



JUDICIAL COUNCIL OF CALIFORNIA

POLICY COORDINATION
AND LIAISON COMMITTEE

www.courts.ca.gov/pclc.htm
pclc@jud.ca.gov

POLICY COORDINATION AND LIAISON COMMITTEE MINUTES OF OPEN MEETING WITH CLOSED SESSION

October 27, 2016

10:30 a.m. - 12:00 p.m.

Superior Court of California, County of San Diego

Hall of Justice, Room 363

330 West Broadway, 3rd Floor

San Diego, CA 92101

Advisory Body Hon. Kenneth K. So, Chair; Hon. Brian J. Back; Hon. Samuel K. Feng;
Members Present: Hon. Scott M. Gordon; Hon. Harry E. Hull, Jr.; Hon. Dean T. Stout; Ms. Kimberly Flener; Mr. Patrick M. Kelly; and, Ms. Donna Melby.

Advisory Body Hon. Gary Nadler, Vice-Chair
Members Absent:

Others Present: **Judicial Council Members:** Hon. Douglas P. Miller and Hon. C. Todd Bottke;
Judicial Council Staff: Ms. Jody Patel; Ms. Kimberly DaSilva, Ms. Diana Glick, Ms. Eve Hershcopf, Ms. Tara Lundstrom, Mr. Douglas C. Miller, Mr. Patrick O'Donnell, Ms. Adrienne Toomey, and Ms. Josely Yangco-Frona; **Committee Staff:** Mr. Cory Jasperson, Ms. Laura Speed, Mr. Daniel Pone, Ms. Sharon Reilly, Ms. Andi Liebenbaum, Mr. Alan Herzfeld, Ms. Monica LeBlond, and Ms. Yvette Casillas-Sarcos.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 10:33 a.m., and committee staff took roll call. No written comments were received.

CONSENT ACTION ITEM

Item 1

- a) **Judicial Council Legislative Policy Summary: 2016 (Action Required)**
Sets forth concise council policy guidelines regarding court-related legislative proposals.
Action: Approved for submission to the Judicial Council.
-

DISCUSSION AND ACTION ITEMS

Item 1

PROPOSALS FOR JUDICIAL COUNCIL-SPONSORED LEGISLATION

- a) **Applying the Electronic Filing and Service Provisions of Civil Procedure section 1010.6(a) and (b) to Criminal Actions (Action Required)**
Provides 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 the Code of Civil Procedure section 1010.6 to criminal actions.
Action: Recommend Judicial Council sponsorship.
- b) **Authorize Electronic Delivery of Notices of Hearing in Proceedings under the Probate Code**
Authorizes 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.
Action: Recommend Judicial Council sponsorship.
- c) **Court Records Destruction Reporting**
Eliminates the requirement that superior courts must report destroyed court records to the Judicial Council.
Action: Recommend Judicial Council sponsorship.
- d) **Criminal Procedure: Multiple County Sentencing**
Promotes uniformity and clarifies judicial sentencing authority when imposing concurrent or consecutive judgements under Penal Code section 1170(h) implicating multiple counties.
Action: Recommend Judicial Council sponsorship be deferred.

e) **Criminal Procedure: Transfer Back To Receiving Court for Limited Purpose after Intercounty Transfer**

Authorizes 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.

Action: Recommend Judicial Council sponsorship.

f) **Electronic Filing, Service, and Signatures**

Authorizes electronic signatures, promotes consistency in the requirements for electronic filing and service, codifies various provisions in the trial court rules, and clarifies the application of Code of Civil Procedure section 1010.6 electronic service provisions in other statutes.

Action: Recommend Judicial Council sponsorship.

g) **Electronic Filing and Service in Juvenile Proceedings**

Authorizes electronic filing and electronic service in juvenile law proceedings and establishes parameters for e-business in the juvenile court.

Action: Recommend Judicial Council sponsorship.

h) **Pre-Arrestment Own Recognizance Release Under Court-Operated or Approved Pretrial Programs**

Provides courts with discretion to approve own recognizance release for arrestees with three prior failures to appear, without holding a hearing in open court, under a court-operated or court-approved pretrial program.

Action: Recommend Judicial Council sponsorship.

i) **Retention of Court Records in Gun Violence Cases**

Specifies the retention period for court records in gun violence cases. Amends Government Code section 68150(a) to remove references to the future adoption of rules of court, pursuant subdivision (c).

Action: Recommend Judicial Council sponsorship.

j) **Subordinate Judicial Officers: Court Commissioners as Magistrates**

Includes “court commissioners” a type of subordinate judicial officer within the definition of those who may serve as a “magistrate.”

Action: Recommend Judicial Council sponsorship.

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 11:04 a.m.

C L O S E D S E S S I O N

Call to Order and Roll Call

The chair called the meeting to order at 11:04 a.m.

Item 1

Approval of Minutes

The advisory body reviewed and approved the minutes of the August 24, 2016, Policy Coordination and Liaison Committee meeting.

Item 2

Pursuant to California Rules of Court 10.75(c)(1)

New Member Orientation.

Action: Informational only. No action required.

Adjourned closed session at 11:28 a.m.

Approved by the advisory body on [DATE].

DRAFT



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

MEMORANDUM

Date	Action Requested
November 7, 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, 415-865-7997 adrienne.toomey@jud.ca.gov Sharon Reilly, 916-323-3121 sharon.reilly@jud.ca.gov
Subject	
Proposal for Judicial Council-Sponsored Legislation: Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)	

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 (CLAC) recommends that the Judicial Council sponsor legislation to amend Penal Code sections 1170 and 1170.3¹, 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 county or counties supervision of the defendant. The court may determine that terms or portions of terms of incarceration and terms or portions of terms of supervision may be served in different counties.” 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.

¹ All statutory references are to the Penal Code.

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

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.

At its October 27, 2016, meeting, members of PCLC questioned whether this legislative proposal is intended to provide that the second sentencing court’s authority includes the authority to direct that the incarceration be served in a different county than the supervision is served in and to determine that incarceration and/or supervision terms themselves may be split between two counties. Upon hearing from staff that was CLAC’s intention, PCLC directed staff to revise the legislative proposal to make this intent explicit in the statute to avoid any confusion. Staff has revised the proposal accordingly.

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

The proposal was circulated 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

CLAC 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 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

CLAC 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 9–10
2. Chart of comments, at pages 11–28

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
11 current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a
12 prior 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
19 law, including pretrial diversion, deferred entry of judgment, or an order granting probation
20 pursuant 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
40 another county or counties, the court rendering the second or other subsequent judgment shall
41 determine the county or counties of incarceration and county or counties of supervision of the

1 defendant. The court may determine that terms or portions of terms of incarceration and terms or
2 portions of terms of supervision may be served in different counties.

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 ***

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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
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>Discussion 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 when sentencing a person to state prison (a</p>	<p>Proposed Response: 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>

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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>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>	

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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">•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?•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?•Since PC 1170(h) sentences are relatively short, is there a compelling reason for a	

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

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	Commentator	Position	Comment	Committee Response
			<p>defendant with multiple-jurisdictional sentences to serve custody time in multiple locations?</p> <ul style="list-style-type: none">•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? <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>Conclusion 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 1170.3.</p>	

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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>As the Council further investigates this issue, the following ideas are offered:</p> <ul style="list-style-type: none"> •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. •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. 	
2.	Trish Marez Director of Criminal Operations Superior Court of California, Sacramento County	N/I	<p>1) Does the proposal appropriately address the stated purpose?</p> <p>Yes, the stated purpose of the proposal is clear: The proposal seeks to clarify judicial sentencing when imposing concurrent or consecutive judgments under P.C. 1170(h) when a defendant is sentenced in multiple counties. The</p>	<i>See Response to #1.</i>

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

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	Commentator	Position	Comment	Committee Response
			<p>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>2) Would the proposal provide cost savings? If so, please quantify.</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 number of mandatory supervision violations for defendants serving</p>	

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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 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>3) Would the proposal provide other efficiencies? If so, please quantify.</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>4) What would be the implementation requirements for courts?</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 sentences in other counties, court staff (most likely the courtroom clerk) would</p>	

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

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	Commentator	Position	Comment	Committee Response
			<p>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>Impact: <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 would have one centralized location to report all sentences pursuant to P.C. 1170(h) – similar to the CDCR Legal</p>	

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

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	Commentator	Position	Comment	Committee Response
			<p>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">• 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. <p>Impact: <i>This may require reprogramming of current case management systems or</i></p>	

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

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	Commentator	Position	Comment	Committee Response
			<p><i>development of a manual process in all 58 counties.</i></p> <ul style="list-style-type: none">• 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?	

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

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	Commentator	Position	Comment	Committee Response
			<p>Impact: <i>This would inevitably lead to delays in court proceedings while the 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="961 824 1386 1214">• 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. <p>Impact: <i>This may necessitate reprogramming of case management systems to capture fines, fees and restitution orders and then transmit them to</i></p>	

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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>alternate courts and/or collection entities, if not captured and collected through local court resources.</i></p> <ul style="list-style-type: none">• 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. <p>Impact: <i>This would have a negative impact to all local court operations. Transferring a case out to a new jurisdiction</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>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 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>Additional Comments:</p> <p>The Courts already have a process when sentencing defendants to concurrent or</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>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 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</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>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> <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	<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 (*).

	Commentator	Position	Comment	Committee Response
			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 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>	<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 (*).

	Commentator	Position	Comment	Committee Response
			1)Specify the case numbers of all cases on which the defendant was sentenced 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 judgment 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	<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 (*).

	Commentator	Position	Comment	Committee Response
			<p>criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.</p> <p>This is a sensible provision and would make clear which county will have custody and supervision.</p> <p>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.</p>	
6.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		<i>No response needed.</i>



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

MEMORANDUM

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
Facilities Policies Working Group	Eunice Calvert-Banks, 415-865-4048
Hon. Douglas P. Miller, Chair	eunice.calvert-banks@jud.ca.gov
Hon. Marla O. Anderson, Vice-Chair	Charles Martel, 415-865-4967
	charles.martel@jud.ca.gov
Subject	Cory Jaspersen, 916-323-3121
Proposal for Judicial Council-Sponsored Legislation: Disposition of Vacant Courthouses	cory.jaspersen@jud.ca.gov

Executive Summary

The Firebaugh, Reedley, and Clovis Courthouses in Fresno County and the Avenal and Corcoran Courthouses in Kings County have been permanently closed by their respective courts and are unsuitable to the needs of the judicial branch. To eliminate the council's continuing liability and expense in holding permanently closed court facilities and to realize the value of the assets in fair market value dispositions, the Facilities Policies Working Group (FPWG) recommends authorizing and approving the disposition of these facilities. The FPWG further recommends authorizing staff to lease or license all or a portion of the Clovis facility pending its final disposition.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective December 16, 2016:

1. Authorize and approve the disposition of the state's equity interest in, and title to, the Firebaugh, Reedley, and Clovis court facilities in Fresno County and the Avenal and Corcoran court facilities in Kings County in fair market value transactions;
2. Direct council staff to take all actions necessary to obtain statutory authorization to dispose of the facilities and to draft and negotiate appropriate agreements with prospective transferees;
3. Direct council staff to take all action necessary to lease or license all or a portion of the Clovis facility until such time as it can be permanently disposed of;
4. Delegate to the Administrative Director or his designee the authority to sign real property disposition agreements and any other related necessary documents, contingent on legislative authorization for the disposition of the properties; and
5. Delegate to the Administrative Director or his designee the authority to sign one or more leases or licenses for the Clovis court facility, pending its final disposition.

Previous Council Action

In August 2014, the Trial Court Facility Modification Advisory Committee requested that the Judicial Council declare the three court facilities in Fresno County (Clovis, Reedley, and Firebaugh) to be surplus property. The Judicial Council deferred action on that request. In April 2015, the Judicial Council declared the San Pedro Courthouse as surplus, with proceeds from its fair market sale to be deposited in accordance with Article III, Section 9 of the California Constitution into the Special Fund for Economic Uncertainties, and authorized its disposition and sponsorship of legislation to accomplish that goal. In October 2015, the Judicial Council approved a short-term lease of the Corning Courthouse to the County of Tehama pending the sale of that courthouse to the county. In December 2015, the Judicial Council approved sponsorship of an alternative proposal to authorize the disposition of the San Pedro Courthouse as nonsurplus property with the proceeds of its sale to be deposited in the ICNA.

Rationale for Recommendation

Background

The State of California, acting by and through the Judicial Council of California, Administrative Office of the Courts, is the record title holder for the court facilities in Firebaugh, Reedley, Clovis, Avenal, and Corcoran.¹ Four of the court facilities (Firebaugh, Reedley, Avenal, and Corcoran) are in buildings where occupancy and use was shared with local county government, while in the fifth (Clovis), the court was the exclusive occupant.

Description of Court Facilities: Fresno County

The Fresno Superior Court permanently closed its court facilities in Firebaugh, Reedley, and Clovis to the public on July 30, 2012. Over the past four years, the Fresno Superior Court has consistently stated that there are no future plans to reopen any of these facilities and is supportive of staff efforts to dispose of them.

The Firebaugh Courthouse is located at 1325 “O” Street, within the City of Firebaugh’s government center, which includes the courthouse, the county library, city administration, and the police department. The court facility is in an 8,190 square foot one-story building with basement and shared parking lot wherein the state holds a 58.02% equity interest, with the county holding the remaining 41.98%. The court’s space in the building consists of one courtroom, a judge’s chambers, two holding cells, and administrative space. The county uses its space in the building as a satellite office, with intermittent staffing. According to an April 2016 appraisal, the value of the entire building is \$740,000 with the council’s share \$390,000. In FY15-16 the council spent \$42,602.26 as its share of operation and maintenance for this vacated facility.

The Reedley Courthouse is located at 815 “G” Street. This court facility is in a 5,888 square foot one-story building with a small shared parking lot wherein the state holds a 78.13% equity interest and the county holds the remaining 21.87% equity interest. The court’s space in the building consists of one courtroom and judge’s chambers, and administrative and storage space. The county’s space in the building is occupied by its agricultural office. According to an April 2016 appraisal, the value of the entire building is \$540,000 with the council’s share \$330,000. In FY15-16 the council spent \$15,755 as its share of operation and maintenance for this vacated facility.

The Clovis Courthouse is located at 1011 5th Street. This court facility is 3,360 square feet in size and holds one courtroom and chambers, one holding cell, and clerk and administrative space. There are six parking stalls on the property. The court occupied 100% of this building.

¹ The Judicial Council in the past referred to its staff as “the Administrative Office of the Courts.” Rule 10.81(b)(4) of the California Rules of Court provides as follows:

The Judicial Council will continue to perform all duties, responsibilities, functions, or other obligations, and bear all liabilities, and exercise all rights, powers, authorities, benefits, and other privileges attributed to the “Administrative Office of the Courts” or “AOC” arising from contracts, memorandums of understanding, or other legal agreements, documents, proceedings, or transactions. The Judicial Council may be substituted for the “Administrative Office of the Courts” or “AOC” wherever necessary, with no prejudice to the substantive rights of any party.

According to an April 2016 appraisal, the value of the entire building is \$720,000. In FY15–16 the council spent \$65,283 on operation and maintenance for this vacated facility.

Kings County

The Kings Superior Court closed the Avenal and Corcoran facilities as of December 18, 2015, when it moved into the new Hanford Courthouse. The court has no need for any of these facilities, and is supportive of staff efforts to dispose of them.

The Avenal Courthouse is located at 501 East Kings. This court facility is in a 7,696 square foot single story building with a shared parking lot wherein the state holds a 58.01% equity interest and the county holds the remaining 41.99%. The court's space in the building consists of one courtroom, two judge's chambers, two holding cells, and administrative and storage space. The county's space in the building is occupied by the county Sheriff. According to an April 2016 appraisal, the value of the entire building is \$670,000 with the council's share \$330,000. In FY15–16 the council spent \$38,542 as its share of operation and maintenance for this facility, though it should be noted that the court occupied this facility until December 18, 2015.

The Corcoran Courthouse is located at 1000 Chittenden Avenue. This court facility is in a 6,995 square foot single story building with a shared parking lot wherein the state holds an 87.06% equity interest, with the county holding the remaining 12.94%. The court's space in the building consists of one courtroom and judge's chambers, one room with three holding cells, and administrative and storage space. The county's space is occupied by the county Sheriff. According to an April 2016 appraisal, the value of the entire building is \$780,000 with the council's share \$690,000. In FY15-16 the council spent \$44,868 as its share of operation and maintenance for this facility, though it should be noted that the court occupied this facility until December 18, 2015.

Once the facilities are disposed of, the judicial branch will realize financial savings on maintenance costs (utilities, landscaping, vandalism prevention/cleanup, etc.). The council and judicial branch as a whole will benefit from a disposition of the court facilities because of the elimination of operations and maintenance costs and liability risks associated with the closed facilities. The judicial branch will also benefit from the dispositions if the Legislature directs that disposition proceeds be deposited into the ICNA or another account within the judicial branch.

Shared Use Buildings: Impact of Joint Occupancy Agreements

The shared occupancy and use of the four shared use buildings is governed in each case by a Joint Occupancy Agreement (JOA) entered into by the Judicial Council and the county in which the facility is located as part of the courthouse transfer process under the Trial Court Facilities Act of 2002 (as amended, the Act). Under the JOAs, management of each shared use building is assigned to either the Judicial Council or the county and a process is established for sharing the cost of operating and maintaining the buildings, including costs incurred after all or a portion of the building is closed, as required under Government Code section 70343(a)(2).²

² All future statutory references are to the Government Code, unless otherwise noted. Section 70343(a)(2) provides as follows:

In a shared use building under a JOA, any transfer by either the Judicial Council or county of rights to occupy and use its exclusive use area, or its equity interest, whether permanent or temporary, must involve the other party. For permanent transfers of Judicial Council's equity interests in the four shared use courthouses under consideration in this report, in each case, three scenarios are possible under the JOAs:

1. The county purchases or otherwise acquires the Judicial Council's equity interest in and title to the building.
2. The county has or will vacate its space in the building and allows the Judicial Council, as titleholder, to dispose of the entire property and give the county its share of the proceeds (equal to its percentage equity interest).
3. The county is unwilling to pursue options 1 or 2 and Judicial Council finds a third party willing to acquire its equity interest in and title to the building. Before completing any such disposition, however, the Judicial Council is required to offer the same terms and conditions to the county. If the county rejects that offer, then a disposition to the third party may proceed, and any such third party would be required to take an assignment of the Judicial Council's rights, duties, and obligations in the JOA. The county must, however, consent to any such assignment. The county may not refuse to give that consent, but it may be made subject to reasonable conditions.

Temporary transfers by a lease or license of a party's exclusive use area in a shared use building are also addressed in the JOAs. The JOAs provide that the Judicial Council and county each have the right to lease or license vacant space to the other or to a third party, but before the Judicial Council may enter into a lease or license with a third party, the council must first offer the lease or license to the county on the same terms and conditions.³ Such temporary transfers do not impact the party's respective equity interests in the building.

(2) Unless otherwise specifically provided by agreement between the Judicial Council and the county, the Judicial Council and the county shall share operation and maintenance costs in a shared use building as follows:

(A) Each entity is responsible for the operation and normal day-to-day maintenance costs of that space in the building exclusively used by the entity.

(B) Each entity shall share the operating and normal day-to-day maintenance costs for the common space in the building based on the proportionate amount of space exclusively used by each entity.

(C) Each entity shall share the major building repairs and maintenance affecting the entire building, including, but not limited to, common areas, based on the proportionate amount of space exclusively used by each entity.

³ Because these rights to temporarily transfer space are included in the JOAs and under authority of section 70392(a), it has been the consistent practice of council staff to draft and negotiate leases, licenses, and other agreements giving the county or sometimes third parties the right to occupy and use court exclusive use area in shared use buildings.

Legal Authority

Transfer of Title to Court Facility

Every transfer of title to state-owned real property must be specifically authorized by statute.⁴ The language of the authorizing legislation will determine where proceeds from such transfer will be deposited. On September 23, 2016, the Legislature authorized the sale of the San Pedro Courthouse, with the sales proceeds being deposited into ICNA.⁵

The San Pedro legislation tracks generally other provisions of the Government Code (§§ 14673.3, 14673.9, 14673.10, and 14673.11) authorizing nonsurplus fair market value dispositions of certain parcels of state-owned real property by the Department of General Services with proceeds for those sales directed to fund replacement facilities. If the Legislature authorizes the dispositions of the five courthouses under consideration in this report in a manner similar to the San Pedro legislation and those sections of the Government Code cited above, proceeds from those dispositions would be deposited in the ICNA and retained for use by and for the judicial branch. Alternatively, the Legislature may direct that disposition proceeds be deposited into some other account within or outside of the judicial branch.

Temporary Transfers of Occupancy and Use of Court Facilities by Lease or License

Under the Act, the Legislature granted the Judicial Council broad authority over trial court facilities. Specifically, section 70391(a) provides that the Judicial Council shall “[e]xercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities.” Section 70392(a) further provides Judicial Council staff with authority to “provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts, if the responsibility for the facility has been transferred to the Judicial Council pursuant to” the Act.

This broad language confers an authority coextensive with that of an owner upon the Judicial Council, except where expressly limited by statute. Nothing in the Act or elsewhere expressly prohibits the Judicial Council from entering into an out-bound lease or license of all or a portion of a court facility with an unrelated third party while it seeks its permanent disposition duty.

In fact, the Act supports the position that the Judicial Council has the requisite authority under California law to enter into a lease or license of a court facility, and Judicial Council staff may implement that authority by seeking to negotiate such an agreement. The Legislature’s use of the phrase “as an owner would have” to describe the nature and scope of the Judicial Council’s authority over court facilities is significant. Under California’s Civil Code, “[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others.” (Civil Code section 654.) Ownership is qualified when it is shared with one or more persons; when the time of enjoyment is deferred or limited; and when the use is restricted. (Civil Code section 680). Otherwise, it is absolute, meaning the owner “has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.” (Civil Code sections 678-679). “Ownership is a bundle of rights and privileges,” and an owner may enter into a lease agreement conferring on the tenant the rights of exclusive possession of the property “against all

⁴ *People v. Chambers*, 37 Cal.2d 552.

⁵ AB 1900 (Jones-Sawyer) Chapter 510, Statutes of 2016.

the world,” including the owner. (*Union Oil Co. v. State Bd. of Equal.* (1963) 60 Cal.2d 441, 447.)

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment. Staff has received written communication from the Superior Court of Fresno County stating that the three facilities have not been used for court operations since 2012, the court does not intend to resume court operations at any of these court location, and the court supports the disposition of these facilities.

Disposition of the two facilities in Kings County has long been contemplated in the planning for the new Hanford Courthouse which was opened in early 2016. Staff has received written communication from the Superior Court of Kings County stating the court has no interest in or resources available to resumption of operations at Avenal or Corcoran.

The alternative to approving disposition of these facilities is for the council to continue to carry the expense and liability of ownership with no real benefit to the judicial branch.

Implementation Requirements, Costs, and Operational Impacts

As noted above, disposition of the four court facilities in the shared use buildings subject to JOAs will in each case require the active participation of the county in which the facility is located. With respect to the three facilities in Fresno County, in previous correspondence, Fresno County staff has informed Judicial Council staff that the county will decide whether or not it is interested in reacquiring any of the facilities only after the Judicial Council has presented specific terms and conditions from third parties. Following Judicial Council approval of the disposition of the five court facilities, Judicial Council staff will simultaneously (1) work to obtain legislative authorization for such dispositions; (2) identify potential parties interested in acquiring the properties and begin negotiating fair market value transactions subject to that authorizing legislation; and (3) with respect to the Clovis facility, and as appropriate with the other four shared use facilities and subject to the applicable JOAs, negotiate leases or licenses of the facilities pending final dispositions.

Costs will be incurred in the disposition process, including costs of appraisals and title and escrow fees. Any such costs incurred by the council will, however, be offset by the disposition proceeds.

Attachments and Links

1. Text of proposed

Link A: [Government Code section 14673.3](#),

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14673.3

Link B: [Government Code section 14673.9](#),

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14673.9

Link C: [Government Code section 14673.10](#),

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14673.10

Link D: [Government Code section 14673.11](#),

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=14673.11

Link E: [Government Code section 70391](#),

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=70391

Link F: [AB 1900 \(Jones-Sawyer\) Chapter 510, Statutes of 2016](#),

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB1900

1 An act to add Section 70395 to the Government Code

2
3 SECTION 1. It is the intent of the Legislature, in enacting this act, to specifically authorize the Judicial
4 Council, with certain participation by the Counties of Fresno and Kings, to sell property known as the Reedley,
5 Clovis, Firebaugh, Avenal and Corcoran superior courthouses, surplus court facilities that are unsuitable for
6 the needs of the judicial branch, and transfer those sale proceeds to the Judicial Council's Immediate and
7 Critical Needs Account of the State Court Facilities Construction Fund.
8

9 SECTION 2. Section 70395 is added to the Government Code, immediately following Section 70394, to read:
10 70395. (a) Notwithstanding any other law, the Judicial Council may sell the properties, at fair market value and
11 upon the terms and conditions and subject to the reservations the Judicial Council deems in the best interests of
12 the state, if all of the following requirements are satisfied:

13 (1) The sale complies with Section 70391 of the Government Code, as applicable.

14 (2) The Judicial Council consults with the Counties of Fresno and Kings concerning the sale of the properties.

15 (3) The Judicial Council offers the properties to the Counties of Fresno and Kings the right to purchase those
16 properties that each county transferred to the state at fair market value before otherwise offering the property
17 for sale.

18 (b) Notwithstanding any other law, the net proceeds from the sale of the property shall be deposited into the
19 Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established by Section
20 70371.5 of the Government Code.

21 (c) For purposes of this act, "properties" mean the Reedley superior courthouse located at 815 G Street, in the
22 City of Reedley, the Clovis superior courthouse located at 1011 5th Street, in the city of Clovis, the Firebaugh
23 superior courthouse located at 1325 "O" Street in the city of Firebaugh, all in the County of Fresno, and the
24 Avenal superior courthouse located at 501 East Kings Street in the city of Avenal, and the Corcoran superior
25 courthouse located at 1000 Chittenden Avenue in the city of Corcoran, both in the County of Kings.

26 (d) The disposition of the properties authorized in this section do not constitute a sale or other disposition of
27 surplus state property within the meaning of Section 9 of Article III of the California Constitution and shall not
28 be subject to subdivision (g) of Section 11011 of the Government Code.
29

30 SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or
31 safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts
32 constituting the necessity are:

33
34 To enable the sale of the court facilities to occur as soon as possible, it is necessary that this act take effect
35 immediately



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

MEMORANDUM

Date	Action Requested
November 14, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Cory T. Jasperson, Director Governmental Affairs	Cory T. Jasperson Governmental Affairs 916-323-3121 phone 916-323-4347 fax cory.jasperson@jud.ca.gov
Subject	
Proposal for Judicial Council: 2017 Legislative Priorities	Laura Speed, Principal Manager Governmental Affairs 916-323-3121 phone 916-323-4347 fax laura.speed@jud.ca.gov

Executive Summary

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and establishes priorities for the upcoming legislative year. Last year, the council's legislative priorities focused on investment in the judicial branch and securing critically needed judgeships.

Governmental Affairs recommends a similar approach for the 2017 legislative year. Staff recommends that the Policy Coordination and Liaison Committee (PCLC) consider the following as Judicial Council legislative priorities in 2017:

- 1) Advocate for continued investment in the judicial branch to preserve and improve access to justice for all Californians, including a method to provide stable and reliable funding, including growth funding; this includes seeking the extension of sunset dates

on increased fees implemented in the fiscal year (FY) 2012–2013 budget, expiring July 1, 2018 or July 1, 2019;

- 2) Address the insufficient number of judgeships and judicial officers in superior courts with the greatest need, including working with the Administration and Legislature to resolve the issue of courts with more authorized judgeships than their assessed judicial need, seeking funding for new judgeships, and ratifying the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts;
- 3) Advocate for sufficient funding for the courthouse construction projects authorized by SB 1407 (Stats. 2008, ch. 311);
- 4) Seek the required legislative authorization to dispose of the vacant courthouses previously approved by the Judicial Council and any remaining properties subsequently approved by the Council this year;
- 5) Support of judicial branch operational efficiencies, cost savings and cost recovery measures; and
- 6) Support a three-branch solution to ensure fairness and efficiency of California’s penalty assessment structure.

Additionally, request that the council continue to delegate to PCLC the authority to take positions or provide comments on behalf of the Judicial Council on proposed legislation, administrative rules or regulations, after evaluating input from council advisory bodies and council staff, and any other input received from the courts, provided that the input is consistent with the council’s established policies and precedents.

Recommendation

Staff recommends that the Policy Coordination and Liaison Committee propose the following as Judicial Council legislative priorities in 2017:

1. Advocate for continued investment in the judicial branch to include: a method for stable and reliable funding for courts to address annual cost increases in baseline operations and plan for the future; and sufficient additional resources to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, and to restore programs and services that were reduced in the past few years. This includes seeking the extension of sunset dates on increased fees implemented in the fiscal year (FY) 2012–2013 budget¹:
 - \$40 increase to first paper filing fees for unlimited civil cases, where the amount in dispute is more than \$25,000 (Gov. Code, § 70602.6)
 - \$40 increase to various probate and family law fees (Gov. Code, § 70602.6)

¹ All fee increases sunset on July 1, 2018 unless otherwise noted (see Table 1 below for estimated revenue totals).

- \$20 increase to various motion fees (Gov. Code, §§ 70617, 70657, 70677)
 - \$450 increase to the complex case fee (Gov. Code, § 70616)
 - \$40 probate fee enacted in 2013, expiring on January 1, 2019 (Gov. Code, § 70662)
2. Increase the number of judgeships and judicial officers in superior courts with the greatest need.
 - a. Seek funding for 12 of the 50 authorized, but unfunded, judgeships to be allocated to the courts with the greatest need based on the most recently approved Judicial Needs Assessment.
 - b. Seek funding for two additional justices in Division Two of the Fourth Appellate District (Riverside/San Bernardino), as follows: Funding for one additional justice in FY 2017–2018 and the second additional justice in FY 2018–2019.
 - c. Advocate, as is done each year, for legislative ratification of the Judicial Council’s authority to convert 16 subordinate judicial officer (SJO) positions to judgeships in eligible courts, and sponsor legislation for legislative ratification of the council’s authority to convert up to 10 additional SJO positions to judgeships, in eligible courts, if the conversion will result in an additional judge sitting in a family or juvenile law assignment that was previously presided over by an SJO.
 - d. Work with the Administration and Legislature to resolve the concerns raised in the Governor’s veto message of SB 229 (Roth, 2015), regarding vacant judgeships in courts with more authorized judges than their assessed judicial need.
 3. Seek sufficient funding for the courthouse construction projects authorized by SB 1407 (Perata, Stats. 2008, ch. 311).
 4. Seek legislative authorization for the disposition of the Chico, Corning and San Diego courthouses as previously authorized by the Judicial Council and any remaining properties subsequently approved by the Council this year. In addition to the legislative authorization required in order to sell the vacant courthouses, this legislation would also identify the account or fund into which sales proceeds would be deposited, in this case, the Immediate and Critical Needs Account of the State Court Facilities Construction Fund,² which funds the most critical judicial branch facilities projects, but with the understanding the Legislature may choose to direct those sales proceeds elsewhere.
 5. Continue to sponsor or support legislation to improve judicial branch operational efficiencies, including cost savings and cost recovery measures.
 6. Advocate for a three-branch solution to ensure the fairness and efficiency of California’s fines, fees, penalties and assessments structure.

² Consistent with the legislative authorization to dispose of the San Pedro Courthouse in AB 1900 (Jones-Sawyer, Stats. 2016, ch. 510).

7. Delegate to PCLC the authority to take positions or provide comments on behalf of the Judicial Council on proposed legislation (state and federal), administrative rules or regulations, after evaluating input from council advisory bodies and council staff, and any other input received from the courts, provided that the input is consistent with the council's established policies and precedents.

Previous Council Action

The council has taken a variety of actions over the past years related to the above recommendations. Recent key actions in these areas are as follows:

Budget: In 2009 and 2010, the council adopted as a key legislative priority for the following year advocating to secure sufficient funding for the judicial branch to allow the courts to meet their constitutional and statutory obligations and provide appropriate and necessary services to the public. In December 2011, the council adopted as a key legislative priority for 2012 advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courts and restore critical staff, programs, and services that were reduced or eliminated in the past several years. A key legislative priority adopted for 2012 also included advocating for a combination of solutions to provide funding restorations for a portion of the funding eliminated from the branch budget since 2008. The combination of solutions included restoring the general fund, implementing cost savings and efficiencies through legislation, identifying new revenues, and using existing revenues to restore services to the public and keep courts open.

In 2013, the council adopted a key legislative priority of advocating to achieve budget stability for the judicial branch, including advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courthouses; restore court facility construction and maintenance projects; and restore critical staff, programs, and services that were reduced or eliminated in the past four years. Annually since 2014, the council has included similar priorities to achieve budget stability for the judicial branch, including advocating for (1) sufficient fund balances allowing courts to manage cash flow challenges; (2) a method for stable and reliable funding for courts to address annual cost increases in baseline operations; and (3) sufficient additional resources to allow courts to improve physical access to the courts by keeping courts open, to expand access by increasing the ability of court users to conduct branch business online, and to restore programs and services that were reduced or eliminated in the past few years.

Senate Bill 1021 (Stats. 2012, ch. 41)—Public safety. In FY 2012–2013 temporary fee increases were approved by the Legislature to help address some of the fiscal issues faced by the courts. Many of these fees were extended for an additional three years in the 2015-2016 Budget Act. However, given that the courts are not fully funded, it is necessary to seek another extension on the temporary fee increases. See table 1 below for actual and projected revenues from the Senate Bill 1021 fees.

Table 1. Sen. Bill 1021 Fee Increases with a July 1, 2018 Sunset Date

Description	Current Fee Amount	FY 2012-13 Increased Revenues	FY 2013-14 Increased Revenues	FY 2014-15 Increased Revenues	FY 2015-16 Increased Revenues	FY 2016-17 Increased Revenues (Estimated - 1st Turn 10R)	FY 2017-18 Increased Revenues (Estimated - 1st Turn 10R)
\$40 increase to first paper filing fees for unlimited civil cases where the amount in dispute is more than \$25K (GC 70602.6)	\$435	\$12,176,947	\$12,645,966	\$11,890,458	\$12,174,025	\$12,248,647	\$12,209,487
\$40 increase to various probate and family law fees (GC 70602.6)	\$435	\$7,637,791	\$7,727,878	\$7,744,597	\$7,758,492	\$7,629,377	\$7,780,973
\$20 increase to various motion fees (GC 70617, GC 70657, GC 70677)	\$60	\$ 7,641,569	\$ 7,332,651	\$ 7,192,278	\$ 7,176,182	\$ 6,967,962	\$ 6,862,347
\$450 increase to the complex case fee (GC 70616)	\$1,000	\$11,253,455	\$ 11,830,217	\$ 9,181,206	\$ 8,211,862	\$ 7,012,778	\$ 5,966,988
Total		\$38,709,762	\$ 39,536,712	\$ 36,008,539	\$ 35,320,561	\$ 33,858,764	\$ 32,819,794

Other Fees that will Sunset on January 1, 2019

Description	Current Fee Amount	FY 2012-13 Increased Revenues	FY 2013-14 Increased Revenues	FY 2014-15 Increased Revenues	FY 2015-16 Increased Revenues	FY 2016-17 Increased Revenues (Estimated - 1st Turn 10R)	FY 2017-18 Increased Revenues (Estimated - 1st Turn 10R)
New \$40 probate fee (GC 70662) -- effective 1/1/14	\$40	\$ -	\$ 57,740	\$ 121,442	\$ 123,471	\$ 123,471	\$ 123,471
Total		\$ -	\$ 57,740	\$ 121,442	\$ 123,471	\$ 123,471	\$ 123,471

Judgeships and SJO conversions: In 2005, the Judicial Council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of the 150 critically needed judgeships. Full funding was provided in the 2007 Budget Act, and judges were appointed to each of the 50 judgeships created by SB 56.

In 2007, the council secured the second set of 50 new judgeships of the 150 critically needed judgeships. (AB 159 [Jones]; Stats 2007, ch. 722.) Initially, funding for the second set of new judgeships would have allowed appointments to begin in June 2008. However, because of budget constraints, the funding was delayed until July 2009. The delay allowed the state to move the fiscal impact from FY 2007–2008 to FY 2009–2010. The Governor included funding for the second set of judgeships in the proposed 2009 Budget Act, but the funding ultimately was made subject to what has been called the “federal stimulus trigger.” This trigger was “pulled,” and the funding for the new judgeships and the various other items made contingent on the trigger was not provided.

In 2008, the council sponsored Senate Bill 1150 (Corbett) to authorize the third set of new judgeships. With the delay of the funding for the second set of judgeships and the state’s worsening fiscal condition, SB 1150 was held in the Senate Appropriations Committee. At its October 25, 2008, meeting, the council approved the 2008 update of the Judicial Needs Assessment. At the same time, the council confirmed the need for the Legislature to create the third set of 50 judgeships, completing the initial request for 150 new judgeships, based on the allocation list approved by the Judicial Council in 2007. The council also sponsored Senate Bill 377 (Corbett) in 2009 to authorize the third set of judgeships to become effective when funding was provided for that purpose. That legislation was also held in the Senate Appropriations Committee.

In both 2011 and 2012, the council sponsored AB 1405 to establish the third set of 50 judgeships. Even though the legislation did not provide funding for those positions, the state's continuing fiscal crisis and the fact that the second set of 50 judgeships had yet to be appointed because of lack of funding resulted in the legislation's not moving forward. The Judicial Council chose not to sponsor similar legislation in 2013 and, instead, chose to focus on other critical budgetary concerns.

In 2014, the council sponsored SB 1190 (Jackson), which sought to secure funding for the second set of 50 new judgeships approved in 2007 but not yet funded and to authorize a third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment. This bill also would have authorized the two additional justices in Division Two of the Fourth Appellate District. The bill was held in the Senate Appropriations Committee.

In 2015, the Judicial Council sponsored SB 229 (Roth) which would have appropriated \$5 million for the funding of 12 of the 50 previously authorized judgeships. Unfortunately, Governor Brown vetoed the bill.

In 2016, the council sponsored SB 1023 (Judiciary), which was identical to SB 229-however, SB 1023 was held in the Senate Appropriations Committee.

Also in 2016, the Judicial Council sponsored AB 2341 (Oberholte) for the Legislature to reallocate up to five vacant judgeships from courts with more authorized judgeships than their assessed judicial need, to courts with fewer judgeships than their assessed judicial need. Consistent with prior legislation referenced above, the allocation of the vacant judgeships would be based on a methodology approved by the council and under criteria contained in statute, subdivision (b) of section 69614 of the Government Code. AB 2341 was intended to address the Governor's message when he vetoed SB 229 in 2015, in which he wrote:

I am aware that the need for judges in many courts is acute - Riverside and San Bernardino are two clear examples. However, before funding any new positions, I intend to work with the Judicial Council to develop a more systemwide approach to balance the workload and the distribution of judgeships around the state.

AB 2341 was approved by the Senate Judiciary Committee. While AB 2341 was pending in the Senate Appropriations Committee, Judicial Council staff, Legislative staff, leadership from the affected courts (Alameda, Santa Clara, Riverside, and San Bernardino), and representatives of organized labor worked closely on amendments to AB 2341 that would have removed opposition to the bill. These amendments (see Attachment A) made the following key changes. 1) Limited the number of vacant judgeships to 4, like the Governor proposed in the May Revise; 2) Changed prior references of reallocate, reallocation, and reallocated to suspend, suspension, and suspended; 3) Allocated 4 new judgeships to courts with the greatest need; and

4) Provided that a court with a vacant suspended judgeship would not have its funding allocation reduced or any of its funding shifted or transferred as a result of, or in connection with, the suspension of a vacant judgeship. These amendments did not appear in print as AB 2341 was held by the Senate Appropriations Committee on the suspense file and did not move forward in the 2015–16 session. The estimate cost of judgeships is outlined below.

Judgeship Costs (with 8.87 FTE's Staff Complement) ¹				
Cost Component	Statewide Average	Average One-time	Total Ongoing	Total Ongoing Salary
Judge Salary/Benefits (excludes retirement) ²	208,220		208,220	208,220
Judge OE&E	11,665	12,450	24,115	11,665
WAFM Staff Salary/Benefits & OE&E (8.87 FTE) ^{3,4}	1,037,923		1,037,923	1,037,923
Security (1.35 FTE)	196,134		196,134	196,134
Interpreter (.42 FTE)	60,242		60,242	60,242
Estimated Total Per Judgeship	1,514,185	12,450	1,526,635	1,514,185

1) Staff complement that is needed to support a new judgeship using the Resource Assessment Study model (RAS). That model suggests that about 8.87 FTE are needed to provide both the direct support of the judicial officer and indirect support. The 12 judgeships previously sought in Sen. Bill 1023 (2016) and Sen. Bill 229 (2015) only included funding for 3.0 FTE.

2) Note: Judges Retirement is paid from the State GF not TCTF and is normally excluded for BCP's for Judgeships. Adding the retirement amount would increase the cost per judgeship to \$1.558 million.

3) Salaries based on statewide average salaries from courts' FY 2015-2016 Schedule 7As excluding collections staff, SJOs, CEO, security, and vacant positions.

4) Benefits based on average of individual courts' reported Program 10 benefits from FY 2015-2016 Schedule 7As excluding collections staff, SJOs, CEO, security, and vacant positions.

With regard to subordinate judicial officer conversions, existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer positions, upon vacancy, to judgeships. The statute caps the number that may be converted each year at 16 and requires the council to seek legislative ratification to exercise its authority to convert positions in any given year. For the past five years, that legislative ratification took the form of language included in the annual budget act.

The council converted the maximum 16 positions in fiscal years 2007–2008, 2008–2009, 2009–2010, 2010–2011, and 2011–2012; 13 in 2012–13; and 11 in 2013–2014. For FY 2014–2015, 9 SJO positions were converted. In FY 2015-2016, 11 SJO positions were converted.

Additionally, legislation enacted in 2010 (AB 2763; Stats. 2010, ch. 690) expedites conversions by authorizing up to 10 additional conversions per year, if the conversion results in a judge's being assigned to a family or juvenile law assignment previously presided over by an SJO. This

legislation requires that the ratification for these additional 10 positions be secured through legislation separate from the budget. Each year since 2011, the Judicial Council has sponsored legislation to secure legislative ratification of these additional SJO conversions: SB 405 (Stats. 2011, ch. 705), AB 1403 (Stats. 2013, ch. 510), AB 2745 (Stats. 2014, ch. 311), AB 1519 (Stats. 2015, ch. 416), AB 2882 (Stats. 2016, ch. 474). In total, 128 SJO positions have been converted, leaving only 34 of the total 162 positions that remain to be converted.

Court Construction Projects: Construction fund redirections during the state’s fiscal crisis and a decline in funds from reduced filings have dramatically cut the funds available for the bonds needed to replace unsafe and substandard facilities and build court facilities that serve the needs of all court users. During the state’s fiscal crisis, approximately \$1.4 billion was redirected, borrowed, shifted, and transferred from the Immediate and Critical Needs Account, and \$250 million of annual funds in the construction account—\$110 million (almost 45 percent)—has been permanently redirected to other purposes.

On August 26, 2016 the Judicial Council approved a recommendation from the Court Facilities Advisory Committee that all 23 judicial branch projects now underway continue through completion of their current project phase and then be put on hold until proper funding to ICNA is restored—six of those projects are in construction and will be completed, the balance are in some stage of site acquisition, scope definition, or design.

Disposition of vacant courthouses: Assembly Bill 1900 (Jones-Sawyer, Stats. 2016, ch. 510), authorized the disposition of the San Pedro Courthouse and required the proceeds of the sale to be deposited into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, which funds the most critical judicial branch facilities projects.

In February 2016, the Judicial Council approved the disposition of the Corning Courthouse and the Chico Courthouse, with the final form of the legislation authorizing sale of these court facilities conforming to the final form of legislation authorizing disposition of the San Pedro Courthouse³.

In April 2015, PCLC, acting on the authority delegated by the Judicial Council, approved Judicial Council sponsored legislation authorizing the disposal of the San Diego Courthouse property at its fair market value in exchange for cash to pay for, or the in-kind performance of, certain Judicial Council obligations to the County of San Diego.

Efficiencies: To address the budget crisis faced by the branch, in April 2012, the Judicial Council approved for sponsorship 17 legislative proposals for trial court operational efficiencies, cost recovery, and new revenue. An additional 6 efficiency proposals were approved for sponsorship in April 2013. Several noncontroversial and relatively minor measures were successful as the following efficiency measures were enacted into law⁴.

³ AB 1900 (Jones-Sawyer, Stats. 2016, ch. 510)

⁴ See Attachment A for a list of efficiency/cost-recovery measures approved and rejected by the Legislature.

Fines, Fees, Penalties and Assessments: The issue of fines, fees, penalties and assessments is a complex matter that requires the attention of all three branches of government to implement a long-term solution. In May 2015, Senator Kevin de León, President Pro Tempore of the Senate, sent a letter to the Administrative Director requesting assistance in addressing this issue. In addition, Senator de León introduced SB 404⁵, which states the “intent of the Legislature to enact legislation to provide a durable solution to address the issues of equity and efficacy of penalty assessments associated with criminal and traffic base fines.”

In June 2015, the council unanimously adopted Rule of court 4.105 that directs courts to allow people who have traffic tickets to appear for arraignment and trial without deposit of bail, unless certain specified exceptions apply.

In 2016, council advisory committees proposed several additional rules. The proposed rules have been out for public comment. The comments are now being reviewed by the advisory committees and if recommended, will be considered by the Judicial Council in December.

A traffic amnesty program was also enacted as part of the 2015-2016 Budget⁶. An 18-month traffic and non-traffic infraction violation amnesty program that discounts delinquent court-ordered debt and restores suspended driver’s licenses for qualified participants commenced October 1, 2015 and continues through March 31, 2017. The program provides discounts of 50% and 80% to qualifying debtors, as specified. The council and staff also worked diligently with the Legislature and the Counties to adopt the guidelines for the traffic amnesty program.

SB 405 (Hertzberg, Stats. 2015, ch. 385) provides that the ability of a defendant to post bail or to pay a fine or civil assessment is not a prerequisite to filing a request that the court vacate the assessment. Additionally, it provides that the imposition or collection of bail or a civil assessment does not preclude a defendant from scheduling a court hearing on the underlying charge. SB 405 also made some technical changes to the traffic amnesty program.

SB 881 (Hertzberg, Stats. 2016, ch. 779)⁷ initially attempted eliminate suspension of driver’s licenses as a means of collecting court-ordered debt associated with non-safety traffic offenses. However, as chaptered, the bill only made technical changes to the existing traffic amnesty program.

Delegation of Authority: California Rule of Court 10.12(a)⁸ authorizes PCLC to act for the council by:

(1) Taking a position on behalf of the council on pending legislative bills, after evaluating input from the council advisory bodies and the Administrative Office of the Courts, and any other

⁵ http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB404

⁶ SB 85 (Stats. 2015, ch. 26) http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB85

⁷ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB881

⁸ www.courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_12

input received from the courts, provided that the position is consistent with the council's established policies and precedents;

(2) Making recommendations to the council on all proposals for council-sponsored legislation and on an annual legislative agenda after evaluating input from council advisory bodies and the Administrative Office of the Courts, and any other input received from the courts; and

(3) Representing the council's position before the Legislature and other bodies or agencies and acting as liaison with other governmental entities, the bar, the media, the judiciary, and the public regarding council-sponsored legislation, pending legislative bills, and the council's legislative positions and agendas.

Rationale for Recommendation

The mission of the Judicial Council includes providing leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this mission is a commitment to meet the needs of the public, which includes reinvestment in our justice system to avoid further reductions and to preserve access to justice, which Californians expect and deserve.

Further, the Chief Justice has proposed a framework to increase public access to the courts. Her vision, entitled Access 3D, combines strategies from the courts—actions that will ensure greater public access—with a reasonable reliance on reinvested funds to the judicial branch. Access 3D is a multidimensional approach to ensuring that Californians have access to the justice system they demand and deserve. The three dimensions of access are:

- Improved physical access, by keeping courts open and operating during hours that benefit the public.
- Increased remote access, by increasing the ability of court users to conduct branch business online.
- Enhanced equal access, by serving people of all languages, abilities, and needs, reflecting California's diversity.

The proposed 2016 legislative priorities continue to support the goals of Access 3D.

Budget

State General Fund support for the judicial branch has been reduced significantly, from a high of 56 percent of the total branch budget in FY 2008–2009, to 47 percent in the current year (FY 2016–2017). Over this same period, to prevent debilitating impacts on public access to justice, user fees and fines were increased; local court fund balances were swept; and statewide project funds, as well as \$1.4 billion in courthouse construction funds, were diverted to court operations or to the General Fund. The council has spent considerable time over the past several years addressing the impacts of budget cuts on the branch, redirecting resources to provide much needed support to trial court operations, advocating for new revenues and other permanent

solutions, and looking inward at cost savings and efficiencies that could be implemented to allow the courts to serve the public effectively with fewer resources.

Judgeships and SJO conversions

The council has consistently sponsored legislation in recent years to secure the 150 most critically needed judgeships. To be most effective it is recommended that the council commit to working with the Administration and Legislature to address the concerns raised in the Governor's veto message of the judgeship bill (Sen. Bill 229, Roth) and to advocate for funding of new judgeships, and ratify the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts.

Fines, Fees, Penalties and Assessments

All three branches of government took action to address the issue of state penalty assessments, however, a long-term solution has not been implemented. This issue needs to be addressed to ensure the fairness and efficiency of the penalty assessment structure. Commitment from each branch is necessary to address this complex matter in order to find a workable long-term solution.

Efficiencies and continued sponsorship

The judicial branch is working to identify measures that will save time and resources, and better serve the public. As a result, courts have implemented dozens of programs, projects, efforts, and new ideas across California in order to make courts more efficient in a time of sharply reduced budgets. The Judicial Council will continue to seek-out, sponsor and support legislation that provides operational efficiencies and cost-recovery for the judicial branch.

Courthouse construction

Senate Bill 1407 (Perata, Stats. 2008, ch. 311), authorized up to \$5 billion in bonds to build or renovate courthouses in 32 counties. These projects are necessary to replace or improve courthouses with the most severe problems—safety and security, structural deterioration, and overcrowding—for the protection of the public, court staff, and judicial officers, and to improve access to justice in California.

Disposition of vacant courthouses

Under existing law, disposition of a court facility requires authorizing legislation.

Delegation of Authority:

The council has delegated to PCLC the authority to act on already introduced legislation. However, often administrative bodies or commissions ask for comments on legislative proposals not yet in the formal legislative process or on proposed rules and regulations that may affect the branch. PCLC is in the appropriate position to analyze and take positions on these actions. The process for taking a position on pending legislation or a proposed regulation would be the same as for a bill—staff would work with the advisory bodies for feedback on a recommended position and then bring the bill to PCLC for a final determination. Delegating this authority will allow PCLC to be nimble in responding to these proposals and also ensure that the council position is presented in a timely manner.

Comments, Alternatives Considered, and Policy Implications

The council has consistently sponsored legislation in recent years to secure the most critically needed judgeships. In previous years the council has considered whether to request the needed judgeships in phases as outlined below:

- Seek funding for 12 of the remaining 50 unfunded judgeships, assigned to the courts with the greatest need based on the most recently approved Judicial Needs Assessment.
- Consider not pursuing funding for this year. The lack of judicial resources, however, is continuing to significantly impair the ability to deliver justice, and failure to move forward will only further deny Californians' access to justice.
- Continue recent requests and pursue funding for the 50 judgeships already authorized. This is the highest-cost option and has not been successful with the Legislature or the Governor.
- Request funding over multiple years.
 - Request the funding of new judgeships over two years, with 25 judgeships being funded each year.
 - Request the funding over three years, with 10 the first year, 15 the second year, and 25 the third year. This is the recommended option.
 - Request the funding over five years, with 10 judgeships funded each year.

In addition to the phased-approach above, in 2016, the Judicial Council sponsored AB 2341 (Oberholte) for the Legislature to reallocate up to five vacant judgeships from courts with more authorized judgeships than their assessed judicial need, to courts with fewer judgeships than their assessed judicial need. This legislation was held in the Senate Appropriations Committee.

Implementation Requirements, Costs, and Operational Impacts

The public expects and deserves access to the California courts. Providing timely access to high-quality justice is the cornerstone of Access 3D. The key to the success of Access 3D is a robust reinvestment in the courts. Adoption of the proposed legislative priorities will allow Judicial Council staff to support the goals of Access 3D.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations support many of the council's strategic plan goals, including Goal I, Access, Fairness, and Diversity, by seeking to secure funding to provide access to the courts for all Californians; Goal II, Independence and Accountability, by seeking to secure sufficient judicial branch resources to ensure accessible, safe, efficient, and effective services to the public; and Goal IV, Quality of Justice and Service to the Public, by seeking funding to continue critical programs to meet the needs of court users.

Attachment

1. Attachment A: Amendments for Suspension of Vacant Judgeships
2. Attachment B: Efficiency and Cost-Recovery Approved and Rejected by the Legislature

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that this act shall not be construed to limit any of the following:

(a) The authority of the Legislature to create and fund new judgeships pursuant to Section 4 of Article VI of the California Constitution.

(b) The authority of the Governor to appoint a person to fill a vacancy pursuant to subdivision (c) of Section 16 of Article VI of the California Constitution.

(c) The authority of the Chief Justice of California to assign judges pursuant to subdivision (e) of Section 6 of Article VI of the California Constitution.

SEC. 2. Section 69614.5 is added to the Government Code, to read:

69614.5. (a) To provide for a more equitable distribution of judgeships, and pursuant to the requirements described in subdivision (d), both of the following actions shall occur:

(1) Four vacant judgeships shall be suspended in superior courts with more authorized judgeships than their assessed judicial need pursuant to subdivision (c).

(2) Four judgeships shall be allocated to superior courts with fewer authorized judgeships than their assessed judicial need pursuant to subdivision (c). The four judgeships shall be funded using existing appropriations for the compensation of superior court judges.

(b) The suspension of vacant judgeships pursuant to subdivision (a) shall be in accordance with a methodology approved by the Judicial Council after solicitation of public comments.

(c) The determination of a superior court's assessed judicial need shall be in accordance with the uniform standards for factually determining additional judicial need in each county, as updated and approved by the Judicial Council, pursuant to the Update of Judicial Needs Study, based on the criteria set forth in subdivision (b) of Section 69614.

(d) If a judgeship in a superior court becomes vacant, the Judicial Council shall determine whether the judgeship is eligible for suspension under the methodology, standards, and criteria described in subdivisions (b) and (c). If the judgeship is eligible for suspension, the Judicial Council shall promptly notify the applicable courts, the Legislature, and the Governor that the vacant judgeship

shall be suspended, subject to approval by the Governor in compliance with subdivision (c) of Section 16 of Article VI of the California Constitution.

(e) (1) For purposes of this section only, a judgeship shall become “vacant” when an incumbent judge relinquishes the office through resignation, retirement, death, removal, or confirmation to an appellate court judgeship during either of the following:

(A) At any time before the deadline to file a declaration of intention to become a candidate for a judicial office pursuant to Section 8023 of the Elections Code.

(B) After the deadline to file a declaration of intention to become a candidate for a judicial office pursuant to Section 8023 of the Elections Code if no candidate submits qualifying nomination papers by the deadline pursuant to Section 8020 of the Elections Code.

(2) For purposes of this section, a judgeship shall not become “vacant” when an incumbent judge relinquishes the office as a result of being defeated in an election for that office.

(f) For purposes of this section only, the “suspension” of a vacant judgeship means that the vacant judgeship may not be filled by appointment or election, notwithstanding any other law, unless an appropriation by the Legislature is made for the judgeship.

(g) A court in which a vacant judgeship is suspended shall not have the court’s funding allocation reduced or any of its funding shifted or transferred as a result of, or in connection with, the suspension of a vacant judgeship pursuant to this section.

Efficiencies and Cost-Recovery Proposals Approved by the Legislature

Senate Bill 75 (Stats. 2013, ch. 31) a trailer bill of the Budget Act of 2013 approved the following efficiency/cost-recovery proposals:

- Increases the statutory fee from \$10 to \$15 for a clerk mailing service of a claim and order on a defendant in small claims actions.
- Prohibits the Franchise Tax Board (FTB) and the State Controller from conditioning submission of court-ordered debt to the Tax Intercept Program on the court or county providing the defendant's social security number, while still allowing the social security number to be released if FTB believes it would be necessary to provide accurate information.
- Increases the fee from \$20 to \$50 for exemplification of a record or other paper on file with the court.
- Modifies the process for evaluating the ability of a parent or guardian to reimburse the court for the cost of court-appointed counsel in dependency matters.

Assembly Bill 619 (Stats. 2013, ch. 452) revises the formula for assessing interest and penalties for delinquent payments to the State Court Facilities Construction Fund to conform to the existing statute governing interest and penalties for late payments to the Trial Court Trust Fund by using the Local Agency Investment Fund rate.

Assembly Bill 648 (Stats. 2013, ch. 454) clarifies language from the prior year that created a new \$30 fee for court reporters in civil proceedings lasting one hour or less.

Assembly Bill 1004 (Stats. 2013, ch. 460) allows magistrates' signatures on arrest warrants to be in the form of digital signatures.

Assembly Bill 1293 (Stats. 2013, ch. 382) establishes a new \$40 probate fee for filing a request for special notice in certain proceedings.

Assembly Bill 1352 (Stats. 2013, ch. 274) streamlines court records retention provisions.

Senate Bill 378 (Stats. 2013, ch. 150) provides that an electronically digitized copy of an official record of conviction is admissible to prove a prior criminal act.

Senate Bill 843 (Stats. 2016, ch. 33) commencing January 1, 2017, and until January 1, 2021, grants a defendant 6 peremptory challenges in a criminal case if the offense charged is punishable with a maximum term of imprisonment of one year or less, and would reduce the number of peremptory challenges that may be exercised separately by a defendant who is jointly tried from 4 to 2 in cases in which the maximum term of imprisonment is one year or less. Requires the

Judicial Council to conduct a study and, on or before January 1, 2020, and submit a report to the Legislature on the reduction in the number of peremptory challenges.

Assembly Bill 2232 (Stats. 2016, ch. 74) corrects drafting errors in the rules governing retention of court files regarding certain misdemeanor traffic offenses.

Efficiencies and Cost-Recovery Proposals Rejected by the Legislature

- **Administrative assessment for maintaining records of convictions under the Vehicle Code:** Clarify that courts are required to impose the \$10 administrative assessment for each conviction of a violation of the Vehicle Code, not just upon a “subsequent” violation.
- **Audits:** Defer 2011 required audit until trial courts and the Judicial Council receive specified funding to cover the cost of the audits.
- **Bail bond reinstatement:** Authorize courts to charge a \$65 administrative fee to reinstate a bail bond after it has been revoked.
- **Collections:** Allow courts to retain and distribute collections rather than transferring collected funds to county treasuries with distribution instructions.
- **Court costs for deferred entry of judgment:** Clarify that the court can recoup its costs in processing a request or application for diversion or DEJ.
- **Court reporter requirement in non-mandated case types (SB 1313, 2014, Nielsen):** Repeal Government Code sections 70045.1, 70045.2, 70045.4, 70045.6, 70045.75, 70045.77, 70045.8, 70045.10, 70046.4, 70050.6, 70056.7, 70059.8, 70059.9, and 70063 to eliminate the unfunded mandate that the enumerated courts (Trinity, Modoc, Merced, Kern, Nevada, El Dorado, Butte, Tehama, Lake, Tuolumne, Monterey, Solano, San Luis Obispo, and Mendocino) use court reporters in specified non-mandated case types.
- **Destruction of records relating to possession or transportation of marijuana:** Eliminate the requirement that courts destroy infraction records relating to possession or transport of marijuana.
- **File search fee for commercial purposes:** Allow courts to charge a \$10 fee to commercial enterprises, except media outlets that use the information for media purposes, for any file, name, or information search request.
- **Marijuana possession infractions:** Amend Penal Code section 1000(a) to exclude marijuana possession, per Health and Safety Code section 11357(b), from eligibility for deferred entry of judgment.
- **Notice of mediation:** Amend Family Code section 3176 to eliminate the requirement for service by certified, return receipt postage prepaid mail for notice of mediation and clarifies that the court is responsible for sending the notice.
- **Notice of subsequent DUI:** Repeal Vehicle Code section 23622(c) to eliminate the court’s responsibility to provide notification of a subsequent DUI to courts that previously convicted the defendant of a DUI.
- **Penalty Assessments:** Revise and redirect the \$7 penalty assessment from court construction funds to State Court Facilities Trust Fund.

- **Preliminary hearing transcripts:** Clarify that preliminary hearing transcripts must be produced only when a defendant is held to answer the charge of homicide.
- **Sentencing Report Deadlines (AB 1214, 2015, Achadjian/ AB 2129, 2016, Lackey):** Amend Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadlines.
- **Trial by written declaration (AB 2781, 2016, Obernolte):** Eliminate the trial de novo option when the defendant in a Vehicle Code violation has not prevailed on his or her trial by written declaration.
- **Monetary sanctions against jurors (AB 2101, 2016, Gordon):** Amend Code of Civil Procedure section 177.5 to add jurors to the list of persons subject to sanctions.