

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee action requested** [Choose from drop down menu below]:  
**Recommend JC approval (has circulated for comment)**

**Rules Committee Meeting Date:** 02-28-2022

**Title of proposal:**

Judicial Branch Administration: Data Analytics Advisory Committee

**Proposed rules, forms, or standards** (*include amend/revise/adopt/approve*):

Approve Cal. Rules of Court, rule 10.68, effective March 11, 2022; and repeal rule 10.66, effective September 14, 2022.

*Committee or other entity submitting the proposal:*

*Staff contact (name, phone and e-mail): Leah Rose-Goodwin, 415-865-7708, leah.rose-goodwin@jud.ca.gov*

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by Rules Committee date:

Project description from annual agenda:

*If requesting July 1 or out of cycle, explain:*

**Additional Information:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

This proposal circulated for public comment; one comment in support was received as noted in the report. Staff asks that the Rules Committee approve this item for review and approval by the Judicial Council at its March 2022 meeting.

**Information for JC Staff regarding form translations:**

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*



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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-080*

For business meeting on March 11, 2022

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**Title**

Judicial Branch Administration: Data  
Analytics Advisory Committee

**Agenda Item Type**

Action Required

**Effective Date**

March 11, 2022 and September 14, 2022

**Rules, Forms, Standards, or Statutes Affected**

Adopt Cal. Rules of Court, rule 10.68 and  
repeal rule 10.66

**Date of Report**

February 22, 2022

**Recommended by**

Hon. Marsha G. Slough, Chair,  
Executive and Planning Committee  
Hon. Kyle S. Brodie, Chair,  
Judicial Council Technology Committee

**Contact**

Leah Rose-Goodwin, Manager  
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### Executive Summary

The chairs of the Executive and Planning Committee and the Technology Committee recommend adoption of proposed California Rules of Court, rule 10.68 to establish the Data Analytics Advisory Committee to analyze, use, and share data to inform decisionmaking in order to enhance and expand vital and accessible services for all the people of California. The chairs also propose the repeal of rule 10.66 because the duties and responsibilities of the new proposed advisory body will include those of the Workload Assessment Advisory Committee established by that rule. If approved, the new rule will become effective as of March 11, 2022; rule 10.66 will be repealed as of September 14, 2022; and, nominations to the new advisory committee will be solicited as part of the 2022 nominations cycle.

### Recommendation

The chairs of the Executive and Planning Committee and of the Technology Committee recommend that the Judicial Council:

1. Adopt rule 10.68 of the California Rules of Court to establish the Data Analytics Advisory Committee, effective March 11, 2022;
2. Repeal rule 10.66 of the California Rules of Court to retire the Workload Assessment Advisory Committee established by the rule, effective September 14, 2022;

The proposed adopted and repealed rules are attached at pages 5 and 6.

### **Relevant Previous Council Action**

On May 21, 2021, the Judicial Council accepted the *Data and Information Governance Policy Concepts* from the Information Technology Advisory Committee.<sup>1</sup> The report was the final work product of the Information Technology Advisory Committee's Data Analytics Workstream, which was charged with recommending a data analytics strategy for the branch that included developing branchwide data and information governance policy recommendations. The discussion at the May Judicial Council meeting highlighted the need for ongoing work in this subject area beyond the workstream's report.

### **Analysis/Rationale**

Following council acceptance of the workstream's report, the chairs of the Executive and Planning Committee and the Technology Committee formed a joint working group consisting of representatives from each of the two committees to consider governance options for leading and planning judicial branch data and analytics strategies and policies.<sup>2</sup> Over the course of several discussions, the group discussed the business need for and objectives of policy development in this subject area and determined that a standing advisory body was needed to lead and plan branch data and analytic strategy. The joint working group then reviewed the areas of focus and annual agendas of existing council advisory bodies to determine if there were any that had the same or similar duties and scope of responsibility of the proposed new committee.

The joint working group determined that the area of focus and duties of the Workload Assessment Advisory Committee (WAAC) were substantively aligned to the proposed scope and duties for the new committee, although the proposed new committee's scope and duties are broader. The joint working group concluded that the WAAC's areas of work should be included as part of the new committee's scope; specifically, the joint working group recognized the need to continue the important workload analyses currently conducted under the direction of the WAAC in understanding and measuring trial court workload and allocating resources to courts on the basis of empirical data. (See proposed rule 10.68(b)(2).) Given the importance of WAAC's work, if the Judicial Council approves creation of the new advisory committee, WAAC

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<sup>1</sup> Judicial Council of Cal., *Judicial Branch Administration: Judicial Branch Data and Information Governance Policy Concepts* (Apr. 23, 2021), <https://jcc.legistar.com/LegislationDetail.aspx?ID=4889531&GUID=DA4EF655-4FB7-4773-99E3-6F0B2C83DB42>.

<sup>2</sup> Joint working group members were Hon. Marsha G. Slough and Hon. Ann C. Moorman from the Executive and Planning Committee and Hon. Kyle S. Brodie and Mr. Shawn Landry from the Technology Committee.

will continue its work through the current advisory committee year, which is why the repeal of the authorizing rule is deferred until September 14, 2022. Additionally, all current members of WAAC will be invited to submit applications in response to a solicitation for membership in the new committee.

### **Policy implications**

This proposal will promote better data-driven decisionmaking, foster transparency, and improve the administration of justice by making recommendations to the Judicial Council in the areas of judicial branch data and information strategy. This work supports Judicial Council efforts to modernize and improve access to justice and complements Judicial Council information technology modernization efforts.

### **Comments**

The working group members made periodic, informational updates to their respective committees throughout the deliberative process, with the most recent updates occurring at the February 8, 2022 Executive and Planning Committee meeting and the February 14, 2022 Technology Committee meeting. There were no comments made in response to these updates.

Additionally, presiding justices, presiding judges, and court executive officers were invited to an informational webinar on December 17, 2021, to learn about the proposed committee. About 50 attendees participated. A few attendees made comments in support of the proposal. One question was asked regarding the proposed merging of the Workload Assessment Advisory Committee with the new proposed committee and how the former's work and charter would be incorporated into the new committee, and the proponents assured the group that the proposed rule would ensure that the new committee would take over the work.

Following the webinar, the proposal circulated for public comment from December 21, 2021, to January 14, 2022. One comment, in support of the proposal, was received from an IT Deputy at a superior court. The comments chart is attached at page 7.

### **Alternatives considered**

The joint working group considered a number of alternatives when determining how to move forward. One option was to create a new advisory body with an area of focus that did not overlap with any existing advisory body. This option was rejected in the interest of maintaining the existing number of Judicial Council advisory bodies.

Rather than creating the proposed new advisory committee, the joint working group considered the alternative of substantially amending and expanding the scope and duties of the Workload Assessment Advisory Committee. However, once the group started drafting the rule language to address the relevant issues, it became apparent that drafting an area of focus for a new advisory committee—which will have a more expansive focus than WAAC—would be more straightforward than making substantial amendments to WAAC's charge in the current rule of court.

Another option was to consolidate the work of the Judicial Branch Statistical Information System (JBSIS) Subcommittee of the Court Executives Advisory Committee as well as the Workload Assessment Advisory Committee into the proposed new advisory body. This alternative was not pursued further because the technical and tactical nature of the JBSIS Subcommittee's work differs from the proposed focus of the new advisory committee on governance and management of data. The joint working group anticipates that the JBSIS Subcommittee and the proposed advisory committee would certainly coordinate and consult with each other.

### **Fiscal and Operational Impacts**

This proposal will not create any direct fiscal impacts. Because the proposal calls for establishing a new advisory committee and retiring another, there is no net increase in administrative costs needed to support the new advisory body. In terms of operational impacts, Judicial Council staff will coordinate any transitional activities needed to ensure that any reports and recommendations normally made by the Workload Assessment Advisory Committee are transferred to the Data Analytics Advisory Committee.

### **Attachments and Links**

1. Cal. Rules of Court, rules 10.66 and 10.68, at pages 5 and 6
2. Chart of comments, at page 7

Rule 10.66 of the California Rules of Court is repealed as of September 14, 2022 and rule 10.68 is adopted, effective March 11, 2022, to read:

1 **Rule 10.66. Workload Assessment Advisory Committee [Repealed]**

2  
3 **(a) — Area of focus**

4  
5 ~~The committee makes recommendations to the council on judicial administration~~  
6 ~~standards and measures that provide for the equitable allocation of resources across~~  
7 ~~courts to promote the fair and efficient administration of justice.~~

8  
9 **(b) — Additional duties**

10 ~~In addition to the duties specified in rule 10.34, the committee must recommend:~~

11  
12  
13 ~~(1) — Improvements to performance measures and implementation plans and any~~  
14 ~~modifications to the Judicial Workload Assessment and the Resource~~  
15 ~~Assessment Study Model;~~

16  
17 ~~(2) — Processes, study design, and methodologies that should be used to measure~~  
18 ~~and report on court administration; and~~

19  
20 ~~(3) — Studies and analyses to update and amend case weights through time studies,~~  
21 ~~focus groups, or other methods.~~

22  
23 **(c) — Membership**

24  
25 ~~(1) — The advisory committee consists of an equal number of superior court~~  
26 ~~judicial officers and court executive officers reflecting diverse aspects of~~  
27 ~~state trial courts, including urban, suburban, and rural locales; size and~~  
28 ~~adequacy of resources; number of authorized judgeships; and for judicial~~  
29 ~~officers, diversity of case type experience.~~

30  
31 ~~(2) — A judicial officer and court executive officer may be from the same court.~~

32  
33  
34 **Rule 10.68. Data Analytics Advisory Committee**

35  
36 **(a) Areas of focus**

37  
38 The committee makes recommendations to the Judicial Council regarding the  
39 collection, use, and sharing of judicial branch data and information to inform  
40 decisionmaking, promote transparency, and improve the administration of justice  
41 while ensuring the security of nonpublic data and data sources.

1 **(b) Additional duties**

2  
3 In addition to the duties described in rule 10.34, the committee must:

- 4  
5 (1) Develop and recommend policies, or revisions to existing policies,  
6 concerning standards and measures to use in collecting, analyzing and  
7 sharing data and information that will advance the goals of increased access  
8 to justice, greater transparency and accountability, and enhanced delivery of  
9 services to the public.
- 10  
11 (2) Develop and recommend performance measures, studies, and methodologies  
12 to measure and report on court administration, practices, and procedures,  
13 including workload assessments; and
- 14  
15 (3) Identify, analyze, and report on emerging issues related to branch data and  
16 information, including usage of data and information to support branch  
17 projects and initiatives.

18  
19 **(c) Membership**

20  
21 The committee must include at least one member from each of the following  
22 categories:

- 23  
24 (1) Appellate justice;
- 25  
26 (2) Trial court judicial officer;
- 27  
28 (3) Trial court or appellate court administrator; and
- 29  
30 (4) Court staff with data and information management expertise.

31  
32 **(d) Member selection**

33  
34 Factors to be considered in making all appointments to the committee include a  
35 candidate's general expertise and experience in data, information, or technology  
36 governance and management.

**SP21-12**

**Judicial Branch Administration: Data and Information Governance Advisory Committee**

(Adopt Cal. Rules of Court, rule 10.68 and repeal rule 10.66)

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Tim Cool, Chief Deputy of IT Superior Court of Riverside County	A	The Courts have a wealth of data that could be used to better serve the public and to increase access to justice.	No response required.

DRAFT

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



## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee Meeting Date:** February 28, 2022

**Rules Committee action requested** [Choose from drop down menu below]:  
**Recommend JC approval (has circulated for comment)**

**Title of proposal:** CEQA Actions: New Projects and Fees for Expedited Review

*Proposed rules, forms, or standards (include amend/revise/adopt/approve):*

Adopt Cal. Rules of Court, rule 3.2240; amend rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705

*Committee or other entity submitting the proposal:*

Appellate Advisory Committee and Civil and Small Claims Advisory Committee

*Staff contact (name, phone and e-mail):* Christy Simons, 415-865-7694, [christy.simons@jud.ca.gov](mailto:christy.simons@jud.ca.gov) and James Barolo, 415-865-8928, [james.barolo@jud.ca.gov](mailto:james.barolo@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Annual agenda approved by Rules Committee on *(date)*: November 2, 2021; amended January 5, 2022

Project description from annual agenda: Item 6. This is a joint project with Civil and Small Claims Advisory Committee. This year, new statutes require streamlined CEQA review for Environmental Leadership projects and Environmental Leadership Transit projects (Senate Bill 7, Senate Bill 44). In recent years, the Legislature added Old Town Center Redevelopment in the City of San Diego, additional State Capitol Building Annex projects, the "Oakland Sports and Mixed-Use Projects" related to a new baseball stadium, and projects in Ingleside related to a new NBA arena to the list of projects to be provided with expedited CEQA review, requiring amendments to the rules of court, including rules 3.2200 et seq. for the trial court and rules 8.700–8.705 for the appellate courts. (Public Resources Code sections 21168.6.7, 21168.6.8, 21168.6.9, 21178, 21189.50, 21189.70.) The statutes for the Environmental Leadership, Environmental Leadership Transit, Oakland ballpark, and Inglewood arena projects also require the council to adopt rules regarding costs that must be paid by a project applicant/developer to the court for expedited handling of the case. This project is legislatively mandated.

**Out of Cycle:** *If requesting September 1 effective date or out of cycle, explain why:*

Out of cycle to get rules in place before the potential filing of litigation under the Oakland ballpark statute. The project is nearing final approval.

**Additional Information for Rules Committee:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

This project has been split into two parts. The attached JC report addresses a new rule and rule amendments to implement streamlined CEQA review for Old Town Center projects in San Diego, additional state capitol building annex projects, Oakland ballpark projects, and Inglewood arena projects. (Public Resources Code sections 21168.6.7, 21168.6.8, 21189.50, 21189.70.) A spring ITC is being prepared for rule amendments to implement streamlined CEQA review for environmental leadership development projects and environmental leadership transit projects. (Pub. Resources Code sections 21168.6.9, 21178.)

**Additional Information for JC Staff** (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)
  - The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.).
  
- **Self-Help Website** (check if applicable)
  - This proposal may require changes or additions to self-help web content.



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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-071*

For business meeting on: March 10–11, 2022

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**Title**

CEQA Actions: New Projects and Fees for Expedited Review

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Adopt Cal. Rules of Court, rule 3.2240; amend rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705

**Effective Date**

March 11, 2022

**Date of Report**

February 23, 2022

**Recommended by**

Appellate Advisory Committee  
Hon. Louis R. Mauro, Chair  
Civil and Small Claims Advisory Committee  
Hon. Tamara L. Wood, Chair

**Contact**

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### Executive Summary

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures to implement a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending several rules to implement recent legislation requiring inclusion of additional projects for streamlined review. The committees also recommend the adoption of a new rule and the amendment of an existing rule to implement statutory provisions requiring that, for two projects, the council, by rule of court, establish fees to be paid by project applicants to the courts for the additional costs of streamlined CEQA review.

### Recommendation

The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council, effective March 11, 2022:

1. Adopt rule 3.2240 of the California Rules of Court to implement statutory provisions requiring that project applicants pay trial court costs in cases concerning certain streamlined CEQA projects and to provide that costs paid under the rule are not recoverable.
2. Amend rules 3.2200, 3.2220, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705 to add and define the new term “streamlined CEQA project,” and add provisions regarding new projects that qualify for expedited procedures.
3. Amend rules 3.2221 and 8.702 to remove references to a 270-day time limit for expedited CEQA review, and replace them with general references to the “statutorily prescribed time.”
4. Amend rule 8.705 to implement statutory provisions requiring that project applicants pay appellate court costs in cases concerning certain streamlined CEQA projects, and to provide that costs paid under the rule are not recoverable.
5. Amend the titles of chapter 2 of division 22 of title 3, and chapter 1 of division 3 of title 8 of the California Rules of Court to refer to “streamlined CEQA projects” rather than listing the statutes that provide for expedited procedures.

The text of the amended rules is attached at pages 12–19.

### **Relevant Previous Council Action**

In 2011, the Legislature enacted Assembly Bill 900 (Stats. 2011, ch. 354), creating an expedited judicial review procedure for CEQA cases relating to “environmental leadership projects.” AB 900 required that challenges to such projects be brought directly to the Court of Appeal and that project applicants seeking certification of a project agree to pay the costs of the Court of Appeal in an amount determined by Judicial Council rule. (Pub. Resources Code, §§ 21183(f), 21185.)<sup>1</sup> To implement AB 900, the council adopted California Rules of Court, rule 8.497.<sup>2</sup> Subsequently, the statutory provision requiring that a petition for writ relief be filed only in the Court of Appeal was ruled unconstitutional by the Superior Court of Alameda County; this ruling was not challenged on appeal.

In 2013, the Legislature again addressed expedited CEQA review by the courts in Senate Bill 743 (Stats. 2013, ch. 386). SB 743 eliminated the provision requiring that a CEQA challenge to a leadership project be brought directly in the Court of Appeal and instead required the Judicial Council to adopt rules requiring that actions or proceedings, including any appeals, be resolved within 270 days of certification of the record of proceedings. (Sen. Bill 743, § 11; amending Pub. Resources Code, § 21185.) The Legislature did not identify specific time frames for resolution in the trial court or the Court of Appeal, specifying only a total period of 270 days for completion of the proceedings. (§§ 21185, 21168.6.6.) SB 743 also provided an expedited review process for

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<sup>1</sup> All further statutory references are to the Public Resources Code unless otherwise noted.

<sup>2</sup> All further rule references are to the California Rules of Court.

projects relating to a new basketball arena and surrounding sports and entertainment complex planned for Sacramento. (Sen. Bill 743, § 7; adding § 21168.6.6.)<sup>3</sup>

In 2014, the Judicial Council adopted rules 3.2220–3.2231 and 8.700–8.705<sup>4</sup> to implement SB 743.<sup>5</sup> In developing those rules, the committees determined, among other things, that there was a distinction made in the Legislature’s delegation of authority to the council with respect to procedures it could adopt for the Sacramento arena cases versus the environmental leadership cases. Specifically, SB 743 provided that for the Sacramento arena cases the expedited procedures to be established by the Judicial Council will apply “[n]otwithstanding any other law.” (§ 21168.6.6(c).) There was no similar provision in the statutes regarding environmental leadership cases. (§ 21185.)

One particular challenge in meeting the 270-day time period for completing review of these cases in the courts was the time for service of a petition. The Public Resources Code provides that a party may take up to 10 business days after filing its petition to serve the respondent public agency and another 20 business days after that to serve any real party in interest. (§§ 21167.6(a), 21167.6.5(a).) Because SB 743 authorized rules of court in Sacramento arena cases “[n]otwithstanding any other law,” the council adopted rules mandating that service on all named parties be completed within three court days, rather than over a two- to four-week period. (Rule 3.2236.) The service rule for environmental leadership cases included an incentive for earlier service rather than a mandate. (See rule 3.2222(d).)

In 2015, Senate Bill 836 added provisions similar to those enacted by SB 743, requiring that the Judicial Council adopt rules to apply the expedited review procedures for resolution of CEQA challenges to “capitol building annex projects.” SB 836 required review within 270 days from the date of certification of the administrative record. (§ 21189.51.) Effective July 2016, the council amended the rules to include capitol building annex projects.

In an effort to avoid constitutional concerns regarding the enactments, all of the legislation included language to the effect that the expedited time frames are “to the extent feasible.”

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<sup>3</sup> SB 743 retained the requirement that the project applicant in environmental leadership cases pay for Court of Appeal costs, and did not add a similar provision in the Sacramento arena cases or provide for payment of trial court costs in either category.

<sup>4</sup> The existing rule providing for payment of costs to the Court of Appeal was at that time renumbered as rule 8.705.

<sup>5</sup> The 2014 report to the Judicial Council is available at [www.courts.ca.gov/documents/jc-20140425-itemM.pdf](http://www.courts.ca.gov/documents/jc-20140425-itemM.pdf).

## Analysis/Rationale

### New projects eligible for expedited review

In four recent bills,<sup>6</sup> the Legislature expanded the projects for which streamlined administrative approval and CEQA expedited review are available:

- Assembly Bill 734 (Stats. 2018, ch. 959)<sup>7</sup> (Link A) added the “Oakland Sports and Mixed-Use Project,” comprising projects developed by the Oakland Athletics in a certain area in Oakland, including a baseball park and adjacent residential, retail, commercial, cultural, entertainment, and recreational uses (Oakland ballpark project). (See § 21168.6.7.)
- Assembly Bill 987 (Stats. 2018, ch. 961)<sup>8</sup> (Link B) added projects located in Inglewood, California, comprising an NBA arena plus related parking and access infrastructure; office space; a sports medicine clinic; retail, restaurant, and community spaces; and a hotel (Inglewood arena project). (See § 21168.6.8.)
- Assembly Bill 1826 (Stats. 2018, ch. 40)<sup>9</sup> (Link C) expanded the statutes providing expedited review of the capitol building annex project to include work related to that project, such as parking or visitor facilities, as well as a new state office building close to the capitol (expanded capitol annex project). (See §§ 21189.50–21189.53 and Gov. Code, § 9125.)
- Assembly Bill 2731 (Stats. 2020, ch. 291)<sup>10</sup> (Link D) added transit-oriented development projects related to the redevelopment of Old Town Center in San Diego (Old Town Center project). (See §§ 21189.70 et seq.)

The amended rules implement the new legislation by adding these projects to the list of projects to which the existing rules for expedited CEQA review apply. The rules also include new fees

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<sup>6</sup> An invitation to comment on proposed rule amendments to implement two more statutes will be circulated in spring 2022. Senate Bill 7 (Stats. 2021, ch. 19) reenacts with certain changes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which was repealed by its own terms January 1, 2021. It provides for certification of certain large projects that would replace old facilities with new ones that reduce pollution and generate jobs, including residential, retail, commercial, sports, cultural, entertainment, and recreational-use projects (environmental leadership projects). (See §§ 21178 et seq.) Senate Bill 44 (Stats. 2021, ch. 633) adds sustainable public transit projects in Los Angeles in preparation for the 2028 Summer Olympic and Paralympic Games (environmental leadership transit projects). (See § 21168.6.9.)

<sup>7</sup> AB 734 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734).

<sup>8</sup> AB 987 may be viewed at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987).

<sup>9</sup> AB 1826 may be viewed at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1826](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826).

<sup>10</sup> AB 2731 may be viewed at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731).

for expedited review, in both the trial and appellate courts, of challenges to Oakland ballpark and Inglewood arena projects, as required by those statutes.

### **Scope of rules to be amended**

The new statutes regarding the Oakland ballpark project, the Inglewood arena project, the expanded capitol annex project, and the Old Town Center project include similar provisions regarding expedited review:

Rules 3.2220 to 3.2237, inclusive, of the California Rules of Court, as may be amended by the Judicial Council, shall apply to any action or proceeding brought to attack, review, set aside, void, or annul the certification or adoption of any environmental impact report for the project that is certified pursuant to subdivision (d) or the granting of any project approvals, to require the action or proceeding, including any potential appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.

(Pub. Resources Code, § 21168.6.7(c) (Oakland); see also §§ 21168.6.8(f) (Inglewood), 21189.51 (expanded capitol annex, within 270 days of certification of the record of proceedings), and 21189.70.3 (Old Town Center, within 270 business days of the filing of the certified record).)

Although rules referenced in the statutes are trial court rules only, this proposal amends both trial court and appellate rules. The statutes state that any action or proceeding relating to the environmental impact report, “including any potential appeals therefrom,” must be completed within the specified number of days “to the extent feasible.” Thus, it appears that the provisions are intended to encompass appeals as well as trial court proceedings.<sup>11</sup>

### **Time for expedited review**

The current trial court and appellate rules for expedited CEQA review include references to a 270-day time limit for completing court proceedings. Both rule 3.2221(b) regarding stipulated extensions of time in the trial court, and rule 8.702(f)(4) regarding stipulated extensions of time to file a brief in the Court of Appeal, state: “If the parties stipulate to extend the time . . . , they are deemed to have agreed that the time for resolving the action may be extended beyond 270 days.” When these rules were adopted in 2014, as discussed above, the statutes to which the rules

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<sup>11</sup> The amended rules recommended by the committees do not include the rules directed solely to the Sacramento arena projects, even though those rules (rules 3.2235–3.2237) are included in the rules cited in the statutes. As noted above, those rules were adopted only for cases involving Sacramento arena projects because of the provision in that statute that the expedited procedures would apply “notwithstanding any other law.” Although a similar phrase is included in AB 987 (the Inglewood arena statute) and AB 2731 (the Old Town Center San Diego statute), there is no such provision in AB 734 (the Oakland ballpark statute). Because all three statutes use similar provisions regarding expedited review and direct that the same rules apply, it appears the Legislature intended that review for all three projects be the same. Since the mandatory service rules could not be applied to Oakland ballpark cases, they have not been applied to Inglewood arena or Old Town Center cases. And because the council had previously concluded that the special service rules should not be amended to apply to the original capitol annex project cases, the committees did not consider applying them to cases under the expanded capitol annex statute, AB 1875.

applied (§§ 21168.6.6(c)–(d), 21185, and 21189.51) required that the actions or proceedings, including any appeals, be resolved, to the extent feasible, within 270 days of certification of the record or the filing of the certified record. However, the statute governing Old Town Center projects contains a different time limit—within *270 business days* of the filing of the certified record. To accommodate different time periods under the statutes and to avoid confusion, the committees recommend replacing references in the provisions regarding stipulations to “270 days” with the “statutorily prescribed” time. (See amended rules 3.2221(b), 8.702(f).)

### **New fees for expedited review**

The Oakland ballpark statute<sup>12</sup> and the Inglewood arena statute<sup>13</sup> include nearly identical provisions requiring that, before the Governor certifies a project for streamlining (including the expedited court review), the project applicant must agree to pay for “any additional costs incurred by the courts in hearing and deciding any case” subject to the statutes. The statutes provide that the costs be determined by the council.

These provisions (set out in the footnotes) are similar to the provision for costs in former section 21182(f)<sup>14</sup> of the 2011 environmental leadership act, AB 900. The primary difference is that the earlier provision provides for payment of “the costs of the Court of Appeal . . . in hearing and deciding” the expedited case, while the new laws provide for payment of “any additional costs” to the trial court as well as the appellate court.

For cases brought under the Oakland ballpark and Inglewood arena statutes, the committees recommend fee amounts of \$120,000 at the trial court level, to be paid by the project developer within 10 days of the filing of the petition, and \$140,000 at the appellate level, to be paid within 10 days of the filing of a notice of appeal. As discussed below, in developing these proposed amounts, the committees looked to the former fee for streamlined environmental leadership cases, the experiences in cases that have been litigated under those rules, and the provision in the new ballpark and arena statutes that the amount is for “additional” costs incurred by the courts in providing expedited review.

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<sup>12</sup> Section 21168.6.7(d)(6) (Oakland ballpark): “The project applicant agrees to pay for any additional costs incurred by the courts in hearing and deciding any case brought pursuant to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the rules of court adopted by the Judicial Council.”

<sup>13</sup> Section 21168.6.8(b)(6) (Inglewood arena): “The project applicant agrees to pay any additional costs incurred by the courts in hearing and deciding any case subject to this section, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council.”

<sup>14</sup> Section 21183(f) (environmental leadership): “The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to Section 21185.”



### ***Court time spent on prior environmental leadership cases***

The environmental leadership rule originally adopted by the council in 2012<sup>15</sup> provides for payment of a fee of \$100,000 by the project developer at the time a notice of appeal is filed, as well as payment of the costs of any special master or contract personnel retained to work on the case. As stated in the report to the council on the original rule, that \$100,000 amount was determined as follows:

This proposed fee was calculated based on estimates collected from courts about the time spent by judges, justices, research attorneys, and judicial assistants on recent CEQA cases regarding projects of the size eligible for participation in the act's expedited review procedure. The fee assumes that, on average, the following amount of time will be spent on such a case:

- 108 hours by the justice assigned to prepare a draft decision;
- 10 hours by each of the other two justices on the panel;
- 230 hours by research attorneys; and
- 31 hours by judicial assistants.

Additional amounts for other staff time, benefits, and overhead were also included in calculating the total fee.

(Judicial Council of Cal. rep., p. 8.)<sup>16</sup>

It turns out that the estimates made in 2012 fell far short of reality for the work necessary for an appellate court to complete the expedited process. In late 2016, the Judicial Council submitted a legislatively required report on how AB 900 (the environmental leadership statute) had fared in the courts and the impact it had on judicial administration. At that time, a single case had been tried and appealed under the environmental leadership project rules, a challenge to the Event Center and Mixed-Use Development at Mission Bay Blocks 29–32 (the Golden State Warriors' Mission Bay project). The details of the timing of that case, in which the Court of Appeal decision was issued 327 days after the case was initially filed,<sup>17</sup> are set out in a report to the Legislature. After an initial delay of 64 days to litigate whether the case should be moved from

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<sup>15</sup> See rule 8.705. Originally adopted as rule 8.497, the rule has been renumbered since but is otherwise unchanged.

<sup>16</sup> Judicial Council of Cal., Advisory Com. Rep., *Appellate Procedure: Review of California Environmental Quality Act Cases Under Public Resources Code Sections 21178–21189.3* (Apr. 11, 2012), p. 8, [www.courts.ca.gov/documents/jc-20120424-itemA1.pdf](http://www.courts.ca.gov/documents/jc-20120424-itemA1.pdf).

<sup>17</sup> At the time of the report, oral argument had not yet been held. However, it was held shortly thereafter, and the Court of Appeal issued its opinion on November 29, 2016. Work on the case was not completed within 270 days for several reasons, but primarily because of time expended on petitioner's efforts at the trial court and the Court of Appeal, Third Appellate District to keep the case in Sacramento (where initially filed) rather than in San Francisco (where it was ultimately decided). Per the case dockets in Appendix C to the 2012 council report, 64 days elapsed between the time of filing and the time when the case was eventually received in the Superior Court of San Francisco County. The court time expended in those 64 days by the Superior Court of Sacramento County and the Court of Appeal, Third Appellate District was not taken into consideration in developing the amount of the new fee.

Sacramento to San Francisco, the courts moved quite expeditiously, consistent with the expedited procedures. The report to the Legislature describes the work entailed as follows:

The Mission Bay project CEQA case is extremely large and complex. The administrative record filed in both the trial court and the Court of Appeal comprises 56 volumes—more than 168,000 pages. The joint appendix filed in the Court of Appeal is 1,514 pages in length. The petitioners’ petition for writ of mandate filed in the trial court included three separate causes of action raising multiple issues regarding the approval of the Mission Bay project. The petitioners’ brief filed in the Court of Appeal, First Appellate District also raised multiple issues. Many of the issues raised in this case involve highly technical questions that require specialized expertise to evaluate.

(Judicial Council of Cal., *Jobs and Economic Improvement Through Environmental Leadership Act: Report to the Legislature Under Assembly Bill 900, Public Resources Code Section 21189.2* (Dec. 1, 2016), p. 6.)

The time spent to adjudicate these complex issues was estimated as follows:

- The CEQA judge at the Superior Court of San Francisco County spent five hours a day on the case (he could not spend full time because of other commitments at the court), as well as 15 hours each weekend throughout the time the case was at the trial court. This equals approximately 740 hours (the equivalent of 92 workdays) of time on the case. In addition, the equivalent of one full-time research attorney worked on the case throughout the time it was in the trial court (91 workdays), resulting in well over 700 hours of research attorney time.
- At the Court of Appeal, First Appellate District, the Mission Bay case took precedence over all other cases assigned to the division handling this case, including juvenile dependency cases. One appellate justice and two research attorneys (rather than the usual single attorney) worked on this case, essentially on a full-time basis, for a total of three months or approximately 60 workdays each. The more than 900 hours (or 120 workdays) of research time at the Court of Appeal is also significantly more than the 230 hours (or 29 workdays) originally estimated in establishing the \$100,000 fee in the leadership cases.

Since 2016, a second project certified under the environmental leadership statute has been involved in litigation—the Sunset Boulevard Project, a major mixed-use construction project in Los Angeles. This litigation, filed in the Superior Court of Los Angeles County and appealed to the Court of Appeal, Second Appellate District, was similarly large and complex, with four separate complaints asserting CEQA violations, two of which went up on appeal.<sup>18</sup> The trial court judge, an experienced CEQA judge, spent hundreds of hours on the case but, because of

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<sup>18</sup> *L.A. Conservancy v. City of L.A.; Fix the City, Inc. v. City of Los Angeles* (Mar. 23, 2018, B284093) [nonpub. opn.].

the complexity of the case and her need to spend time on other matters, the judgment took 230 days to issue. The Court of Appeal decision took a similar amount of time. The trial court judge reported that if she had been able to work on the case full time, she may have been able to have the judgment issued within the desired timeline.

### ***Development of new fee amounts***

As described above, AB 734 (the Oakland ballpark project) and AB 987 (the Inglewood arena project) require the project applicants to pay any “additional” court costs (“as provided in the rules of court adopted by the Judicial Council”) to adjudicate CEQA challenges brought against the project within 270 days. Given the typical scope of CEQA cases that qualify for expedited procedures and the court resources used in the Mission Bay and Sunset Boulevard cases, the committees concluded that the only possible way for courts to comply with the statutory timeline would be to take the case out of normal processing and assign personnel to it full time. Accounting for weekends and court holidays, 270 days is equivalent to approximately 182 workdays. Splitting this time equally between the trial and appellate courts provides each court with roughly 91 workdays to hear and decide the case.

Indeed, the trial court judge in the Mission Bay case estimated that he spent the equivalent of 92 workdays on the case and was assisted by two research attorneys who together spent a similar amount of time. Similarly, the trial court judge in Sunset Boulevard estimated that she may have been able to meet the expedited timeline if she had worked on the case full time. Appellate review of the Mission Bay case took a comparable amount of time. One appellate court justice and two research attorneys worked on that case for roughly 60 workdays each, or 180 workdays total. One appellate court justice and one research attorney spending 91 workdays on a case would also amount to approximately 180 workdays. The only data with respect to the time for appellate review in the Sunset Boulevard case is from the docket—a decision was filed 234 days after the notice of appeal was filed.

Accordingly, the cost of a judicial officer and a research attorney to work full time for 91 workdays at each court level appears to be a reasonable estimate for “additional costs” to adjudicate an expedited CEQA challenge. Such an estimate does not include other appellate court justice time, staff time, or overhead, all of which were factored into the calculation for the fee required in current rule 8.705, which aimed to cover *all* appellate court costs for environmental leadership projects.<sup>19</sup> The estimates<sup>20</sup> are as follows:

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<sup>19</sup> Inclusion of other staff time, judicial officer and staff benefits, and overhead, may be appropriate when determining the fee for projects brought under SB 7 (future environmental leadership projects) and SB 44 (environmental leadership transit projects), both of which require the project applicant to agree “to pay the costs of the trial court and the court of appeal in hearing and deciding” any challenge to the project under CEQA.

<sup>20</sup> These estimates are based solely on salary compensation, such as would be paid to an assigned judge or a retired annuitant research attorney, and do not include judicial officer or attorney benefits.

- In the trial court, the cost of a judge for 91 days and one research attorney for 91 days would be approximately \$120,000.
- In the appellate court, the cost of one appellate justice for 91 days and one research attorney for 91 days would be approximately \$140,000.

The committees thus recommend that the above amounts be charged for the expedited review by the trial court and the Court of Appeal, respectively. (See rules 3.2240 and 8.705.) As permitted by the statutes, the proposed rules also allow for costs for any special master required for the matter to be charged directly to the project developer, as is currently provided in the environmental leadership cases.

### **Other amendments**

At the time it was circulated in 2012, a couple of comments received on the proposal for the \$100,000 fee for expedited CEQA review by the Court of Appeal in environmental leadership cases suggested that the rule should clarify that this is not a recoverable cost. The Appellate Advisory Committee declined to include this provision at the time,<sup>21</sup> but noted that, if this issue was not addressed by the Legislature, the committee would consider the possibility of circulating a new proposal regarding this issue in the future. The committees included a specific question on this issue in the invitation to comment and now recommend that the rules provide that any fee or cost paid under the rule is not a recoverable cost. (See rules 3.2240(4), 8.705(5).)

To reduce unnecessary complexity, the committees also recommend amending the titles of two chapters of the rules (chapter 2 of division 22 of title 3 and chapter 1 of division 3 of title 8) to refer to “streamlined CEQA projects” in place of the growing list of Public Resources Code sections under which CEQA review may be streamlined.

### **Policy implications**

The committees recommend the new and amended rules to implement legislation and to ensure that the rules conform to law. The policy choices have been made by the Legislature.

### **Comments**

The proposal circulated for public comment from December 20, 2021, until January 14, 2022. Circulation was expedited based on the possibility that the Oakland ballpark project could be approved as early as March 2022, with any potential litigation to take place soon thereafter. The committees wanted to be sure that project proponents, as well as the public generally, had an opportunity to comment on the proposal before the new fees were implemented.

The committees have received no comments.

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<sup>21</sup> The committee noted in its report to the council at that time that such a provision had not been included in the rule as circulated and was a sufficiently substantive change that the committee could not recommend it without further circulation.

### **Alternatives considered**

Because the new rules and the establishment of fees are mandated by the Legislature, the committees did not consider the alternative of no rules.

The committees considered a different method of determining the costs to be paid: require the posting of a \$100,000 deposit, calculate the court's actual costs for hearing and deciding that particular matter at the conclusion of the case, and require payment of actual costs at the end of the case. The committees ultimately decided against this approach, however, because of the administrative burden associated with calculating and collecting these costs in each case.

### **Fiscal and Operational Impacts**

Implementing the new legislation requiring expedited review of CEQA challenges to new project types will certainly generate costs and operational impacts for both the trial court and the Court of Appeal in which the proceedings governed by these statutes are held. In particular, the legislation requires that courts prioritize these cases and devote considerable concentrated resources to resolve them, to the extent feasible, within the prescribed time. The primary operational impact is expected to be the additional time that other cases will have to wait while these cases move to the front of the line. The committees do not anticipate that this rule proposal will result in additional costs to other courts.

### **Attachments and Links**

1. Cal. Rules of Court, rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 3.2240, 8.700, 8.702, 8.703, and 8.705, at pages 12–19
2. Link A: Assembly Bill 734,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB734](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB734)
3. Link B: Assembly Bill 987,  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB987](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB987)
4. Link C: Assembly Bill 1826,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB1826](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1826)
5. Link D: Assembly Bill 2731,  
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB2731](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2731)

Rule 3.2240 of the California Rules of Court is adopted and rules 3.2200, 3.2220, 3.2221, 3.2222, 3.2223, 8.700, 8.702, 8.703, and 8.705 are amended, effective March 11, 2022, to read:

1 **Rule 3.2200. Application**

2  
3 Except as otherwise provided in chapter 2 of the rules in this division, which govern  
4 actions under Public Resources Code sections 21168.6.6–21168.6.8, 21178–21189.3, ~~and~~  
5 21189.50–21189.57, and 21189.70–21189.70.10, the rules in this chapter apply to all  
6 actions brought under the California Environmental Quality Act (CEQA) as stated in  
7 division 13 of the Public Resources Code.  
8  
9

10 **Chapter 2. California Environmental Quality Act Proceedings Under Public**  
11 **Resources Code Sections ~~21168.6, 21178–21189.3, and 21189.50–21189.57~~ Involving**  
12 **Streamlined CEQA Projects**

13  
14 **Article 1. General Provisions**

15  
16 **Rule 3.2220. Definitions and application**

17  
18 **(a) Definitions**

19  
20 As used in this chapter:

21  
22 (1) A “streamlined CEQA project” means any project within the definitions  
23 stated in (2) through (7).

24  
25 ~~(1)~~(2) An “environmental leadership development project” or “leadership project”  
26 means a project certified by the Governor under Public Resources Code  
27 sections 21182–21184.  
28

29 ~~(2)~~(3) The “Sacramento entertainment and sports center project” or “Sacramento  
30 arena project” means an entertainment and sports center project as defined by  
31 Public Resources Code section 21168.6.6, for which the proponent provided  
32 notice of election to proceed under that statute described in section  
33 21168.6.6(j)(1).  
34

35 (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project”  
36 means a project as defined in Public Resources Code section 21168.6.7 and  
37 certified by the Governor under that section.  
38

39 (5) An “Inglewood arena project” means a project as defined in Public Resources  
40 Code section 21168.6.8 and certified by the Governor under that section.  
41

42 ~~(3)~~(6) An “expanded capitol building annex project” means a state capitol building  
43 annex project, annex project–related work, or state office building project as  
44 defined by Public Resources Code section 21189.50.  
45

1 (7) An “Old Town Center transit and transportation facilities project” or “Old  
2 Town Center project” means a project as defined in Public Resources Code  
3 section 21189.70.  
4

5 **(b) Proceedings governed**  
6

7 The rules in this chapter govern actions or proceedings brought to attack, review,  
8 set aside, void, or annul the certification of the environmental impact report or the  
9 grant of any project approvals for ~~the Sacramento arena project, a leadership~~  
10 ~~project, or a capitol building annex project~~ a streamlined CEQA project. Except as  
11 otherwise provided in Public Resources Code sections 21168.6.6–21168.6.8,  
12 21178–21189.3, and 21189.50–21189.57, and 21189.70–21189.70.10 and these  
13 rules, the provisions of the Public Resources Code and the CEQA Guidelines  
14 adopted by the Natural Resources Agency (Cal. Code Regs., tit. 14, § 15000 et  
15 seq.) governing judicial actions or proceedings to attack, review, set aside, void, or  
16 annul acts or decisions of a public agency on the grounds of noncompliance with  
17 the California Environmental Quality Act and the rules of court generally apply in  
18 proceedings governed by this rule.  
19

20 **(c) Complex case rules**  
21

22 \* \* \*

23  
24 **Rule 3.2221. Time**  
25

26 **(a) Extensions of time**  
27

28 \* \* \*

29  
30 **(b) Extensions of time by parties**  
31

32 If the parties stipulate to extend the time for performing any acts in actions  
33 governed by these rules, they are deemed to have agreed that the statutorily  
34 prescribed time for resolving the action may be extended ~~beyond 270 days~~ by the  
35 number of days by which the performance of the act has been stipulated to be  
36 extended, and to that extent to have waived any objection to noncompliance with  
37 the deadlines for completing review stated in Public Resources Code sections  
38 21168.6.6(e)–(d)–21168.6.8, 21185, and 21189.51, and 21189.70.3. Any such  
39 stipulation must be approved by the court.  
40

41 **(c) Sanctions for failure to comply with rules**  
42

43 If a party fails to comply with any time requirements provided in these rules or  
44 ordered by the court, the court may issue an order to show cause as to why one of  
45 the following sanctions should not be imposed:  
46

1 (1)–(2) \* \* \*

2

3 (3) If the failure to comply is by respondent or a real party in interest, removal of  
4 the action from the expedited procedures provided under Public Resources  
5 Code sections 21168.6.6(e)–(d), 21168.6.8, 21185, and 21189.51, and  
6 21189.70.3, and these rules; or

7

8 (4) \* \* \*

9

10 **Rule 3.2222. Filing and service**

11

12 (a)–(c) \* \* \*

13

14 (d) **Service of petition in action regarding leadership project and capitol building**  
15 **annex project streamlined CEQA project other than the Sacramento arena**  
16 **project**

17

18 If the petition or complaint in an action governed by these rules and relating to a  
19 streamlined CEQA project other than the Sacramento arena project leadership  
20 project or a capitol building annex project is not personally served on any  
21 respondent public agency, any real party in interest, and the Attorney General  
22 within three court days following filing of the petition, the time for filing  
23 petitioner’s briefs on the merits provided in rule 3.2227(a) and rule 8.702(e)(f) will  
24 be decreased by one day for every additional two court days in which service is not  
25 completed, unless otherwise ordered by the court for good cause shown.

26

27 (e) \* \* \*

28

29 **Rule 3.2223. Petition**

30

31 In addition to any other applicable requirements, the petition must:

32

33 (1) On the first page, directly below the case number, indicate that the matter is  
34 either a “Sacramento Arena CEQA Challenge,” or an “Environmental  
35 Leadership CEQA Challenge,” or a “Capitol Building Annex Project” a  
36 “Streamlined CEQA Project”;

37

38 (2) State one of the following:

39

40 (A) The proponent of the project at issue provided notice to the lead agency  
41 that it was proceeding under Public Resources Code section 21168.6.6,  
42 21168.6.7, or 21168.6.8 (whichever is applicable) and is subject to this  
43 rule; or

44



- 1 (B) The project at issue was certified by the Governor as a leadership  
2 project under Public Resources Code sections 21182–21184 and is  
3 subject to this rule; or  
4  
5 (C) The project at issue is an expanded capitol building annex project as  
6 defined by Public Resources Code section 21189.50 and is subject to  
7 this rule; or  
8  
9 (D) The project at issue is an Old Town Center project as defined by Public  
10 Resources Code section 21189.70 and is subject to this rule;

11  
12 (3) If a leadership project, provide notice that the person or entity that applied for  
13 certification of the project as a leadership project must, if the matter goes to  
14 the Court of Appeal, make the payments required by ~~Public Resources Code~~  
15 ~~section 21183(f)~~ rule 8.705; and

16  
17 (4) If an Oakland ballpark or Inglewood arena project, provide notice that the  
18 person or entity that applied for certification of the project as an Oakland  
19 ballpark or Inglewood arena project must make the payments required by rule  
20 3.2240 and, if the matter goes to the Court of Appeal, the payments required  
21 by rule 8.705; and

22  
23 ~~(4)~~(5) \* \* \*

24  
25 **Rule 3.2240. Trial Court Costs in Oakland Ballpark and Inglewood Arena Projects**

26  
27 In fulfillment of the provisions in Public Resources Code sections 21168.6.7 and  
28 21168.6.8 regarding payment of trial court costs with respect to cases concerning certain  
29 streamlined CEQA projects:

- 30  
31 (1) Within 10 days after service of the petition or complaint in a case concerning an  
32 Oakland ballpark project or an Inglewood arena project, the person or entity that  
33 applied for certification of the project as a streamlined CEQA project must pay a  
34 fee of \$120,000 to the court.  
35  
36 (2) If the court incurs the costs of any special master appointed by the court in the case  
37 or of any contract personnel retained by the court to work on the case, the person or  
38 entity that applied for certification of the project must also pay, within 10 days of  
39 being ordered by the court, those incurred or estimated costs.  
40  
41 (3) If the party fails to timely pay the fee or costs specified in this rule, the court may  
42 impose sanctions that the court finds appropriate after notifying the party and  
43 providing the party with an opportunity to pay the required fee or costs.  
44  
45 (4) Any fee or cost paid under this rule is not recoverable.  
46

1  
2 **Chapter 1. Review of California Environmental Quality Act Cases Under Public**  
3 **Resources Code Sections ~~21168.6.6, 21178-21189.3, and 21189.50-21189.57~~**  
4 **Involving Streamlined CEQA Projects**  
5

6 **Rule 8.700. Definitions and application**  
7

8 **(a) Definitions**  
9

10 As used in this chapter:

11  
12 (1) A “streamlined CEQA project” means any project within the definitions  
13 stated in (2) through (7).

14  
15 ~~(1)~~(2) An “environmental leadership development project” or “leadership project”  
16 means a project certified by the Governor under Public Resources Code  
17 sections 21182–21184.

18  
19 ~~(2)~~(3) The “Sacramento entertainment and sports center project” or “Sacramento  
20 arena project” means an entertainment and sports center project as defined by  
21 Public Resources Code section 21168.6.6, for which the proponent provided  
22 notice of election to proceed under that statute described in section  
23 21168.6.6(j)(1).

24  
25 (4) An “Oakland sports and mixed-use project” or “Oakland ballpark project”  
26 means a project as defined in Public Resources Code section 21168.6.7 and  
27 certified by the Governor under that section.

28  
29 (5) An “Inglewood arena project” means a project as defined in Public Resources  
30 Code section 21168.6.8 and certified by the Governor under that section.

31  
32 ~~(3)~~(6) An “expanded capitol building annex project” means a state capitol building  
33 annex project, annex project–related work, or state office building project as  
34 defined by Public Resources Code section 21189.50.

35  
36 (7) An “Old Town Center transit and transportation facilities project” or “Old  
37 Town Center project” means a project as defined in Public Resources Code  
38 section 21189.70.

39  
40 **(b) Proceedings governed**  
41

42 The rules in this chapter govern appeals and writ proceedings in the Court of  
43 Appeal to review a superior court judgment or order in an action or proceeding  
44 brought to attack, review, set aside, void, or annul the certification of the  
45 environmental impact report or the granting of any project approvals for an

1 environmental leadership development project, the Sacramento arena project, or a  
2 capitol building annex a streamlined CEQA project.

3  
4 **Rule 8.702. Appeals**

5  
6 (a) \* \* \*

7  
8 (b) **Notice of appeal**

9  
10 (1) \* \* \*

11  
12 (2) *Contents of notice of appeal*

13  
14 The notice of appeal must:

15  
16 (A) State that the superior court judgment or order being appealed is  
17 governed by the rules in this chapter;

18  
19 (B) Indicate whether the judgment or order pertains to ~~the Sacramento~~  
20 ~~arena project, a leadership project, or a capitol building annex a~~  
21 streamlined CEQA project; and

22  
23 (C) If the judgment or order being appealed pertains to a leadership project,  
24 an Oakland ballpark project, or an Inglewood arena project, provide  
25 notice that the person or entity that applied for certification or approval  
26 of the project as a leadership such a project must make the payments  
27 required by rule 8.705.

28  
29 (c)–(e) \* \* \*

30  
31 (f) **Briefing**

32  
33 (1)–(3) \* \* \*

34  
35 (4) *Extensions of time to file briefs*

36  
37 If the parties stipulate to extend the time to file a brief under rule 8.212(b),  
38 they are deemed to have agreed that the statutorily prescribed time for  
39 resolving the action may be extended ~~beyond 270 days~~ by the number of days  
40 by which the parties stipulated to extend the time for filing the brief and, to  
41 that extent, to have waived any objection to noncompliance with the deadlines  
42 for completing review stated in Public Resources Code sections 21168.6.6(e)–  
43 ~~(d)~~ 21168.6.8, 21185, ~~and~~ 21189.51, and 21189.70.3 for the duration of the  
44 stipulated extension.

45  
46 (5) \* \* \*

1  
2 (g) \* \* \*

3  
4 **Advisory Committee Comment**

5  
6 **Subdivision (b).** It is very important to note that the time period to file a notice of appeal under  
7 this rule is the same time period for filing most postjudgment motions in a case regarding the  
8 Sacramento arena project, and in a case regarding ~~a leadership project or capitol building annex~~  
9 any other streamlined CEQA project, the deadline for filing a notice of appeal may be earlier than  
10 the deadline for filing a motion for a new trial, a motion for reconsideration, or a motion to vacate  
11 the judgment.

12  
13 **Rule 8.703. Writ proceedings**

14  
15 (a) \* \* \*

16  
17 (b) **Petition**

18  
19 (1) \* \* \*

20  
21 (2) *Contents of petition*

22  
23 In addition to any other applicable requirements, the petition must:

24  
25 (A) State that the superior court judgment or order being challenged is  
26 governed by the rules in this chapter;

27  
28 (B) Indicate whether the judgment or order pertains to ~~the Sacramento~~  
29 ~~arena project, a leadership project, or a capitol building annex~~ a  
30 streamlined CEQA project; and

31  
32 (C) If the judgment or order pertains to a leadership project, an Oakland  
33 ballpark project, or an Inglewood arena project, provide notice that the  
34 person or entity that applied for certification of the project as a  
35 ~~leadership~~ such a project must make the payments required by rule  
36 8.705.

37  
38 **Rule 8.705. Court of Appeal costs in ~~leadership~~ certain streamlined CEQA projects**

39  
40 In fulfillment of the provisions in Public Resources Code sections 21168.6.7, 21168.6.8,  
41 and 21183 regarding payment of the Court of Appeal's costs with respect to cases  
42 concerning leadership, Oakland ballpark, and Inglewood arena projects:

43  
44 (1) Within 10 days after service of the notice of appeal or petition in a case concerning  
45 a leadership project, the person ~~who~~ or entity that applied for certification of the  
46 project as a leadership project must pay a fee of \$100,000 to the Court of Appeal.  
47

1 (2) Within 10 days after service of the notice of appeal or petition in a case concerning  
2 an Oakland ballpark project or Inglewood arena project, the person or entity that  
3 applied for certification of the project as an Oakland ballpark project or Inglewood  
4 arena project must pay a fee of \$140,000 to the Court of Appeal.  
5

6 ~~(2)~~(3) If the Court of Appeal incurs the costs of any special master appointed by the Court  
7 of Appeal in the case or of any contract personnel retained by the Court of Appeal  
8 to work on the case, the person ~~who~~ or entity that applied for certification of the  
9 project as a leadership project, an Oakland ballpark project, or an Inglewood arena  
10 project must also pay, within 10 days of being ordered by the court, those incurred  
11 or estimated costs.  
12

13 ~~(3)~~(4) If the party fails to timely pay the fee or costs specified in this rule, the court may  
14 impose sanctions that the court finds appropriate after notifying the party and  
15 providing the party with an opportunity to pay the required fee or costs.  
16

17 (5) Any fee or cost paid under this rule is not a recoverable cost.  
18

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee Meeting Date:** 2/28/2022

**Rules Committee action requested** [Choose from drop down menu below]:  
**Recommend JC approval (has circulated for comment)**

**Title of proposal:** Criminal Law: Felony Sentencing

*Proposed rules, forms, or standards (include amend/revise/adopt/approve):*

Amend rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453

*Committee or other entity submitting the proposal:*  
Criminal Law Advisory Committee

*Staff contact (name, phone and e-mail):* Sarah Fleischer-Ihn, 5-7702, sarah.fleischer-ihn@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Annual agenda approved by Rules Committee on (date): 11/2/2021

Project description from annual agenda: Amend felony sentencing rules: Effective January 1, 2022, Assembly Bill 124 and Senate Bill 567 amend Penal Code section 1170, and Senate Bill 81 amends Penal Code section 1385 on felony sentencing. These changes require amendments to rules of court on felony sentencing, including rules 4.405 (definitions), 4.406 (statement of reasons), 4.408 (listing of factors not exclusive; sequence not significant), 4.420 (selection of term of imprisonment), 4.421 (circumstances in aggravation), 4.422 (circumstances in mitigation), 4.428 (factors affecting imposition of enhancements), 4.433 (matters to be considered at sentencing), and 4.437 (statements in aggravation or mitigation).

**Out of Cycle:** *If requesting September 1 effective date or out of cycle, explain why:*

**Additional Information for Rules Committee:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

**Additional Information for JC Staff** (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-081*

For business meeting on: March 11, 2022

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**Title**

Criminal Law: Felony Sentencing

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453

**Effective Date**

March 14, 2022

**Date of Report**

February 24, 2022

**Recommended by**

Criminal Law Advisory Committee  
Hon. Brian M. Hoffstadt, Chair

**Contact**

Sarah Fleischer-Ihn, 415-865-7702,  
[sarah.fleischer-ihn@jud.ca.gov](mailto:sarah.fleischer-ihn@jud.ca.gov)

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### Executive Summary

The Criminal Law Advisory Committee recommends amendments to specified felony sentencing rules of the California Rules of Court to reflect several major legislative changes were made to sentencing of felony offenses and enhancements, which went into effect January 1, 2022. The recommended amendments will reflect statutory changes (1) requiring aggravated factors to be stipulated to by the defendant or found true beyond a reasonable doubt when imposing the upper term of a felony offense or enhancement; (2) allowing courts to consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified official records, but that this exception may not be used to select the upper term of an enhancement; (3) discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice; (4) regarding mitigating circumstances requiring imposition of the lower term; (5) identifying specified mitigating circumstances for consideration in sentencing; (6) allowing an act or omission that is punishable in different ways by different laws to be punished under either of those provisions; and (7) amending dismissal of enhancements due to specified mitigating circumstances. The recommended amendments would also clarify that courts may consider aggravating factors in exercising discretion in imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining

whether to exercise discretion pursuant to Penal Code section 1385(c) and make nonsubstantive technical amendments.

### **Recommendation**

The Criminal Law Advisory Committee recommends that the Judicial Council, effective March 14, 2022:

1. Repeal rules 4.300 and 4.453 to reflect changes discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice;
2. Amend rule 4.405 to:
  - clarify the definition of “base term,” and add definitions of “principal term,” “subordinate term,” and “offense;”
  - modify the definition of “aggravation” to apply to factors that justify the imposition of the upper prison term or factors that the court may consider in exercising discretion authorized by statute and under these rules including imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to section 1385(c); and
  - amend the advisory committee comment to reflect changes regarding sentencing triads;
3. Amend rule 4.406 to :
  - delete a provision requiring the court to state reasons for declining to commit an eligible juvenile found amenable to treatment to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, to reflect the repeal of Welfare and Institutions Code section 707.2;
  - require a court to state reasons for selecting a term for either an offense or an enhancement; and
  - amend the advisory committee comment to rule 4.406 to reflect changes regarding sentencing triads;
4. Amend the advisory committee comment to rule 4.408 to reflect changes regarding sentencing triads;
5. Amend rule 4.411.5 to:
  - require the contents of a probation officer’s presentence investigation report to include: whether factors in aggravation were proven beyond a reasonable doubt or



stipulated; specific factors in mitigation that may require imposition of low term; and discussion of both aggravating and mitigating factors related to disposition;

- to require the contents of a probation officer’s presentence investigation report to include any mitigating factors pursuant to Penal Code section 1385(c);
  - to delete references to chargeable probation services and attorney fees under Penal Code section 987.8, to reflect the repeal of these fees by Assembly Bill 1869 (Stats. 2020, ch. 92);
6. Amend rule 4.414 to state that a court may consider factors in aggravation and mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt, when determining a defendant’s suitability for probation;
  7. Amend rule 4.420 to
    - clarify in the title that it addresses offenses, and not enhancements;
    - reflect changes regarding sentencing triads, including under what circumstances the court may impose the upper term;
    - reflect changes regarding mandatory imposition of the low term under specified circumstances; and
    - amend the advisory committee comment to reflect changes regarding sentencing triads and to include a definition of “interests of justice;”
  8. Amend the advisory committee comment to rule 4.421 to reflect changes regarding sentencing triads and nonsubstantive technical amendments;
  9. Amend rule 4.423 to add mitigating factors specified in Penal Code section 1385(c);
  10. Amend rule 4.424 to reflect changes allowing the court to use its discretion regarding which act or omission to punish under Penal Code section 654;
  11. Amend rule 4.425 to clarify that a court may consider any circumstances in aggravation or mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt, when considering whether to impose consecutive or concurrent sentences, with specified exceptions;
  12. Amend rule 4.427 to:
    - reflect changes to Penal Code section 1385(c) regarding dismissal of enhancements; and

- amend the advisory committee comment to reflect changes to Penal Code sections 1170.1, regarding requirements to impose the upper term of an enhancement, and 1385(c), regarding dismissal of enhancements;
13. Amend rule 4.428 to reflect changes regarding enhancements with triads and include a new section on dismissal of enhancements under Penal Code section 1385(c);
  14. Amend the advisory committee comment to rule 4.428 to include definitions of “furtherance of justice” and “great weight;”
  15. Amend the advisory committee comment to rule 4.437 to state that the requirement that a statement in aggravation or mitigation include notice of intention to rely on new evidence may include either party’s intention to provide evidence to prove or contest the existence of a factor in mitigation that would require imposition of the low term for the underlying offense or dismissal of an enhancement; and
  16. Amend rule 4.447 of the California Rules of Court to refer to Penal Code section 1385(c).

The proposed amended rules are attached at pages 9–27.

### **Relevant Previous Council Action**

The Judicial Council last amended the felony sentencing rules of the California Rules of Court, rules 4.401–4.480, effective January 1, 2018, to (1) reflect amendments and updates related to changes in California’s Determinate Sentencing Law, indeterminate sentences, and sentencing enhancements; (2) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act; (3) provide guidance to courts on the referral of cases to probation for investigation reports; (4) clarify the use of risk/needs assessments in a probation officer’s presentence report; (5) add the reporting requirements of Penal Code section 29810(c)(2) to the contents of a probation officer’s presentence report; and (6) make nonsubstantive technical amendments.

### **Analysis/Rationale**

Effective January 1, 2022, several major legislative changes were made to sentencing of felony offenses and enhancements.

Penal Code section 1170(b)(1)-(3) and 1170.1(d) were added to state that a court may impose an upper term of custody if aggravating factors were found true beyond a reasonable doubt or stipulated to by the defendant, except when a prior conviction is used as an aggravating factor to impose the upper base term, but not for the upper term of an enhancement (Sen. Bill 567; Stats. 2021, ch. 731).

Penal Code section 1170(b)(6) was added to require the imposition of the low term of custody in specified circumstances, except if imposition of the low term would not be in the interests of

justice if aggravating factors outweigh mitigating factors. The specified circumstances are (1) if the person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence; (2) the person was a youth (defined as any person under 26 years of age) at the time of the commission of the offense; or (3) prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking (Assem. Bill 124; Stats. 2021, ch. 695).

Penal Code section 1385 was amended to direct the exercise of judicial discretion in striking enhancements in specified circumstances, unless the court finds that dismissal would endanger public safety (Sen. Bill 81; Stats. 2021, ch 721). The specified circumstances are as follows:

- Application of the enhancement would result in a discriminatory racial impact as described in paragraph (4) of subdivision (a) of Section 745.
- Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed.
- The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed.
- The current offense is connected to mental illness.
- The current offense is connected to prior victimization or childhood trauma.
- The current offense is not a violent felony as defined in subdivision (c) of Section 667.5.
- The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case.
- The enhancement is based on a prior conviction that is over five years old.
- Though a firearm was used in the current offense, it was inoperable or unloaded.

Most of the recommended amendments reflect these changes to Penal Code sections 1170, 1170.01, and 1385. In addition, the proposed amendments reflect the committee's conclusion that the new statutory requirements for imposition of an upper term of an offense or enhancement do not apply when the court is imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to section 1385(c). (See *People v. Black* (2007) 41 Cal.4th 799, 815-816 (*Black II*) [aggravating circumstances serve two analytically distinct functions in California's current determinate sentencing scheme; one function is to raise the maximum permissible sentence from the middle term to the upper term, and the other function is to serve as a consideration in the trial court's exercise of its discretion in selecting the appropriate term from among those authorized for the defendant's offense].) These changes are reflected in the recommended amendments to rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.425, 4.427, 4.428, 4.437, and 4.447.

Finally, Penal Code section 654 was amended to allow an act or omission that is punishable in different ways by different laws to be punished under either of those provisions (Assem. Bill 518; Stats. 2021, ch. 441). The statutory amendment is reflected in the recommended amendment to rule 4.424.

The committee also recommends repealing rules 4.430 and 4.453, and amending rule 4.406 to reflect statutory changes discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice (Sen. Bill 92; Stats. 2021, ch. 18).

### **Policy implications**

The proposed rule amendments reflect several major legislative changes to sentencing of felony offenses and enhancements, which went into effect January 1, 2022, and should take effect immediately to ensure that the rules of court are consistent with statute.

### **Comments**

Six stakeholders submitted comments: two superior courts (Los Angeles and San Diego Counties), a public defender's office (San Diego County), the Pacific Juvenile Defender Center, California Attorneys for Criminal Justice, and a member of the public. One commenter agreed with the proposal and five agreed if modified. The committee incorporated several comments suggesting further clarity and consistency in the rules.

#### ***Standard of proof of aggravating circumstances when the mitigating circumstances in section 1170(b)(6) are present***

The San Diego County Public Defender's Office recommended that the rules state that aggravating circumstances in the context of Penal Code section 1170(b)(6) must be stipulated to by the defendant or proven true beyond a reasonable doubt. The committee does not recommend this language because section 1170(b)(6) does not state that aggravating circumstances that the court relies on to not impose the lower term must be proven beyond a reasonable doubt or stipulated to by the defendant.

#### ***Official record of conviction when imposing the upper term can only be used to prove the existence of a prior conviction but not an enhancement attached to the prior conviction***

Penal Code section 1170(b)(1)–(3) and 1170.1(d) were added to state that a court may impose an upper term of custody if aggravating factors were found true beyond a reasonable doubt or stipulated to by the defendant, except when a prior conviction is used as an aggravating factor to impose the upper base term, but not for the upper term of an enhancement (Sen. Bill 567; Stats. 2021, ch. 731).

The proposed amendments include advisory committee comments to rules 4.405, 4.408, and 4.421 referencing the exception:

In determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified official records. This exception may not be used to select the upper term of an enhancement.

The San Diego County Public Defender's Office recommended additional language stating that "this exception only applies to the base crime of the prior conviction and not to any

enhancements attached to that base crime” which is a restatement of another clause in Penal Code section 1170(b)(3) (“This paragraph does not apply to enhancements imposed on prior convictions.”). The committee does not recommend adding language about the exception not applying to enhancements attached to the prior conviction as that goes to issues of proof rather than sentencing.

***Restitution order becoming a judgment***

California Attorneys for Criminal Justice recommended deleting language in rule 4.411.5 concerning a recommendation by the probation officer about whether any restitution order should become a judgment under section 1203(j) if unpaid. They noted that under section 1214(b), any restitution order is a judgment, so that it was unclear why the probation officer would recommend that it should become a judgment, and could result in a conflict between court orders and section 1214(b). Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before they are considered for adoption, and the committee will consider this suggestion during the next rules cycle.

***Legislative history on application of Penal Code section 1385(c), dismissal of enhancements, to alternative sentencing schemes.***

The advisory committee comment to rule 4.428 included the following language in the proposal that circulated for comment:

The legislative history on Senate Bill 81 states that the presumption created by Penal Code section 1385(c) does not apply to alternative sentencing schemes such as One Strike, Two Strikes, or Three Strikes. (See Assm. Com. Pub. Safety, Report on Sen. Bill 81 (2021–2022 Reg. Sess.) June 29, 2021, pp. 5–6.) Unlike an offense specific enhancement, an alternative sentencing scheme does not add an additional term of imprisonment to the base term; instead, it provides for an alternate sentence for the underlying felony itself when it is proven that certain conditions specified in the statute are true. (See *People v. Anderson* (2009) 47 Cal.4th 92, 102; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 527.)

Three commenters – California Attorneys for Criminal Justice, the Pacific Juvenile Defender Center and the San Diego County Public Defender’s Office – raised concerns about whether the Legislature intended for dismissals of enhancements under section 1385(c) to apply to prior serious and violent felony convictions and adjudications under the Three Strikes Law. In light of these comments, the committee has deleted the above paragraph referring to legislative history and case law from its recommendation.

**Alternatives considered**

The committee did not consider alternatives, determining that the rule amendments were needed to reflect legislative changes.

## **Fiscal and Operational Impacts**

No implementation or operational impacts are likely.

## **Attachments and Links**

1. Cal. Rules of Court, rules 4.300, 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447, 4.433, at pages 9–27
2. Attachment A: Chart of comments, at pages 28–57

Rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, and 4.447 are amended, and rules 4.300 and 4.453 are repealed, effective March 14, 2022, to read:

1 **Rule 4.300. Commitments to nonpenal institutions**

2  
3 ~~When a defendant is convicted of a crime for which sentence could be imposed under~~  
4 ~~Penal Code section 1170 and the court orders that he or she be committed to the~~  
5 ~~California Department of Corrections and Rehabilitation, Division of Juvenile Justice~~  
6 ~~under Welfare and Institutions Code section 1731.5, the order of commitment must~~  
7 ~~specify the term of imprisonment to which the defendant would have been sentenced. The~~  
8 ~~term is determined as provided by Penal Code sections 1170 and 1170.1 and these rules,~~  
9 ~~as though a sentence of imprisonment were to be imposed.~~

10  
11 **Advisory Committee Comment**

12  
13 ~~Commitments to the Department of Corrections and Rehabilitation, Division of Juvenile Justice~~  
14 ~~(formerly Youth Authority) cannot exceed the maximum possible incarceration in an adult~~  
15 ~~institution for the same crime. (See *People v. Olivas* (1976) 17 Cal.3d 236.)~~

16  
17 ~~Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from~~  
18 ~~the record of the conviction, the maximum potential period of imprisonment for the crime of~~  
19 ~~which the defendant was convicted.~~

20  
21 ~~Under the Uniform Determinate Sentencing Act, the court’s discretion as to length of term leaves~~  
22 ~~doubt as to the maximum term when only the record of convictions is present.~~

23  
24 **Rule 4.405. Definitions**

25  
26 As used in this division, unless the context otherwise requires:

27  
28 (1) \* \* \*

29  
30 (2) “Base term” is the determinate or indeterminate sentence imposed for the  
31 commission of a crime, not including any enhancements that carry an additional  
32 term of imprisonment, determinate term in prison or county jail under section  
33 1170(h) selected from among the three possible terms prescribed by statute; the  
34 determinate term in prison or county jail under section 1170(h) prescribed by  
35 statute if a range of three possible terms is not prescribed; or the indeterminate term  
36 in prison prescribed by statute.

37  
38 (3) When a person is convicted of two or more felonies, the “principal term” is the  
39 greatest determinate term of imprisonment imposed by the court for any of the  
40 crimes, including any term imposed for applicable count-specific enhancements.

- 1  
2 (4) When a person is convicted of two or more felonies, the “subordinate term” is the  
3 determinate term imposed for an offense, plus any count-specific enhancements  
4 applicable to the offense ordered to run consecutively to the principal term.  
5  
6 ~~(3)~~ (5) “Enhancement” means an additional term of imprisonment added to the base term.  
7  
8 (6) “Offense” means the offense of conviction unless a different meaning is specified  
9 or is otherwise clear from the context. The term “instant” or “current” is used in  
10 connection with “offense” or “offense of conviction” to distinguish the violation for  
11 which the defendant is being sentenced from an enhancement, prior or subsequent  
12 offense, or from an offense before another court.  
13  
14 ~~(4)~~ (7) “Aggravation,” or “circumstances in aggravation” “mitigation,” or “circumstances  
15 in mitigation” means factors that justify the imposition of the upper prison term  
16 referred to in Penal Code section 1170(b) and 1170.1, or factors that the court may  
17 consider in exercising discretion authorized by statute and under these rules  
18 including imposing the middle term instead of a low term, denying probation,  
19 ordering consecutive sentences, or determining whether to exercise discretion  
20 pursuant to Penal Code section 1385(c), that the court may consider in its broad  
21 sentencing discretion authorized by statute and under these rules.  
22  
23 (8) “Mitigation” or “circumstances in mitigation” means factors that the court may  
24 consider in its broad sentencing discretion authorized by statute and under these  
25 rules.  
26  
27 ~~(5)~~ (9) “Sentence choice” means the selection of any disposition of the case that does not  
28 amount to a dismissal, acquittal, or grant of a new trial.  
29  
30 ~~(6)~~ (10) “Section” means a section of the Penal Code.  
31  
32 ~~(7)~~ (11) “Imprisonment” means confinement in a state prison or county jail under section  
33 1170(h).  
34  
35 ~~(8)~~ (12) “Charged” means charged in the indictment or information.  
36  
37 ~~(9)~~ (13) “Found” means admitted by the defendant or found to be true by the trier of fact  
38 upon trial.  
39  
40 ~~(10)~~ (14) “Mandatory supervision” means the period of supervision defined in section  
41 1170(h)(5)(A), (B).  
42



1 (11) (15) “Postrelease community supervision” means the period of supervision governed  
2 by section 3451 et seq.

3  
4 (12) (16) “Risk/needs assessment” means a standardized, validated evaluation tool  
5 designed to measure an offender’s actuarial risk factors and specific needs that, if  
6 successfully addressed, may reduce the likelihood of future criminal activity.

7  
8 (13) (17) “Evidence-based practices” means supervision policies, procedures, programs,  
9 and practices demonstrated by scientific research to reduce recidivism among  
10 individuals under probation, parole, or postrelease supervision.

11  
12 (14) (18) “Community-based corrections program” means a program consisting of a  
13 system of services for felony offenders under local supervision dedicated to the  
14 goals stated in section 1229(c)(1)–(5).

15  
16 (15) (19) “Local supervision” means the supervision of an adult felony offender on  
17 probation, mandatory supervision, or postrelease community supervision.

18  
19 (16) (20) “County jail” means local county correctional facility.  
20

#### 21 **Advisory Committee Comment**

22  
23 ~~Following the United States Supreme Court decision in *Cunningham v. California* (2007) 549~~  
24 ~~U.S. 270, the Legislature amended the determinate sentencing law to remove the presumption that~~  
25 ~~the court is to impose the middle term on a sentencing triad, absent aggravating or mitigating~~  
26 ~~circumstances. (See Sen. Bill 40; Stats. 2007, ch. 3.) It subsequently amended sections 186.22,~~  
27 ~~186.33, 1170.1, 12021.5, 12022.2, and 12022.4 to eliminate the presumptive middle term for an~~  
28 ~~enhancement. (See Sen. Bill 150; Stats. 2009, ch. 171.) Instead of finding facts in support of a~~  
29 ~~sentencing choice, courts are now required to state reasons for the exercise of judicial discretion~~  
30 ~~in sentencing.~~

31  
32 The Legislature amended the determinate sentencing law to require courts to order imposition of  
33 a sentence or enhancement not to exceed the middle term unless factors in aggravation justify  
34 imposition of the upper term and are stipulated to by the defendant or found true beyond a  
35 reasonable doubt at trial by the jury or by the judge in a court trial. (See Sen. Bill 567; Stats.  
36 2021, ch. 731.) However, in determining whether to impose the upper term for a criminal offense,  
37 the court may consider as an aggravating factor that a defendant has suffered one or more prior  
38 convictions, based on certified records of conviction. This exception may not be used to select the  
39 upper term of an enhancement.

40  
41 The court may exercise its judicial discretion in imposing the middle term or low term and must  
42 state the facts and reasons on the record for choosing the sentence imposed. In exercising this  
43 discretion between the middle term and the low term, the court may rely on aggravating factors

1 that have not been stipulated to by the defendant or proven beyond a reasonable doubt. (*People v.*  
2 *Black* (2007) 41 Cal.4th 799.)

3  
4 The Legislature also amended the determinate sentencing law to require courts to order  
5 imposition of the low term when the court finds that certain factors contributed to the commission  
6 of the crime unless the court finds that it would not be in the interests of justice to do so because  
7 the aggravating factors outweigh the mitigating factors. (Pen. Code, § 1170(b)(6).)  
8

9 **Rule 4.406. Reasons**

10  
11 (a) \* \* \*

12  
13 (b) **When reasons required**

14  
15 Sentence choices that generally require a statement of a reason include, but are not  
16 limited to:

- 17  
18 (1) Granting probation when the defendant is presumptively ineligible for  
19 probation;  
20  
21 (2) Denying probation when the defendant is presumptively eligible for  
22 probation;  
23  
24 ~~(3) Declining to commit an eligible juvenile found amenable to treatment to the~~  
25 ~~Department of Corrections and Rehabilitation, Division of Juvenile Justice;~~  
26  
27 (4) ~~(3) Selecting a term for either an offense or an enhancement one of the three~~  
28 ~~authorized terms in prison or county jail under section 1170(h) referred to in~~  
29 ~~section 1170(b) for either a base term or an enhancement;~~  
30  
31 ~~(5) (4) Imposing consecutive sentences;~~  
32  
33 ~~(6) (5) Imposing full consecutive sentences under section 667.6(c) rather than~~  
34 ~~consecutive terms under section 1170.1(a), when the court has that choice;~~  
35  
36 ~~(7) (6) Waiving a restitution fine;~~  
37  
38 ~~(8) (7) Granting relief under section 1385; and~~  
39  
40 ~~(9) (8) Denying mandatory supervision in the interests of justice under section~~  
41 ~~1170(h)(5)(A).~~  
42  
43

**Advisory Committee Comment**

1  
2 \* \* \*

3  
4 **Rule 4.408. Listing of factors not exclusive; sequence not significant**

5  
6 (a)–(b) \* \* \*

7 **Advisory Committee Comment**

8  
9 The variety of circumstances presented in felony cases is so great that no listing of criteria could  
10 claim to be all-inclusive. (Cf., Evid. Code, § 351.)

11  
12 The court may impose a sentence or enhancement exceeding the middle term only if the facts  
13 underlying the aggravating factor were stipulated to by the defendant or found true beyond a  
14 reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170(b)(2).)

15  
16 However, in determining whether to impose the upper term for a criminal offense, the court may  
17 consider as an aggravating factor that a defendant has suffered one or more prior convictions,  
18 based on certified records of conviction. This exception may not be used to select the upper term  
19 of an enhancement. (Pen. Code, § 1170(b)(3).)

20  
21 The Legislature also amended the determinate sentencing law to require courts to order  
22 imposition of the low term when the court finds that certain factors contributed to the commission  
23 of the crime unless the court finds that it would not be in the interests of justice to do so because  
24 the aggravating factors outweigh the mitigating factors. (Pen. Code, § 1170(b)(6).)

25  
26  
27 **Rule 4.411.5. Probation officer’s presentence investigation report**

28  
29 (a) **Contents**

30  
31 A probation officer’s presentence investigation report in a felony case must include  
32 at least the following:

33  
34 (1) A face sheet showing at least:

35  
36 (A) The defendant’s name and other identifying data;

37  
38 (B) The case number;

39  
40 (C) The crime of which the defendant was convicted, and any  
41 enhancements which were admitted or found true;  
42

1 (D) Any factors in aggravation including whether the factors were  
2 stipulated to by the defendant, found true beyond a reasonable doubt at  
3 trial by a jury, or found true beyond a reasonable doubt by a judge in a  
4 court trial;

5  
6 ~~(D)~~ (E) The date of commission of the crime, the date of conviction, and any  
7 other dates relevant to sentencing;

8  
9 ~~(E)~~ (F) The defendant’s custody status; and

10  
11 ~~(F)~~ (G) The terms of any agreement on which a plea of guilty was based.

12  
13 (2)–(5) \* \* \*

14  
15 (6) Any relevant facts concerning the defendant’s social history, including those  
16 categories enumerated in section 1203.10, organized under appropriate  
17 subheadings, including, whenever applicable, “Family,” “Education,”  
18 “Employment and income,” “Military,” “Medical/psychological,” “Record of  
19 substance abuse or lack thereof,” and any other relevant subheadings. This  
20 includes:

21  
22 (A) ~~F~~Factors relevant to whether the defendant may be suffering from sexual  
23 trauma, traumatic brain injury, posttraumatic stress disorder, substance  
24 abuse, or mental health problems as a result of his or her U.S. military  
25 service; and

26  
27 (B) Factors listed in section 1170(b)(6) and whether the current offense is  
28 connected to those factors.

29  
30 (7)–(9) \* \* \*

31  
32 (10) Any mitigating factors pursuant to section 1385(c).

33  
34 ~~(10)~~ (11) The probation officer’s recommendation. When requested by the  
35 sentencing judge or by standing instructions to the probation department, the  
36 report must include recommendations concerning the length of any prison or  
37 county jail term under section 1170(h) that may be imposed, including the  
38 base term, the imposition of concurrent or consecutive sentences, and the  
39 imposition or striking of the additional terms for enhancements charged and  
40 found.

41  
42 ~~(11)~~ (12) Detailed information on presentence time spent by the defendant in  
43 custody, including the beginning and ending dates of the period or periods of

1 custody; the existence of any other sentences imposed on the defendant  
2 during the period of custody; the amount of good behavior, work, or  
3 participation credit to which the defendant is entitled; and whether the sheriff  
4 or other officer holding custody, the prosecution, or the defense wishes that a  
5 hearing be held for the purposes of denying good behavior, work, or  
6 participation credit.

7  
8 ~~(12)~~ (13) A statement of mandatory and recommended restitution, restitution fines,  
9 and other fines, fees, assessments, penalties, and costs to be assessed against  
10 the defendant; including chargeable probation services and attorney fees  
11 under section 987.8 when appropriate, findings concerning the defendant's  
12 ability to pay, and a recommendation whether any restitution order should  
13 become a judgment under section 1203(j) if unpaid; and, when appropriate,  
14 any finding concerning the defendant's ability to pay.

15  
16 ~~(13)~~ (14) Information pursuant to ~~Penal Code~~ section 29810(c):

17  
18 (A)–(B) \* \* \*

19  
20 (b)–(c) \* \* \*

21  
22 **Rule 4.414. Criteria affecting probation**

23  
24 Criteria affecting the decision to grant or deny probation include facts relating to the  
25 crime and facts relating to the defendant.

26  
27 (a)–(b) \* \* \*

28  
29 **(c) Suitability for probation**

30  
31 In determining the suitability of the defendant for probation, the court may consider  
32 factors in aggravation and mitigation, whether or not the factors have been  
33 stipulated to by the defendant or found true beyond a reasonable doubt at trial by a  
34 jury or the judge in a court trial.

35  
36 **Advisory Committee Comment**

37  
38 \* \* \*

39  
40 **Rule 4.420. Selection of term of imprisonment for offense**

41  
42 (a) When a ~~sentence~~ judgment of imprisonment is imposed, or the execution of a  
43 sentence judgment of imprisonment is ordered suspended, the sentencing judge

1            must, in their sound discretion, order imposition of a sentence not to exceed the  
2            middle term, except as otherwise provided in paragraph (b). ~~select the upper,~~  
3            ~~middle, or lower term on each count for which the defendant has been convicted, as~~  
4            ~~provided in section 1170(b) and these rules.~~

5  
6            **(b)**    The court may only choose an upper term when (1) there are circumstances in  
7            aggravation of the crime that justify the imposition of an upper term, and (2) the  
8            facts underlying those circumstances have been (i) stipulated to by the defendant,  
9            (ii) found true beyond a reasonable doubt at trial by a jury, or (iii) found true  
10           beyond a reasonable doubt by the judge in a court trial.

11  
12           **(c)**    Notwithstanding paragraphs (a) and (b), the court may consider the fact of  
13           defendant’s prior convictions based on a certified record of conviction without it  
14           having been stipulated to by the defendant or found true beyond a reasonable doubt  
15           at trial by a jury or the judge in a court trial. This exception does not apply to the  
16           use of the record of a prior conviction in selecting the upper term of an  
17           enhancement.

18  
19           ~~**(b)**~~ **(d)** In selecting between the middle and lower terms of imprisonment, exercising his  
20           or her discretion in selecting one of the three authorized terms of imprisonment  
21           referred to in section 1170(b), the sentencing judge may consider circumstances in  
22           aggravation or mitigation, and any other factor reasonably related to the sentencing  
23           decision. The court may consider factors in aggravation and mitigation, whether or  
24           not the factors have been stipulated to by the defendant or found true beyond a  
25           reasonable doubt at trial by a jury or the judge in a court trial. The relevant  
26           circumstances may be obtained from the case record, the probation officer’s report,  
27           other reports and statements properly received, statements in aggravation or  
28           mitigation, and any evidence introduced at the sentencing hearing.

29  
30           **(e)**    Notwithstanding section 1170(b)(1), and unless the court finds that the aggravating  
31           circumstances outweigh the mitigating circumstances such that imposition of the lower  
32           term would be contrary to the interests of justice, the court must order imposition of the  
33           lower term if any of the following was a contributing factor in the commission of the  
34           offense:

35  
36                    **(1)**    The defendant has experienced psychological, physical, or childhood  
37                    trauma, including, but not limited to, abuse, neglect, exploitation, or  
38                    sexual violence;

39  
40                    **(2)**    The defendant is a youth, or was a youth as defined under section  
41                    1016.7(b) at the time of the commission of the offense; or  
42

1 (3) Prior to the instant offense, or at the time of the commission of the offense, the  
2 defendant is or was a victim of intimate partner violence or human trafficking.

3  
4 (f) Paragraph (e) does not preclude the court from imposing the lower term even if  
5 there is no evidence of the circumstances listed in paragraph (e).

6  
7 (e) (g) To comply with section 1170(b)(5), a fact charged and found as an enhancement  
8 may be used as a reason for imposing a particular term only if the court has  
9 discretion to strike the punishment for the enhancement and does so. The use of a  
10 fact of an enhancement to impose the upper term of imprisonment is an adequate  
11 reason for striking the additional term of imprisonment, regardless of the effect on  
12 the total term.

13  
14 (d) (h) A fact that is an element of the crime on which punishment is being imposed may  
15 not be used to impose a particular term.

16  
17 (e) (i) The reasons for selecting one of the three authorized terms of imprisonment  
18 referred to in section 1170(b) must be stated orally on the record.

19  
20 **Advisory Committee Comment**

21  
22 ~~The determinate sentencing law authorizes the court to select any of the three possible terms of~~  
23 ~~imprisonment even though neither party has requested a particular term by formal motion or~~  
24 ~~informal argument. Section 1170(b) vests the court with discretion to impose any of the three~~  
25 ~~authorized terms of imprisonment and requires that the court state on the record the reasons for~~  
26 ~~imposing that term.~~

27  
28 It is not clear whether the reasons stated by the judge for selecting a particular term qualify as  
29 “facts” for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified,  
30 judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For  
31 example, the court is not permitted to use a reason to impose a greater term if that reason also is  
32 either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The  
33 court should not use the same reason to impose a consecutive sentence as to impose an upper  
34 term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the  
35 same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11  
36 Cal.App.4th 102, 106.)

37  
38 The rule makes it clear that a fact charged and found as an enhancement may, in the alternative,  
39 be used as a factor in aggravation.

40  
41 *People v. Riolo* (1983) 33 Cal.3d 223, 227 (and note 5 on 227) held that section 1170.1(a) does  
42 not require the judgment to state the base term (upper, middle, or lower) and enhancements,

1 computed independently, on counts that are subject to automatic reduction under the one-third  
2 formula of section 1170.1(a).

3  
4 Even when sentencing is under section 1170.1, however, it is essential to determine the base term  
5 and specific enhancements for each count independently, in order to know which is the principal  
6 term count. The principal term count must be determined before any calculation is made using the  
7 one-third formula for subordinate terms.

8  
9 In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at  
10 an informed decision whether to make terms consecutive or concurrent; and the base term for  
11 each count must be stated in the judgment when sentences are concurrent or are fully consecutive  
12 (i.e., not subject to the one-third rule of section 1170.1(a)).

13  
14 Case law suggests that in determining the “interests of justice” the court should consider the  
15 constitutional rights of the defendant and the interests of society represented by the people; the  
16 defendant’s background and prospects, including the presence or absence of a record; the nature  
17 and circumstances of the crime and the defendant’s level of involvement; the factors in  
18 aggravation and mitigation including the specific factors in mitigation of Penal Code section  
19 1170(b)(6); and the factors that would motivate a “reasonable judge” in the exercise of their  
20 discretion. The court should not consider whether the defendant has simply pled guilty, factors  
21 related to controlling the court’s calendar, or antipathy toward the statutory scheme. (See *People*  
22 *v. Romero* (1996) 13 Cal.4th 947; *People v. Dent* (1995) 38 Cal.App.4th 1726; *People v.*  
23 *Kessel* (1976) 61 Cal.App.3d 322; *People v. Orin* (1975) 13 Cal.3d 937.)

24  
25 **Rule 4.421. Circumstances in aggravation**

26  
27 Circumstances in aggravation include factors relating to the crime and factors relating to  
28 the defendant.

29  
30 **(a)–(c) \* \* \***

31  
32 **Advisory Committee Comment**

33  
34 ~~Circumstances in aggravation may justify imposition of the middle or upper of three possible~~  
35 ~~terms of imprisonment. (Section 1170(b).)~~

36  
37 ~~The list of circumstances in aggravation includes some facts that, if charged and found, may be~~  
38 ~~used to enhance the sentence.~~

39  
40 Courts may not impose a sentence greater than the middle term except when aggravating factors  
41 justifying the imposition of the upper term have been stipulated to by the defendant or found true  
42 beyond a reasonable doubt at trial by the jury or the judge in a court trial. These requirements do  
43 not apply to consideration of aggravating factors for the lower or middle term. If the court finds



1 that any of the factors listed in section 1170(b)(6)(A–C) were a contributing factor to the  
2 commission of the offense, the court must impose the lower term (see rule 4.420(e)) unless the  
3 court finds that the aggravating factors outweigh the mitigating factors to such a degree that  
4 imposing the lower term would be contrary to the interests of justice. In this instance, since the  
5 court is not addressing the imposition of the upper term, the court may consider factors in  
6 aggravation that have not been stipulated to by the defendant or found true beyond a reasonable  
7 doubt at trial by the jury or the judge in a court trial.

8  
9 In determining whether to impose the upper term for a criminal offense, the court may consider as  
10 an aggravating factor that a defendant has suffered one or more prior convictions, based on a  
11 certified record of conviction. This exception may not be used to select the upper term of an  
12 enhancement.

13  
14 This rule does not deal with the dual use of the facts; the statutory prohibition against dual use is  
15 included, in part, in the comment to rule 4.420.

16  
17 ~~Conversely, such facts as infliction of bodily harm, being armed with or using a weapon, and a~~  
18 ~~taking or loss of great value may be circumstances in aggravation even if not meeting the~~  
19 ~~statutory definitions for enhancements or charged as an enhancement.~~

20  
21 ~~Facts concerning the defendant’s prior record and personal history may be considered. By~~  
22 ~~providing that the defendant’s prior record and simultaneous convictions of other offenses may~~  
23 ~~not be used both for enhancement and in aggravation, section 1170(b) indicates that these and~~  
24 ~~other facts extrinsic to the commission of the crime may be considered in aggravation in~~  
25 ~~appropriate cases.~~

26  
27 Refusal to consider the personal characteristics of the defendant in imposing sentence may raise  
28 serious constitutional questions. The California Supreme Court has held that sentencing decisions  
29 must take into account “the nature of the offense and/or the offender, with particular regard to the  
30 degree of danger both present to society.” (*In re Rodriguez* (1975) 14 Cal.3d 639, 654, quoting *In*  
31 *re Lynch* (1972) 8 Cal.3d 410, 425.) In *Rodriguez* the court released petitioner from further  
32 incarceration because “it appears that neither the circumstances of his offense *nor his personal*  
33 *characteristics* establish a danger to society sufficient to justify such a prolonged period of  
34 imprisonment.” (*Id.* at p. 655, fn. omitted, italics added.) “For the determination of sentences,  
35 justice generally requires . . . that there be taken into account the circumstances of the offense  
36 together with the character and propensities of the offender.” (*Pennsylvania ex rel. Sullivan v.*  
37 *Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v. Georgia* (1976) 428 U.S. 153,  
38 189.)

39  
40 ~~Former subdivision (a)(4), concerning multiple victims, was deleted to avoid confusion. Some of~~  
41 ~~the cases that had relied on that circumstance in aggravation were reversed on appeal because~~  
42 ~~there was only a single victim in a particular count.~~

1 ~~Old age or youth of the victim may be circumstance in aggravation; see section 1170.85(b). Other~~  
2 ~~statutory circumstances~~ factors in aggravation are listed, for example, in sections 422.76, 1170.7,  
3 1170.71, 1170.8, and 1170.85, and may be considered to impose the upper term if stipulated to by  
4 the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court  
5 trial.

6  
7 **Rule 4.423. Circumstances in mitigation**

8  
9 Circumstances in mitigation include factors relating to the crime and factors relating to  
10 the defendant.

11  
12 **(a) Factors relating to the crime**

13  
14 Factors relating to the crime include that:

15  
16 (1)–(9) \* \* \*

17  
18 (10) If a firearm was used in the commission of the offense, it was unloaded or  
19 inoperable.

20  
21 **(b) Factors relating to the defendant**

22  
23 Factors relating to the defendant include that:

24  
25 (1)–(2) \* \* \*

26  
27 (3) The defendant experienced psychological, physical, or childhood trauma,  
28 including, but not limited to, abuse, neglect, exploitation, or sexual violence  
29 and it was a factor in the commission of the crime;

30  
31 (4) The commission of the current offense is connected to the defendant’s prior  
32 victimization or childhood trauma, or mental illness as defined by section  
33 1385(c);

34  
35 (5) The defendant is or was a victim of intimate partner violence or human  
36 trafficking at the time of the commission of the offense, and it was a factor in  
37 the commission of the offense;

38  
39 (6) The defendant is under 26 years of age, or was under 26 years of age at the  
40 time of the commission of the offense;

41  
42 (7) The defendant was a juvenile when they committed the current offense;  
43

- 1           ~~(3)~~ (8) The defendant voluntarily acknowledged wrongdoing before arrest or at an  
2   early stage of the criminal process;  
3  
4           ~~(4)~~ (9) The defendant is ineligible for probation and but for that ineligibility would  
5   have been granted probation;  
6  
7           (10) Application of an enhancement could result in a sentence over 20 years;  
8  
9           (11) Multiple enhancements are alleged in a single case;  
10  
11           (12) Application of an enhancement could result in a discriminatory racial impact;  
12  
13           (13) An enhancement is based on a prior conviction that is over five years old;  
14  
15           ~~(5)~~ (14) The defendant made restitution to the victim; and  
16  
17           ~~(6)~~ (15) The defendant’s prior performance on probation, mandatory supervision,  
18   postrelease community supervision, or parole was satisfactory.

19  
20 (c) \* \* \*

21  
22   **Advisory Committee Comment**

23  
24 \* \* \*

25  
26 **Rule 4.424. Consideration of applicability of section 654**

27  
28 Before determining whether to impose either concurrent or consecutive sentences on all  
29 counts on which the defendant was convicted, the court must determine whether the  
30 proscription in section 654 against multiple punishments for the same act or omission  
31 requires a stay of execution of the sentence imposed on some of the counts. If a stay of  
32 execution is required due to the prohibition against multiple punishments for the same  
33 act, the court has discretion to choose which act or omission will be punished and which  
34 will be stayed.

35  
36 **Rule 4.425. Factors affecting concurrent or consecutive sentences**

37  
38 Factors affecting the decision to impose consecutive rather than concurrent  
39 sentences include:

40  
41 (a) \* \* \*

1 (b) **Other facts and limitations**

2  
3 Any circumstances in aggravation or mitigation, whether or not the factors have  
4 been stipulated to by the defendant or found true beyond a reasonable doubt at trial  
5 by a jury or the judge in a court trial, may be considered in deciding whether to  
6 impose consecutive rather than concurrent sentences, except:

- 7  
8 (1) A fact used to impose the upper term;  
9  
10 (2) A fact used to otherwise enhance the defendant’s sentence in prison or county  
11 jail under section 1170(h); and  
12  
13 (3) A fact that is an element of the crime, ~~may not be used to impose consecutive~~  
14 ~~sentences.~~

15  
16 **Advisory Committee Comment**

17  
18 \* \* \*

19  
20 **Rule 4.427. Hate crimes**

21  
22 (a)–(b) \* \* \*

23  
24 (c) **Hate crime enhancement**

25  
26 If a hate crime enhancement is pled and proved, the punishment for a felony  
27 conviction must be enhanced under section 422.75 unless the conviction is  
28 sentenced as a felony under section 422.7.

- 29  
30 (1) The following enhancements apply:  
31  
32 (A) An enhancement of a term in state prison as provided in section  
33 422.75(a). Personal use of a firearm in the commission of the offense is  
34 an aggravating factor that must be considered in determining the  
35 enhancement term.  
36  
37 (B) An additional enhancement of one year in state prison for each prior  
38 felony conviction that constitutes a hate crime as defined in section  
39 422.55.  
40  
41 (2) The court may strike enhancements under (c) if it finds mitigating  
42 circumstances under rule 4.423, or pursuant to section 1385(c) and states  
43 those mitigating circumstances on the record.

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(3) The punishment for any enhancement under (c) is in addition to any other punishment provided by law.

(d)–(e) \* \* \*

**Advisory Committee Comment**

Multiple enhancements for prior convictions under subdivision (c)(1)(B) may be imposed if the prior convictions have been brought and tried separately. (Pen. Code, § 422.75(d).)

In order to impose the upper term based on section 422.75, the fact of the enhancement pursuant to sections 422.55 or 422.6 must be stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial.

Any enhancement alleged pursuant to this section may be dismissed pursuant to section 1385(c).

**Rule 4.428. Factors affecting imposition of enhancements**

**(a) Enhancements punishable by one of three terms**

If an enhancement is punishable by one of three terms, the court must, in its sound discretion, order imposition of a sentence not to exceed the middle term, unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. ~~, in its discretion, impose the term that best serves the interest of justice and state the reasons for its sentence choice on the record at the time of sentencing. In exercising its discretion in selecting the appropriate term, the court may consider factors in mitigation and aggravation as described in these rules or any other factor authorized by rule 4.408.~~

**(b) Striking or dismissing enhancements under section 1385**

If the court has discretion under section 1385(a) to strike an enhancement in the interests of justice, the court also has the authority to strike the punishment for the enhancement under section 1385(e**b**). In determining whether to strike the entire enhancement or only the punishment for the enhancement, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant’s criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration.

1 **(c) Dismissing enhancements under section 1385(c)**

- 2
- 3 (1) The court shall exercise the discretion to dismiss an enhancement if it is in
- 4 the furtherance of justice to do so, unless the dismissal is prohibited by
- 5 initiative statute.
- 6
- 7 (2) In exercising its discretion under section 1385(c), the court must consider and
- 8 afford great weight to evidence offered by the defendant to prove that any of
- 9 the mitigating circumstances in section 1385(c) are present.
- 10
- 11 (A) Proof of the presence of one or more of these circumstances weighs
- 12 greatly in favor of dismissing the enhancement, unless the court finds
- 13 that dismissal of the enhancement would endanger public safety.
- 14
- 15 (B) The circumstances listed in 1385(c) are not exclusive.
- 16
- 17 (C) “Endanger public safety” means there is a likelihood that the dismissal
- 18 of the enhancement would result in physical injury or other serious
- 19 danger to others.
- 20
- 21 (3) If the court dismisses the enhancement pursuant to 1385(c), then both the
- 22 enhancement and its punishment must be dismissed.

23

24 **Advisory Committee Comment**

25

26 Case law suggests that in determining the “furtherance of justice” the court should consider the

27 constitutional rights of the defendant and the interests of society represented by the people; the

28 defendant’s background and prospects, including the presence or absence of a record; the nature

29 and circumstances of the crime and the defendant’s level of involvement; the factors in

30 aggravation and mitigation including the specific factors in mitigation of section 1385(c); and the

31 factors that would motivate a “reasonable judge” in the exercise of their discretion. The court

32 should not consider whether the defendant has simply pled guilty, factors related to controlling

33 the court’s calendar, or antipathy toward the statutory scheme. (See *People v. Romero* (1996) 13

34 Cal.4th 947; *People v. Dent* (1995) 38 Cal.App.4th 1726; *People v. Kessel* (1976) 61 Cal.App.3d

35 322; *People v. Orin* (1975) 13 Cal.3d 937.)

36

37 How to afford great weight to a mitigating circumstance is not further explained in section 1385.

38 The court is not directed to give conclusive weight to the mitigating factors, and must still engage

39 in a weighing of both mitigating and aggravating factors. A review of case law suggests that the

40 court can find great weight when there is an absence of “substantial evidence of countervailing

41 considerations of sufficient weight to overcome” the presumption of dismissal when the

42 mitigating factors are present. (*People v. Martin* (1996) 42 Cal.3d 437.) In exercising this

43 discretion, the court may rely on aggravating factors that have not been stipulated to by the

1 defendant or proven beyond a reasonable doubt at trial by a jury or a judge in a court trial.  
2 (*People v. Black* (2007) 41 Cal.4th 799.)

3  
4 ~~The legislative history on Senate Bill 81 states that the presumption created by section 1385(c)~~  
5 ~~does not apply to alternative sentencing schemes such as One Strike, Two Strikes, or Three~~  
6 ~~Strikes. (See Assem. Com. Pub. Safety, Report on Sen. Bill 81 (2021–2022 Reg. Sess., June 29,~~  
7 ~~2021, pp. 5–6.) Unlike an offense specific enhancement, an alternative sentencing scheme does~~  
8 ~~not add an additional term of imprisonment to the base term; instead, it provides for an alternate~~  
9 ~~sentence for the underlying felony itself when it is proven that certain conditions specified in the~~  
10 ~~statute are true. (See *People v. Anderson* (2009) 47 Cal.4th 92, 102; *People v. Superior Court*~~  
11 ~~(*Romero*) (1996) 13 Cal.4th 497, 527.)~~

### 13 **Rule 4.437. Statements in aggravation and mitigation**

14  
15 **(a)–(e) \* \* \***

#### 16 17 **Advisory Committee Comment**

18  
19 Section 1170(b)(4) states in part:

20  
21 “At least four days prior to the time set for imposition of judgment, either party or the victim, or  
22 the family of the victim if the victim is deceased, may submit a statement in aggravation or  
23 mitigation to dispute facts in the record or the probation officer’s report, or to present additional  
24 facts.”

25  
26 This provision means that the statement is a document giving notice of intention to dispute  
27 evidence in the record or the probation officer’s report, or to present additional facts.

28  
29 The statement itself cannot be the medium for presenting new evidence, or for rebutting  
30 competent evidence already presented, because the statement is a unilateral presentation by one  
31 party or counsel that will not necessarily have any indicia of reliability. To allow its factual  
32 assertions to be considered in the absence of corroborating evidence would, therefore, constitute a  
33 denial of due process of law in violation of the United States (14th Amend.) and California (art. I,  
34 § 7) Constitutions.

35  
36 The requirement that the statement include notice of intention to rely on new evidence will  
37 enhance fairness to both sides by avoiding surprise and helping to ensure that the time limit on  
38 pronouncing sentence is met. This notice may include either party’s intention to provide evidence  
39 to prove or contest the existence of a factor in mitigation that would require imposition of the low  
40 term for the underlying offense or dismissal of an enhancement.

### 41 42 **Rule 4.447. Sentencing of enhancements**

1 **(a) Enhancements resulting in unlawful sentences**

2  
3 Except pursuant to section 1385(c), Aa court may not strike or dismiss an  
4 enhancement solely because imposition of the term is prohibited by law or exceeds  
5 limitations on the imposition of multiple enhancements. Instead, the court must:

- 6  
7 (1) Impose a sentence for the aggregate term of imprisonment computed without  
8 reference to those prohibitions or limitations; and  
9  
10 (2) Stay execution of the part of the term that is prohibited or exceeds the  
11 applicable limitation. The stay will become permanent once the defendant  
12 finishes serving the part of the sentence that has not been stayed.

13  
14 **(b) Multiple enhancements**

15  
16 Notwithstanding section 1385(c), If a defendant is convicted of multiple  
17 enhancements of the same type, the court must either sentence each enhancement  
18 or, if authorized, strike the enhancement or its punishment. While the court may  
19 strike an enhancement, the court may not stay an enhancement except as provided  
20 in (a) or as authorized by section 654.

21  
22 **Advisory Committee Comment**

23  
24 **Subdivision (a).** Statutory restrictions may prohibit or limit the imposition of an enhancement in  
25 certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and  
26 (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

27  
28 Section 1385(c) requires that in the furtherance of justice certain enhancements be dismissed  
29 unless dismissal is prohibited by any initiative statute.

30  
31 Present practice of staying execution is followed to avoid violating a statutory prohibition or  
32 exceeding a statutory limitation, while preserving the possibility of imposition of the stayed  
33 portion should a reversal on appeal reduce the unstayed portion of the sentence. (See *People v.*  
34 *Gonzalez* (2008) 43 Cal.4th 1118, 1129–1130; *People v. Niles* (1964) 227 Cal.App.2d 749, 756.)

35  
36 Only the portion of a sentence or component thereof that exceeds a limitation is prohibited, and  
37 this rule provides a procedure for that situation. This rule applies to both determinate and  
38 indeterminate terms.

39  
40 **Subdivision (b).** A court may stay an enhancement if section 654 applies. (See *People v. Bradley*  
41 (1998) 64 Cal.App.4th 386; *People v. Haykel* (2002) 96 Cal.App.4th 146, 152.)



1 **Rule 4.453. Commitments to nonpenal institutions**

2  
3 ~~When a defendant is convicted of a crime for which sentence could be imposed under~~  
4 ~~Penal Code section 1170 and the court orders that he or she be committed to the~~  
5 ~~California Department of Corrections and Rehabilitation, Division of Juvenile Justice~~  
6 ~~under Welfare and Institutions Code section 1731.5, the order of commitment must~~  
7 ~~specify the term of imprisonment to which the defendant would have been sentenced. The~~  
8 ~~term is determined as provided by Penal Code sections 1170 and 1170.1 and these rules,~~  
9 ~~as though a sentence of imprisonment were to be imposed.~~

10  
11 **Advisory Committee Comment**

12  
13 ~~Commitments to the Department of Corrections and Rehabilitation, Division of Juvenile Justice~~  
14 ~~(formerly Youth Authority) cannot exceed the maximum possible incarceration in an adult~~  
15 ~~institution for the same crime. (See *People v. Olivas* (1976) 17 Cal.3d 236.)~~

16  
17 ~~Under the indeterminate sentencing law, the receiving institution knew, as a matter of law from~~  
18 ~~the record of the conviction, the maximum potential period of imprisonment for the crime of~~  
19 ~~which the defendant was convicted.~~

20  
21 ~~Under the Uniform Determinate Sentencing Act, the court's discretion as to length of term leaves~~  
22 ~~doubt as to the maximum term when only the record of convictions is present.~~

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Caitlin Peters	<b>AM</b>	<p>1.) Does the proposal appropriately address the stated purpose?</p> <p>-It addresses the need for change but it neglects to address cases for example “warbler”. If the defendant is available for the warbler misdemeanor then a felony 5 year probation and in custody sentence should not be an appropriate sentence. Also, I feel and have witnessed many civil cases wrongly admitted into criminal court resulting in incarceration of inmates criminally when the matter should have been civilly. Mainly, the biggest concern is accountability and the information for abusive practices. More times than not a judge knows the “victim” and inevitably discriminates on the defendant by criminal convictions instead of civil judgement when civil is the jurisdiction in which it belongs. Without the ability to exercise our constitutional rights inevitably fiscal overhead is sky rocketing as a multitude of corrupt judges continue to disregard “justice for all” because there’s no justice when a civilian challenge the justices. A defendant challenging the Justices ends up incarcerated, discriminated against, and the abuse becomes excessive abuse done at the hands of “Justice”.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p>	<p>The committee has reviewed the comment, but the concerns raised regarding alleged practices in the courts are outside the scope of this proposal, which is to implement the changes in felony sentencing enacted in recent legislation.</p>

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>			
<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
		<p>2.) Would the proposal provide cost savings? If so, please quantify.</p> <p style="padding-left: 40px;">-If the courts acted with an ethical mind and no greed your cost and savings would be appropriate and not in gross excess. There is no “changes” that can fix this aside from criminal prosecution to judicial administration committing crimes against civilians and the way the conduct abusive practices within the individual justice systems.</p> <p>3.) 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?</p> <p>* TEACH ETHICS AND THEN HOLD ACCOUNTIBILITY FOR ABUSIVE PRACTICES. TEACH HUMAN KINDNESS. WHEN HIRING DO NOT HIRE CRIMINALS WITH NO ETHICS TO CONDUCT JUDICIAL BUSINESS. NO MORE TENURE. IF A JUDGE IS FOUND TO BE IN VIOLATION OF ANYTHING THEY ARE OUT AND IF THAT IS IGNORED THEN THEY ARE INCARCERATED. YOU WANT TO SAVE TAX PAYERS DOLLARS THEN FIX YOU COLLEAGUES AND NOT THE CIVILIANS. TEACH WHAT THE TRUE MEANING OF</p>	

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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List of All Commenters, Overall Positions on the Proposal, and General Comments			
Committer	Position	Comment	Committee Response
		<p>INTENT IS AND CONDUCT AUDITS AND REVIEWS RANDOMLY OF DIFFERENT VOLUMES OF COURT PROCEEDINGS TO ENSURE SUPERIOR COURTS ARE ACTING ACCORDINGLY, IF NOT THEN YOU NEED TO ACT ACCORDINGLY.</p> <p>4.) How well would this proposal work in courts of different sizes?</p> <p>* THE PROBLEM IS NOT IN SIZE BUT IN NEGLIGENCE BY UPPER COURTS TO HOLD LOWER COURTS ACCOUNTABILITY FOR ABUSIVE BEHAVIORS. ALSO, THE INABILITY TO REQUEST ASSISTANCE IN MATTERS OF UNETHICAL PRACTICES CONDUCTED BY SUPERIOR COURT OR EMPLOYEES IS APPALLING. QUIT WRONGFULLY PROSECUTING AND ENSLAVING US CITIZENS IN PRIVATE FOR PROFIT PRISONS. MAKING THE INCARCERATION AND CORRUPT COURT JUSTICES GO HAND IN HAND DUE TO A NEED. TAKE ACCOUNTABILITY AND THE PROCESS OF GAINING ACCOUNTABILITY BE OF MORE PRIORITY AND YOU WONT HAVE AN UNEQUAL BALANCE OF INMATES ARRESTED WITHOUT BEING A DANGER TO SOCIETY. WHICH IS TRULY THE ONLY REASON A PERSON SHOULD EVER</p>	

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			BE INCARCERATED.	
2.	California Attorneys for Criminal Justice by Stephen Munkelt, Executive Director	<b>AM</b>	See comments on specific provisions below.	
3.	Pacific Juvenile Defender Center by Lana Kreidie and Jonathan Laba, Executive Board Members	<b>AM</b>	See comments on specific provisions below.	
4.	San Diego County Public Defender’s Office	<b>AM</b>	See comments on specific provisions below.	
5.	Superior Court of Los Angeles County by Bryan Borys	<b>A</b>	We have no objections to the proposed changes. See comments on specific provisions below.	
6.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	<b>AM</b>	<ul style="list-style-type: none"> <li>• Does the proposal appropriately address the stated purpose? <b>Yes.</b></li> <li>• Would the proposal provide cost savings? If so, please quantify. <b>No.</b></li> <li>• 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?</li> </ul>	No response required.

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>List of All Commenters, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<b>Unknown at this time.</b>  • How well would this proposal work in courts of different sizes? <b>The impact should not differ based on court size.</b>  See comments on specific provisions below.	

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.405, Definitions</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
San Diego County Public Defender’s Office	<p><u>(7) “Aggravation,” or “circumstances in aggravation” means factors that justify the imposition of the upper prison term, or a prison term exceeding the low term if the court finds that factors pursuant to Penal Code section 1170(b)(6) were a contributing factor to the offense, referred to in Penal Code sections 1170(b) and 1170.1, or factors that the court may consider in exercising discretion authorized by statute and under these rules including imposing the middle term instead of the low term when Penal Code section 1170(b)(6) factors are not present, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to Penal Code section 1385(c).</u></p> <p style="text-align: center;"><b>Advisory committee comment</b></p> <p><u>The Legislature amended the determinate sentencing law to require courts to order imposition of a sentence or enhancement not to exceed the middle term unless factors in aggravation justify imposition of the upper term and are stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (See Sen. Bill 567; Stats. 2021, ch. 731.) However, in determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified <del>official</del> records of conviction. This exception can only be used to prove the existence of a prior conviction and does not apply to any enhancements attached to the prior conviction. (Pen. Code § 1170, subd. (b)(3).) This exception may not be used to select the upper term of an enhancement.</u></p>	<p>The committee is not adding this language to the recommended rule because aggravating circumstances under section 1170(b)(6) are incorporated into the definition.</p> <p>The committee agrees to change “certified official records” to “certified records of conviction.” The committee is not adding language about the exception not applying to enhancements attached to the prior conviction as that goes to issues of proof rather than sentencing.</p>

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.405, Definitions</b>		
Superior Court of Los Angeles County	One issue for consideration: Rule 4.405(2) amends the definition of “base term.” It eliminates language regarding the use of the “base term” for crimes that carry determinate or indeterminate sentences. There is no apparent reason for this amendment other than to simplify the previous definition. None of the new laws requires changes to the definition of the “base term.”	The committee is recommending the amendment to simplify the definition of base term.
Superior Court of San Diego County	<ul style="list-style-type: none"><li>• Since 4.405(10) (as amended) defines the term “section” as a “section of the Penal Code,” perhaps delete “Penal Code” where it appears in 4.405(7) (as amended); 4.411.5(a)(6)(B), (a)(10), and (a)(14); 4.427(c)(2) and advisory committee comments; 4.428 advisory committee comments; and 4.447 advisory committee comments.</li><li>• Rule 4.405(17) (as amended) – add a period to the end of the sentence.</li></ul>	The committee agrees with these suggestions.



**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.408, Listing of factors not exclusive; sequence not significant</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
San Diego County Public Defender’s Office	<p><b>Advisory Committee Comment (re: Rule 4.408 - page 10)</b>                      ***  <u>However, in determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on a certified <del>official records</del> record of conviction. This exception only applies to the base crime of the prior conviction and not to any enhancements attached to that base crime. This exception may not be used to select the upper term of an enhancement. (Pen. Code § 1170(b)(3).)</u></p>	The committee agrees to amend “certified official records” to “certified records of conviction.” The committee declines to add language about the exception not applying to enhancements attached to the prior conviction as that goes to issues of proof rather than sentencing.
Superior Court of San Diego County	In the advisory committee comment to rule 4.408, it may be a good idea to repeat the info that the low term may be mandatory in some cases (similar to the language in advisory committee comment for rule 4.405).	The committee agrees with the recommendation.

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.411.5, Probation officer’s presentence investigation report</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of San Diego County	<ul style="list-style-type: none"> <li>• In rule 4.411.5(a)(1)(C) consider adding the following underlined language: “...any enhancements which were <b><u>admitted or</u></b> found true.”</li> <li>• Rule 4.411.5(a)(11) (as amended) – keep the “and.”</li> <li>• In rule 4.411.5(a)(14) (as amended), consider adding the following underlined language “restitution, restitution fines, <b><u>and</u></b> other fines, <b><u>fees, assessments, penalties, and</u></b> costs...”</li> </ul>	The committee agrees with these suggestions and has incorporated them into the amendments that it is recommending to the Council.
California Attorneys for Criminal Justice	<p>Rule 4.411.5(a)(13)</p> <p>This concern is directed to language that has been in the Rule previously, but which may be inappropriate or obsolete. The Rule generally is describing requirements for the probation officer’s pre-sentence report. Subdivision (a)(13) is proposed to read:</p> <p>“A statement of mandatory and recommended restitution, restitution fines, other fines, and costs to be assessed against the defendant; a recommendation whether any restitution order should become a judgment under section 1203(j) if unpaid.; and, when appropriate, any finding concerning the defendant’s ability to pay.”</p>	

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

<b>Rule 4.411.5, Probation officer’s presentence investigation report</b>		
	<p>Under Penal Code § 1214(b) any restitution order is a judgment, so it is unclear why the probation officer should recommend that it should become a judgment. If the probation officer recommended that the restitution not be made a judgment the court’s orders would be in conflict with § 1214, and the defendant would be mis-advised, and led to believe the sum could not be collected as a judgment. CACJ believes the clause “a recommendation whether any restitution order should become a judgment under section 1203(j) if unpaid” should be dropped from the Rule.</p>	<p>Because this would be an important substantive change to the proposal, the committee believes public comment should be sought before it is considered for adoption. The committee will consider this suggestion during the next rules cycle.</p>

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.420, Selection of term of imprisonment for offense</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
San Diego County Public Defender's Office	<p><b>Rule 4.420. Selection of term of imprisonment for offense.</b></p> <p>(c) Notwithstanding paragraphs (a) and (b), the court may consider the fact of defendant's prior convictions based on a certified record of conviction without it having been stipulated to by the defendant or found true beyond a reasonable doubt to a jury at trial or the judge in a court trial. <i>This exception only applies to the base crime of the prior conviction and not to any enhancements attached to that base crime.</i> This exception does not apply to the use of the record of a prior conviction in selecting the upper term of an enhancement.</p> <p>(d) In selecting between the middle term and the lower terms of imprisonment, the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The court may consider factors in aggravation and mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at a trial by a jury or a judge in a court trial. The relevant circumstances <i>that do not require stipulation by the defendant or proof beyond a reasonable doubt</i> may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.</p>	<p>The committee is not adding the proposed language about the exception not applying to enhancements attached to the prior conviction as that goes to issues of proof rather than sentencing.</p> <p>The committee is not adding this additional clause, as the requirements are articulated in the prior sentence.</p>

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

**Rule 4.420, Selection of term of imprisonment for offense**

<p>San Diego County Public Defender’s Office</p>	<p>(e) Notwithstanding section 1170(b)(1), and unless the court finds that the aggravating circumstances, <i>which were stipulated to by the defendant or found true beyond a reasonable doubt by a jury at trial or by a judge in a court trial</i>, outweigh the mitigating circumstances such that imposition of the lower term would be contrary to the interests of justice, the court must order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:</p> <p>(1)-(3) * * *</p> <p><i>This paragraph does not apply to a sentence that must be imposed pursuant to Penal Code section 1170(b)(6). Where a factor listed in Penal Code section 1170(b)(6) is a contributing factor in the commission of the offense, <b>the court must impose the low term</b> unless the circumstances in aggravation so far outweigh the circumstances in mitigation that imposition of the low term is contrary to the interest of justice. A court may only use circumstances in aggravation that have been proved beyond a reasonable doubt or stipulated to by the defendant.</i></p> <p><b>Advisory Committee Comment</b> Case law suggests that in determining the “interests of justice” the court should consider the constitutional rights of the defendant and the interests of society represented by the people; the defendant’s background and prospects, including the presence or absence of a record; the nature and circumstances of the crime and the defendant’s level of involvement; the factors in aggravation and mitigation including the specific factors in mitigation of Penal Code section 1170(b)(6) <i>and section 1385(c)</i>; and the factors that would motivate a “reasonable judge” in the exercise of their discretion. The court should not consider whether the defendant</p>	<p>The committee is not adding this comment to its recommendations because section 1170(b)(6) does not state that aggravating factors that the court relies on to not impose the lower term must be proved beyond a reasonable doubt or stipulated to by the defendant.</p> <p>The committee is not adding a reference to section 1385(c) to its recommended comment, since this rule concerns selecting the term of imprisonment for the offense, not enhancements.</p>
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**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.420, Selection of term of imprisonment for offense</b>		
	has simply pled guilty, factors related to controlling the court’s calendar, or antipathy toward the statutory scheme. (See <i>People v. Romero</i> (1996) 13 Cal.4th 947; <i>People v. Dent</i> (1995) 38 Cal.App.4th 1726; <i>People v. Kessel</i> (1976) 61 Cal.App.3d 322; <i>People v. Orin</i> (1975) 13 Cal.3d 937.)	
Superior Court of San Diego County	Rule 4.420(c) (as amended) - change to “...by a jury or a judge in a court trial;” change (e)(2) (as amended) to “section 1016.7(b) (instead of “subd. (b) of...”) to match other citation formatting in the rules.	The committee is modifying the language in its recommended rule to “at trial by a jury or a judge in a court trial,” and has changed the reference to 1016.7(b).

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.421, Circumstances in aggravation</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
California Attorneys for Criminal Justice	<p>The fourth paragraph of the proposed comment reads: “By providing that the defendant’s prior record and simultaneous convictions of other offenses may not be used both for enhancement and in aggravation, section 1170(b) indicates that these and other facts extrinsic to the commission of the crime may be considered in aggravation in appropriate cases.”</p> <p>As amended, § 1170(b)(3) says that prior convictions proven by a certified record may be used as factors in aggravation without being pled and proven. Neither this subdivision nor any other part of the statute describes a procedure for “simultaneous convictions.” Hence the meaning of the quoted text is unclear. The first paragraph of the comment already points out that aggravating facts may be used in choosing the lower or mid-terms without being pled and proven. Dual use of facts is also referenced in the first paragraph, and under Rule 4.420(e).</p> <p>CACJ believes the quoted language should be deleted.</p>	The committee agrees that the sentence is not clear and is deleting it from the recommendation.

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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**Rule 4.421, Circumstances in aggravation**

San Diego County Public  
Defender’s Office

**Advisory Committee Comment**

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Courts may not impose a sentence greater than the middle term except when aggravating factors justifying the imposition of the upper term have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial. These requirements do not apply to consideration of aggravating factors for the lower or middle term, unless the low term must be imposed pursuant to Penal Code section 1170(b)(6). If the court finds that any of the factors listed in section 1170(b)(6)(A–C) were a contributing factor to the commission of the offense, the court must impose the lower term (see rule 4.420(e)) unless the court finds that the aggravating factors, which have been stipulated to by the defendant or found true beyond a reasonable doubt by a jury at trial or a judge at a court trial, outweigh the mitigating factors to such a degree that imposing the lower term would be contrary to the interests of justice. In this instance, since the court is not addressing the imposition of the upper term, the court may consider factors in aggravation that have not been stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial.

In determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on a certified official records record of conviction. This exception only applies to the base crime of the prior conviction and not to any enhancements attached to that base crime. This exception may not be used to select the upper term of an enhancement.

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The committee is not adding this language to its recommendation because section 1170(b)(6) does not state that aggravating factors that the court relies on to not impose the lower term must be proved beyond a reasonable doubt or stipulated to by the defendant.

The committee agrees to amend “certified official records” to “certified records of conviction.” The committee is not adding language about the exception not applying to enhancements attached to the prior conviction as that goes to issues of proof rather than sentencing.



**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

**Rule 4.421, Circumstances in aggravation**

<p><del>Old age or youth of the victim may be circumstance in aggravation; see section 1170.85(b).</del> Other statutory <u>circumstances factors</u> in aggravation are listed, for example, in sections 422.76, 1170.7, 1170.71, 1170.8, and 1170.85, <u>and may be considered to impose the upper term, or to exceed the low term if the court finds that factors pursuant to Penal Code section 1170(b)(6) contributed to the commission of the offense, if stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial.</u></p>	<p>The committee is not adding this language because section 1170(b)(6) does not state that aggravating factors that the court relies on to not impose the lower term must be proved beyond a reasonable doubt or stipulated to by the defendant.</p>
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**SP22-02****Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.423, Circumstances in mitigation</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of San Diego County	<ul style="list-style-type: none"> <li>In rule 4.423(b) (as amended), subsection (6) would seem to also cover juvenile offenders listed in subsection (7).</li> <li>Rule 4.423(b)(4) (as amended) and 4.428(c)(2)(B) and (3) - add “section” before “1385(c).”</li> </ul>	<p>The committee is keeping both of these factors in its recommendation, as rule 4.423(b)(6) reflects statutory language from Penal Code section 1170(b)(6)(B), and rule 4.423(b)(7) reflects statutory language from Penal Code section 1385(c)(3)(G).</p> <p>The committee agrees with this suggestion.</p>

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.425, Factors affecting concurrent or consecutive sentences</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
San Diego County Public Defender's Office	<p><b>Rule 4.425. Factors affecting concurrent or consecutive sentences</b>            Factors affecting the decision to impose consecutive rather than concurrent sentences include:</p> <p><b>(a) * * *</b></p> <p><b>(b) Other facts and limitations</b></p> <p>Any circumstances in aggravation or mitigation, <u>whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial</u>, may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:</p> <p>(1) A fact used to impose the upper term <i>or a term other than the low term if factors pursuant to Penal Code section 1170(b)(6) were a contributing factor to the commission of the offense</i>;</p> <p>(2) – (3) ***</p> <p><b>Advisory Committee Comment (top of page 20)</b>  <u>In order to impose the upper term, or a term other than the low term if factors pursuant to Penal Code section 1170(b)(6) were a contributing factor to the commission of the offense, based on Penal Code section 422.75, the fact of the enhancement pursuant to Penal Code sections 422.55 or 422.6 must be stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial.</u></p>	<p>The committee is not adding this language because section 1170(b)(6) does not state that aggravating factors that the court relies on to not impose the lower term must be proved beyond a reasonable doubt or stipulated to by the defendant.</p>

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

<b>Rule 4.425, Factors affecting concurrent or consecutive sentences</b>		
Superior Court of San Diego County	Rule 4.425(b)(3) there should be a period after the word “crime” and the remainder of the sentence deleted.	The committee agrees with this suggestion.

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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<b>Rule 4.428, Factors affecting imposition of enhancements</b>		
<b>Commenter</b>	<b>Comment</b>	<b>Committee Response</b>
Superior Court of San Diego County	<ul style="list-style-type: none"><li>• Recommend that 4.428(b) be repurposed/retitled so that it addresses striking the punishment on the enhancement and subdivision (c) addresses dismissing the enhancement itself. Typically, an enhancement would be “dismissed” and a sentence/punishment would be “stricken” although the two terms are and can be used interchangeably, as written in section 1385. If the subdivisions are not going to be separated out between one subdivision that addresses striking the punishment on the enhancement and one dismissing the enhancement itself, then it is recommended that subdivision (b) mirror section 1385 and add the term “dismiss” to the title and the body of the text. In other words, it should include the language “strike or dismiss.”</li><li>• Rule 4.428, change citation to the legislative history to “...Reg. Sess., June....”</li></ul>	<p>The committee has changed the title to recommended rule 4.428(b) as “striking or dismissing enhancements under section 1385.”</p> <p>The committee agrees with this suggestion.</p>

**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

**Rule 4.428, Factors affecting imposition of enhancements**

<p>California Attorneys for Criminal Justice</p>	<p>*Rule 4.428 Advisory Comment One area of concern is the proposed advisory comments to Rule 4.428 on the imposition of enhancements, in Paragraph 3 of the proposed comment. This states that the new provisions regarding dismissal of enhancements do not apply to One Strike, Two Strike or Three Strike sentencing, because these are “alternative sentencing schemes”, not “offense specific enhancements.” The comment references a portion of the legislative history to support this conclusion.</p> <p>We request that this paragraph be deleted or substantially amended. There will be many defendants with Three Strike sentences, or under other “alternate schemes” who will argue that the new amendments do apply in their cases. The statute does not specifically address this question, and there is no case authority at this early date. Because this will be an important issue for many defendants, it should be and will be litigated. CACJ believes it is inappropriate for the Council to state this opinion as a fact, before litigation with evidence, full briefing and argument. This comment essentially “puts a thumb on the scale” of every trial court’s analysis of the issue before litigation.</p> <p>It seems clear there are other considerations to be brought forward before a final determination whether “alternative sentencing schemes” are exempt from the standards for dismissal of enhancements. See, for example, the Senate Public Safety analysis for 3/16/21, which talks about enhancements doubling a person's sentence or converting a determinate term into a life sentence, almost certainly referring to strikes; and its extensive reference to the Committee for the Revision of the Penal Code, which wrote extensively about strikes in its 2020 Annual Report.</p>	<p>In light of comments received from California Attorneys for Criminal Justice, Pacific Juvenile Defender Center, and the San Diego County Public Defender’s Office, the committee is deleting the comment on the legislative history of Senate Bill 81 from the recommended changes to this advisory committee comment.</p>
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**SP22-02**

**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

**Rule 4.428, Factors affecting imposition of enhancements**

There is also §1385(c)(3)(G), affording great weight in favor of dismissal where a “prior juvenile adjudication [] triggers the enhancement or enhancements applied in this case.” This almost certainly refers to a juvenile “strike” offense.

The council should not make a comment, like this one, which seems to preempt the interpretation of a new, and ambiguous, statute.

We recognize that an important function of the advisory comments to the Rules is to signal potential issues. But this can be done without suggesting that the council has an opinion on the correct resolution of the issue. We would have no objection if this paragraph were amended to say that it is unclear whether the changes will apply to “alternative sentencing schemes” such as Three Strikes, as distinct from “enhancements.”

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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**Rule 4.428, Factors affecting imposition of enhancements**

<p>Pacific Juvenile Defender Center</p>	<p>*Specifically, we request the following paragraph be deleted from the proposed Advisory Committee Comment to Rule 4.428: The legislative history on Senate Bill 81 states that the presumption created by Penal Code section 1385(c) does not apply to alternative sentencing schemes such as One Strike, Two Strikes, or Three Strikes. (See Assm. Com. Pub. Safety, Report on Sen. Bill 81 (2021–2022 Reg. Sess.) June 29, 2021, pp. 5–6.) Unlike an offense specific enhancement, an alternative sentencing scheme does not add an additional term of imprisonment to the base term; instead, it provides for an alternate sentence for the underlying felony itself when it is proven that certain conditions specified in the statute are true. (See <i>People v. Anderson</i> (2009) 47 Cal.4th 92, 102; <i>People v. Superior Court (Romero)</i> (1996) 13 Cal.4th 497, 527.)</p> <p><b><u>Comment Regarding Proposed Advisory Committee Comment to Rule 4.428</u></b></p> <p>Senate Bill 81, effective January 1, 2022, amended Penal Code section 1385 by adding provisions “aim[ing] to provide clear guidance on how and when judges may apply sentence enhancements.” (Sen. Com. Public Safety, Report on Sen. Bill 81 (2021- 2022 Reg. Sess.) March 16, 2021, p. 3.) SB 81’s highly consequential changes to Penal Code section 1385 were derived from recommendations made by the Commission for the Revision of the Penal Code (“CRPC”), whose 2020 Annual Report is quoted extensively in the various committee analyses for SB 81. As quoted in the Senate Public Safety Committee analysis:</p>	<p>In light of comments received from California Attorneys for Criminal Justice, Pacific Juvenile Defender Center, and the San Diego County Public Defender’s Office, the committee is deleting the comment on the legislative history of Senate Bill 81 from the recommended changes to this advisory committee comment.</p>
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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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

**Rule 4.428, Factors affecting imposition of enhancements**

Sentence enhancements can be dismissed by sentencing judges. The current legal standard instructs judges to dismiss a sentence enhancement when “in furtherance of justice.” Courts have not clarified or defined this standard, and the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an “amorphous concept.” As a result, this discretion may be inconsistently exercised and underused because judges do not have guidance on how courts should exercise the power. The lack of clarity and guidance is especially concerning given demographic disparities in sentences. As noted, Three Strikes sentences and gang enhancements in California are disproportionately applied against people of color. People suffering from mental illness are also overrepresented among people currently serving life sentences under the Three Strikes Law for nonviolent crimes.

(Sen. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) March 16, 2021, p. 5.)

Despite the legislation’s laudable goal to provide “clear guidance on how and when judges may apply sentence enhancements,” there are various unresolved legal issues regarding the applicability of SB 81 to different types of “enhancements.” One such issue is whether the nine mitigating circumstances described in new section 1385(c) apply to prior serious and violent felony convictions and

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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**Rule 4.428, Factors affecting imposition of enhancements**

(Sen. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) March 16, 2021, p. 3.) The Three Strikes Law is the only penalty provision that doubles a person’s sentence. The reference to “enhancements” is this language must be a reference to “strikes.”

- 1) The Senate Public Safety Committee analysis cites a September 2017 publication of the Public Policy Institute of California titled *Sentence Enhancements: Next Targets of Corrections Reform*. As quoted in the committee analysis, the publication describes strikes as “enhancements”:

Aside from second and third strikes, the most common enhancement adds one year for each previous prison or jail term.

(Sen. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) March 16, 2021, p. 3.)<sup>3</sup>

- 2) Both Senate and Assembly analyses unambiguously state that SB 81 implements the recommendations of the Commission on the Revision of the Penal Code (CRPC), and the CRPC’s recommendations regarding sentencing enhancements, as contained in its 2020 Annual Report, unquestionably included “strikes.” In fact, both the Senate and Assembly analyses quote the portions of the CRPC’s report that reference the Three Strikes Law. To repeat the language we quoted earlier in this Comment:

<sup>3</sup> The PPIC report describes the Three Strikes Law as an enhancement mechanism: “California’s best-known sentence enhancement mechanism is the Three Strikes Law, passed in 1994. The law doubles the sentence of

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**Rule 4.428, Factors affecting imposition of enhancements**

any offender convicted of a second serious or violent crime. A third conviction results in a sentence of between 25 years to life. There are roughly 38,000 second and third “strikers” in California prisons, a little more than one-third of the prison population.” Report found at <https://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform> (as of February 14, 2022).

Sentence enhancements can be dismissed by sentencing judges. The current legal standard instructs judges to dismiss a sentence enhancement when “in furtherance of justice.” Courts have not clarified or defined this standard, and the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an “amorphous concept.” As a result, this discretion may be inconsistently exercised and under used because judges do not have guidance on how courts should exercise the power.

The lack of clarity and guidance is especially concerning given demographic disparities in sentences. As noted, Three Strikes sentences and gang enhancements in California are disproportionately applied against people of color. People suffering from mental illness are also overrepresented among people currently serving life sentences under the Three Strikes law for nonviolent crimes.

(Sen. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) March 16, 2021, p. 5; Assm. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) June 29, 2021, p. 3.)

3) While the Assembly Public Safety analysis concludes that

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**Rule 4.428, Factors affecting imposition of enhancements**

“enhancements” do not include “alternative sentencing schemes,” it does so in reliance on the definition in the California Rules of Court, and cites cases that support this narrow definition. (Assm. Com. Public Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) June 29, 2021, pp. 5- 6). But in fact, as demonstrated in *People v. Brookfield* (2009) 47 Cal.4th 583, 592, “enhancements” sometimes include “alternative sentencing schemes.”

And a reading of the case law on this point demonstrates that when there are competing interpretations, the question should be decided by the appellate courts based on statutory language and legislative intent rather than on how other cases interpreted other statutes and initiatives. In *Brookfield*, the Supreme Court notes that the Legislature, when crafting future legislation on the subject, may want to consider the distinction the courts have drawn between “enhancements” and penalty provisions in other prior contexts. (Id. at p. 595.) But at no point does the Supreme Court impose this narrow definition on the Legislature; in fact, they instead recognize the Legislature’s broader definition in the legislation at issue in that case.

For the reasons stated above, the legislative history and statutory language taken as a whole suggest the Legislature intended the term “enhancements” to include “alternative sentencing schemes,” unless those alternative sentencing schemes are explicitly excluded under Penal Code section 1385(c)(1).

The language of Penal Code section 1385(c)(3)(G) provides further evidence that SB 81 was intended to apply to “strikes.”

The seventh of the nine mitigating circumstances created by

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**Rule 4.428, Factors affecting imposition of enhancements**

SB 81 -- and one of particular interest to PJDC, as an association of juvenile defenders – is contained in subdivision (c)(3)(G). The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case.

(Pen. Code, §1385, subd. (c)(3)(G).) This subdivision applies in two circumstances:

- If the defendant was a juvenile when they committed the current offense; and
- If the defendant was a juvenile when they committed any prior juvenile adjudication that triggers the enhancement in the current case.

Juvenile adjudications are not considered “convictions.” (Welf. & Inst. Code, §203.) The one exception in the sentencing “enhancements” context is the Three Strikes Law, which defines a juvenile adjudication as a “conviction” for purposes of the Three Strikes Law if specified circumstances are met. (See Pen. Code, §§667, subd. (d)(3); 1170.12, subd. (b)(3); People v. Garcia (1999) 21 Cal.4th 1.) The undersigned are aware of no other juvenile adjudications that trigger sentencing “enhancements,” as that term must be used in section 1385(c)(3)(G), when appended to adult criminal charges.

The language in the second bullet point has meaning only if it applies to juvenile adjudications being used as “strikes” in criminal court. When interpreting a statute, the courts must endeavor to harmonize and give effect to all of its provisions. (People v. Garcia, supra, 21 Cal.4th at p. 6.)

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**Rule 4.428, Factors affecting imposition of enhancements**

	<p>Applying that principle, section 1385(c)(3)(G) must be read to apply to juvenile “strikes,” which are the “enhancements” that explicitly are referenced in that subdivision. If SB 81 were interpreted to not apply to “strikes,” the referenced language in 1385(c)(3)(G) would be surplusage.</p> <p>Since subdivision (c)(3)(G) must be interpreted to apply to juvenile “strike” adjudications, the Legislature plainly used the word “enhancement” in Penal Code section 1385(c) – as exemplified by its use in section 1385(c)(3)(G) -- to include “strikes” under the Three Strikes Law. This interpretation is not only necessary in order to give meaning to the language in section 1385(c)(3)(G), but is also consistent with the purpose of SB 81, and its intended codification of the recommendations of the Commission on the Revision of the Penal Code, as discussed above.</p> <p>For the foregoing reasons, we request the Judicial Council delete the proposed language in Rule 4.428 that mandates that SB 81 does not apply to “strike” convictions and adjudications.</p>	
<p>San Diego County Public Defender’s Office</p>	<p>Advisory committee comment:  <del>The legislative history on Senate Bill 81 states that the presumption created by Penal Code section 1385(c) does not apply to alternative sentencing schemes such as One Strike, Two Strikes, or Three Strikes. (See Assem. Com. Pub. Safety, Report on Sen. Bill 81 (2021-2022 Reg. Sess.) June 29, 2021, pp. 5-6.) Unlike an offense specific enhancement, an alternative sentencing scheme does not add an additional term of imprisonment to the base term; instead, it provides for an alternate sentence for the underlying felony itself when it is proven that certain conditions specified in the statute are true. (See <i>People v. Anderson</i> (2009) 47 Cal.4th 92, 102; <i>People v.</i></del></p>	<p>In light of comments received from California Attorneys for Criminal Justice, Pacific Juvenile Defender Center, and the San Diego County Public Defender’s Office, the committee is deleting the comment on the legislative history of Senate Bill 81 from the recommended changes to this advisory committee comment.</p>

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**Criminal Law: Felony Sentencing** (Amend Cal. Rules of Court, rules 4.405, 4.406, 4.408, 4.411.5, 4.414, 4.420, 4.421, 4.423, 4.424, 4.425, 4.427, 4.428, 4.437, 4.447; repeal rules 4.300 and 4.453)

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**Rule 4.428, Factors affecting imposition of enhancements**

Superior Court (Romero) (1996) 13 Cal.4th 497, 527.)

(Penal Code section 1385 is the vehicle with which courts dismiss prior strike offenses for the purposes of sentencing when it is in the furtherance of justice to do so. (See People v. Superior Court (Romero) (1996) 13 Cal.4th 497.) There is no question that prior strike sentencing significantly enhances a defendant’s sentence. Senate Bill 81 defines and assists the court in its exercise of discretion to dismiss enhancements in the furtherance of justice pursuant to Penal Code section 1385. Though One Strike, Two Strike and Three Strike sentencing have been considered “alternative sentencing schemes” and not “enhancements” by some courts, these cases all significantly predate section 1385(c). Further, the actual language of the section 1385(c) is silent as to its application to prior strike sentencing. The Advisory Committee should, thus, also remain silent on this issue until the courts have had a chance to interpret the new law.)

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee action requested** [Choose from drop down menu below]:  
**Submit to JC (without circulating for comment)**

**Rules Committee Meeting Date:** February 28, 2022

**Title of proposal:** Rules and Forms: Small Estate Disposition

**Proposed rules, forms, or standards** (*include amend/revise/adopt/approve*):  
Adopt form DE-300; revise forms DE-305, DE-310, DE-315

*Committee or other entity submitting the proposal:*  
Probate and Mental Health Advisory Committee  
Hon. Jayne C. Lee, Chair

*Staff contact (name, phone and e-mail):* Corby Sturges, 415-865-4507, [corby.sturges@jud.ca.gov](mailto:corby.sturges@jud.ca.gov)

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Approved by Rules Committee date: February 15, 2022

Project description from annual agenda: Develop recommendation to adopt one form and revise three forms for use in proceedings to dispose of decedents' estates without administration. Assembly Bill 473 (Stats. 2019, ch. 122) added section 890 to the Probate Code to require the Judicial Council, by April 1, 2022, to adjust and publish a list of specified property values used for determining eligibility for disposition of decedents' estates without probate administration. To implement this legislative mandate, the council must adopt the new form and revise the existing forms before April 1, 2022.

*If requesting July 1 or out of cycle, explain:*

The Probate and Mental Health Advisory Committee requests that the Rules Committee submit the report to the Judicial Council for approval without first circulating for comment because the law requires the recommended forms to take effect on April 1, 2022. The committee plans to request postadoption circulation of the proposal for public comment in the spring 2022 comment cycle.

**Additional Information:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

**Information for JC Staff regarding form translations:**

- *List any amended forms in this proposal that have already been translated:*
- *List any new forms that require translation by statute or that you will request to be translated:*





## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-079*

For business meeting on March 10–11, 2022

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<b>Title</b>	<b>Agenda Item Type</b>
Rules and Forms: Small Estate Disposition	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
Adopt form DE-300; revise forms DE-305, DE-310, and DE-315	April 1, 2022
<b>Recommended by</b>	<b>Date of Report</b>
Probate and Mental Health Advisory Committee Hon. Jayne Chong-Soon Lee, Chair	February 23, 2022
	<b>Contact</b>
	Corby Sturges, 415-865-4507 <a href="mailto:corby.sturges@jud.ca.gov">corby.sturges@jud.ca.gov</a>

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### Executive Summary

The Probate and Mental Health Advisory Committee recommends adopting one form for mandatory use and revising three forms for optional use in judicial proceedings to dispose of property in small estates without administration. The revisions are needed to implement the legislative mandate in Probate Code section 890, which requires the Judicial Council to adjust the threshold property values that determine eligibility for disposition of small estates without full probate administration and to publish a list of the adjusted amounts by April 1, 2022. The committee also recommends revisions to update and clarify the existing forms at the same time. The forms will be circulated for comment after adoption.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective April 1, 2022:

1. Adopt *Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration* (form DE-300) to publish the adjusted maximum values of estates and specific property to determine eligibility for various summary disposition procedures under

Probate Code sections 6600–6613 and 13000–13606 and for use as an attachment to affidavits or petitions as required in Probate Code sections 13101, 13152, 13200, and 13601.

2. Revise *Affidavit re: Real Property of Small Value* (form DE-305), *Petition to Determine Succession to Real Property* (form DE-310), and *Order Determining Succession to Real Property* (form DE-315) to:
  - a. Add references to the adjusted threshold values for eligibility to use the procedure under Probate Code section 13200 to claim real property of adjusted as required by Probate Code section 890 a decedent who dies on or after April 1, 2022;
  - b. Clarify that the threshold value applicable to the property of a decedent who dies before April 1, 2022, remains unchanged; and
  - c. Update the forms to simplify language and conform to current law and Judicial Council style guidelines.

The revised forms are attached at pages 6–11.

### **Relevant Previous Council Action**

Effective July 1, 1987, the Judicial Council adopted *Affidavit re: Real Property of Small Value* and approved *Petition to Determine Succession to Real Property* and *Order Determining Succession to Real Property* in response to amendments to the Probate Code.

Effective January 1, 1989, the Judicial Council revised these forms and assigned their current designating numbers. Effective January 1, 2000, the council adopted all previously optional probate forms, including those in this proposal, for mandatory use.

The council has approved revisions to these forms several times since then in response to statutory amendments, including increases to the amounts of the maximum property values used to determine eligibility for disposition of property without administration.<sup>1</sup> Effective January 1, 2020, the council revised these forms to update the maximum property values in response to adjustments enacted by Assembly Bill 473 (Stats. 2019, ch. 122).

### **Analysis/Rationale**

The committee recommends adopting form DE-300 for mandatory use and revising forms DE-305, DE-310, and DE-315 to fulfill the mandate in Probate Code section 890. That statute requires the Judicial Council, on April 1, 2022, and at each three-year interval thereafter, to adjust the dollar amounts specified in chapter 6 (commencing with section 6600) of part 3 of division 6 and in division 8 (commencing with section 13000) of the Probate Code in effect

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<sup>1</sup> The dollar amounts were added to the official form titles between 2004 and 2011.

immediately before that date.<sup>2</sup> These amounts set upper limits on the property values that determine eligibility for disposition of small estates without full probate administration.

The council must determine the amount of each required adjustment based on the change in the United States city average of the “Consumer Price Index for All Urban Consumers” from December 2018 to December 2021 and round each adjusted amount to the nearest \$25.<sup>3</sup> The council must also, as of April 1, publish a list of the adjusted values and the date of the next scheduled adjustment.<sup>4</sup> Proposed form DE-300 would fulfill the publication mandate by listing the code sections that specify a maximum value, briefly describing the property to which each section applies, listing the adjusted value for each code section, and giving the date of the next scheduled adjustment.

Sections 13101, 13152, 13200, and 13601 also require an affiant or petitioner who seeks to use the procedure authorized by any of those sections to attach the published list to the affidavit or petition.<sup>5</sup> For this reason, the committee recommends adopting form DE-300 for mandatory use rather than approving it for optional use.

***Petition to Determine Succession to Real Property (form DE-310) and Order Determining Succession to Real Property (form DE-315)***

Forms DE-310 and DE-315 must be used in the summary disposition procedure authorized by sections 13150–13158. Section 13151 authorizes the successor to a decedent’s interest in a particular item of real property, without obtaining letters of administration or awaiting probate of the will, to petition for a court order determining that the petitioner has succeeded to that property subject to specific conditions, including that the gross value of the decedent’s real and personal property in California does not exceed \$166,250, as adjusted periodically in accordance with section 890. Section 13152 specifies the required contents of that petition, and section 13154 authorizes the court to make the requested order if it can and does make specific findings, including a determination that the value of the decedent’s California property does not exceed the statutory limit.

On April 1, 2022, the procedure prescribed by section 890 requires adjusting the maximum value of that property from \$166,250 to \$184,500 for decedents who die on or after that date. Form DE-310, the mandatory petition form, and form DE-315, the mandatory order form, both include

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<sup>2</sup> Prob. Code, § 890 (added by Assem. Bill 473; Stats. 2019, ch. 122, § 1). All further statutory references are to the Probate Code unless otherwise specified.

<sup>3</sup> *Id.*, § 890(b). See United States Bur. Lab. Statistics, Consumer Price Index, at [www.bls.gov/cpi/](http://www.bls.gov/cpi/), and data series CUUR0000SA0, searchable at <https://data.bls.gov/cgi-bin/surveymost?cu>. The application of the statutory method to adjust the statutory values is explained and illustrated in Attachment A.

<sup>4</sup> *Id.*, § 890(c).

<sup>5</sup> *Id.*, §§ 13101(f) (affidavit to collect or transfer personal property), 13152(e) (petition to determine succession to real property), 13200(f) (affidavit to collect real property of limited value), and 13601(e)(2) (affidavit to collect compensation owed to deceased spouse).

several references to \$166,250. The recommended revisions to these forms remove unnecessary references to \$166,250 and add a reference to \$184,500 to indicate the adjusted value.<sup>6</sup>

In addition, section 13200 authorizes a person or persons claiming a particular item of a decedent's real property in California as the decedent's successor to file with the probate court an affidavit of succession to that property if the gross value of all the decedent's real property in California does not exceed \$55,425. Effective April 1, 2022, the procedure prescribed by section 890 requires adjusting the maximum value of that property from \$55,425 to \$61,500 for decedents who die on or after that date. The form adopted for use in this procedure, *Affidavit re Real Property of Small Value* (form DE-305), refers to \$55,425 in several places. The recommended revisions to form DE-305 remove unnecessary references to \$55,425 and add a reference to \$61,500 to indicate the adjusted value. The committee also recommends revising item 6 on this form to reflect the amendment, by Assembly Bill 976 (Stats. 2017, ch. 319, § 84), of the required manner of delivering the affidavit to any guardian or conservator of the estate of the decedent at the time of the decedent's death.<sup>7</sup>

### **Policy implications**

The recommended revisions promote at least two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by ensuring that the Judicial Council forms reflect accurate legal information that will make it easier for prospective litigants, particularly self-represented litigants, to choose the proper method with which to gain access to the probate court.

### **Comments**

The recommended forms have not yet circulated for public comment because the December 2021 Consumer Price Index, on which the recommendation depends, was not released in sufficient time allow circulation and review of comments and still meet the legislative deadline of April 1, 2022. The committee recommends adopting the new and revised forms at this time, and the committee will submit an invitation to comment in the spring 2022 cycle to ensure that the forms meet the need of self-represented litigants, courts, and attorneys.

### **Alternatives considered**

The committee considered recommending approval of form DE-300 for optional use. The statutory requirements that a petitioner or an affiant attach the published list to specified petitions

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<sup>6</sup> In addition to these required revisions, the committee also recommends removing the dollar amounts from the form titles to prevent confusion, revising item 10b on form DE-310 to use gender-neutral language, and removing current item 8, a determination that is not a condition precedent to the issuance of a valid order under section 13154, from form DE-315.

<sup>7</sup> In addition to these required revisions to form DE-305, the committee also recommends revising item 7 to supply a link to the State Controller's list of probate referees, adding item 8b to reflect the option of obtaining the personal representative's written consent under Probate Code section 13200(a)(7)(B), and revising item 10 to clarify who may sign the affidavit.

or affidavits, however, led the committee instead to recommend the form’s adoption for mandatory use.

The committee also considered, when revising form DE-305, a request to replace the notary public’s certificate of acknowledgment on that form with a jurat. The committee declined that request because section 13200(b) expressly requires a certificate of acknowledgment, not a jurat.<sup>8</sup>

The committee did not consider the alternative of taking no action because the revisions are required to implement statutory changes affecting litigants, including self-represented litigants, effective April 1, 2022, and to bring the forms into compliance with current law.

### **Fiscal and Operational Impacts**

The only fiscal or operational impacts this proposal should have on courts or litigants are the costs of replacing outdated forms and reprogramming digital case management systems. Because the changes are required by statute, these impacts cannot be avoided.

### **Attachments and Links**

1. Forms DE-300, DE-305, DE-310, and DE-315, at pages 6–11
2. Attachment A: Calculation of Limits on Value of Property or Estates Eligible for Disposition Without Administration
3. Link A: Assem. Bill 473 (Stats 2019, ch. 122),  
[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB473](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB473)

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<sup>8</sup> *Id.*, 13200(b). Compare Civil Code section 1189 and Government Code section 8205(a)(2) (certificate of acknowledgment) with Government Code section 8202 (jurat). Although it appears that a notary would typically execute a jurat when taking an affidavit, the description (in Gov. Code, § 8205(a)(3)) of the notary’s role in taking an affidavit to be presented to a property holder is not completely clear and, therefore, provides insufficient reason to depart from section 13200(b)’s express requirement of a certificate of acknowledgment.

**MAXIMUM VALUES FOR SMALL ESTATE SET-ASIDE  
& DISPOSITION OF ESTATE WITHOUT ADMINISTRATION**

This form lists the maximum dollar values of a decedent's estate or specific property in that estate, as of the date of the decedent's death, for purposes of determining eligibility for

- (1) an order setting the estate aside for the decedent's surviving spouse and minor children; or
- (2) disposition of the estate or specific real or personal property in the estate informally, without full administration.

**NOTE:** The values in the left column apply to the estate of a decedent who died before April 1, 2022. The values in the right column apply to property of a decedent who died on or after April 1, 2022.

The amount of the adjustment of the prior values is based on the change in the United States city average of the Consumer Price Index for All Urban Consumers for the three-year period ending December 31, 2021, with each adjusted value rounded to the nearest \$25. (See Prob. Code, § 890(b).) Unless otherwise provided by statute after April 1, 2022, these values will next be adjusted April 1, 2025.

<u>Probate Code Section</u>	<u>Description</u>	<b>Amount</b> (for death before Apr. 1, 2022)	<b>Amount</b> (for death on or after Apr. 1, 2022)
<b>1. SMALL ESTATE SET-ASIDE UNDER PROBATE CODE SECTIONS 6600–6613</b>			
§§ 6602, 6609	As of the date of the decedent's death, the net value of the decedent's estate, excluding all liens and encumbrances at the date of death and the value of any probate homestead set apart under Probate Code section 6520, must not exceed:	\$ 85,900	\$ 95,325
<b>2. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION UNDER SECTIONS 13000–13606</b>			
<b>a. PROPERTY EXCLUDED FROM DETERMINING VALUE OF ESTATE</b>			
§ 13050(c)	The amount of any salary or other compensation owed to the decedent, not to exceed:	\$ 16,625	\$ 18,450
<b>b. AFFIDAVIT FOR COLLECTION, RECEIPT, OR TRANSFER OF PERSONAL PROPERTY</b>			
§§ 13100, 13101	The gross value of the decedent's real and personal property in California, excluding the property described in Probate Code section 13050, must not exceed:	\$ 166,250	\$ 184,500
<b>c. PETITION &amp; COURT ORDER DETERMINING SUCCESSION TO PROPERTY</b>			
§§ 13151, 13152, 13154	The gross value of the decedent's real and personal property in California, excluding the property described in Probate Code section 13050, must not exceed:	\$ 166,250	\$ 184,500
<b>d. AFFIDAVIT FOR SUCCESSION TO REAL PROPERTY OF SMALL VALUE</b>			
§ 13200	The gross value of all real property in the decedent's estate located in California, excluding the real property described in Probate Code section 13050, must not exceed:	\$ 55,425	\$ 61,500
<b>e. AFFIDAVIT FOR COLLECTION OF COMPENSATION OWED TO DECEASED SPOUSE</b>			
§§ 13600, 13601	Net salary or other compensation owed, in aggregate, by one or more employers for personal services of the deceased spouse, must not exceed: <i>(This limit does not apply if the decedent was a firefighter or peace officer described in Government Code section 22820(a).)</i>	\$ 16,625	\$ 18,450

**NOTICE**

If the decedent died on or after April 1, 2022, this form must be attached to

- an affidavit or declaration furnished under Probate Code section 13101;
- a *Petition to Determine Succession to Real Property* (form DE-310) filed under Probate Code section 13151;
- an *Affidavit re: Real Property of Small Value* (form DE-305) filed under Probate Code section 13200; or
- an affidavit or declaration furnished under Probate Code section 13601.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.:

After recording, return to:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY, STATE, ZIP CODE:

TELEPHONE NO.: FAX NO.:

EMAIL ADDRESS:

ATTORNEY FOR (name):

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

**DRAFT**  
**Not approved by**  
**the Judicial Council**

FOR RECORDER'S USE ONLY

ESTATE OF (name):	CASE NUMBER:
DECEDENT	
<b>AFFIDAVIT RE: REAL PROPERTY OF SMALL VALUE</b>	FOR COURT USE ONLY

- The decedent (name):  
 died on (date):  
 at (city, state):
  - At least **six months** have passed since the decedent's death. (Attach a certified copy of the decedent's death certificate.)
  - The decedent was domiciled in this county at the time of death.
    - The decedent was **not** domiciled in California at the time of death, but the decedent died owning real property in this county.
  - The **gross value**, on the date of the decedent's death, of all real property in the decedent's estate located in California, as shown by the attached inventory and appraisal—excluding the real property described in Probate Code section 13050—did not exceed **\$55,425** if the decedent died before April 1, 2022, or **\$61,500** if the decedent died on or after April 1, 2022.
  - The **legal description** and the Assessor's Parcel Number of the particular item of the decedent's real property claimed by the declarant(s) are provided on an attached page titled Attachment 5a, "Legal Description." (Copy legal description **exactly** from deed or other legal instrument.)
    - The decedent's interest in this real property is (specify):
  - Name and address of each guardian or conservator of the decedent's estate at time of death:  none  are as follows:\*  

<u>Name</u>	<u>Address</u>
- Additional guardians or conservators are identified in Attachment 6.  
 (\* You must deliver a copy of this affidavit and all attachments in the manner provided in Probate Code section 1215 to each guardian or conservator named above. You may use Judicial Council form POS-030 for proof of mailing, form POS-020 for proof of personal service, or form POS-050 for proof of electronic service.)
- An inventory and appraisal of all of the decedent's **real property** in California is attached. The appraisal was made by a probate referee appointed by the State Controller for the county in which the property is located. (You must prepare the inventory on Judicial Council forms DE-160 and DE-161. You may select any probate referee appointed for the county to perform the appraisal. A list of all probate referees, shown by county, is available at [www.sco.ca.gov/eo\\_probate\\_contact.html](http://www.sco.ca.gov/eo_probate_contact.html). Each court also has a list of referees appointed for its county. Check with the probate referee or consult an attorney if you need help preparing the inventory.)
  - No proceeding for administration of decedent's estate is now being or has been conducted in California.
    - The decedent's personal representative has consented in writing to the use of the procedure provided by Probate Code section 13200 et seq. (Attach a copy of the consent and a copy of the personal representative's letters of administration.)

ESTATE OF (name):	CASE NUMBER:
DECEDENT	

9. Funeral expenses, expenses of last illness, and all known unsecured debts of the decedent have been paid. (NOTE: You may be personally liable for decedent's unsecured debts up to the fair market value of the real property and any income you receive from it.)
10. The declarant—or a trust or other entity, on behalf of which the declarant is acting—is, or all declarants together constitute, the successor of the decedent (as defined in Probate Code section 13006) to the decedent's interest in the property described in item 5, and no other person or entity has a superior right to the decedent's interest in that property, because the declarant(s) is or are:
- a.  (if decedent left a will) the sole beneficiary or all the beneficiaries who succeeded to the property under the decedent's will. (Attach a copy of the will.)
  - b.  (if decedent died without a will) the sole person or all the persons who succeeded to the property under Probate Code sections 6401 and 6402.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

(TYPE OR PRINT NAME)\*

▶

(SIGNATURE OF DECLARANT)

Date: \_\_\_\_\_

(TYPE OR PRINT NAME)\*

▶

(SIGNATURE OF DECLARANT)

SIGNATURES OF ADDITIONAL DECLARANTS ATTACHED

\* A declarant claiming on behalf of a trust or other entity should also state the name of the entity that is a beneficiary under the decedent's will and declarant's capacity to sign on behalf of the entity (trustee, Chief Executive Officer, etc.).

**CERTIFICATE OF ACKNOWLEDGMENT**

(NOTE: Do not attach an additional certificate of acknowledgment to this page on a small strip of paper. If you need one or more additional certificates of acknowledgment, attach them to this form on separate, full-sized 8-1/2 by 11-inch pages.)

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.**

STATE OF CALIFORNIA, COUNTY OF (specify): \_\_\_\_\_

On (date): \_\_\_\_\_, before me (name and title): \_\_\_\_\_

personally appeared (name of each): \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that they executed the instrument in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

(SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

(SEAL)	<p style="text-align: center;"><b>CLERK'S CERTIFICATE</b></p> <p>I certify that the foregoing, including any attached certificates of acknowledgment and any attached legal description of the property (but excluding other attachments), is a true and correct copy of the original affidavit on file in my office. (Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)</p> <p>Date: _____ Clerk, by _____, Deputy</p>
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ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b> <b>Not approved by</b> <b>the Judicial Council</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<b>ESTATE OF (name):</b>  <div style="text-align: right;">DECEDENT</div>	CASE NUMBER:  HEARING DATE AND TIME: DEPT.:
<b>PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY</b> <input type="checkbox"/> <b>and Personal Property</b>	

1. Petitioner (name of each person claiming an interest):

**requests** a determination that the real property  and personal property described in item 11 is property passing to petitioner.

2. Decedent (name):

- a. Date of death:
- b. Place of death (city and state or, if outside the United States, city and country):

3.  At least 40 days have passed since the decedent's death.

- 4. a.  Decedent was a resident of this county at the time of death.
- b.  Decedent was **not** a resident of California at the time of death. Decedent died owning property in this county.

5. Decedent died  intestate (without a will)  testate (with a will), and a copy of the will is affixed as Attachment 5 or 12a.

- 6. a.  No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
- b.  Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.

7. Proceedings for the administration of decedent's estate in another jurisdiction

- a.  have **not** been commenced.
- b.  have been commenced  and completed. (Specify state, county, court, and case number):

8. The **gross value** of decedent's interest in real and personal property located in California, as shown by the inventory and appraisal attached to this petition—excluding the property described in Probate Code section 13050—at the time of decedent's death did not exceed **\$166,250** if the decedent died before April 1, 2022, or **\$184,500** if the decedent died on or after April 1, 2022. (Prepare and attach as Attachment 8 an inventory and appraisal of all California property in the estate. (Use Judicial Council forms DE-160 and DE-161.) A probate referee appointed for the county named above must appraise all real property and all personal property other than cash or its equivalent. See Prob. Code, §§ 8901, 8902.)

9. a. Decedent is survived by (check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))

- (1)  spouse
- (2)  no spouse, as follows: (a)  divorced or never married (b)  spouse deceased
- (3)  registered domestic partner
- (4)  no registered domestic partner (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)
- (5)  child, as follows: (a)  natural or adopted (b)  natural adopted by a third party
- (6)  no child
- (7)  issue of a predeceased child
- (8)  no issue of a predeceased child

b. Decedent  is  is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (See Prob. Code, § 6454.)

ESTATE OF (name):	CASE NUMBER:
DECEDENT	

10.  Decedent is survived by (complete if decedent is survived by (1) a spouse or registered domestic partner described in Prob. Code, § 37, but no issue (only a or b apply); or (2) no spouse or registered domestic partner described in Prob. Code, § 37, and no issue. Check **only the first box that applies.**)
- a.  a parent or parents who are listed in item 14.
  - b.  a sibling, or issue of a deceased sibling, all of whom are listed in item 14.
  - c.  other persons who might be entitled to inherit property if decedent did not have a will, all of whom are listed in item 14.
  - d.  no known next of kin.
11. Attachment 11 contains (1) the legal description of decedent's California real property and the Assessor's Parcel Number(s)  and a description of the personal property in California passing to each petitioner; (2) decedent's interest in the property; and (3) if a petitioner's claim to the property is based on succession under Probate Code sections 6401 and 6402, facts that show the character of the property as community, separate, or quasi-community property.
12. Each petitioner is a successor of the decedent (as defined in Probate Code section 13006) and successor to the decedent's interest in one or more of the pieces of real property  and personal property  described in item 11 because each petitioner is
- a.  (will) a beneficiary who succeeded to the property under decedent's will.<sup>1</sup>
  - b.  (no will) a person who succeeded to the property under Probate Code sections 6401 and 6402.
13. The interest claimed by each petitioner in each specific piece of real property  and personal property  is stated in Attachment 13  is as follows (specify):
14. The names, relationships to decedent, ages, and residence or mailing addresses, as far as known to or reasonably ascertainable by petitioner, of (1) all persons named or checked in items 1, 9, and 10; (2) all other persons who may be entitled to inherit decedent's property in the absence of a will; and (3) all persons designated in the will to receive any property are listed in Attachment 14.
15. The names and addresses of all executors named in decedent's will are  listed below.  listed in Attachment 15.
- No executor is named.  There is no will.
16.  Petitioner is the trustee of a trust designated in decedent's will to receive property. The names and addresses of all persons interested in the trust, as determined in cases of future interests under Probate Code section 15804(a)(1), (2), or (3), are listed in Attachment 16.
17.  Decedent's estate was under a  guardianship  conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator  are listed below  are listed in Attachment 17.

18. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF ATTORNEY)

▶

\_\_\_\_\_  
 (SIGNATURE OF ATTORNEY)\*

\*(Signature of all petitioners also required (Prob. Code, § 1020).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER)

▶

\_\_\_\_\_  
 (SIGNATURE OF PETITIONER)<sup>2</sup>

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER)

▶

\_\_\_\_\_  
 (SIGNATURE OF PETITIONER)<sup>2</sup>

SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

<sup>1</sup> Probate Code section 13152(c) requires that a copy of the will be attached in certain instances. If required, include as Attachment 5 or 12a.

<sup>2</sup> Each person named in item 1 must sign.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.:

After recording, return to:

NAME:

FIRM NAME:

STREET ADDRESS:

CITY, STATE, ZIP CODE:

TELEPHONE NO.: FAX NO.:

EMAIL ADDRESS:

ATTORNEY FOR (name):

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

**DRAFT**  
**Not approved by**  
**the Judicial Council**

FOR RECORDER'S USE ONLY

ESTATE OF (name):	CASE NUMBER:
DECEDENT	
<b>ORDER DETERMINING SUCCESSION TO REAL PROPERTY</b> <input type="checkbox"/> and Personal Property	<b>FOR COURT USE ONLY</b>

1. Date of hearing: \_\_\_\_\_ Time: \_\_\_\_\_  
 Dept./Room: \_\_\_\_\_  
 Judicial Officer (name): \_\_\_\_\_

**THE COURT FINDS**

- Notice has been given as required by law.
- Decedent died on (date):
  - a resident of the California county named above.
  - a nonresident of California who owned property in the county named above.
  - intestate (without a will)  testate (with a will).
- At least 40 days have passed since the decedent's death.
- No proceeding for the administration of the decedent's estate is now being or has been conducted in California.
  - Decedent's personal representative has consented in writing to use the procedure in Probate Code section 13150 et seq.
- The gross value of decedent's real and personal property in California at the time of decedent's death, excluding any property described in Probate Code section 13050, did not exceed  \$166,250 (death before April 1, 2022).  
 \$184,500 (death on or after April 1, 2022).
- Each petitioner is a successor of the decedent (as defined in Probate Code section 13006) to the decedent's interest the real  and personal  property described in item 8a because each petitioner is (check one):
  - (will) a beneficiary who succeeded to the property under decedent's will.
  - (no will) a person who succeeded to the property under Probate Code sections 6401 and 6402.

**THE COURT FURTHER FINDS AND ORDERS**

8. a. The real  and personal  property  described in Attachment 8a  described as follows  is property of decedent passing to each petitioner as described in b. (For real property, give legal description):

b. Each petitioner's name and specific property interest  is stated in Attachment 8b  is as follows (specify):

9.  Other orders are stated in Attachment 9.

10. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
 JUDICIAL OFFICER  
 SIGNATURE FOLLOWS LAST ATTACHMENT

**Calculation of Limits on Value of Property or Estates  
Eligible for Disposition Without Administration  
(Adjusted April 1, 2022)**

The values specified in chapter 6 (commencing with section 6600) of part 3 of division 6 and in division 8 (commencing with section 13000) of the Probate Code are listed in *Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration* (form DE-300), and are adjusted, effective April 1, 2022, as required by Probate Code section 890(b) using the following method:

**Formula**

Under Probate Code section 890, the adjustments to the amounts of the specified values are calculated based on the change in the U.S. city average of the Consumer Price Index for All Urban Consumers (CPI-U) from the December 40 months before the adjustment to the December immediately preceding the adjustment.<sup>1</sup> (Prob. Code, § 890(b).) Determining the April 1, 2022, adjustment requires the following calculation:

$$\text{Adjusted amount} = \left[ \frac{(\text{CPI-U [Dec. 2021]} - \text{CPI-U [Dec. 2018]})}{\text{CPI-U (Dec. 2018)}} + 1 \right] \times \text{Previous amount}$$

**Calculation**

The CPI-U in December 2018 was 251.233. The CPI-U in December 2021 was 278.802. The proportional amount of change is determined by performing the calculation in brackets below. The result is 1.109735.

$$\text{Adjusted amount} = \left[ \frac{(278.802 - 251.233)}{251.233} + 1 \right] \times \text{Previous amount} = \mathbf{1.109735} \times \text{Previous amount}$$

The adjusted amount of each value specified in chapter 6 (commencing with section 6600) of part 3 of division 6 and in division 8 (commencing with section 13000) of the Probate Code in effect March 31, 2022, is then reached by multiplying the amount of each current value by 1.109735 and rounding each product to the nearest \$25. (See Prob. Code, § 890(b).) For example, the current value given in Probate Code section 6602 is \$85,900. The product of multiplying 85,900 by 1.109735 is 95,326.24. Rounded to the nearest \$25, the adjusted value is \$95,325.

<sup>1</sup> The data used for the calculations in this report can be found by searching series report CUUR0000SA0 at <https://data.bls.gov/cgi-bin/srgate>.

## RULES COMMITTEE ACTION REQUEST FORM

**Rules Committee Meeting Date:** February 28, 2022

**Rules Committee action requested** [Choose from drop down menu below]:

**Submit to JC (without circulating for comment)**

**Title of proposal:** Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions

*Proposed rules, forms, or standards (include amend/revise/adopt/approve):*

Adopt form EJ-186 and revise form EJ-156

*Committee or other entity submitting the proposal:*

Judicial Council Staff

*Staff contact (name, phone and e-mail):* James Barolo, 415-865-8928 james.barolo@jud.ca.gov

*Identify project(s) on the committee's annual agenda that is the basis for this item:*

Annual agenda approved by Rules Committee on (date): November 16, 2021

Project description from annual agenda: Rules and Forms: Miscellaneous Technical Changes. Develop rule and form changes as necessary to make changes meeting the criteria of rule 10.22(d)(2): "a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy...." These include revisions to forms that contain dollar figures based on statutory criteria that the Judicial Council is mandated to adjust on a regular basis.

**Out of Cycle:** *If requesting September 1 effective date or out of cycle, explain why:*

Code of Civil Procedure section 703.150 requires the Judicial Council to adjust the dollar amounts of certain statutory exemptions effective, April 1, 2022

**Additional Information for Rules Committee:** (To facilitate Rules Committee's review of your proposal, please include any relevant information not contained in the attached summary.)

**Additional Information for JC Staff** (provide with reports to be submitted to JC):

- **Form Translations** (check all that apply)

This proposal:

- includes forms that have been translated.
- includes forms or content that are required by statute to be translated. Provide the code section that mandates translation: [Click or tap here to enter text.](#)
- includes forms that staff will request be translated.

- **Form Descriptions** (for any proposal with new or revised forms)

The forms in this proposal will require new or revised form descriptions on the JC forms webpage. (If this is checked, the form descriptions should be approved by a supervisor before submitting this RAR.)

- **Self-Help Website** (check if applicable)

This proposal may require changes or additions to self-help web content.



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

*Item No.: 22-038*

For business meeting on: March 10–11, 2022

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**Title**

Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions

**Rules, Forms, Standards, or Statutes Affected**

Adopt form EJ-186 and revise form EJ-156

**Recommended by**

Judicial Council staff  
Anne Ronan, Supervising Attorney  
Legal Services

**Agenda Item Type**

Action Required

**Effective Date**

April 1, 2022

**Date of Report**

February 15, 2022

**Contact**

James Barolo, 415-865-8928  
[james.barolo@jud.ca.gov](mailto:james.barolo@jud.ca.gov)

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### Executive Summary

Judicial Council staff recommend that the Judicial Council take the following actions required by statute to reflect changes in the California Consumer Price Index in relation to the enforcement of judgements: (1) adopt *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186), and revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which include the three-year adjustments to the dollar amounts in provisions relating to enforcement of judgments, as required by Code of Civil Procedure section 703.150; and (2) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

### Recommendation

Judicial Council staff recommend that the Judicial Council take the following actions:

1. Adopt *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186), effective April 1, 2022, which contains revised figures adjusted to reflect changes in the Consumer Price Index;

2. Revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), effective April 1, 2022, which contains revised figures adjusted to reflect changes in the Consumer Price Index;
3. Approve, effective March 30, 2022, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and
4. Direct Judicial Council staff to submit the report to the Legislature.

The new and revised forms are at pages 5–7, and the report is attached as Attachment A.

### **Relevant Previous Council Action**

In 2004, the Judicial Council authorized the Administrative Office of the Courts<sup>1</sup> to prepare a list of the amounts of certain exemptions from enforcement of judgments and to periodically update the list as required by Code of Civil Procedure<sup>2</sup> section 703.150(d) and (e) to reflect changes in the California Consumer Price Index for All Urban Consumers (CCPI). (See Link A.) Pursuant to this authorization, a list entitled *Current Dollar Amounts of Exemptions From Enforcement of Judgments* was prepared and posted on the California Courts website in April 2004. The list contained the dollar amounts of exemptions effective as of April 1, 2004, and indicated that further adjustments would be made every three years. As statutorily mandated, the exemption amounts on the list were adjusted in 2007, 2010, 2013, 2016, and 2019. The council, rather than the Administrative Director, began approving the revisions to the form in 2013.

The requirement that the council report on potential adjustments to the homestead exemption based on changes in the CCPI (see § 703.150(c)) is a more recent addition to that statute. This is the fourth report to the Legislature prepared under that provision.

### **Analysis/Rationale**

#### **Exemptions to enforcement of judgments**

Section 703.150(f) requires the Judicial Council to adjust the dollar amounts of several exemptions from the enforcement of judgment provided in sections 703.140(b) (for cases under title 11 of the United States Code) and 704.010 et seq. (for other cases) every three years based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(a), (b).) The list of the dollar amounts of exemptions needs to be adjusted again at this time.

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<sup>1</sup> See Judicial Council of Cal., Advisory Com. Rep., *Exemptions From the Enforcement of Judgments* (Apr. 12, 2004), and minutes of the April 23, 2004, Judicial Council meeting, item 1, [www.courts.ca.gov/documents/age0404.pdf](http://www.courts.ca.gov/documents/age0404.pdf).

<sup>2</sup> Unless otherwise noted, all statutory references hereafter are to the Code of Civil Procedure.

Based on the recently published 2021 CCPI figures<sup>3</sup> and using the formula attached to this report, staff have calculated the adjusted dollar amounts of the exemptions effective April 1, 2022, and revised the *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156) to show the adjusted amounts.<sup>4</sup>

In 2010, the Legislature amended the provisions on exemptions to address potential adjustments to the dollar amount of homestead exemptions provided in section 704.730(a). (See § 703.150(d).) The council is not to make these adjustments, but only to calculate what they would be under the same formula used for adjusting the other exemptions (i.e., based on the change in the CCPI over the past three years) and to provide that information to the Legislature, beginning on April 1, 2013, and at three-year intervals thereafter. (*Ibid.*)

Since the Judicial Council last reported on potential adjustments to dollar amounts of homestead exemption in 2019, the Legislature amended section 704.730. (Assem. Bill 1885; Stats. 2020, ch. 94.) The Legislature substantially increased the amounts of the homestead exemption effective January 1, 2021, and included in the amended statute provisions by which the amounts of the exemption automatically adjust every year based on changes in the California Consumer Price Index, starting January 1, 2022. (Code Civ. Proc. § 704.730(b).)

Although the adjustments have now been made automatic, the Legislature did not, when amending section 704.730, eliminate the provision for triannual reports for potential adjustments. In addition, should the Legislature continue to want the council to calculate and report on such adjustments, however, it is unclear how to calculate the requested dollar amounts, because, as explained in the report to the Legislature (Attachment A), the formula for annual adjustment in section 704.730(b) regarding homestead exemptions is different than the formula for triannual adjustments for other exemptions set forth in section 703.150(e). The report therefore provides the percentage change that would be applied under section 703.150(e), but does not attempt to generate specific dollar amounts. A copy of the formula used to generate the percentage is attached to the report to the Legislature.

### **Dollar amounts under section 699.730**

Recently, the Legislature added a new set of figures to the list of dollar amounts that the council is to adjust and publish every three years under section 703.150(e) and (f): the figures contained in paragraph (7) of subdivision (b) of section 699.730. That code section provides that the principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the property at the time it was incurred. (See Code Civ. Proc., § 699.730(a).) However, the protections in section

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<sup>3</sup> The California Department of Industrial Relations has published the figures on its website, at [www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF](http://www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF).

<sup>4</sup> The current version of form EJ-156 was correctly revised in 2019, although it appears that the “Formula for adjusting exemption amounts on form EJ-156” attached to the 2019 report to the council at page 8 contained some minor typographical errors. Despite the errors on that sheet, the correct numbers were used to adjust the dollar amounts on form EJ-156, and it is those figures that are being adjusted in the proposed revision.



699.730(a) do not apply to certain types of unpaid debts, including debts, other than student loan debt, owed to a financial institution at the time of the execution of a judgment lien, if certain requirements based on dollar amounts are met. (See Code Civ. Proc., § 699.730(b)(7).)

Just as for the exemption amounts, the statute requires that the council adjust the dollar amounts in section 690.730(b)(7) every three years, starting April 1, 2022, based on changes to the CCPI during that period, and to publish the adjusted amounts together with the next scheduled date of adjustment. (See § 703.150(c), (e) & (f).) Because these figures do not represent amounts of income or assets that are exempt from enforcement of judgment, but are instead amounts of a particular type of debt or judgment that cannot serve as the basis for the sale of a principal place of residence, the adjusted figures cannot simply be added to the existing form. Instead, staff is recommending a new, similar form, *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186). The proposed form contains the statutorily required adjustment for April 1, 2022, which staff calculated using the formula attached to this report.

### **Policy implications**

There are no policy implications to these recommendations; they are simply actions required by statute.

### **Comments**

This proposal was not circulated for comment because the changes to the dollar amounts are technical, required by statute, and not subject to discretion.

### **Alternatives considered**

No alternatives to publishing adjusted dollar amounts were considered in light of the statutory mandate that the council adjust the figures every three years beginning in 2004.

### **Fiscal and Operational Impacts**

The implications for this proposal for the trial courts should be minimal. Forms EJ-156 and EJ-186 are informational only and are not filed with or completed by the courts. No costs or operational impacts are associated with the approval of the report to the Legislature.

### **Attachments and Links**

1. Forms EJ-156 and EJ-186, at pages 5–7
2. Formula for adjusting dollar amounts, at page 8
3. Attachment A: *Report required under Code of Civil Procedure section 703.150(c)*
4. Link A: 2021 California Consumer Price Index for All Urban Consumers, Department of Industrial Relations, [www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF](http://www.dir.ca.gov/OPRL/CPI/PresentCCPI.PDF)

**CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS**  
**Code of Civil Procedure sections 703.140(b) and 704.010 et seq.**

**EXEMPTIONS UNDER SECTION 703.140(b)**

The following lists the current dollar amounts of exemptions from enforcement of judgment under Code of Civil Procedure section 703.140(b) used in a case under title 11 of the United States Code (bankruptcy).

These amounts are effective April 1, 2022. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)

<u>Code Civ. Proc., § 703.140(b)</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
<p><b>DRAFT (1)</b>  <b>2/12/2022</b>  <b>Not approved by</b>  <b>the Judicial Council</b></p>	(1) The debtor's aggregate interest in real property or personal property that the debtor or a dependent of the debtor uses as a residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence	\$ 31,950
	(2) The debtor's interest in one or more motor vehicles	\$ 6,375
	(3) The debtor's interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor (value is of any particular item)	\$ 800
	(4) The debtor's aggregate interest in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor	\$ 1,900
	(5) The debtor's aggregate interest, plus any unused amount of the exemption provided under paragraph (1), in any property	\$ 1,700
	(6) The debtor's aggregate interest in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor	\$ 9,525
	(8) The debtor's aggregate interest in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent	\$ 17,075
	(11)(D) The debtor's right to receive, or property traceable to, a payment on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent	\$ 31,950

**CURRENT DOLLAR AMOUNTS OF EXEMPTIONS FROM ENFORCEMENT OF JUDGMENTS**  
**Code of Civil Procedure sections 703.140(b) and 704.010 et seq.**

**EXEMPTIONS UNDER SECTION 704.010 et seq.**

The following lists the current dollar amounts of exemptions from enforcement of judgment under title 9, division 2, chapter 4, article 3 (commencing with section 704.010) of the Code of Civil Procedure.

The amount of the automatic exemption for a deposit account under section 704.220(a) is effective July 1, 2021, and unless otherwise provided by statute after that date, will be adjusted annually effective July 1 by the Department of Social Services under Welfare and Institutions Code section 11453 to reflect the minimum basic standard of care for a family of four as established by § 11452.\*

The other amounts are all effective April 1, 2022. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)

<u>Code Civ. Proc. Section</u>	<u>Type of Property</u>	<u>Amount of Exemption</u>
704.010	Motor vehicle (any combination of aggregate equity, proceeds of execution sale, and proceeds of insurance or other indemnification for loss, damage, or destruction)	\$ 3,625
704.030	Material to be applied to repair or maintenance of residence	\$ 3,825
704.040	Jewelry, heirlooms, art	\$ 9,525
704.060	Personal property used in debtor's or debtor's spouse's trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$4,850)	\$ 9,525
704.060	Personal property used in debtor's and spouse's common trade, business, or profession (amount of exemption for commercial motor vehicle not to exceed \$9,700)	\$ 19,050
704.220	Deposit account, generally (exemption without claim; amount per judgment debtor, section 704.220(a),(e)) <sup>1</sup>	\$ 1,826*
704.080	Deposit account with direct payment of social security or public benefits (exemption without claim, section 704.080(b)) <sup>2</sup>	
	• Public benefits, one depositor is designated payee	\$ 1,900
	• Social security benefits, one depositor is designated payee	\$ 3,825
	• Public benefits, two or more depositors are designated payees <sup>3</sup>	\$ 2,825
	• Social security benefits, two or more depositors are designated payees <sup>3</sup>	\$ 5,725
704.090	Inmate trust account	\$ 1,900
	Inmate trust account (restitution fine or order)	\$ 325 <sup>4</sup>
704.100	Aggregate loan value of unmaturing life insurance policies	\$ 15,250

<sup>1</sup> This exemption does not preclude other exemptions for deposit accounts. However, if the exemption amount for the deposit account applicable under other automatic exemptions—such as those applicable for direct deposit of social security benefits or public benefits—is greater under the other exemptions, then those apply instead of this one. (Code Civ. Proc., § 704.220(b).)

<sup>2</sup> The amount of a deposit account with direct deposited funds that exceeds exemption amounts shown is also exempt to the extent it consists of payments of public benefits or social security benefits. (Code Civ. Proc., § 704.080(c).)

<sup>3</sup> If only one joint payee is a beneficiary of the payment, the exemption is in the amount available to a single designated payee. (Code Civ. Proc., § 704.080(b)(3) and (4).)

<sup>4</sup> This amount is not subject to adjustments under Code Civ. Proc., § 703.150.

## CURRENT DOLLAR AMOUNTS UNDER CODE OF CIVIL PROCEDURE SECTION 699.730(b)

The following lists the dollar amounts set forth in section 699.730(b)(7) of the Code of Civil Procedure, adjusted pursuant to section 703.150.

The principal place of residence of a judgment debtor is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the property at the time it was incurred. (See Code Civ. Proc., § 699.730(a).) However, the provisions in section 699.730(a) do not apply to certain types of unpaid debts, including debts other than student loan debt, owed to a financial institution at the time of the execution of a judgment lien, if certain requirements based on dollar amounts are met. (See Code Civ. Proc. § 699.730(b)(7).)

The amounts stated here are effective April 1, 2022. Unless otherwise provided by statute after that date, they will be adjusted at each three-year interval, ending on March 31. The amount of the adjustment to the prior amounts is based on the change in the annual California Consumer Price Index for All Urban Consumers for the most recent three-year period ending on the preceding December 31, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)

- |                              |  |
|------------------------------|--|
| Section 699.730(b)(7)(A)(i)  | The amount of the original judgment on which the lien is based, when entered, was greater than \$81,850                |
| Section 699.730(b)(7)(A)(ii) | The amount owed on the outstanding judgment at the time of the execution on the judgment lien is greater than \$81,850 |

**DRAFT**  
**2/12/2022**  
**Not approved by**  
**the Judicial Council**

**Calculation of Dollar Amounts Under Code of Civil Procedure  
Sections 699.730, 703.140(b), and 704.010 et seq.  
(Adjusted April 1, 2022)**

The adjustments to the current dollar amounts of the exemptions provided in Code of Civil Procedure sections 703.140(b) and 704.010 et seq., in *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), and to *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186) are calculated as follows:

**Formula**

Under Code of Civil Procedure section 703.150(a), (b), (c), and (e), the adjustments to the dollar amount of the exemptions in sections 703.140(b) and 704.010 et seq. are calculated as follows:

$$\text{Adjusted dollar amount} = \left[ \frac{\text{annual CCPI (2021)} - \text{annual CCPI (2018)}}{\text{annual CCPI (2018)}} + 1 \right] \times \text{Previous dollar amount}$$

This is similar to the method of calculation employed by the Judicial Conference of the United States in calculating adjustments to the federal bankruptcy exemptions, but it uses the California Consumer Price Index instead of the federal equivalent.

**Definition**

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

**Calculation (as of April 1, 2022)**

The calculation for the adjusted dollar amounts in Code of Civil Procedure sections 699.730, 703.140(b), and 704.010 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[ \frac{297.371 - 272.51}{272.51} + 1 \right] \times \text{Previous dollar amount} = 1.09123 \times \text{Previous dollar amount}$$

The adjustments of the dollar amounts of each of the individual exemptions is calculated by increasing the amounts of the individual exemptions by 9.123 percent, with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)



# JUDICIAL COUNCIL OF CALIFORNIA

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*Chair of the Judicial Council*

HON. MARSHA G. SLOUGH  
*Chair, Executive and Planning Committee*

HON. DAVID M. RUBIN  
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*Judicial Council*

March 30, 2022

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Legislative Counsel  
1021 O Street, Suite 3210  
Sacramento, California 95814

Ms. Erika Contreras  
Secretary of the Senate  
State Capitol, Room 3044  
Sacramento, California 95814

Ms. Sue Parker  
Chief Clerk of the Assembly  
State Capitol, Room 319  
Sacramento, California 95814

*Re: Report required under Code of Civil Procedure section 703.150(c)*

Dear Ms. Jenkins, Ms. Contreras, and Ms. Parker:

The Judicial Council respectfully submits this report as required by Code of Civil Procedure section 703.150(d). That statute provides that at three-year intervals beginning on April 1, 2013, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of the homestead exemptions in effect immediately before that date as provided in section 704.730(a) may be increased under the formula set forth in section 703.150(e), should the Legislature approve such an adjustment. The council notes, however, that it is no longer clear how to make that calculation and, even if it were, the adjusted dollar amounts no longer seem to be needed in light of recent legislation that provides for automatic adjustments of the homestead exemption amounts.

Since the Judicial Council last reported on potential adjustments to dollar amounts of homestead exemptions in 2019, the Legislature amended section 704.730. (See Assem. Bill 1885; Stats. 2020, ch. 94.) The Legislature substantially increased the amounts of the homestead

exemption effective January 1, 2021, and included in the amended statute provisions by which the amounts of the exemption automatically adjust every year based on changes in the California Consumer Price Index, starting January 1, 2022. (Code Civ. Proc. § 704.730(b).)

Although the adjustments have now been made automatic, the Legislature did not, when amending section 704.730, eliminate the provision for triannual reports for potential adjustments. If the Legislature should continue to want the council to calculate and report on such adjustments, however, it is unclear how to calculate the requested dollar amounts, because the formula for annual adjustments in section 704.730(b) regarding homestead exemptions is different than the formula for triannual adjustments for other exemptions set forth in section 703.150(e).

- Section 703.150(e) requires the Judicial Council to calculate an adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers (CCPI) for the *prior three-year period* ending December 31, to the dollar amount of exemptions “in effect immediately before” April 1 of every third year.
- Section 704.730(b) provides that, as of January 1, 2022, the amount of the homestead exemptions shall adjust *annually* based on the change in the annual CCPI for the prior *fiscal year*, published by the Department of Industrial Relations.

To adjust the dollar amounts of the homestead exemptions in effect immediately before April 1, 2022 (as required under section 703.150(e)), the council must first determine what those amounts are. Although section 704.730(b) provides that the amounts adjusted as of January 1, 2022 are based on the change in CCPI over the prior *fiscal year*, it is unclear what that change is. The Department of Industrial Relations updates the CCPI every two months, and provides an annual average for the calendar year, but does not publish a fiscal year CCPI. There is no definition of fiscal year in the Code of Civil Procedure; there is one in the Government Code, with the fiscal year beginning July 1 through June 30. However, because the Department of Industrial Relations does not publish a CCPI amount for July (it only publishes amounts for even numbered months), even using that definition does not clarify exactly how to calculate the adjusted amount. The dollar amounts of the homestead exemptions in section 704.730 could, as of January 1, 2022, be adjusted by 4.4% or 4.7%, or something else altogether, depending on what figures from the Department of Industrial Relations are considered to constitute CCPI for the prior fiscal year.<sup>1</sup>

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<sup>1</sup> Assuming the fiscal year is from July 1 to June 30, the change could be measured using the change in the figures published for June 2020 and June 2021 (4.4%) or for August 2020 (the first CCPI published in that fiscal year) and August 2021 (4.7%). Other options exist, such as the change in figures published for August 2020 and June 2021 (the last CCPI during that fiscal year, but only 11 months later, with a 3.9% change). Calculating an annual CPI for

Ms. Cara L. Jenkins  
Ms. Erika Contreras  
Ms. Sue Parker  
March 30, 2022  
Page 3

Moreover, once the current homestead exemption amounts are calculated, applying the adjustments required in section 703.150 would result in duplicative adjustments because, unlike the other exemptions to which that section applies, the homestead exemptions have already been increased twice during the three-year period that is considered under 703.150, with one of the increases based directly on changes in CCPI within that period.

For the above reasons, the council has not included specific dollar amounts in this report. However, the council reports that, should the Legislature decide to adjust the current homestead exemptions in section 704.730 based on the provisions for adjusting exemption amounts under section 703.150(e), the current dollar amounts of the homestead exemptions would be increased by 9.123%. The calculation for making the adjustments is attached.

If you have any questions related to this report, please contact Deborah Brown, Chief Counsel, at 415-865-7667, [deborah.brown@jud.ca.gov](mailto:deborah.brown@jud.ca.gov).

Sincerely,

Martin Hoshino  
Administrative Director  
Judicial Council of California

MH/AMR  
Attachment

Links: Code Civ. Proc., § 703.150:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=703.150.&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=703.150.&lawCode=CCP)

Code Civ. Proc., § 704.730:

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=704.730.&lawCode=CCP](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=704.730.&lawCode=CCP)

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each of those periods (which is not a figure published by Department of Industrial Relations), and comparing it to an annual CPI from the prior fiscal year, could result in yet different percentages.



Ms. Cara L. Jenkins

Ms. Erika Contreras

Ms. Sue Parker

March 30, 2022

Page 4

cc: Eric Dang, Counsel, Office of Senate President pro Tempore Toni G. Atkins  
Alf Brandt, Senior Counsel, Office of Assembly Speaker Anthony Rendon  
Shaun Naidu, Policy Consultant, Office of Assembly Speaker Anthony Rendon  
Anita Lee, Principal Fiscal and Policy Analyst, Legislative Analyst's Office  
Gabriel Petek, Legislative Analyst, Legislative Analyst's Office  
Jessie Romine, Budget Analyst, Department of Finance  
Margie Estrada, Chief Counsel, Senate Judiciary Committee  
Mary Kennedy, Chief Counsel, Senate Public Safety Committee  
Eric Csizmar, Consultant, Senate Republican Policy Office  
Morgan Branch, Consultant, Senate Republican Policy Office  
Alison Merrilees, Chief Counsel, Assembly Judiciary Committee  
Sandy Uribe, Chief Counsel, Assembly Public Safety Committee  
Jennifer Kim, Consultant, Assembly Budget Committee  
Lyndsay Mitchell, Consultant, Assembly Republican Office of Policy & Budget  
Gary Olson, Consultant, Assembly Republican Office of Policy & Budget  
Daryl Thomas, Consultant, Assembly Republican Office of Policy & Budget  
Amy Leach, Minute Clerk, Office of Assembly Chief Clerk  
Cory T. Jaspersen, Director, Governmental Affairs, Judicial Council  
Jenniffer Herman, Administrative Coordinator, Governmental Affairs, Judicial Council

## Attachment 1

### Calculation of Potential Increases to Dollar Amounts Under Code of Civil Procedure Section 704.730 (for April 1, 2022)

#### Formula

Under Code of Civil Procedure section 703.150(d) and (e), the potential adjustments to the dollar amount of the exemptions in sections 704.730 would be calculated as follows:

$$\text{Adjusted dollar amount} = \left[ \frac{\text{annual CCPI (2021)} - \text{annual CCPI (2018)}}{\text{annual CCPI (2018)}} + 1 \right] \times \text{Previous dollar amount}$$

#### Definition

“CCPI” means the California Consumer Price Index for All Urban Consumers published by the Department of Industrial Relations, Division of Labor Statistics.

#### Calculation (as of April 1, 2022)

The calculation for potential adjustments to the dollar amounts in Code of Civil Procedure sections 704.730 et seq. is based on the following formula:

$$\text{Adjusted dollar amount} = \left[ \frac{297.371 - 272.51}{272.51} + 1 \right] \times \text{Previous dollar amount} = 1.09123 \times \text{Previous dollar amount}$$

The adjusted amounts for each of the exemption amounts in section 703.740 would be calculated by increasing the individual dollar amounts by 9.123 percent with each adjusted amount rounded to the nearest \$25. (See Code Civ. Proc., § 703.150(e).)