



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

February 12, 2020

Action Requested

Recommend for Judicial Council Sponsorship

To

Members of the Policy Coordination and
Liaison Committee

Deadline

N/A

From

Sharon Reilly, Attorney

Contact

Sharon Reilly, 916-323-3121
sharon.reilly@jud.ca.gov

Subject

Proposal for Judicial Council–Sponsored
Legislation: Additional Marshals for New
Shasta Superior Courthouse

Background

Shasta County Superior Court (Shasta), has identified a need for the Judicial Council to sponsor legislation to allow Shasta to employ custodial officers necessary to facilitate the transport of all in-custody defendants to its new courthouse currently scheduled to open in early January 2022. Custodial officers will be necessary to transport and supervise defendants who will remain at the courthouse for longer periods of time (in the holding/detention area) and to accommodate moving groups by bus, rather than individuals, to the new courthouse. Amendments to Penal Code sections 831 and 831.5 are necessary to grant authority to Shasta to employ custodial officers.

Recommendation

Staff recommends that the Judicial Council sponsor legislation to amend Penal Code sections 831 and 831.5 to grant authority to Shasta to employ the custodial officers necessary to fully staff the security needs of its new courthouse.

Comments

According to the council's Director of Facilities, the current schedule projects that move into Shasta's new courthouse will be in December of 2021 and will likely be open to the public in January 2022. Nonetheless, Shasta indicates that the recruitment and hiring process for the new custodial officers is roughly one year. Based on this timeline, staff believes an expedited process for legislation is necessary for custodial officers to be employed for the projected public opening date.

In addition, due to the limited nature of the legislation—applicable to only those courts that use marshals, that is the Shasta and Trinity County Superior Courts, staff believes that this proposal does not need to go through the Joint Legislative Subcommittee of the Trial Court Presiding Judges and Court Executive Officers Advisory Committees. Instead, Shasta has consulted with the Chairs of the Court Executive Officers Advisory Committee and they have agreed that Shasta may proceed as recommended in this proposal.

Relevant Previous Council Action

No relevant previous council action.

Analysis/Rationale

Background

The Shasta County Marshal's Office, which is a division of Shasta, has Deputy Marshal positions that are sworn peace officers under Penal Code section 830.1, just like sheriffs and police officers. The deputies operate as bailiffs in the courtrooms, but also perform police functions in the courthouse and on its premises, such as writing citations, arresting individuals, picking up defendants who fail to appear, and conducting perimeter security.

Presently, Shasta has a main courthouse building, and about 100 yards away the county Justice Center Shasta maintains two felony arraignment courtrooms that are attached to the jail. Deputy marshals bring felony defendants who are in custody down a short internal stairwell from the jail to the courtroom, and then act as the bailiff in the courtroom. For matters involving misdemeanor defendants who are in custody, or for any criminal trials in the main courthouse, deputy marshals transport those defendants in a van from the jail to a sally port in Shasta's existing main courthouse. Those individuals are maintained in the courthouse's holding area when not in court. There are a large number of in-custody defendants who are charged with felonies and who are accompanied from the jail through the stairwell to the felony courtrooms daily, but the number of van transports to the main courthouse are currently much less (as they are only in-custody defendants who are in trial, or in-custody misdemeanor defendants, which is not common).

Issue

Currently, the only other positions in the Marshals office are dispatchers and public safety service officers (PSSOs), neither of which are sworn officers and thus unable to perform tasks that would allow transport of in-custody defendants.

When Shasta moves to its new 6-story courthouse in 2022, all in-custody defendants will be transported by bus to the new courthouse. They will likely remain at the courthouse for longer periods of time (in the holding/detention area), to accommodate moving groups by bus, rather than individuals. This means Shasta will require custodial staffing for in-custody transport and supervision when the new courthouse opens.

Penal Code sections 831 and 831.5 permit most law enforcement entities who maintain custody of prisoners and operate a detention facility to employ custodial officers, who are public officers, not peace officers. The statute does not include the marshal's office, likely because no one contemplated the two courts (Shasta and Trinity County Superior Courts) that have marshal's offices when the statutes were enacted.

Solution

Amending Penal Code sections 831 and 831.5 to include Shasta's Marshal Office in the statutes will permit Shasta to hire custodial officers for full-time in custody transport and supervision duties, rather than a fully sworn peace officer (deputy marshal) being used for transport/supervision. The deputy marshals will better be utilized performing bailiff duties and other police functions, while the marshals acting as custodial officers can handle transport and supervision. Additionally, Shasta anticipates custodial positions will be easier to recruit (according to Shasta, deputy sheriff positions are very hard to recruit for) and those positions will be at less cost to Shasta.

Policy implications

The proposed amendments will not impact other law enforcement agencies. Staff has discussed the concept of the proposal with the California State Sheriffs Association and they did not express concerns with the concept.

Alternatives considered

Staff considered recommending that this proposal go through the standard Judicial Council process for legislative proposals. However, as discussed above, Shasta has indicated that recruiting and hiring custodial officers can take as long as one-year. In view of the timelines facing Shasta to be ready to open the new courthouse and serve the public, staff is

recommending that this proposal go through an expedited process. In addition, staff believes that this approach is appropriate given that the proposal only impacts Shasta.

Fiscal and Operational Impacts

We note this proposal would not directly result in additional cost to the court, however, once the new courthouse opens to the public there may be additional security costs that will need to be addressed through the normal budget process. Authorizing custodial officers positions may provide a less costly solution.

Attachments and Links

1. Text of proposed Penal Code section 831, at pages 5–6
2. Text of proposed Penal Code section 831.5, at pages 7–10

1 **§ 831. Custodial officers**

2 (a) A custodial officer is a public officer, not a peace officer, employed by a law enforcement agency
3 of a city or county or superior court who has the authority and responsibility for maintaining custody
4 of prisoners and performs tasks related to the operation of a local detention facility used for the
5 detention of persons usually pending arraignment or upon court order either for their own
6 safekeeping or for the specific purpose of serving a sentence in that facility.

7
8 (b) A custodial officer shall not carry or possess firearms in the performance of his or her official
9 duties. A custodial officer may use a firearm that is a less lethal weapon, as defined in Section
10 16780, in the performance of his or her official duties, at the discretion of the employing sheriff, ~~or~~
11 chief of police, or marshal, as applicable, or his or her designee. A custodial officer who uses a less
12 lethal weapon shall be trained in its use and shall comply with the policy on the use of less lethal
13 weapons as set forth by the sheriff, ~~or~~ chief of police, or marshal.

14
15 (c) Each person described in this section as a custodial officer shall, within 90 days following the
16 date of the initial assignment to the position, satisfactorily complete the training course specified in
17 Section 832. In addition, each person designated as a custodial officer shall, within one year
18 following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum
19 selection and training standards prescribed by the Board of State and Community Corrections
20 pursuant to Section 6035. Persons designated as custodial officers, before the expiration of the 90-
21 day and one-year periods described in this subdivision, who have not yet completed the required
22 training, may perform the duties of a custodial officer only while under the direct supervision of a
23 peace officer as described in Section 830.1, who has completed the training prescribed by the
24 Commission on Peace Officer Standards and Training, or a custodial officer who has completed the
25 training required by this section.

26
27 (d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as
28 described in Section 830.1, on duty at the same time to supervise the performance of the custodial
29 officers.

30
31 (e) This section does not confer any authority upon any custodial officer, except while he or she is on
32 duty.

33
34 (f) A custodial officer may do all of the following:

1

2 (1) Use reasonable force in establishing and maintaining custody of persons delivered to him or her
3 by a law enforcement officer.

4

5 (2) Make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly
6 issued warrant.

7

8 (3) Release without further criminal process persons arrested for intoxication.

9

10 (4) Release misdemeanants on citation to appear in lieu of or after booking.

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1 **§ 831.5. Custodial officers; powers and duties; training**

2 (a) As used in this section, a custodial officer is a public officer, not a peace officer, who is employed
3 by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus
4 County, Riverside County, Santa Clara County, Napa County, a marshal of a superior court, or a
5 county having a population of 425,000 or less who has the authority and responsibility for
6 maintaining custody of prisoners and performs tasks related to the operation of a local detention
7 facility used for the detention of persons usually pending arraignment or upon court order either for
8 their own safekeeping or for the specific purpose of serving a sentence in the local detention facility.
9 Custodial officers of a county shall be employees of, and under the authority of, the sheriff, except in
10 counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive
11 authority to keep the county jail and the prisoners in it. Custodial officers of a superior court shall be
12 employees of, and under the authority of, the marshal. A custodial officer includes a person
13 designated as a correctional officer, jailer, or other similar title. The duties of a custodial officer may
14 include the serving of warrants, court orders, writs, and subpoenas in the detention facility or under
15 circumstances arising directly out of maintaining custody of prisoners and related tasks.

16
17 (b) A custodial officer has no right to carry or possess firearms in the performance of his or her
18 prescribed duties, except, under the direction of the sheriff, ~~or~~ chief of police, or marshal, while
19 engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots,
20 lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of
21 the sheriff, ~~or~~ chief of police, or marshal.

22
23 (c) A person described in this section as a custodial officer shall, within 90 days following the date of
24 the initial assignment to that position, satisfactorily complete the training course specified in Section
25 832. In addition, a person designated as a custodial officer shall, within one year following the date
26 of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and
27 training standards prescribed by the Board of State and Community Corrections pursuant to Section
28 6035. Persons designated as custodial officers, before the expiration of the 90-day and one-year
29 periods described in this subdivision, who have not yet completed the required training, shall not
30 carry or possess firearms in the performance of their prescribed duties, but may perform the duties
31 of a custodial officer only while under the direct supervision of a peace officer, as described in
32 Section 830.1, who has completed the training prescribed by the Commission on Peace Officer
33 Standards and Training, or a custodial officer who has completed the training required in this
34 section.

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(d) At any time 20 or more custodial officers are on duty, there shall be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers.

(e) This section does not confer any authority upon any custodial officer except while on duty.

(f) A custodial officer may use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer; may make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant; may make warrantless arrests pursuant to Section 836.5 only during the duration of his or her job; may release without further criminal process persons arrested for intoxication; and may release misdemeanants on citation to appear in lieu of or after booking.

(g) Custodial officers employed by the Santa Clara County Department of Correction are authorized to perform the following additional duties in the facility:

(1) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or felony in the presence of the officer that is a violation of a statute or ordinance that the officer has the duty to enforce.

(2) Search property, cells, prisoners or visitors.

(3) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

(4) Conduct searches and seizures pursuant to a duly issued warrant.

(5) Segregate prisoners.

(6) Classify prisoners for the purpose of housing or participation in supervised activities. These duties may be performed at the Santa Clara Valley Medical Center, or at other health care facilities in the County of Santa Clara, as needed and only as they directly relate to guarding in-custody inmates. This subdivision does not authorize the performance of any law enforcement activity involving any person other than the inmate or his or her visitors.

1 (h)(1) Upon resolution by the Napa County Board of Supervisors, custodial officers employed by the
2 Napa County Department of Corrections are authorized to perform all of the following duties in a
3 facility located in that county:

4
5 (A) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe
6 that the person to be arrested has committed a misdemeanor or felony in the presence of the officer
7 that is a violation of a statute or ordinance that the officer has the duty to enforce.

8
9 (B) Search property, cells, prisoners, or visitors.

10
11 (C) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

12
13 (D) Conduct searches and seizures pursuant to a duly issued warrant.

14
15 (E) Segregate prisoners.

16
17 (F) Classify prisoners for the purpose of housing or participation in supervised activities.

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19 (2) This subdivision does not authorize the performance of any law enforcement activity involving
20 any person other than an inmate or his or her visitors.

21
22 (i)(1) Upon resolution by the County of Madera Board of Supervisors, custodial officers employed by
23 the Madera County Department of Corrections are authorized to perform all of the following duties in
24 a facility located in that county:

25
26 (A) Arrest a person without a warrant whenever the custodial officer has reasonable cause to believe
27 that the person to be arrested has committed a misdemeanor or felony in the presence of the officer
28 that is a violation of a statute or ordinance that the officer has the duty to enforce.

29
30 (B) Search property, cells, prisoners, or visitors.

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32 (C) Conduct strip or body cavity searches of prisoners pursuant to Section 4030.

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34 (D) Conduct searches and seizures pursuant to a duly issued warrant.

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36 (E) Segregate prisoners.

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(F) Classify prisoners for the purpose of housing or participation in supervised activities.

(2) This subdivision does not authorize the performance of any law enforcement activity involving any person other than an inmate or his or her visitors.

(j) This section does not authorize a custodial officer to carry or possess a firearm when the officer is not on duty.

(k) It is the intent of the Legislature that this section, as it relates to Santa Clara, Madera, and Napa Counties, enumerate specific duties of custodial officers known as “correctional officers” in Santa Clara, Madera, and Napa Counties and to clarify the relationships of the correctional officers and deputy sheriffs in those counties. These duties are the same duties of the custodial officers prior to the date of enactment of Chapter 635 of the Statutes of 1999 pursuant to local rules and judicial decisions. It is further the intent of the Legislature that all issues regarding compensation for custodial officers remain subject to the collective bargaining process between the counties and the authorized bargaining representative for the custodial officers. However, this section does not assert that the duties of custodial officers are equivalent to the duties of deputy sheriffs and does not affect the ability of the county to negotiate pay that reflects the different duties of custodial officers and deputy sheriffs.



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MEMORANDUM

Date

February 10, 2010

To

Members of the Policy Coordination and
Liaison Committee

From

Sharon Reilly, Attorney
Mark Neuburger, Legislative Advocate
Andi Liebenbaum, Attorney
Leily Arzy, Judicial Fellow

Subject

2020 Judicial Council–Sponsored Legislative
Proposals:

- (1) Bills with Authors
- (2) Updates and Proposed Amendments to
the Council’s Electronic Delivery of
Post-conviction Documents and
Signature and Consistent Fee Provisions
for Electronic Delivery Legislative
Proposals

Submissions to Omnibus Cleanup Bills

Action Requested

Approve Recommended Amendments to the
Council’s Electronic Delivery of Post-
conviction Documents and Signature and
Consistent Fee Provisions for Electronic
Delivery Legislative Proposals.

Approve Submissions to Omnibus Cleanup
Legislation.

Deadline

N/A

Contact

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Sponsor

Judicial Council

Description of Bill

Judicial Council–Sponsored Legislative Proposals

We are providing an update and recommendations for additional action on two of the legislative proposals approved by the Judicial Council at its November 13, 2019 meeting.

1. AB 2165 (Rivas), Electronic filing and service of documents (Electronic filing)

Council Item: 19-184

Amends Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil matters in the trial courts account for signatures not made under penalty of perjury by persons other than the filer.

Status: Pending referral to Policy Committee

2. Electronic Delivery of Documents Following Conviction (e-Delivery)

Council Item: 19-182

Amends Penal Code section 1203.01, *as proposed to be amended*:

- Allow courts to offer the option of electronic delivery of “documents or the data contained in the documents” to attorneys, CDCR, and county jails.
- Allow attorneys, CDCR, and county jails to choose the electronic delivery option either orally or in writing.
- Require that courts continue to deliver the documents via U.S. mail if an attorney, CDCR, and county does not request electronic delivery.
- Require that courts continue to deliver the documents via U.S. Mail to defendants post-conviction.

Status: Staff continues to meet with legislative staff to identify potential authors for this proposal.

3. SB 897 (Jackson), as introduced – Gun Violence Restraining Orders

Council Item: 19-219

Amends Penal Code section 18140 to add a time frame of as soon as practicable but not later than three court days after issuance for a law enforcement officer to file a copy of a temporary emergency gun violence restraining order with the court. This change will ensure that the court receives the emergency order with sufficient time to set and notice a hearing within 21 days, as required by newly enacted Penal Code section 18148.

Status: Referred to Senate Committee on Public Safety on February 6, 2020.

4. Telephone Appearance Fee Revenue Distribution (Telephone Appearance)

Council Item: 19-183

Amends the statutes related to telephonic appearances to (1) update and improve the formula for telephone appearance service fees to be more equitable and reflect current revenue allocation standards; and (2) update the method of transmitting those fees to reflect current fiscal practices in the courts. The proposed amendments would have no impact on the fee charged to individuals for telephone appearance services. This proposal will eliminate the requirement that vendors make the existing \$944,000 (approximate) statutory payments and the provisions providing for the allocation of these funds to the 38 courts. This will allow the Judicial Council to allocate funds equitably and distribute funds to all 58 trial courts. It will also increase the vendor's per call fee by \$3 to ensure the Trial Court Trust Fund (TCTF) continues to receive stable funding. Increasing the fee that each vendor and court must transmit to TCTF from \$20 to \$23 will result in a \$864,000 per year increase, which will help offset the loss of funds by the repeal of existing statute.

Status: Staff continues to meet with legislative staff to potential authors for this proposal.

Provisions Submitted to the Public Safety, Transportation, and Judiciary Committee Annual Omnibus Cleanup Legislation

In late December and early January of each year the Transportation Committees, the Judiciary Committees, and the Public Safety Committees reach out to stakeholders for submissions to their omnibus clean-up bills. The California District Attorney's Office coordinates submissions to the Public Safety Omnibus. The submissions are then circulated to relevant justice partners who may request that the submission be rejected. Submissions must be technical or noncontroversial in nature.

Submitted to Assembly Transportation Committee

Amend Government Code Section 76000.3: to eliminate references to "infraction parking violations."

Submitted to Assembly Judiciary Committee¹

Amend Public Contract Code section 19209: to harmonize the branch procurement reporting requirements with the reporting provisions in FISCAL, which is a statewide budgeting, accounting, procurement, and cash management system.

¹ As of this memo, this omnibus bill is not in print, so we are unaware what the bill number is/will be.

Submitted to CDAA for Inclusion in the Public Safety Omnibus²

Amend Penal Code section 1001.36 to:

1. Make presumptively confidential, except as otherwise provided by law, a document submitted to a court related to a defendant's petition to participate in Mental Health Diversion (i.e. written reports prepared by psychiatrists or psychologists) and requires the court to retain such documents in the confidential portion of the court's file.
2. Provide that the defendant, counsel for the defendant, and the prosecution may inspect copy, or utilize the documents, and any information contained in the documents, without an order from the court for purposes related to the defense, prosecution, treatment, and safety of the defendant, and for the safety of the public.
3. Provides that the court may consider a motion, application, or petition to access the documents in accordance with subdivision (h) of Rule 2.551 of the California Rules of Court.

Amend Penal Code section 1170.17: to allow a defendant to waive the right to be personally present, using similar language to Penal Code section 977(b)(2), waiver of personal presence of defendant in felony proceedings (other than arraignment, plea, preliminary hearing, specified parts of trial, and imposition of sentence).

Repeal Penal Code section 1170.17: to repeal the section allows a juvenile offender who was direct filed upon in adult court and then ultimately convicted of something not eligible for direct file to request that his sentencing/disposition be sent back to juvenile court. The statute is now obsolete because of Proposition 57 but it hasn't been repealed.

Recommendation

Adopt staff recommendation to modify these council-sponsored legislative proposals in the following manner:

E-Filing: amend the bill to eliminate the language concerning consistent fee provisions and retain the clarifying language addressing document signatures.

E-Delivery: amend the proposal to eliminate the option for convicted persons to received post convictions documents electronically.

Omnibus Legislation: approve submissions to the Judiciary, Public Safety, and Transportation Committees' Omnibus legislation.

² As of this memo, this omnibus bill is not in print, so we are unaware what the bill number is/will be.

Relevant Previous Council Action

The Judicial Council adopted all of the legislative proposals listed above at its regular meeting on November 14, 2019.

Analysis/Rationale

E-Filing

This proposal amends Code of Civil Procedure section 1010.6, which governs electronic filing and service in civil matters in the trial courts to (1) create consistency in fee provisions by allowing courts to recover no more than their actual costs regardless of whether electronic filing and service are permitted by local rule, required by court order, or required by local rule; and (2) account for signatures not made under penalty of perjury by persons other than the filer.

When a court permits electronic filing by local rule, it may charge a fee for payment processing not to exceed the costs of processing a payment. (§ 1010.6(b)(7).) If a court permits electronic filing by local rule, it may also require electronic filing and service by court order, but the provision on ordering electronic filing and service does not directly address costs. (§ 1010.6(c).) A court may also require electronic filing and service by local rule, and in that case, it “may charge fees of no more than the actual cost” except in instances where the court deems waiving the fees appropriate. (§ 1010.6(d).) Accordingly, what costs a court can recover vary depending on whether electronic filing and service are permitted by local rule, required by court order, or required by local rule. The provisions of the proposal addressing fee provisions is intended to resolve the difference and allow recovery of actual costs for permissive electronic filing and mandatory electronic filing by court order.

E-Delivery

As originally approved by the Judicial Council the proposal would have allowed convicted persons to opt into electronic delivery. After consulting with staff to the Assembly Public Safety Committee, the California Sheriffs Association, and the California Department of Correction (CDCR) staff determined that this is an unrealistic option at this time. While CDCR may offer some tablets to inmates for educational purposes, our understanding is that inmates generally do not have access to electronic delivery. Likewise, inmates in county jails do not have access to electronic delivery. As a result, CDCR or the county jail would likely need to print the documents, which shifts the printing costs to those agencies. For these reasons, staff recommends that the proposal be revised to eliminate the language that would allow convicted persons to opt into electronic delivery and instead to require courts to continue delivering required documents to the convicted persons via U.S. mail.

Transportation Committee Omnibus

Amend Government Code Section 76000.3 to eliminate references to “infraction parking violations,” The Traffic Advisory Committee (TAC) recommended this change because there is no legal definition for an infraction parking violation, and there is no other place in any code section where the term is used. In working with the Assembly Transportation Committee and

stakeholders, it was agreed that the ideal approach would be to replace the reference with the term “parking offense.” Staff recommends that the Judicial Council approve TAC’s submission.

Assembly Judiciary Committee Omnibus

Amend Public Contract Code section 19209 to harmonize the branch procurement reporting requirements with the reporting provisions in FISCAL, which is the statewide budgeting, accounting, procurement, and cash management system. The Judicial Council Branch Accounting and Procurement Unit recommended this change because the current statutory reporting requirement was implemented before the judicial branch migrated to the statewide FISCAL system, FISCAL’s reporting capacity is different from what the statute requires the council to report, and rather than reporting separately from FISCAL, the judicial branch should, like other state agencies and departments, rely on the capacity of FISCAL for its reporting. Assembly Judiciary Committee is planning to include this provision in an upcoming amended version of its Omnibus bill. Staff recommends that the Judicial Council approve this submission.

Public Safety Omnibus

Amend Penal Code section 1001.36 to:

1. Make presumptively confidential, except as otherwise provided by law, a document submitted to a court related to a defendant’s petition to participate in Mental Health Diversion (i.e. written reports prepared by psychiatrists or psychologists) and requires the court to retain such documents in the confidential portion of the court’s file.
2. Provide that the defendant, counsel for the defendant, and the prosecution may inspect copy, or utilize the documents, and any information contained in the documents, without an order from the court for purposes related to the defense, prosecution, treatment, and safety of the defendant, and for the safety of the public.
3. Provides that the court may consider a motion, application, or petition to access the documents in accordance with subdivision (h) of Rule 2.551 of the California Rules of Court.

Effective January 1, 2020, Penal Code section 1369 was amended to make similar documents submitted in competency proceedings confidential (SB 557). This proposal extends those same protections to individuals participating in mental health diversion. This language is virtually identical to the language of Penal Code section 1369.5, the only difference is the reference to “this section” versus “this chapter....” Staff recommends that the Judicial Council approve this submission.

Amend Penal Code section 1170.17 to allow a defendant to waive the right to be personally present, using similar language to Penal Code section 977(b)(2), waiver of personal presence of defendant in felony proceedings (other than arraignment, plea, preliminary hearing, specified

parts of trial, and imposition of sentence). A defendant has a right to be personally present at sentencing, including a resentencing. Under Penal Code section 1193, a defendant may waive the right to be personally present at judgment in open court or through a notarized writing. In recent years, there have been a number of new laws allowing for resentencing of incarcerated defendants (e.g., Prop. 47, Prop. 64, Penal Code section 1170(d)(1)). However, defendants in state prison usually lose housing and programming opportunities when they are required to physically go to court for a resentencing. Furthermore, the costs associated with transporting state prison inmates to local jails, and housing them in local facilities, is significant. Staff recommends that the Judicial Council approve this submission.

Repeal Penal Code section 1170.17 because it is obsolete. That section allows a juvenile offender who was direct filed upon in adult court and then ultimately convicted of something not eligible for direct file to request that his sentencing/disposition be sent back to juvenile court. However, the statute is now obsolete because of Proposition 57 but it hasn't been repealed. To make the law consistent with Proposition 57, the legislature enacted a new statute to allow something similar in Welfare and Institutions Code section 707.5, but didn't also repeal the obsolete statute (AB 1423, ch. 583, Stats. 2019).

According to the Juvenile Court Judges of California: AB 1423 closes a gap in California's efforts to apply adolescent developmental science to law, which includes the previous passage of SB 1391, SB 439, and Proposition 57. The United States Supreme Court and California courts have recognized that youthfulness and developmental immaturity matter in the justice system. Youth transferred for prosecution to adult court for serious charges should have the opportunity to return to juvenile court to receive treatment if the charges are found to be less serious than initially alleged. AB 1423 is consistent with California's rehabilitative approach toward young people, the purpose of the juvenile court, and the importance of considering adolescent development in sentencing decisions.

The Judicial Council has proposed repealing the Rule of Court 4.510, which implements the obsolete statute. Commenters on the proposal have suggested that the council wait until Penal Code section 1170.17 is repealed.

Alternatives considered

Staff discussed moving forward with the e-filing and e-delivery proposals as originally approved by the Judicial Council, but in view of the issues identified, staff concluded that the best

approach is to make the changes described because without those changes it could be difficult to move the proposals through the legislative process.

Fiscal and Operational Impacts

E-Filing

The proposed modifications to this legislative package will not create additional costs for the judicial branch and may result in saving from the reduced use of paper and postage for delivery via U.S. Mail.

Telephonic Appearance

Staff notes that this legislative package will eliminate the requirement that vendors make the existing \$944,000 (approximate) statutory payments and the provisions provide for the allocation of these funds to the 38 courts. This will allow the Judicial Council to allocate funds equitably and distribute funds to all 58 trial courts. It will also increase the vendor's per call fee by \$3 to ensure the Trial Court Trust Fund (TCTF) continues to receive stable funding. Increasing the fee that each vendor and court must transmit to TCTF from \$20 to \$23 will result in a \$864,000 per year increase, which will help offset the loss of funds by the repeal of existing statute.

Attachments and Links

1. Link A: Assembly Bill 2165 (Rivas), as introduced
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2165
Electronic filing and service of documents (Electronic filing) – Judicial Council November 13, 2019, Agenda Item: 19-184
<https://jcc.legistar.com/View.ashx?M=F&ID=7830800&GUID=D7EB1BEF-FA10-4C49-9D05-66CCC16102A9>
2. Link B: Electronic delivery of documents following conviction (e-Delivery) – Judicial Council November 13, 2019, Agenda Item: 19-182
[https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155055&GUID=B4078F70-6564-47F7-95A3-2386E048DC4F&Extra=WithText&Title=Subject+Details+\(With+Text\)](https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155055&GUID=B4078F70-6564-47F7-95A3-2386E048DC4F&Extra=WithText&Title=Subject+Details+(With+Text))
3. Link C: Senate Bill 897 (Jackson), as introduced
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB897
Temporary Emergency Gun Violence Restraining Order – Judicial Council November 13, 2019, Agenda Item 19-219
[https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155056&GUID=7FECAFC8-F619-4E0B-99B2-56BAEC096974&Extra=WithText&Title=Subject+Details+\(With+Text\)](https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155056&GUID=7FECAFC8-F619-4E0B-99B2-56BAEC096974&Extra=WithText&Title=Subject+Details+(With+Text))
4. Link D: Telephone Appearance Fee Revenue Distribution (Telephone Appearance) – Judicial Council November 13, 2019, Agenda Item: 9-183
[https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155107&GUID=F7050AFE-16ED-41D0-B74E-8DE9C5ED6157&Extra=WithText&Title=Subject+Details+\(With+Text\)](https://jcc.legistar.com/ViewReport.ashx?M=R&N=Master&GID=508&ID=4155107&GUID=F7050AFE-16ED-41D0-B74E-8DE9C5ED6157&Extra=WithText&Title=Subject+Details+(With+Text))
5. Link E: Subdivision (h) of Rule 2.551 of the California Rules of Court
https://www.courts.ca.gov/cms/rules/index.cfm?title=two&linkid=rule2_551
6. Link F: Penal Code section 1369

- http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1369&lawCode=PEN
7. Link G: SB 557
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB557
8. Link H: Penal Code section 1359.5
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1369.5.&lawCode=PEN
9. Link I: AB 1423 (ch. 583, Stats. 2019)
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1423
10. Link J: Rule of Court 4.510
https://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_510