviving spouse in the manner provided in Chapter 4 (commencing with Section 413.10) of  
34 Title 5 of Part 2 of the Code of Civil Procedure.  
35 (b) At least 30 days before the time set for the hearing on the petition, the petitioner shall cause  
36 notice of the time and place of hearing, together with a copy of the petition, to be ~~mailed~~  
37 delivered pursuant to Section 1215 to each of the following persons who are not petitioners:  
38 (1) All trustees of the trust and of any trusts to which an allocation of liability may be approved  
39 by the court pursuant to the petition.  
40 (2) All beneficiaries affected.  
41 (3) The personal representative of the deceased settlor's estate, if any is known to the trustee.  
42 (4) The Attorney General, if the petition relates to a charitable trust subject to the jurisdiction of  
43 the Attorney General, unless the Attorney General waives notice.

1  
2 **Probate Code section 20122.**

3 Not less than 30 days before the hearing, the petitioner shall do both of the following:

4 (a) Cause notice of the hearing and a copy of the petition to be ~~mailed~~ delivered pursuant to  
5 Section 1215 to the personal representative and to each person interested in the estate against  
6 whom prorated amounts may be charged pursuant to paragraph (1) of subdivision (a) of Section  
7 20123.

8 (b) Cause a summons and a copy of the petition to be served on each person interested in the  
9 estate who may be directed to make payment of prorated amounts pursuant to paragraph (2) of  
10 subdivision (a) of Section 20123. The summons shall be in the form and shall be served in the  
11 manner prescribed in Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil  
12 Procedure.

13  
14 **Probate Code section 20222.**

15 Not less than 30 days before the hearing the petitioner shall do both of the following:

16 (a) Cause notice of the hearing and a copy of the petition to be ~~mailed~~ delivered pursuant to  
17 Section 1215 to the trustee and each transferee against whom prorated amounts may be charged  
18 pursuant to paragraph (1) of subdivision (a) of Section 20223.

19 (b) Cause a summons and a copy of the petition to be served on each transferee who may be  
20 directed to make payment of prorated amounts pursuant to paragraph (2) of subdivision (a) of  
21 Section 20223. The summons shall be in the form and shall be served in the manner prescribed in  
22 Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure.

23  
24 **Welfare and Institutions Code section 728**

25 (a) \* \* \*

26  
27 (b) If the juvenile court decides to terminate or modify a guardianship previously established  
28 under the Probate Code pursuant to subdivision (a), the juvenile court shall provide notice of that  
29 decision to the court in which the guardianship was originally established. The clerk of the  
30 superior court, upon receipt of the notice, shall file the notice with other documents and records  
31 of the pending proceeding and send by first-class mail or electronic service pursuant to Section  
32 1215 of the Probate Code a copy of the notice to all parties of record in the superior court.

33  
34 (c)-(g) \* \* \*

35  
36 **Welfare and Institutions Code section 5362**

37 (a) The clerk of the superior court shall notify each conservator, his or her conservatee and the  
38 person in charge of the facility in which the person resides, and the conservatee's attorney, at  
39 least 60 days before the termination of the one-year period. If the conservator is a private party,  
40 the clerk of the superior court shall also notify the mental health director and the county officer  
41 providing conservatorship investigation pursuant to Section 5355, at least 60 days before the  
42 termination of the one-year period. Notification shall be ~~given in person or by first class mail~~

1 delivered pursuant to Section 1215 of the Probate Code. The notification shall be in substantially  
2 the following form:

3 [Form text here, unchanged from the form text in the current statute]  
4

5 (b) Subject to a request for a court hearing or jury trial, the judge may, on his or her own motion,  
6 accept or reject the conservator's petition.  
7

8 If the conservator does not petition to reestablish conservatorship at or before the termination of  
9 the one-year period, the court shall issue a decree terminating conservatorship. The decree shall  
10 be ~~sent~~ delivered to the conservator and his or her conservatee ~~by first-class mail~~ pursuant to  
11 Section 1215 of the Probate Code and shall be accompanied by a statement of California law as  
12 set forth in Section 5368.

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**Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Julia Kelety Judge of the Superior Court, County of San Diego, San Diego	AM	<p>My bottom line is that I think the proposal is good, but as I discuss below, there is some additional work to do, including modifying current forms; and fixing CRC 2.500 et seq., which governs access to the court’s electronic records, before the changes can be implemented.</p> <p>The best part about this proposal is that it cleans up the entire Probate Code by replacing the notice requirements sprinkled throughout the code with a universal reference to a new section 1215.</p> <p>However, there are several areas that need additional consideration.</p> <p>First, as you can see in the new 1215, electronic service is only available on those who have “filed written consent to receive electronic service and provided an electronic service address.” The language may need to be tightened up to ensure that the consent is filed</p>	<p>Clarification that the consent to e-service must be filed in the particular matter in which service is</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>in the instant matter, not elsewhere, and that the written consent include the electronic service address. It will be very hard for Probate Examiners and the court to know whether service is correct if there is any ambiguity in the court file. It may be necessary to have a form that the party files in the probate matter which contains the necessary consent language as well as the service address.</p> <p>Second, the existing “Proof of Service” forms will have to be changed to incorporate the provisions of the new 1215. For example, the current notice of hearing doesn’t track the proposed rule:  <a href="http://www.courts.ca.gov/documents/de120.pdf">http://www.courts.ca.gov/documents/de120.pdf</a></p> <p>Finally, Rule of Court 2.503 will need to be re-done before the new rule can be implemented. That Rule of Court deals with electronic access to court records. It provides that in conservatorships and guardianships, the court may not give non-parties remote access to</p>	<p>involved is an excellent suggestion that the committee supports. Proposed section 1215(c)(1) does require the person to be served electronically to provide an electronic address. The committee will revise the <i>Request for Special Notice</i> (form DE-154/GC-035) to provide a consent to e-service and an electronic address, and will consider development of a separate form for these purposes not tied to a <i>Request for Special Notice</i>.</p> <p>The committee will review in 2017 all probate-connected proof-of-service forms to see what changes are necessary. The forms revised in that year would become effective on January 1, 2018, the same date the legislation would become effective if it is passed by the Legislature and signed by the Governor in 2017.</p> <p>The committee does not agree that the proposed statutory provisions authorizing electronic service of notice in probate proceedings are inconsistent with the rules on remote access to court records, or that the rules on remote access need to be changed to implement the new provisions. The</p>

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			<p>electronic records, other than ROA matters, which are defined in the government code as title of the case, date of commencement, and memo of subsequent proceedings and their dates.</p> <p>As I read the CRC, If we agree that a court-generated notice constitutes a court <b>[record?]</b>, then the clerk could not send it electronically to a non-party (e.g. a surety or the Attorney General) because the notice goes beyond the ROA limits. CRC 2.501 excepts parties from its prohibition on access to electronic records, but in probate, notice is often required to others beyond the immediate parties. Thus, 2.503 will have to be addressed and fixed as part of this process.</p> <p>(And lastly, there is a typo in [Welfare &amp; Institutions Code] section 728, which now</p>	<p>provision of electronic notice by the court to persons entitled to such notice is not the same as providing remote access to court records by the public. Further, to the extent that electronic notice is authorized by statute, the rules governing remote access to the public would not apply. (See Cal. Rules of Court, rule 2.501(b): “[t]he rules in the chapter on remote access apply only to access to court records by the public and do not limit access to court records by a party in an action or proceeding, by the attorney of a party, or <i>by other persons or entities that are entitled to access by statute or rule.</i>”) (Italics added.) Thus, because the proposed legislation would provide by statute that non-parties entitled to notice may receive such notice electronically, rule 2.501(b) makes it clear that the rules on remote access to court records would not apply to these non-parties respecting electronic notices to them from the court.</p> <p>The committee has revised the proposal to correct this error, and thanks Judge Keley for spotting it</p>

## LEG16-09

### Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective Proceedings

(Enact a new Probate Code section 1265; Restate existing Probate Code section 1265 as a new section 1266; amend Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; amend Welfare and Institutions Code sections 728 and 5362; and repeal Probate Code section 1216)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			erroneously refers to “215” instead of “1215”.)  Thank you for the opportunity to comment on this proposal.	and notifying us.
2.	Orange County Bar Association, by Todd G. Friedland, President, Newport Beach	A	No specific comments received.	No response necessary.
3.	Cheryl Siler Aderant Holdings, Inc. Culver City	AM	I am writing to comments on the proposed amendments to the California Probate Code as set forth in Leg 16-09.  As you know, Leg 16-09 contains proposed amendments relating to the “Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective Proceedings.” As part of this proposal, Probate Code 1215 is being revised to include provisions for service of notices and	



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>other papers by personal delivery, mail and electronic means.</p> <p>Generally, I have no problem with the proposed amendments. However, one issue does concern me and that is whether or not the provisions of California Code of Civil Procedure (CCP) 1016.6 are applied to extend the notice period if a notice is served by electronic means prior to a hearing. If so, this would be inconsistent with the treatment of notices served by mail under Probate Code 1215.</p> <p>Currently, Probate Code 1215(e) states:</p> <p>When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.</p> <p>Generally, this section is understood to mean that if a notice must be served a certain number of days prior to a hearing, for instance 15 days, the notice may be served by mail 15 days before the hearing and the provisions of CCP 1013(a)</p>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>extending the notice period by 5 days are not applicable.</p> <p>In the proposed amendments, Probate Code 1215(e) is renumbered 1215(a)(4), however, the language remains the same.</p> <p>Proposed Probate Code 1215(c) is being added to permit service via electronic means and states:</p> <p>(1) A notice or other paper may be electronically served on a person under subdivision (a) of Section 1010.6 of the Code of Civil Procedure if the person has filed written consent to receive electronic service and provided an electronic service address.</p> <p>(2) Electronic service is complete when the notice or other paper is sent.</p> <p>The proposed language of Section 1215(c) is problematic in light of the language used in proposed Section 1215(a)(4). The new language</p>	

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### Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective

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			<p>in Section 1215(c) suggests that the provisions of CCP 1010.6(a) apply to service of a notice by electronic means in a probate matter. CCP 1010.6(a)(4) extends the period of notice by two court days if service of the notice is made by electronic means.</p> <p>Thus, under the rules as proposed, the time to serve a notice by mail before the hearing would not be extended under CCP 1013(a), but the time to serve the notice by electronic means before the hearing would be extended under CCP 1010.6.</p> <p>This creates odd and confusing results. For example, where a notice must be served 15 days before the hearing, under the rules as proposed, the notice would be required to be served 15 days before the hearing if served by mail. In contrast, the same notice would be required to be served 15 days and 2 court days before the hearing if served by electronic means. It seems this would result in parties avoiding electronic service as it requires them to act sooner than if</p>	

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			<p>serving by mail.</p> <p>To avoid such problems, I suggest the language of proposed Probate Code section 1215(c)(2) be revised to mimic 1215(a)(4). This could be done as follows:</p> <p>(2) Electronic service is complete when the notice or other paper is sent <u>and the period of notice is not extended</u>.</p> <p>Thank you for your time and please let me know if you have any questions or comments.</p>	<p>The committee agrees with this comment, and will recommend that Probate Code section 1215(c)(2) be revised to read as follows:</p> <p>“(2) Electronic service is complete when the notice or other paper is sent and the period of notice is not extended.”</p>
4.	Standing Committee on the Delivery of Legal Services, State Bar of California, by Phong S. Wong, Chair, San Francisco	A	<p><b>Does the proposal appropriately address the stated purpose?</b></p> <p>Yes. The amendments that will be made to the probate code to authorize electronic service of notices and other papers on a person only apply to those who have filed consent to receive electronic service and have provided an electronic service address. Individuals,</p>	No response necessary.

**LEG16-09**

**Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective Proceedings** (Enact a new Probate Code section 1265; Restate existing Probate Code section 1265 as a new section 1266; amend Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; amend Welfare and Institutions Code sections 728 and 5362; and repeal Probate Code section 1216)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			including self-represented litigants and low-income parties, without access to email will not be impacted, as they simply do not have to consent to electronic service.	
5.	Superior Court, County of Los Angeles, Los Angeles	A	<p>This proposal appropriately addresses the stated purpose.</p> <ul style="list-style-type: none"> <li>• This proposed legislation does not mandate any new requirements for the Court.</li> <li>• Under WIC 5362 the Court is required to give notice to the parties [and to the person in charge of the facility where the conservatee resides] 60 days in advance of termination of the conservatorship. It would be of great benefit if this notice may one day be mandated to occur electronically to certain parties that file written consent to electronic service.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 5362 applies to mental health conservatorships under the Lanterman-Petris-Short (LPS) Act, not to probate conservatorships, but the procedural provisions of the Probate Code applicable to the latter matters also apply to LPS conservatorships, except as provided in Welfare and Institutions Code section 5350. Section 5362 would be amended by the proposed legislation to provide for notification “pursuant to section 1215,” which would include electronic service.</li> </ul> <p>The Los Angeles County Public Guardian is the conservator in most LPS conservatorships in that</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				<p>county, and most LPS conservatees there are represented by county public defenders. The committee therefore anticipates that electronic notice would be feasible in such cases for notice to the conservator, the facility where the conservatee resides, to the county public defender’s office—and to the other county officers required if the conservator is a private party. Electronic service of this notice to a private conservator would also be reasonably feasible, subject to the need to get prior consent to electronic service.</p> <p>However, electronic service of this notice to the LPS conservatee does not appear to be feasible.</p>
6.	Superior Court, County of San Diego by Michael M. Roddy, Court Executive Officer, San Diego	AM	Judicial Council and local forms with proof or service or a clerk’s certificate of service by mail will need to be revised to accommodate electronic service.	

## LEG16-09

### Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective

Proceedings (Enact a new Probate Code section 1265; Restate existing Probate Code section 1265 as a new section 1266; amend Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; amend Welfare and Institutions Code sections 728 and 5362; and repeal Probate Code section 1216)

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

	Commentator	Position	Comment	Committee Response
			<p>Additionally, it would be helpful if the Judicial Council developed a mandatory form for individuals to file, when consenting to electronic service. It needs to be very clear to the Probate Examiners and Judicial Officers whether the electronic service has been consented to and is therefore valid; a mandatory form could accomplish this.</p> <p>CRC 2.503 will need to be reviewed and modified before court staff can fully take advantage of this new rule in Guardianship and Conservatorship cases. CRC 2.503 deals with electronic access to court records and provides that in conservatorships and guardianships, the court may not give non-parties remote access to electronic records, other than ROA matters, which are defined in the government code as title of the case, date of commencement, and memo of subsequent proceedings and their dates. Court-generated notice constitutes a court record, meaning the clerk could not send</p>	<p>The committee will propose any new forms or revisions of existing forms made necessary or desirable by this proposed legislation in 2017, to match the effective date of the proposed legislation.</p> <p>See the committee’s response to Hon. Julia Kelety, Judge of the Superior Court, County of San Diego, above.</p>

## LEG16-09

### Probate: Electronic Service of Notices and Other Papers in Probate, Guardianship, Conservatorship, and Other Protective

Proceedings (Enact a new Probate Code section 1265; Restate existing Probate Code section 1265 as a new section 1266; amend Probate Code sections 366, 453, 1050, 1209, 1212–1215, 1217, 1220, 1250, 1252, 1460, 1461, 1461.4, 1461.5, 1511, 1513.2, 1516, 1542, 1822, 1826, 1827.5, 1830, 1842, 1847, 1851, 2214, 2250, 2352, 2357, 2361, 2610, 2611, 2612, 2614, 2683, 2684, 2700, 2702, 2804, 2808, 3088, 3131, 3206, 3602, 3704, 3801, 3918, 8100, 8110, 8111, 8469, 8522, 8803, 8903, 8906, 8924, 9052, 9153, 9732, 9762, 9783, 9787, 10585–10587, 11601, 13200, 13655, 15686, 16061.7–16061.9, 16336.6, 16501–16503, 17203–17205, 17403, 17454, 19011, 19024, 19040, 19052, 19150, 19153, 19323, 20122, and 20222; amend Welfare and Institutions Code sections 728 and 5362; and repeal Probate Code section 1216)

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

	Commentator	Position	Comment	Committee Response
			<p>it electronically to a non-party (e.g. a surety; the Attorney General; 1st and 2nd degree relatives) because the notice goes beyond the ROA limits. CRC 2.501 excepts parties from its prohibition on access to electronic records, but in probate, notice is often required to others beyond the immediate parties.</p> <p><b>Q: Does the proposal appropriately address the stated purpose?</b></p> <p>A: Yes, although further action is necessary to fully accomplish the goal.</p>	





## JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

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### MEMORANDUM

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Date	Action Requested
September 26, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Court Executives Advisory Committee Jake Chatters, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov Josely Yangco-Fronza, 415-865-7626 josely.yangco-fronza@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Court Records Destruction Reporting Requirement	

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#### **Executive Summary**

The Court Executives Advisory Committee recommends that the Judicial Council sponsor legislation to amend Government Code section 68153, the statute governing the destruction of court records, to eliminate the requirement that superior courts must report destroyed court records to the Judicial Council. Current law requires that superior courts must provide lists of the court records destroyed within the jurisdiction of the superior court to the Judicial Council in accordance with the California Rules of Court. By eliminating the requirement for courts to provide the lists to the council, the legislative proposal would reduce the courts' workload and simplify the reporting process.

#### **Recommendation**

The Court Executives Advisory Committee recommends that the Judicial Council sponsor legislation to eliminate the statutory reporting requirement in Government Code section 68153.

The text of the amendments to the statute is attached at page 81.

### **Previous Council Action**

In 1994, the Legislature enacted Assembly Bill 1374, which added Government Code section 68153, which requires that superior courts report any court records that they have destroyed to the Judicial Council. In response, the Judicial Council subsequently adopted rule 10.855 (l) and Judicial Council form REC-003 to implement the reporting requirement.

### **Rationale for Recommendation**

Under Government Code section 68153, superior courts must provide a “list of the court records destroyed within the jurisdiction of the superior court . . . to the Judicial Council in accordance with the California Rules of Court.” In turn, rule 10.855(l) requires each superior court to submit semiannually to the Judicial Council form, *Report to Judicial Council: Superior Court Records, Destroyed, Preserved, and Transferred* (form REC-003), which includes the following information: (1) a list by year of filing of the court records destroyed; (2) a list by year of filing and location of the court records of the comprehensive and sample court records preserved; and (3) a list by year of filing and location of the court records transferred to entities under rule 10.856.

The Court Executives Advisory Committee (CEAC) has concluded that the reporting requirement in Government Code section 68153 is unnecessary and overly burdensome on courts. It recommends that the Judicial Council sponsor legislation to eliminate this requirement.

Government Code section 68153 would be amended to eliminate the reporting requirement.<sup>1</sup> Complying with this requirement is time-consuming and burdensome for superior courts, and Judicial Council staff has received no requests for the lists of forms. Moreover, when superior courts destroy court records under Government Code section 68153, they are required to make a notation of the date of destruction on the index of cases or on a separate destruction index. This statutory requirement ensures that superior courts establish appropriate mechanisms for tracking whether a court record has been destroyed. Unaware of any reason for additionally tracking the destruction of these records on a statewide level, CEAC reasons that tracking is best left at the local level.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for public comment from December 11, 2015, to January 22, 2016, during the winter 2016 cycle. There were no comments received in response to the circulation of the legislative proposal.

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<sup>1</sup> If the Legislature enacts this amendment to Government Code section 68153, CEAC intends to recommend eliminating subdivision (l) of rule 10.855.

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

The legislative proposal would result in staff time savings for the court because it would eliminate this time-consuming and burdensome requirement: courts would no longer be required to report destroyed court records to the Judicial Council.

### **Attachments**

1. Text of proposed Government Code section 68153, at page 81

Government Code section 68153 would be amended, effective January 1, 2018, to read:

1 **Government Code section 68153**

2

3 Upon order of the presiding judge of the court, court records open to public inspection  
4 and not ordered transferred under the procedures in the California Rules of Court,  
5 confidential records, and sealed records that are ready for destruction under Section  
6 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure,  
7 obliteration, recycling, or other method approved by the court, except confidential and  
8 sealed records, which shall not be buried or recycled unless the text of the records is first  
9 obliterated.

10

11 Notation of the date of destruction shall be made on the index of cases or on a separate  
12 destruction index. ~~A list of the court records destroyed within the jurisdiction of the~~  
13 ~~superior court shall be provided to the Judicial Council in accordance with the California~~  
14 ~~Rules of Court.~~

15



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
September 15, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Adrienne Toomey, 415-865-7977 adrienne.toomey@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)	

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#### **Executive Summary**

The Criminal Law Advisory Committee proposes amendments to Penal Code sections 1170 and 1170.3 to promote uniformity and clarify judicial sentencing authority when imposing concurrent or consecutive judgments under section 1170(h) implicating multiple counties. Specifically, the proposed amendment to section 1170 would direct that when the court imposes a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.

## Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code sections 1170 and 1170.3<sup>1</sup>, as follows:

- Amend section 1170(h)(6) to provide: “When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.” Renumber current subdivisions (h)(6) and (h)(7) to (h)(7) and (h)(8) respectively.
- Amend section 1170.3 by adding subdivision (a)(7), which reads: “Determine the county or counties of incarceration and supervision when the court is imposing a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county or counties.”

## Previous Council Action

The Judicial Council, at its December 2014 meeting, approved a legislative proposal to amend Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h). Staff was unable to secure an author for this proposal. However, AB 1156 (Stats. 2015, ch. 378) included an identical proposal, and the Judicial Council supported that bill. The council also supported another provision of AB 1156 which amended several provisions of law relating to criminal justice realignment that the council had identified as needing clarification

At its December 2014 meeting, the council also approved an additional criminal justice realignment proposal to amend Penal Code sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c) to:

1. Provide courts with discretion to order the release of supervised persons from custody, unless otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued; and
2. Empower courts to fashion any terms and conditions of release deemed appropriate, in order to enhance public safety.

Senator Monning carried that proposal as SB 517, which was signed into law by the Governor (Stats. 2015, ch. 61).

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<sup>1</sup> All statutory references are to the Penal Code.

## **Rationale for Recommendation**

The Criminal Justice Realignment Act made significant changes to the sentencing and supervision of persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants who are convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (§ 1170(h).)

Under realignment, when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department, unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case. (§ 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (§ 1170(h)(5)(B).) The realignment act also created “postrelease community supervision,” whereby certain offenders being released from state prison are no longer supervised by the state parole system, but instead supervised by a local county supervision agency. (§§ 3450–3465.) And following the realignment act, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings, but instead adversarial judicial proceedings conducted in county superior courts. (§ 1203.2.)

The realignment legislation is silent on the issue of sentences from multiple jurisdictions. The issue is significant because now counties must carry the cost and burdens of local incarceration and supervision. Section 1170.1, which governs multiple count and multiple case sentencing for commitments to state prison and county jail, and California Rules of Court, Rule 4.452 require the second judge in a consecutive sentencing case to “resentence” the defendant to a single aggregate term. Currently, there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

The proposal is intended to provide uniformity and guidance to courts when imposing concurrent or consecutive judgments under section 1170(h) involving multiple counties.

## **Comments, Alternatives Considered, and Policy Implications**

### **External comments**

The committee circulated the proposal for public comment in the spring 2016 cycle and received six comments. Four agreed with the proposal: the Superior Courts of San Diego and Los Angeles Counties, the Orange County Bar Association, and the Riverside County Probation Department. The two others did not indicate a position and included feedback relevant to the underlying procedures and criteria for determining the county of incarceration or supervision in multi-county cases.

The purpose of the present legislative proposal is limited to clarifying by statute which court has the authority to determine the county or counties of incarceration and supervision of the defendant in multi-county cases. Assuming the Legislature amends sections 1170(h) and 1170.3 as proposed, the committee will then separately develop proposed rules of court for Judicial

Council adoption providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases, and other procedural matters. The committee will also circulate the proposed rules for public comment.

### **Alternatives**

The committee considered directly developing a proposed rule of court providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in cases with concurrent or consecutive judgments under section 1170(h). But the committee determined that statutory authority was first necessary to clarify that the court rendering the second or other subsequent judgment in these multi-county cases has the authority to determine the county or counties of incarceration and supervision of the defendant.

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

The committee considered the potential burdens that any legislative and rule changes may place on the courts. The committee, however, determined that these amendments are appropriate because they are necessary to provide uniformity and guidance to courts on this issue, which has significant financial and other impacts on courts and counties.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed amendments to sections 1170 and 1170.3 supports the policies underlying Goal IV, Quality of Justice and Service to the Public of the Judicial Branch Strategic Plan.

### **Attachments**

1. Text of proposed Penal Code sections 1170 and 1170.3, at pages 86–87
2. Chart of comments, at pages 88–105



Sections 1170 and 1170.3 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **1170.**

2

3 \*\*\*

4 (h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision  
5 where the term is not specified in the underlying offense shall be punishable by a term of  
6 imprisonment in a county jail for 16 months, or two or three years.

7 (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be  
8 punishable by imprisonment in a county jail for the term described in the underlying offense.

9 (3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony  
10 conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current  
11 conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior  
12 felony conviction in another jurisdiction for an offense that has all the elements of a serious  
13 felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision  
14 (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5  
15 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of  
16 the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a  
17 felony punishable pursuant to this subdivision shall be served in state prison.

18 (4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law,  
19 including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant  
20 to Section 1203.1.

21 (5) (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular  
22 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend  
23 execution of a concluding portion of the term for a period selected at the court's discretion.

24 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph  
25 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall  
26 commence upon release from physical custody or an alternative custody program, whichever is  
27 later. During the period of mandatory supervision, the defendant shall be supervised by the  
28 county probation officer in accordance with the terms, conditions, and procedures generally  
29 applicable to persons placed on probation, for the remaining unserved portion of the sentence  
30 imposed by the court. The period of supervision shall be mandatory, and may not be earlier  
31 terminated except by court order. Any proceeding to revoke or modify mandatory supervision  
32 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section  
33 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless  
34 in actual custody related to the sentence imposed by the court, the defendant shall be entitled to  
35 only actual time credit against the term of imprisonment imposed by the court. Any time period  
36 which is suspended because a person has absconded shall not be credited toward the period of  
37 supervision.

38 (6) When the court is imposing a judgment pursuant to this subdivision concurrent or  
39 consecutive to a judgment or judgments previously imposed pursuant to this subdivision in

1 another county or counties, the court rendering the second or other subsequent judgment shall  
2 determine the county or counties of incarceration and supervision of the defendant.

3 (~~6~~ 7) The sentencing changes made by the act that added this subdivision shall be applied  
4 prospectively to any person sentenced on or after October 1, 2011.

5 (~~7~~ 8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall  
6 become effective and operative on January 1, 2015, and shall be applied prospectively to any  
7 person sentenced on or after January 1, 2015.

8 \*\*\*

9 **1170.3.**

10  
11 The Judicial Council shall seek to promote uniformity in sentencing under Section 1170 by:

12 (a) The adoption of rules providing criteria for the consideration of the trial judge at the time of  
13 sentencing regarding the court's decision to:

14 (1) Grant or deny probation.

15 (2) Impose the lower, middle, or upper prison term.

16 (3) Impose the lower, middle, or upper term pursuant to paragraph (1) or (2) of subdivision (h) of  
17 Section 1170.

18 (4) Impose concurrent or consecutive sentences.

19 (5) Determine whether or not to impose an enhancement where that determination is permitted  
20 by law.

21 (6) Deny a period of mandatory supervision in the interests of justice under paragraph (5) of  
22 subdivision (h) of Section 1170 or determine the appropriate period and conditions of mandatory  
23 supervision. The rules implementing this paragraph shall be adopted no later than January 1,  
24 2015.

25 (7) Determine the county or counties of incarceration and supervision when the court is imposing  
26 a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment  
27 or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county  
28 or counties.

29 \*\*\*

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	<p>•Does the proposal appropriately address the stated purpose? Yes, however issues remain (see ‘Discussion’ below).</p> <p>•Would the proposal provide cost savings? No</p> <p>•Would the proposal provide other efficiencies? No</p> <p>•What would the implementation requirements be for courts? This is difficult to determine until the Judicial Council adopts rules as proposed under Penal Code 1170.3 (see ‘Discussion’ below)</p> <p><b>Discussion</b> The proposal put forth by the Judicial Council seeks to provide a similar structure for PC 1170(h) sentenced offenders as is currently the practice for state prison sentences for defendants with convictions arising from multiple jurisdictions. Although there is a need to address this population, it is important to consider that the uniqueness of PC 1170(h) sentences provide challenges not encountered with state prison sentences.</p> <p>Although the proposal under consideration may be helpful in accomplishing the stated objectives as far as uniformity and clarification of sentencing authority, logistical issues remain for multi-jurisdictional cases based on the nature of Penal Code 1170(h) sentences themselves. The major issue is what works</p>	<p><b>Proposed Response:</b> The purpose of the present legislative proposal is to clarify by statute the following authority for courts: when the court imposes a judgment under Penal Code section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.</p> <p>Assuming the Legislature amends section 1170(h) and 1170.3 as proposed, the Criminal Law Advisory Committee will separately develop proposed rules of court for Judicial Council adoption providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases, and other procedural matters. The Committee will circulate the proposed rules for public comment.</p> <p>The bulk of this comment pertains to the substance of the potential rules of court. Since the details of the proposed rules of court are not presently at issue, specific responses are not currently needed.</p>

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>when sentencing a person to state prison (a single institution, in that all prisons in California are administered by one entity – the CDCR) may be cumbersome and impractical when applied to sentences involving multiple counties which each have their own courts, county jails, Probation Departments, and varying resources allocated to the Criminal Realignment population. The fact that PC 1170(h) sentences are not administered at a centralized location makes a resolution to multi-county sentences more challenging than simply applying statutes and guidelines that work for prison cases to a similar, but very distinct, case type. It is believed, therefore, that when the Judicial Council adopts rules to provide criteria for the courts as directed by PC 1170.3, such issues will be considered and addressed.</p> <p>The document ‘Felony Sentencing After Realignment – May 2016’ authored by Judges Couzens and Bigelow which discusses Criminal Realignment, is helpful in understanding the challenges of fashioning an equitable solution for multi-county PC 1170(h) sentences (see pages 64-70). Judges Couzens and Bigelow state that “...[t]he original objective of [Penal Code] section 1170.1 and [California Rules of Court] Rule 4.452 was to create a single sentence for CDCR... The requirement is reasonable and appropriate when the sentence is to be served in a single institution – state prison.”</p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>The authors discuss this subject and propose a solution for sentencing defendants with PC 1170(h) cases in multiple jurisdictions in a proper and fair manner “[u]ntil the Legislature addresses the multi-jurisdiction problem...”. Their suggestion is to “... have the sentences physically served in proportion to the amount of time ordered by each county.” While this idea would be optimal in terms of fairness, it may not be viable in practice due to the realities of county budgets, transportation of inmates, coordination of effort, and other considerations which would require administering an incarceration and supervision program proportionately across multiple counties.</p> <p>If the Judicial Council looks to this formula some concerns might be examined:</p> <ul style="list-style-type: none"><li>•Does a judicial officer in one county have the authority to resentence and remand a defendant to another county’s jail or to the supervision of another county’s Probation Department?</li><li>•If a judicial officer on a subsequent sentencing remands the defendant back to the first county to serve all incarceration and supervision for all sentences would a Penal Code 1203.9 transfer of the defendant’s case(s) be required? If so, what modifications, if any, would be required to accommodate the transfer process under such circumstances?</li><li>•Since PC 1170(h) sentences are relatively</li></ul>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>short, is there a compelling reason for a defendant with multiple-jurisdictional sentences to serve custody time in multiple locations?</p> <ul style="list-style-type: none"><li>•How does the transfer of an incarcerated defendant from one jurisdiction to another contribute to positive rehabilitation and reintegration back into the community without being burdensome and disruptive, especially when treatment, education, and other opportunities may be available in one jurisdiction and not another?</li></ul> <p>Besides the challenge of the location of the defendant due to the nature of these sentences, no information has been provided in the proposal indicating the size of the population of defendants currently included in the multi-jurisdictional category. It would be helpful to have an estimation of the size of this group in order to assess the proposal's viability, and an indication of any trends that are emerging with this subset[1].</p> <p><b>Conclusion</b> As written, the proposal leaves much discretion and leeway to the judicial officer doing the second or subsequent sentencing for the determination of where the defendant's incarceration and supervision is to occur. Judicial discretion is important and should not be omitted; however, adequate guidance should also be provided by the Judicial Council in adopting rules as proposed under Penal Code</p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>1170.3.</p> <p>As the Council further investigates this issue, the following ideas are offered:</p> <ul style="list-style-type: none"> <li>•Since county jails are now considered ‘prison’ for PC 1170(h) sentences after the institution of Criminal Realignment, perhaps a good solution would be to treat them as such[2]. That is, rather than seeking a proportionate dispensation of custody and supervision time allocated to multiple counties, a better solution may be that in all circumstances, one county would be designated as the location for incarceration, thereby eliminating the need for punishment to be carried out in specific jurisdictions. Unless compelling reasons[3] would dictate otherwise, perhaps the location where the defendant is to serve all custody[4] would be in the latest sentencing jurisdiction.</li> <li>•When the Judicial Council seeks comments on the criteria as outlined in Penal Code section 1170.3, it would be helpful to be provided as much information as possible regarding the size of this population and any emerging trends.</li> </ul>	
2.	Trish Marez Director of Criminal Operations Superior Court of California, Sacramento County	N/I	<p><b>1) Does the proposal appropriately address the stated purpose?</b></p> <p>Yes, the stated purpose of the proposal is clear: The proposal seeks to clarify judicial sentencing when imposing concurrent or consecutive judgments</p>	<i>See Response to #1.</i>

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>under P.C. 1170(h) when a defendant is sentenced in multiple counties. The proposed amendment would direct Judicial Council to institute rules/criteria for courts to use to determine the appropriate county or counties of incarceration and supervision.</p> <p><b>2) Would the proposal provide cost savings? If so, please quantify.</b></p> <p>There would be potential cost savings for a local court if supervision is determined to be in an alternate county and any violations of mandatory supervision could be handled in an alternate county. Cost savings could be mitigated if you have transfer-in cases equal to or greater than cases transferred out. Cost-savings could also be mitigated due to the resources consumed with the transfer of cases between the final sentencing county and the county or counties of incarceration and/or supervision.</p> <p>There are potential cost savings state-wide if all post-incarceration hearings are handled in one county/court as opposed to multiple counties/courts. The cost savings are difficult to quantify without having data on the</p>	



**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>number of mandatory supervision violations for defendants serving sentences in multiple counties and the number of court appearances necessary to resolve the violations. The cost-savings could be mitigated, however, due to the resources consumed with the transfer of cases between the final sentencing county and the county or counties of incarceration and/or supervision.</p> <p><b>3) Would the proposal provide other efficiencies? If so, please quantify.</b></p> <p>From a state-wide perspective, it would be a more efficient use of resources to have all post-incarceration hearings heard and adjudicated in one county as opposed to multiple counties, if that objective could be accomplished without consuming more resources transferring cases between counties than would be ultimately saved.</p> <p><b>4) What would be the implementation requirements for courts?</b></p> <p>It is difficult to determine the requirements for implementation without knowing what processes would be required. However, if the onus is on the final sentencing Court to identify</p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p>sentences in other counties, court staff (most likely the courtroom clerk) would have to run criminal history reports on all defendants prior to sentencing to identify any sentences in any alternate county or counties. This would necessitate training for all courtroom clerks on how to run criminal history reports (approximately six hours of training per staff member). This would also necessitate granting access to iclets to court staff as well as paying any fees associated with said access.</p> <p><b>Impact:</b> <i>This research would lead to delays in court proceedings. Once a defendant indicated they wished to enter a plea and be immediately sentenced, the research would have to be completed. This would most likely lead to continuances and extra court appearances in the Home Courts to gather the information for sentencing. Since the vast majority of cases are resolved in the home courts, this would negatively impact the Court's ability to effectively manage already burgeoning calendars.</i></p> <p>It would make the most sense for the local prosecutor to provide the information to the Court prior to sentencing. Ideally, all 58 counties</p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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	Commentator	Position	Comment	Committee Response
			<p>would have one centralized location to report all sentences pursuant to P.C. 1170(h) – similar to the CDCR Legal Process Unit - a clearinghouse of sorts where all local prosecutors could retrieve the information prior to the resolution of the current charges in their respective counties.</p> <p>Once the judicial officer sentences a defendant; determines whether there are any other active sentences pursuant to P.C. 1170(h); establishes the defendant’s permanent residence; applies rules and criteria adopted by Judicial Council to determine the appropriate county or counties of incarceration and sentencing, and identifies the same, the final sentencing Court would have to facilitate the following:</p> <ul style="list-style-type: none"> <li>• Transfer of the defendant to an incarceration facility in an alternate county, which would necessitate a judicial order and notification to the local Sherriff and receiving Court and Sheriff, either electronically or by manual process.</li> </ul> <p><b>Impact:</b> <i>This may require reprogramming of current case</i></p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p><i>management systems or development of a manual process in all 58 counties.</i></p> <ul style="list-style-type: none"><li>• The final sentencing court would need to ensure there were comparable special conditions of mandatory supervision ordered by the Court, which would necessitate contacting Probation Departments in alternate counties. As an example, a judicial officer may require GPS monitoring of a defendant on Mandatory Supervision and participation in a specialized treatment program. If GPS monitoring or the treatment program wasn't available in the identified county of supervision, what would that mean? Does the court not order those conditions, even though deemed necessary? Does the Court change the county of supervision based on services and not the defendant's home address?</li></ul> <p><b>Impact:</b> <i>This would inevitably lead to delays in court proceedings while the</i></p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p><i>information was being researched and analyzed and would most likely lead to continuances and extra court appearances in the Home Courts. Since the vast majority of cases are resolved in the home courts, this would negatively impact the Court's ability to effectively manage already burgeoning calendars.</i></p> <ul style="list-style-type: none"><li data-bbox="940 732 1373 1068">• The final sentencing Court would need to evaluate whether or not to transfer the collection of any fines, fees and restitution orders either in from, or out to, alternative counties. It would necessitate researching the method whereby fees are reported and collected in alternate counties.</li></ul> <p><b>Impact:</b> <i>This may necessitate reprogramming of case management systems to capture fines, fees and restitution orders and then transmit them to alternate courts and/or collection entities, if not captured and collected through local court resources.</i></p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<ul style="list-style-type: none"><li data-bbox="940 321 1367 1003">• Court staff would have to transfer files to any alternate county or counties where the defendant is to serve the period of incarceration. If the incarceration county was the same as the supervision county, this could be handled like a P.C. 1203.9 transfer. If the supervision county was different than the incarceration county, the sentencing county would have to transfer the file to the incarceration county with an order for the incarceration county to transfer the file to the supervision county once the period of incarceration concluded – thus creating two transfer processes.</li></ul> <p data-bbox="982 1040 1367 1416"><i>Impact: This would have a negative impact to all local court operations. Transferring a case out to a new jurisdiction necessitates a judicial order, the capture of the order by court staff and then processing of the file which may include termination of mandatory supervision in the sentencing county, copying of the entire</i></p>	

**LEG16-04**

**Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	Commentator	Position	Comment	Committee Response
			<p><i>file for local record keeping purposes and then transferring the original file to the alternate county. This process takes, on average, a total of 1.2 hours per case. If a defendant is serving any active grants of probation in any other matters, a determination would need to be made as to those matters as well.</i></p> <p><i>Transferring in a case from a new jurisdiction necessitates receipt of the order and file, review of the file to ensure receipt of all original documents, creation of the case in the case management system and creation of a physical file. This process takes, on average, a total of 1.8 hours per case.</i></p> <p><b>Additional Comments:</b></p> <p>The Courts already have a process when sentencing defendants to concurrent or consecutive time if the sentence from an alternate county is known. If the defendant is sentenced concurrently, the Court simply states on the record the local prison time is to be served concurrently to the time imposed in X-County. If the time is consecutive, the Court</p>	

**LEG16-04****Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>orders a hold placed on the defendant so that he/she can be transferred upon completion of the primary sentence. The Courts also currently have a protocol and process for the transfer of supervision between counties. Penal Code Section 1203.9 provides that persons released on mandatory supervision can have their cases transferred to any other county in which the person permanently resides. Penal Code Section 1203.9 also provides for a more thorough vetting process, which includes a probation investigation, evaluation and recommendation to the Court, including establishing the permanency of residence of the offender, local programs available, and any restitution orders and victim issues.</p> <p>There is apparent value in knowing about sentences in alternate counties, and it makes sense that this would be an important factor to consider at final sentencing. If we had a state-wide system set up like the California Department of Corrections and Rehabilitation, where no matter the county of incarceration there was one oversight entity for incarceration and post-incarceration supervision, we could manage offenders released more efficiently and effectively. With our current structure of 58 individual Courts with varying case management systems and differing local county resources, the proposal is, on its face, an unduly onerous one for local courts to try and successfully implement.</p>	



**LEG16-04****Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Another consideration is potential financial impacts to our justice partners, i.e., will there be push back from other counties (Sheriff, Probation Department, District Attorney, Public Defender, County Service Providers, Department of Revenue Recovery) if a defendant is sentenced in one county is ordered to be incarcerated and/or supervised in another county and, by virtue of that transfer, consuming that county's resources?</p> <p>Finally, if the defendant disagrees with the Court's determination of the county or counties of incarceration and/or supervision, a process would need to be in place to address an appeal of that decision.</p>	
3.	Orange County Bar Association By Todd G. Friedland President	A	The proposal suggests amendments to Penal Code sections 1170 and 1170.3 to direct trial courts to designate which county will be charged with the supervision of a defendant who has been committed in cases by different counties which will result in a period of mandatory supervision or postrelease community supervision. The proposal would require the trial court which sentences the defendant last in time to designate which county will be charged with supervision of the defendant. Currently, there is no statutory guidance on who determines which county will supervise a defendant under these circumstances. The proposal provides clarity on the issue by requiring trial courts to make	<i>No response needed.</i>

**LEG16-04****Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			that determination.	
4.	Riverside County Probation By Ronald Miller Chief Deputy Probation Officer	A	<p>This is a common sense change that we would support. It would require courts to clearly specify which county will have the period of incarceration and supervision. For example, take a defendant that has pending cases in two counties. In county 1, he is sentenced to an 1170(h) sentence split – 16 months in and 16 months supervision. Prior to release, the defendant is transported to county 2 to face another pending charge. The second court imposes an 8 month period of supervision to be served consecutively to county 1 (for an aggregate sentence of 3 years 8 months). The second court would be required to re-state in which county (or counties) the defendant is going to do his aggregate sentence. So, the second court would state the aggregate sentence: 16 months custody and 24 months supervision. It would then define which jail the defendant would serve the period of incarceration and which probation department would have supervision jurisdiction.</p> <p>I would probably go a step further, though. I would recommend the court develop an 1170 abstract of judgment. Similar to a regular prison abstract, an 1170(h) abstract would advise jail officials and probation departments of the particulars of the aggregate sentence:</p> <p>1)Specify the case numbers of all cases on which the defendant was sentenced</p>	<i>No response needed.</i>

**LEG16-04****Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			2)Which counties the case numbers belonged to 3)The individual sentence on each case/count, including: a. the length of incarceration on each case/count b. which county the incarceration should take place c. Any period of supervision on each case/count, including the probation department(s) with jurisdiction 4)The aggregate sentence on all the defendants cases 5)The ability to notify prior courts (i.e. county 1) that their abstract was amended a.(the second county in the example above will issue an “amended” abstract of judgement to override county 1’s abstract)	
5.	Superior Court of California, County of Los Angeles	A	This proposed amendment to section 1170 would direct that when the court imposes a sentence under section 1170(h) (felony time to be served in county jail) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and	<i>No response needed.</i>

**LEG16-04****Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			supervision in such cases.  This is a sensible provision and would make clear which county will have custody and supervision.  This proposal needs to include mechanisms for transfer of incarceration and supervision as determined by the court rendering the second or subsequent judgment. Coordination between Probation offices and jails is required to ensure that the subsequent order is executed.	
6.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		<i>No response needed.</i>



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
October 14, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer	

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#### **Executive Summary**

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. The proposal was developed at the request of criminal judges who expressed concerns about the inability of transferring courts to do so under current law.

#### **Recommendation**

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1203.9<sup>1</sup>, as follows:

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<sup>1</sup> All statutory references are to the Penal Code.

Add subdivision (f) that reads: “The receiving court may refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, or evidence, or for any other reason, that the matter would more appropriately be conducted by the transferring court. The Judicial Council shall adopt rules of court to govern referrals under this subdivision, including factors for consideration when determining the propriety of the referral and related procedural requirements.”

### **Previous Council Action**

Since the enactment of Criminal Justice Realignment Act in 2009, the Judicial Council has sponsored or supported several measures relating to intercounty transfers. Most recently, in 2014, the Judicial Council sponsored AB 2645 (Dababneh; Stats. 2014, ch. 111), which modified intercounty transfer procedures to require transferring courts to determine the amount of any victim restitution before transfer unless the court is unable to determine the amount within a reasonable time.

In 2013, the Judicial Council supported AB 492 (Quirk, Stats. 2013, ch. 13), which explicitly requires transferring courts to make the determination of the probationer’s county of residence for Proposition 36 probation cases. In doing so, the council noted that the Criminal Law Advisory Committee had developed a legislative proposal to eliminate the separate transfer requirements for Proposition 36 probation cases, serving no ostensible purpose, which was scheduled to circulate for public comment that spring. Because AB 492 sought to accomplish the same goal as the committee’s proposal, the council supported AB 492.

In 2009, the Judicial Council supported SB 431 (Benoit; Stats. 2009, ch. 588), which required a court, when granting probation to an individual who permanently resides in a county other than the county of conviction, to transfer jurisdiction of the case to the county in which that person permanently resides, unless the court determines on the record that the transfer would be inappropriate. The bill also required the court in the county of the probationer's residence to accept jurisdiction over the case and required the council to adopt rules of court providing factors for the court's consideration when determining the appropriateness of a transfer (see Cal. Rules of Court, rule 4.530). The Judicial Council supported SB 431 because it addressed issues and concerns that have been raised over the years about the disparate transfer practices and around the state.

### **Rationale for Recommendation**

Currently, section 1203.9(a)(2) and California Rule of Court 4.530(e) allow a receiving court to provide comments for the record regarding the proposed transfer. Before deciding the transfer motion, the transferring court must state on the record that it received and considered those comments. (Cal. Rules of Court, rule 4.530(e)(3).) Although a receiving court may transfer a case back to the original court if the defendant moves there, that court has no ability to transfer back under other circumstances. However, there are instances when sending a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the

parties. Examples of this include post-conviction challenges such as habeas corpus petitions, resentencing matters, appellate-related proceedings, and probation violation hearings that require testimony from witnesses only available in the jurisdiction of the transferring court.

To address these instances the committee proposes amending section 1203.9 to add subdivision (f) to authorize a receiving court to refer a particular hearing or other court proceeding back to the transferring court for the limited purpose of conducting the proceeding if the receiving court determines, based upon the geographic location of the parties, victims, witnesses, evidence, or for any other reason that the matter would more appropriately be conducted by the transferring court.

### **Comments, Alternatives Considered, and Policy Implications**

The committee circulated the proposal for public comment from April 15 to June 14, 2016. A total of 8 comments were received: 2 agreed with the proposal, 2 did not indicate a position and, 4 did not agree with the proposal. The committee considered all of the comments. Noteworthy comments are described below and a chart of all comments received is attached.

While maintaining its usefulness in some situations, the Superior Court of Orange County expressed a concern that the proposal would lead to more hearings than originally contemplated under this proposal. Anticipating this concern, the proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.

Both the Superior Courts of Orange and Los Angeles Counties commented that if enacted, the proposal would require the development of procedures (including rules and forms) to guide courts on the logistics of the limited transfers. Anticipating this need as well, the proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.

The Superior Court of Sacramento County expressed a concern that, due to the high volume of transfers, the proposal could prove costly in some jurisdictions due to the necessary involvement of court staff and support services. The committee considered this concern. However, the proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

Both the Superior Courts of Sacramento and San Bernardino County Probation noted that the proposal does not address probation supervision during the limited transfer. The committee considered this comment and determined that the proposal should not alter existing law because probation supervision responsibility appropriately lies in the receiving court for continuity of supervision.

The Orange County Bar Association expressed concern that the proposal would change the practice of the courts in Proposition 47 cases, from reviewing the petitions in the receiving court,

to reviewing them in the transferring court. The committee considered this issue. There is currently a split among two Courts of Appeal as to which court, transferring or receiving, is the proper court to hear a petition to recall a sentence under Proposition 47. *People v. Curry* (2106) 1 Cal. App. 5<sup>th</sup> 1073, 1076, holds that petitions for recall of sentences under Proposition 47 are properly filed in the transferring court, resolving a conflict between the requirements of section 1170.18(a) (Proposition 47) and section 1203.9 (intercounty transfers) in favor of the language of Proposition 47.<sup>2</sup> However, *People v. Adelman*, No. E064099 (Cal. Ct. App., Aug. 31, 2016), decided after *Curry*, resolves that same conflict in favor of section 1203.9.<sup>3</sup> Thus, *Adelman* holds that petitions for recall of sentences under Proposition 47 are properly filed in the receiving court, creating a split among the Courts of Appeal on this issue.<sup>4</sup>

Consistent with the committee’s discussion, the chairs clarified the proposal to add “or for any other reason” as a possible factor for the referral. The clarification is intended to provide flexibility to the proposal and to prevent the need for further amendment however this conflict is resolved.

The committee approved this proposal on September 8<sup>th</sup>, after a discussion of the impact of *Curry*. During that meeting the committee approved the proposal with modifications in light of *Curry*. However, after that meeting *People v. Adelman* came to the committee’s attention. Because of this split and consistent with the committee’s discussion, the chairs clarified the proposal to add “or for any other reason” as a possible factor for a referral back to the original transferring court. The clarification is intended to provide flexibility to the proposal and to prevent the need for further amendment however this conflict is resolved.

Additionally, during its meeting on October 13, the Joint Legislative Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (JLS) echoed the comments concerning probation supervision, the possibility of creating more hearings for the sentencing court, and the anticipated need for the development of rules of court and forms to guide courts’ implementation. JLS approved of the committee’s responses, including the continuation of supervision by receiving courts, the anticipation that the proposal would reduce the burden on the courts overall, and the proposal’s explicit provision for the

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<sup>2</sup> In reaching its decision, *Curry* states: “... this is one of the rare Proposition 47 cases when all we need is the plain statutory language, specifically, the language in the proposition that a ‘petition for a recall of sentence’ by a probationer, or a former probationer, is to be filed with the ‘trial court that entered the judgment of conviction’ (Id. at p. 1076).”

<sup>3</sup> Specifically, *Adelman* held: “Based on a practical, reasonable, commonsense analysis, allowing the court that currently has entire jurisdiction over a case to decide a section 1170.18 petition is the wisest and most appropriate policy.”

<sup>4</sup> While *Adelman* distinguishes itself from *Curry* by narrowing application of *Curry*’s holding to Post Release Community Service cases, the committee does not agree with the distinction. (See *People v. Adelman*, Id. at p. 4). Note that *Adelman* relies upon the legal treatise, *Sentencing California Crimes*, authored by Judge Richard Couzens and Justice Tricia Bigelow, in support of its conclusion that Proposition 47 petitions must be filed in the receiving court. Yet, Couzens and Bigelow, co-chairs of this committee, dispute *Adelman*’s narrow reading of *Curry*. And *Curry* explicitly includes probationers in its holding. (See *People v. Curry*, supra at 1076: “...this is one of the rare Proposition 47 cases when all we need is the plain statutory language, specifically, the language in the proposition that a ‘petition for recall of sentence’ by a probationer, or a former probationer, is to be filed with the ‘trial court that entered the judgment of conviction...’”).



development of rules and forms by the Judicial Council. JLS also questioned whether the sentencing court would have the ability to refuse a referral under the proposal and expressed approval that the sentencing court would not have that ability. JLS voted to recommend the proposal be approved for Judicial Council-sponsorship.

### **Alternatives**

The committee determined that the proposal was appropriate for recommendation to the Judicial Council and did not consider alternatives to this proposal.

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

While transferring courts would have added proceedings, receiving courts would have fewer. The overall cost to the court system, as well as the burden on individual witnesses, would be reduced because witnesses from the original jurisdiction would not be required to travel to the receiving county. The proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed amendment to section 1203.9 supports the policies underlying Goal 3, Modernization of Management and Administration. Specifically, this proposed amendment supports Goal 3, Objective 5, “Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”

### **Attachments**

1. Text of proposed Penal Code section 1203.9 at page 111
2. Chart of comments, at pages 112–125

Section 1203.9 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 1203.9. Probation or mandatory supervision; transfer of cases; jurisdiction; payment of**  
2 **fees and penalties; rules**

3  
4 (a) \* \* \* (e) \* \* \*

5 (f) The receiving court may refer a particular hearing or other court proceeding back to the  
6 transferring court for the limited purpose of conducting the proceeding if the receiving court  
7 determines, based upon the geographic location of the parties, victims, witnesses, or evidence, or  
8 for any other reason, that the matter would more appropriately be conducted by the transferring  
9 court. The Judicial Council shall adopt rules of court to govern referrals under this subdivision,  
10 including factors for consideration when determining the propriety of the referral and related  
11 procedural requirements.

12 (g) The Judicial Council shall promulgate rules of court for procedures by which the proposed  
13 receiving county shall receive notice of the motion for transfer and by which responsive  
14 comments may be transmitted to the court of the transferring county. The Judicial Council shall  
15 adopt rules providing factors for the court's consideration when determining the appropriateness  
16 of a transfer, including, but not limited to, the following:

- 17 (1) Permanency of residence of the offender.  
18 (2) Local programs available for the offender.  
19 (3) Restitution orders and victim issues.

20 (h) The Judicial Council shall consider adoption of rules of court as it deems appropriate to  
21 implement the collection, accounting, and disbursement requirements of subdivisions (d) and (e).  
22

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County		<p>This proposal can be useful for specific hearings, however, there is concern that this provision will open the flood gates for many more hearings than for which this was intended. We are currently working through some challenges with Financial Hearings after transfer that I believe would benefit from this change, however, I do not agree with it.</p> <p>If this is passed, procedures, requirements for findings in the record and forms for notice to parties, notice to the transferring court need to be developed to ensure the right hearings are transferred and for the right reasons.</p> <p>For the hearings I mention above, the big question is, do we inconvenience the defendant by going to another county for a hearing or the probation office that is collecting the fines and fees? I believe that county probation departments should work together and represent each other at financial hearings so that the case remains at the receiving court and the defendant is not required to travel (and incur the undue hardship related to travel) when asking to review the financial aspects of their case.</p> <p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <ul style="list-style-type: none"> <li>• Does the proposal appropriately address the</li> </ul>	<p>The committee anticipated this concern. The proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.</p> <p>The committee anticipated this need. The proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.</p>

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>stated purpose? Response: Yes, but with the modifications I noted above.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>• Would the proposal provide cost savings? If so please quantify. Response: No.</li> <li>• What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems. Response: Very limited, procedures would need to be developed to hear these cases after transfer.</li> <li>• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: Yes, provided the proper rules and forms are published along with this change.</li> <li>• How well would this proposal work in courts of different sizes? Response: Yes.</li> </ul>	
2.	Trish Marez		Amendment to PC 1203.9 to allow the receiving	

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	Director of Criminal Operations Sacramento Superior Court		<p>court to transfer a case back to the transferring court for limited jurisdiction purposes i.e. Habeas Corpus Petitions, re-sentencing, appellate related proceedings, or probation violation hearings which require testimony from witnesses in the transferring county.</p> <p>Background:</p> <p>Penal Code section 1203.9 governs the intercounty transfer of post-judgment cases when the defendant is on Probation or Mandatory Supervision.</p> <p>Current law relevant language:</p> <p>CRC 4.530</p> <ul style="list-style-type: none"><li>•Sets parameters for filing the transfer motion including required notices and allows for the receiving court to comment on the motion.</li><li>•Factors that must be considered are:<ul style="list-style-type: none"><li>—Permanent residence of supervisee.</li><li>—Availability of appropriate programs.</li><li>—Effects on restitution orders.</li><li>—Victim issues re: residence and ability to enforce protective orders.</li></ul></li><li>•Case must be transferred if permanent residence of supervisee is determined to be in the receiving county unless determination is made deeming in inappropriate.</li><li>•Restitution must be determined prior to</li></ul>	

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
			<p>transfer.</p> <ul style="list-style-type: none"> <li>•Entire jurisdiction must be accepted by the receiving court.</li> <li>•Costs of transfer paid by supervisee.</li> <li>•Jail sentence must be completed prior to transfer.</li> </ul> <p>PC 1203.9</p> <ul style="list-style-type: none"> <li>•Transfers case to court of permanent residency of supervisee for the remaining duration of probation unless inappropriate.</li> <li>•Outstanding fines/fees etc. remain owed in transferring court for collection and distribution.</li> <li>•Additional fees from receiving court/probation also collected by transferring court.</li> <li>•If elected, receiving court may take over collection of owed fines/fees etc. and transmit to transferring court.</li> </ul> <p>Current Court Processes:</p> <p>Transfer-Out</p> <ul style="list-style-type: none"> <li>•Pre-Motion Court processes (Support Staff)</li> <li>•Recommendation from Probation</li> <li>•Court hearing conducted</li> <li>•Minute order prepared</li> <li>•Order processed and conformed</li> <li>•File updated in JIMS (Probation Terminated in Sacramento)</li> <li>•File sent to records (change of venue desk)</li> <li>•Copy of entire file made</li> <li>•Original file sent to receiving court by certified</li> </ul>	

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
			<p>mail</p> <ul style="list-style-type: none"> <li>•JIMS entries</li> <li>•Certified mail receipt received and placed in file</li> </ul> <p>Transfer-In</p> <ul style="list-style-type: none"> <li>•Receive file and review</li> <li>•Create case in JIMS</li> <li>•Enter Probation information, charges, fees, etc. and refer to Probation dept.</li> <li>•Physical file created</li> <li>•Court hearing conducted upon filing of violation</li> </ul> <p>Transfer Back-In</p> <ul style="list-style-type: none"> <li>•Receive file and review</li> <li>•Remove probation termination from JIMS and refer to Probation dept.</li> <li>•Enter any violations and sentencing information if applicable</li> <li>•File sent to records (change of venue desk)</li> <li>•Copies replaced with original documents and JIMS entries are done</li> <li>•Court hearing conducted upon filing of violation</li> </ul> <p>Requests for Specific Comments:</p> <p>1.Does the proposal appropriately address the stated purpose?</p> <p>Yes and No. The specific purpose of the proposal is clear; however it does not address</p>	

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
			<p>the logistics of the back and forth transfer of cases between counties. Currently entire jurisdiction is transferred to the receiving county. Within this proposal a case may be transferred back for limited jurisdictional purposes only. In these limited transfers will the court file be transferred each time? Will each Court maintain their own file and inform the other county of the hearings and dispositions?</p> <p>Which County’s Probation Department will supply information to the Court?</p> <p>2. Would the proposal provide cost savings?</p> <p>No. This proposal would require additional funds from each Court for additional staffing hours, copies and mailings.</p> <p>3. What would the implementation requirements be for courts? Training Staff, revising processes and procedures, case management system codes or modifications)</p> <p>Depending on the final instruction regarding physical file transfers, this is difficult to answer. Training staff on a new process can take many hours. This process would require new procedures written as well as potential modification to our case management system. All modifications would be dependent on whether each county would be required to</p>	<p>The committee considered this comment and determined that the proposal should not alter existing law. Probation supervision responsibility lies in the receiving court for continuity of supervision.</p>



**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
			<p>maintain a case record of the same case file. More information is needed to access the actual impacts on processes and staff training.</p> <p>4. Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Yes. During this two month period procedures would be reviewed and modified. Upon procedures being created staffing would be informed and trained.</p> <p>5. How well would this proposal work in courts of different sizes?</p> <p>Considering the main financial impacts would be to staffing hours this process has the potential to disrupt smaller court processes. In larger courts the additional staffing hours would be absorbed easier than in a court with only a few staff members. Also, depending on the details required within the court's case management system courts impacts would range widely.</p> <p>IMPACTS</p> <p>Accurate impacts are difficult to determine with the limited information available. Definite adaptations will include court process changes and new written procedures. The initial transfer</p>	

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>process may require modification to address the maintenance of files and communication between courts and with Probation. The possibility of cases returning for limited jurisdiction purposes will require the transfer of information between courts several times and may result in possible delays in the enforcement of judicial orders. Electronic Communication with the Sac Probation Department would need altering as well due to the current termination of probation process.</p> <p>There have been 134 transfers granted from 1/1/16 through 4/25/16. With approximately 400 cases transferred out annually, this revision could prove costly. According to this revision all cases could potentially be returned for a limited purpose without prior knowledge. Costs would be incurred for each court and probation department at each transfer for support services and in court staffing. More information is needed to determine the probability of how many of these cases will have issues that require limited purpose transferring.</p>	<p>The committee has considered this concern. However, the proposal is designed to ease burdens currently associated with litigating proceedings in a receiving court that are more efficiently litigated in the transferring court.</p>
3.	Orange County Bar Association by Todd Friedland President	N	The proposal suggests amendments to Penal Code section 1203.9, the statute which governs intercounty transfer procedures for all probation and mandatory supervision cases. Typically, the statute is used when a probationer or supervisee resides in a county other than the county in which the case was adjudicated.	

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>When a case is ordered transferred, the transfer is for all purposes and the case cannot be heard in the county of origin unless transferred back under the statute. The proposal suggests an amendment to the statute which would allow the receiving court to transfer the case back to the transferring court for limited purposes where it would benefit the court, the litigation at issue, or the parties. The proposal lists the following examples: “post conviction challenges such as habeas corpus petitions, resentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.”</p> <p>The examples, particular the one concerning resentencing, raise considerable access to justice concerns for defendants in criminal actions. With the passage of Proposition 47, thousands of defendants state-wide have been resentenced and will be continued to be resentenced on cases impacted by the initiative. In cases transferred to other counties under section 1203.9, there was initially considerable confusion throughout the state about whether those petitions for resentencing can be handled in the receiving court or whether they need to be transferred back to the court of origin. Currently, those cases are being handled in the receiving jurisdiction in accordance with the statutory mandate that the “receiving county shall accept the entire jurisdiction over the</p>	<p>The committee considered this issue at length. There is currently a split among the appellate courts as to which court, transferring or the receiving, is the proper court to hear a petition to recall a sentence under Proposition 47. Consistent with the committee’s discussion, the proposal has been clarified to add “or for any other reason” as a possible factor for the referral. The clarification is intended to provide flexibility to the proposal and prevent the need for further amendment however this conflict is resolved.</p>

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			case.” (Pen. Code, § 1203.9, subd. (b).) Under the proposal, courts would have the discretion to send those cases back to transferring courts which would impose considerable hardship—in terms of travel, expense and time—on individuals seeking the relief they are entitled to under the law.	
4.	San Bernardino County Probation By Stacy Thacker Executive Secretary III	N	1. The proposal does not address probation supervision. If a case is transferred back to the transferring county for limited purposes, will the receiving county continue to provide supervision or will supervision also be transferred back to the transferring county? The proposal does not address/clarify the status of probation supervision, whether retained or transferred, during the period of transfer to the transferring county for limited purposes. If retained and a violation of probation occurs during that period, which county addresses the violation.	The committee considered this comment and determined that probation supervision during the limited transfer would remain in the receiving court for continuity of supervision.
5.	San Diego County District Attorney By David Greenberg Chief Deputy District Attorney	N	This will add too much confusion. I believe the court receiving the case can handle all matters pertaining to it. It provides finality.	No response required.
6.	Sierra Co Probation – California By Jeff Bosworth Chief Probation Officer	N	I think that the proposal is open to some abuse; here are some examples of why I don’t think it would work very well:  Example one (concurrent): 1st county: sentences defendant to 16 months county jail.	

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	Commentator	Position	Comment	Committee Response
			<p>2nd county sentences defendant to 3 years county jail but has them served concurrent to case in 1st county.                      2nd county then orders the terms to be served in 1st county, even though the majority of the time is from 2nd county case.</p> <p>Example two (consecutive):                      1st county sentences defendant to 16 months in jail.                      2nd county sentences def to three years in jail, consecutive This becomes a total of 3 years (from county #2) and 8 months (county #1) 2nd county then orders the terms to be served in 1st county, even though the majority of the time is from 2nd county case.</p> <p>Example three (split sentence):                      1st county sentences defendant to 16 months split: 8 jail &amp; 8 on mandatory supervision 2nd county sentences defendant to 2 years with a split: 1 mo jail, 1 year 23 months supervision (so can go to rehab) At time of 2nd sentencing, def has 8 months jail credit on what is now an 8 month subordinate term By the rules stated above, the 2nd court could order the defendant to do their supervision time in 1st county – even though they are time served there.</p> <p>Here is an alternative suggestion I think would be better</p> <p>As usual, starts with decisions by second</p>	<p>This comment is beyond the scope of the</p>

**LEG16-06**

**Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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	Commentator	Position	Comment	Committee Response
			<p>sentencing judge, who makes these findings:</p> <ul style="list-style-type: none"> <li>• The permanent residence of defendant</li> <li>• Which county term has longest remaining exposure – after allowances for credits, subordinate terms, etc.</li> </ul> <p>Concurrent sentence:</p> <ul style="list-style-type: none"> <li>• Def to be housed at county that has longest remaining custody exposure</li> <li>• After completion of actual custody time, def will be supervised for any split portion at county of residence</li> <li>• If it so desires, the county sheriff wherein defendant is doing actual custody may bill other county for 50% of costs of concurrent jail stay</li> <li>• If second county sheriff prefers, they may accept custody of individual at their facility rather than deal with billing (they could not bill first county).</li> </ul> <p>The idea with the billing is to put an equal share of the costs on both counties during time when custody is joint. This is important to small counties.</p> <p>Some larger counties may decide billing isn't worth the trouble, so would not have to. Also, some counties may prefer to house defendant at their own place, rather than pay half.</p> <p>Consecutive sentencing:</p> <ul style="list-style-type: none"> <li>• Def is housed at county that has principal term</li> </ul>	<p>proposal.</p>

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"> <li>• If def permanent residence is county of principal term, then def stays put and finishes rest of sentence and any MS time at county of residence               <ul style="list-style-type: none"> <li>o The principal county may bill subordinate term county for cost of incarceration during subordinate term</li> </ul> </li> <li>• If def permanent residence is county of subordinate term, then upon completion of principal term, the defendant is transferred in custody to county of subordinate term where they will complete their jail sentence and any mandatory supervision that is required.</li> </ul>	
7.	Superior Court of California, Los Angeles	A	<p>The Criminal Law Advisory Committee proposes amending Penal Code section 1203.9 to authorize a receiving court to transfer a case of a person on probation or mandatory supervision back to the transferring court for a limited purpose when needed to best suit the needs of the court, the litigation at issue, or the parties. There are instances when transferring a case back to the transferring court for a limited purpose would benefit the court, the litigation at issue, or the parties. Examples of this include post-conviction challenges such as habeas corpus petitions, re-sentencing or appellate related proceedings, or instances in which probation violation hearings require testimony from witnesses who are only available in the original jurisdiction.</p> <p>This would give bench officers more flexibility in handling such matters and is discretionary in any event.</p>	

**LEG16-06****Criminal Procedure: Transfer Back to Receiving Court for Limited Purpose after Intercounty Transfer**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			A new process will need to be created to establish limited transfers between counties. Parameters for the use of this type of transfer need to be established by the Judicial Council. This proposal will have a greater impact on our criminal court locations that are in close proximity to neighboring counties. A new form to address this process will be required.	The committee anticipated this need. The proposal requires the Judicial Council to adopt rules of court to govern referrals under the proposal, including factors for consideration when determining the propriety of the referral and related procedural requirements.
8.	Superior Court of California, County of San Diego By Mike Roddy	A		No response required.





## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
August 18, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Electronic Filing, Service, and Signatures	

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#### **Executive Summary**

The Information Technology Advisory Committee recommends that the Judicial Council sponsor legislation to add Code of Civil Procedure section 1013b and amend sections 664.5, 1010.6, and 1011. This legislative proposal would (1) authorize the use of electronic signatures for signatures made under penalty of perjury on electronically filed documents, (2) provide for a consistent effective date of electronic filing and service across courts and case types, (3) consolidate the mandatory electronic filing provisions, (4) clarify the application of section 1010.6's electronic service provisions in sections 664.5 and 1011, and (5) codify provisions that are currently in the California Rules of Court on mandatory electronic service, effective date of electronic service, protections for self-represented persons, and proof of electronic service.

#### **Recommendation**

The Information Technology Advisory Committee recommends that the Judicial Council, effective January 1, 2018:

1. Sponsor legislation enacting new Code of Civil Procedure section 1013b; and
2. Sponsor legislation amending Code of Civil Procedure sections 664.5, 1010.6, and 1011.

The text of the proposed new and amended statutes is attached at pages 134–138.

### **Previous Council Action**

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since January 1, 2000, Code of Civil Procedure section 1010.6 has authorized permissive electronic filing and service in the superior courts. (Stats. 1999, ch. 514, § 1.) The Judicial Council first adopted statewide rules implementing permissive electronic filing and service in the trial courts in 2002.

Four years ago, the Legislature enacted Assembly Bill 2073, which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project. (Stats. 2012, ch. 320; codified at Code Civ. Proc., § 1010.6(d).) AB 2073 also instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions. (Code Civ. Proc., § 1010.6(f).) Upon adoption of those rules, AB 2073 allowed superior courts to require mandatory electronic filing by local rule. (*Id.*, § 1010.6(g).) Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service in civil cases.

### **Rationale for Recommendation**

This legislative proposal builds on the lessons learned in promulgating the uniform mandatory electronic filing and service rules, as well as the experience of the Superior Court of Orange County and other superior courts in implementing mandatory and permissive electronic filing. It would amend the Code of Civil Procedure to authorize electronic signatures, promote consistency in the requirements for electronic filing and service, codify various provisions in the trial court rules, and clarify the application of section 1010.6's electronic service provisions in other statutes.

In developing this proposal, the Information Technology Advisory Committee (ITAC) sought input from the Civil and Small Claims Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Advisory Committee on Providing Access and Fairness.

### **Proposed amendments to section 1010.6**

The proposed amendments to section 1010.6 would authorize electronic signatures on electronically filed documents, provide for consistency in the effective date of filing across courts and case types, consolidate the mandatory electronic filing provisions, and codify the provisions that are currently in the rules on mandatory electronic service, effective date of electronic service, and protections for self-represented litigants.

***Authorize electronic signatures on electronically filed documents.*** Section 1010.6(b)(2)(B) currently requires that anyone who electronically files a document signed under penalty of

perjury must print, sign, and keep the document indefinitely. These requirements have proved burdensome for litigants, especially government agencies and other high-frequency filers.

This proposal would amend subdivision (b)(2)(B) to provide that electronically filed documents may in the future be signed under penalty of perjury by means of an electronic signature. The proposed amendment would require that the electronic signature satisfy procedures, standards, and guidelines established by the Judicial Council. The language mirrors Government Code section 68150(g), which currently authorizes electronic signatures by judges and the courts.

To accommodate those without access to electronic-signature technology, the proposal would also retain but modify the procedures required in the current statute. The proposed amendment would still allow documents to be printed and signed by hand (in lieu of an electronic signature); however, it would eliminate the requirement that the original signature be maintained indefinitely. Instead, it would require the person signing the document to maintain the original signatures only until “final disposition of the case” as defined in Government Code section 68151(c).

***Provide for a consistent effective date of filing across courts and case types.*** Under current law, where electronic filing is permissive, documents must be received before the “close of business”—which is defined as 5 p.m. or the time at which the court would not accept filing at its filing counter, whichever is earlier—in order to be deemed filed that day. (Code Civ. Proc., § 1010.6(b)(3).) However, in authorizing the Superior Court of Orange County’s mandatory electronic filing pilot project, the Legislature provided that the court “may permit documents to be filed electronically until 12 a.m. of the day after the court date that the filing is due, and the filing shall be considered timely.” (*Id.*, § 1010.6(d)(1)(D).)

With the exception of the Superior Court of Orange County’s mandatory electronic filing pilot project, the statute is silent as to when documents must be electronically filed for mandatory electronic filing cases to be deemed filed that day. (See *id.*, § 1010.6(g)(2).) In adopting uniform rules for mandatory electronic filing, the Judicial Council elected to allow courts to provide by local rule for up-until-midnight electronic filing in mandatory electronic filing cases (the approach provided by the Legislature for the Superior Court of Orange County’s mandatory electronic filing pilot project); otherwise, in the absence of such a local rule, the document must be filed by “close of business” to be deemed filed that day. (Cal. Rules of Court, rule 2.253(b)(7).) The rules also define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

Accordingly, the current statute and rules allow for both inter- and intracourt variation in the effective date for electronic filing depending on (1) whether electronic filing is permissive or mandatory for the case type and (2) what time a court stops accepting filings each day. The potential for variation has increased in recent years as budget concerns have caused many courts to cut back on the hours that their filing counters are open. To provide for consistency across

courts and case types, the committee recommends that the cutoff time be midnight for determining the effective date of filing for both permissive and mandatory electronic filing.

In response to comments requesting that the statute specifically address documents received electronically by a court at 12:00 a.m. and on non-court days, the committee revised the proposal as follows: “Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on a non-court day shall be deemed filed on the next court day.”

***Codify the effective date of electronic service.*** The statute is silent with respect to the effective date of electronic service. Instead, the effective date of electronic service is specified in rule 2.251(h)(4), which provides that electronic service that “occurs after the close of business is deemed to have occurred on the next court day.” As noted above, the rules define “close of business” as “5 p.m. or any other time on a court day at which the court stops accepting documents for filing at its filing counter, whichever is earlier.” (*Id.*, rule 2.250(b)(10).)

This proposal would codify the effective date of service by adding a new paragraph (5) to section 1010.6(a). To provide for consistency across courts and with the proposed effective date of electronic filing, the new paragraph would provide: “Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a non-court day shall be deemed served on the next court day.”

***Consolidate the mandatory electronic filing provisions.*** Subdivision (d) of section 1010.6 provides that the Superior Court of Orange County may establish a pilot project to require that parties to specified civil actions electronically file and serve documents. Subdivision (g) provides that trial courts may require mandatory electronic filing by local rule after the Judicial Council adopts uniform mandatory electronic filing and service rules. Because the statutory authorization for the pilot project expired on July 1, 2014, this proposal would amend section 1010.6 to eliminate references to the pilot project and consolidate the provisions governing mandatory electronic filing in subdivision (d).

***Codify the mandatory electronic service provisions.*** This proposal would codify the mandatory electronic service provisions from the rules. Subdivision (a) of section 1010.6—which governs electronic service in trial courts generally—does not expressly authorize mandatory electronic service. (See Code Civ. Proc., § 1010.6(a)(2) [authorizing electronic service of a document “when a party has agreed to accept service electronically in that action”].)<sup>1</sup> Subdivisions (c) and (d) recognize that mandatory electronic service may be required by court order in complex civil

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<sup>1</sup> Subdivision (a)(3) does allow courts to electronically serve a document if the party has agreed to accept electronic service or the court has ordered electronic service under subdivisions (c) or (d), which currently refer to mandatory electronic service in complex civil cases and the Superior Court of Orange County’s pilot project. But it does not expressly allow courts—other than the Superior Court of Orange County—to require electronic service of a document in cases other than complex civil cases. Nevertheless, because this proposal would amend subdivision (d) to address mandatory electronic service in all courts, this proposal would not need to make any further amendments to subdivision (a)(3).

cases or by local rule as part of the Superior Court of Orange County’s electronic filing pilot project. The authority for the mandatory electronic service rules is instead derived from subdivision (f) of section 1010.6, which required the Judicial Council, on or before July 1, 2014, to adopt uniform rules to permit mandatory electronic filing and service of documents in the trial courts.

In adopting rules to implement subdivision (f), the Judicial Council decided to allow courts to require electronic service by local rule or court order. (Cal. Rules of Court, rule 2.251(c)(1) [“A court may require parties to serve documents electronically in specified actions by local rule or court order, as provided in the Code of Civil Procedure section 1010.6 and the rules . . .”].) Similarly, under rule 2.251(c)(2), if a court requires a party to electronically file documents in an action, the party “must also serve documents and accept service of documents electronically from all other parties,” subject to certain exceptions. (See also *id.*, rule 2.251(b) [providing that a party consents to electronic service by electronic filing of any document with the court, unless the party is self-represented].)

To codify these rules, this proposal would amend subdivision (d) not only to consolidate the mandatory electronic filing provisions, but also to authorize mandatory electronic service. Authorizing mandatory electronic service in revised subdivision (d) would track the language in current subdivisions (c) and (d), which authorize both mandatory electronic filing and service in complex cases and through the Superior Court of Orange County’s pilot project. This proposal would also codify these rules by amending subdivision (a)(2) to recognize that electronic service is required when a court has ordered electronic service under subdivisions (c) or (d) (as revised).

***Codify the protections for self-represented persons.*** The trial court rules that implement the electronic filing and service provisions of section 1010.6 already contain significant protections for self-represented persons. Rules 2.251(c)(2)(B) and 2.253(b)(2) exempt self-represented persons from mandatory electronic filing and service. These rules were adopted in response to the instructions in section 1010.6(f) that the uniform mandatory electronic filing and service rules include statewide policies on unrepresented litigants.

This proposal would codify the exceptions for self-represented persons by adding a new subdivision (d)(4) to provide that unrepresented persons are exempt from mandatory electronic filing and service. It would also amend subdivisions (a)(2) and (3) to provide that mandatory electronic service applies to parties and other persons only if they are represented.

#### **Proposed amendments to sections 664.5 and 1011**

The proposed amendments to sections 664.5 and 1011 would clarify the application of section 1010.6’s electronic service provisions. Under section 1010.6(a)(2), a document may be electronically served whenever “a document may be served by mail, express mail, overnight delivery, or facsimile transmission.” Similarly, subdivision (a)(3) currently provides that where the parties have consented to electronic service, or the court has required electronic service (by order or local rule in complex civil cases or in the Superior Court of Orange County’s mandatory

electronic filing pilot project), a court may also electronically serve any document issued by the court that is not required to be personally served.

Section 664.5 provides for mailing notice of the entry of judgment. To clarify the application of section 1010.6, references to “mail” and “certificate of mailing” would be replaced with the more inclusive terms “serve” and “certificate of service.”

Section 1011 recognizes possible means of service. This proposal would add a new subdivision (c) to cross-reference section 1010.6: “Electronic service shall be permitted pursuant to Section 1010.6 and the rules on electronic service in the California Rules of Court.” This language is taken directly from section 1013, which governs service of notices or other papers. (See Code Civ. Proc., § 1013(g).)

### **Proposed new section 1013b**

Proposed new section 1013b would codify the trial court rule governing proof of electronic service. Currently, the Code of Civil Procedure addresses proof of service by mailing, but not proof of electronic service. (See Code Civ. Proc., § 1013a.) Proof of electronic service is addressed only in the California Rules of Court. (See Cal. Rules of Court, rule 2.251(i).) To fix this apparent statutory gap and to assist other advisory committees in their efforts to modernize their statutes, the legislative proposal would add a new section 1013b.<sup>2</sup>

The proposed language for section 1013b(a)(1) is not currently in rule 2.251; it is intended to correct an oversight in the rule that conflicts with section 1010.6.<sup>3</sup> Code of Civil Procedure section 1013a requires that proof of service by mail be made by affidavit or certificate showing that “the person making the service” is “not a party to the cause.” However, Code of Civil Procedure section 1010.6 allows for electronic service by a party. (Code Civ. Proc., § 1010.6(a)(1)(A) [“Electronic service may be performed directly *by a party*, by an agent of a party, including the party’s attorney, or through an electronic filing service provider,” italics added].) To reflect this difference, proposed section 1013b(a) would add another exception to the general requirement that proof of electronic service be made by any of the methods provided in section 1013a for proof of mailing. Proposed section 1013b(a)(1) would recognize that proof of electronic service need not state that the party making the service is “not a party to the cause.”

The proposed language for section 1013b(a)(2) is taken directly from rule 2.251(i)(1). In stating the requirements for proof of electronic service, rule 2.251(i)(1) incorporates the requirements for proof of mailing in Code of Civil Procedure section 1013a, subject to several exceptions. The proposed language for section 1013b(a)(2) differs from the language in rule 2.251(i)(1) in one

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<sup>2</sup> ITAC is currently leading a collaborative, multiyear effort to modernize the statutes and rules to facilitate e-business, electronic filing, and electronic service. As part of phase II of this project, ITAC and the Probate and Mental Health Advisory Committee have recommended a legislative proposal to amend the Probate Code to authorize electronic service of notices and other papers. The Probate Code currently cross-references Code of Civil Procedure section 1013a for proof of mailing. (See Prob. Code, § 1261.) Introducing a new section 1013b on proof of electronic service to the Code of Civil Procedure would avoid adding a reference to the rules in the Probate Code.

<sup>3</sup> This year, the Judicial Council adopted rule amendments that will eliminate this requirement from the rule effective January 1, 2017.

way: it would require that the proof of electronic service list only the date of electronic service, not the time and date.<sup>4</sup> In practice, it has been difficult to implement the requirement that the proof of electronic service list the time of electronic service; the person executing the proof of electronic service will not know the exact time of electronic service until after it has occurred.

The proposed language for section 1013b(b) is taken directly from rule 2.251(i)(2), which provides that proof of electronic service may be in electronic form and may be electronically filed with the court. Proposed section 1013b(c) modifies the language in rule 2.251(i)(4) to cross-reference the proposed new signature requirements (discussed above) in Code of Civil Procedure section 1010.6(b)(2)(B).

### **Comments, Alternatives Considered, and Policy Implications**

The rules proposal circulated for public comment on the spring 2016 cycle. Fourteen commentators submitted comments in response to the invitation to comment: four agreed with the proposal, seven agreed if modified, and three did not indicate their position. The committee's specific responses to each comment are available in the attached comment chart at pages 139–157.

One commentator expressed concern about the term “other person” in section 1010.6(a) and questioned to whom this term applied. The committee considered the commentator's suggestion to identify these individuals in the statute, but declined to pursue it in light of the wide variety of individuals who might fall under the category of persons other than parties. Instead, the committee determined that providing further clarification was best left for implementing rules proposals. Comprehensively identifying those who fall in the category of “other person” is complicated because it varies by case type. For example, these individuals might include grandparents, siblings, caregivers, and other adult relatives in juvenile dependency proceedings, whereas it might include creditors, known heirs and devisees, and anyone requesting special notice in probate proceedings. The Welfare and Institutions Code and Probate Code recognize service on and by these individuals.

The committee also considered recommending a 5:00 p.m. cutoff time for the effective date of electronic filing and service in proposed new subdivision (a)(5) and amended subdivision (b)(3) of Code of Civil Procedure section 1010.6. In light of the input received by the public and other advisory committees, the committee decided to retain its recommendation that midnight be the cutoff time. Although valid concerns were raised both in support of and against a midnight cutoff time, the committee decided that it preferred this option after weighing the arguments. A midnight cutoff time would best serve the needs of self-represented litigants, many of whom are unable to electronically file and serve during regular work hours.

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<sup>4</sup> This year, the Judicial Council adopted rule amendments, effective January 1, 2017, that will also eliminate this requirement from the rule.

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

To the extent that this proposal would codify existing requirements in the trial court rules, it is not expected to result in any additional costs or to otherwise affect the implementation of electronic filing and service in the superior courts. Standardizing the cutoff time for the effective date of electronic filing and service at midnight would require those courts that allow for electronic filing and service until close of business to make modifications to their case management systems. Overall, however, providing consistency and clarity across courts and case types is expected to result in efficiency gains for litigants.

To implement the authorization for electronic signatures, the Judicial Council would need to adopt standards and guidelines governing electronic signatures by parties and other persons. This would require staff time and resources. Because electronic signatures would be applied by the party or person either directly or through an electronic filing service provider, it is expected that there will be minimal implementation or ongoing costs for courts. Because original signatures made under penalty of perjury would no longer need to be retained indefinitely, it is expected to result in efficiencies for litigants and government agencies.

### **Attachments**

1. Text of proposed Code of Civil Procedure sections 664.5, 1010.6, 1011, and 1013b, at pages 134–138
2. Chart of comments, at pages 139–157



Section 1013b of the Code of Civil Procedure would be enacted and sections 664.5, 1010.6, and 1011 would be amended, effective January 1, 2018, to read:

1    **§ 664.5.**  
2

3    (a) In any contested action or special proceeding other than a small claims action or an  
4    action or proceeding in which a prevailing party is not represented by counsel, the party  
5    submitting an order or judgment for entry shall prepare and ~~mail~~ serve a copy of the  
6    notice of entry of judgment to all parties who have appeared in the action or proceeding  
7    and shall file with the court the original notice of entry of judgment together with the  
8    proof of service ~~by mail~~. This subdivision does not apply in a proceeding for dissolution  
9    of marriage, for nullity of marriage, or for legal separation.  
10

11   (b) Promptly upon entry of judgment in a contested action or special proceeding in which  
12   a prevailing party is not represented by counsel, the clerk of the court shall ~~mail~~ serve  
13   notice of entry of judgment to all parties who have appeared in the action or special  
14   proceeding and shall execute a certificate of such ~~mailing~~ service and place it in the  
15   court's file in the cause.  
16

17   (c) \* \* \*

18  
19   (d) Upon order of the court in any action or special proceeding, the clerk shall ~~mail~~ serve  
20   notice of entry of any judgment or ruling, whether or not appealable.  
21

22   (e) The Judicial Council shall, ~~by January 1, 1999, adopt a rule of court for the purposes~~  
23   ~~of providing~~ provide by rule of court that, upon entry of judgment in a contested action or  
24   special proceeding in which a state statute or regulation has been declared  
25   unconstitutional by the court, the Attorney General is promptly notified of the judgment  
26   and that a certificate of that ~~mailing~~ service is placed in the court's file in the cause.  
27

28   **§ 1010.6.**  
29

30   (a) A document may be served electronically in an action filed with the court as provided  
31   in this section, in accordance with rules adopted pursuant to subdivision (e).  
32

33   (1) For purposes of this section:

34  
35   (A) "Electronic service" means service of a document, on a party or other person, by  
36   either electronic transmission or electronic notification. Electronic service may be  
37   performed directly by a party or other person, by an agent of a party or other person,  
38   including the party's or other person's attorney, or through an electronic filing service  
39   provider.  
40

1 (B) “Electronic transmission” means the transmission of a document by electronic means  
2 to the electronic service address at or through which a party or other person has  
3 authorized electronic service.

4  
5 (C) “Electronic notification” means the notification of the party or other person that a  
6 document is served by sending an electronic message to the electronic address at or  
7 through which the party or other person has authorized electronic service, specifying the  
8 exact name of the document served, and providing a hyperlink at which the served  
9 document may be viewed and downloaded.

10  
11 (2) If a document may be served by mail, express mail, overnight delivery, or facsimile  
12 transmission, electronic service of the document is authorized when a party or other  
13 person has agreed to accept service electronically in that action or when a court has  
14 ordered electronic service on a represented party or other represented person under  
15 subdivision (c) or (d).

16  
17 (3) In any action in which a party or other person has agreed to accept electronic service  
18 under paragraph (2), or in which the court has ordered electronic service on a represented  
19 party or other represented person under subdivision (c) or (d), the court may electronically  
20 serve any document issued by the court that is not required to be personally served in the  
21 same manner that parties electronically serve documents. The electronic service of  
22 documents by the court shall have the same legal effect as service by mail, except as  
23 provided in paragraph (4).

24  
25 (4) \* \* \*

26  
27 (5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a  
28 court day shall be deemed served on that court day. Any document that is served  
29 electronically on a non-court day shall be deemed served on the next court day.

30  
31 (b) A trial court may adopt local rules permitting electronic filing of documents, subject  
32 to rules adopted pursuant to subdivision (e) and the following conditions:

33  
34 (1) \* \* \*

35  
36 (2)(A) When a document to be filed requires ~~the~~ a signature, not under penalty of perjury,  
37 ~~of an attorney or a self-represented party,~~ the document shall be deemed to have been  
38 signed by ~~that attorney or self-represented party~~ the person filing if filed electronically.

39  
40 (B) When a document to be filed requires the signature, under penalty of perjury, of any  
41 person, the document shall be deemed to have been signed by that person if filed  
42 electronically and if either of the following conditions is satisfied:

1 (i) That person has signed a printed form of the document ~~has been signed by that person~~  
2 prior to, or on the same day as, the date of filing. The attorney or person filing the  
3 document represents, by the act of filing, that the declarant has complied with this  
4 section. The attorney or person filing the document shall maintain the printed form of the  
5 document bearing the original signature until final disposition of the case, as defined in  
6 subdivision (c) of Government Code section 68151, and make it available for review and  
7 copying upon the request of the court or any party to the action or proceeding in which it  
8 is filed.

9  
10 (ii) That person has signed the document using a computer or other technology in  
11 accordance with procedures, standards, and guidelines established by the Judicial Council  
12 pursuant to this section.

13  
14 (3) Any document ~~that is electronically filed with the court after the close of business on~~  
15 ~~any day shall be deemed to have been filed~~ received electronically by the court between  
16 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any  
17 document that is received electronically on a non-court day shall be deemed filed on the  
18 next court day. ~~“Close of business,” as used in this paragraph, shall mean 5 p.m. or the~~  
19 ~~time at which the court would not accept filing at the court’s filing counter, whichever is~~  
20 ~~earlier.~~

21  
22 (4)–(6) \* \* \*

23  
24 (c) \* \* \*

25  
26 (d) A superior court may, by local rule, require electronic filing and service in civil cases,  
27 subject to the requirements and conditions stated in subdivision (b) of this section, the  
28 rules adopted by the Judicial Council under subdivision (f), and the following conditions:

29  
30 ~~(1) Notwithstanding subdivision (b), the Orange County Superior Court may, by local~~  
31 ~~rule and until July 1, 2014, establish a pilot project to require parties to specified civil~~  
32 ~~actions to electronically file and serve documents, subject to the requirements set forth in~~  
33 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) and rules adopted pursuant to~~  
34 ~~subdivision (e) and the following conditions:~~

35  
36 ~~(A)~~ The court shall have the ability to maintain the official court record in electronic  
37 format for all cases where electronic filing is required.

38  
39 ~~(B)~~(2) The court and the parties shall have access either to more than one electronic filing  
40 service provider capable of electronically filing documents with the court, or to electronic  
41 filing access directly through the court. Any fees charged by the court shall be for no  
42 more than the actual cost of the electronic filing and service of the documents, and shall  
43 be waived when deemed appropriate by the court, including, but not limited to, for any

1 party who has received a fee waiver. Any fees charged by an electronic filing service  
2 provider shall be reasonable and shall be waived when deemed appropriate by the court,  
3 including, but not limited to, for any party who has received a fee waiver.

4  
5 ~~(C)(3)~~ The court shall have a procedure for the filing of nonelectronic documents in order  
6 to prevent the program from causing undue hardship or significant prejudice to any party  
7 in an action, including, but not limited to, unrepresented parties.

8  
9 (4) Unrepresented persons are exempt from mandatory electronic filing and service.

10  
11 ~~(D)~~ A court that elects to require electronic filing pursuant to this subdivision may permit  
12 documents to be filed electronically until 12 a.m. of the day after the court date that the  
13 filing is due, and the filing shall be considered timely. However, if same day service of a  
14 document is required, the document shall be electronically filed by 5 p.m. on the court  
15 date that the filing is due. Ex parte documents shall be electronically filed on the same  
16 date and within the same time period as would be required for the filing of a hard copy of  
17 the ex parte documents at the clerk's window in the participating county. Documents filed  
18 on or after 12 a.m., or filed upon a noncourt day, will be deemed filed on the soonest  
19 court day following the filing.

20  
21 ~~(2)~~ If a pilot project is established pursuant to paragraph (1), the Judicial Council shall  
22 conduct an evaluation of the pilot project and report to the Legislature, on or before  
23 December 31, 2013, on the results of the evaluation. The evaluation shall review, among  
24 other things, the cost of the program to participants, cost effectiveness for the court,  
25 effect on unrepresented parties and parties with fee waivers, and ease of use for  
26 participants.

27  
28 (e) \* \* \*

29  
30 (f) The Judicial Council shall, ~~on or before July 1, 2014,~~ adopt uniform rules to permit the  
31 mandatory electronic filing and service of documents for specified civil actions in the trial  
32 courts of the state, ~~which shall be informed by any study performed pursuant to paragraph~~  
33 ~~(2) of subdivision (d)~~ and which shall include statewide policies on vendor contracts,  
34 privacy, access to public records, unrepresented parties, parties with fee waivers,  
35 hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of  
36 electronic service. These rules shall conform to the conditions set forth in this section, as  
37 amended from time to time.

38  
39 ~~(g)(1)~~ Upon the adoption of uniform rules by the Judicial Council for mandatory  
40 electronic filing and service of documents for specified civil actions in the trial courts of  
41 the state, as specified in subdivision (f), a superior court may, by local rule, require  
42 mandatory electronic filing, pursuant to paragraph (2) of this subdivision.

1 ~~(2) Any superior court that elects to adopt mandatory electronic filing shall do so pursuant~~  
2 ~~to the requirements and conditions set forth in this section, including, but not limited to,~~  
3 ~~paragraphs (1), (2), (4), (5), and (6) of subdivision (b) of this section, and subparagraphs~~  
4 ~~(A), (B), and (C) of paragraph (1) of subdivision (d), and pursuant to the rules adopted by~~  
5 ~~the Judicial Council, as specified in subdivision (f).~~

6  
7 **§ 1011.**

8  
9 The service may be personal, by delivery to the party or attorney on whom the service is  
10 required to be made, or it may be as follows:

11  
12 (a)–(b) \* \* \*

13  
14 (c) Electronic service shall be permitted pursuant to Section 1010.6 and the rules on  
15 electronic service in the California Rules of Court.

16  
17 **§ 1013b.**

18  
19 (a) Proof of electronic service may be made by any of the methods provided in Section  
20 1013a, with the following exceptions:

21  
22 (1) The proof of electronic service does not need to state that the person making the  
23 service is not a party to the cause.

24  
25 (2) The proof of electronic service shall state:

26  
27 (A) The electronic service address of the person making the service, in addition to that  
28 person’s residence or business address;

29  
30 (B) The date of the electronic service, instead of the date and place of deposit in the mail;

31  
32 (C) The name and electronic service address of the person served, in place of that  
33 person’s name and address as shown on the envelope; and

34  
35 (D) That the document was served electronically in place of the statement that the  
36 envelope was sealed and deposited in the mail with postage fully prepaid.

37  
38 (b) Proof of electronic service may be in electronic form and may be filed electronically  
39 with the court.

40  
41 (c) Proof of electronic service shall be signed as provided in subparagraph (B) of  
42 paragraph (2) of subdivision (b) of Section 1010.6.

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Bet Tzedek Legal Services by Janet R. Morris, Esquire Attorney	A	<p>Bet Tzedek supports the proposal to eliminate the wet signature requirement for electronically assembled and filed documents and to establish procedures for an electronic signature.</p> <p>In our our experience in managing a large self help conservatorship clinic; consistency and accuracy is achieved when there is a single electronically signed and filed document.</p> <p>We would also like to suggest that there be a way to receive the court’s orders by email as well so that a litigant could download and print them. This will assist litigants who cannot make it back to the courthouse easily to retrieve their orders post hearing.</p>	<p>The committee appreciates Bet Tzedek Legal Services’ support.</p> <p>Code of Civil Procedure section 1010.6(a)(3) currently authorizes a court to electronically serve “any document issued by the court that is not required to be personally served.” With the roll out of new case management systems that allow for electronic filing throughout the state, courts will increasingly be able to take advantage of this existing authority and provide for electronic service of court-issued documents.</p>
2.	California Department of Child Support Services by Alisha A. Griffin Director Rancho Cordova	NI	DCSS has reviewed LEG16-10 entitled Technology: Electronic Filing, Service, and Signature, and is supportive of the changes JCC has proposed. The JCC proposals address much of what this department tried to address with AB 1519, namely the requirement to keep an original wet signature on a document signed under penalty of perjury indefinitely (CCP 1010.6). The fact that your proposal seeks to amend that section to permit these documents be signed by means of electronic signature is a	The committee appreciates the input of the California Department of Child Support Services. This legislative proposal would not affect the application of Family Code section 17400(b)(3)—which governs “[n]otwithstanding any other law”—to electronically filed pleadings signed under penalty of perjury by an agent of the local child support agency.

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>huge step forward so long as it does not run afoul of Family Code Section 17400(b)(3) or the resulting Judicial Council Rules of Court, which states:</p> <p>Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.</p> <p>We appreciate that the language is not mandatory in that it permits those without access to e-signature to still sign manually and then only retain the document until final deposition of the case. This option will allow our department to take a phased implementation approach if our system changes cannot be completed by the JCC effective date of January 1, 2018.</p>	No response required.

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			The department appreciates the opportunity to comment on your proposal and the work done by the JCC to advance, promote, and expand legal electronic communications. The department suggests only that the above Rule of Court or any others that may be impacted be considered prior to implementation so that all bodies of law on this issue are in line with one another.	The committee agrees and intends to propose implementing amendments to the California Rules of Court that next year. It is contemplated that e-signature standards and guidelines would also be developed next year, in collaboration with the Court Executives Advisory Committee.
3.	Laurel Halbany MRHFM LLC Oakland	AM	<p>The proposed changes to electronic service rules should retain a filing and service deadline of “close of business” (that is, 5:00 p.m.) for a document to be considered timely filed and served that court day.</p> <p>Changing the deadline to “before midnight” invites gamesmanship and will, in effect, eliminate a full day from the required time of service. Vendors such as LexisNexis allow automated service, such that a document may be uploaded with the direction that it is automatically served at a particular time - for example, that a document uploaded at 4:45 p.m. not actually be served and available to opposing parties until just before midnight. While it is not uncommon for attorneys to work somewhat later than 5:00 p.m., it is far less common to be working at midnight. Thus, parties have every incentive to delay service until close to</p>	<p>The committee appreciates Ms. Halbany’s input.</p> <p>On balance, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the costs. The committee also considered that the risk of gamesmanship is mitigated by the deadline extension of two court days for responding to electronically served documents (as provided in Code of Civil Procedure section 1010.6(a)(4)).</p>



**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>midnight, depriving their opponents of additional time to review and respond to document served.</p> <p>Additionally, the proposal is silent as to the timeliness of documents served precisely at midnight.</p>	<p>The committee has revised the legislative proposal to address the effective date of filing for documents that are electronically filed and served at 12:00 a.m.</p>
4.	Lisa Los Angeles	AM	<p>I feel that the filing deadline should be restricted to 5:00 p.m. Support staff should not have to bear the burden of working until midnight to pick up the slack for attorneys that wait until the last minute to draft and/or make revisions.</p>	<p>The committee shares this concern. On balance, however, the committee determined that the benefits of allowing for electronic service up until midnight outweighed the detriments and costs.</p>
5.	Mark W. Lomax Attorney Pasadena	AM	<p>(1) Since C.C.P. section 1010.6(a)(1)(A) authorizes two methods of electronic service-- electronic transmission and electronic notification—proposed new C.C.P. section 1013b, which will prescribe proof of electronic service, should require that a proof of electronic service state which method of service was used.</p> <p>(2) Proposed new C.C.P. section 1013b does not seem to contemplate service by electronic notification. It does not require a proof of electronic service effected by electronic notification to contain information that would be important if service were disputed, such as the name of the electronic service provider.</p>	<p>The committee appreciates Mr. Lomax’s input. It declines to pursue these recommendations because the proposed new Code of Civil Procedure section 1013b adequately covers electronic service by both electronic transmission and electronic notification.</p> <p>New proposed Code of Civil Procedure section 1013b sufficiently contemplates electronic service by notification. The requirement in proposed section 1013b(a)(2)(D) that the proof of electronic service state that “the document was served electronically” contemplates electronic service by notification. This conclusion is</p>

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### Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	Commentator	Position	Comment	Committee Response
			<p>Here is the relevant portion of a proof of electronic service made by electronic notification, which was filed in 2016 in a complex litigation case in the Los Angeles Superior Court: "Service was effectuated via electronic service by Case Anywhere, the matter's e-service provider pursuant to court order dated March 14, 2011. I uploaded onto the Case Anywhere document depository a true and correct copy of the document being served, and the Case Anywhere electronic service system e-mailed notices of uploading of the same, which notices included links to the documents uploaded, to the parties indicated in the attached electronic service list." As you can see, very little of the contents of this proof of service would be required by proposed new section 1013b.</p> <p>(3) Under current law, proof of service by mail is prescribed by C.C.P. section 1013a. Instead of amending section 1013a to include a provision prescribing proof of electronic service, the Judicial Council proposal</p>	<p>supported by section 1010.6(a), which expressly recognizes "electronic service" as including "electronic transmission" and "electronic notification." Thus, "electronic notification" is a form of electronic service of a document. (See Code Civ. Proc., § 1010.6(a)(1)(C) [defining "electronic notification" as "the notification of the party or other person that a <i>document is served</i> by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded," italics added].)</p> <p>The committee also viewed providing information about the electronic service provider ("EFSP" as unnecessary because EFSPs, in effect, step into the shoes of the postal service for purposes of electronic service. Just as the proof of service under section 1013a does not require identification of the mail carrier used to effect service by mail, the proof of electronic service would not identify the EFSP used to effect electronic service.</p> <p>The committee agrees that statutes referencing section 1013a would need to be updated to include references to proposed new section 1013b, where appropriate. It determined that this</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>recommends enacting a new C.C.P. section, 1013b, that will prescribe proof of electronic service. This could cause confusion in some cases since section 1013a is cross-referenced in a number of statutes. (See, e.g., C.C.P. §§405.23, 594(b), and 684.220(c); Civ. Code §1719(g); Gov. Code §915.2(c); Labor Code §3082; and Prob. Code §1261.) The fact that section 1013a is cross-referenced in those statutes, and that new section 1013b will not be, may lead some attorneys and courts to conclude that service under those statutes cannot be made electronically.</p> <p>(4) There are special provisions for service of papers under title 9 (§§680.010-724.260) of the Code of Civil Procedure, the Enforcement of Judgments Law. To avoid confusion about the application of section 1010.6 to service of papers under title 9, the council should consider appropriate proposed amendments to chapter 4 (§§684.010-684.310) of division 1 of title 9, regarding service of papers. It should be noted that the council has specific rulemaking authority under title 9 (C.C.P. §681.030) and that the California Law Revision Commission has continuing authorization to review and make recommendations concerning enforcement of judgments (C.C.P. §681.035).</p> <p>(5) I strongly support amending C.C.P. section</p>	<p>approach was preferable to adding proposed new section 1013b to section 1013a because it will ultimately provide for greater clarity in the law. It will also allow the committee to examine each statute to ensure that accompanying references to “mail” are replaced with “serve,” where appropriate. The committee intends to undertake this review in recommending additional modernization proposals next year.</p> <p>This recommendation is outside the scope of this legislative proposal as circulated. The committee will take it under consideration in reviewing additional legislative proposals to modernize the Code of Civil Procedure next year.</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			664.5 to substitute “serve” for “mail” because of a conflict between section 664.5 and the California Rules of Court. Under C.R.C. rules 8.104(a)(2) (unlimited cases) and 8.822(a)(2) (limited cases), any manner of service of notice of entry of judgment permitted by the Code of Civil Procedure, including electronic service when permitted under C.C.P. section 1010.6 and C.R.C. rules 2.250-2.261, is sufficient to trigger the running of the time to file a notice of appeal. Rules 8.104(a)(2) and 8.822(a)(2) conflict with C.C.P. section 664.5, which requires a party or the clerk to “mail” (not “serve”) notice of entry of judgment.	The committee appreciates this support.
6.	Orange County Bar Association by Todd G. Friedland President	AM	CCP Section 1010.6(a) authorizes service by electronic means. Specifically, 1010.6(a)(2) addresses acceptance of electronic service, and 1010.6(a)(3) allows the court to serve its documents electronically. The proposed amendments to both of these provisions would include “other person[s].” The definitions at 1010.6(a)(1)(A) as proposed, and currently (B) and (C) mention “other person,” but provide no guidance. For purposes of clarification, it is suggested that the language of the section or of the Advisory Committee Comments, indicate who is contemplated as an “other person.” It is believed this clarification is of increased importance, given subsequent provisions of the section dealing with court-ordered electronic	The committee appreciates this input, but declines to pursue this suggestion. The term “other person” is intended to encompass a variety of different individuals, depending on case type, who are not parties to the proceedings (e.g., grandparents, siblings, caregivers, and other adult relatives, among others, in juvenile cases). Because this is a legislative proposal, the committee cannot add an advisory committee comment. It also has concerns about trying to identify the full range of individuals contemplated by the statute. However, the committee will consider developing an implementing rules proposal that would amend the rules to provide further guidance on this issue.

## LEG16-10

### Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	Commentator	Position	Comment	Committee Response
			<p>service.</p> <p>Further, subdivisions (a)(1)(B) and (C) indicate that “a party or other person” has authorized electronic service. This appears consistent with the proposed language for inclusion in 1010.6(a)(2) and (3) where either a party or other person has agreed to electronic service, but not where the court has ordered such service. It is suggested thought be given as to whether the use of “authorized” is accurate or desirable in subdivisions (a)(1)(B) and (C).</p> <p>Additionally, the discussion of these particular amendments notes, at page 5 of the proposal, that the mandatory electronic service imposed by 1010.6(a)(2) and (3) would apply, “to parties and other persons only if they are represented.” This is not clear from the proposed language. To avoid confusion, it is suggested that the word “represented” be inserted before “other person” in the respective provisions providing for court-ordered electronic service.</p> <p>Section 1010.6(a)(5) and (b)(3) apply to the effective dates of service and filing, respectively. As written, the proposed language is silent as to service or filing made at midnight. Further, in both instances, the proposed language uses the concept of a court day. In connection with service, this poses a problem as</p>	<p>The committee declines to pursue this suggestion. The term “authorized” is not intended to refer to whether the party or other person has consented to electronic service. Instead, it refers to the electronic service address that the party or other person has provided for the purpose of receiving documents served electronically, regardless of whether electronic service is permissive or mandatory.</p> <p>The committee agrees and has incorporated this suggestion into the proposal by revising the proposed amendment to section 1010.6(a)(2) and (3) to provide “on a represented party or other <i>represented</i> person.” (Italics added.)</p> <p>The committee agrees and has revised the proposal to address documents that electronically served and filed at 12:00 a.m. and on non-court days.</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>service, traditionally, may be made on any day. As to filing, this could pose a problem were the language interpreted as allowing filing only on a court day, that is, one might dispute not the effective date of filing, but the very effectiveness of filing.</p> <p>For these reasons, it is suggested that a version of the language of the Orange County Superior Court pilot program as to date of filing, be adopted as to both service and filing. Assuming the concept of “court day” is retained in connection with service, the following is provided for consideration: Electronically [served – in the case of 1010.6(a)(5)] [filed – in the case of 1010.6(b)(3)] documents [served] [filed] prior to midnight on a court day will be deemed [served] [filed] as of that day. Filing occurs at the time the document is received by the court and a confirmation of receipt is created. Any document electronically [served] [filed] at or after midnight, or filed on a noncourt day, will be deemed [served] [filed] on the next court day.</p> <p>Request for Specific Comments 1 - For the reasons set forth above, the proposal does not address the stated purpose. Further, there is concern with the inconsistencies posed by the provisions proposed for codification and CRC Rule 2.251.</p>	

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Specifically, the proposed language at 1010.6(a)(2) and (3) leads a party to expect either an agreement or a court order before they would be subject to mandatory electronic service. This, however, is not the case per Rule 2.251(b)(1)(B) which provides that the act of electronically filing any document with the court is evidence that the party has agreed to accept such service. This has proven to be an unhappy trap for litigants and their counsel in litigation brought in the Orange County courts where electronic filing is mandatory. These proposals are made to facilitate and encourage greater use of electronic filing. Accordingly, without some acknowledgment of these inconsistencies and attendant changes to the provisions of the code section or the Rule, this will continue to be a potential trap, growing in parallel with electronic filings.</p> <p>It is urged that, after the proposed amendments are finalized, the forgoing provisions of Rule 2.251, together with other of its provisions such as (h)(4) utilizing “close of business,” be reviewed to avoid conflicts with relevant statutes and ensure consistency in this area.</p> <p>2- CCP Section 1010.6(a)(5) and (b)(3) should provide that documents electronically served and filed up until midnight be deemed served or</p>	<p>This suggestion is outside the scope of this legislative proposal, as circulated. The committee may consider this recommendation in developing implementing rules proposals. The committee further notes that rule 2.251(b)(1)(B)—which provides that “[t]he act of e-filing is evidence that the party agrees to accept service at the electronic service address the party has furnished to the court”—does not apply to self-represented litigants. (See Cal. Rules of Court, rule 2.251(b)(1)(B) [“This subparagraph (B) does not apply to self-represented parties; they must affirmatively consent to electronic service under subparagraph (A)”].) This means that self-represented litigants must provide separate consent to both electronic filing <i>and</i> service.</p> <p>The committee agrees and intends to develop a rules proposal to implement the legislation, if enacted.</p> <p>The committee agrees and has revised the rules proposal to incorporate the suggestions by specifically addressing documents that are</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			filed on that day. Please see comments above in the general discussion as to proposed language, time, and “court day.”	electronically filed and served at 12:00 a.m. and on non-court days.
7.	State Bar Committee on Administration of Justice by Saul Bercovitch Legislative Counsel San Francisco	A	<p>As discussed below, CAJ agrees with the proposed amendments.</p> <p>CAJ agrees with the proposed amendments to section 1010.6, requiring that the person filing electronically signed documents maintain custody of the original signed documents only until final disposition of the case, rather than indefinitely as it is presently required. CAJ supports the use of electronic signatures under the requirements that the electronic signature satisfy the procedures, standards and guidelines of the Judicial Council, to be consistent with the language in Government Code Section 68150(g).</p> <p>CAJ agrees that the amendments to section 1010.6 are necessary to provide a consistent, effective date of filing, so that any document received electronically by the court before midnight on a court day shall be deemed to have been filed on that court day, and any document received after midnight is deemed to have been filed on the next court day. CAJ believes this is more clear than the current requirement that documents be received “by the</p>	<p>The committee appreciates the input of the State Bar Committee on Administration of Justice.</p> <p>No response required.</p> <p>No response required.</p>



## LEG16-10

### Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	Commentator	Position	Comment	Committee Response
			<p>close of business” which may be 5:00 p.m., or earlier, and is often changing due to budget considerations of the courts who are limiting filing counter times.</p> <p>CAJ agrees that the proposed amendments to sections 664.5 and 1011 to reference “service” instead of “mail” are a necessary update to the language, and agrees that the recognition of electronic service as a permissible method of service in section 1011 should be added as proposed.</p> <p>CAJ agrees that the new section 1013b is sufficient to address proof of service requirements as to electronic service.</p> <p>Our specific comments as solicited are as follows:</p> <p><b><i>Does the Proposal appropriately address the stated purpose?</i></b></p> <p>CAJ agrees that the proposals as stated do address the purpose, which is in major part to update the Code of Civil Procedure to properly address electronic filing and electronic service issues.</p> <p><b><i>Should the Code of Civil Procedure Section 1010.6(a)(5) and (b)(3) provide that</i></b></p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p><i>documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</i></p> <p>CAJ agrees that documents electronically filed and served up until midnight should be deemed filed or served on that day. CAJ discussed an alternative 5:00 p.m. cut-off time for electronic filing and electronic service. In discussing this, members of CAJ agreed that a midnight deadline promotes more conformity and consistency. Members referenced the Los Angeles County and Orange County e-filing systems, as well as the federal filing systems, which allow for a midnight deadline for e-filing citing their efficiency. Additionally, members cited the convenience factor of being able to file documents after standard business hours, especially for self-represented litigants who may need to be at work during ordinary court hours, and solo/small firm practitioners. Finally, members of CAJ placed significance on the fact that any risk of purported “abuse” of midnight filing deadlines is mitigated by the extended two court days allotted for electronic service presently under Code of Civil Procedure Section 1010.6(a)(4), which remains unchanged in the proposal.</p>	No response required.

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### Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
8.	State Bar of California, Standing Committee on the Delivery of Legal Services by Phong S. Wong Chair Los Angeles	A	<ul style="list-style-type: none"><li>• <u>Does the proposal appropriately address the stated purpose?</u></li></ul> Yes.  <ul style="list-style-type: none"><li>• <u>Should Code of Civil Procedure section 1010.6(a)(5) and (b)(3) provide that documents electronically filed and served up until midnight be deemed filed or served on that day? Or should 5 p.m. be the cutoff time for electronic filing and electronic service?</u></li></ul> SCDLS believes midnight should be the cutoff time.  <b>Additional Comments</b>  SCDLS supports the proposal because it protects self-represented litigants by not requiring that they file electronically, and it protects indigent individuals represented by counsel because there the electronic filing fee will not be incurred by parties with an approved fee waiver.	The committee appreciates the input of the State Bar's Standing Committee on the Delivery of Legal Services.  No response required.  No response required.
9.	Superior Court of Los Angeles County	AM	<ul style="list-style-type: none"><li>• With regard to the time deadline for electronic filing, we suggest that the views of the attorneys and advocates for self-represented litigants would be most important.</li></ul>	The committee appreciates the input of the Superior Court of Los Angeles County.

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"> <li>• This proposal would provide cost savings due to a likely reduction in staff hours currently spent serving large numbers of the public at filing windows and processing paper documents and files.</li> <li>• Making this law effective one year after approval would be sufficient for implementation in LASC.</li> <li>• We believe it would work well in larger courts (100 judicial officers or more). We have no comment regarding smaller courts.</li> <li>• Removing the time of electronic service from the proof of electronic service could cause difficulties if the proof of service is challenged by way of motion as there would be no way for the judicial officer to determine the time and date of service other than by declaration or sworn testimony. This could cost the court money in terms of judicial time spent on this issue.</li> </ul>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The committee understands this concern. By amending the cut-off time for the effective date of electronic service to midnight, it is expected that the exact time of electronic service will be an issue in fewer cases. The proof of electronic service will reflect the date when the document was electronically served, and judicial officers and clerks should be able to ascertain the effective date of filing with this information.</p>
10.	Superior Court of Orange County Civil and Probate Managers by Bryan Chae Principal Analyst	NI	One of the requirements is that if the court wants to use eFiling Service Providers, they must provide more than one. While I think the purpose of this is prevent the monopolization of eFiling services by one private company, this rule does not effectively eliminate that. EFSPs frequently specialize. For example, one	The committee appreciates the input from the Superior Court of Orange County's Civil and Probate Managers. The committee declines to pursue this recommendation at present because it is outside the scope of the proposal, as circulated. However, the committee will take this suggestion under consideration next year. Meanwhile, courts

## LEG16-10

### Technology: Electronic Filing, Service, and Signatures (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			company may only file Family cases and another Civil. If those were the only 2 EFSPs, they still have effective monopolies.	may take this into consideration when certifying EFSPs and deciding whether to require electronic filing. Postponing mandatory e-filing is always an option if there are insufficient EFSPs for each case type to provide for a competitive electronic filing environment.
11.	Superior Court of Orange County Family Law and Juvenile Court Managers by Michelle Wang Program Coordinator Specialist	NI	Would government agencies be exempt from maintaining original documents until “final disposition of the case” or is maintaining the electronic copy of documents sufficient?	<p>Similar to other electronic filers (with the exception described below for local child support agencies), government agencies would have two options when electronically filing documents signed under penalty of perjury: (1) electronically signing the document under the standards and guidelines developed by the Judicial Council, or (2) printing out the document, physically signing it, and maintaining the original until final disposition of the case. Government agencies would not be required to maintain the original documents if they electronically sign documents under option (1). These proposed amendments are intended to facilitate e-filing, while still ensuring that signatures made under penalty of perjury may be verified and validated if their authenticity comes into question during the pendency of the proceeding.</p> <p>As noted above, Family Code section 17400(b)(3) provides an exception for “pleadings signed by an agent of the local child support agency under penalty of perjury.” These pleadings may be maintained “by way of an electronic copy in the</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
				Statewide Automated Child Support System.” They must be retained “for the period of time prescribed by subdivision (a) of Section 68152 of the Government Code.”
12.	Superior Court of San Bernardino County by Kelly McNamara Managing Attorney	AM	The proposed changes are a good start, but do not go far enough in addressing the obstacles faced by litigants who are indigent or otherwise entitled to file and obtain copies of forms at no cost, such as petitioners for domestic violence restraining orders. Until and unless the requirement to print and provide a "wet" signature is eliminated entirely, these filers will see minimal (if any) benefit from the proposed changes. The current legislation shifts the cost burden to these litigants (paper, toner, etc.) and presents an obstacle to access that many are unable to overcome. Until this obstacle is removed, the legislation does nothing to promote equal access, and I would be unable to support it.	The committee appreciates this input and shares the concern about promoting access for indigent litigants. It expects that the proposed electronic signature requirements will ultimately benefit indigent litigants, who would not be required to print and retain the original “wet” signature if they elect to electronically sign forms. This means that if they fill out the forms online, they would be able to electronically sign and electronically file the document without ever printing it out.  In developing the standards and guidelines for electronic signatures in collaboration with the Court Executives Advisory Committee, the committee will keep the needs of indigent and self-represented litigants in mind to ensure that the electronic signature requirements are accessible to all litigants. Judicial Council forms should also be revised to implement the legislation and allow for the application of electronic signatures to forms that require signatures under penalty of perjury.
13.	Superior Court of San Diego County by Mike Roddy Executive Officer	A	No specific comment.	The committee appreciates the Superior Court of San Diego County’s support.

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
14.	Hon. Rebecca Wightman Commissioner Superior Court of San Francisco County	AM	<p>I am absolutely in favor of legislation that will accomplish the items identified in the Executive Summary of the proposal.</p> <p>I listed "agree if modified" only because it was unclear from the proposal as to whether it addressed an ongoing problem that has been occurring with one of the biggest institutional filers in the area of child support proceedings in connection with CRC 2.257 (re: retention of documents filed electronically that are signed under penalty of perjury). This has been extremely problematic in the areas of signed proofs of service. Many child support agencies have "paperless" files, and there is a statewide practice of imaging originals for their records, but not keeping originals. There are also many thousands of documents that are signed by process servers (service of governmental complaints, OSCs re contempt) vs. state or county employees (Motions, Orders after Hearing), the latter being such that electronic signatures are likely not difficult to create). Several years ago, CRC 2.257 was an impediment to getting many local child support agencies to e-file more documents (through courts' e-filing systems), and we were told at that time that the corresponding CCP sections were being looked at and it was suggested that everything get addressed at once.</p>	<p>The committee appreciates Commissioner Wightman's support.</p> <p>No response required.</p>

**LEG16-10****Technology: Electronic Filing, Service, and Signatures** (enact Code of Civil Procedure section 1013b; amend sections 664.5, 1010.6, and 1011)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>I'm now wondering if anyone at the Judicial Council consulted with the AB1058 Program Manager on this topic.</p> <p>I apologize for not being particularly tech savvy, but it has been my experience that when certain general civil statutes are amended, in particular ones that also apply to Family Law, the area and operations of child support cases, are sometimes overlooked. Sometimes there is a need to carve out an exception for DCSS that works for their system, and other times there should not be an exception and they need to adjust. However, has the question/issue even been discussed during the process of preparing this proposal?</p> <p>I would ask that Fam/Juv consult with Judicial Council's AB1058 Program Manager and the State Dept. of Child Support Services (DCSS) to make sure that the proposal here goes far enough to accommodate their statewide system.</p>	<p>The committee shares Commissioner Wightman's concerns that its proposal be reviewed by others with subject matter expertise relevant to family proceedings. To that end, the committee presented this proposal to the Family and Juvenile Law Advisory Committee for its input prior to circulation. No concerns were raised at the time about the proposed amendments related to electronic signatures. In addition, the Department of Child Support Services provided specific comment offering its general support of the proposal so long as it does not conflict with Family Code section 17400(b)(3); it does not, for the reasons stated above.</p> <p>Please see response above.</p>





## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
September 16, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Family and Juvenile Law Advisory Committee	Diana Glick, 916-643-7012 diana.glick@jud.ca.gov
Hon. Jerilyn L. Borack, Co-chair	
Hon. Mark A. Juhas, Co-chair	
Information Technology Advisory Committee	
Hon. Sheila F. Hanson, Chair	
Judicial Council Technology Committee	
Hon. Marsha G. Slough, Chair	
Subject	
Proposal for Judicial Council-Sponsored Legislation: Electronic Filing and Service in Juvenile Proceedings	

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#### **Executive Summary**

The Family and Juvenile Law Advisory Committee, the Information Technology Advisory Committee and the Judicial Council Technology Committee recommend enacting section 212.5 and amending various sections of Welfare & Institutions Code to authorize electronic filing and electronic service in juvenile law proceedings and establish parameters for e-business in the juvenile court.

## **Recommendation**

The Family and Juvenile Law Advisory Committee, the Information Technology Advisory Committee and the Judicial Council Technology Committee recommend that the Judicial Council sponsor legislation to enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of Welfare & Institutions Code.

New section 212.5 of the Welfare and Institutions Code would expressly apply the provisions of section 1010.6 of the Code of Civil Procedure to all juvenile proceedings, while setting limitations and conditions on the electronic service of parties and other persons. The limitations on electronic service include the following:

- Electronic service is authorized only if the county and the court choose to permit electronic service.
- Electronic service on a party or other person is permitted only upon consent to receive electronic service by the party or other person.
- A party or other person may withdraw prior consent to electronic service.
- Consent or withdrawal of prior consent to receive electronic service may be filed with the court only by a party or other person, or that person's attorney.
- Electronic service is not permitted on minors who are under the age of 16.
- If the party or other person to be served is a minor who is 16 years old or older, electronic service is permitted only upon consent by both the minor and the minor's attorney.
- Electronic service of medical or psychological documentation relating to a minor is not permitted on a minor who is 16 years old or older.
- The party or other person must be served by both electronic means and by other means specified in the statute if (1) the document to be served is the notice of hearing at which the social worker will recommend the termination of parental rights, or the appellate advisements required pursuant to Welfare and Institutions Code section 366.26(l)(3)(A); or (2) there is a citation issued pursuant to section 661, or a hearing is noticed under section 777(d).
- If the minor is an Indian child, or the court has reason to know that an Indian child is involved, service shall be provided exclusively in accordance with Welfare and Institutions Code section 224.2.

In addition, new section 212.5 codifies paragraph (3) of subdivision (b) of rule 5.522 of the California Rules of Court, which provides that the confidentiality of juvenile records shall be preserved when these records are transmitted electronically through encryption. The requirement to apply encryption to ensure the confidentiality of records would apply to both electronic filing and electronic service.

## **Previous Council Action**

The Judicial Council has authorized electronic filing, but not electronic service, in juvenile proceedings. It has not taken any prior action related to e-mailing notices of hearings in juvenile dependency cases.

Code of Civil Procedure section 1010.6 and trial court rules 2.250–2.261 authorize electronic filing and electronic service in civil matters. Effective July 1, 2014, the Judicial Council amended rule 5.522 to enable the electronic filing of juvenile court documents in accordance with the trial court rules, specifically rules 2.252, et seq. However, the council expressly excluded the application of trial court rule 2.251 to juvenile proceedings. (See Cal. Rules of Court, rule 5.522(b)(4) [“This rule does not incorporate the electronic service provisions in rule 2.251”].) Rule 2.251 authorizes electronic service and sets forth technical requirements for electronic service.

Effective January 1, 2016, Assembly Bill 879 (Stats. 2015, ch. 219) authorizes e-mailing notices of hearings in juvenile court under Welfare & Institutions Code sections 290.1–295. At its February 2016 meeting, the Judicial Council approved a joint proposal by the Family & Juvenile Law Advisory Committee and the Information Technology Advisory Committee to implement AB 879. The proposal (1) amended rules 5.524, 5.534, and 5.708 of the California Rules of Court; (2) adopted mandatory form EFS-005-JV/JV-141, *E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change (Juvenile Dependency)*; and (3) renumbered form EFS-005 to EFS-005-CV.

### **Rationale for Recommendation**

The provisions of AB 879 applied to a defined set of hearings conducted for children in the juvenile dependency system and authorized notice by e-mail for those hearings specified in sections 290.1–295. The legislation established important parameters for electronic service in the juvenile context and codified protections for parties and other persons who may consent to receive an e-mail notice of hearing.

This proposal seeks to apply the electronic filing and service provisions contained in section 1010.6 of the Code of Civil Procedure to juvenile dependency *and* delinquency proceedings, while preserving—and in some cases expanding upon—the conditions and limitations on electronic service set forth in AB 879.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal circulated for comment as part of the Spring 2016 invitation to comment cycle, from April 15, 2016 to June 14, 2016, to the standard mailing list for family and juvenile law proposals. Included on the list were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, family law facilitators and self-help center staff, social workers, probation officers, and other juvenile law professionals. A chart with the full text of the comments received and the committees’ responses is attached at pages 184–194.

Comments were received from five distinct entities, including superior courts and bar associations. One commentator rejected the entire proposal as an affront to the changes implemented through AB 879. Another commentator fully supported the proposal. Two

commentators supported the proposal if amended and provided valuable feedback. One commentator declined to indicate support or opposition to the proposal.

Substantive comments focused on three main areas: 1) the use of the term “encryption” to ensure confidentiality of documents; 2) the age at which it is appropriate for minors to receive electronic service in juvenile matters; and 3) the importance of prohibiting certain documents from being electronically served on a minor.

### **Concerns regarding “encryption”**

The proposal would add a new section to the Welfare & Institutions Code that authorizes and sets parameters for electronic service and electronic filing in juvenile court. New section 212.5 includes a subdivision regarding confidentiality, which states: “Electronic service and electronic filing must be conducted in a manner that preserves and ensures the confidentiality of records by encryption.”

Three commentators responded to this language. One indicated that the legislation should state that email should be “encrypted or made available to the recipient(s) via access to a secure web site...” Because the Code of Civil Procedure explicitly allows for these two options in its definition of electronic service (§ 1010.6(a)(1)(A)), staff does not believe there is a need to amend WIC as well, particularly since new Section 212.5 expressly applies this section of the CCP to juvenile matters.

Another commentator recommended that courts implement specific rules on encryption or that the Judicial Council should issue specific guidance on encryption. The committees discussed this and determined that specific standards on encryption may be appropriate for a California Rule of Court or the Trial Court Records Manual.

A third commentator shared the following concerns: “every document in a juvenile case is confidential...Some in our court believe the language in subdivision (h) may not be strong enough.”

There was significant discussion by all committees regarding the use of the word “encryption” to describe the range of possible security technologies that might be employed to preserve the confidentiality of information in juvenile cases. Ultimately, it was decided that the term is sufficiently broad to cover the full range of technologies but precise enough to signal the level of security required. It is envisioned that standards will be developed and included in future rule proposals or potentially in the Trial Court Records Manual.

### **Electronic Transmission of Medical and Psychological Records**

In drafting new Section 212.5, FJLAC added subdivision (e), which expressly prohibits the electronic transmission “of a psychological or medical report of a minor.” One commentator expressed concern that “medical report” may not be sufficient to cover other medical documentation such as test results.

The Committees agreed that “psychological or medical documentation” better encompasses the types of medical reports and test results that are meant to be included in the prohibition on electronic service.

The Committees also agreed to rephrase the subdivision to prohibit electronic service on a minor “of psychological or medical documentation related to a minor.”

### **Appropriate Age for Receiving Electronic Service**

Assembly Bill 879 established a two-tiered system in which minors ages 14-15 are able to consent to e-mail notice of hearings; however, the consent of their attorney is required and e-mail notice is supplemented with paper notice. Minors ages 16-17 may also consent to e-mail notice of hearings; the consent of their attorney is also required, but e-mail notice is the only notice and there is no follow-up paper notice.

In drafting the proposed legislation, FJLAC proposed to limit electronic service to minors age 16 and above with their consent and with the consent of their attorneys. A single commentator suggested that minors as young as 12 are capable of using email. The Committees considered this feedback but ultimately decided to propose a minimum age for electronic service of 16 years old.

There were also a number of comments from the San Diego Superior Court highlighting drafting errors or suggesting ways to improve the language of the proposal that were gratefully accepted by the Committees.

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

Implementation may require changes in court procedures and training in those courts that choose to allow for notice of hearings by e-mail. One commentator noted that “Savings would be realized in postage, paper, copying, and the labor involved with non-electronic forms of service.” This commentator also indicated that it is unclear “whether courts have the capacity to safeguard against hacking into their systems for the purpose of obtaining protected information.”

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed legislative amendments support the policies underlying Goal VI: Branchwide Infrastructure for Service Excellence. Specifically, authorizing electronic business in code and setting appropriate parameters based on the particular area of law contributes to the goal of enhancing technological access and integration.

### **Attachments**

1. Welfare & Institutions Code, new Section 212.5 and proposed amendments to Sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45, at pages 163–183
2. Chart of comments, at pages 184–194

Section 212.5 of the Welfare and Institutions Code would be enacted and sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 would be amended, effective January 1, 2018, to read:

1 **§ 212.5.**

2  
3 Unless otherwise provided by law, Section 1010.6 of the Code of Civil Procedure shall apply to  
4 juvenile matters, with the following exceptions and conditions:

5 (a) Electronic service is authorized only if the county and the court choose to permit electronic  
6 service.

7 (b) Electronic service on a party or other person shall be permitted only upon consent to receive  
8 electronic service by the party or other person. A party or other person may withdraw prior  
9 consent to electronic service. The Judicial Council shall create a form designed to implement this  
10 section.

11 (c) Consent or withdrawal of prior consent to receive electronic service may be filed with the  
12 court only by a party or other person entitled to service, or that person's attorney.

13 (d) Electronic service is not permitted on any party or person who is under the age of 16 years  
14 old.

15 (e) If the party or other person to be served is a minor, age 16 or above:

16 (1) Electronic service shall be permitted only upon consent by the minor and by the minor's  
17 attorney.

18 (2) Electronic service is not permitted of psychological or medical documentation related to a  
19 minor.

20 (f) The party or other person shall be served both by electronic means and by other means  
21 specified in the relevant statute if:

22 (1) The document to be served is the notice of hearing, or the appellate advisements required  
23 pursuant to subparagraph (A) of paragraph (3) of subdivision (l) of Section 366.26, for a hearing  
24 at which the social worker will recommend the termination of parental rights; or

25 (2) The document to be served is a citation pursuant to Section 661, or a notice of hearing  
26 pursuant to subdivision (d) of Section 777.

27 (g) If the minor is an Indian child, or the court has reason to know that an Indian child is  
28 involved, service shall be provided exclusively in accordance with Section 224.2.

29 (h) Electronic service and electronic filing must be conducted in a manner that preserves and  
30 ensures the confidentiality of records by encryption.

31  
32 **§ 248.**

33  
34 (a) \* \* \*

35 (b) Service, as provided in this section, shall be made as follows:

36 (1) \* \* \*

37 (2) If paragraph (1) is not applicable, service shall be made by mail or by electronic service  
38 pursuant to Section 212.5, within the time period specified in Section 248.5, to the last known  
39 address of those persons or to the address designated by those persons appearing at the hearing  
40 before the referee and the ~~mailing~~ documents served shall include, if applicable, the written  
41 explanation of the right to seek review of the order. If the parent or guardian does not have a last

1 known address or electronic service address designated, then service ~~by mail~~ shall be to that party  
2 in care of his or her counsel.

3  
4 **§ 248.5.**

5  
6 All written findings and orders of the court shall be served by the clerk of the court personally, ~~or~~  
7 by first-class mail, or by electronic service pursuant to Section 212.5, within three judicial days  
8 of their issuance on the petitioner, the minor or the minor's counsel, the parent or the parent's  
9 counsel, and the guardian or the guardian's counsel.

10  
11 **§ 290.1.**

12  
13 If the probation officer or social worker determines that the child shall be retained in custody, he  
14 or she shall immediately file a petition pursuant to Section 332 with the clerk of the juvenile  
15 court, who shall set the matter for hearing on the detention hearing calendar. The probation  
16 officer or social worker shall serve notice as prescribed in this section.

17 (a)-(d) \* \* \*

18 (e) Service of the notice shall be written or oral. If the person being served cannot read, notice  
19 shall be given orally. ~~Except as provided in subdivisions (f), (g), and (h), written notice may be~~  
20 ~~served by electronic mail if the county, or city and county, and the court choose to permit service~~  
21 ~~by electronic mail and the person to be served has consented to service by electronic mail by~~  
22 ~~signing Judicial Council Form EFS-005. Notice shall not be served electronically under this~~  
23 ~~section.~~

24 (f) \* \* \*

25 (g) ~~Except as provided in subdivision (h), if notice is required to be provided to a child pursuant~~  
26 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~  
27 ~~mail only if all of the following requirements are satisfied:~~

28 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

29 (2) ~~The child is 16 years of age or older.~~

30 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
31 ~~005.~~

32 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
33 ~~Judicial Council Form EFS-005.~~

34 (h) ~~If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~  
35 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~  
36 ~~of the following requirements are satisfied:~~

37 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

38 (2) ~~The child is 14 or 15 years of age.~~

39 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
40 ~~005.~~

41 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
42 ~~Judicial Council Form EFS-005.~~

1 ~~(i) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
2 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

3  
4 **§ 290.2.**

5  
6 Upon the filing of a petition by a probation officer or social worker, the clerk of the juvenile  
7 court shall issue notice, to which shall be attached a copy of the petition, and he or she shall  
8 cause the same to be served as prescribed in this section.

9 ~~(a)-(b) \* \* \*~~

10 ~~(c) Notice shall be served as follows:~~

11 ~~(1)-(2) \* \* \*~~

12 ~~(3) Except as provided in subdivisions (e), (f), and (g), notice may be served by electronic mail in~~  
13 ~~lieu of notice by first-class mail if the county, or city and county, and the court choose to permit~~  
14 ~~service by electronic mail and the person to be served has consented to service by electronic mail~~  
15 ~~by signing Judicial Council Form EFS-005. Notice shall not be served electronically under this~~  
16 ~~section.~~

17 ~~(d)-(e) \* \* \*~~

18 ~~(f) Except as provided in subdivision (g), if notice is required to be provided to a child pursuant~~  
19 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~  
20 ~~mail only if all of the following requirements are satisfied:~~

21 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

22 ~~(2) The child is 16 years of age or older.~~

23 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
24 ~~005.~~

25 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
26 ~~Judicial Council Form EFS-005.~~

27 ~~(g) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~  
28 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~  
29 ~~of the following requirements are satisfied:~~

30 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

31 ~~(2) The child is 14 or 15 years of age.~~

32 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
33 ~~005.~~

34 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
35 ~~Judicial Council Form EFS-005.~~

36 ~~(h) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
37 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

38  
39 **§ 291.**

40  
41 After the initial petition hearing, the clerk of the court shall cause the notice to be served in the  
42 following manner:



1 (a)–(d) \* \* \*

2 (e) Service of the notice of the hearing shall be given in the following manner:

3 (1) If the child is detained and the persons required to be noticed are not present at the initial  
4 petition hearing, they shall be noticed by personal service or by certified mail, return receipt  
5 requested.

6 (2) If the child is detained and the persons required to be noticed are present at the initial petition  
7 hearing, they shall be noticed by personal service, ~~or by first-class mail,~~ or by electronic service  
8 pursuant to Section 212.5.

9 (3) If the child is not detained, the persons required to be noticed shall be noticed by personal  
10 service, ~~or by first-class mail,~~ or by electronic service pursuant to Section 212.5, unless the  
11 person to be served is known to reside outside the county, in which case service shall be by first-  
12 class mail or by electronic service pursuant to Section 212.5.

13 ~~Except as provided in subdivisions (g), (h), and (i), notice may be served by electronic mail in~~  
14 ~~lieu of notice by first-class mail if the county, or city and county, and the court choose to permit~~  
15 ~~service by electronic mail and the person to be served has consented to service by electronic mail~~  
16 ~~by signing Judicial Council Form EFS-005.~~

17 (f)–(g) \* \* \*

18 ~~(h) Except as provided in subdivision (i), if notice is required to be provided to a child pursuant~~  
19 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~  
20 ~~mail only if all of the following requirements are satisfied:~~

21 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

22 ~~(2) The child is 16 years of age or older.~~

23 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
24 ~~005.~~

25 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
26 ~~Judicial Council Form EFS-005.~~

27 ~~(i) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~  
28 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~  
29 ~~of the following requirements are satisfied:~~

30 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

31 ~~(2) The child is 14 or 15 years of age.~~

32 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
33 ~~005.~~

34 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
35 ~~Judicial Council Form EFS-005.~~

36 ~~(j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
37 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

38  
39 **§ 292.**

40  
41 The social worker or probation officer shall give notice of the review hearing held pursuant to  
42 Section 364 in the following manner:

1 (a)-(d) \* \* \*

2 (e) Service of the notice shall be by personal service, by ~~first-class mail~~ (first-class mail or  
3 certified mail with return receipt requested), ~~or by certified mail, return receipt requested,~~  
4 ~~addressed to the last known address of the person to be noticed, or by electronic service pursuant~~  
5 ~~to Section 212.5. Except as provided in subdivisions (f), (g), and (h), notice may be served by~~  
6 ~~electronic mail if the county, or city and county, and the court choose to permit service by~~  
7 ~~electronic mail and the person to be served has consented to service by electronic mail by signing~~  
8 ~~Judicial Council Form EFS-005.~~

9 (f) \* \* \*

10 (g) ~~Except as provided in subdivision (h), if notice is required to be provided to a child pursuant~~  
11 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~  
12 ~~mail only if all of the following requirements are satisfied:~~

13 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

14 ~~(2) The child is 16 years of age or older.~~

15 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
16 ~~005.~~

17 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
18 ~~Judicial Council Form EFS-005.~~

19 (h) ~~If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~  
20 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~  
21 ~~of the following requirements are satisfied:~~

22 ~~(1) The county, or city and county, and the court choose to permit service by electronic mail.~~

23 ~~(2) The child is 14 or 15 years of age.~~

24 ~~(3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
25 ~~005.~~

26 ~~(4) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
27 ~~Judicial Council Form EFS-005.~~

28 (i) ~~This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
29 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

30  
31 **§ 293.**

32  
33 The social worker or probation officer shall give notice of the review hearings held pursuant to  
34 Section 366.21, 366.22, or 366.25 in the following manner:

35 (a)-(d) \* \* \*

36 (e) Service of the notice shall be by first-class mail addressed to the last known address of the  
37 person to be noticed, ~~or by personal service on the person,~~ or by electronic service pursuant to  
38 Section 212.5. Service of a copy of the notice shall be by personal service, ~~or by certified mail,~~  
39 ~~return receipt requested, by electronic service under Section 212.5, or any other form of notice~~  
40 ~~that is equivalent to service by first-class mail. Except as provided in subdivisions (g), (h), and~~  
41 ~~(i), notice may be served by electronic mail in lieu of notice by first-class mail if the county, or~~

1 city and county, and the court choose to permit service by electronic mail and the person to be  
2 served has consented to service by electronic mail by signing Judicial Council Form EFS-005.

3 (f) \* \* \*

4 (g) \* \* \*

5 (h) Except as provided in subdivision (i), if notice is required to be provided to a child pursuant  
6 to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic  
7 mail only if all of the following requirements are satisfied:

8 (1) The county, or city and county, and the court choose to permit service by electronic mail.

9 (2) The child is 16 years of age or older.

10 (3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-  
11 005.

12 (4) The attorney for the child has consented to service of the minor by electronic mail by signing  
13 Judicial Council Form EFS-005.

14 (i) If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision  
15 (a), written notice may be served on the child by electronic mail as well as by regular mail if all  
16 of the following requirements are satisfied:

17 (1) The county, or city and county, and the court choose to permit service by electronic mail.

18 (2) The child is 14 or 15 years of age.

19 (3) The child has consented to service by electronic mail by signing Judicial Council Form EFS-  
20 005.

21 (4) The attorney for the child has consented to service of the minor by electronic mail by signing  
22 Judicial Council Form EFS-005.

23 (j) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,  
24 unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

25  
26 **§ 294.**

27  
28 The social worker or probation officer shall give notice of a selection and implementation  
29 hearing held pursuant to Section 366.26 in the following manner:

30 (a)-(d) \* \* \*

31 (d) Regardless of the type of notice required, or the manner in which it is served, once the court  
32 has made the initial finding that notice has properly been given to the parent, or to any person  
33 entitled to receive notice pursuant to this section, subsequent notice for any continuation of a  
34 Section 366.26 hearing may be by first-class mail to any last known address, by an order made  
35 pursuant to Section 296, by electronic service pursuant to Section 212.5, ~~except as provided in~~  
36 ~~paragraphs (2) and (3) of subdivision (h) and subdivision (i), by electronic mail if the county, or~~  
37 ~~city and county, and the court choose to permit service by electronic mail and the person to be~~  
38 ~~served has consented to service by electronic mail by signing Judicial Council Form EFS-005, or~~  
39 by any other means that the court determines is reasonably calculated, under any circumstance, to  
40 provide notice of the continued hearing. However, if the recommendation changes from the  
41 recommendation contained in the notice previously found to be proper, notice shall be provided

1 to the parent, and to any person entitled to receive notice pursuant to this section, regarding that  
2 subsequent hearing.

3 (e) \* \* \*

4 (f) Notice to the parents may be given in any one of the following manners:

5 (1) If the parent is present at the hearing at which the court schedules a hearing pursuant to  
6 Section 366.26, the court shall advise the parent of the date, time, and place of the proceedings,  
7 their right to counsel, the nature of the proceedings, and the requirement that at the proceedings  
8 the court shall select and implement a plan of adoption, legal guardianship, or long-term foster  
9 care for the child. The court shall direct the parent to appear for the proceedings and then direct  
10 that the parent be notified thereafter only by first-class mail to the parent's usual place of  
11 residence or business ~~only or by electronic service pursuant to Section 212.5. In lieu of notice by~~  
12 ~~first-class mail, notice may be served by electronic mail if the county, or city and county, and the~~  
13 ~~court choose to permit service by electronic mail and the person to be served has consented to~~  
14 ~~service by electronic mail by signing Judicial Council Form EFS-005.~~

15 (2)-(3) \* \* \*

16 (4) Delivery to a competent person who is at least 18 years of age at the parent's usual place of  
17 residence or business, and thereafter ~~mailed to~~ served on the parent named in the notice by first-  
18 class mail at the place where the notice was delivered or by electronic service pursuant to Section  
19 212.5.

20 (5) If the residence of the parent is outside the state, service may be made as described in  
21 paragraph (1), (3), or (4) or by certified mail, return receipt requested.

22 (6) If the recommendation of the probation officer or social worker is legal guardianship or long-  
23 term foster care, service may be made by first-class mail to the parent's usual place of residence  
24 or business or by electronic service pursuant to Section 212.5. ~~or, i~~ In the case of an Indian child,  
25 if the recommendation of the probation officer or social worker tribal customary adoption,  
26 service may be made by first-class mail to the parent's usual place of residence or business. ~~In~~  
27 ~~lieu of notice by first class mail, notice may be serviced by electronic mail if the county, or city~~  
28 ~~and county, and the court choose to permit service by electronic mail and the person to be served~~  
29 ~~has consented to service by electronic mail by signing Judicial Council Form EFS-005.~~

30 (7) If a parent's identity is known but his or her whereabouts are unknown and the parent cannot,  
31 with reasonable diligence, be served in any manner specified in paragraphs (1) to (6), inclusive,  
32 the petitioner shall file an affidavit with the court at least 75 days before the hearing date, stating  
33 the name of the parent and describing the efforts made to locate and serve the parent.

34 (A) If the court determines that there has been due diligence in attempting to locate and serve the  
35 parent and the probation officer or social worker recommends adoption, service shall be to that  
36 parent's attorney of record, if any, by certified mail, return receipt requested. If the parent does  
37 not have an attorney of record, the court shall order that service be made by publication of  
38 citation requiring the parent to appear at the date, time, and place stated in the citation, and that  
39 the citation be published in a newspaper designated as most likely to give notice to the parent.  
40 Publication shall be made once a week for four consecutive weeks. Whether notice is to the  
41 attorney of record or by publication, the court shall also order that notice be given to the

1 grandparents of the child, if their identities and addresses are known, by first-class mail or by  
2 electronic service pursuant to Section 212.5.

3 (B) If the court determines that there has been due diligence in attempting to locate and serve the  
4 parent and the probation officer or social worker recommends legal guardianship or long-term  
5 foster care, no further notice is required to the parent, but the court shall order that notice be  
6 given to the grandparents of the child, if their identities and addresses are known, by first-class  
7 mail or by electronic service pursuant to Section 212.5.

8 (C) \* \* \*

9 (g)(1) \* \* \*

10 (h)(1) Notice to all counsel of record shall be by first-class mail; or by electronic service pursuant  
11 to Section 212.5. ~~by electronic mail if the county, or city and county, and the court choose to~~  
12 ~~permit service by electronic mail and the person to be served has consented to service by~~  
13 ~~electronic mail by signing Judicial Council Form EFS-005.~~

14 (2) ~~Except as provided in paragraph (3), if notice is required to be provided to a child, written~~  
15 ~~notice may be served on the child by electronic mail only if all of the following requirements are~~  
16 ~~satisfied:~~

17 (A) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

18 (B) ~~The child is 16 years of age or older.~~

19 (C) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
20 ~~005.~~

21 (D) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
22 ~~Judicial Council Form EFS-005.~~

23 (3) ~~If notice is required to be provided to a child, written notice may be served on the child by~~  
24 ~~electronic mail as well as by regular mail if all of the following requirements are satisfied:~~

25 (A) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

26 (B) ~~The child is 14 or 15 years of age.~~

27 (C) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
28 ~~005.~~

29 (D) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
30 ~~Judicial Council Form EFS-005.~~

31 (i)-(l) \* \* \*

32 (m) ~~Notwithstanding any choice by a county, or city and county, and the court to permit service~~  
33 ~~of written notice of court proceedings by electronic mail, or consent by any person to service of~~  
34 ~~written notice by electronic mail by signing Judicial Council Form EFS-005, notice of any~~  
35 ~~hearing at which the county welfare department is recommending the termination of parental~~  
36 ~~rights may only be served electronically by electronic mail only if notice is also given by another~~  
37 ~~means of service provided for in this section.~~

38 (n) ~~This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
39 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

40  
41 **§ 295.**

1 The social worker or probation officer shall give notice of review hearings held pursuant to  
2 Sections 366.3 and 366.31 and for termination of jurisdiction hearings held pursuant to Section  
3 391 in the following manner:

4 (a)–(d) \* \* \*

5 (e) Service of notice shall be by first-class mail addressed to the last known address of the person  
6 to be provided notice or by electronic service pursuant to Section 212.5. ~~Except as provided in~~  
7 ~~subdivisions (g), (h), and (i), notice may be served by electronic mail in lieu of notice by first-~~  
8 ~~class mail if the county, or city and county, and the court choose to permit service by electronic~~  
9 ~~mail and the person to be served has consented to service by electronic mail by signing Judicial~~  
10 ~~Council Form EFS-005~~. In the case of an Indian child, notice shall be by registered mail, return  
11 receipt requested.

12 (f)–(g) \* \* \*

13 (h) ~~Except as provided in subdivision (i), if notice is required to be provided to a child pursuant~~  
14 ~~to paragraph (4) or (5) of subdivision (a), written notice may be served on the child by electronic~~  
15 ~~mail only if all of the following requirements are satisfied:~~

16 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

17 (2) ~~The child is 16 years of age or older.~~

18 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
19 ~~005.~~

20 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
21 ~~Judicial Council Form EFS-005.~~

22 (i) ~~If notice is required to be provided to a child pursuant to paragraph (4) or (5) of subdivision~~  
23 ~~(a), written notice may be served on the child by electronic mail as well as by regular mail if all~~  
24 ~~of the following requirements are satisfied:~~

25 (1) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

26 (2) ~~The child is 14 or 15 years of age.~~

27 (3) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
28 ~~005.~~

29 (4) ~~The attorney for the child has consented to service of the minor by electronic mail by signing~~  
30 ~~Judicial Council Form EFS-005.~~

31 (j) ~~This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
32 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

33  
34 **§ 297.**

35  
36 (a) ~~Notice required for an initial petition filed pursuant to Section 300 is applicable to a~~  
37 ~~subsequent petition filed pursuant to Section 342. A subsequent petition filed pursuant to Section~~  
38 ~~342 shall be noticed pursuant to Sections 290.1 and 290.2, except that service may be electronic~~  
39 ~~service pursuant to Section 212.5.~~

40 (b) Upon the filing of a supplemental petition pursuant to Section 387, the clerk of the juvenile  
41 court shall immediately set the matter for hearing within 30 days of the date of the filing, and the  
42 social worker or probation officer shall cause notice thereof to be served upon the persons

1 required by, and in the manner prescribed by, Sections 290.1, 290.2, and 291, except that service  
2 may be electronic service pursuant to Section 212.5.

3 (c)–(d) \* \* \*

4  
5 **§ 302.**

6  
7 (a) \* \* \*

8 (b) Unless their parental rights have been terminated, both parents shall be notified of all  
9 proceedings involving the child. In any case where the social worker is required to provide a  
10 parent or guardian with notice of a proceeding at which the social worker intends to present a  
11 report, the social worker shall also provide both parents, whether custodial or noncustodial, or  
12 any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing,  
13 ~~either personally by personal service, or by first-class mail, or by electronic service pursuant to~~  
14 Section 212.5. The social worker shall not charge any fee for providing a copy of a report  
15 required by this subdivision. The social worker shall keep confidential the address of any parent  
16 who is known to be the victim of domestic violence.

17 (c)–(d) \* \* \*

18  
19 **§ 316.1.**

20  
21 (a)(1) \* \* \*

22 (2) ~~Except as provided in subdivisions (b) and (c), in addition to providing his or her permanent~~  
23 ~~mailing address, the court may, if the county, or city and county, and the court choose to permit~~  
24 ~~service by electronic mail, permit any party who is entitled to notice of court proceedings, upon~~  
25 ~~his or her consent to service by electronic mail by signing Judicial Council Form EFS-005, to~~  
26 ~~voluntarily provide the court with a designated electronic mail address for the purpose of~~  
27 ~~receiving notice by electronic mail.~~ Upon his or her appearance before the court, each party who  
28 consents to electronic service pursuant to Section 212.5 ~~by electronic mail~~ shall designate for the  
29 court his or her electronic mail service address. The court shall advise each party that the  
30 electronic mail service address will be used by the court and the social services agency for  
31 purposes of providing notice pursuant to Sections 290.1, 290.2, 291, 292, 293, 294, 295, 297, and  
32 342, unless and until the party notifies the court or the social services agency of a new electronic  
33 mail service address in writing or unless the party withdraws consent to electronic service.

34 (b) ~~Except as provided in subdivision (c), the court may permit a child who appears before the~~  
35 ~~court and who is entitled to notice of court proceedings to voluntarily provide the court with a~~  
36 ~~designated electronic mail address for the purpose of receiving notice by electronic mail only~~  
37 ~~under the following circumstances:~~

38 (1) ~~If the child is 16 years of age or older, notice shall be served by first-class mail, or if all of the~~  
39 ~~following requirements are satisfied, by electronic mail:~~

40 (A) ~~The county, or city and county, and the court choose to permit service by electronic mail.~~

41 (B) ~~The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
42 ~~005.~~

1 ~~(C) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
2 ~~Judicial Council Form EFS-005.~~

3 ~~(2) If the child is 14 or 15 years of age, written notice may be served on the child by electronic~~  
4 ~~mail as well as by regular mail if all of the following requirements are satisfied:~~

5 ~~(A) The county, or city and county, and the court choose to permit service by electronic mail.~~

6 ~~(B) The child has consented to service by electronic mail by signing Judicial Council Form EFS-~~  
7 ~~005.~~

8 ~~(C) The attorney for the child has consented to service of the minor by electronic mail by signing~~  
9 ~~Judicial Council Form EFS-005.~~

10 ~~(e) Notice of court proceedings by electronic mail is not permitted in any of the following~~  
11 ~~circumstances:~~

12 ~~(1) For notice of any hearing at which the county welfare department is recommending~~  
13 ~~termination of parental rights, in which case notice may only be served by electronic mail if~~  
14 ~~supplemental and in addition to first class mail.~~

15 ~~(2) If the social worker or probation officer knows or has reason to know that an Indian child is~~  
16 ~~involved, in which case notice shall be given in accordance with Section 224.2.~~

17 ~~(3) If the person entitled to notice is a child under 14 years of age.~~

18 ~~(d) The Judicial Council may develop a form for the designation of a permanent mailing address~~  
19 ~~by parents and guardians for use by the courts and social services agencies.~~

20 ~~(e) This section shall remain in effect only until January 1, 2019, and as of that date is repealed,~~  
21 ~~unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.~~

22  
23 **§ 342.**

24  
25 In any case in which a minor has been found to be a person described by Section 300 and the  
26 petitioner alleges new facts or circumstances, other than those under which the original petition  
27 was sustained, sufficient to state that the minor is a person described in Section 300, the  
28 petitioner shall file a subsequent petition. This section does not apply if the jurisdiction of the  
29 juvenile court has been terminated prior to the new allegations.

30 Unless otherwise provided by law, aAll procedures and hearings required for an original petition  
31 are applicable to a subsequent petition filed under this section.

32  
33 **§ 362.4.**

34  
35 When the juvenile court terminates its jurisdiction over a minor who has been adjudged a  
36 dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and  
37 proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the  
38 minor's parents, or proceedings to establish the paternity of the minor child brought under the  
39 Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family  
40 Code, are pending in the superior court of any county, or an order has been entered with regard to  
41 the custody of that minor, the juvenile court on its own motion, may issue a protective order as



1 provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order  
2 determining the custody of, or visitation with, the child.

3 Any order issued pursuant to this section shall continue until modified or terminated by a  
4 subsequent order of the superior court. The order of the juvenile court shall be filed in the  
5 proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity,  
6 at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part  
7 thereof.

8 If no action is filed or pending relating to the custody of the minor in the superior court of any  
9 county, the juvenile court order may be used as the sole basis for opening a file in the superior  
10 court of the county in which the parent, who has been given custody, resides. The court may  
11 direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior  
12 court of the county in which the order is to be filed. The clerk of the superior court shall,  
13 immediately upon receipt, open a file, without a filing fee, and assign a case number.

14 The clerk of the superior court shall, upon the filing of any juvenile court custody order, send a  
15 copy of the order with the case number by first-class mail or by electronic means pursuant to  
16 Section 212.5 ~~a copy of the order with the case number~~ to the juvenile court and to the parents at  
17 the address listed on the order. The Judicial Council shall adopt forms for any custody or  
18 restraining order issued under this section. These form orders shall not be confidential.

19  
20 **§ 364.05.**

21  
22 Notwithstanding Section 364, in a county of the first class, a copy of the report required pursuant  
23 to subdivision (b) of Section 364 shall be provided to all parties at least 10 calendar days prior to  
24 the hearing. This may be accomplished by mailing or electronically serving pursuant to Section  
25 212.5 the report at least 15 calendar days prior to the hearing to a party whose address is within  
26 the State of California, or at least 20 calendar days prior to the hearing to a party whose address  
27 is outside the State of California. The court shall grant a reasonable continuance, not to exceed  
28 10 calendar days, upon request by any party or his or her counsel on the ground that the report  
29 was not provided at least 10 calendar days prior to the hearing as required by this section, unless  
30 the party or his or her counsel has expressly waived the requirement that the report be provided  
31 within the 10-day period or the court finds that the party's ability to proceed at the hearing is not  
32 prejudiced by the lack of timely service of the report. In making this determination, the court  
33 shall presume that a party is prejudiced by the lack of timely service of the report, and may find  
34 that the party is not prejudiced only by clear and convincing evidence to the contrary.

35  
36 **§ 366.05.**

37  
38 Notwithstanding subdivision (c) of Section 366.21, in a county of the first class, any  
39 supplemental report filed in connection with a status review hearing held pursuant to subdivision  
40 (a) of Section 366 shall be provided to the parent or legal guardian and to counsel for the child at  
41 least 10 calendar days prior to the hearing. This may be accomplished by mailing or  
42 electronically serving pursuant to Section 212.5 the report at least 15 calendar days prior to the

1 hearing to a party whose address is within the State of California, or at least 20 calendar days  
2 prior to the hearing to a party whose address is outside the State of California. The court shall  
3 grant a reasonable continuance, not to exceed 10 calendar days, upon request by any party or his  
4 or her counsel on the ground that the report was not provided at least 10 calendar days prior to  
5 the hearing as required by this section, unless the party or his or her counsel has expressly waived  
6 the requirement that the report be provided within the 10-day period or the court finds that the  
7 party's ability to proceed at the hearing is not prejudiced by the lack of timely service of the  
8 report. In making this determination, the court shall presume that a party is prejudiced by the lack  
9 of timely service of the report, and may find that the party is not prejudiced only by clear and  
10 convincing evidence to the contrary.

11  
12 **§ 366.21.**

13  
14 (a)–(b) \* \* \*

15 (c) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental  
16 report with the court regarding the services provided or offered to the parent or legal guardian to  
17 enable him or her to assume custody and the efforts made to achieve legal permanence for the  
18 child if efforts to reunify fail, including, but not limited to, efforts to maintain relationships  
19 between a child who is 10 years of age or older and has been in out-of-home placement for six  
20 months or longer and individuals who are important to the child, consistent with the child's best  
21 interests; the progress made; and, where relevant, the prognosis for return of the child to the  
22 physical custody of his or her parent or legal guardian; and shall make his or her recommendation  
23 for disposition. If the child is a member of a sibling group described in subparagraph (C) of  
24 paragraph (1) of subdivision (a) of Section 361.5, the report and recommendation may also take  
25 into account those factors described in subdivision (e) relating to the child's sibling group. If the  
26 recommendation is not to return the child to a parent or legal guardian, the report shall specify  
27 why the return of the child would be detrimental to the child. The social worker shall provide the  
28 parent or legal guardian, counsel for the child, and any court-appointed child advocate with a  
29 copy of the report, including his or her recommendation for disposition, at least 10 calendar days  
30 prior to the hearing. The report may be served electronically pursuant to Section 212.5. In the  
31 case of a child removed from the physical custody of his or her parent or legal guardian, the  
32 social worker shall, at least 10 calendar days prior to the hearing, provide a summary of his or her  
33 recommendation for disposition to any foster parents, relative caregivers, and certified foster  
34 parents who have been approved for adoption by the State Department of Social Services when it  
35 is acting as an adoption agency or by a county adoption agency, community care facility, or foster  
36 family agency having the physical custody of the child. The social worker shall include a copy of  
37 the Judicial Council Caregiver Information Form (JV-290) with the summary of  
38 recommendations to the child's foster parents, relative caregivers, or foster parents approved for  
39 adoption, in the caregiver's primary language when available, along with information on how to  
40 file the form with the court. The summary of the recommendation may be served electronically  
41 pursuant to Section 212.5.

42 (d)–(l) \* \* \*

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**§ 366.26.**

(a)–(k) \* \* \*

(l)(1)–(2) \* \* \*

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if the party is present at the time of the making of the order. If the party is not present at the time of making the order, this notice shall be made by the clerk of the court by first-class mail by the clerk of the court to the last known address of a party not present at the time of making the order or by electronic service pursuant to Section 212.5. If the notice is for a hearing at which the social worker will recommend the termination of parental rights, service may be electronic service only in addition to service by first-class mail.

(B)–(D) \* \* \*

(4) \* \* \*

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m)–(n) \* \* \*

**§ 387.**

(a)–(c) \* \* \*

(d) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290.1 and 291, except that service under this subdivision may be electronic service pursuant to Section 212.5.

(e) \* \* \*

**§ 607.2.**

(a) On and after January 1, 2012, the court shall hold a hearing prior to terminating jurisdiction over a ward who satisfies any of the following criteria:

(1)–(3) \* \* \*

(4) Service of the notice of hearing may be electronic service pursuant to Section 212.5.

(b) At a hearing during which termination of jurisdiction over a ward described in subdivision (a) is being considered, the court shall take one of the following actions:

(1) \* \* \*

(2)(A) \* \* \*

1 (B) The court shall set a hearing within 20 judicial days of the date of the order described in  
2 subparagraph (A) to review the child welfare services department's decision and may either  
3 affirm its decision not to file a petition pursuant to Section 300 or order the child welfare services  
4 department to file a petition pursuant to Section 300. Service of the notice of hearing may be  
5 electronic service pursuant to Section 212.5.

6 (3)–(6) \* \* \*

7 (c)–(d) \* \* \*

8  
9 **§ 630.**

10  
11 (a) If the probation officer determines that the minor shall be retained in custody, he shall  
12 immediately proceed in accordance with Article 16 (commencing with Section 650) to cause the  
13 filing of a petition pursuant to Section 656 with the clerk of the juvenile court who shall set the  
14 matter for hearing on the detention calendar. Immediately upon filing the petition with the clerk  
15 of the juvenile court, if the minor is alleged to be a person described in Section 601 or 602, the  
16 probation officer or the prosecuting attorney, as the case may be, shall serve such minor with a  
17 copy of the petition and notify him of the time and place of the detention hearing. The probation  
18 officer, or the prosecuting attorney, as the case may be, shall thereupon notify each parent or each  
19 guardian of the minor of the time and place of such hearing if the whereabouts of each parent or  
20 guardian can be ascertained by due diligence. Such notice may be given orally. Service under this  
21 subdivision shall not be made electronically.

22 (b) \* \* \*

23  
24 **§ 658.**

25  
26 (a) Except as provided in subdivision (b), upon the filing of the petition, the clerk of the juvenile  
27 court shall issue a notice, to which shall be attached a copy of the petition, and he or she shall  
28 cause the same to be served upon the minor, if the minor is eight or more years of age, and upon  
29 each of the persons described in subdivision (e) of Section 656 whose residence addresses are set  
30 forth in the petition and thereafter before the hearing upon all persons whose residence addresses  
31 become known to the clerk. If the court has ordered the care, custody, and control of the minor to  
32 be under the supervision of the probation officer for foster care placement pursuant to  
33 subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster  
34 parents, preadoptive parents, legal guardians or relatives providing care to the minor. The clerk  
35 shall issue a copy of the petition, to the minor's attorney and to the district attorney, if the district  
36 attorney has notified the clerk of the court that he or she wishes to receive the petition, containing  
37 the time, date, and place of the hearing. Service under this subdivision may be electronic service  
38 pursuant to Section 212.5 except that electronic service is not authorized if the minor is detained  
39 and those persons entitled to notice are not present at the initial detention hearing.

40 (b) Upon the filing of a supplemental petition where the minor has been declared a ward of the  
41 court or a probationer under Section 602 in the original matter, the clerk of the juvenile court

1 shall issue a notice, to which shall be attached a copy of the petition, and he or she shall cause the  
2 notice to be served upon the minor, if the minor is eight or more years of age, and upon each of  
3 the persons described in subdivision (e) of Section 656 whose residence addresses are set forth in  
4 the supplemental petition and thereafter known to the clerk. The clerk shall issue a copy of the  
5 supplemental petition to the minor's attorney, and to the district attorney if the probation officer  
6 is the petitioner, or, to the probation officer if the district attorney is the petitioner, containing the  
7 time, date, and place of the hearing. If the court has ordered the care, custody, and control of the  
8 minor to be under the supervision of the probation officer for foster care placement pursuant to  
9 subdivision (a) of Section 727, the clerk shall also issue a copy of that notice to any foster  
10 parents, preadoptive parents, legal guardians, or relatives providing care to the minor. Service  
11 under this subdivision may be electronic service pursuant to Section 212.5.

12  
13 **§ 660.**

14  
15 (a) Except as provided in subdivision (b), if the minor is detained, the clerk of the juvenile court  
16 shall cause the notice and copy of the petition to be served on all persons required to receive that  
17 notice and copy of the petition pursuant to subdivision (e) of Section 656 and Section 658, either  
18 personally or by certified mail with request for return receipt, as soon as possible after filing of  
19 the petition and at least five days prior to the time set for hearing, unless the hearing is set less  
20 than five days from the filing of the petition, in which case, the notice and copy of the petition  
21 shall be served at least 24 hours prior to the time set for hearing. Service under this subdivision  
22 shall not be made electronically.

23 (b) If the minor is detained, and all persons entitled to notice pursuant to subdivision (e) of  
24 Section 656 and Section 658 were present at the detention hearing, the clerk of the juvenile court  
25 shall cause the notice and copy of the petition to be served on all persons required to receive the  
26 notice and copy of the petition, ~~either personally~~ by personal service, ~~or by first-class mail,~~ or by  
27 electronic service pursuant to Section 212.5, as soon as possible after the filing of the petition  
28 and at least five days prior to the time set for hearing, unless the hearing is set less than five days  
29 from the filing of the petition, in which case the notice and copy of the petition shall be served at  
30 least 24 hours prior to the time set for the hearing. Service under this subdivision may be  
31 electronic service pursuant to Section 212.5 except that electronic service is not authorized if the  
32 minor is detained and those persons entitled to notice are not present at the detention hearing.

33 (c) If the minor is not detained, the clerk of the juvenile court shall cause the notice and copy of  
34 the petition to be served on all persons required to receive the notice and copy of the petition,  
35 ~~either personally~~ by personal service, ~~or by first-class mail,~~ or by electronic service pursuant to  
36 Section 212.5, at least 10 days prior to the time set for hearing. If that person is known to reside  
37 outside of the county, the clerk of the juvenile court shall ~~mail-serve~~ serve the notice and copy of the  
38 petition, by first-class mail or by electronic service pursuant to Section 212.5, to that person, as  
39 soon as possible after the filing of the petition and at least 10 days before the time set for hearing.  
40 Failure to respond to the notice shall in no way result in arrest or detention. In the instance of  
41 failure to appear after notice by first-class mail or electronic service pursuant to Section 212.5,  
42 the court shall direct that the notice and copy of the petition is to be personally served on all

1 persons required to receive the notice and a copy of the petition. However, if the whereabouts of  
2 the minor are unknown, personal service of the notice and a copy of the petition is not required  
3 and a warrant for the arrest of the minor may be issued pursuant to Section 663. Personal service  
4 of the notice and copy of the petition outside of the county at least 10 days before the time set for  
5 hearing is equivalent to service by first-class mail or electronic service. Service may be waived  
6 by any person by a voluntary appearance entered in the minutes of the court or by a written  
7 waiver of service filed with the clerk of the court at or prior to the hearing.

8 (d) \* \* \*

9  
10 **§ 661.**

11  
12 In addition to the notice provided in Sections 658 and 659, the juvenile court may issue its  
13 citation directing any parent, guardian, or foster parent of the person concerning whom a petition  
14 has been filed to appear at the time and place set for any hearing or financial evaluation under the  
15 provisions of this chapter, including a hearing under the provisions of Section 257, and directing  
16 any person having custody or control of the minor concerning whom the petition has been filed to  
17 bring the minor with him or her. The notice shall in addition state that a parent, guardian, or  
18 foster parent may be required to participate in a counseling or education program with the minor  
19 concerning whom the petition has been filed. If the proceeding is one alleging that the minor  
20 comes within the provisions of Section 601, the notice shall in addition contain notice to the  
21 parent, guardian, or other person having control or charge of the minor that failure to comply  
22 with the compulsory school attendance laws is an infraction, which may be charged and  
23 prosecuted before the juvenile court judge sitting as a superior court judge. In those cases, the  
24 notice shall also include notice that the parent, guardian, or other person having control or charge  
25 of the minor has the right to a hearing on the infraction before a judge different than the judge  
26 who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the  
27 provisions of Section 170.6 of the Code of Civil Procedure. Personal service of the citation shall  
28 be made at least 24 hours before the time stated therein for the appearance. Service under this  
29 section may be electronic service pursuant to Section 212.5 only in addition to other forms of  
30 service required by law.

31  
32 **§ 727.4.**

33  
34 (a)(1) Notice of any hearing pursuant to Section 727, 727.2, or 727.3 shall be ~~mailed~~ served by  
35 the probation officer to the minor, the minor's parent or guardian, any adult provider of care to  
36 the minor including, but not limited to, foster parents, relative caregivers, preadoptive parents,  
37 community care facility, or foster family agency, and to the counsel of record if the counsel of  
38 record was not present at the time that the hearing was set by the court, by first-class  
39 mail addressed to the last known address of the person to be notified, ~~or shall be personally~~  
40 served by personal service on those persons, or by electronic service pursuant to Section 212.5,  
41 not earlier than 30 days nor later than 15 days preceding the date of the hearing. The notice shall  
42 contain a statement regarding the nature of the status review or permanency planning hearing and

1 any change in the custody or status of the minor being recommended by the probation  
2 department. The notice shall also include a statement informing the foster parents, relative  
3 caregivers, or preadoptive parents that he or she may attend all hearings or may submit any  
4 information he or she deems relevant to the court in writing. The foster parents, relative  
5 caregiver, and preadoptive parents are entitled to notice and opportunity to be heard but need not  
6 be made parties to the proceedings. Proof of notice shall be filed with the court.

7 (2) \* \* \*

8 (b)–(d) \* \* \*

9  
10 **§ 777.**

11  
12 An order changing or modifying a previous order by removing a minor from the physical custody  
13 of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment  
14 to a private institution or commitment to a county institution, or an order changing or modifying  
15 a previous order by directing commitment to the Youth Authority shall be made only after a  
16 noticed hearing.

17 (a) \* \* \*

18 (b) Upon the filing of such notice, the clerk of the juvenile court shall immediately set the same  
19 for hearing within 30 days, and the probation officer shall cause notice of it to be served upon the  
20 persons and in the manner prescribed by Sections 658 and 660. Service under this subdivision  
21 may be electronic service pursuant to Section 212.5.

22 (c) \* \* \*

23 (d) An order for the detention of the minor pending adjudication of the alleged violation may be  
24 made only after a hearing is conducted pursuant to Article 15 (commencing with Section 625) of  
25 this chapter. Service under this subdivision may be electronic service pursuant to Section 212.5  
26 only in addition to other forms of service required by law.

27  
28 **§ 778.**

29  
30 (a)(1) \* \* \*

31 (2) If it appears that the best interests of the child may be promoted by the proposed change of  
32 order or termination of jurisdiction, the court shall order that a hearing be held and shall give  
33 prior notice, or cause prior notice to be given, to such persons and by such means as prescribed  
34 by Sections 776 and 779, by electronic service pursuant to Section 212.5, and, in such instances  
35 as the means of giving notice is not prescribed by such sections, then by such means as the court  
36 prescribes.

37 (b)(1)–(4) \* \* \*

38  
39 **§ 779.**

1 The court committing a ward to the Youth Authority may thereafter change, modify, or set aside  
2 the order of commitment. Ten days' notice of the hearing of the application therefor shall be  
3 served ~~by United States mail~~ upon the Director of the Youth Authority. In changing, modifying,  
4 or setting aside the order of commitment, the court shall give due consideration to the effect  
5 thereof upon the discipline and parole system of the Youth Authority or of the correctional  
6 school in which the ward may have been placed by the Youth Authority. Except as provided in  
7 this section, nothing in this chapter shall be deemed to interfere with the system of parole and  
8 discharge now or hereafter established by law, or by rule of the Youth Authority, for the parole  
9 and discharge of wards of the juvenile court committed to the Youth Authority, or with the  
10 management of any school, institution, or facility under the jurisdiction of the Youth Authority.  
11 Except as provided in this section, this chapter does not interfere with the system of transfer  
12 between institutions and facilities under the jurisdiction of the Youth Authority. This section  
13 does not limit the authority of the court to change, modify, or set aside an order of commitment  
14 after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to,  
15 or failing to, provide treatment consistent with Section 734.  
16 However, before any inmate of a correctional school may be transferred to a state hospital, he or  
17 she shall first be returned to a court of competent jurisdiction and, after hearing, may be  
18 committed to a state hospital for the insane in accordance with law.

19  
20 **§ 785.**

21  
22 (a) Where a minor is a ward of the juvenile court, the wardship did not result in the minor's  
23 commitment to the Youth Authority, and the minor is found not to be a fit and proper subject to  
24 be dealt with under the juvenile court law with respect to a subsequent allegation of criminal  
25 conduct, any parent or other person having an interest in the minor, or the minor, through a  
26 properly appointed guardian, the prosecuting attorney, or probation officer, may petition the court  
27 in the same action in which the minor was found to be a ward of the juvenile court for a hearing  
28 for an order to terminate or modify the jurisdiction of the juvenile court. The court shall order  
29 that a hearing be held and shall give prior notice, or cause prior notice to be given, to those  
30 persons and by the means prescribed by Sections 776 and 779, by electronic service pursuant to  
31 Section 212.5, or where the means of giving notice is not prescribed by those sections, then by  
32 such means as the court prescribes.

33 (b)-(d) \* \* \*

34  
35 **§ 903.45.**

36  
37 (a) \* \* \*

38 (b) In a county where a board of supervisors has designated a county financial evaluation officer,  
39 the juvenile court shall, at the close of the disposition hearing, order any person liable for the cost  
40 of support, pursuant to Section 903, the cost of legal services as provided for in Section 903.1,  
41 probation costs as provided for in Section 903.2, or any other reimbursable costs allowed under  
42 this code, to appear before the county financial evaluation officer for a financial evaluation of his



1 or her ability to pay those costs. If the responsible person is not present at the disposition hearing,  
2 the court shall cite him or her to appear for a financial evaluation. In the case of a parent,  
3 guardian, or other person assessed for the costs of transport, food, shelter, or care of a minor  
4 under Section 207.2 or 903.25, the juvenile court shall, upon request of the county probation  
5 department, order the appearance of the parent, guardian, or other person before the county  
6 financial evaluation officer for a financial evaluation of his or her ability to pay the costs  
7 assessed.

8 If the county financial evaluation officer determines that a person so responsible has the ability to  
9 pay all or part of the costs, the county financial evaluation officer shall petition the court for an  
10 order requiring the person to pay that sum to the county or court, depending on which entity  
11 incurred the expense. If the parent or guardian is liable for costs for legal services pursuant to  
12 Section 903.1, the parent or guardian has been reunified with the child pursuant to a court order,  
13 and the county financial evaluation officer determines that repayment of the costs would harm  
14 the ability of the parent or guardian to support the child, then the county financial evaluation  
15 officer shall not petition the court for an order of repayment, and the court shall not make that  
16 order. In addition, if the parent or guardian is currently receiving reunification services, and the  
17 court finds, or the county financial officer determines, that repayment by the parent or guardian  
18 will pose a barrier to reunification with the child because it will limit the ability of the parent or  
19 guardian to comply with the requirements of the reunification plan or compromise the parent's or  
20 guardian's current or future ability to meet the financial needs of the child, or in any case in  
21 which the court finds that the repayment would be unjust under the circumstances of the case,  
22 then the county financial evaluation officer shall not petition the court for an order of repayment,  
23 and the court shall not order repayment by the parent or guardian. In evaluating a person's ability  
24 to pay under this section, the county financial evaluation officer and the court shall take into  
25 consideration the family's income, the necessary obligations of the family, and the number of  
26 persons dependent upon this income. A person appearing for a financial evaluation has the right  
27 to dispute the county financial evaluation officer's determination, in which case he or she is  
28 entitled to a hearing before the juvenile court. The county financial evaluation officer, at the time  
29 of the financial evaluation, shall advise the person of his or her right to a hearing and of his or her  
30 rights pursuant to subdivision (c).

31 At the hearing, a person responsible for costs is entitled to have, but shall not be limited to, the  
32 opportunity to be heard in person, to present witnesses and other documentary evidence, to  
33 confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her,  
34 and to receive a written statement of the findings of the court. The person has the right to be  
35 represented by counsel, and, if the person is unable to afford counsel, the right to appointed  
36 counsel. If the court determines that the person has the ability to pay all or part of the costs,  
37 including the costs of any counsel appointed to represent the person at the hearing, the court shall  
38 set the amount to be reimbursed and order him or her to pay that sum to the county or court,  
39 depending on which entity incurred the expense, in a manner in which the court believes  
40 reasonable and compatible with the person's financial ability.

41 If the person, after having been ordered to appear before the county financial evaluation officer,  
42 has been given proper notice and fails to appear as ordered, the county financial evaluation

1 officer shall recommend to the court that the person be ordered to pay the full amount of the  
2 costs. Proper notice to the person shall contain all of the following:  
3 (1)–(3) \* \* \*  
4 (4) A warning that if the person fails to appear before the county financial evaluation officer, the  
5 officer will recommend that the court order the person to pay the costs in full.  
6 If the county financial evaluation officer determines that the person has the ability to pay all or a  
7 portion of these costs, with or without terms, and the person concurs in this determination and  
8 agrees to the terms of payment, the county financial evaluation officer, upon his or her written  
9 evaluation and the person’s written agreement, shall petition the court for an order requiring the  
10 person to pay that sum to the county or the court in a manner that is reasonable and compatible  
11 with the person’s financial ability. This order may be granted without further notice to the  
12 person, provided a copy of the order is served on the person by mail or by electronic means  
13 pursuant to section 212.5.  
14 However, if the county financial evaluation officer cannot reach an agreement with the person  
15 with respect to either the liability for the costs, the amount of the costs, the person’s ability to pay  
16 the costs, or the terms of payment, the matter shall be deemed in dispute and referred by the  
17 county financial evaluation officer back to the court for a hearing.  
18 (c)–(d) \* \* \*

## LEG16-08

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Office of County Counsel, County of Los Angeles By Alyssa Skolnick, Principal Deputy County Counsel	AM	<i>Instead of limiting the security to encryption, we think the proposed legislation should state that the email shall be encrypted or made available to the recipient(s) via access to a secure web site maintained by each county.</i>	The Committees appreciate this comment and note that the proposed legislation seeks to preserve the confidentiality of documents regardless of the medium in which they are communicated. The legislation is not intended to be prescriptive with regard to the type of communication technology employed by courts. The proposal authorizes the use of electronic service in the juvenile context and ensures that to the extent electronic service is used, it must use encryption to ensure the security of communications. By definition, electronic service already contemplates the possibility of either an email or electronic posting of documents. California Code of Civil Procedure currently defines electronic service as “service of a document...by either electronic transmission or electronic notification.” (§ 1010.6(a)(1)(A).) Regardless of the method selected, encryption must be used to protect the information.
2.	Orange County Bar Association By Todd G. Friedland, President	N	<i>In 2015 our Legislature passed AB 879 and thereby empowered parties to juvenile court proceedings with the option of accepting electronic service. AB 879 was authored by Assemblywoman Autumn Burke (D/62nd) and coauthored by Senators Joel Anderson (R/38th) and Robert Hertzberg (D/18th). The Senate approved AB 879 on a 40-to-0 vote. The Assembly did likewise with a 79-to-0 vote. The Governor signed AB 879 on 8/17/15 and it</i>	The Committees appreciate these comments and agree that the approach set forth in AB 879 (authorizing optional e-mail notice of specified juvenile dependency hearings) is appropriate to authorize the use of electronic communications in juvenile court. Far from revisiting the underlying proposition of AB 879, this legislative proposal seeks to expand the approach of that bill into juvenile delinquency matters and to other notice and service provisions contained in Welfare &

## LEG16-08

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	Commentator	Position	Comment	Committee Response
			<i>went into effect on 1/1/2016. Now barely four months later the suggestion is to revisit AB 879. Give AB 879 a chance to succeed. The Judicial Counsel's proposal should be opposed.</i>	Institutions Code. This proposal is part of a larger group of legislative proposals that would authorize electronic service in juvenile, criminal and probate law. In addition, this proposal seeks to explicitly authorize the use of electronic filing in juvenile matters.
3.	Superior Court of California, County of Los Angeles	A	<p><i>If the court chooses to permit electronic service, our case management system (CMS) would need the ability to perform the following functions:</i></p> <ol style="list-style-type: none"> <li><i>1. Send encrypted notices to parties and other persons who may consent to e-mail notice of specified dependency hearings via e-mail;</i></li> <li><i>2. Provide electronic service of court's order if there is a juvenile court custody order filed upon the juvenile court's termination of jurisdiction over said minor;</i></li> <li><i>3. Provide electronic service of notice of appellate advisements; and</i></li> <li><i>4. Provide electronic service of the written findings and court orders when a referee hears a juvenile case.</i></li> </ol>	No response required. The Committees appreciate the planning work involved in incorporating additional e-business options into juvenile court processes.
4.	Superior Court of California, County of Orange By Michelle Wang Program Coordinator Specialist	NI	<i>Question: Is the consent form utilized once and applies indefinitely until the withdrawal of consent is filed? Or is it per case?</i>	In accordance with the recently enacted AB 879 (Chapter 219, Statutes of 2015), on July 1, 2016, a new form, titled <i>E-Mail Notice of Hearing: Consent, Withdrawal of Consent, Address Change</i>

## LEG16-08

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
	Lamoreaux Justice Center—Family & Juvenile Division		<p><i>We recommend proposing an optional Judicial Council form that parties may use as a consent form.</i></p> <p><i>This proposal should limit consent forms to electronic service to parties and attorneys to ensure nobody that is not a party to the case receives information on the minor’s hearing(s). This legislation should also provide guidelines and specificity on encryption so all the courts can be uniformed on encryption.</i></p> <p>Is the provision requiring the use of encryption to preserve the confidentiality of electronic documents sufficient to ensure that juvenile records will be protected?</p> <p><i>Yes, however, either the courts need to implement specific rules on how the process of encryption will be handled or we recommend</i></p>	<p><i>(Juvenile Dependency)</i> (EFS-005-JV) was adopted as a mandatory form for courts. When courts and county agencies agree to allow e-mail notice of specified juvenile dependency hearings, parties and other persons entitled to notice may use this form to notify the court of their consent to receive e-mail notifications. They may also use the form to change their e-mail address with the court and to withdraw consent for e-mail notices at any time.</p> <p>The Committees appreciate the concern for possible disclosure of confidential information regarding juveniles. However, Welfare &amp; Institutions Code notice provisions (§§ 290.1-295) provide that various persons who are not parties to a dependency hearing are nevertheless entitled to notice of these hearings. These include non-custodial adult relatives and siblings, among others. The EFS-005-JV does require those consenting to e-mail notice of hearing to indicate the basis for their right to notice.</p> <p>The Committees considered whether statute was the proper venue for setting forth encryption standards and specifications. After much deliberation, it was decided that the term “encryption” was sufficiently broad to cover the wide range of technologies available for information security and would be the most appropriate term to include in the Welfare &amp;</p>

**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<i>JCC supply us with a uniformed guideline/process on how to encrypt documents.</i>	Institutions Code. Specific standards for encryption technology are more appropriate for a Rule of Court, and possibly for inclusion in the Judicial Council’s Trial Court Records Manual.
5.	Superior Court of California, County of San Diego By Mike Roddy, Executive Officer	AM	<p>Does the proposal appropriately address the stated purpose? <i>Yes.</i></p> <p>Are there other sections in the Welfare and Institutions Code that will require amendment in order to facilitate electronic filing or service in juvenile proceedings? -- § 388 (<i>Amendment considered? See WIC § 778.</i>) -- § 391(e) <i>hearing to terminate jurisdiction over nonminor? CRC 5.555(c)(4) (service of PO’s or SW’s report).</i></p>	<p>No response required.</p> <p>The Committees appreciate the suggestion to include these hearings and have addressed notice in these contexts as follows:</p> <p><b>Section 388:</b> Section 297(c) states: “If a petition for modification has been filed pursuant to Section 388, and it appears that the best interest of the child may be promoted by the proposed change of the order, the recognition of a sibling relationship, or the termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the social worker or probation officer and to the child’s attorney of record, or if there is no attorney of record for the child, to the child, and his or her parent or parents or legal guardian or guardians in the manner prescribed by Section 291 unless a different manner is prescribed by the court.” (Subd.,</p>

**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>Is the prohibition on electronic service of psychological and medical evaluations sufficient to protect these documents from unwarranted disclosure? Are there other documents that should be included?</p> <p><i>Yes, drug test results and HIV test results.</i></p>	<p>(c), Welf. &amp; Inst. Code § 297.)</p> <p>The current legislative proposal would amend Section 291 to include electronic notice and would therefore apply to hearings convened pursuant to section 388.</p> <p><b>Section 391(e):</b> Section 295 states that it applies to notice of “termination of jurisdiction hearings held pursuant to Section 391.” (Welf. &amp; Inst. Code § 295.) The current legislative proposal would amend section 295 to include electronic notice and would therefore apply to hearings convened pursuant to section 388.</p> <p>The Committees appreciate this feedback and have discussed this issue at length. The principal concern of the Family and Juvenile Law Committee is that psychological and medical documentation transmitted electronically will be more easily retransmitted or possibly posted on the Internet in violation of confidentiality rules. Therefore, the Committees propose to amend the language of new Section 212.5 to include all medical and psychological <i>documentation</i> (including test results) and would limit</p>

**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>Is it appropriate to limit electronic service to adults and minors who are at least 16 years old?</p> <p><i>Not certain if 16 is an appropriate cut-off age. Many middle school-age children use e-mail. Would 12 years of age be acceptable? (See, e.g., WIC § 366.26(c)(1)(B)(ii) [court shall not terminate parental rights if child 12 or older objects].)</i></p>	<p>electronic transmission as follows:</p> <p><u>(d) Electronic service is not permitted on any party or person who is under the age of 16 years old.</u></p> <p><u>(e) If the party or other person to be served is a minor, age 16 or above:</u></p> <p><u>(1) Electronic service shall be permitted only upon consent by the minor and by the minor’s attorney.</u></p> <p><u>(2) Electronic service is not permitted of psychological or medical documentation related to a minor.</u></p> <p>The Committees appreciate this feedback but believe that 16 is an appropriate minimum age for the receipt of electronic service.</p>



**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>Would the proposal provide cost savings? If so please quantify.  <i>Savings would be realized in postage, paper, copying, and the labor involved with non-electronic forms of service.</i></p> <p>What would the implementation requirements be for courts—for example, training staff, revising processes and procedures, changing docket codes in case management systems, or modifying case management systems?  <i>All of the above examples would be required. Not certain whether courts have the capacity to safeguard against hacking into their systems for the purpose of obtaining protected information.</i></p> <p>How well would this proposal work in courts of different sizes?  <i>Probably easier and less expensive to implement in smaller courts.</i></p> <p>Suggested Drafting Changes:</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p> <p>The Committees appreciate this detailed</p>

**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>1. WIC § 290.2 Par. (2) of subd. (c) inadvertently omitted?</p> <p>2. WIC § 292(e) Suggest changing line 2 as follows so that “addressed to the last known address...” applies to both types of mail service (first-class and certified):</p> <p>(e) Service of the notice shall be by personal service, by first-class mail, <del>or</del> <u>or</u> by certified mail, return receipt requested, addressed to the last known address of the person to be noticed, or by...</p> <p>3. WIC § 293(e) Suggest changing line 36 to delete “on the person” (redundant):</p> <p>... by personal service <del>on the person</del>, or by</p>	<p>feedback and respond as follows:</p> <p>1. WIC § 290.2 This was a drafting error that has been corrected.</p> <p>2. WIC § 292(e) The Committees agree that the commas and modifying clauses in this sentence could introduce confusion. However, eliminating the comma between “first class mail” and “certified mail” might lead readers to attach the modifier “return receipt requested” to both mail options instead of only certified mail. The Committees propose an alternative solution:</p> <p>“Service of the notice shall be by personal service, by mail (first class mail or certified mail with return receipt requested) addressed to the last known address of the person to be noticed, or by...”</p> <p>3. WIC § 293(e) The Committees agree that this language appears redundant and propose to delete the words “on the person.”</p>

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**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>electronic service pursuant to..."</p> <p>4. WIC § 293(e) Why is the second sentence necessary? The first sentence already provides for service of the notice. Isn't service "of a copy of the notice" duplicative? Throughout the statute, references are made to "the notice"; except for subdivision (e), there are no references to "a copy of the notice."</p> <p>5. WIC § 294(f)(6) If amended as proposed, suggest changing the second sentence to:  <u>If, in the case of an Indian child, the recommendation of the probation officer or social worker is tribal customary adoption, service may be made by first-class mail to the parent's usual place of residence or business.</u></p> <p>6. WIC § 294(h)(1) Delete space between (h) and (1).</p> <p>7. WIC § 607.2(a)(4) Insert period at end of sentence.</p>	<p>4. WIC § 293(e) The Committees agree that these two sentences are duplicative and propose to delete the second sentence of the subdivision related to service of a copy of the notice.</p> <p>5. WIC § 294(f)(6) The Committees appreciate the need to improve this wording and propose the following:  "In the case of an Indian child, if the recommendation of the probation officer or social worker is tribal customary adoption, service may be made..."</p> <p>6. WIC § 294(h)(1) This was a drafting error that has been corrected.</p> <p>7. WIC § 607.2(a)(4) This was a drafting error that has been</p>

**LEG16-08**

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	Commentator	Position	Comment	Committee Response
			<p>8. WIC § 607.2(b)(2)(B) Insert period at end of second sentence.</p> <p>9. WIC § 660(c) P. 24, line 3 – Insert “pursuant to Section 212.5” after “or electronic service”</p> <p>10. WIC § 661 P. 24, line 27 – Insert “pursuant to Section 212.5” after “electronic service”</p> <p>11. WIC § 777(d) P. 25, line 22 – Insert “pursuant to Section 212.5” after “electronic service”</p> <p>Our juvenile court has in the past stated unequivocally that we do not have the technical capability to serve or be served electronically in any context other than appeals. The provision in the proposed new WIC 212.5 that the court must consent to electronic service is crucial. Failure to have this language included could be an issue for our court. Also, every document in a</p>	<p>corrected.</p> <p>8. WIC § 607.2(b)(2)(B) This was a drafting error that has been corrected.</p> <p>9. WIC § 660(c) The Committees agree that this change will serve to clarify the provision.</p> <p>10. WIC § 661 The Committees agree that this change will serve to clarify the provision.</p> <p>11. WIC § 777(d) The Committees agree that this change will serve to clarify the provision.</p> <p>The Committees appreciate these comments and agree that the following are critical underpinnings of the statutory amendments: -Electronic service for juvenile matters is authorized only upon consent by the court and the county -Documents in juvenile matters are confidential and it is the responsibility of each entity that handles juvenile court records to</p>

## LEG16-08

**Juvenile Law: Electronic Filing and Service in Juvenile Proceedings** (Enact section 212.5 and amend sections 248, 248.5, 290.1, 290.2, 291, 292, 293, 294, 295, 297, 302, 316.1, 342, 362.4, 364.05, 366.05, 366.21, 366.26, 387, 607.2, 630, 658, 660, 661, 727.4, 777, 778, 779, 785, and 903.45 of the Welfare and Institutions Code )

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			juvenile case is confidential. We have always been instructed not to send anything that contains information about a juvenile case to anyone who is not on the Outlook system because electronic transmission is not secure. The provision that all documents transmitted electronically must be encrypted is also crucial. Some in our court believe the language in subdivision (h) may not be strong enough.	ensure that confidentiality is preserved, regardless of the medium of communication. -“Encryption” describes a wide range of technologies and is sufficiently broad a term to account for the variety and rapid evolution of internet security technology. The use of the term “encryption” is appropriate for statutory language; California Rules of Court and other regulatory documents, such as the Trial Court Records Manual will set forth standards for encryption technology used by the courts.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
September 15, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs	

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#### **Executive Summary**

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1319.5 to provide courts with discretion to approve own recognizance (OR) release for arrestees with three prior failures to appear (FTAs), without holding a hearing in open court, under a court-operated or court-approved pretrial program. Penal Code section 1319.5 requires a hearing in open court before an offender arrested for a felony offense who has previously failed to appear in court three or more times over the preceding three years may be granted OR release. The committee developed this proposal at the request of courts actively engaged in developing and expanding pretrial programs in an effort to address impacts on court and calendars as well as the effects of jail overcrowding. The proposal is intended to provide judges with greater flexibility in ordering supervised release, and increase access to justice in the earliest stages of a criminal proceeding.

## Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1319.5(b)(2)<sup>1</sup>, as follows:

Revise the definition of persons who may not be released on their own recognizance until a hearing is held in open court before a magistrate or a judge to exclude persons arrested for one of the designated offenses who have failed to appear in court as ordered three or more times over the preceding three years if the person is released under a court-operated or court-approved pretrial release program.

## Previous Council Action

In 2014, the Judicial Council supported SB 210 (Hancock), which, among other things, would have: (1) provided that a pretrial OR release investigation report may be prepared for any defendant not charged with a violent felony or driving under the influence with injury; (2) required that a pretrial OR release investigation report shall include “all results of an evidence-based pretrial risk assessment” concerning the risk the defendant presents to public safety and the probability the defendant will return to court; and (3) required that in setting conditions for pretrial release and in setting, reducing or denying bail, the court consider the following, in addition to the protection of the public, the defendant’s criminal record and the seriousness of the charged offense, as specified. Related to that support the council noted that jail overcrowding is a very real and continuing problem, which often results in the Sheriff, rather than the court, determining which defendants are released from jail pretrial. The council believed that by permitting courts to consider the results of an evidence-based pretrial risk assessment instrument, the bill would have enhanced judicial discretion in determining which defendants to release pretrial, a responsibility that should rest with the courts.

## Rationale for Recommendation

Section 1319.5 requires a hearing in open court before an offender arrested for a felony offense who has previously failed to appear in court three or more times over the preceding three years may be granted OR release. In counties where a sizeable portion of those arrested already have multiple FTAs due to jail overcrowding and other factors, the restriction in section 1319.5 constrains judicial discretion and limits courts’ efficient use of court-operated or court-approved pretrial release programs to process releases for appropriate defendants during non-court hours.

Courts are increasingly implementing evidence-based pretrial release programs<sup>2</sup> designed to ensure that: (1) the court’s release decisions are informed by a risk assessment, with recommendations based on county-specific guidelines that establish which defendants are eligible for release; and (2) individuals granted OR release receive appropriate levels of supervision by court-operated or court-approved programs rather than being released without any form of supervision. Section 1318 sets forth statutory requirements for defendants who receive

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<sup>1</sup> All statutory references are to the Penal Code.

<sup>2</sup> *Pretrial Progress: A Survey of Pretrial Practices and Services in California*. Californians for Safety and Justice. [http://libcloud.s3.amazonaws.com/211/95/d/636/PretrialSurveyBrief\\_8.26.15v2.pdf](http://libcloud.s3.amazonaws.com/211/95/d/636/PretrialSurveyBrief_8.26.15v2.pdf)

court-approved OR release and courts have broad authority to impose additional conditions including, when appropriate, drug testing and electronic monitoring<sup>3</sup>.

Some courts include an OR release component that operates during non-court hours. On-call magistrates approve OR releases that allow arrestees to return to their jobs and families, while imposing statutory conditions and appropriate levels of supervision. However, these innovative programs have been hindered by the inflexible requirements of section 1319.5, which requires a hearing in open court before some arrestees can be granted OR release. During non-court hours, including weekends and holidays, jail officials may have no option but to release offenders without supervision or court date reminders. Many of those offenders will fail to appear for subsequent court dates, and so the dysfunctional cycle of arrest and unsupervised jail release continues. Amending section 1319.5 to allow judges the option to grant OR release to arrestees with three or more FTAs without a hearing in open court if they are released under a court-operated or court-approved pretrial release program will encourage more efficient processing of cases, more appropriate levels of supervision, and a possible reduction in jail overcrowding.

## **Comments, Alternatives Considered, and Policy Implications**

### **Notable Comments**

The committee circulated the proposal for public comment from April 15 to June 14, 2016. A total of 6 comments were received; 3 agreed with the proposed amendments, 1 did not agree, and 2 did not indicate a position. Both the Superior Court of Los Angeles County and the Superior Court of San Diego agreed with the proposal.

A commentator from Riverside County Probation Department did not agree with the proposal and suggested that in cases where defendants have more than three FTAs, “it might be wise to make the release after arraignment, after the parties involved can argue their respective cases and the court can take all information into account before making a decision.” The committee declined to revise the proposal, noting that court-operated or court-approved pretrial release programs typically provide risk assessment and other information that incorporate FTAs and data to address concerns regarding court appearance and public safety, and may offer a range of supervision options.

A commentator from the Public Policy Institute of California noted that the proposal may inadvertently increase FTAs if court date reminder systems are not already in place, and suggested that the added discretion provided to the courts should be coupled with a requirement that court-approved pretrial programs implement court date reminder systems for felony defendants. The committee recognized that many pretrial release programs include a court date reminder system as a useful component but declined to include that as a requirement, leaving implementation to the discretion of the courts.

A chart with all comments received and committee responses is attached at pages 201–211.

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<sup>3</sup> [In re York \(1995\) 40 Cal.Rptr.2d 308, 9 Cal.4th 1133, 892 P.2d 804](#)



## **Alternatives**

The committee determined that the proposal was appropriate for recommendation to the Judicial Council and did not consider alternatives to this proposal.

## **Policy implications**

Section 1270 provides that any person who has been arrested for, or charged with, an offense other than a capital offense may be released on his or her own recognizance by a court or magistrate. Section 1319 prohibits courts from granting OR release without a hearing in open court to persons who are arrested for a violent felony. Section 1319.5 prohibits courts from granting OR release without a hearing in open court to any person who: (1) is on felony probation or felony parole; or (2) who is arrested for a felony offense or other specified offenses and has failed to appear in court as ordered, resulting in a warrant being issued, three or more times over the three years preceding the current arrest, except for infractions arising from violations of the Vehicle Code. This proposal modifies section 1319.5 to allow courts to consider for OR release, without a hearing in open court, arrestees who have failed to appear three or more times in the preceding three years, but only if those courts have court-operated or court-approved pretrial release programs. Further, under this proposal pretrial programs can provide risk assessment and other data to inform the court's release decision, and can implement the level of supervision and other conditions imposed by the court. This minimal expansion will: (1) provide courts with discretion to allow these arrestees to more quickly return to their homes, families and employment; (2) help to reduce jail overcrowding; and (3) allow courts to impose terms of supervision and conditions that are otherwise absent when a jail official releases an arrestee in order to comply with a jail population cap. This proposal does not require magistrates to grant OR release, and instead provides magistrates with the discretion to consider granting release to these arrestees when there is a court-operated or court-approved pretrial release program in place.

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

No significant implementation requirements, costs, or operational impacts are likely as the proposal simply expands the pool of arrestees eligible to be considered for OR release without a hearing in open court for courts with a court-operated or court-approved pretrial release program. Under the proposal, each court will retain discretion to determine whether to have a court-operated or court-approved pretrial release program. For those courts with a pretrial release program, there likely will be minimal additional costs and operational impacts engendered by adding to magistrates' workload for consideration for OR release the subset of arrestees with three or more FTAs.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed amendment to section 1319.5 supports the policies underlying Goal I, Access, Fairness, and Diversity and Goal IV, Quality of Justice and Service to the Public of the Judicial Branch Strategic Plan. Specifically, this proposed amendment supports Goal I, objective 4, "Work to achieve procedural fairness in all types of cases"; and Goal IV, objective 3, "Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes."

## **Attachments**

1. Text of proposed Penal Code section 1319.5, at page 200
2. Chart of comments, at pages 201–211

Section 1319.5 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **1319.5.**

2 (a) No person described in subdivision (b) who is arrested for a new offense may be released  
3 on his or her own recognizance until a hearing is held in open court before the magistrate or  
4 judge.

5 (b) Subdivision (a) shall apply to the following:

6 (1) Any person who is currently on felony probation or felony parole.

7 (2) Any person who has failed to appear in court as ordered, resulting in a warrant being  
8 issued, three or more times over the three years preceding the current arrest, except for  
9 infractions arising from violations of the Vehicle Code, and who is arrested for any of the  
10 following offenses, unless the person is released under a court-operated or court-approved  
11 pretrial release program:

12 (A) Any felony offense.

13 (B) Any violation of the California Street Terrorism Enforcement and Prevention Act (Chapter  
14 11 (commencing with Section 186.20) of Title 7 of Part 1).

15 (C) Any violation of Chapter 9 (commencing with Section 240) of Title 8 of Part 1 (assault  
16 and battery).

17 (D) A violation of Section 484 (theft).

18 (E) A violation of Section 459 (burglary).

19 (F) Any offense in which the defendant is alleged to have been armed with or to have  
20 personally used a firearm.

**LEG16-05**

**Criminal Procedure: Pre-Arrestment Own Recognition Release Under Court-Operated or Approved Pretrial Programs**

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	<p>Request for Specific Comments</p> <p>In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:</p> <ul style="list-style-type: none"> <li>•Does the proposal appropriately address the stated purpose? Response: Yes</li> <li>•Are the proposed revisions an effective way to address the restrictions imposed by Penal Code section 1319.5? Response: Yes</li> </ul> <p>The advisory committee [or other proponent] also seeks comments from courts on the following cost and implementation matters:</p> <ul style="list-style-type: none"> <li>•Would the proposal provide cost savings? If so please quantify. Response: No, this would require more people being supervised and the number of hearings will remain the same in the long run.</li> <li>•What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe),</li> </ul>	<ul style="list-style-type: none"> <li>• No response required.</li> <li>• No response required.</li> <li>• The committee recognizes the proposal may provide cost savings for some courts and justice system partners but not for others.</li> <li>• No response required.</li> </ul>

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	Commentator	Position	Comment	Committee Response
			<p>changing docket codes in case management systems, or modifying case management systems.</p> <p>Response: Training for our Pre-Trial Release staff, procedure updates and training of magistrates. We currently have a pre-trial release program that assesses a score utilizing the VPRAI tool.</p> <ul style="list-style-type: none"> <li>•Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Response: Yes</li> <li>•How well would this proposal work in courts of different sizes? Response: Not well if small courts do not have the resources to conduct interviews prior to arraignment.</li> </ul>	<ul style="list-style-type: none"> <li>• No response required.</li> <li>• The committee notes that the decision whether to implement the proposal is discretionary with each court.</li> </ul>
2.	<p>Ronald Miller Chief Deputy Riverside County Probation</p>	N	<p>We reviewed the Judicial Council proposal to amend Penal Code section 1319.5. The proposal essentially provides the court the discretion to approve, without a hearing in open court, OR release for arrestees with three or more prior FTA's.</p> <p>The purpose of the proposed amendment is to alleviate jail overcrowding, improve court calendar impacts and provide more options for the judges in ordering releases and</p>	<p>The committee declines to revise the proposal based on this comment. The committee's proposal requires that approved OR releases are under a court-operated or court-approved pretrial release program. These programs typically provide information the court may use in deciding whether to grant OR release, including risk assessments that incorporate FTA data and other information relevant to ensuring public safety, and may offer a range</p>

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>increase access to justice in early states of criminal proceedings.</p> <p>The primary purpose of pre-trial release is to ensure the defendant appears in court and releases are made with the community's safety in mind. However, it is our opinion that the changes to 1319.5(b)(2) could be interpreted to imply that FTA's are less of a concern when considering pretrial releases. Such an assumption would not be evidence-based.</p> <p>The proposed changes would seem to minimize the significant weight the VPRAI gives to prior FTAs. Indeed, our validated assessment tool (RPRAI) puts even more weight on prior FTAs, in that defendants with two or more prior FTAs (in the last two years) would automatically score a moderate risk (bordering on high). Releases in this situation would constitute an override for our assessment tool. In such cases, it might be wise to make the release after arraignment, after the parties involved can argue their respective cases and the court can take all information into account before making a decision.</p>	of supervision options.
3.	Orange County Bar Association By Todd Friedland President	A	The proposal suggests amending Penal Code section 1319.5 to provide courts with discretion to approve, without a hearing in	No response required.

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	Commentator	Position	Comment	Committee Response
			<p>open court, own recognizance releases under a court-operated or court-approved pretrial release program for arrestees with three or more prior failures to appear. Currently, Penal Code section 1319.5 prevents an arrestee who has failed to appear three or more times over the preceding three years to be released without a court hearing.</p> <p>Historically, defendants could only secure pre-trial release prior to their arraignment by making bail. Recently, many courts have moved away pre-trial release based on bail and have instead implemented pre-trial release programs which assess whether own recognizance release is appropriate for individual defendants based on validated risk assessment tools. The use of these evidence-based practices reduces unnecessary time in custody, allows defendants to continue working and mitigates the financial and social impact of system-involvement on the defendant, his or her family and community generally.</p> <p>This proposal would expand the pool of the defendants who could be screened under a pre-trial release program using evidence-based practices which would further the economic and societal goals of avoiding unnecessary incarceration.</p>	

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Shasta County Probation Department by Tracie Neal Chief Probation Officer	N/I	<p>In Shasta County we have a significant number of offenders who are unable to be released and supervised through our Pre-arrestment Supervised Own Recognizance (PSOR) program due to the current structure of Penal Code Section 1319.5. This is, in part, due to the large number of failures to appear (FTA) our offenders earn in Shasta County. For a number of years, we've experienced a considerable issue with FTAs in our county. Our Community Corrections Partnership Executive Committee has worked to address these issues in a number of ways including creating a compliance team made up of representatives from Probation and other local law enforcement agencies. This team addresses non-compliance with court orders and assists with those offenders who fail to appear in court.</p> <p>In addition, Shasta County law enforcement agencies created "Shasta's Most Wanted", a program that highlights five offenders per week in our local news systems, who have failed to appear in court for various new law and probation/parole violations. To date over 600 offenders have been arrested as a result of this program.</p>	No response required.



**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	Commentator	Position	Comment	Committee Response
			<p>We have also created a Supervised Own Recognizance (SOR) program. The SOR program was created to combat two major issues of concern, the significant amount of FTAs and overcrowding in the jail. Over 75% of offenders in our jail are pre-sentence and are often released due to over-crowding before arraignment. This program, run by probation staff, utilizes an evidence-based tool to make a recommendation to the court for release from custody at arraignment and has been successful in reducing the number of FTAs in our county. We have been able to locate, with the assistance of GPS, offenders when they do not appear in court and pick them up and bring them to court. This has saved a considerable amount of the time and resources our court and our justice partners use to process FTAs, locate offenders on warrant, book offenders in the jail and to ensure offenders are moving forward through the court process to sentencing where they are often ultimately placed under probation supervision. Even with this program, there was still a major concern about the number of offenders that were released from the jail after hours and on weekends. As a result of these concerns, the Probation Department worked with the Court to apply for a grant to expand the</p>	

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>SOR program to weekends under the PSOR Program. This program utilizes the same evidence based tool as the SOR Program to make recommendations to the court on offenders booked into the jail after arraignment of Friday and before arraignment on Monday morning.</p> <p>We have faced, however, a difficulty with the current law and the requirement that all offenders with 3 or more FTAs appear before a bench officer at arraignment to be placed on a supervised release program. In looking at a sampling of offenders screened for the PSOR program from January through March 2016, approximately 5.04% of all offenders screened offenders on the weekends have not been able to move forward with the PSOR process due to the amount of FTAs on their record. All of these offenders (52 individuals) would likely have been recommended by Probation to be placed on the program. All of these offenders are flagged in the jail system to be held for recommendation to our SOR program on Monday morning but, due to overcrowding, not all these offenders can be held. Offenders are often released without being able to be placed on the PSOR/SOR program which leaves Probation without the</p>	

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>ability to supervise these offenders or a means to reduce FTAs among this population. Often these offenders FTA in court and then subsequently have too many FTAs to qualify for PSOR once again when they are found and booked into the jail. This cycle can continue over and over with no consequence or ability to hold the offender accountable. A change in the law regarding allowing offenders with multiple FTAs to be placed on a supervised release program without appearing before a bench officer would allow the Probation Department the latitude to evaluate and make recommendations to place offenders appropriate for the programs on supervision under these programs, to potentially include GPS. This higher level of accountability and supervision would increase the number of local offenders that appear for court and are sentenced according to the law.</p> <p>If the proposed changes were to go into effect the Shasta County PSOR program is ready to work with the Court to accept, monitor and supervise those offenders that would not have previously been considered or recommended for the program due to the number of FTAs. As noted, we continue to struggle with over-crowding in the jail and</p>	

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			this program allows our county to hold offenders accountable, work toward reducing the number of FTAs in Shasta County as well as decrease the number of court appearances and time it takes to move through the court process to sentencing.	
5.	Superior Court of California, County of Los Angeles	A	The Criminal Law Advisory Committee proposes amending Penal Code section 1319.5 to provide courts with discretion to approve, without a hearing in open court, OR releases under a court-operated or court-approved pretrial release program for arrestees with three or more prior failures to appear (FTAs). The Request for Comment notes that, “There is growing recognition that, in many cases, the interests of public safety and those of the accused can best be served by appropriate pretrial release, and courts are increasingly implementing innovative pretrial release programs. Pretrial programs can provide courts with a range of release options and encourage the exercise of judicial discretion in imposing an effective level of pretrial supervision, particularly for offenders who may have failed to appear for court hearings in the past. Appropriate pretrial release can also help to address the historic overcrowding of California’s jails, a problem that became more significant with criminal justice realignment.” In her State of the Judiciary	No response required.

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Address to a Joint Session of the California Legislature on March 8, 2016, Chief Justice Tani G. Cantil-Sakauye noted that the legislature had provided funds for 12 court pretrial release programs, and that, “[t]here are interesting studies, and the takeaways from the studies are that in some cases pretrial detention actually increases recidivism. And in other types of offenders we found that supervised release is actually as effective as money bail.”</p> <p>Given that there are funds for such pre-trial release programs and that the option would be discretionary, there is no objection.</p> <p>Los Angeles County currently has an established release program that is operated by Probation. This proposal would expand the parameters of the existing release criteria.</p>	
6.	Superior Court of California, County of San Diego By Mike Roddy	A		No specific comment
7.	Sonya Tafoya Research Associate Public Policy Institute of California	N/I	<p>Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs.</p> <p>Research consistently shows that defendants</p>	The committee declines to revise the proposal based on this comment. The committee recognizes that many court-operated or court-approved pretrial release programs include a court reminder system as a useful component

**LEG16-05****Criminal Procedure: Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			with prior FTA's are at higher risk of future FTA's. This suggests that the proposal as written may decrease pretrial detention as intended, but may also inadvertently increase FTA's if court date reminder systems are not already in place. The added discretion proposed should be coupled with a requirement that courts or court approved pretrial programs implement court reminder systems for all felony defendants.	but declines to include court reminder systems as a requirement for this proposed legislation as there are various approaches that courts may implement for successful programs.



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
October 7, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Court Executives Advisory Committee Jake Chatters, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov Josely Yangco-Fronza, 415-865-7626 josely.yangco-fronza@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Retention of Court Records in Gun Violence Cases	

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#### **Executive Summary**

The Court Executives Advisory Committee recommends that the Judicial Council sponsor legislation to amend Government Code section 68152(a)(6) to specify the retention period for court records in gun violence cases. It also recommends a technical amendment to Government Code section 68150(a).

#### **Recommendation**

The Court Executives Advisory Committee recommends that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68152(a)(6) to specify the retention period for court records in gun violence cases; and
2. Amend Government Code section 68150(a) to remove references to the future adoption of rules of court, pursuant subdivision (c).

The text of the amended Government Code sections is attached at page 215.

## **Previous Council Action**

In 2012, the Court Executives Advisory Committee led a collaborative effort with other advisory committees to modernize and improve the records retention statutes in the Government Code. The Judicial Council subsequently sponsored records retention legislation. This initiative resulted in the enactment of Assembly Bill 1352 (Stats. 2013, ch. 274), which amended the Government Code to reduce the record retention periods for certain court records, to establish retention periods for new types of records that were not dealt with under existing law, and to eliminate ambiguities in the law relating to records retention.

## **Rationale for Recommendation**

### **Gun violence cases**

Since Assembly Bill 1352 was enacted in 2012, new legislation has been passed that provides for protective orders in proceedings to prevent gun violence. (See Assem. Bill 1014 [Stats. 2014, ch. 872].) This proposal would amend Government Code section 68152, on court records retention, to specify the statutory period for retaining court records in gun violence cases. The proposed amendment would require the superior courts to retain the court records for gun violence cases for the same period that records must be retained for civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence cases. Superior courts must retain records for these case types “for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment.” (Gov. Code, § 68152(a)(6).)

### **Technical amendments**

This proposal would also amend Government Code section 68150(a) to remove references to the future adoption of rules of court, pursuant subdivision (c). The Judicial Council adopted these rules in 2011. It would also remove the references to national standards that applied while the rule and implementing standards and guidelines were in development.<sup>1</sup>

## **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for public comment in the spring of 2015 in conjunction with other legislative proposals. No comments were submitted concerning the proposals discussed in this report.<sup>2</sup>

Because of the enactment of AB 1014, there is a need for new statutory provisions on the retention period for court records in gun violence cases. No alternatives to recommending such legislation were considered.

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<sup>1</sup> The standards and guidelines for electronic court records are stated in the *Trial Court Records Manual*. (Cal. Rules of Court, rule 10.854; Judicial Council of Cal., *Trial Court Records Manual* (rev. Jan. 1, 2016), pp. 35–45.)

<sup>2</sup> Members of the public commented on other proposals concerning the retention of original wills in probate proceedings. Those proposals have been withdrawn for further consideration and are not included in this proposal.



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

By clarifying the retention period for court records relating to gun violence cases, the proposed amendments are expected to assist courts in maintaining and, when appropriate, destroying applicable court records.

### **Attachments**

1. Text of proposed Government Code sections 68150 and 68152, at page 215

Sections 68150 and 68152 of the Government Code would be amended, effective January 1, 2018, to read:

1 **Government Code section 68150**

2 (a) Trial court records may be created, maintained, and preserved in any form or forms of  
3 communication or representation, including paper, optical, electronic, magnetic, micrographic, or  
4 photographic media or other technology, if the form or forms of representation or communication  
5 satisfy the rules adopted by the Judicial Council pursuant to subdivision (c), ~~once those rules  
6 have been adopted. Until those rules are adopted, the court may continue to create, maintain, and  
7 preserve records according to the minimum standards or guidelines for the preservation and  
8 reproduction of the medium adopted by the American National Standards Institute or the  
9 Association for Information and Image Management.~~

10 (b)-(l) \* \* \*

11  
12 **Government Code section 68152**

13 The trial court clerk may destroy court records under Section 68153 after notice of destruction,  
14 and if there is no request and order for transfer of the records, except the comprehensive  
15 historical and sample superior court records preserved for research under the California Rules of  
16 Court, when the following times have expired after the date of final disposition of the case in the  
17 categories listed:

18 (a) Civil actions and proceedings, as follows:

19 (1)-(5) \* \* \*

20 (6) Civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary  
21 school violence, gun violence, and workplace violence cases: retain for the same period of time  
22 as the duration of the restraining or other orders and any renewals thereof, then retain the  
23 restraining or other orders permanently as a judgment; 60 days after expiration of the temporary  
24 restraining or other temporary orders; retain judgments establishing paternity under Section 6323  
25 of the Family Code permanently.

26 (7)-(15) \* \* \*



## JUDICIAL COUNCIL OF CALIFORNIA

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### MEMORANDUM

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Date	Action Requested
September 26, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Trial Court Presiding Judges Advisory Committee Hon. Brian L. McCabe, Chair Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Marlene Smith, 415-865-7617 marlene.smith@jud.ca.gov Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Subordinate Judicial Officers: Court Commissioners as Magistrates	

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#### **Executive Summary**

The Trial Court Presiding Judges Advisory Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 808 to include “court commissioners,” a type of subordinate judicial officer (SJO), within the definition of those who may serve as a “magistrate.” Penal Code section 808 currently defines “magistrates” as the judges of the Supreme Court, Courts of Appeal, and Superior Courts. Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be increased to include magistrate duties without causing undue confusion. By expanding the pool of judicial officers who are authorized to exercise magistrate powers, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to equitably address judicial workloads.

## **Recommendation**

The Criminal Law and Trial Court Presiding Judges Advisory Committees recommend that the Judicial Council sponsor legislation to amend Penal Code section 808, as follows:

Amend the statement in Penal Code section 808 defining those who may serve as magistrates by adding subdivision (d), “court commissioners” to the definitional statement that “[t]he following persons are magistrates:”

## **Previous Council Action**

No relevant previous Judicial Council action to report.

## **Rationale for Recommendation**

Penal Code section 808 currently defines “magistrates” as the judges of the Supreme Court, Courts of Appeal, and Superior Courts. Court commissioners, a type of subordinate judicial officer (SJO), are not included in the statutory definition. The proposal would expand the pool of judicial officers who are authorized to exercise magistrate powers and perform magistrate duties. By expanding the authorized duties of commissioners, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to equitably address judicial workloads.

The role of a magistrate is unique in the criminal justice system, and differs from the role of a judge. The principal functions of magistrates include issuing search warrants, bench warrants, arrest warrants, and warrants of commitment (Pen. Code, §§ 807, 881(a), 1488, 1523.); fixing and granting bail (Pen. Code, § 815a); conducting preliminary examinations of persons charged with a felony and binding defendants over for trial or release (Pen. Code, § 858); and acting as the designated on-call magistrate when court is not in session (Pen. Code, § 810).

The purpose of court commissioners and other SJOs is “to assist an overburdened judiciary with the performance of ‘subordinate judicial duties.’” (*Branson v. Martin* (1997) 56 Cal.App.4th 300, 305.) In criminal cases, court commissioners are authorized to perform a variety of duties, if directed to perform those duties by the presiding judge (Gov. Code, §§ 72190.1, 72190.2). However, commissioners do not currently have authority to issue search warrants (see 61 Ops.Cal.Atty.Gen. 487 (1978)) or to take and enter a guilty plea at arraignment (see 67 Ops.Cal.Atty.Gen. 162, 167 (1984)).

Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be expanded to include magistrate duties without causing undue confusion. In this manner, the proposal provides greater flexibility in the use of existing judicial and commissioner resources to increase access to justice while equitably addressing judicial workload concerns.

## **Comments, Alternatives Considered, and Policy Implications**

### **Notable Comments**

The committees circulated the proposal for public comment from April 15 to June 14, 2016. A total of 9 comments were received; 7 agreed with the proposed changes, 1 did not agree, and 1 did not indicate a position. Both the Superior Court of Riverside County and the Superior Court of San Diego County agreed with the proposal, as did the California Court Commissioners Association and the California Judges Association (noting that their comments “are not representative of a final position on the proposal.”) A chart with all comments received and the responses of both committees is attached at pages 222–226.

A commissioner of 22 years from the Superior Court of San Diego County opposed the proposal and noted, “I believe that some courts (maybe not all) would take advantage of their Commissioners by assigning them undesirable duties that the judges of those courts dislike, abhor, and detest.” The committees acknowledged there could be unintended consequences of the proposal that might negatively affect some commissioners but view the overall effect of the proposal as positive for commissioners, judges and the criminal justice system as a whole.

### **Alternatives**

The committees alternatively considered amending Penal Code section 808 to provide court commissioners with limited authority to exercise specifically defined magistrate powers and perform magistrate duties. (see Pen. Code, § 646.91(a) [commissioners are included among the judicial officers authorized to issue ex parte emergency protective orders for persons in immediate danger of being stalked], and Pen. Code, § 809 [the Santa Clara County Superior Court night-time commissioner is “considered a magistrate for the purpose of conducting prompt probable cause hearings for persons arrested without an arrest warrant”].) The committees, however, determined that a proposal to include court commissioners as magistrates for all purposes would provide greater flexibility, enhance court efficiencies, and enable courts to more effectively and equitably address workload issues while increasing access to justice.

### **Policy implications**

Over the years, judicial workload demands have exceeded the number of available judicial officers.<sup>1</sup> As of June 30, 2014, there were 291 authorized commissioner full time equivalent positions in the judicial branch.<sup>2</sup> The number of SJOs assigned to each court varies widely across the state. Several reasons favor broadening the scope of commissioner authority, including:

- The assignment flexibility that commissioners allow the courts;
- The expertise commissioners bring to many case types; and

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<sup>1</sup> Judicial Council of Cal., *The Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* (November 2014), [www.courts.ca.gov/12922.htm](http://www.courts.ca.gov/12922.htm). This mandatory report to the Legislature describes the filings-based need for judicial officers in the trial courts and shows that an additional 270 full-time equivalent judicial officers are needed in 35 courts. Judicial need is calculated based on a complex workload formula. The statewide need for new judgeships is calculated by adding the judicial need among only the courts that have fewer judgeships than their workload demands.

<sup>2</sup> Judicial Council of Cal., *2015 Court Statistics Report: Statewide Caseload Trends, 2004–2005 Through 2013–2014*, p. 80 (2015), [www.courts.ca.gov/12941.htm#id7495](http://www.courts.ca.gov/12941.htm#id7495).

- The ability of commissioners “to assist judges with routine preliminary matters, thereby freeing the judges for more complex matters.”<sup>3</sup>

In addition, recent rulings and legislation have enhanced the need for greater flexibility in fulfilling the duties of magistrates. The Supreme Court in *Missouri v. McNeely* (2013) 569 U.S. \_\_\_ [133 S.Ct. 1552, 185 L.Ed.2d 696], for example, ruled that search warrants are required for nonconsensual blood testing during driving under the influence investigations, and that exceptions to the warrant requirement must be determined case by case based on the totality of the circumstances (see also Penal Code § 1524(a)(13) which was amended in response to *McNeely* to authorize courts to issue search warrants under these circumstances (SB 717, Stats. 2013, ch. 317) and § 1524(a)(16)(A)(i) which was also amended to authorize courts to issue search warrants for investigations relating to operating water vessels, water skis, aquaplane, and similar devices while under the influence (AB 539, Stats. 2015, ch. 118)). The ruling and resulting legislation have increased the number of search warrant requests, particularly off-hours requests, resulting in increased workload demands for judges who serve as on-call magistrates on nights and weekends.

Similarly, recently enacted legislation has expanded the courts’ workload by providing courts with authority to issue temporary emergency gun violence restraining orders (Pen. Code, §§ 18125–18145; AB 1014, Stats. 2014, ch. 872). Penal Code section 18145(a)(2) authorizes the issuance of temporary emergency gun violence restraining orders in accordance with the procedures for obtaining a search warrant based on a sworn oral statement, if time and circumstances do not permit the submission of a written petition. Those procedures specifically authorize magistrates to issue oral search warrants when the court is in session (see Pen. § 1526(b)). Further, Penal Code section 18145(b) requires the presiding judge of each superior court to designate at least one judge, commissioner, or referee to be reasonably available to issue temporary emergency gun violence restraining orders when the court is not in session. Because the statutory authority for this type of restraining order is new, the workload impact is not yet known but is anticipated to be significant for some courts. Expanding statutory authority to include court commissioners as magistrates would increase court flexibility in addressing these new workloads, and increase access to justice in response to the need for a more system wide approach to balancing judicial resources.

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

Under the proposal, local court leadership would retain discretion to decide the extent of magistrate duties that could be performed by court commissioners. For those courts that choose to incorporate the magistrate role into commissioner duties, potential implementation costs may include commissioner training. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh implementation costs.

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<sup>3</sup> See Judicial Council of Cal., *Subordinate Judicial Officers: Duties and Titles* (July 2002), p. 13, [www.courts.ca.gov/documents/sjowgfinal.pdf](http://www.courts.ca.gov/documents/sjowgfinal.pdf). The report found that SJOs spent at least 75 percent of their time on criminal cases performing the duties of temporary judges.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed amendment to Penal Code section 808 supports the policies underlying Goal I, Access, Fairness, and Diversity and Goal IV, Quality of Justice and Service to the Public. Specifically, this proposed amendment supports Goal I, objective 4, “Work to achieve procedural fairness in all types of cases”; and Goal IV, objective 3, “Provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes.”

## **Attachments**

1. Text of proposed Penal Code section 808, at page 221
2. Chart of comments, at pages 222–226

Section 808 of the Penal Code would be amended, effective January 1, 2018, to read:

1    **§ 808 Complaints Before Magistrates**

2

3    The following persons are magistrates:

4

5    (a) The judges of the Supreme Court.

6

7    (b) The judges of the courts of appeal.

8

9    (c) The judges of the superior courts.



# LEG16-01

## Subordinate Judicial Officers: Court Commissioners as Magistrates

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Court Commissioners Association by Jeri Hamlin President	A	<p>The California Court Commissioners Association supports and endorses the proposal to amend PC Section 808 to include court commissioners within the definition of those who may serve as a magistrate.</p> <p>Among other benefits, this legislative change will help courts of limited resources better utilize the many talents and extensive experience of their respective commissioners, and in so doing, benefit the public in a substantial way.</p>	No response required.
2.	California Judges Association by Lexi Purich Howard Legislative Director	A	<p>Thank you for the opportunity to provide comments on behalf of the California Judges Association (CJA).</p> <p>CJA supports the legislative proposal to amend Penal Code Section 808 to include court commissioners within the definition of those who may serve as magistrate.</p> <p>The proposed expansion of judicial officers who are authorized to perform magistrate duties, including reviewing and signing search warrants, is a timely and much needed response to increasing judicial workloads.</p> <p>Our comments here are intended to assist with the proposal at this stage and are not representative of a final position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.</p>	No response required.

## LEG16-01

### Subordinate Judicial Officers: Court Commissioners as Magistrates

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
3.	Hon. Jeffrey M. Harkavy Commissioner Superior Court of California, County of Los Angeles	A	<p>I wish to add my voice in strong support of the proposed amendment to Penal Code Section 808, including court commissioners in the definition of magistrates. In my opinion, there is no logical or public policy reason for court commissioners to not perform the duties of a magistrate. As Commissioners, we have the exact same qualifications to hold our position as that of judges. We are required to complete the same training classes, ongoing judicial education and we are equally bound to the Canons of Judicial Ethics. On a day to day basis, we perform the same duties as judge's and are held to the same high standards. By passing this proposed amendment, there will be more well trained judicial officers to perform the important tasks now performed by judges alone.</p> <p>Thank you for your consideration.</p>	No response required.
4.	Hon. Scott P. Harman Commissioner Superior Court of California, County of Sacramento	A	<p>I am e-mailing to indicate my support for the proposal to allow SJOs to act as magistrates. I would also like to suggest that there is a great need statewide for an assigned commissioner's program, especially in the AB 1058 arena where the Federal Regulations require a commissioner to hear the child support cases.</p>	The suggestion to expand the proposal to create an Assigned Commissioner Program in the AB 1058 arena is beyond the scope and intent of the circulated LEG16-01 proposal. The committees will refer the suggestion to the appropriate Judicial Council committee for consideration.
5.	Orange County Bar Association by Todd G. Friedland President	A	<p>This proposal appears to serve the stated purpose of balancing judicial workloads and increasing courtroom efficiency and access to justice. Many court commissioners have expertise similar to that of judges and would be reliable decision-makers in performing magistrate duties.</p> <p>This proposal is short-sighted and in the end</p>	No response required.

## LEG16-01

### Subordinate Judicial Officers: Court Commissioners as Magistrates

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			provides only temporary relief if any from caseload congestion. Many counties already use commissioners in many of the functions of the magistrate. Parties are already free to stipulate to a commissioner presiding at a preliminary hearing. This proposal merely masks the real problem which faces our court system; namely, the lack of adequate trial court funding and the unwillingness of the Governor to fill current judicial vacancies and the Legislature's failure to add needed judicial positions. Merely adding another body to nighttime warrant duty does little to solve California's long-term judicial needs.	
6.	Superior Court of California, County of Riverside by Marita Ford Senior Management Analyst	A		No specific comment.
7.	Superior Court of California, County of San Diego by Mike Roddy Executive Officer	A		No specific comment.
8.	Hon. Rebecca Wightman Commissioner, Dept. 416 Superior Court of California, County of San Francisco	N/I	I have been a Commissioner for almost two decades (in two different counties), and have had a variety of assignments. I wholeheartedly agree with the proposal, and urge that in fact, it be expanded as noted herein. The current proposal will indeed provide trial courts with greater flexibility in managing their respective judicial workloads. And it while it mentions potential implementation costs for commissioner training, I would point out that a number of courts may realize potential savings by not having to separately track and parcel out certain "duty	The suggestion to expand the proposal to amend Family Code § 4252 to authorize the Judicial Council to create an Assigned Commissioner Program in the Title IV-D child support system is beyond the scope and intent of the circulated LEG16-01 proposal. The committees will refer the suggestion to the appropriate Judicial Council committee for consideration.

**LEG16-01****Subordinate Judicial Officers: Court Commissioners as Magistrates**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>judge” duties.</p> <p>I would also like to see the proposal go farther. Specifically, I would like to see the proposed legislation to also seed an amendment the Family Code §§4252, to either clarify or add a provision that would specifically authorize the Judicial Council under direction of the Chief Justice, to create an Assigned Commissioner Program in the Title IV-D child support system (also known as the AB1058 program). As trial court budgets become more and more strained, and with AB1058 funding having been stagnant for the past 8 years, the need for flexibility in the program has become critical. Such an amendment would provide the necessary flexibility to deploy experienced AB1058 Commissioners (similar to the Assigned Judges Program) to assist counties that may be experiencing coverage issues, backlogs, or are in need of other help to improve in certain areas identified and required as part of the federal funding. The CJA and CCCA have previously indicated support for such a proposal. Given the current creation by the Chief Justice of the 2016 AB1058 Funding Allocation Joint Subcommittee, this would be an ideal time to consider such a proposal that would assist trial courts in managing their workloads.</p> <p>Thank you for the opportunity to comment. I submit this comment as an individual, and not on behalf of any organization.</p>	

**LEG16-01****Subordinate Judicial Officers: Court Commissioners as Magistrates**

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
9.	Hon. Lee C. Witham Commissioner San Diego County	N	<p>I have worked as a Court Commissioner for over 22 years. Prior to those years, I practiced law for about 19 years, 10 of those years as a Deputy District Attorney.</p> <p>I am opposed to the pending proposal to amend Penal Code 808 in order to include commissioners as magistrates.</p> <p>I believe that some courts (maybe not all) would take advantage of their Commissioners by assigning them undesirable duties that the judges of those courts dislike, abhor, and detest. Please register my position in opposition.</p>	3. The committees acknowledge the opposition submitted and understand that there may be some concerns regarding duties assigned to commissioners if the proposal should eventually pass. However, the committees believe that the proposal will provide for a more system-wide approach to balancing judicial workload.

**CLOSED SESSION  
AGENDA ITEM**



# JUDICIAL COUNCIL OF CALIFORNIA

POLICY COORDINATION  
AND LIAISON COMMITTEE

[www.courts.ca.gov/pclc.htm](http://www.courts.ca.gov/pclc.htm)  
[pccl@jud.ca.gov](mailto:pccl@jud.ca.gov)

## POLICY COORDINATION AND LIAISON COMMITTEE

### MINUTES OF CLOSED MEETING

August 24, 2016

4:30 p.m.

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**Advisory Body Members Present:** Hon. Kenneth K. So, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Brian J. Back; Hon. Samuel K. Feng; Hon. Harry E. Hull, Jr.; Hon. Dean T. Stout; Hon. Charles Wachob; Mr. Mark G. Bonino; and, Ms. Kimberly Flener.

**Advisory Body Members Absent:** Mr. Patrick Kelly and Ms. Donna Melby.

**Others Present:** Hon. Raymond J. Ikola, Chair, Appellate Advisory Committee; Hon. Louis R. Mauro, Member, Appellate Advisory Committee; Hon. Eric C. Taylor, Member, Judicial Council; and, Ms. Jody Patel; **Committee staff:** Ms. Laura Speed, Ms. Sharon Reilly, Ms. Monica Lebond, and Ms. Yvette Casillas-Sarcos.

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#### CLOSED SESSION

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##### **Call to Order and Roll Call**

The chair called the meeting to order at 4:30 p.m., and staff took roll call.

##### **Approval of Minutes**

The advisory body reviewed and approved the minutes of the August 18, 2016, Policy Coordination and Liaison Committee meeting.

##### **Item 1**

##### **Discussion**

##### ***Action on pending legislation***

- a) AB 1776 (Oberholte), as proposed to be amended – Court transcripts: electronic form  
Allows a certified shorthand reporter, in a case on appeal, to deliver a reporter's transcript in electronic form to any court, party or person entitled to a transcript unless the court, party or person entitled to the reporter's transcript requests the reporter's transcript be in paper form. Provides that transcripts in electronic form shall comply with the California Rules of Court pertaining to the formatting of reporter's electronic transcripts. Provides that nothing in this CCP 271 alters the requirements of Government Code section 69954, whether a transcript is

delivered in electronic or paper form. Provides that any transcript delivered in accordance with this section shall be considered the original transcript for purposes of any obligation of an attorney to maintain or deliver a file for a client.

**Action: Support, if amended.**

- b) SB 881 (Hertzberg), as amended August 19, 2016 and as proposed to be amended – Amnesty  
Requires courts to lift a driver’s license (DL) suspension for failure to appear/failure to pay in traffic infraction cases (FTA/FTP) if a person enters into an installment agreement with the courts. Authorizes a court to notify the Department of Motor Vehicles (DMV) if a person defaults on an installment agreement and requires the DMV to reinstate the DL suspension. Requires courts to lift a DL suspension if a person who has defaulted on an installment agreement comes into compliance with the installment agreement. Preserves the requirement under the existing traffic amnesty program that DL suspensions may not be imposed if a person defaults on an amnesty installment agreement. Preserves any existing notification requirements relating to DL suspensions

**Action: Support, in concept.**

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 4:48 p.m.

Approved by the advisory body on [DATE].