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

November 17, 2016
4:30–5:30 p.m.
Teleconference

Advisory Body Members Present:	Hon. Kenneth K. So, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Brian J. Back; Hon. Samuel K. Feng; Hon. Scott M. Gordon; Hon. Harry E. Hull, Jr.; Hon. Dean T. Stout; Ms. Kimberly Flener; and, Mr. Patrick M. Kelly.
Advisory Body Members Absent:	Ms. Donna Melby
Others Present:	**Judicial Council Members:** Hon. C. Todd Bottke; **Judicial Council Staff:** Ms. Jody Patel, Ms. Millicent Tidwell, Ms. Eunice Calvert-Banks, Mr. Charles Martel, and Ms. Adrienne Toomey; **Committee Staff:** Mr. Cory Jasperson, Ms. Laura Speed, Ms. Sharon Reilly, and Ms. Yvette Casillas-Sarcos.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:31 p.m., and committee staff took roll call. No written comments were received.

Approval of Minutes

The advisory body reviewed and approved the minutes of the October 27, 2016, Policy Coordination and Liaison Committee meeting.

DISCUSSION AND ACTION ITEMS

Item 1

PROPOSALS FOR JUDICIAL COUNCIL-SPONSORED LEGISLATION

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

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.

b) Disposition of Vacant Courthouses

Authorizes and approves the disposition of the Firebaugh, Reedley, and Clovis Courthouses in Fresno County and the Avenal and Corcoran Courthouses in Kings County. Authorizes staff to lease or license all or a portion of the Clovis facility pending its final disposition.

Action: Recommend Judicial Council sponsorship.

c) Judicial Council: 2017 Legislative Priorities

Each year, the Judicial Council authorizes sponsorship of legislation to further key council objectives and establishes priorities for the upcoming legislative year.

Action: Recommend Judicial Council sponsorship.

ADJOURNMENT

There being no further open meeting business, the meeting was adjourned at 4:45 p.m.

CLOSED SESSION

Call to Order and Roll Call

The chair called the meeting to order at 4:48 p.m.

Item 1

Pursuant to California Rules of Court 10.75(d)(3)

Negotiations concerning legislation.

a) California Public Employees' Pension Reform Act

Adjourned closed session at 4:56 p.m.

Approved by the advisory body on [DATE].

Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title
Proposed Legislation (Appellate Procedure) Authorizes Fees for Electronic Filing and Service

Proposed Rules, Forms, Standards, or Statutes
Amend Government Code sections 68929, 68930, and 68933

Proposed by
Administrative Presiding Justices Advisory Committee

Action Requested
Review and submit comments by April 28, 2017

Proposed Effective Date
January 1, 2019

Contact
Robert Lowney, 415-865-7833,
robert.lowney@jud.ca.gov

Executive Summary and Origin

The Administrative Presiding Justices Advisory Committee proposes amending the statutes relating to appellate court fees to clarify that an appellate court's electronic filing service provider may charge a reasonable fee for its services, to allow an appellate court to contract with its electronic filing service provider to receive a portion of the fees collected by that provider, and to authorize the appellate courts to charge a fee to recover costs incurred for providing electronic filing. Persons entitled to fee waivers would not be subject to any of the fees provided for in this proposal.

Background

The Courts of Appeal and the Supreme Court are in the process of instituting electronic filing and service, which will improve access to the courts and expedite business processes at a time when the development of appellate e-filing is moving forward rapidly. Currently, e-filing is mandatory in five of the six appellate districts, and the deployment of e-filing in the Supreme Court is tentatively scheduled for July 2017.

The Proposal

To help finance the full implementation of electronic filing, some statutory changes are needed to clarify the authority of the vendor and the courts to collect fees for these services. Fees in the Supreme Court and the Courts of Appeal are the subject of Article 4 of Chapter 3 of Title 8 of the Government Code (sections 68926–68933). This proposal would amend three of the fee statutes in that article. The principal amendments are described below.

Government Code section 68930

The main proposed changes to the fee statutes would be to add new subdivisions (a)(1)–(2) and (b) to Government Code section 68930.

Proposed paragraph (1) of subdivision (a). In California, a central feature of the e-filing systems used by the appellate and trial courts is the reliance on electronic filing service providers (EFSPs) to enable parties to file their documents electronically with the courts. EFSPs assist filers not only in preparing and transmitting documents to the courts but also in electronically serving these documents on other parties in the case. For providing these services, the EFSPs expect to be, and are, paid. The system would not operate without such compensation.

The California Rules of Court on electronic filing and service recognize this situation. Appellate rule 8.73(b) provides, in part: "The court's contract with an electronic filing service provider may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee." The same provision appears in the trial court rules. (See rule 2.255(b).)

For the trial courts, the rule providing for a reasonable fee is also reflected in a statute. (See Code Civ. Proc., § 1010.6(d)(1)(B), which provides, in part: "Any fees charged by an electronic filing service provider shall be reasonable.") The appellate courts presently have no equivalent statutory provision. Because the Judicial Council has the authority to adopt rules provided they are not inconsistent with statute and there is no statute on this subject, the appellate rule allowing providers to charge reasonable fees is legally sufficient. However, though a statute expressly addressing the issue of providers charging reasonable fees in the appellate courts is not necessary, to have such statutory authority for the appellate as well as the trial courts seems desirable.

This proposal therefore recommends amending Government Code section 68930 to include the following provision: "A court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may. . . [¶] [a]llow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee." (See amended Government Code, § 68930(a)(1).)

In addition to codifying rule 8.73, this proposal recommends that section 68930(a)(1) allow the appellate courts to contract with the electronic filing and service providers to receive a portion of the fee revenues collected by the providers under that paragraph. Section (a)(1) would also specify that any revenue received by a court of appeal under that paragraph shall be remitted to the Appellate Court Trust Fund.

To ensure access for low-income persons, the statute would state that the fees authorized under (a)(1) shall not be charged to any party who has been granted a fee waiver. (Amended section 68930(b).)

Proposed paragraph (2) of subdivision (a). The institution of electronic filing imposes direct costs not only on the electronic filing service providers that assist the courts but also on the courts that are implementing e-filing. The new e-filing systems need to be integrated with the appellate courts' case management systems. Once developed and installed, the integrated e-filing processes must be operated, maintained, and updated. In addition to technology, costs for training, personnel, and other elements are associated with adopting electronic filing. To address these fiscal issues, section 68930 would be amended to include new subdivision (a)(2).

For the trial courts, the principal statute on electronic filing and service already includes express authority for the courts implementing e-filing to charge fees to recover their costs. (See Code Civ. Proc., § 1010.6(d)(1)(B).) Providing similar statutory authority for the appellate courts is appropriate. Hence, this proposal recommends amending Government Code section 68930 to include a provision that a court of appeal that contracts with electronic filing service providers to furnish and maintain an electronic filing and service system may "[c]harge a fee to recover its costs." (Amended Gov. Code, § 68930(a)(2).) The statute would specify that the cost recovery fees shall be collected by the electronic filing service provider and remitted to the court.

Again, the statute would state that the fees authorized under (a)(2) shall not be charged to any party who has been granted a fee waiver. (See amended Gov. Code, § 68930(b).)

Other statutory changes

Amended Government Code section 68929. Currently, Government Code section 68929 concerns the fee for comparing documents requiring a certification. This fee is in addition to the fee for certification. Under this proposal, the provision for the fee for certification, which is currently in section 68930, would be relocated to become subdivision (a) of section 68929. The current provisions in section 68929 on the fee for comparing documents would become subdivision (b) of that section. These changes have the benefit of locating all the certification fees in a single section while providing a place in section 68930 for the new fee provisions described above.

Amended Government Code section 68933. Government Code section 68933, which establishes the Appellate Court Trust Fund and identifies the fees collected by the Courts of Appeal and Supreme Court that are to be deposited in that fund, would be amended to specify that any fee revenue from amended section 68930(a)(1) shall be placed in the fund.

Alternatives Considered

One consideration was to leave the law unchanged. In that event, appellate fee issues would continue to be addressed through rules and contracts. To provide greater certainty and transparency, the better option is to have legislation enacted that will clarify the law, provide express statutory authority for all the fees described above, and specify how the fees collected are to be distributed.

Implementation Requirements, Costs, and Operational Impacts

The proposed legislation will require some implementation efforts. However, the legal clarity provided by the amended statutes should make it easier to identify, track, and distribute the fees collected.

Request for Specific Comments

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

- Do the proposed statutory changes achieve the goals of the legislation?
- Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions?
- Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal?

Attachments

1. Proposed amended Government Code sections 68929, 68930, and 68933, at page 5

Government Code sections 68929, 68930, and 68933 would be amended, effective January 1, 2019, to read:

68929.

(a) The fee for each certificate under seal is one dollar ($1).

(b) The fee for comparing any document requiring a certificate is five cents ($0.05) a folio, except that when the document to be compared was printed or typewritten from the same type or at the same time as the original on file and has been corrected in all respects to conform with it, such charge shall be one cent ($0.01) a folio. Such fee is in addition to the fee for the certificate.

68930.

~~The fee for each certificate under seal is one dollar ($1).~~

(a) A court of appeal that contracts with an electronic filing service provider to furnish and maintain an electronic filing and service system may do the following:

(1) Allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee. The court may contract with the electronic filing service provider to receive a portion of the fee revenues collected by the provider under this paragraph. Any revenues received by the court of appeal pursuant to this paragraph shall be remitted to the Appellate Court Trust Fund.

(2) Charge a fee to recover its costs. The cost recovery fee shall be collected by the electronic filing service provider and remitted to the court.

(b) The fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has been granted a fee waiver.

68933.

(a) There is hereby established the Appellate Court Trust Fund, the proceeds of which shall be used for the purpose of funding the courts of appeal and the Supreme Court.

(b) The fund, upon appropriation by the Legislature, shall be apportioned by the Judicial Council to the courts of appeal and the Supreme Court as determined by the Judicial Council, taking into consideration all other funds available to each court and the needs of each court, in a manner that promotes equal access to the courts, ensures the ability of the courts to carry out their functions, and promotes implementation of statewide policies.

(c) Notwithstanding any other provision of law, the fees listed in subdivision (d) shall all be transmitted for deposit in the Appellate Court Trust Fund within the State Treasury.

(d) This section applies to all fees collected pursuant to Section 68926, excluding that portion subject to Section 68926.3; subdivision (b) of Section 68926.1; and Sections 68927, 68928, 68929, 68930(a)(1), and 68932.

(e) The Appellate Court Trust Fund shall be invested in the Surplus Money Investment Fund, and all interest earned shall be allocated to the Appellate Court Trust Fund semiannually and used as specified in this section.

Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title
Proposed Legislation (Appellate Procedure): Content of the Record in Certain Juvenile Appeals

Proposed Rules, Forms, Standards, or Statutes
Amend Welf. & Inst. Code, § 827

Proposed by
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Action Requested
Review and submit comments by April 28, 2017

Proposed Effective Date
January 1, 2019

Contact
Heather Anderson, 415-865-7691
heather.anderson@jud.ca.gov

Executive Summary and Origin

This proposal would amend the statute that specifies who may access and copy records in a juvenile case file to clarify that people who are entitled to seek review of certain orders in juvenile proceedings or who are respondents in such appellate proceedings may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The proposal would also clarify that either the juvenile court or the Court of Appeal may permit such individuals to access and copy additional records in the juvenile case file. This proposal is based on a suggestion from the executive officer of a Court of Appeal.

Background

The confidentiality of juvenile case files is established by Welfare and Institutions Code section 827. This confidentiality is intended to protect the privacy rights of the child who is the subject of the juvenile court proceedings. Subdivision (a)(1) of this statue identifies those who may inspect and receive copies of a juvenile court case file.[1] These include the child who is the subject of the proceeding, the child's parent or guardian, the attorneys for the parties, the petitioning agency in a dependency action, or the district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

[1] You can access the full text of this section at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC*).

Ordinarily, to help resolve these matters as quickly as possible, when an appeal or petition is filed challenging a judgment or order in a juvenile proceeding, the record for that appellate proceedings is prepared and sent to the Court of Appeal and the parties very quickly. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court, rules 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as a notice of appeal or notice of intent to file a writ petition is filed. A premise of this practice seems to be that all the parties to the appellate proceeding are entitled under section 827 to inspect and receive copies of the records from the juvenile case file that would be included in the record.

Currently, however, some individuals who have been authorized to participate in juvenile proceedings and have the right to seek review of certain orders in those proceedings or who have a right to respond to an appeal or petition seeking such review are not entitled under section 827 to inspect or copy any records in a juvenile case file. This situation may occur, for example, when the appellant is a family member or other person who filed a petition seeking de facto parent status and is appealing the denial of that petition or who filed a petition under Welfare and Institutions Code section 388 to change, modify, or set aside a juvenile court order on grounds of change of circumstance or new evidence and is appealing the denial of that petition. In these cases, the juvenile courts and Courts of Appeal are following various procedures to decide, on a case-by-case basis, what records the parties to the appellate proceeding may receive. Doing so takes time and resources for the persons who are seeking review or who are respondents in such proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

The Proposal

The Appellate Advisory Committee is proposing an amendment to section 827 to provide that persons not otherwise entitled to access the juvenile case file under 827 who file a notice of appeal or petition challenging a juvenile court order or who are a respondent in such an appellate proceeding, may, for purposes of those appellate proceeding, access and copy those records to which they were previously given access by the juvenile court. The amendment would also provide that an order from either the juvenile court or the Court of Appeal is required for such individuals to access any other item in the juvenile court record.

The committee believes that this proposed amendment appropriately balances the policy considerations favoring confidentiality of juvenile case files against these individuals' need for access to these records for purposes of effectuating their right to participate in appellate proceedings in these cases. Since these individuals were already privy to the records in the juvenile court proceedings, the proposal would not dilute the confidentiality protections for the child. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would reduce barriers to their access to justice, delays in these proceedings, and time and expenses for the parties and the courts. The amendment would also

clarify the procedure for providing these individuals with access to any additional records from the juvenile case file in these circumstances.

Please note, to help commentators to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is attached.

Alternatives Considered

The committee considered several options for possible changes to the California Rules of Court to address this issue, including:

- Specifically requiring appellants to file a petition in the juvenile court requesting access to the juvenile case file and allowing the dismissal of the appeal if they fail to do so;

- Requiring the Court of Appeal to determine, on a case-by-case basis, what items from the juvenile case file to include in the record on appeal in these cases and who can access that record on appeal; and

- Setting the contents of the record on appeal in these cases by rule.

The committee ultimately concluded, however, that none of these approaches, by themselves was sufficient to address the issue.

Implementation Requirements, Costs, and Operational Impacts

The committee believes that this proposal will reduce burdens on litigants, trial courts, and the Courts of Appeal associated with preparing the record on appeal in these cases.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose? Is there an alternative approach for addressing this problem that would be preferable to the proposed amendment to section 827?
- Does the proposal appropriately identify the individuals who should have access to certain items from the juvenile case file without court order? Should other individuals be included? Is there a better way to identify who should have this access?
- Does the proposal appropriately identify the items from the juvenile case file that should be accessible without court order? Should other items be included?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments and Links

1. Proposed amendments to Welfare and Institutions Code section 827, at pages 5–10

Welfare and Institutions Code section 827 would be amended, effective January 1, 2019 to read:

§ 827. Limited dissemination of records; Misdemeanor violation of confidentiality provisions.

(a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) The minor's parents or guardian.

(E) The attorneys for the parties, judges, referees, other hearing officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.

(G) The superintendent or designee of the school district where the minor is enrolled or attending school.

(H) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(I) The State Department of Social Services, to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12, of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements, Section 10850.4, and paragraph (2).

(J) Authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to

the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(M) When acting within the scope of investigative duties of an active case, a statutorily authorized or court-appointed investigator who is conducting an investigation pursuant to Section 7663, 7851, or 9001 of the Family Code, or who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(N) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(O) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(P) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) (A) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the

court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing by a preponderance of evidence that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(B) This paragraph represents a presumption in favor of the release of documents when a child is deceased unless the statutory reasons for confidentiality are shown to exist.

(C) If a child whose records are sought has died, and documents are sought pursuant to this paragraph, no weighing or balancing of the interests of those other than a child is permitted.

(D) A petition filed under this paragraph shall be served on interested parties by the petitioner, if the petitioner is in possession of their identity and address, and on the custodian of records. Upon receiving a petition, the custodian of records shall serve a copy of the request upon all interested parties that have not been served by the petitioner or on the interested parties served by the petitioner if the custodian of records possesses information, such as a more recent address, indicating that the service by the petitioner may have been ineffective.

(E) The custodian of records shall serve the petition within 10 calendar days of receipt. If any interested party, including the custodian of records, objects to the petition, the party shall file and serve the objection on the petitioning party no later than 15 calendar days after service of the petition.

(F) The petitioning party shall have 10 calendar days to file any reply. The juvenile court shall set the matter for hearing no more than 60 calendar days from the date the petition is served on the custodian of records. The court shall render its decision within 30 days of the hearing. The matter shall be decided solely upon the basis of the petition and supporting exhibits and declarations, if any, the objection and any supporting exhibits or declarations, if any, and the reply and any supporting declarations or exhibits thereto, and argument at hearing. The court may solely upon its own motion order the appearance of witnesses. If no objection is filed to the petition, the court shall review the petition and issue its decision within 10 calendar days of the final day for filing the objection. Any order of the court

shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(5) Individuals listed in subparagraphs (A), (B), (C), (D), (E), (F), (H), and (I) of paragraph (1) may also receive copies of the case file. In these circumstances, the requirements of paragraph (4) shall continue to apply to the information received.

(6) Any individual not listed in paragraph (1) who files a notice of appeal or writ petition challenging a juvenile court order or who is a respondent in such an appeal or writ proceeding, may, for purposes of that appeal or writ proceeding, inspect and copy any records in the juvenile case file to which the individual was previously granted access by the juvenile court, including the record on appeal that contains such records, and, on order of either the judge of the juvenile court or the Court of

Appeal, such individual may inspect and copy any other record or portion thereof in the juvenile case file or appellate record. The requirements of paragraph (4) shall continue to apply to documents received under this paragraph. The Judicial Council shall adopt rules to implement this paragraph.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) (A) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

(B) Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

(C) An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of

attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) (1) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: "Unlawful Dissemination Of This Information Is A Misdemeanor." Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18 years, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

(2) Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a "juvenile case file" means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

(f) The persons described in subparagraphs (A), (E), (F), (H), (K), (L), (M), and (N) of paragraph (1) of subdivision (a) include persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.

(g) A case file that is covered by, or included in, an order of the court sealing a record pursuant to Section 781 or 786 may not be inspected except as specified by Section 781 or 786.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title Proposed Legislation (Criminal Procedure): Electronic Arrest Warrants	Action Requested Review and submit comments by April 28, 2017
Proposed Rules, Forms, Standards, or Statutes Amend Penal Code section 817	Proposed Effective Date January 1, 2019
Proposed by Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Contact Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 817 to eliminate several telephonic confirmation requirements between the magistrate and officer for arrest warrants issued electronically. This proposal would align section 817 with recent amendments to Penal Code section 1526, which governs the electronic issuance of search warrants.

Background

Penal Code section 817[1] governs the issuance of arrest warrants. For arrest warrants issued through e-mail, computer server, or facsimile equipment, section 817 currently requires up to three telephonic conversations between a magistrate and an officer. A magistrate must first take an officer's oral oath by phone before the officer electronically transmits a signed probable cause declaration, a proposed arrest warrant, and supporting documents to the magistrate. (Pen. Code, § 817(c)(2)(A).) After receiving the documents, the magistrate must telephonically confirm receipt and verify legibility and authenticity. (*Id.*, § 817(c)(2)(B).) If the magistrate decides to issue the warrant and electronically transmits a signed warrant to the officer, the officer must telephonically acknowledge receipt. (*Id.*, § 817(c)(2)(D).)

The Proposal

By eliminating several telephonic confirmation requirements, this proposal would align section 817 with recent amendments to section 1526, which governs the electronic issuance of search warrants. (See Assem. Bill 39; Stats. 2015, ch. 193.)

[1] All future references are to the Penal Code.

Similar to section 1526, proposed section 817 would require only one telephonic conversation between the officer and the magistrate to issue an arrest warrant electronically. That conversation would occur after the officer has electronically transmitted the proposed arrest warrant and all supporting declarations and documents to the magistrate. During that conversation, the magistrate would (1) take the officer's oral oath, (2) confirm receipt of the proposed arrest warrant and all supporting declarations and attachments, (3) verify the receipt and legibility of all pages, and (4) verify the authenticity of the officer's signature.

This proposal would eliminate the current requirements of telephonic conversations between the officer and the magistrate before the officer sends the proposed arrest warrant and after the officer receives the signed arrest warrant from the magistrate. Eliminating these steps is intended to promote procedural efficiencies by streamlining and modernizing the warrant process.

Lastly, this proposal would make additional amendments to section 817 to require only one telephonic conversation between the magistrate and officer. Similar to section 1526, proposed section 817 would no longer require that the magistrate print out the warrant or telephonically authorize the officer to write words "duplicate original" on the officer's copy. Proposed section 817 would also provide that the warrant received by the officer, instead of the warrant printed by the magistrate, be deemed the original warrant.

Alternatives Considered

The committee considered proposing amendments that would allow for the electronic issuance of arrest and search warrants without any telephonic communication between the officer and the magistrate. It decided instead to require at least one telephonic conversation to facilitate the magistrate's questioning of the officer, ensure accountability, and confirm the reliability of the technology used to transmit the documents.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected. To the contrary, the committee anticipates that this proposal would increase efficiencies by eliminating unnecessary procedural steps and by aligning the procedures for issuing arrest and search warrants.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 12 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed amendments to Penal Code section 817, at pages 4–5

Effective January 1, 2018, Penal Code section 817 would be amended to read:

§ 817.

(a)–(b) * * *

(c) In lieu of the written declaration required in subdivision (b), the magistrate may take an oral statement under oath under one of the following conditions:

(1) * * *

(2) The oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, or telephone and computer server, under all of the following conditions:

(A) The oath is made during a telephone conversation with the magistrate, after ~~which~~ the declarant ~~shall~~ has signed his or her declaration in support of the warrant of probable cause for arrest and transmitted the proposed arrest warrant and all supporting declarations and documents to the magistrate. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the warrant, he or she shall:

~~(i) Cause the warrant, supporting declarations, and attachments to be subsequently printed if those documents are received by electronic mail or computer server.~~

(ii) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.

(iii) Note on the warrant the exact date and time of the issuance of the warrant.

(iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

~~The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.~~

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed warrant to the declarant who shall telephonically acknowledge its receipt. ~~The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.~~ The completed search warrant, as signed by the magistrate and received by the affiant, shall be deemed to be the original warrant.

(d)–(h) * * *

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title
Proposed Legislation (Technology): Electronic Service

Proposed Rules, Forms, Standards, or Statutes
Amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a

Proposed by
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Action Requested
Review and submit comments by April 28, 2017

Proposed Effective Date
January 1, 2019

Contact
Andrea Jaramillo, 916-263-0991
andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) recommends amending section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure. This legislative proposal would (1) authorize the courts to electronically serve a written demand for payment on the drawer of a bad check when the court is the payee of the check and the drawer of the check is accepting electronic service in the matter to which the check pertains; (2) authorize a party asserting a real property claim to electronically serve a notice of pendency of the action on other parties or owners when those parties or owners are already accepting electronic service in the action; (3) authorize electronic service of notices of intention to move for a new trial or vacate judgment; and (4) amend certain deadlines tied to dates of "mailing" to be tied instead to dates of "service." The proposal originates from ITAC's modernization project to amend statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices.

Background

Code of Civil Procedure section 1010.6 (section 1010.6) authorizes electronic service in the superior courts. Under section 1010.6, the Judicial Council implemented rules for both permissive and mandatory electronic service. Legislation that the Judicial Council is sponsoring in 2017 will, if passed by the Legislature and signed by the Governor, codify certain electronic service provisions currently covered in the rules, including the addition of Code of Civil Procedure section 1013b to govern proof of electronic service. (Judicial Council of Cal., Adv.

Com. Rep., *Judicial Council–Sponsored Legislation: Electronic Filing, Service, and Signatures* (Oct. 28, 2016).[1])

The Proposal

This proposal builds on prior efforts to provide clarity about and foster the use of electronic service. To these ends, the proposal amends the Civil Code and the Code of Civil Procedure as detailed below.

Proposed amendments to Civil Code section 1719 would authorize the courts to electronically serve a written demand for payment when the court is the payee of a check passed on insufficient funds and the drawer of the check consents to or is require to accept electronic service

Civil Code section 1719 governs procedures and remedies available to a payee of a check passed on insufficient funds. Remedies include service charges and treble damages owed to the payee. (Civ. Code, § 1719 (a)–(b).) For damages, payees must make written demand for payment. (Civ. Code, § 1719(b).) When the payee is a court, Civil Code section 1719(g) allows only mailing of the demand and, in a dispute, allows damages only when a copy of the written demand is entered into evidence along with the "certificate of mailing" in the form provided for in Code of Civil Procedure section 1013a(4).

Civil Code section 1719(g) is at odds with Code of Civil Procedure section 1010.6(a)(3), which allows courts to "electronically serve any document issued by the court" when personal service is not required and when a party has consented or is required to accept electronic service. To resolve this incongruity, the proposal amends Civil Code section 1719(g) to add a provision that clearly permits a court to electronically serve a written demand on the drawer of a bad check when the court is the payee of a check passed on insufficient funds and the check relates to an action in which the drawer has consented or is required to accept electronic service. It also clarifies that proof of electronic service rather than proof of mailing is allowed. These changes will eliminate the need for a court to mail a demand when the drawer is already accepting electronic service of documents in the case to which the check pertains. This is a narrow exception to the requirement of mailing a demand.

The proposed amendment cross-references Code of Civil Procedure section 1013b, which will govern proof of electronic service and is part of Judicial Council–sponsored legislation in 2017. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 6–7, 13.) If the legislation passes, section 1013b will supplant most of rule 2.251(i) of the California Rules of Court, which currently covers proof of electronic service. If the legislation does not pass, this proposal can be revised to amend section 1719(g) to cross-reference the California Rules of Court rather than Code of Civil Procedure section 1013b.

[1] The legislative proposal was approved as part of the consent agenda of the Judicial Council's December meeting. (Judicial Council of Cal., agenda (Dec. 16, 2016), *https://jcc.legistar.com/View.ashx?M=A&ID=463484&GUID=8E4B8E76-2D88-480D-843A-6576CC996914* (as of Dec. 27, 2016).

Proposed amendments to Code of Civil Procedure sections 405.22 and 405.23 would authorize electronic service of a notice of pendency of an action involving a claim to real property where the adverse parties or owners consent or are required to accept electronic service

Code of Civil Procedure sections 405.22 and 405.23 govern service requirements for a notice of pendency of an action involving a claim to real property. A notice of pendency may be recorded in the office of the recorder in the county (or counties) in which the real property is situated. (Code Civ. Proc., § 405.20.) Such a notice is void and invalid as to any adverse party or owner of record absent proper service and proof of service. (Code Civ. Proc., § 405.23.) Under sections 405.22 and 405.23, the notice of pendency must be mailed by registered or certified mail, and the proof of service must be in the form and content specified by Code of Civil Procedure section 1013a, which governs proof of service by mail.

The proposal amends Code of Civil Procedure section 405.22 to clearly authorize a claimant to use electronic service for a notice of pendency in lieu of mailed service when the parties to whom the real property claim is adverse and owners of record have consented or are required to accept electronic service in the action to which the notice pertains. The proposal also amends Code of Civil Procedure section 405.23 to allow for proof of electronic service and not just proof of service by mail. These amendments are narrow in scope but will eliminate the need for mailing of a notice of pendency in situations where the persons involved are already accepting electronic service in the underlying action.

The proposed amendment to Code of Civil Procedure section 405.22 cross-references Code of Civil Procedure section 1013b, which is part of Judicial Council–sponsored legislation in 2017 and will govern proof of electronic service. If section 1013b is not enacted into law, this proposal can be revised to amend section 405.23 to cross-reference the California Rules of Court governing proof of electronic service instead.

Proposed amendments to Code of Civil Procedure section 594 would authorize electronic service of a notice of trial or hearing

Code of Civil Procedure section 594 allows a party to bring an issue to trial or hearing in the absence of the adverse party. (Code Civ. Proc., § 594(a).) When the issue to be tried is an issue of fact, however, the court must first be satisfied that the adverse party had adequate notice (15 days for most trials and 5 days for unlawful detainers). (*Ibid.*) The Code of Civil Procedure states that the notice to the adverse party "shall by served by mail" by the court clerk, but if the court clerk does not do so, any party may serve the notice "by mail." (§ 594(b).) This proposal amends section 594 to clearly authorize electronic service and proof of electronic service in accordance with Code of Civil Procedure sections 1010.6 and 1013b.

The proposed amendment to section 594 cross-references Code of Civil Procedure section 1013b, which is part of Judicial Council–sponsored legislation in 2017 and which will govern proof of electronic service. If section 1013b is not enacted into law, this proposal can be revised

to amend section 594 to cross-reference the California Rules of Court governing proof of electronic service instead.

Proposed amendments to Code of Civil Procedure sections 659, 660, and 663a would replace "mailing" with "service" to ensure consistency between these sections and Code of Civil Procedure section 664.5

In 2017, the Judicial Council will be sponsoring legislation to amend Code of Civil Procedure section 664.5 to allow notices of entry of judgment to be electronically served rather than mailed or personally served in certain actions. (Judicial Council of Cal., Adv. Com. Rep., *supra*, at pp. 6, 9.) Code of Civil Procedure sections 659, 660, and 663a all cross-reference section 664.5, and the proposal amends those provisions for consistency.

Amending Code of Civil Procedure section 659. Section 659 refers to section 664.5 in setting the deadline to file a notice of intention to move for a new trial, and specifically keys one deadline to the date of "mailing" of the notice of entry of judgment. (Code Civ. Proc., § 659(a)(2).) To keep sections 664.5 and 659 consistent, the proposal strikes "mailing" from section 659 and replaces it with "service." In addition, subsection (b) of section 659 states that the deadlines to file cannot be extended by order, stipulation, or provisions of the Code of Civil Procedure that extend time when service is by mail. Under Code of Civil Procedure section 1010.6(a)(4)(A)(i), electronic service also does not extend the time for filing a notice of intention to move for a new trial. Accordingly, the proposal amends section 659(b) to add that time cannot be extended by electronic service.

Amending Code of Civil Procedure section 660. Section 660 cross-references section 664.5 in setting a jurisdictional deadline for a court to rule on a motion for a new trial, and specifically keys one deadline to the date of "mailing" of the notice of entry of judgment. To keep sections 664.5 and 660 consistent, the proposal strikes "mailing" from section 660 and replaces it with "service."

Amending Code of Civil Procedure section 663a. Section 663a refers to section 664.5 in setting the deadline to file a notice of intention to move to vacate judgment, and specifically keys one deadline to the date of "mailing" of the notice of entry of judgment. (Code Civ. Proc., § 663a(a)(2).) Section 663a also cross-references section 664.5 in setting a jurisdictional deadline for a court to rule on a motion to vacate judgment, and specifically ties one deadline to the date of "mailing" of the notice of entry of judgment. (Code Civ. Proc., § 663a(b).) To keep sections 664.5 and 663a consistent, the proposal strikes "mailing" from section 663a and replaces it with "service."

Finally, subsection (c) of section 663a states that the deadlines to file cannot be extended by order, stipulation, or provisions of the Code of Civil Procedure that extend time when service is by mail. Under Code of Civil Procedure section 1010.6(a)(4)(A)(ii), electronic service also does not extend the time for filing a notice of intention to move to vacate judgment. Accordingly, the proposal amends section 663a(c) to add that time cannot be extended by electronic service.

Alternatives Considered

The alternative to the proposed amendments would be to preserve the status quo. However, the status quo is inconsistent with ITAC's project to modernize statutes to promote modern e-business practices and with the goal to ensure cohesion between Judicial Council–sponsored legislation and related statutes.

Implementation Requirements, Costs, and Operational Impacts

The proposal should provide more consistency and clarity in the use of electronic service in the areas covered by Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a. The proposal is unlikely to result in additional costs.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would three and a half months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Text of proposed amendments to Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a, at pages 6–11

Section 1719 of the Civil Code and sections 405.22, 405.23, 594, 659, 660, and 663a of the Code of Civil Procedure would be amended, effective January 1, 2019, to read:

Civil Code, § 1719.

(a)(1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars ($25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars ($35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars ($100) nor more than one thousand five hundred dollars ($1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b)–(c) * * *

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand that, in that case, shall have been sent to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e)–(f) * * *

(g)(1) Notwithstanding subdivision (a), if the payee is the court, the written demand for payment described in subdivision (a) may be mailed to the drawer by the court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by the court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions.

(2) In lieu of the mailing provisions of (g)(1), if the payee is the court and the check passed on insufficient funds relates to an action in which the drawer has consented to accept or is required to accept electronic service pursuant to Section 1010.6 of the Code of Civil Procedure, the court clerk may serve the written demand electronically. Notwithstanding subdivision (d), in the case of a stop payment where the demand is electronically served by the court clerk, a court may not award damages or costs pursuant to subdivision (d) unless the court receives into evidence a copy of the written demand, and a certificate of electronic service by the court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure as modified for electronic service in accordance with Section 1013b of the Code of Civil Procedure.

(3) For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h)–(k) * * *

Code of Civil Procedure, § 405.22.

(a) Except in actions subject to Section 405.6, the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll. If there is no known address for service on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to that effect may be recorded instead of the proof of service required above, and the service on that party or owner shall not be required. Immediately following recordation, a copy of the notice shall also be filed with the court in which the action is pending. Service shall also be made immediately and in the same manner upon each adverse party later joined in the action.

(b) In lieu of the mailing provisions of (a), a claimant may serve the notice electronically in accordance with Section 1010.6 upon the parties to whom the real property claim is adverse and the owners of record provided that the parties to whom the real property claim is adverse and the owners of record have consented to accept or are required to accept electronic service pursuant to Section 1010.6 in the action to which the notice pertains.

Code of Civil Procedure, § 405.23.

Any notice of pendency of action shall be void and invalid as to any adverse party or owner of record unless the requirements of Section 405.22 are met for that party or owner and a proof of service in the form and content specified in Section 1013a for service by mail or Section 1013b for electronic service has been recorded with the notice of pendency of action.

Code of Civil Procedure, § 594.

(a) In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial or five days' notice of the trial in an unlawful detainer action as specified in subdivision (b). If the adverse party has served notice of trial upon the party seeking the dismissal, verdict, or judgment at least five days prior to the trial, the adverse party shall be deemed to have had notice.

(b) The notice to the adverse party required by subdivision (a) shall be served electronically in accordance with Section 1010.6 or by mail on all the parties by the clerk of the court not less than 20 days prior to the date set for trial. In an unlawful detainer action where notice is served electronically in accordance with Section 1010.6 or by mail, that service shall be electronically served or mailed not less than 10 days prior to the date set for trial. If notice is not served by the clerk as required by this subdivision, it may be served electronically in accordance with Section 1010.6 or by mail by any party on the adverse party not less than 15 days prior to the date set for trial, and in an unlawful detainer action where notice is served electronically in accordance with Section 1010.6 or by mail, that service shall be electronically served or mailed not less than 10 days prior to the date set for trial. The time provisions of Section 1010.6 and Section 1013 shall not serve to extend the notice of trial requirements under this subdivision for unlawful detainer actions. If notice is served by the clerk, proof thereof may be made by introduction into evidence of the clerk's certificate pursuant to subdivision (3) of Section 1013a, compliance with Section 1013b when service is electronic, or other competent evidence. If notice is served by a party, proof may be made by introduction into evidence of an affidavit or certificate pursuant to subdivision (1) or (2) of Section 1013a, compliance with Section 1013b when service is electronic, or other competent evidence. The provisions of this subdivision are exclusive.

Code of Civil Procedure, § 659.

(a) The party intending to move for a new trial shall file with the clerk and serve upon each adverse party a notice of his or her intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court, or both, either:

(1) After the decision is rendered and before the entry of judgment.

(2) Within 15 days of the date of ~~mailing~~ service of the notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest; provided, that upon the filing of the first notice of intention to move for a new trial by a party, each other party shall have 15 days after the service of that notice upon him or her to file and serve a notice of intention to move for a new trial.

(b) That notice of intention to move for a new trial shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The times specified in paragraphs (1) and (2) of subdivision (a) shall not be extended by order, ~~or~~ stipulation, ~~or by~~ those provisions of Section 1013 that extend the time for exercising a right or doing an act where service is by mail~~.~~, or those provisions of Section 1010.6 that extend the time for exercising a right or doing an act where service is electronic.

Code of Civil Procedure, § 660.

On the hearing of such motion, reference may be had in all cases to the pleadings and orders of the court on file, and when the motion is made on the minutes, reference may also be had to any depositions and documentary evidence offered at the trial and to the report of the proceedings on the trial taken by the phonographic reporter, or to any certified transcript of such report or if there be no such report or certified transcript, to such proceedings occurring at the trial as are within the recollection of the judge; when the proceedings at the trial have been phonographically reported, but the reporter's notes have not been transcribed, the reporter must upon request of the court or either party, attend the hearing of the motion and shall read his notes, or such parts thereof as the court, or either party, may require.

The hearing and disposition of the motion for a new trial shall have precedence over all other matters except criminal cases, probate matters and cases actually on trial, and it shall be the duty of the court to determine the same at the earliest possible moment.

Except as otherwise provided in Section 12a of this code, the power of the court to rule on a motion for a new trial shall expire 60 days from and after the ~~mailing~~ service of the notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 60 days from and after service on the moving party by any party of written notice of the entry of the judgment, whichever is earlier, or if such notice has not theretofore been given, then 60 days after filing of the first notice of intention to move for a new trial. If such motion is not determined within said period of 60 days, or within said period as thus extended, the effect shall be a denial of the motion without further order of the court. A motion for a new trial is not determined within the meaning of this section until an order ruling on the motion (1) is entered in the permanent minutes of the court or (2) is signed by the judge and filed with the clerk. The entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed. The minute entry shall in all cases show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

Code of Civil Procedure, § 663a.

(a) A party intending to make a motion to set aside and vacate a judgment, as described in Section 663, shall file with the clerk and serve upon the adverse party a notice of his or her intention, designating the grounds upon which the motion will be made, and specifying the particulars in which the legal basis for the decision is not consistent with or supported by the facts, or in which the judgment or decree is not consistent with the special verdict, either:

(1) After the decision is rendered and before the entry of judgment.

(2) Within 15 days of the date of ~~mailing~~ service of the notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest.

(b) Except as otherwise provided in Section 12a, the power of the court to rule on a motion to set aside and vacate a judgment shall expire 60 days from the ~~mailing~~ service of the notice of entry of judgment by the clerk of the court pursuant to Section 664.5, or 60 days after service upon the moving party by any party of written notice of entry of the judgment, whichever is earlier, or if that notice has not been given, then 60 days after filing of the first notice of intention to move to set aside and vacate the judgment. If that motion is not determined within the 60-day period, or within that period, as extended, the effect shall be a denial of the motion without further order of the court. A motion to set aside and vacate a judgment is not determined within the meaning of this section until an order ruling on the motion is (1) entered in the permanent minutes of the court, or (2) signed by the judge and filed with the clerk. The entry of an order to set aside and vacate the judgment in the permanent minutes of the court shall constitute a determination of the motion even though that minute order, as entered, expressly directs that a written order be prepared, signed, and filed. The minute entry shall, in all cases, show the date on which the order actually is entered in the permanent minutes, but failure to comply with this direction shall not impair the validity or effectiveness of the order.

(c) The provisions of Section 1013 extending the time for exercising a right or doing an act where service is by mail and the provisions of Section 1010.6 extending the time for exercising a right or doing an act where service is electronic shall not apply to extend the times specified in paragraphs (1) and (2) of subdivision (a).

(d)–(e) * * *

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title
Proposed Legislation: Temporary Emergency Gun Violence Restraining Orders

Proposed Rules, Forms, Standards, or Statutes
Amend Pen. Code, §§ 18140 and 18145

Proposed by
Civil and Small Claims Advisory Committee
Hon. Raymond M. Cadei, Chair

Action Requested
Review and submit comments by April 28, 2017

Proposed Effective Date
January 1, 2019

Contact
Jenny Wald, 415-865-8713
jenny.wald@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes that the statutes establishing the procedure for obtaining emergency gun violence restraining orders be amended. The amendments would replace the requirement for compliance with procedures for the issuance of oral search warrants under Penal Code section 1526 when these orders are "obtained orally" with the requirement that the law enforcement officer memorialize and sign an affidavit under oath reciting the oral statements provided to the judicial officer. These amendments are intended to clarify the requirements for obtaining these orders and to promote consistency and uniformity by adopting similar requirements that apply to domestic violence cases under the Family Code.

This proposal was developed in response to concerns raised last year by a superior court judge.

Background

Assembly Bill 1014 (Stats. 2014, ch. 872), which became operative on January 1, 2016, established a civil restraining order process to provide law enforcement and immediate family members the means to remove firearms and ammunition from the hands of persons who present a danger to themselves, others, and the public. The legislation follows gun violence laws developed by other states that authorize warrants for the seizure of firearms under specified statutory circumstances. AB 1014 is also modeled in part on California's Domestic Violence Prevention Act (DVPA) (Fam. Code, § 6200 et seq.; see Pen. Code, §§ 18125–18145, 18150–18165, and 18170–18197.)

Penal Code section 18145(a)(1) requires that a temporary emergency gun violence restraining order (GVRO) "shall be obtained by submitting a written petition to the court." However, under subdivision (a)(2), if "time and circumstances" do not permit the submission of a written petition, the court may issue the order "in accordance with the procedures for obtaining an oral search warrant" under Penal Code section 1526(b). Subdivision (b) requires that the warrant issue on an "oral statement under oath" that is recorded or transcribed under alternative conditions.[1]

In contrast, under Family Code section 6241, a judicial officer is authorized to grant a domestic violence emergency protective order (EPO) "*orally, by telephone or otherwise, . . .* at all times whether or not the court is in session" (italics added). To obtain an EPO under the DVPA, the law enforcement officer is *not required* to submit a written petition or an affidavit, or to provide an oral statement under oath. All that is required is the officer's *oral assertion* that "reasonable grounds" exist for issuance of the domestic violence EPO.[2]

Although it does not explicitly so state, form EPO-002, *Firearms Emergency Protective Order*, is intended to implement the process under Penal Code section 18145(a)(2) for obtaining an emergency GVRO orally. One of the concerns raised by the superior court judge is whether that form can serve as the written petition submitted to the court for purposes of Penal Code section 18145(a)(1). The other concern raised is that the form does not indicate compliance with the requirement of Penal Code section 18145(a)(2) for following the procedures of Penal Code section 1526 relating to oral search warrants if the order is obtained orally.

In response to the judge's second concern, the committee proposes amending Penal Code section 18145(a) and 18140(a). The proposal maintains the requirement for submission of a "written petition" under Penal Code section 18145(a)(1). However, the proposal would replace the requirement of Penal Code section 18145(a)(2) that oral requests be obtained according to the procedures for oral search warrant procedures under Probate Code section 1526 with requirements that the law enforcement officer memorialize and sign an affidavit under oath reciting the oral statements provided to the judicial officer that are the basis for the emergency order.

The Proposal

The proposal recommends:

- Amending subdivision (a)(1) of Penal Code section 18145 to clarify that the petition shall be "made in writing" and "based on a signed affidavit submitted to a judicial officer."

[1] "In lieu of the written affidavit required in subdivision (a), the magistrate *may take* an *oral statement under oath* under one of the following conditions: ¶ (1) The oath shall be made under penalty of perjury and *recorded and transcribed*. The *transcribed statement shall be deemed to be an affidavit* for the purposes of this chapter." Pen. Code, § 1526(b), italics added.

[2] See form EPO-001, *Emergency Protective Order (CLETS-EPO)*; Fam. Code, § 6250.

- Amending subdivision (a)(2) of Penal Code section 18145 to provide that a temporary emergency GVRO may issue "orally by a judicial officer based on the statements of a law enforcement officer in accordance with subdivision (a) of Section 18140."

- Amending subdivision (a) of Penal Code section 18140 to require that the law enforcement officer "memorialize and sign an affidavit under oath reciting the oral statements provided to the judicial officer."

The proposed amendments would resolve the concern that form EPO-002 does not include language to indicate compliance with the existing Penal Code section 18145(a)(2) requirement for following the Penal Code section 1526 procedure to obtain oral search warrants if the order is obtained orally. The amendments would also clarify the process for issuance of temporary emergency GVROs and eliminate the complicated procedures that may confuse parties and interfere with the court's ability to efficiently process and issue emergency orders. Further, it would promote consistency and uniformity by adopting similar requirements specified by the Legislature that apply to emergency orders obtained orally in domestic violence cases under Family Code section 6241.

The proposal retains the essential requirements of the original statutes. Specifically, subdivisions (a)(1) and (a)(2) of Penal Code section 18145 are structured on the procedures for issuance of search warrants under subdivisions (a) and (b) of Penal Code section 1526. The key requirement here is that the warrant must issue on a statement made in a "signed affidavit" in writing or an "oral statement under oath" that is "recorded and transcribed."[3]

Alternatives Considered

The committee considered creating a separate form for the written petition to implement the requirement of Penal Code section 18145(a)(1). The committee concluded that a separate form is not necessary, because the existing form EPO-002 complies with the statutory requirements for use as a written petition submitted to the court. The committee also reviewed a proposal for revisions to the form intended to satisfy the requirements of Penal Code section 18145(a)(2) for orders obtained orally. Specifically, the revisions were to expressly indicate on the form that the officer complied with the statute and that the "oral statements" were made to the judicial officer "under oath." The committee decided not to recommend this proposal.

Implementation Requirements, Costs, and Operational Impacts

The purpose of the proposal is to clarify the procedures and statutory requirements for issuance of temporary emergency GVROs. There may be one-time costs associated with updating educational and/or practice guide materials.

[3] Pen. Code, § 1526(b) enumerates alternative conditions for the oral statements to be recorded and transcribed. The "sworn oral statement" may be recorded by a court reporter, and a certified transcript filed with the clerk of the court; or the oath may be made during a telephone conversation, with the affiant's signature in the form of a digital signature or an electronic signature if transmitted by email, and with the magistrate confirming receipt.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts?
- Would a separate Judicial Council form be useful to implement the requirement under Penal Code section 18145(a)(1) for the submission of a "written petition" to the court? (Please describe).

Attachments and Links

1. Penal Code sections 18140 and 18145, at page 5

Penal Code sections 18140 and 18145 would be amended, effective January 1, 2019, to read:

§ 18140. Requirements for law enforcement officer seeking order

A law enforcement officer who requests a temporary emergency gun violence restraining order shall do all of the following:

(a) If the order is obtained orally, memorialize and sign an affidavit under oath reciting the oral statements provided to the judicial officer and memorialize the order of the court on the form approved by the Judicial Council.

(b) Serve the order on the restrained person, if the restrained person can reasonably be located.

(c) File a copy of the order with the court as soon as practicable after issuance.

(d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

§ 18145. Petition; Designation of judge to issue orders

(a)

(1) Except as provided in paragraph (2), the petition for a temporary emergency gun violence restraining order shall be ~~obtained by submitting a written petition to the court~~ in writing and based on a signed affidavit submitted to a judicial officer.

(2) If time and circumstances do not permit the submission of a written petition, a temporary emergency gun violence restraining order may be issued ~~in accordance with the procedures for obtaining an oral search warrant described in Section 1526~~ orally by a judicial officer based on the statements of a law enforcement officer in accordance with subdivision (a) of Section 18140.

(b) The presiding judge of the superior court of each county shall designate at least one judge, commissioner, or referee who shall be reasonably available to issue temporary emergency gun violence restraining orders when the court is not in session.

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

LEG17-__

Title
Proposed Legislation (Traffic): Uniform Hourly Rate for Community Service in Lieu of Infraction Fine

Proposed Rules, Forms, Standards, or Statutes
Amend Pen. Code, § 1209.5

Proposed by
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Action Requested
Review and submit comments by April 28, 2017

Proposed Effective Date
January 1, 2019

Contact
Jamie Schechter, 415-865-5327
jamie.schechter@jud.ca.gov

Executive Summary and Origin

The Traffic Advisory Committee proposes amending Penal Code section 1209.5 to provide a uniform rate throughout the state for converting infraction fines into community service hours. Specifically, the committee proposes a uniform hourly rate of double the California state minimum wage for community service performed in lieu of paying infraction fines. The committee developed this proposal in response to Judicial Council directives to consider recommendations to promote access to justice in all infraction cases.

Background

Penal Code section 1209.5 governs the imposition of community service in lieu of fines for infraction convictions. Section 1209.5 provides that a court may sentence a defendant to perform community service if payment of the total fine would pose a hardship on the defendant or his or her family. However, each court determines its own hourly rate for defendants who perform community service, leading to different rates throughout the state.

The Proposal

The proposed amendment is designed to provide a uniform and equitable hourly rate for community service in lieu of infraction fines throughout the state. By doing so, it is intended to promote access to justice.

Effective January 1, 2017, California has two schedules for minimum wage, depending on whether the employer has (1) 25 or fewer employees, or (2) more than 25 employees. (Lab.

Code, § 1182.12.) This proposal would equate the applicable community service rate to double the lowest schedule for minimum wage. The lowest schedule is set to increase to $11 per hour in 2019, the year this proposal would go into effect. (Lab. Code, § 1182.12.) Accordingly, effective January 1, 2019, for each one hour of community service performed, a defendant would be entitled to a credit of $22 to be deducted from his or her total fine.

Alternatives Considered

The committee considered various formulas before approving this proposal. It considered recommending a specific dollar amount for each hour or each day of community service, but determined that tying the amount to the state minimum wage would help ensure that the rate remained consistent with inflation. The committee also considered proposing only the state minimum wage for the rate of conversion, but determined that double the minimum wage would benefit more defendants for whom payment of the fine poses a hardship. Lastly, the committee considered proposing the higher of the two state minimum wages—the minimum wage for employers with more than 25 employees—but determined that the lower of the two was appropriate given that the rate is to be doubled.

The committee also considered recent legislative changes resulting from Assembly Bill 2839.[1] AB 2839 added language to both Penal Code sections 1205, governing payment of fines and imprisonment for failure to pay fines, and 2900.5, governing custody credit for imprisonment for misdemeanors and felonies, stating "[i]f an amount of the base fine is not satisfied by jail credits, *or by community service,* the penalties and assessments imposed on the base fine shall be reduced by the percentage of the base fine that was satisfied." (Emphasis added.) It is not clear whether these amendments alter the way community service is calculated. One interpretation could require courts to apply community service rates to the base fine, rather than the total fine, which includes the imposition of assessments, fees, and penalties, therefore extending the amendments of AB 2839 to section 1209.5. The committee considered these legislative changes in developing this proposal. They recognized that potential legal developments in this area may require modifications to the proposal.

Implementation Requirements, Costs, and Operational Impacts

It is possible the proposal could increase the number of defendants who request community service, which could increase workload for courts in administering community service programs.

[1] Assem. Bill 2839 (Stats. 2016, ch. 769).

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would the development of forms to assess hardship and to show the calculation of the hourly rate for each case be helpful? If so, why?
- How well would this proposal work in courts of different sizes?
- Would recent changes to Penal Code sections 1205 and 2900.5 affect how courts implement this proposal? If so, how?
- Please comment on how the proposal may impact the implementation of community service in your jurisdiction.

Attachments and Links

1. Text of proposed amendment to Penal Code section 1209.5, at page 4

Penal Code section 1209.5 would be amended, effective January 1, 2019, as follows:

§ 1209.5

Notwithstanding any other provision of law, any person convicted of an infraction may, upon a showing that payment of the total fine would pose a hardship on the defendant or his or her family, ~~be sentenced to~~ perform community service in lieu of the total fine that would otherwise be imposed. ~~The defendant shall perform community service at the hourly rate applicable to community service work performed by criminal defendants.~~ For purposes of this section, the term "total fine" means the bail or base fine and all assessments, penalties, and additional moneys to be paid by the defendant. For purposes of this section, the hourly rate applicable to community service work by criminal defendants for total fines of up to two thousand dollars ($2,000) shall be double the lowest schedule for California minimum wage. For a total fine of more than two thousand dollars ($2,000), the rate of conversion shall be determined by dividing the total fine by the number of hours of community service ordered by the court to be performed in lieu of the total fine. A court may have a local rule to increase the amount that is credited for each hour of community service.