

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**LEG20-\_\_**

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**Title**

Proposal for Judicial Council–Sponsored  
Legislation: Notification of Reduced or  
Dismissed Convictions for Probation  
Transfer Cases

**Action Requested**

Review and submit comments by June 9,  
2020

**Proposed Effective Date**

January 1, 2022

**Proposed Rules, Forms, Standards, or Statutes**

Amend Pen. Code, §§ 1203.425, 1203.9, and  
13151

**Contact**

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**Proposed by**

Criminal Law Advisory Committee  
Hon. J. Richard Couzens, Chair

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### Executive Summary and Origin

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code sections 1203.425, 1203.9, and 13151 to require notification between receiving courts and transferring courts of reductions of felonies to misdemeanors and dismissals of convictions in probation transfer cases.

### Background

Under California law, when probation is transferred, the receiving court accepts “the entire jurisdiction over the case effective the date that the transferring court orders the transfer.” (Pen. Code, § 1203.9(b).) This includes jurisdiction to adjudicate petitions to reduce a felony to a misdemeanor or dismiss a conviction under Penal Code section 1203.4 and multiple other statutes. However, no statute or rule of court currently requires (1) the transferring court to limit access to the transferred case file; (2) probation transfers to be reported to the Department of Justice (DOJ); (3) the receiving court to notify the transferring court when a reduction or dismissal occurs; or (4) the transferring court to update its records if it receives notice of a reduction or dismissal from the receiving court. If a receiving court reduces or dismisses a conviction but does not notify the transferring court, publicly accessible conviction documents in a transferring court’s case file may be inaccurate.

*This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee.  
It is circulated for comment purposes only.*

In 2018 and 2019, the Legislature passed two significant automated record relief bills, which removed the burden of seeking record relief from a defendant-petitioner and made it the responsibility of government agencies. Assembly Bill 1793 (Stats. 2018, ch. 993) enacted Health and Safety Code section 11361.9, automating relief for marijuana convictions under Proposition 64, which reduced or repealed designated marijuana-related offenses. Assembly Bill 1076 (Stats. 2019, ch. 578) requires the DOJ, in relevant part, to grant automatic record relief to individuals meeting specified criteria, including completing probation without revocation and not currently serving a sentence for any offense. A court may not disclose information concerning a conviction granted automatic record relief or a dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42, except in limited circumstances.

Automatic marijuana conviction relief would likely go through the transferring court, not the receiving court.<sup>1</sup> Under the new law, DOJ is responsible for identifying marijuana convictions that may be eligible for relief under Prop. 64 and notifying the prosecuting agency of all eligible cases in its jurisdiction. The prosecuting agency is required to inform the court if it is or is not challenging the resentencing of a case. For any case in which the court grants relief, the court must notify DOJ, which in turn modifies the state summary criminal history information database. Because DOJ has disposition information only from the county of conviction (the transferring court), it would likely contact the prosecution in that county, which would lead to proceedings in the transferring court. If a probation transfer case is granted automated relief in the transferring court and the receiving court is not notified, the receiving court may have inaccurate publicly accessible conviction documents in its case file.

Similarly, automatic record relief would also likely go through the transferring court. Under AB 1076, DOJ is directed to review records in the statewide criminal justice databases for eligible cases and to notify “the superior court having jurisdiction over the criminal case, informing the court of all cases for which a complaint was filed in that jurisdiction and for which relief was granted pursuant to this section.” (Pen. Code, § 1203.425(c).) Arguably, the receiving court has jurisdiction over the transferred criminal case, but DOJ would likely notify the transferring court because probation transfers are not reported to the DOJ and because the complaint was filed in the transferring court’s jurisdiction.

Section 1203.425’s requirement that a court not disclose information concerning a conviction granted automated record relief or dismissal under Penal Code sections 1203.4, 1203.4a, 1203.41, or 1203.42 may be problematic to apply in probation transfer cases with court files across multiple jurisdictions. For example, a receiving court may dismiss a case under section

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<sup>1</sup> In *People v. Thor Sinthavong Chanthasone* (July 11, 2018, E068935 [nonpub. opn.]), the Fourth Appellate District held that requests for relief under Health and Safety Code section 11361.8 (resentencing or dismissal of marijuana conviction under Proposition 64) should be filed in the sentencing court, even in the case of a probation transfer, based on the statutory language directing petitions to go “before the trial court that entered the judgment of conviction.” (Health & Saf. Code, § 11361.8(a).) The court relied on the Supreme Court’s ruling in *People v. Adelman* (2018) 4 Cal.5th 1071, which held that a defendant is required to file a Proposition 47 petition in the court in which the defendant was sentenced, regardless of whether the matter was later transferred to another superior court.

1203.4 and not disclose information as required under the new law, but if the transferring court does not receive any notice of this changed disposition, its court file would not be similarly restricted. Although AB 1076 does not address probation transfer scenarios, the intent appears to be for all courts to similarly restrict the release of conviction information after designated relief has been granted.

## **The Proposal**

This proposal aims to create a framework for notification of reduced or dismissed cases between receiving and transferring courts through existing court procedures and by adding elements addressing probation transfers to the automated record cleaning statute.

Specifically, the proposal amends Penal Code sections 1203.9 and 13151 to require a transferring court to report a probation transfer to the DOJ as a subsequent action to a case. The disposition update will occur once the case was accepted by the receiving court and will identify the receiving court and new case number, if any. The proposal also amends Section 1203.9 to require the receipt of records from the receiving court to the transferring court to include the receiving court's new case number, if any. This requirement will give DOJ the court and case information it needs to notify all involved courts of any future reduction or disposition change in a transferred case, whether petition-based or automated.

Finally, the proposal amends Penal Code section 1203.425 to require electronic notice of a reduction or dismissal from DOJ to all involved courts and require courts to update records to reflect a reduction or dismissal. The proposal also further clarifies how provisions of the existing statute apply to probation transfer cases, including that a petition in opposition to automated record cleaning may be filed by the prosecuting agency or probation department in either the transferring court or the receiving court, in the county of current jurisdiction.

## **Alternatives Considered**

The committee discussed amending Rule of Court 4.530, Intercounty transfer of probation and mandatory supervision cases, at length. Part of the discussion focused on how to avoid additional court workload by leveraging existing court procedures and how DOJ could play a role in managing the notification between courts. The committee concluded that a rule of court was limited in its ability to fully address the issue and that a legislative proposal provided a more robust solution.

## **Fiscal and Operational Impacts**

The major fiscal and operational impacts of this proposal fall on DOJ, which, to comply with new reporting and notification requirements, will need to add probation transfer disposition codes to the criminal disposition reports and create a mechanism to provide electronic notice to all involved courts of subsequent reductions or dismissals.

The fiscal and operational impacts to the courts result from (1) requiring transferring courts to report the transfer to DOJ; (2) requiring receiving courts to notify transferring courts of the new case numbers, if any; and (3) requiring all courts to update their records if notified by DOJ of a reduction or dismissal affecting the case. However, the proposal adds minor additions to existing court procedures and seeks to lessen the burden on courts by shifting notification duties to DOJ.

### **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

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

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

### **Attachments and Links**

1. Pen. Code, §§ 1203.425, 1203.9, and 13151, at pages 5–7

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1 **§ 1203.425.**

2  
3 (a)–(b) \* \* \*

4  
5 (c)

6  
7 (1) On a monthly basis, the department shall electronically submit a notice to the  
8 superior court having jurisdiction over the criminal case, informing the court  
9 of all cases for which a complaint was filed in that jurisdiction and for which  
10 relief was granted pursuant to this section. Commencing on February 1, 2021,  
11 for any record retained by the court pursuant to Section 68152 of the  
12 Government Code, except as provided in subdivision (d), the court shall not  
13 disclose information concerning a conviction granted relief pursuant to this  
14 section or Section 1203.4, 1203.4a, 1203.41, or 1203.42, to any person or  
15 entity, in any format, except to the person whose conviction was granted  
16 relief or a criminal justice agency, as defined in Section 851.92.

17  
18 (2)

19  
20 (A) If probation is transferred pursuant to Section 1203.9, the department  
21 shall electronically submit a notice as provided in paragraph (1) to both  
22 the transferring court and any subsequent receiving court. The  
23 electronic notice shall be in a mutually agreed upon format.

24  
25 (B) If a receiving court reduces a felony to a misdemeanor pursuant to  
26 section 17(b), or dismisses a conviction pursuant to law—including,  
27 but not limited to, sections 1203.4, 1203.4a, 1203.41, 1203.42,  
28 1203.43, or 1203.49—it shall furnish a disposition report to the  
29 department with the original case number and CII number from the  
30 transferring court, and the department shall electronically submit a  
31 notice to the superior court that sentenced the defendant. If probation is  
32 transferred multiple times, the department shall electronically submit a  
33 notice to all other involved courts. The electronic notice shall be in a  
34 mutually agreed upon format.

35  
36 (C) If a court receives notification from the department pursuant to  
37 subparagraph (B), the court shall update its records to reflect the  
38 reduction or dismissal. If a court receives notification that a case was  
39 dismissed pursuant to this section or Section 1203.4, 1203.4a, 1203.41,  
40 or 1203.42, the court shall update its records to reflect the dismissal and  
41 shall not disclose information concerning a conviction granted relief to  
42 any person or entity, in any format, except to the person whose

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1                   conviction was granted relief or a criminal justice agency, as defined in  
2                   Section 851.92.

3  
4 (d)–(g) \* \* \*

5  
6 (h)

7  
8           (1) The prosecuting attorney or probation department may, no later than 90  
9           calendar days before the date of a person’s eligibility for relief pursuant to  
10           this section, file a petition to prohibit the department from granting automatic  
11           relief pursuant to this section, based on a showing that granting such relief  
12           would pose a substantial threat to the public safety. If probation was  
13           transferred pursuant to Section 1203.9, the prosecuting attorney or probation  
14           department in either the receiving county or the transferring county shall file  
15           the petition in the county of current jurisdiction.

16  
17 (2)–(5) \* \* \*

18  
19           (6) If the court grants a petition pursuant to this subdivision, the court shall  
20           furnish a disposition report to the Department of Justice pursuant to Section  
21           13151, stating that relief pursuant to this section was denied, and the  
22           department shall not grant relief pursuant to this section. If probation was  
23           transferred pursuant to section 1203.9, the department shall electronically  
24           submit a notice that relief pursuant to this section was denied to the  
25           transferring court, and, if probation was transferred multiple times, to all  
26           other involved courts.

27  
28           (7) A person denied relief pursuant to this section may continue to be eligible for  
29           relief pursuant to Section 1203.4 or 1203.4a. If the court subsequently grants  
30           relief pursuant to one of those sections, the court shall furnish a disposition  
31           report to the Department of Justice pursuant to Section 13151, stating that  
32           relief was granted pursuant to the applicable section, and the department shall  
33           grant relief pursuant to that section. If probation was transferred pursuant to  
34           section 1203.9, the department shall electronically submit a notice that relief  
35           was granted pursuant to the applicable section to the transferring court and, if  
36           probation was transferred multiple times, to all other involved courts.

37  
38 (i) \* \* \*

Penal Code sections 1203.425, 1203.9, and 13151 would be amended, effective January 1, 2022, to read:

1 **§ 1203.9.**

2  
3 (a)

4  
5 (1)–(3) \* \* \*

6  
7 (4) The receipt of records from the receiving court to the transferring court shall  
8 include the new case number, if any.

9  
10 (5) Pursuant to section 13151, the transferring court shall report to the  
11 Department of Justice that probation was transferred, once the receiving court  
12 accepts the transfer. A probation transfer report shall identify the receiving  
13 court and the new case number, if any.

14  
15  
16 (b)–(g) \* \* \*

17  
18 **§ 13151.**

19  
20 (a) The superior court that disposes of a case for which an arrest was required to be  
21 reported to the Department of Justice pursuant to Section 13150 or for which  
22 fingerprints were taken and submitted to the Department of Justice by order of the  
23 court shall ensure that a disposition report of a case containing the applicable data  
24 elements enumerated in Section 13125, including the CII number and the court  
25 docket number, or Section 13151.1 if the disposition is one of dismissal, is  
26 furnished to the Department of Justice within 30 days according to the procedures  
27 and in a format prescribed by the department. The court shall also furnish a copy of  
28 the disposition report to the law enforcement agency having primary jurisdiction to  
29 investigate the offense alleged in the complaint or accusation. When a court orders  
30 an action subsequent to the initial disposition of a case, the court shall similarly  
31 report the proceedings to the department, including a transfer of probation pursuant  
32 to Section 1203.9 by the transferring court, once the case is accepted by the  
33 receiving court. A probation transfer report shall identify the receiving superior  
34 court and the new case number, if any. When filing a case with the court, the  
35 criminal justice agency shall include the CII number in the filing.

36  
37 (b) \* \* \*

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## INVITATION TO COMMENT

### LEG20-\_\_

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**Title**

Proposal for Judicial Council–Sponsored  
Legislation (Family Law): Recognition of  
Tribal Court Orders Relating to the Division  
of Marital Assets

**Action Requested**

Review and submit comments by June 9,  
2020.

**Proposed Effective Date**

January 1, 2022

**Proposed Rules, Forms, Standards, or Statutes**

Amend Fam. Code, § 2611; Amend Code  
Civ. Proc., § 1736

**Contact**

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**Proposed by**

California Tribal Court–State Court Forum  
Hon. Abby Abinanti, Cochair  
Hon. Suzanne M. Kingsbury, Cochair

Family and Juvenile Law Advisory  
Committee

Hon. Jerilyn L. Borack, Cochair  
Hon. Mark A. Juhas, Cochair

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### Executive Summary and Origin

As a result of comments from tribal court judges and advocates, the California Tribal Court–State Court Forum (Forum) and the Family and Juvenile Law Advisory Committee (Committee) recommend that the Judicial Council, effective January 1, 2022, sponsor legislation to add section 2611 to the Family Code and add subsection 1736(c) to the Code of Civil Procedure to ensure that valid divorce or dissolution judgments issued by tribal courts that include division of pension assets are effective and in particular are recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA).

### Background

California is home to more people of Indian ancestry than any other state in the nation. Currently there are 109 federally recognized tribes in California, second only to the number of tribes in the state of Alaska. Each tribe is sovereign, with powers of internal self-governance, including the

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authority to develop and operate a court system. At least 20 tribal courts currently operate in California, and several other courts are under development.

Tribal courts in California hear a variety of case types including child abuse and neglect cases; domestic violence protective orders; domestic relations (e.g., divorce and dissolution); contract disputes and other civil cases for money judgments; unlawful detainers, property disputes, nuisance abatements, and possession of tribal lands; name changes; and, civil harassment protective orders.

Some tribal courts in California issue domestic relations orders, including divorce and dissolution decrees. For these domestic relations orders to be thorough and effective, tribal courts must be able to address division of assets, including pension benefits governed by the federal Employee Retirement Income Security Act of 1974 (ERISA). In 2011, the U.S. Department of Labor issued guidance on when a domestic relations order issued under tribal law would be a “judgment, decree or order . . . made pursuant to a State domestic relations law within the meaning of federal law.”<sup>1</sup> That guidance concluded that:

In the Department’s view, a tribal court order may constitute a “judgment, decree or order . . . made pursuant to State domestic relations law” for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.

Section 206(d)(3)(B)(ii) or ERISA is codified as 29 U.S.C. § 1056(d)(3)(B)(ii).

The result of the guidance issued by the U.S. Department of Labor is that for a tribal court divorce or dissolution order to effectively distribute pension benefits governed by ERISA, state law must recognize the order as a judgement, decree, or order made pursuant to state domestic relations law. The Department of Labor specifically approved of the model that had been incorporated into Oregon statute at Oregon Revised Statutes section 24.115(4).<sup>2</sup>

In 2012, the Judicial Council proposed legislation that eventually became the Tribal Court Civil Money Judgment Act (Sen. Bill 406 (Evans); Stats. 2014, ch. 243). This legislation added sections 1730–1741 to the Code of Civil Procedure to clarify and simplify the process for recognition and enforcement of tribal court civil judgments consistent with the mandate set out in rule 10.60(b) of the California Rules of Court regarding recommendations concerning the recognition and enforcement of court orders that cross jurisdictional lines.

California law does not currently explicitly recognize judgments or orders from tribal courts (or foreign courts for that matter) that divide pension assets as judgements or orders made pursuant

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<sup>1</sup> Available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2011-03a>.

<sup>2</sup> Available at <https://www.oregonlaws.org/ors/24.115>.

to state domestic relations law as mandated by ERISA. Further, current California law has no mechanism to simply “recognize” a tribal court order. Therefore, in order for a party in tribal court to have an ERISA Domestic Relations Order (DRO) accepted, that party would have to “register” the order. This creates a multitude of additional issues both for the litigant as well as the court.

The litigants are then required to: (1) pay for the two first-appearance fees (currently \$870); (2) pay for a certified copy (currently \$20); and (3) pay the fee for a bench officer’s signature (currently \$20).

Litigants are also required to complete the necessary registration paperwork. Once registration is complete, the California court then becomes responsible for that order, requiring court and staff time.

The Family Code contemplates recognition and enforcement of foreign custody orders under the Uniform Child Custody Jurisdiction Act (UCCJA) and foreign support orders and paternity judgments under the Uniform Interstate Family Support Act (UIFSA).<sup>3</sup> The Foreign-Country Money Judgments Act<sup>4</sup> excludes from its coverage any judgment arising from a divorce, support, or maintenance judgment rendered in connection with domestic relations. The Tribal Court Civil Money Judgment Act<sup>5</sup> does not have a blanket exclusion for domestic relations judgments but does exclude judgments for which federal or state law already provides for recognition, including the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) and the Uniform Interstate Family Support Act.<sup>6</sup> Registration of these orders can be inconsistent, cumbersome, and expensive, and is not required by federal law.

## **The Proposal**

This proposal seeks to address an ongoing gap in the law by creating a simplified process to file in California state court an otherwise valid order of a tribal court—dividing pension assets—so as to have that order recognized for ERISA purposes.

The proposal, effective January 1, 2022, would (1) add subsection (c) to section 1736 of the Code of Civil Procedure establishing a simplified process for the filing of a tribal court order that relates to the provision of child support, spousal support payments, or marital property rights to a spouse, former spouse, or child, or other dependent from a pension plan covered by ERISA; and, (2) add section 2611 to the Family Code specifying that an order so filed and recognized is a

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<sup>3</sup> The Uniform Child Custody and Jurisdiction Act is incorporated into the Family Code at sections 3400 et seq. The Uniform Interstate Family Support Act is found at sections 5700.101 et seq.

<sup>4</sup> Code Civ. Proc., §§ 1713–1725.

<sup>5</sup> For a very helpful overview of these issues, see “Making Foreign Divorce Judgments, Orders, and Decrees Valid and Enforceable California Court Orders,” Divorcesource.com, Peter M. Walzer, Esq., available at <https://www.divorcesource.com/ds/california/making-foreign-divorce-judgments-orders-and-decrees-valid-and-enforceable-california-court-orders-4276.shtml>.

<sup>6</sup> Part 6 (commencing with § 5700.101), Fam. Code, Div. 9.

domestic relations order made pursuant to the domestic relations laws of this state for the purposes of ERISA.

The Judicial Council will be required to create rules and forms to implement the legislation. Consistent with the legislation, these rules and forms would require the filing of a joint petition that would avoid the problem of a potential collateral attack on the orders.

### **Alternatives Considered**

The Forum and Committee initially considered simply adding language to the Tribal Court Civil Money Judgement Act similar to that found in Oregon Revised Statute 24.115(4), referenced by the U.S. Department of Labor in advisory opinion 2011-03A.<sup>7</sup> After much discussion, the Forum and Committee concluded that registration of the order under the Tribal Court Civil Money Judgment Act was unnecessarily cumbersome and expensive to achieve the goal of having the tribal court orders recognized under ERISA and that a simplified filing process was a better way of achieving this goal with less expense on litigants and less burden on the state courts.

### **Fiscal and Operational Impacts**

No implementation costs are anticipated. It is expected that the proposal will improve efficiencies by ensuring that parties can effectively resolve dissolution issues in tribal court and not have to take pension issues to a different venue. While the simplified filing process contemplates that there will be no filing fee and may require adjustments to court processes, it should avoid the state court having to engage in protracted hearings and enforcement of the orders, and thus ultimately reduce the burdens on the state courts.

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<sup>7</sup> Oregon Revised Statute 24.115(4) is available at: <https://www.oregonlaws.org/ors/24.115>.

### **Request for Specific Comments**

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

- Is the proposal broad enough to encompass all kinds of pensions?
- Should the proposal be broader to encompass different kinds of pension plans such as those in the CalPERS system?
- Should the proposal be broader to encompass orders from foreign countries or sister states?
- Is it a problem if the orders can only be recognized through a joint petition? Do we need to have a process for recognition if one party refuses to join the petition?

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

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would 6 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

### **Attachments and Links**

1. Code Civ. Proc., § 1736, at page 6
2. Fam. Code, § 2611, at page 7

Section 1736 of Chapter 3 of Title 11 of Part 3 of the Code of Civil Procedure would be amended, effective January 1, 2022, to read:

1 **1730–1735 \* \* \***

2

3 **1736. (a)–(b) \* \* \***

4

5 **1736. (c)** A proceeding for the recognition of a tribal court order that relates to the  
6 provision of child support, spousal support payments, or marital property rights to a  
7 spouse, former spouse, child, or other dependent of a participant of a pension plan  
8 covered by 29 U.S.C. § 1056 shall be commenced by a filing a joint petition in a form to  
9 be prescribed by the Judicial Council signed under oath by both parties to the proceeding.  
10 The petition shall include a certified copy of the order to be recognized, the name and  
11 current address of each party, and the issuing tribal court’s name and mailing address.

12

13 **1737–1741 \* \* \***

Part 5 of Division 7 of the Family Code would be amended, effective January 1, 2022, to read:

1 **2610.** \* \* \*

2

3 **2611.** (a) A final order of a tribal court that relates to the provision of child support,  
4 spousal support payments, or marital property rights to a spouse, former spouse, child, or  
5 other dependent of a participant in a pension plan covered by 29 U.S.C. § 1056 that is  
6 filed in accordance with section 1736(c) of the California Code of Civil Procedure and  
7 that otherwise complies with the requirements of 29 U.S.C. § 1056 is a domestic relations  
8 order made pursuant to the domestic relations laws of this state for the purposes of 29  
9 U.S.C. § 1056.

10

11 (b) The filing of the tribal court order does not confer any jurisdiction on a court of this  
12 state to modify or enforce the tribal court order.

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## INVITATION TO COMMENT

### LEG20-\_\_

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<b>Title</b>	<b>Action Requested</b>
Proposal for Judicial Council–Sponsored Legislation: Remote Video Appearances in All Civil Actions and Proceedings	Review and submit comments by June 9, 2020
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Enact Code Civ. Proc., § 367.7	January 1, 2022
<b>Proposed by</b>	<b>Contact</b>
Civil and Small Claims Advisory Committee Hon. Ann I. Jones, Chair Family and Juvenile Law Advisory Committee Hon. Jerilyn L. Borack, Cochair Hon. Mark A. Juhas, Cochair Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Andrea L. Jaramillo, 916-263-0991 <a href="mailto:andrea.jaramillo@jud.ca.gov">andrea.jaramillo@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims, Family and Juvenile Law, and Information Technology Advisory Committees recommend the Judicial Council sponsor legislation to provide statutory authority for courts to permit remote video appearances in any civil actions or proceedings including trials and evidentiary hearings. The proposal originates with recommendations included in reports from the Commission on the Future of California’s Court System and the Information Technology Advisory Committee’s Remote Video Appearances Workstream.

### Background

In 2014, Chief Justice Tani G. Cantil-Sakauye established the Commission on the Future of California’s Court System (Futures Commission) to examine the work of the trial courts and consider how court operations could be improved and streamlined. The Futures Commission released its final report in 2017 and noted that, “the option to attend court proceedings remotely

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should ultimately be available for all noncriminal case types and appearances, and for all witnesses, parties, and attorneys in courts across the state.”<sup>1</sup>

In 2018, the Information Technology Advisory Committee (ITAC) formed the Remote Video Appearances Workstream (the workstream), which analyzed the state of video and digital appearances in California courts, and made recommendations to “broaden the adoption of this emerging model for court appearances.”<sup>2</sup> The workstream made several recommendations that legislative and rule proposals be developed to facilitate the use of video appearances in most civil proceedings.

Following the workstream’s report, the Civil and Small Claims Advisory Committee, Family and Juvenile Law Advisory Committee, Probate and Mental Health Advisory Committee, and ITAC formed a joint ad hoc subcommittee to move forward with development of legislative and rule proposals.

## **The Proposal**

The proposed legislation would provide statutory authority for courts to permit remote video appearances in any civil action or proceeding, including trials and evidentiary hearings. The scope is broad. Examples of actions and proceedings that would be included are civil and small claims, unlawful detainers, juvenile dependency, family law, petitions for gun violence restraining orders, petitions for name changes, and sexually violent predator hearings.

The proposed legislation would also specify that the Judicial Council may adopt rules effectuating the new code section. Potential areas for rule making include the notice to be given by a person requesting a video appearance, the manner in which video appearances are to be conducted, the conditions required for a person to be permitted to appear by video, and provisions relating to the courts’ use of private vendors to provide video appearance services.

Because the proposed legislation would provide clear statutory authority for the courts to give people the option of appearing in court by video instead of in person, it would advance the judicial branch’s technology goals of (1) promoting the digital court to improve access to the courts,<sup>3</sup> and (2) promoting legislative changes to facilitate the use of technology in court operations and the delivery of court services.<sup>4</sup>

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<sup>1</sup> Judicial Council of Cal., Futures Commission Rep. (2017), pp. 221–222. (Recommendation 5.1), available online at <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.

<sup>2</sup> Remote Video Appearances Workstream, *Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase 1 Report, Final* (Nov. 20, 2019), p. 3 (Workstream Report), available online at <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>.

<sup>3</sup> Judicial Council of Cal., *Strategic Plan for Technology 2019–2022* (2019), pp. 8–9, available online at <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf> (as of Feb. 11, 2020).

<sup>4</sup> *Id.* at pp. 14–15.



## **Alternatives Considered**

The committees considered the alternatives of recommending no action, recommending rules, or recommending something other than legislation or rules. The committees determined legislation providing statutory authority to courts to permit video appearances was an important first step to facilitate the use of video appearances in California. The proposal would ensure courts have clear authority to proceed with video appearances in all civil actions for all types of proceedings, including trials and evidentiary hearings. While the committees did not develop a rule proposal at this time, they anticipate doing so if the Judicial Council chooses to sponsor the legislation following public comment.

The committees considered amending existing Code of Civil Procedure section 367.5, which governs telephonic appearances, to include video, but determined that a separate code section would be clearer given that the overall scope of the case types and proceedings for video are generally broader than for telephone.

The committees considered excluding juvenile cases from the proposal. The Workstream Report noted that juvenile cases may require special attention and different rules than other civil proceedings, made no juvenile-specific recommendations, and recognized that the use of video remote technology in juvenile cases would require further discussion. (Workstream Report, p. 4.) The members of the joint ad hoc subcommittee discussed the matter and learned that courts already have used or are using video capability in juvenile cases. For example, the Superior Court of Placer County allows juveniles to appear by video from a courtroom in one location to a courtroom in another location. The committees did not want the proposal to stand as a potential obstacle to existing video appearance efforts by the courts, or create conflicts with other statutes on the subject. The committees determined it would be preferable to keep the proposed code section broad.

## **Fiscal and Operational Impacts**

The legislation would provide courts with statutory authority to permit video appearances, but it would not require courts to permit video appearances. Courts that choose to proceed with permitting video appearances would have fiscal and operational impacts because they would need resources to run video appearances such as staff, training, equipment, and software. Government Code section 70630 authorizes courts to charge fees to recover costs of permitting parties to appear by video.

## Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?
- Are there any civil actions or proceedings that should be excluded from the scope of the proposed code section? If so, should the code section allow the Judicial Council to provide for those actions and proceedings by rule?

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Would the proposal result in costs or savings to the court? If so, what costs or savings would be associated with implementing the proposal?
- Would this proposal impact the court's current efforts to allow video appearances?
- How well would this proposal work in courts of different sizes?
- What challenges, if any, does the court anticipate facing to allow video appearances?

## Attachments and Links

1. Code Civ. Proc., § 367.7, at page 5.
2. Link A: Judicial Council of Cal., Futures Commission Report (2017), <https://www.courts.ca.gov/documents/futures-commission-final-report.pdf>.
3. Link B: Remote Video Appearances Workstream, *Remote Video Appearances for Most Noncriminal Hearings 2018–2019: Workstream Phase 1 Report, Final* (Nov. 20, 2019), <https://www.courts.ca.gov/documents/jctc-20191125-materials.pdf>.
4. Link C: Judicial Council of Cal., *Strategic Plan for Technology 2019–2022* (2019), <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf>.
5. Link D: Gov. Code, § 70630, [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=70630](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=70630).

Section 367.7 of the Code of Civil Procedure would be enacted, effective January 1, 2022, to read:

1 **§ 367.7**

2

3 (a) It is the intent of this section to improve access to the courts and reduce litigation  
4 costs by providing that a court may, as appropriate and practical, permit parties to appear  
5 in court by video in all civil actions and proceedings including trials and evidentiary  
6 hearings.

7

8 (b) A court may permit a person to appear by video in any civil action or proceeding.

9

10 (c) The Judicial Council may adopt rules effectuating this section.

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