JUDICIAL COUNCIL
OF CALIFORNIA

POLICY COORDINATION
AND LIAISON COMMITTEE

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POLICY COORDINATION AND LIAISON COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

August 31, 2017
4:30 p.m.
Teleconference

Advisory Body Members Present:	Hon. Gary Nadler, Vice-Chair; Hon. Brian J. Back; Hon. Samuel K. Feng; Hon. Harry E. Hull, Jr.; Hon. Dean T. Stout; Hon. Scott M. Gordon; Mr. Patrick M. Kelly; Ms. Donna Melby; and, Ms. Kimberly Flener.
Advisory Body Members Absent:	Hon. Kenneth K. So, Chair.
Others Present:	Hon. Todd Bottke, Judicial Council member and president of the California Judges Association; **Judicial Council staff:** Mr. Doug Denton and Ms. Anne Ronan; **Committee staff:** Mr. Cory Jasperson, Ms. Laura Speed, Mr. Daniel Pone, Mr. Alan Herzfeld, Ms. Monica LeBlond, and Ms. Yvette Casillas-Sarcos.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:34 p.m., and took roll call. No written comments were received.

Approval of Minutes

The advisory body reviewed and approved the minutes of the August 10, 2017, and August 15, 2017, Policy Coordination and Liaison Committee meetings. (*Hon. Harry E. Hull, Jr., abstained.)*

DISCUSSION AND ACTION ITEMS

Item 1

Proposal for Judicial Council-sponsored Legislation

Disposition of the West Los Angeles Courthouse

Authorize and approve the sale of the West Los Angeles Courthouse in a fair market value transaction with the proceeds to be directed to the Immediate Critical Needs Account of the State Court Facilities Construction Fund established by Senate Bill 1407 (Perata; Stats, 2008, ch. 311) or any other Judicial Council facilities fund authorized by the Legislature.

Action: Recommend for Judicial Council sponsorship.

Item 2

Invitation to Comment

Proposed Legislation (Small Claims): Provision of Court Interpreters

Eliminates an exception that says interpreters are not required in small claims proceedings. Further states that the qualifications of interpreters appointed in small claims proceedings must be consistent with those appointed in other civil actions.

Action: Approved for circulation.

ADJOURNMENT

There being no further open meeting business, the meeting was adjourned at 4:39 p.m.

CLOSED SESSION

Item 1 (Action Required)

Pursuant to California Rules of Court, Rule 10.75(d)(3).

Negotiations concerning legislation

a) AB 1450 (Obernolte), as amended June 19, 2017 – Court reporters: electronic transcripts

Requires court reporters to provide transcripts to appellate courts, parties, or any other person entitled to a transcript in an electronic format that complies with the California Rules of Court, unless a paper copy is requested.

Action: Oppose, if substantively amended.

b) SB 658 (Wiener), as amended August 22, 2017 – Jury selection: civil voir dire

Makes various changes to the civil voir dire statute. Among other things, maintains the provision that specifies that the scope of the examination conducted by counsel shall be within reasonable limits prescribed by the trial judge in the judge's sound discretion. Requires a judge, in the exercise of their sound discretion over the scope of voir dire, to give due consideration to all of the following: (a) the amount of time requested by trial counsel; (b) any unique or complex elements, legal or factual, in the case; (c) length of the trial; (d) number of parties; (e) number of witnesses; and (f) whether the case is designated as a complex or long cause. Requires a judge to provide the parties with both the alphabetical list and the list of prospective jurors in the order in which they will be called. Clarifies that a judge shall not impose specific unreasonable or arbitrary time limits, or establish an inflexible time limit policy for voir dire.

Action: No position.

c) SB 785 (Wiener), as proposed to be amended – Evidence: immigration status

Among other things, seeks to prevent irrelevant information about a person's immigration status from being divulged in open court and included in specified public court records. Prohibits parties to a civil or criminal action from disclosing evidence regarding the immigration status of any other party or witness in open court, unless the party first

requests a confidential, in camera hearing and ruling by the judicial officer presiding over the case as to whether the evidence is relevant and not inadmissible. Prohibits *in criminal cases* evidence of a person's immigration status from being included in public court records, except as authorized by the court pursuant to the above-described confidential, in camera hearing procedure.

Action: No position.

Item 2 (Information Item)
Pursuant to California Rules of Court, Rule 10.75(d)(3).
Negotiations concerning legislation
Legislative Updates

Cory Jasperson and Daniel Pone provided updates on:

- SB 789 (Bradford) – California Environmental Quality Act: Olympic games: sports and entertainment project: eminent domain.
- SB 185 (Hertzberg) – Crimes: infractions
- SB 10 (Hertzberg) – Bail: pretrial release

Adjourned closed session at 5:19.

Approved by the advisory body on [enter date].

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 21, 2017

To
Members of the Policy Coordination and Liaison Committee

From
Appellate Advisory Committee
Hon. Louis R. Mauro, Chair

Subject
Proposal for Judicial Council–Sponsored Legislation: Access to Juvenile Case File for Purposes of Appellate Proceedings

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
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Executive Summary

The Appellate Advisory Committee, after consultation with the Family and Juvenile Law Advisory Committee, recommends that the Judicial Council sponsor legislation to amend Welfare and Institutions Code section 827, which 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 proceedings, access and copy those records to which they were previously given access by the juvenile court. The proposed amendment 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.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council sponsor legislation to amend Welfare and Institutions Code section 827 to provide that:

1. Any individual not otherwise entitled under section 827 to access a juvenile court case file 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 the 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 any such records or portions thereof that are made a part of the appellate record;

2. The current requirements of section 827(a)(3) regarding release of a juvenile court case file to individuals not otherwise entitled to access under the statute apply if the individual seeks access to any other record or portion thereof in the juvenile case file or made a part of the appellate record, except that a petition seeking release may be filed in, and release of records ordered by, either the juvenile court or the Court of Appeal; and

3. Documents received under this proposed amendment are subject to the confidentiality requirements established by section 827(a)(4).

The proposed amendment to section 827 is attached at pages 7–12.[1]

Previous Council Action

In December 2013, the Judicial Council approved sponsoring legislation to amend Welfare and Institutions Code section 827 to ensure the access of Indian tribes to juvenile court files involving tribal children, consistent with the mandates of existing federal and state law.[2] The Judicial Council sponsored legislation—Assembly Bill 1618 (Stats. 2014, ch. 57, § 1)—was enacted effective January 1, 2015.

The Judicial Council has also adopted rules and forms to implement and govern access to juvenile court records under section 827. The council adopted amendments to former rule 1423, effective January 1, 2001, to implement statutory changes requiring the release of a juvenile case file to the public in certain cases when the child is deceased. The Judicial Council adopted rule 5.553 and amended rule 5.552 effective January 1, 2009. At the same time, it adopted forms JV-569, JV-571, JV-572, JV-573, and JV-574, and revised form JV-570. These adopted and amended rules and forms implemented statutory changes concerning access to records and the right to copy those records.

Rationale for Recommendation

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

[1] Please note, to help readers to see this proposed amendment in context, the full text of section 827, with the proposed amendment incorporated, is shown in the attachment.
[2] The report to the Judicial Council regarding this proposal is available at: http://www.courts.ca.gov/documents/jc-20131213-itemG.pdf

of the juvenile court proceedings. Subdivision (a)(1) identifies those who may inspect and receive copies of a juvenile court case file.[3] 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.

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 proceeding is prepared and sent to the Court of Appeal and the parties within 20 days after the notice of appeal is filed. The items that must be included in the record on appeal or for certain writ proceedings are listed in California Rules of Court 8.407, 8.450, and 8.454. The trial court is required to begin preparing the record in these proceedings as soon as a notice of appeal or notice of intent to file a writ petition is filed. These procedures appear to be based in part on the premise 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 to inspect or copy any records in a juvenile case file under section 827. 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 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 parties in the appellate proceedings, for the juvenile court, and for the Court of Appeal. It also results in delays and, particularly when the appellant and/or petitioner is self-represented, procedural dismissals of these appeals without consideration of their merit.

The Proposal

The Appellate Advisory Committee proposes amending 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 the 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.

This proposal was developed after consultation with the Family and Juvenile Law Advisory Committee. The two committees formed an ad hoc joint working group to develop the proposed

[3] The full text of § 827 is available at *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=827.&lawCode=WIC*).

statutory amendment. The goal in drafting the proposed amendment was to appropriately balance the policy considerations favoring confidentiality of juvenile case files against the need for access to certain records by individuals for purposes of effectuating their right to participate in appellate proceedings in these cases. The proposal developed by the joint working group and recommended by the committee would not dilute the confidentiality protections for the child because it would only provide access without a court order to those records to which an individual was already privy in the juvenile court proceedings. By eliminating the necessity for special procedures to authorize the individuals' access to these records, the proposal would increase efficiency and access to justice while reducing costs and delays for the parties and the courts. The amendment would also clarify the procedure for providing the individuals with access to any additional records from the juvenile case file in these circumstances.

Comments, Alternatives Considered, and Policy Implications

External comments

The proposal to amend section 827 was circulated for public comment from February 27 to April 28, 2017 as part of the regular spring comment cycle. Six individuals or organizations submitted comments on this proposal. Four commentators indicated that they agreed with the proposal and two indicated that they agreed with the proposal if modified. Some of the commentators who indicated that they agreed with the proposal also suggested some changes. The public comments were reviewed by the joint working group of the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee. A chart with the full text of the comments received and the committee's responses is attached at pages 14-22. The two main substantive issues raised by the comments and the committee's responses are discussed below.

Identification of records to be provided without court order

As circulated for public comment, the proposed amendment to section 827 would have authorized an individual 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 to 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." The Superior Court of San Diego County, which indicated it agreed with the proposal, raised two concerns about this provision.

First, the court expressed concern about the phrase "including the record on appeal that contains such records" because the record on appeal might contain other records or portions thereof to which an individual should not have access. The court suggested that this phrase be changed to "including such records that are made a part of the record on appeal." The committee agreed with this suggested revision and has incorporated it into the proposal.

Second, the court indicated that it might be difficult to identify those records to which the individual was previously granted access by the juvenile court. They therefore suggested the following alternate language that would specify particular documents that the individual could

access and copy: “any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed.”

The joint working group of the Appellate Advisory Committee and the Family and Juvenile Law Advisory Committee and the full Appellate Advisory Committee considered this suggestion, as well as other possible approaches to addressing the court’s concern. Ultimately, the committee decided against incorporating the language suggested by the court because of concerns that it would be over-inclusive: there may be documents related to a hearing, such as probation reports, or parts thereof, to which such an individual involved in the appellate proceeding should not have access. The working group and committee also considered modifying the proposed language to provide that the individual could access any document “filed by or served on the individual.” This approach was rejected because of concerns it would be under-inclusive: documents to which an individual was given access by the juvenile court through a Welfare and Institutions Code section 827 request would not have been “served” on the individual, and so would not fall within this language. Ultimately, the committee agreed with the working group recommendation that the proposal retain the language as circulated for public comment and, if the legislation is enacted, that the committees consider the development of rules or a form to assist courts in identifying the documents that can be released without a court order.

Notice and opportunity to object when access to additional records is sought

As circulated for public comment, the proposed amendment to section 827 would have provided that “on order of either the judge of the juvenile court or the Court of Appeal” an individual 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 inspect and copy any other record or portion thereof in the juvenile case file or appellate record.”

Two commentators—the San Diego Office of County Counsel’s Juvenile Dependency Division (one of the two commentators that agreed with the proposal if amended) and the Superior Court of San Diego County—expressed concern about the fact that this provision did not provide for notice and an opportunity to object to the release of this additional information. This notice and objection procedure is required under section 827(a)(3) when a person not otherwise entitled to access to the juvenile case file petitions for access. The committee concluded that it would be appropriate to apply these same notice and objection requirements when an individual involved in an appellate proceeding wants access to records to which he or she did not previously have access and has revised the proposal accordingly.

Alternatives

In addition to the alternatives considered in response to the external and internal comments, 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.

Relevant Strategic Plan Goals and Operational Plan Objectives

These proposed amendments support strategic Goal III, Modernization of Management and Administration (Goal III.B), and objective III.B.5 of the related operational plan to develop and implement effective trial and appellate case management practices.

Attachments

1. Text of proposed Welfare and Institutions Code section 827, at pages 7–12
2. Chart of comments, at pages 13–20

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 any such records or portions thereof that are made a part of the appellate record. The requirements of paragraph (3) shall

continue to apply to any other record or portion thereof in the juvenile case file or made a part of the appellate record, except that a petition seeking release may be filed in and release of records ordered by either the juvenile court or the Court of Appeal. 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.

LEG17-02

Appellate Procedure: Content of the Record in Certain Juvenile Appeals

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

	Commentator	Position	Comment	Committee Response
1.	California Appellate Court Clerks Association by Daniel P. Potter Clerk Administrator and President, California Appellate Court clerks Association San Jose, CA	A	The Clerks Association agrees with the proposed amendment to the Welfare & Institutions Code. This change would increase efficiency for the parties to appellate court proceedings as well as court staff.	The committee notes the commentator's support for the proposal; no response required.
2.	Los Angeles County by Alyssa Skolnick Principal Deputy County Counsel Monterey Park, CA	AM	LITIGATION County agencies, including child welfare and probation agencies are subject to civil lawsuits for various reasons. Unless there is a juvenile court order allowing use of a juvenile files by an attorney representing the county or its agencies in a civil lawsuit, the attorney may not inspect the file. Further, mere inspection of the file without court authorization is a violation of privacy rights and may subject the county or its agencies to liability for any unauthorized inspection. (Gonzalez v. Spencer (9th. Cir. (2003) 336 F. 832.) In Los Angeles County, the juvenile court processes all §827 petitions filed each year to allow inspection of juvenile files where the county or its agencies are parties to a civil case involving a minor. Processing these §827 petitions is very time-consuming, often taking more than a year, which results in significant delay in civil cases. If §827 was amended to allow access by counsel involved in these type of civil cases, then there would be no need for processing by the juvenile court, resulting in streamlined access. The current process requires significant resources from the	The additional changes to Welfare and Institutions Code section 827 suggested by the commentator are beyond the scope of the proposal that was circulated for public comment. The committee will treat them as new suggestions for consideration when the committee develops its agenda for the next committee year.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			juvenile courts and county agencies. Further, it causes significant delay in the civil actions, impacting the resources of the civil courts, as well. Section 827 needs to be amended to clarify that an attorney representing the State, political subdivision of the State, or local child welfare and probation agencies is entitled to inspect and receive copies of the case file to investigate or defend against any lawsuit or government claim filed pursuant to Government Code Section 900, et seq. This proposed amendment mirrors State Department of Social Services, Manual of Policies and Procedures Section 19-004.5, governing a government lawyer's ability to access public social services records. This Regulation states: Release of Confidential Information in Conjunction with a Lawsuit: If an applicant/recipient or caretaker relative becomes a party or plaintiff in any suit against the State of California, any political subdivision of the state, or any agency administering the laws governing the administration of public social services and such suit challenges the validity of the laws governing the administration of public social services or the manner in which the laws have been applied, the attorney representing the state, political subdivision, or agency shall be given access to all files and records relating to the plaintiff. Such files and records may be disclosed to the	

	Commentator	Position	Comment	Committee Response
			court having jurisdiction of the lawsuit insofar as they are relevant to the determination of any factual or legal issue in the case. In such cases, it should be brought to the court's attention, when presented with the requested information, of the state law and policy against further disclosure of the information. CHILD AND FAMILY TEAMS We also recommend that WIC 827 be revised to permit the sharing of information with members of a child and family team, as defined by WIC 16501(a)(4) as part of the State's Continuum of Care Reform. WIC 16501(a)(4) became effective January 1, 2017.	
3.	Orange County Bar Association by Michael L. Baroni President Newport Beach, CA	A	No suggested changes. OCBA will merely add that this modification to Welfare and Institutions Code section 827 is long overdue and critical to efficient appellate practice in appeals taken by relatives and de facto parents who might otherwise be placed in the position of having limited access to appellate relief. That noted, rule 8.409(e) – dealing with the transmission of the appellate record in dependency appeals – may benefit from a minor modification noting that record transmission is subject to the appellants' right to such information under section 827.	The committee notes the commentator's support for the proposal.
4.	San Diego Office of County Counsel Juvenile Dependency Division by Candice H. Cohen	AM	My concerns with amendments to section 827, is that it allows for a greater dissemination of confidential records that were not previously	The committee acknowledges the concern about the absence of requirement for notice and opportunity to object to the release of records to

	Commentator	Position	Comment	Committee Response
	Senior Deputy County Counsel San Diego, CA		provided pursuant to the original in camera review. There is no procedure to notice the parties and the subject of those records that additional information is being inspected and copied. There is no procedure to sufficiently identify what items are now being made accessible or being requested. The proposed changes do not allow for a hearing if there is opposition to portions of the juvenile case files that have not previously been ordered in a previous 827 hearing. There is a greater fear that records could be produced that an individual wanted kept private and are not relevant to the matter at hand. When the appellant or petitioner is self-represented, the misuse of such materials is more likely, whether out of ignorance or maliciousness.	which an individual did not previously have access in the juvenile court proceedings. Based on this and the comments of Superior Court of California, County of San Diego, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of section 827(a)(3) apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal The committee also acknowledges the concerns about further dissemination of confidential records by those who receive them under this proposed amendment. The proposed amendments specifies that the existing requirements of section 827 prohibiting the dissemination of material from a juvenile case file by anyone receiving that information apply to individuals receiving information under this proposed amendment. However, as with any other release of information from a juvenile case file, this provision cannot guarantee compliance by a recipient
5.	Superior Court of Los Angeles by: Not stated Los Angeles, CA	A	*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?* This proposal will achieve its stated purpose, of increasing efficiencies and access to justice for the appellants, while reducing work for the court. In treating these appellants as entitled	The committee notes the commentator's support for the proposal; no response required.

	Commentator	Position	Comment	Committee Response
			parties, they will be able to submit a Declaration in Support of Access for the appellate transcript, instead of a form JV-570. The form JV-570 necessitates a statutory 21-day notice period to be observed, which requires court clerks to send notices and collect objections from the noticed parties. Reducing the amount of filed form JV-570s will reduce the amount of notices sent by court clerks. Moreover, without having to comply with the statutory notice period, the court will be able to provide the appellant their records faster, which will allow for swifter disposition of the given appeal and permanence for the related child(ren). *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?* Any implementation requirements for the court are minimal, if any, because this proposal essentially codifies the court's current procedure for designating the appellate transcript for these types of appellants.	The committee appreciates the commentator's input on these implementation questions
6.	Superior Court of California County of San Diego by Mike Roddy Executive Officer San Diego, CA 92101	A	Overall, this is a good suggestion that will increase efficiency; however, it might be hard to know what records the individual was previously granted access to; they may not be marked or separated out. Maybe "inspect and	The committee notes the commentator's support for the proposal. The committee acknowledges the commentator's concern about identifying the documents to which

	Commentator	Position	Comment	Committee Response
			copy any minute order, report, or other document in the juvenile case file that is directly related to the hearing from which the appeal or writ was filed" would be more clear. It should also specifically state that any information that is privileged or confidential pursuant to any other state law or federal law or regulation must be redacted or removed.	an individual previously had access. The committee decided not to modify the proposal as suggested by the commentator, however. Both in developing the proposal and in reviewing the public comments, the committee considered a variety of different options for identifying the records to which an individual appellant, petitioner, or respondent should have access without a court order. The committee considered language similar to that suggested by the commentator, but concerns were raised that even some documents or portions thereof that are directly related to the hearing might not have been made available to all participants in a hearing. The committee ultimately decided to recommend the language that was circulated for public comment, but, if the legislation is enacted, to consider rules and/or a form to assist courts in identifying the documents that must be released without a court order.
			The proposed amendment seems to grant access to anyone who files an appeal or writ, even if it turns out that person does not have standing.	The commentator is correct that the proposal is not drafted to make access to records without a court order dependent upon whether the person has standing to file an appeal or writ. Making access dependent on standing would potentially create difficulties and delay in preparation of the appellate record since standing must be determined by the Court of Appeal. Instead, this amendment focuses on clarifying access to those records in the juvenile court file to that the individual had access to during the juvenile court proceedings. The committee believes that this approach protects the confidentiality of the

	Commentator	Position	Comment	Committee Response
			There are also concerns by some in our court about the highlighted language in the proposed amendment. "(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. …" Is it possible there might be documents included in the record on appeal that such an individual should not have access to? Often, before documents are released pursuant to a WIC 827 petition, court staff redacts information which must remain confidential under WIC 827(a)(3)(A), i.e., information that is privileged or confidential under some other state or federal law. An example would be the name of the reporting party, which must remain confidential under PC 11167(d). One of our senior clerks, who has extensive	proceedings by not widening existing access. The committee has modified the proposal as suggested by the commentator.

	Commentator	Position	Comment	Committee Response
			experience in preparing records for writs and appeals, confirmed that names of reporting parties are not redacted when the record is prepared; furthermore, the record often contains other documents that should not be disclosed to parties (e.g., psychological evaluations). If a non-party appellant or respondent is given access to the entire record on appeal, s/he will likely obtain information that should not be released to him/her. A possible solution: Change the language from "including the record on appeal that contains such records" to "**including such records that are made a part of the record on appeal**." With this language, the appellant or respondent would not receive the entire record on appeal – which could include information that is confidential or privileged under other state and federal laws. Rather, s/he would receive only the documents to which s/he was previously granted access by the court. Finally, should the notice and opportunity to file an objection requirements when the person seeks access to the entire file be spelled out here, or will that be left to the amended rule of court?	Based on this and the comments of the San Diego Office of County Counsel Juvenile Dependency Division, the committee has revised the proposal to clarify that the notice and opportunity to object requirements of paragraph 3 apply to such records, but that a petition seeking release of such records may be filed in and ruled on by either the juvenile court or the Court of Appeal

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 1, 2017

To
Members of the Policy Coordination and Liaison Committee

From
Administrative Presiding Justices Advisory Committee

Subject
Proposal for Judicial Council–Sponsored Legislation: Authorization for Fees for Electronic Filing and Service in the Appellate Courts

Agenda Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
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Executive Summary

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council sponsor legislation to amend the Government Code sections relating to appellate court fees (1) to clarify that an appellate court or the court's electronic filing service provider may charge a reasonable fee for its electronic filing services; (2) to allow the appellate courts to contract with the electronic filing service provider to receive a portion of the fees collected by that provider; and (3) 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 the legislation.

Recommendation

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council sponsor legislation to:

1. Amend Government Code section 68930 to add new subdivisions (a)(1)–(2) and (b). New subdivision (a)(1) would provide that an appellate court that contracts, individually or jointly with other courts, with an electronic filing service provider to furnish and maintain an electronic filing and service system may allow the provider to charge electronic filers a reasonable fee in addition to the court's filing fee and may contract with the electronic filing service provider to receive a portion of the fee revenues collected by the provider under this provision. New subdivision (a)(2) would provide that the court may also charge a fee to recover its costs. And new subdivision (b) would provide that that the fees authorized under (a)(1)–(2) shall not be charged to any party who has been granted a fee waiver and may be waived in other circumstances upon a finding of good cause.

2. Amend Government Code section 68929 to relocate the provision for the fee for certification, which is currently in section 68930, to become subdivision (a) of section 68929 and move the current provisions in section 68929 on the fee for comparing documents to become subdivision (b) of that section.

3. Amend 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, to specify that any fee revenue from amended section 68930(a)(1) shall be placed in the fund.

The text of the legislation is attached at page 7.

Previous Council Action

The Judicial Council adopted rules for electronic filing and service in the Supreme Court and Courts of Appeal in 2010. (See Cal. Rules of Court, rules 8.70–8.79.) Those rules have been amended two times.

Rationale for Recommendation

Courts of Appeal and the Supreme Court are in the final stages of instituting electronic filing and service, which will improve access to the courts and expedite business processes. Currently, e-filing is in operation in five of the six appellate districts and has just been deployed in the Supreme Court.

To help finance the full implementation of electronic filing, 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 current 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, even 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, "The Supreme Court or a court of appeal that furnishes and maintains an electronic filing and service system or that contracts, individually or jointly with other courts, with an electronic filing service provider to do so may. . . [a]llow the electronic filing service 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.

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 an appellate court that furnishes and maintains an electronic filing and service system or contracts with electronic filing service provider to do so may "[c]harge a fee to recover its costs." (See 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.

Proposed subdivision (b). To ensure access for low-income persons, the statute would state that the fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has been granted a fee waiver and would also provide that these fees may be waived in other circumstances upon a finding of good cause. (Amended section 68930(b).) This reflects another provision in current rule 8.73 which provides that, "[w]henever possible, the contract [with the electronic filing service provider] should require the electronic filing service provider agree to waive a fee that normally would be charged to a party when the court orders that the fee be waived for that party." It is also similar to language in the statute relating to e-filing in the trial courts. (See Code Civ. Proc., § 1010.6(d)(1)(B), which provides, in part, "The court, an electronic filing manager, or an electronic filing service provider shall waive any fees charged if the court deems a waiver appropriate, including where a party has received a fee waiver.")

Other statutory changes

Amended Government Code section 68929. Currently, Government Code section 68929 addresses 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.

Comments

External Comments

This legislative proposal was circulated for public comment from February 28 through April 28, 2017. Five comments were received on the proposal. All the comments support the legislation, though two commentators recommend that certain additional provisions be added.

As circulated for public comment, proposed new Government Code section 68930(b) would have required only that the fees authorized under (a)(1) and (a)(2) not be charged for a party who has been granted a fee waiver. The two commentators that are recommending additional provisions—the Family Violence Appellate Project (FVAP) and the State Bar Litigation Section Committee on Appellate Courts (State Bar section) —both state that they support the proposed legislation and that this support is conditional on including this proposed provision in Government Code section 68930(b). In addition, these two commentators recommend that this exemption should be expanded to include nonprofits representing parties and to private attorneys representing parties pro bono. In response to these comments, the committee revised proposed Government Code section 68930(b) to include a provision providing the fees under (a)(1) and (2) may also be waived in other circumstances upon a finding of good cause. The committee concluded that requiring waiver of these fees for any attorney representing a party pro bono or to any nonprofit organization representing a party would be overly broad and, in many circumstances, unnecessary to ensure access to justice for low-income litigants. Not all parties represented by attorneys on a pro bono basis or by nonprofit organizations are low-income. When an attorney or organization is representing a low-income party, that party may seek a fee waiver. Under the proposed statutory language circulated for public comment, if the party received a fee waiver, the attorney representing that party would not be charged the e-filing fees. In addition, even if the e-filing fees were charged, they would be recoverable by the prevailing party as costs on appeal. (See the advisory committee comment to California Rules of Court, rule 8.278(d)(1)(D), which provides that this provision, "allowing recovery of the 'costs to notarize, serve, mail, and file the record, briefs, and other papers' is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.")

The committee also concluded, however, that the language that was circulated for public comment might be too narrow in restricting the prohibition on charging these fees to circumstances in which a fee waiver has been granted. There may be other circumstances in which a court may determine that, to ensure access to the courts, these fees should not be charged to a particular party. As noted above, the language of both rule 8.73 and the statutes relating to e-filing in the trial court currently appear to recognize this by more broadly providing for waiver of these e-filing fees when a court determines it is appropriate. Therefore, the committee modified the proposal to give the court discretion to order that these fees be waived on a finding of good cause.

Internal Comments

The input of the Joint Appellate Technology Subcommittee (JATS), which is composed of members of the Appellate Advisory Committee and the Information Technology Advisory Committee, was also sought on this proposal. JATS noted that, as circulated for public comment, the proposal would have authorized only those courts that contracted with an electronic filing service provider to only collect a court cost recovery fee. Although the appellate courts all currently contract with such a provider, the committee concluded that the courts' collection of a cost recovery fee should not be contingent upon the existence of such a contract. The committee therefore revised the proposal to remove this limitation.

In reviewing the comments, it was also noted that the proposal as circulated appeared to contemplate only a contract between a single court and an electronic filing service provider. While currently each court does have an independent contract, in the future, some or all of the appellate courts may develop a joint agreement with such a provider. To reflect this possibility, the committee revised the proposal to include references to such a joint agreement.

Alternatives Considered

In addition to the alternatives considered in response to the comments received, one alternative to this legislative proposal would be 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 in this report, 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

Attachments and Links

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

Government Code, § 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.

Government Code, § 68930.

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

(a) The Supreme Court or a court of appeal that furnishes and maintains an electronic filing and service system or that contracts, individually or jointly with other courts, with an electronic filing service provider to do so may do the following:

(1) Allow the electronic filing service provider to charge electronic filers a reasonable fee in addition to the court's filing fee. The court or courts 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 courts pursuant to this paragraph shall be remitted to the Appellate Court Trust Fund.

(2) Charge a fee to recover its costs. If the court contracts with an electronic filing service provider, 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 and may be waived in other circumstances upon a finding of good cause.

Government Code, § 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.

LEG 17-01
Authorization for Fees for Electronic Filing and Service in the Appellate Courts)
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	[Proposed] Committee Response
1.	California Appellate Court Clerks Association (CACCA) by Daniel P. Potter, President San Jose,CA	A	The Clerks Association agrees with the proposed amendments to the Government Code sections. The proposed changes to address the goals of the legislation as well as the appropriate fee revenue distributions.	The Clerks Association's support for the proposed amendments is duly noted.
2.	Family Violence Appellate Project (FVAP) by Erin Smith San Francisco	AM	Purpose: 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. [Responses to specific questions]: Do the proposed statutory changes achieve the goals of the legislation? **Yes** Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions? **Yes** Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal? **No** Recommendation: FVAP supports this proposed legislation, and writes to specify that such support is conditional on the exemption	The Family Violence Appellate Project (FVAP) comment accurately summarizes the legislative proposal. The committee appreciates the responses to the specific questions asked in the invitation to comment. The committee notes FVAP's general support for the proposed legislation.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	[Proposed] Committee Response
			proposed in Government Code section 68930(b), for people entitled to fee waivers, remaining in the bill. Such exemption will ensure equal access to the appellate courts for the state's low-income residents. In addition, FVAP would like to see this exemption expanded to include nonprofits and private attorneys representing parties pro bono. Such a rule would ensure access to justice for low-income litigants, who are often reliant on pro bono representation by private attorneys and/or nonprofit organizations to present their cases competently; encourage more pro bono and nonprofit appellate representation, providing better access to justice at the appellate level; and limit the financial burden on nonprofits with limited resources. Specifically, section 68930(b) could be amended to read: (b) The fees authorized under (a)(1) and (a)(2) shall not be charged to any party who has been granted a fee waiver; to any attorney representing a party pro bono; or to any nonprofit organization representing a party.	For the reasons indicated below, the committee declined to include the language suggested by the commenter, but did revise proposed Government Code section 68930(b) to include a provision authorizing the fees under (a)(1) and (2) to be waived in other circumstances on a finding of good cause. The committee concluded that requiring waiver of these fees for any attorney representing a party pro bono or to any nonprofit organization representing a party would be overly broad and, in many circumstances, unnecessary to ensure access to justice for low-income litigants. Not all parties represented by attorneys on a pro bono basis or by nonprofit organizations are low-income. When an attorney or organization is representing a low-income party, that party may seek a fee waiver. Under the proposed statutory language circulated for public comment, if the party received a fee waiver, the attorney representing that party would not be charged the e-filing fees. In addition, even if the e-filing fees were charged, they would be recoverable by the prevailing party as costs on appeal (See the advisory committee comment to California Rules of Court, rule 8.278(d)(1)(D) which provides that this provision "allowing recovery of the 'costs to notarize, serve, mail, and

	Commentator	Position	Comment	[Proposed] Committee Response
				file the record, briefs, and other papers' is intended to include fees charged by electronic filing service providers for electronic filing and service of documents.") The committee also concluded, however, that the language that was circulated for public comment might be too narrow in restricting the prohibition on charging these fees to circumstances in which a fee waiver has been granted. The language of both rule 8.73 and the statutes relating to e-filing in the trial court currently appear to recognizes that there may be circumstances beyond when a party has a fee waiver when it might be appropriate to relieve a party of e-filing related fees. Therefore, the committee modified the proposal to give the court discretion to order that these fees be waived on a finding of good cause.
3.	Superior Court of San Diego County by Mike Roddy	A	No specific comment.	The court's support for the proposed amendments is duly noted. No response required.
4.	State Bar of California, Litigation Section Committee on Appellate Courts Comment on Behalf of Org. By Paula Mitchell Los Angeles	A	Do the proposed statutory changes achieve the goals of the legislation? **Yes** Are the distributions of fee revenues in amended sections 68930 and 68933 the appropriate distributions? **Yes** Do any other statutory changes regarding appellate court fees for electronic filing and service need to be made as part of this proposal? **No**	The committee appreciates the responses to the specific questions asked in the invitation to comment.

	Commentator	Position	Comment	[Proposed] Committee Response
			Our Recommendation: The Committee on Appellate Courts supports this proposed legislation, and write to specify that such support is conditional on the exemption proposed in Government Code section 68930(b), for people entitled to fee waivers, remaining in the bill. Such exemption will ensure equal access to the appellate courts for the state's low-income residents. In addition, to further the purpose of ensuring to access to justice for low-income litigants, who are often reliant on court-appointed attorneys, pro bono private attorneys, and/or nonprofit organizations to present their cases competently; we would encourage the committee to consider expanding this exemption to include certain categories of attorneys who are ensuring that California's low-income residents have access to justice in the appellate courts.	The committee notes the Litigation Section's general support for the proposed legislation. Please see the response to the comments of the Family Violence Appellate Project above.
5.	Orange County Bar Association by Michael L. Baroni	A	No specific comment.	The bar association's support for the proposed amendments is duly noted. No response required.

 Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 16, 2017

To
Members of the Policy Coordination and Liaison Committee

From
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Subject
Proposed Legislation (Criminal Procedure): Electronic Arrest and Search Warrants

Action Requested
Recommend for Judicial Council-Sponsorship

Deadline
N/A

Contact
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Executive Summary

The Criminal Law Advisory Committee recommends amending Penal Code sections 817 and 1526 to make more efficient the process for electronically issuing arrest and search warrants, respectively. The proposal would allow magistrates to issue arrest and search warrants electronically without communicating with the officer telephonically by eliminating the requirement of an oral statement under oath. It would also make amendments to align Penal Code section 817 with Penal Code section 1526.

Recommendation

The Criminal Law Advisory Committee recommends amending Penal Code sections 817 and 1526[1] to eliminate the requirement of an oral statement under oath and all telephonic conversations between the magistrate and the officer. The committee also recommends amending

[1] All further references are to the Penal Code, unless otherwise indicated.

section 817 to provide that the warrant signed by the magistrate and received by the officer be deemed the original warrant.

Previous Council Action

The Judicial Council previously sponsored and supported bills that make the warrant process more efficient. Two years ago, the council adopted a support position on Assembly Bill 39 (Medina; Stats. 2015, ch. 193), which amended Penal Code section 1526 to (1) eliminate all but one of the telephonic conversation requirements for electronic search warrants, and (2) provide that the completed search warrant be deemed the original warrant. The council reasoned that AB 39 was "consistent with emerging technology that makes court operations more efficient."

In 2013, the Judicial Council sponsored AB 1004 (Gray; Stats. 2013, ch. 460), which streamlined the process for obtaining arrest warrants by (1) permitting their submission through computer servers, and (2) allowing magistrates to sign arrest warrants digitally or electronically. In 2010, the council supported AB 2505 (Strickland; Stats. 2010, ch. 98), which allowed (1) an oath by an affiant seeking a search warrant to be made using a telephone and computer server (in addition to a fax machine or e-mail), and (2) the affiant's signature to be in the form of an electronic signature.

Rationale for Recommendation

Sections 817 and 1526 govern the electronic issuance of arrest and search warrants, respectively. Both allow the magistrate to take an officer's oral statement under oath by phone and use e-mail, computer server, or facsimile equipment to receive and issue the warrant. (Pen. Code, §§ 817(c)(2), 1526(b)(2).)

Although the procedures set forth in these two provisions are similar, there are several differences resulting from recent amendments to section 1526. Whereas section 817 currently requires multiple telephonic conversations between the magistrate and the officer,[2] section 1526 requires only one.[3] In addition, section 817 provides that the completed warrant, as signed by the magistrate, be deemed the original warrant and requires that the magistrate authorize the officer to write "duplicate original" on the copy of the completed warrant. (Pen. Code, § 817(c)(2)(C)–(D).) Section 1526 instead provides that "[t]he completed search warrant, as signed by the magistrate and received by the affiant, shall be deemed to be the original warrant." (*Id.*, § 1526(b)(2)(D).)

[2] Under section 817, a magistrate must first take an officer's oral statement under 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).)

[3] Under section 1526, the magistrate takes the oath telephonically after the officer signs the affidavit and transmits the proposed search warrant and supporting affidavit and other attachments. (Pen. Code, § 1526(b)(2)(A).)

This proposal would amend sections 817 and 1526 to allow magistrates to issue arrest and search warrants electronically without a telephonic conversation between the officer and the magistrate by eliminating the requirement of an oral oath. This amendment is intended to promote procedural efficiencies by streamlining and modernizing the warrant process.

The officer's electronic signature under penalty of perjury on the affidavit or probable cause declaration has the same legal effect as the oral oath. The primary difference is that the formality of an oral oath before a judge adds some solemnity to the occasion that might cause an officer to be more careful when preparing the affidavit or probable cause declaration. The committee reasoned that the benefits did not outweigh the costs of retaining the oral oath requirement.

Although the telephonic conversation provides an opportunity for the magistrate to question the officer to clarify any ambiguity in the affidavit or declaration, the conversation is not recorded and would not be admissible in support of the warrant. At best, it might prompt the officer to revise and resubmit the affidavit or probable cause declaration. Yet, this proposal would not preclude this result; a magistrate would be free to contact the officer with any questions or concerns.

The costs associated with telephonic conversations between officers and magistrates for arrest and search warrants can be considerable, especially for courts in larger counties that experience a greater volume of applications. It is not uncommon for magistrates to wait—often late in the night or early morning—for the officer to return their call because the officer has been called away on another assignment or is otherwise unavailable. The affidavits and probable cause declarations for the offenses more commonly committed at this hour, such as driving under the influence, are frequently submitted on a standardized form containing check boxes, with the result that fewer ambiguities and questions arise.

Eliminating the requirement of an oral oath would also align electronic and paper processes. The statutes currently do not require an oral statement under oath if the officer submits written affidavits and probable cause declarations in paper form. (Pen. Code, §§ 817(b), 1526(a).) They do allow, but not require, the magistrate to examine the person seeking the warrant under oath. (*Id.,* §§ 817(d), 1526(a).) With advances in technology and the public's growing comfort with using technology to conduct business, the committee viewed it as no longer necessary to add procedural hurdles to serve as a check on the electronic process.

Lastly, this proposal would also make additional amendments to align section 817 with current section 1526. Section 817 would provide that the warrant signed by the magistrate and received by the officer be deemed the original warrant.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal circulated for public comment this spring. Five commenters submitted comments on this proposal: two agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position.

The Superior Courts of San Bernardino and Los Angeles Counties recommended expanding the more modest circulated proposal—which would have retained the oral oath requirement and instead amended section 817 to align with current section 1526 to require one telephonic conversation between the magistrate and officer—to eliminate the oral oath requirement and forego telephonic conversations entirely.

The Superior Court of San Bernardino County explained that the requirement of a phone conversation significantly lengthens the amount of time required to review the warrant because "[f]requently, the arresting officer fails to answer at the phone number provided, and it requires multiple attempts for the judge to make telephonic contact with the officer." The court further viewed this requirement as unnecessary because (1) the magistrate's questioning of the officer would be irrelevant in litigating a facial challenge to the warrant; (2) an officer willing to lie in writing would not likely be deterred by a telephone conversation; and (3) the officer's accountability is already ensured by the sworn affidavit or probable cause declaration. Lastly, the court reasoned that warrant requests submitted after hours are necessarily emergencies and that the requirement of a telephonic conversation often delays or results in the rejection of the warrant.

The Superior Court of Los Angeles County similarly requested that the committee expand the circulated proposal. The court recommended that magistrates retain the discretion to call officers requesting a warrant, but that a telephonic conversation should not be mandated by law for arrest and search warrants.

The committee agreed with the commenters over a divided vote, described below, and revised the proposal accordingly.

Alternatives considered

Although the committee initially considered the current, more expansive proposal, it opted instead to circulate for public comment a more limited proposal that would align section 817 with section 1526 by requiring one telephonic conversation between the magistrate and the officer.[4] Two superior courts submitted comments recommending that the committee pursue the more expansive proposal.

[4] The Invitation to Comment identified the current, more expansive proposal as an alternative considered by the committee.

The committee ultimately agreed with the commenters, but the vote was divided. Of the 14 members at the meeting, seven voted in favor of revising the proposal, five voted against revising the proposal, and two abstained. Some dissenting members preferred the added formality of the oral oath, which results in officers taking the process more seriously from their experience. Others welcomed creating the opportunity for magistrates to question officers and expressed concern that it would be more difficult to locate officers if a telephonic conversation were not required.

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 for magistrates and officers.

Attachments

1. Pen. Code, §§ 817 and 1526, at pages 6–9
2. Chart of comments, at pages 10–15

Penal Code sections 817 and 1526 would be amended, effective January 1, 2019, to read:

§ 817.

(a)

(1) When a declaration of probable cause is made by a peace officer of this state, in accordance with subdivision (b), ~~or~~ (c), or (d), the magistrate, if, and only if, satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described therein has committed the offense, shall issue a warrant of probable cause for the arrest of the defendant.

(2) The warrant of probable cause for arrest shall not begin a complaint process pursuant to Section 740 or 813. The warrant of probable cause for arrest shall have the same authority for service as set forth in Section 840 and the same time limitations as that of an arrest warrant issued pursuant to Section 813.

(b) The declaration in support of the warrant of probable cause for arrest shall be a sworn statement made in writing. If the declarant transmits the proposed arrest warrant and all supporting declarations and attachments to the magistrate using facsimile transmission equipment, electronic mail, or computer server, the conditions in subdivision (d) shall apply.

(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) The oath shall be taken under penalty of perjury and recorded and transcribed. The transcribed statement shall be deemed to be the declaration for the purposes of this section. The recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative, the sworn oral statement may be recorded by a certified court reporter who shall certify the transcript of the statement, after which the magistrate receiving it shall certify the transcript, which shall be filed with the clerk of the court.

(d)(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)~~(1) ~~The oath is made during a telephone conversation with the magistrate, after which~~ The declarant shall sign under penalty of perjury his or her declaration in support of the warrant of probable cause for arrest. 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)~~(2) If the magistrate decides to issue the warrant, he or she shall:

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

~~(ii)~~(B) 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)~~(C) 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)~~(3) 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 warrant, as signed by the magistrate and received by the declarant, shall be deemed to be the original warrant.

~~(d)~~(e) Before issuing a warrant, the magistrate may examine under oath the person seeking the warrant and any witness the person may produce, take the written declaration of the person or witness, and cause the person or witness to subscribe the declaration.

~~(e)~~(f) A warrant of probable cause for arrest shall contain the information required pursuant to Sections 815 and 815a.

~~(f)~~(g) A warrant of probable cause for arrest may be in substantially the following form:

* * *

~~(g)~~(h) An original warrant of probable cause for arrest or the duplicate original warrant of probable cause for arrest shall be sufficient for booking a defendant into custody.

~~(h)~~(i) Once the defendant named in the warrant of probable cause for arrest has been taken into custody, the agency that obtained the warrant shall file a "certificate of service" with the clerk of the issuing court. The certificate of service shall contain all of the following:

(1) The date and time of service.

(2) The name of the defendant arrested.

(3) The location of the arrest.

(4) The location where the defendant was incarcerated.

§ 1526.

(a) The magistrate, before issuing the warrant, may examine on oath the person seeking the warrant and any witnesses the person may produce, and shall take his or her affidavit or their affidavits in writing, and cause the affidavit or affidavits to be subscribed by the party or parties making them. If the affiant transmits the proposed search warrant and all affidavits and supporting documents to the magistrate using facsimile transmission equipment, email, or computer server, the conditions in subdivision (c) shall apply.

(b) 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. In these cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the magistrate receiving it and shall be filed with the clerk of the court. In the alternative in these cases, the sworn oral statement shall be recorded by a certified court reporter and the transcript of the statement shall be certified by the reporter,

after which the magistrate receiving it shall certify the transcript which shall be filed with the clerk of the court.

~~(2)~~(c) ~~The oath is made using telephone and facsimile transmission equipment, telephone and email, or telephone and computer server, as follows~~

(A) ~~The oath is made during a telephone conversation with the magistrate, after the affiant has signed his or her affidavit in support of the application for the search warrant and transmitted the proposed search warrant and all supporting affidavits and documents to the magistrate.~~ The affiant's signature may be in the form of a digital signature or electronic signature if email or computer server is used for transmission to the magistrate.

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

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

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

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

~~(iii) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.~~

~~(D)~~(C) The magistrate shall transmit via facsimile transmission equipment, email, or computer server, the signed search warrant to the affiant. The completed search warrant, as signed by the magistrate and received by the affiant, shall be deemed to be the original warrant. The original warrant and any affidavits or attachments in support thereof shall be returned as provided in Section 1534.

LEG17-04
Proposed Legislation (Criminal Procedure): Electronic Arrest Warrants
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	No impact to operations procedures. Will require a change to the magistrate procedures through Legal Research. ☐ Does the proposal appropriately address the stated purpose? **Response: Yes** ☐ Would the proposal provide cost savings? If so please quantify. **Response: No.** ☐ What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? **Response: Updating of magistrate procedures and drafting information for judicial officers.** ☐ Would 12 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? **Response: Yes** ☐ How well would this proposal work in courts of different sizes? **Response: Unknown.**	The committee appreciates Mr. De La Isla's input. No response required. No response required. No response required. No response required. No response required.
2.	Orange County Bar Association By: Michael L. Baroni President	A	Currently, Penal Code § 817 requires up to three telephonic conversations between a magistrate and an officer for an arrest warrant issued through e-mail, computer server, or facsimile equipment. By contrast, Penal Code §1526, electronic search	The committee appreciates the input of the Orange County Bar Association.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			warrant issuance, requires only one telephone conversation. In order to promote consistency, proposed §817 would require only one telephonic conversation between the officer and the magistrate to issue an arrest warrant electronically. The 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. The proposal adequately addresses the stated purpose.	No response required.
3.	Superior Court of California, County of Los Angeles By: Sandra Pigati-Pizano Management Analyst	AM	This proposal should be modified so that a magistrate does not have to make telephonic contact with an officer who submits an electronic request for a warrant. Penal code sections 817 (arrest warrants) and section 1526 (search warrants) should be amended so that any requirement that a magistrate make telephonic contact with an officer who submits an electronic request for a warrant is eliminated from the applicable Penal code sections. Magistrates should still have the discretion to call officers requesting a warrant, should he or she find it necessary, but telephonic contact with an officer should not be mandatory under California law.	The committee appreciates the court's input. It agrees with the court's suggestion and has revised the proposal accordingly.

	Commentator	Position	Comment	Committee Response
4.	Superior Court of California, County of San Bernardino By: Honorable Raymond L. Haight III Presiding Judge Hon. Vander Feer Assistant Presiding Judge Hon. Robert Glenn Yabuno Chair, Criminal Committee	N/I	The Criminal Law Advisory Committee has proposed amending Penal Code section 817 to "eliminate several telephonic confirmation requirements between the magistrate and officer for arrest warrants issued electronically." The amendment would align the requirements governing electronically issued arrest warrants with electronically issued search warrants. The proposed amendment is worth pursuing, but will only address a relatively small portion of the issues created by the requirement of telephonic contact with the requesting officer as part of the process of reviewing and issuing arrest and search warrants. Arrest warrants are only a small portion of the warrants issued after hours. Search warrants comprise the vast majority of electronic warrants issued by judges after hours. Reducing the number of phone calls required will certainly help streamline the processing of electronic warrants, but the primary problem is with the telephone requirement itself. The requirement often transforms a ten minute warrant review process into one that can take many times longer. Frequently, the arresting officer fails to answer at the phone number provided, and it requires multiple attempts for the judge to make telephonic contact with the requesting officer. We believe that Penal Code sections 817 (governing arrest warrants) and 1526 (governing search warrants) should be amended to eliminate the requirement that a magistrate make telephone contact with an officer who submits an electronic request for a warrant. The Criminal Law Advisory	The committee appreciates the court's input. No response required. The committee agrees with the court's suggestion and has revised the proposal accordingly.

	Commentator	Position	Comment	Committee Response
			Committee considered that alternative, but rejected it for three reasons: "to facilitate the magistrate's questioning of the officer, ensure accountability, and confirm the reliability of the technology used to transmit the documents. None of those stated reasons withstand scrutiny. First, there is no need to question an officer regarding the contents of the affidavit offered in support of a warrant. The California Supreme Court has identified two types of challenges to the sufficiency of the warrant. A facial challenge to the warrant asserts "that the statements that appear in the warrant and affidavit when taken together do not amount to a showing of probable cause." (*People v. Hobbs* (1994) 7 Cal.4th 948, 985, fn.6.) Nothing the officer says when questioned would be relevant in litigating such a challenge. Furthermore, although a "subfacial challenge" may also be raised, which alleges "that the affiant intentionally or recklessly lied in the warrant or affidavit" (*id.*), it seems highly unlikely that an affiant willing to lie in writing would be deterred by a telephone conversation. Second, for the same reasons, the phone conversation with the affiant will not ensure accountability. Again, the affiant has already submitted a sworn declaration. Any need for accountability is fully satisfied by the affiant's identification and signature. Third, a phone call does nothing to confirm the reliability of the technology used to transmit warrants. Notably, the Committee's proposed amendment would eliminate the need to call the	No response required. No response required. No response required.

	Commentator	Position	Comment	Committee Response
			officer to confirm the warrant has been received. The Committee correctly sees that step as unnecessary, given the state of the technology used to transmit documents. Requiring a phone call to officers exacts a real cost to the administration of justice. After-hours warrants are, by nature of the fact that they are submitted after hours, emergencies. The need to make a phone call can delay issuing a warrant significantly. If, for example, the officer submits a warrant, then is unavailable to answer a phone call due to unforeseen circumstances, then the warrant cannot issue. If a judge calls and receives no answer, then the warrant will presumably be rejected. Yes, the warrant can be resubmitted, but with significant delay and consumption of resources. Magistrates should still have the ability to call officers requesting a warrant, should they wish to do so. But, maintaining that requirement in the Penal Code as a mandatory prerequisite to issuing a warrant preserves an anachronism. Important documents are transmitted electronically every day, not just by courts, but by banks, hospitals and countless others. Our technology is sufficient to ensure accountability and reliability. California law should be revised to recognize that fact. There is simply no reason to require telephonic contact if the judge receives an affidavit which is in good order and ready for approval.	No response required. No response required. No response required.

LEG17-04
Proposed Legislation (Criminal Procedure): Electronic Arrest Warrants
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A		The committee appreciates the court's support.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 1, 2017

To
Members of the Policy Coordination and Liaison Committee

From
Information Technology Advisory Committee
Hon. Sheila F. Hanson, Chair

Subject
Proposal for Judicial Council-Sponsored Legislation: Modernization of Civil Statutes (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a)

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
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Daniel Pone, 916-323-3121
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Executive Summary

The Information Technology Advisory Committee (ITAC) recommends that the Judicial Council sponsor legislation to amend 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; (2) authorize a party asserting a real property claim to electronically serve a notice of pendency of 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." In developing this proposal, ITAC worked with the Civil and Small Claims Advisory Committee (CSCAC).

Recommendation

The Information Technology Advisory Committee recommends that the Judicial Council sponsor legislation to:

1. Amend Civil Code section 1719 to add new subdivision (g)(2), which would allow a court 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 already accepting electronic service in the matter to which the check pertains.

2. Amend Code of Civil Procedure sections 405.22 and 405.23. The amendment to section 405.22 would add new subdivision (b), which would allow a claimant in a real property action to serve a notice of pendency of the action electronically instead of by mail on other parties or owners when those parties or owners are already accepting electronic service in the action. The amendment to section 405.23 adds a provision for proof of electronic service of the notice of pendency.

3. Amend Code of Civil Procedure section 594 to include electronic service as an option for service of a notice of a trial or hearing.

4. Amend Code of Civil Procedure section 659 to amend subdivisions (a)(2) and (b). The amendment to subdivision (a)(2) would strike "mailing" and replace it with "service" to ensure consistency with Code of Civil Procedure section 664.5, which section 659 cross-references. The amendment to subdivision (b) would add language that the time to file a notice of intention to move for a new trial is not extended by electronic service, which is consistent with Code of Civil Procedure section 1010.6(a)(4)(A)(i).

5. Amend Code of Civil Procedure section 660 to strike "mailing" and replace it with "service" to ensure consistency with Code of Civil Procedure section 664.5, which section 660 cross-references.

6. Amend Code of Civil Procedure section 663a to amend subdivisions (a)(2), (b) and (c). The amendments to subdivisions (a)(2) and (b) would strike references to "mailing" and replace them with "service" to ensure consistency with Code of Civil Procedure section 664.5, which section 663a cross-references. The amendment to subdivision (c) would add language that electronic service does not extend time for exercising a right or doing an act, consistent with Code of Civil Procedure section 1010.6(a)(4)(A)(ii).

Previous Council Action

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 sponsored in 2017 (Assem. Bill 976 [Berman]) will 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.

Rationale for Recommendation

This proposal builds on prior Judicial Council efforts to modernize court procedures and, more specifically, provide clarity about and foster the use of electronic service.

Civil Code section 1719

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 found in AB 976.

Code of Civil Procedure sections 405.22 and 405.23

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 found in AB 976 and will govern proof of electronic service.

Code of Civil Procedure section 594

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 be 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 found in AB 976 and which will govern proof of electronic service.

Code of Civil Procedure sections 659, 660, and 663a

If, Judicial Council-sponsored legislation AB 976 (2017), is signed into law, Code of Civil Procedure section 664.5 will be amended to allow notices of entry of judgment to be electronically served rather than mailed or personally served in certain actions. 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.

Comments, Alternatives Considered, and Policy Implications

This legislative proposal was circulated for public comment on the spring 2017 cycle. Four commenters submitted comments on the proposal. Most of the comments supported the legislation, a couple comments included suggested modifications to specific portions of the proposal, and one comment disagreed with one portion of the proposal. Both ITAC and CSCAC considered the comments.

One commenter agreed with the amendment to Civil Code section 1719(g), but raised a concern that if the drawer of a bad check was a party represented by counsel, the demand would be sent to counsel's electronic service address rather than the party's. ITAC and CSCAC considered the comment, but declined to alter the proposal. The committees determined that counsel's professional ethical obligations should be sufficient to ensure counsel communicates with the client.

One commenter disagreed with the amendments to Code of Civil Procedure sections 405.22 and 405.23 and stated that the amendments may provide no real benefit and it was likely most notices of pendency would still be served by mail. ITAC and CSCAC considered this concern and, while the proposal would likely be applicable to only a narrow subset of litigants, the committees found it reasonable to allow an electronic option for notice where the litigants are already dealing

electronically with one another. The same commenter raised a concern that electronic service may be lacking because the current requirement for registered mail provides "heightened requirements" that provide for tracking and evidence of receipt. ITAC and CSCAC considered these issues, but found that electronic service provides sufficient record of transmission of the notice.

Two commenters discussed timing issues related to Code of Civil Procedure section 594(b), which requires that service of a notice of trial be served within different time frames depending on whether a party or the court clerk serves the notice and depending on whether the action is an unlawful detainer. The commenters suggested altering the time frames. ITAC and CSCAC determined that these comments were beyond the scope of the proposal as the proposal is intended to add electronic service as a mechanism for service of a notice of new trial, not alter statutory time frames.

After the proposal circulated for comment, ITAC and CSCAC approved a nonsubstantive, technical revision to the language in the proposed amendment to Civil Code section 1719(g)(2), which cross-references Code of Civil Procedure section 1013b. The purpose of this revision was to conform the proposal to a nonsubstantive edit made this year by the Legislature in AB 976 to Code of Civil Procedure section 1013b.

Following the ITAC and CSCAC meetings, the Judicial Council Technology Committee (JCTC) considered the proposal and discussed that the language used across the proposed amendments could be more consistent. Accordingly, staff have revised the language to be more consistent. The edits are technical and non-substantive. Specifically, the proposed amendment to Civil Code section 1719(g)(2) originally had language that read, ". . . 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 language in other proposed amendments is more simplified and staff have pared down the proposed language in Civil Code section 1719(g)(2) to read, ". . . if the payee is the court and the check passed on insufficient funds relates to an action in which the drawer is accepting electronic service pursuant to Section 1010.6 of the Code of Civil Procedure . . ."

Similarly, the proposed language for Code of Civil Procedure section 405.22 is pared down from ". . . 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. . ." to "provided that the parties to whom the real property claim is adverse and the owners of record are accepting electronic service pursuant to Section 1010.6

JCTC has also directed staff to update PCLC on the status of legislation (Assem. Bill 976) that may impact the proposal. As of the date of this memorandum, the legislation is pending in the Senate. More likely than not, the outcome of the legislation will be known by PCLC's September 14, 2017 meeting. Accordingly, pursuant to JCTC's direction, staff will provide a verbal update on the legislation at the meeting.

With respect to 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. The proposal provides the option of electronic service, but does not add any new requirement to use electronic service.

Relevant Strategic Plan Goals

The proposal is consistent with "Goal 4: Promote Rule and Legislative Changes" in the *California Courts Strategic Plan for Technology 2014–2018*. Under Goal 4, the judicial branch will drive modernization of statutes, rules, and procedures to facilitate use of technology in court operations and delivery of court services. Goal 4 is strongly aligned with the judicial branch's strategic plan overarching goals for (1) access, fairness, and diversity; (2) independence and accountability; (3) modernization of management and administration; and (4) quality of justice and service to the public.

Attachments

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 8–13
2. Chart of comments, at pages 14–21

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 is accepting 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 (a)(4) of 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 are accepting 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) * * *

LEG 17-05

Technology: Electronic Service (amend Civil Code section 1719 and Code of Civil Procedure sections 405.22, 405.23, 594, 659, 660, and 663a

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

	Commentator	Position	Comment	Committee Response
1.	Aderant By Victoria Katz, Rules Attorney www.aderant.com Email: **victoria.katz@aderant.com**	NI	We have reviewed the Invitation to Comment LEG 17-05 and write to request that the proposed amendment to CCP 594(b) be further clarified with respect to the calculation of the 15 and 10-day deadlines for a party to serve notice provided therein. As proposed, CCP 594(b) states, in part: > 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. CCP 1010.6(a)(4) says, "[A]ny period of notice, or any right or duty to do any act or	The committees appreciate the comment, but the modification suggested in the comment goes beyond the scope of the proposal. The proposal adds electronic service as a mechanism to serve the notice of trial, but is not intended to alter statutory time frames applicable to specific case types.

	Commentator	Position	Comment	Committee Response
			make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days…." CCP 1013(a) provides, "[A]ny period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended . . . 20 calendar days if either the place of mailing or the place of address is outside the United States…." The statement that the time provisions in CCP 1010.6 and 1013 shall not "extend the notice of trial requirements under this subdivision for unlawful detainer actions," makes the calculation for non-unlawful detainer actions ambiguous, because it seems to imply that they *do* serve to extend the notice of trial requirements in those cases. For example, in a non-unlawful detainer actions, amended CCP 594(b) seems to require notice to be electronically served 15	

	Commentator	Position	Comment	Committee Response
			days + 2 court days prior to the date of trial, pursuant to CCP 594(b) and CCP 1010.6. Similarly, notice served by mail outside of California and outside of the United States, would need to be served 20 and 30 days prior to the date of trial, respectively. Is this correct? Or should the deadline for service of notice in non-unlawful detainer actions served by either method simply be 15 days prior to trial? If the deadline is meant to be only 15 days before trial, we respectfully request that CCP 594(b) be further amended to eliminate the reference to unlawful detainer actions in the sentence regarding the time provisions of CCP 1010.6 and 1013: "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 extra time under CCP 1010.6 and 1013 is meant to be added to the notice deadline, we respectfully request that CCP 594(b) be further amended to clarify this fact. For example, the time provision sentence could be changed to read, "Except for unlawful detainer actions, the time provisions of Section 1010.6 and Section 1013 shall serve	

	Commentator	Position	Comment	Committee Response
			to extend the notice of trial requirements under this subdivision."	
2.	Lomax, Mark W. Pasadena CA, Email: mlomax1074@gmail.com	AM	C.C.P. section 411.20 requires the clerk to mail notice regarding a dishonored check for a filing fee, and C.C.P. section 411.21 requires the clerk to mail notice regarding partial payment of a filing fee. I recommend that both sections be amended to permit the notices to be served electronically or by postal mail.	The committees appreciate the comment, but it is beyond the scope of this proposal. The committees may consider the suggestion as part of a future proposal.
3.	Orange County Bar Association By Michael L. Baroni, President P.O. Box 6130 Newport Beach, CA 92658	A, AM, N	Agree as Modified - As to the proposed changes to CC section 1719, the following modifications are suggested. With very limited exception, parties who have agreed to accept, or who are required to accept, electronic service of documents pursuant to the provisions of CCP section 1010.6, are represented by counsel. For these parties, the email address on file with the court is that of their respective counsel and not that of the actual party. Consequently, a drawer of a check may appear to be a party subject to electronic service in the underlying action, but whose personal email is not the one in the court records. While there is no disagreement with the idea behind the proposal, it is	The committees appreciate the comment, but decline to alter the proposal. If the drawer's counsel receives the notice, that should be sufficient in light of professional ethical obligations that counsel would owe the drawer as client.

	Commentator	Position	Comment	Committee Response
			suggested that the proposed language adding subsection (2) to CC section 1719(g) be modified in some manner to ensure that the drawer's personal email address is used and that permission for its use by the court is obtained. To do anything less would result in an insufficient and failed demand under CC section 1719(g). Disagree – As to the proposed changes to CCP sections 405.22 and 405.23, the following observations are made. As a practical matter, it is difficult to see how allowing the service electronically of a notice of pendency of action would be of real benefit. At the time a plaintiff, for example, would want to serve the notice, it would seem unlikely that an adverse party even if required to be served electronically, would have responded so as to have its electronic contact information on file. In that all affected owners of record also must be served notice, it would seem even more unlikely that their respective electronic contact information or consent would be known to the plaintiff. Finally, in that service must be made "immediately" upon each adverse party later joined per CCP section 405.22, it would seem most unlikely	The committees appreciate the comment, but decline to alter the proposal at this time. While the proposed amendments would be applicable to only a narrow subset of litigants, it is reasonable to allow an electronic option for the notice where the litigants are already dealing electronically with one another. Electronic service also provides a sufficient record of transmission.

	Commentator	Position	Comment	Committee Response
			their electronic contact information would have been provided. For these reasons, based on the timing considerations involved, the likelihood exists that most if not all of these notices would still be served by mail. Beyond the practical considerations, there are differences in the very nature of a notice of pendency of action which set it apart from a pleading, for example. These differences are not just rooted in tradition, but in actual distinction. The use and impact of these notices is serious which is, perhaps, the reason for the heightened requirements associated with their service (these heightened requirements would be lost, of course, were electronic service allowed). Pleadings simply may be mailed, but these notices must be sent registered or certified mail, return receipt requested. Both of these methods allow for tracking and evidence of receipt. Pleadings are filed with the court, while notices are recorded with the county recorder, and require a notary's seal and acknowledgment. Pleading and notices are both public records, but the notice appears in the chain of title giving constructive notice to all who come after. In short, a notice of pendency of	

	Commentator	Position	Comment	Committee Response
			action is surrounded by unique considerations, and it should not be equated with, treated like, or served in the manner of a subsequent pleading. Agree – As to the proposed changes to CCP sections 594, 659, 660, and 663a. **Request for Specific Comments:** Does the proposal appropriately address the stated purpose? Yes, in light of the modernization project which seeks to "facilitate electronic filing and service and to foster modern e-business practices." It is believed, however, that the anticipated benefits of these efforts should be carefully weighed against certain implications and ramifications for litigants.	The committees appreciate the support. The committees appreciate the comment.
4.	Superior Court of Los Angeles County 111 N. Hill Street Los Angeles, CA 90012	AM	**Suggested modifications:** **Code of Civil Procedure § 594(b)** **Page 9, lines 1 through 3 -** In order to clarify that the 20 day provision only applies to service by mail, not electronic service, change: "…shall be served electronically in accordance with Section 1010.6 or by mail on all parties by	The committees appreciate the comment, but the modification suggested in the comment goes beyond the scope of the proposal. The proposal adds electronic service as a mechanism to serve the notice of trial, but is not intended to alter the 20 day time frame.

	Commentator	Position	Comment	Committee Response
			the clerk of the court not less than 20 days prior to the date set for trial." **to** "…shall be served by mail on all parties by the clerk of the court not less than 20 days prior to the date set for trial or electronically in accordance with Section 1010.6."	
5.	Superior Court of San Diego County By Mike Roddy, Court Executive Officer County Courthouse 220 West Broadway San Diego, CA 92101	A	No specific comments.	The committees appreciate the support.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
July 25, 2017

To
Members of the Policy Coordination and Liaison Committee

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

Subject
Proposal for Judicial Council–Sponsored Legislation: Temporary Emergency Gun Violence Restraining Orders

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council sponsor legislation to amend the statutes setting forth the procedure for issuing a temporary emergency gun violence restraining order, specifically Penal Code sections 18140 and 18145. The amendments would replace the procedural requirement for obtaining an order orally—currently a reference to compliance with procedures under Penal Code section 1526—with requirements set forth directly within the gun violence prevention statutes, which would parallel the requirements for emergency orders obtained in domestic violence cases, and would clarify the procedures for law enforcement officers and the court to follow in orally issuing a temporary emergency gun violence restraining order. This change, which was initiated as the result of concerns expressed by a judicial officer as to whether the current procedure for orally issuing temporary emergency gun violence restraining orders on form EPO-002 fully complied with the statute, would not in any way change the factual assertions required of the officer or findings required of the judicial officer for the order to issue.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council sponsor legislation to amend the statutes setting forth the procedure for issuing a temporary emergency gun violence restraining order, specifically Penal Code sections 18140 and 18145. The amendments would replace the current procedural requirement for obtaining an order orally (a reference to compliance with procedures under Penal Code section 1526) with requirements set forth directly within the gun violence prevention statutes, and would clarify the procedures for law enforcement officers and the court to follow in orally issuing a temporary emergency gun violence restraining order.

The text of the proposed amended statutes is attached at page 7.

Previous Council Action

Assembly Bill 1014 (Skinner, 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. Despite the location of the statutes in the Penal Code (see Pen. Code, §§ 18100 et seq. [1]), the statutes expressly provided that the process to obtain a gun violence restraining order is to be considered a civil proceeding.

By statute, the Judicial Council must prescribe the form of the petitions and orders and any other documents necessary to implement the new law. (see § 18104.) The council adopted a series of Gun Violence Restraining Order forms in 2016. The forms adopted included one for law enforcement officers to use in obtaining and enforcing a temporary gun violence restraining order, the *Firearms Emergency Protective Order* (EPO-002). That order was modeled after the already existing Judicial Council form *Emergency Protective Order* (EPO-001), used for immediate issuance of emergency orders in domestic violence cases. The statutes that present the procedures for obtaining this EPO are addressed in this recommendation.

In 2017, the Judicial Council sponsored AB 1443 (Levine, Stats. 2017, ch. 172) which, among other things, establishes a record retention period for gun violence restraining orders.

Rationale for Recommendation

Background

Assembly Bill 1014 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). (Cf. Fam. Code, § 6200 et seq.; and Pen. Code, §§ 18125–18197.)

A temporary emergency gun violence restraining order (EPO) may be issued only on the request of a law enforcement officer and only when the officer has shown, and the judicial officer has found, that there is reasonable cause to believe that an immediate and present danger exists of the

[1] Unless otherwise noted, all statutory references in this report are to the Penal Code.

subject causing injury to himself or others through use of firearms. § 18125. The EPO expires 21 days from issuance. *Id.* It must contain a statement of the grounds for supporting the issuance of the order and the date and time it expires, along with information about the possibility of a more permanent order being obtained and the address of the applicable court. § 18135.

EPOs are generally obtained by a law enforcement officer in the field, dealing with the circumstances of the immediate and present danger that is the basis for the order. The current statute appears to be based, at least in one section, on the assumption that the order will be obtained orally,[2] outside the courthouse setting, because it mandates that the officer "file a copy of the order with the court as soon as possible after issuance." § 18140(c).

Notwithstanding the assumption underlying section 18140(c) that firearm EPOs will generally be obtained orally, section 18145(a) provides that such orders shall be obtained via written petition, unless time and circumstances do not permit preparing and filing a written petition.

When the order is obtained orally—as in practice it almost always is—the statute currently provides that it should be issued in accordance with the procedures for obtaining an oral search warrant under section 1526. Subdivision (b) of section 1526, providing for issuing warrants orally, requires that the warrant be issued on an oral statement under oath that is either recorded at the courthouse (either by a machine or a court reporter) and transcribed or put into writing after it has been made over the phone and then transmitted to the judicial officer over fax or e-mail prior to the issuance of the warrant. Section 1526 also requires that the warrant then be issued by the judicial officer and faxed or transmitted by e-mail back to the law enforcement officer. The committee is concerned that these procedures, which are very different from those used for issuance of domestic violence EPOs, are too burdensome for use with these firearm EPOs.

Some concerns have been voiced by at least one judicial officer as to whether the current *Firearms Emergency Protective Order* (form EPO-002) is in compliance with the gun violence restraining order statutes, as it does not act as a written petition and does not reference the provisions for obtaining a search warrant orally. This judge raised concerns that, as a result, there is confusion in the implementation of the statute and the issuance of firearms EPOs. In light of these concerns, as well as of the ambiguity in the statute,[3] the committee recommends that the council sponsor legislation to amend the statutes to clarify the procedures and, at the same time, make them more consistent with the procedures used for EPOs in domestic violence cases, [4]

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[2] Obtaining an order orally means that the judicial officer approves the order over the phone in a conversation with a law enforcement officer in the field.

[3] Compare the underlying assumption in section 18140(c) that the emergency orders will be obtained orally and later filed with the court, with the ***default*** in section 18145(a) that they be obtained by written petition.

[4] Under Family Code section 6241, a judicial officer is authorized to grant a domestic violence emergency protective order orally. To obtain an EPO under the Domestic Violence Protective Act, the law enforcement officer is not required to submit a written petition or affidavit, or even to provide the oral statement under oath. All that is required is the officer's oral assertion that he or she has reasonable grounds for believing a person is in immediate and present danger of domestic violence, abuse, or abduction. See form EPO-001, *Emergency Protective Order (CLETS-EPO)*; and Fam. Code, § 6250.

while still requiring a statement by the law enforcement officer under oath as currently required by the statute.

Recommended amendments

The recommended amendments are as follow:

- Amend subdivision (a) of section 18145 by switching the order of current subparts (1) and (2), to place *oral* issuance of emergency orders in the primary position with a written process authorized if time and circumstances permit.

- Further amend subdivision (a) of section 18145 to provide that a judicial officer may orally issue an emergency order based on the statements of a law enforcement officer in accordance with the amended subdivision (a) of section 18140.

- Amend subdivision (a) of section 18140 to require that, if the emergency order is obtained orally, the law enforcement officer "sign a declaration under penalty of perjury reciting the oral statements provided to the judicial officer" on the Judicial Council form, as well as memorialize the order, as already required.

The amendments would also provide that a declaration under penalty of perjury would be required should time and circumstances permit a written petition. (Recommended § 18145(a)(2).)

The amendments would clarify the process for issuance of temporary emergency gun violence restraining orders and further the court's ability to efficiently process and issue emergency orders. Making the oral procedures the primary procedure in the statute reflects the reality of how these orders are issued: obtaining a firearms EPO is generally done over the phone requested by a law enforcement officer in the field dealing with a situation in which someone poses an *immediate and present danger* of causing harm to himself, herself, or others. It is hard to see how time and circumstances would allow the officer to present a written form to a judicial officer at the courthouse, particularly as the default procedure.

The amendments would also promote consistency and uniformity by adopting requirements similar to those specified by the Legislature for EPOs obtained orally in domestic violence cases under Family Code section 6241.

The proposal retains the essential requirements of the original statutes. Specifically, the oral statements that the law enforcement officer seeking the order makes to the judicial officer must be declared under penalty of perjury, on the order form eventually filed with the court, a parallel to the requirement of statements under oath for oral issue of search warrants. (Cf. § 1526(b): law enforcement officer statement made by telephone and recorded or sent in to court in writing via fax or e-mail.)

Comments, Alternatives Considered, and Policy Implications

External comments

The committee circulated proposed amendments in spring 2017 for comments. The circulated proposal provided that the emergency orders could be issued orally based on oral statements that the law enforcement officer memorialized under penalty of perjury on the Judicial Council order form. Four comments were received: from the Orange County Bar Association and three courts, the Superior Courts of Los Angeles, San Diego, and Ventura Counties.

A specific question of whether to develop a written petition form was included in the Invitation to Comment. Only one commenter responded to that point, the Superior Court of San Diego, which stated no.

The Orange County Bar Association agreed with the proposed amendments, and the commentator recognized that form EPO-002 may be out of compliance with Penal Code section 18145 as it currently reads. The purpose behind this recommendation is to address this situation. The committee notes that there were no other comments on this point, neither endorsing nor opposing bringing the statutes in line with the process behind the form.

The commenter also noted that essentials for warrant issuance are retained under the amendments because the law enforcement officer must still make a statement under oath that is recorded (on the EPO form, in the event of an oral application).

The Superior Court of Los Angeles County agreed with the recommendation if modified, asking that courts be allowed the alternative of issuing the oral emergency order based *either* on the oral statements of the law enforcement officer, which are put into writing under penalty of perjury on the EPO form, or on the oral statements made in accordance with the search warrant procedures. The committee believes that leaving reference to the search warrant procedure in the statute would prove confusing to law enforcement. The committee believes that the process for obtaining a search warrant is too cumbersome to be used in the field at the scene of an emergency. (See Pen. Code, § 18125(a)(1) [“The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another”].)

Under the process envisioned by the drafting group for the gun violence restraining order forms, the officer at the scene of an emergency would call the duty judge from the cruiser, read the statement of facts entered on form EPO-002, and get an oral approval from the judge. The officer would then complete form EPO-002, serve it immediately on the respondent, and seize the firearms.

The Superior Court of San Diego agreed with the proposed amendments. While answering no to the question of whether a written petition form should be developed, it raised the suggestion that a space for a judicial officer’s signature should be included on form EPO-002. The committee declines to add a signature line at this point. The committee agrees that a separate Judicial Council form would not be useful because there would seldom be time to present a written petition to the court in an emergency situation. The committee does not believe that the form

needs a line for the judge's signature as the judge's approval will almost always be obtained orally, and therefore the line on the EPO form will almost always be blank. Also, there is currently no room on the form for any additional lines.

Internal comments

In considering the comments, particularly the lack of comments seeking a separate written petition form, and further reviewing the proposed amendments, the committee concluded that one amendment not made in the original circulation should be considered: switching the order of the subparts of section 18145(a) so that the process for orally issuing an emergency order comes first, with the process for a written request provided for in the event there are instances when time and circumstances would permit such a process. The committee concluded that because the vast majority of emergency temporary gun violence protective orders are issued orally, it would make the statute less confusing to be ordered in this way.

Alternatives

The committee considered creating a separate form for a written petition to implement the requirement of current section 18145(a)(1), and posed the question on the Invitation to Comment as to whether a written petition form should be developed. No commenter indicated any need or desire for a written petition form. The committee believes that the existing form EPO-002 is sufficient.

The committee also considered some revisions to form EPO-002 intended to satisfy current section 18145(a)(2), which provides that orders obtained orally be issued in accordance with the procedures for obtaining oral search warrants. The committee decided not to recommend this proposal but instead recommend a more comprehensive change to the statutory procedures themselves, in order to obtain greater clarity and to lessen the burdens on the courts.

Implementation Requirements, Costs, and Operational Impacts

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

Attachments and Links

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 a declaration under penalty of perjury 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 judicial officer may issue a temporary emergency gun violence restraining order ~~shall be obtained by submitting a written petition to the court~~ orally based on the statements of a law enforcement officer in accordance with subdivision (a) of Section 18140.

(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~~ obtained in writing and based on a declaration signed under penalty of perjury.

(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.

LEG17-03
Proposed Legislation: Temporary Emergency Gun Violence Restraining Orders
All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael L. Baroni, President	A	AB 1014 enacted Penal Code §§ 18100 et. seq.. These sections established a Gun Violence Restraining Order (GVRO) using a civil restraining order process. The GVRO is used to remove guns and ammunition from one who is a danger to themselves or others by a petition from law enforcement or family members. Penal Code §18145(a)(1) requires that a temporary emergency GVRO "shall be obtained by submitting a written petition to the court." However, pursuant to Family Code §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". Unlike the Penal Code sections, a law enforcement officer is <u>not</u> required to submit a written petition or an affidavit, or to provide an oral statement under oath. Moreover, it is debatable whether Form EPO-002, the Firearms Emergency Protective Order used for the GVRO, is in compliance with §18145(a)(1). In order to promote consistency and resolve ambiguity between the Penal and Family Law code sections, Judicial Council proposes three statutory amendments: •Amend subdivision (a)(1) of Penal Code	The committee acknowledges the commenter's agreement with the proposal. The committee notes that the commentator recognizes that the EPO-002 may be out of compliance with Penal Code section 18145 as it currently reads. The purpose behind this proposal is to address this situation. The committee further notes that there were no other comments on this point, neither endorsing nor opposing bringing the statutes in line with the process behind the form.

	Commentator	Position	Comment	Committee Response
			section 18145 to clarify that the petition shall be "made in writing" and "based on a signed affidavit submitted to a judicial officer." •Amend 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." •Amend 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 appropriately address the stated purpose. The proposed subdivisions (a)(1) and (a)(2) of Penal Code section 18145 are based on the procedures for the issuance of search warrants under Penal Code §§1526(a) and (b). The essentials for warrant issuance are retained as a statement must be made in a "signed affidavit" in writing or an "oral statement under oath" that is "recorded and transcribed."	
2.	Superior Court of Los Angeles County	AM	The proposed change to Penal Code, Section 18145(a)(2) deletes the language	The committee believes that leaving reference to the search warrant procedure in the statute would

	Commentator	Position	Comment	Committee Response
			incorporating Penal Code, Section 1526. That section provides an alternative to obtaining a telephonic search warrant in which the sworn statement is audio recorded and then transcribed. (Penal Code, Section 1526(b)(1).) By deleting this language, this alternative is not available for a GVRO. It is not clear why we would eliminate the option of a telephonic warrant which is recorded and then transcribed. From a policy perspective it is best to provide more options for obtaining a GVRO under emergency situations. In addition, the elimination of the audio recorded statement procedure may be confusing to law enforcement since this option will remain viable for traditional search warrants. Instead the statute should read that a GVRO "may be issued in accordance with the procedures for obtaining an oral search warrant described in Section 1526 or orally by a judicial officer based on the statements of a law enforcement officer in accordance with subdivision (a) of Section 18140."	prove confusing to law enforcement. The committee believes that the process for obtaining a search warrant are too cumbersome to be used in the field at the scene of an emergency. (See Pen. Code, § 18125(a)(1) ["The subject of the petition poses an immediate and present danger of causing personal injury to himself, herself, or another"].) Under the process envisioned by the drafting group for the Gun Violence forms, the officer at the scene of an emergency will call the duty judge from the cruiser, reads the statement of facts entered on the EPO-002, and gets an oral approval from the judge. The officer will then complete the EPO-002, serve it immediately on the respondent, and seize the firearms.
3.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	Q: Does the proposal appropriately address the stated purpose? A: Yes. Q: Would the proposal provide cost	The committee acknowledges the commenter's agreement with the proposal.

	Commentator	Position	Comment	Committee Response
			savings? If so, please quantify. A: No. Q: 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). A: No. However, the current EPO-002 should be modified to include an option for a judicial officer's signature for requests submitted during business hours.	The committee agrees that a separate Judicial Council form would not be useful because there would seldom, if ever, be time to present a written petition to the court in an emergency situation. The committee does not believe that the form needs a line for the judge's signature as the judge's approval will almost always be obtained orally. Also, there is currently no room on the form for any additional lines.
4.	Superior Court of Ventura County by Julie Camacho, Court Manager	AM	Agree with the proposed changes but request additional information/clarification. Penal Code Section 18140(c) directs the law enforcement officer requesting the emergency gun violence restraining order to "File a copy of the order with the court as soon as practicable after issuance." The EPO forms, including the EPO-002 form, do not have a place for the court staff to "file stamp" the document. In the Ventura Superior Court, the form is stamped with a date of receipt stamp, but is not filed. Also, if the document is to be filed with the court, shouldn't the original EPO form be submitted and not a copy as stated in PC 18140? It is this court's experience with the domestic violence EPO forms that the law	The committee acknowledges the commenter's agreement with the proposal. The commentator raises some valid questions, but they are not pertinent to the current proposal. The EPO-002 does not initiate a proceeding for a permanent order; only the GV-100 petition does that. The statutes do not currently address what a court should do with EPOs after they expire. Most likely, whatever disposition the courts currently make of their EPO-001 (domestic violence emergency orders) would be appropriate for the EPO-002's also. . The reasonable conclusion is that the original will be served on the respondent. As noted in the comment, statutes require the filing of a copy. It is not clear why law enforcement would be submitting originals of the EPO-001.

	Commentator	Position	Comment	Committee Response
			enforcement agencies are submitting the original form to the court. In addition, Government Code Section 68152(a)(6) states the retention period of the Civil Harassment, Domestic Violence, Elder and Dependent Adult Abuse, Private Postsecondary School Violence and Workplace Violence temporary restraining orders, which would include the EPO temporary orders. Should the Gun Violence Restraining Orders be added to this section to provide the court a time line for retention of both the EPO's, TRO's and Orders After Hearing?	The committee agrees that Gov. Code 68152 be amended to add Gun Violence orders to the retention of records requirements, but the suggestion is outside the scope of this proposal. The committee will refer the suggestion to the appropriate advisory committee for future consideration.

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
August 10, 2017

To
Members of the Policy Coordination and Liaison Committee

From
Traffic Advisory Committee
Hon. Gail Dekreon, Chair

Subject
Proposal for Judicial Council-Sponsored Legislation: Uniform Hourly Rate for Community Service in Lieu of Infraction Fine

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

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Executive Summary

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. This proposal is in response to Judicial Council directives to consider recommendations to promote access to justice in infraction cases.

Recommendation

The Traffic Advisory recommends that the Judicial Council sponsor legislation to amend Penal Code section 1209.5, as follows:

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 shall be double the lowest schedule for California minimum wage. A court may have a local rule to increase the amount that is credited for each hour of community service.

Previous Council Action

None.

Rationale for Recommendation

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. Currently, each court determines its own hourly rate for defendants who perform community service, resulting in different rates throughout the state.

The Proposal

The proposed amendment is designed to provide a uniform and equitable minimum hourly rate for community service in lieu of payment 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.

Comments, Alternatives Considered, and Policy Implications

Comments

This legislative proposal was circulated for public comment this spring. A total of seven commenters provided input on this proposal; four agreed with the proposal, one agreed with the proposal if modified, and two did not indicate a position. There were several notable comments.

The proposal should apply to misdemeanors as well as infractions. One commenter requested that the proposal apply to misdemeanors as well as infractions. The committee declined to pursue this recommendation because it is outside the scope of the present proposal and the committee's

purview. The committee may refer the suggestion to the appropriate advisory committee for future consideration.

Double the minimum wage should be the minimum permissible amount rather than the maximum. One commenter requested that double the minimum wage per hour should be the minimum permissible, rather than the maximum permissible. The committee agrees with the suggestion. The proposal provides that every defendant will receive at least double the minimum wage for community service credit. A court may have a local rule to increase the amount that is credited for each hour. Additionally, the committee noted a judge may continue to exercise discretion to reduce the total amount owed, thereby also reducing a defendant's outstanding court-ordered debt burden.

The relevant amount should apply to the base fine instead of the total fine. Two commenters requested the proposal specify that the rate apply to the base fine rather than the total fine.[1]

The committee considered the requested change but determined the existing proposal would allow defendants to perform fewer hours of community service without creating inequality among infraction defendants. For example, if a defendant committed a violation of speeding less than 15 mph over the speed limit (Vehicle Code section 22349(a)), the base fine would be $35 and the total bail would be approximately $238. If the committee changed the proposal to apply only to the base fine, a defendant could complete one hour of community service to satisfy the base fine, whereas a defendant who paid the fine would owe $238; a defendant working at a minimum wage job might have to work more than 21 hours to pay off the total bail.[2]

After careful consideration, the committee recommends that the community service conversion apply to the total fine, and intends for this proposed legislation to clarify going forward how community service will be calculated for infractions.

The rate should be the same as the custody credit rate for Penal Code sections 1205 and 2900.5. One commenter wondered if the committee considered having the conversion rate for community service be the same as custody credits under Penal Code sections 1205 and 2900.5, as it might be easier for staff who are doing the conversion calculations to have both rates be the same. The current daily credit rate for time served is $125.

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[1] In support of their position, one commenter pointed to Assembly Bill 2839, which added the following 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): "If 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." (Assem. Bill 2839 (Stats. 2016, ch. 769), italics added.) AB 2839 did not amend Penal Code section 1209.5, and the committee does not take a position on the application of AB 2839 to existing section 1209.5.

[2] This example is for illustrative purposes only. Actual calculations and fine amounts might vary.

The committee considered the suggestion. The committee agrees that it might be easier for staff to have both rates be the same, but it declined to adopt the suggestion because having two different rates will not be an excessive burden on staff, and because, overall, the proposal is more equitable as currently drafted.

The rate should be minimum wage and not double the minimum wage. One commenter requested the rate be tied to minimum wage but not doubled, as doubling the minimum wage will put it out of line with the monetary credit defendants receive for each day in custody. Like the previous comment, this commenter is concerned the proposal is out of line with the amount defendants are credited for each day in custody which is $125.

The committee initially considered recommending the minimum wage in developing this proposal, but instead elected to propose double the lowest schedule for the state minimum wage to provide defendants with a greater benefit. Also a defendant in jail remains in custody 24 hours a day, whereas a day of labor is based on only eight (8) hours of work. The committee reconsidered its position in light of this comment, but declined to change the proposal.

Double the minimum wage should apply for conversion of total bail amounts over $2,000. The proposal as circulated read, "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." One commenter requested the calculator to be double the minimum wage instead of the original calculation for fines over $2,000.

The committee agrees with the suggestion because a $2,000 cut off is arbitrary. The committee revised the proposal to eliminate the $2,000 cut off. The committee also noted that the proposal allows a court to increase the amount that is credited for each hour by local rule, and that judges may continue to exercise discretion to reduce the total amount of fines owed for individual defendants.

A uniform community service rate should be graduated to reflect the time spent on the job. One commenter noted that it takes great effort for non-profits to incorporate the contribution of labor for defendants seeking community service credit for fines, and non-profits hope to turn the defendant into a future volunteer. The commenter noted that if a defendant receives double the minimum wage credit against fines, the defendant will be less likely to later volunteer without compensation. The commenter also noted that other volunteers who work for the non-profit will resent working alongside a defendant who receives credit of double the minimum wage. The commenter believes that a uniform rate is good, but suggested a graduated rate. For example, the first x hours would be credited at minimum wage and a dollar more for each number of additional hours, or the non-profit should determine the rate.

The committee noted that the commenter raised interesting concerns about a defendant's dedication to a non-profit. However, a defendant's ongoing commitment to a non-profit community service provider is a positive by-product, not the primary goal, of the proposal. Moreover, implementing a graduated rate or alternatively, having the non-profit determine the rate is too impractical. The committee declined to pursue the suggestion.

Alternatives Considered

The committee considered various formulas before approving the one in 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, either in cash or by service, poses a hardship. 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. Lastly, based on comments received, the committee considered whether the rate should apply to the base fine only or the total fine, whether the day rate should be the same for community service as it is for custody credits, and whether the rate should be tied only to the minimum wage. After considering all of the alternatives, the committee determined the rate in the proposal is the most equitable.

Policy Implications

There is some concern, the proposal could increase the number of defendants who request community service, which would increase workload for courts in administering community service requests and completion.

Relevant Strategic Plan Goals and Operational Plan Objectives

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

Attachments

1. Text of proposed Penal Code section 1209.5, at page 6
2. Chart of comments, at pages 7–13

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 shall be double the lowest schedule for California minimum wage. A court may have a local rule to increase the amount that is credited for each hour of community service.

LEG17-06
Proposed Legislation (Traffic): Uniform Hourly Rate for Community Service in Lieu of Infraction Fine

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

	Commentator	Position	Comment	Committee Response
1.	Amy Dreskin Anderson	A	I am in favor of the doubled minimum wage uniformly applied in payment alternatives work programs for tickets, so long as this option is available for misdemeanors.	**Proposed response**: The committee appreciates Ms. Anderson's input. The committee declines to pursue this recommendation because it is outside the scope of the present proposal and the committee's purview. The committee may refer the suggestion to the appropriate advisory committee for future consideration.
2.	California Public Defenders Association By: Charles Denton President	N/I	The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators tentatively supports the Committee's proposal to allow the conversion of infractions to community service at a rate of double the minimum wage at the request of the defendant, but urges the Committee to make changes designed to avoid overburdening the already poor. Specifically, we would suggest that, as with criminal fines, the amount per hour set in Penal Code section 1209.5 be "the minimum" permissible amount, rather than a maximum, that the relevant amount be the base fine, rather than the fine plus "penalties and assessments," and that double the minimum wage also be the <u>minimum</u> permissible conversion credit for fines over two thousand dollars. We make these suggestions because we believe that the vast majority of those who will ask for conversion of their infraction fines to	**Proposed response:** The committee appreciates the California Public Defender's Association's input. The committee agrees with the suggestion that the amount per hour be the minimum permissible amount. The proposal as currently drafted provides that every defendant will receive at least double the minimum wage for community service credit. A court may have a local rule to increase the amount that is credited for each hour. Additionally, the committee noted a judge may exercise discretion to reduce the total amount owed, thereby also reducing a defendant's burden. The committee considered the requested change from "total fine" to "base fine" but determined the existing proposal would allow defendants to

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			community service are the poor. Given that most impoverished defendants already live hand to mouth, we believe that imposing overly large amounts of community service hours in lieu of infraction fines will cause harm to them and to their families. For example, under the current proposal, a $2000 fine would take an able-bodied adult more than ninety hours (two weeks of work) to complete. Given that only last year the Legislature expressed its preference that courts use the "base" fine when converting a fine to community service, we believe that the use of the base fine and not the fine plus penalties and assessments is also appropriate in the infraction context. (See AB 2839 (2016).) Thus, we would suggest the following amendment to section 1209.5: § 1209.5 Notwithstanding any other provision of law, any person convicted of an infraction may, upon a showing that payment of the fine would pose a hardship on the defendant or his or her family, perform community service in lieu of the fine that would otherwise be imposed. For purposes of this section, the term "fine" means the bail or base fine to be paid by the defendant. For purposes of this section, the minimum hourly rate applicable to community service work by	perform fewer hours of community service without creating inequality among infraction defendants. After careful consideration, the committee recommends that the community service conversion apply to the total fine, and intends for this proposed legislation to clarify going forward how community service will be calculated for infractions. The committee declines to pursue this suggestion. The committee agrees with the suggestion because a $2,000 cut off was arbitrary. It revised the proposal to eliminate the $2,000 cut off. The committee also noted that the proposal allows a court to increase the amount that is credited for each hour by local rule and that judges may exercise discretion to reduce the total amount of fines owed for individual defendants.

	Commentator	Position	Comment	Committee Response
			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, but shall in no event be lower than double the lowest schedule for California minimum wage. A court may have a local rule to increase the amount that is credited for each hour of community service.	
3.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	If uniform rate for infractions is imposed, a new conversion chart for community service in lieu of fines on infractions will need to be created. ☐ Does the proposal appropriately address the stated purpose? **Response: Yes** ☐ Would the proposal provide cost savings? If so, please quantify. **Response: Would be a significant savings for the defendant, but would increase costs for the courts as more defendants would want community service.** ☐ What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures	**Proposed Response:** The committee appreciates Mr. De La Isla's input.

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			(please describe), changing docket codes in case management systems, or modifying case management systems. **Response: Courts would need to update their community service conversion rates and educate courtroom clerks, judges and other staff authorized to grant community service in lieu of a fine.** ☐ 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? **Response: Yes.** ☐ How well would this proposal work in courts of different sizes? **Response: Unknown.** ☐ Would recent changes to Penal Code sections 1205 and 2900.5 affect how courts implement this proposal? If so, how? **Response: It is suggested that the community service credit be applied to the base fine ordered and any related penalties be reduced as well. Taking it off the total amount due would cause challenges for calculations.**	The committee may develop forms in the future. The committee considered the requested change but determined the existing proposal would allow defendants to perform fewer hours of community service without creating inequality among infraction defendants and would not be an excessive burden on staff. After careful consideration, the committee recommends that the community service conversion apply to the total fine, and intends for this proposed legislation to

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			☐ Please comment on how the proposal may impact the implementation of community service in your jurisdiction. **Response: At double the minimum wage, the public would request community service at a higher rate. This could impact the amount of hearings, warrants for non-completion etc. . . Therefore, it is suggested that the rate be tied to the minimum wage, but not doubled. Doing so will put it way out of line with the amount defendants get for each day in custody.**	clarify going forward how community service will be calculated for infractions. The committee declines to pursue this suggestion. The committee initially considered recommending just the minimum wage in developing this proposal, but instead elected to propose double the lowest schedule for the state minimum wage to provide defendants with a greater benefit. Based on this comment, the committee reconsidered its position, but declines to change the proposal.
4.	Orange County State Bar Association By: Michael L Baroni President	A	Fines imposed under a conviction for an infraction may be converted into hours of community service by the court where hardship is shown pursuant to Penal Code §1209.5. Currently, there is no uniform hourly rate for community service and each court sets its own rate. In order to promote fairness and	**Proposed Response:** The committee appreciates the Orange County State Bar Association's input.

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			uniformity, it is proposed that section 1209.5 be amended to set an hourly rate for community service at double the lowest schedule for the California minimum wage for total fines up to $2,000. By setting the rate to the minimum wage, inflation will be taken into account. For a total fine of more than $2,000, the rate of conversion is to be determined by dividing the total fine by the number of hours of community service. Local courts may also raise the minimum hourly rate. The proposal addresses the stated purpose.	
5.	Susan Spalding Former Community Service Worker	AM	It takes a great deal of effort on the part of the non-profit agency to incorporate the contribution of labor for people seeking credit against court-ordered fines. Generally, the non profit hopes to turn a debtor into a future volunteer. The debtor who receives double the minimum wage for community service is less likely to be willing to later volunteer their time without any compensation Plus, the volunteers who work for the non profit will resent working alongside a less dedicated person who is compensated at double the minimum wage in credit off a fine they owe. A uniform rate is good but should be graduated to reflect time on the job. First x hours of community service for the same non profit should be credited at minimum wage and a dollar more an hour for each additional x hours. Or let the nonprofit determine the rate of compensation between	**Proposed Response:** The committee appreciates Ms. Spalding's input. The committee notes that the commenter raises valid concerns about a defendant's dedication to a non-profit. However, implementing a graduated rate or having the non-profit determine the rate is too impractical. The committee declines to pursue the suggestion.

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			minimum and double minimum wage.	
6.	Superior Court of California, County of Los Angeles	A	It has been years since the conversion of a fine to community labor has been updated. This is a reasonable proposal and should have no operational impact on the court, other than to update fine conversion charts.	**Proposed Response:** The committee appreciates the Superior Court of Los Angeles County's input.
7.	Superior Court of California, County of San Diego By: Mike Roddy Executive Officer	A	Has the Judicial Council Committee writing this proposal considered that this new proposed rate would be significantly higher than the rate established for custody credits under PC 1205 and 2900.5? It may be easier for staff who are doing conversion calculations to have both rates be the same.	**Proposed Response:** The committee appreciates the Superior Court of San Diego County's input. The committee considered this suggestion. Although the committee agrees that it would be slightly easier for staff to have both rates be the same, it declines to pursue the suggestion because having two different rates would not be an excessive burden on staff, and because overall the proposal is more equitable as currently drafted.