

Judicial Council of California

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

INVITATION TO COMMENT

SP14-06

Title	Action Requested
Judicial Administration: Rule for Trial Court Budget Advisory Committee	Review and submit comments by September 19, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 10.64	October 28, 2014
Proposed by	Contact
Executive and Planning Committee Hon. Douglas P. Miller, Chair	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov

Executive Summary and Origin

This proposal would amend California Rules of Court, rule 10.64, the rule for the Trial Court Budget Advisory Committee, to make a change to the membership category for presiding judges. It would provide that “presiding judge,” as used in the rule, means a current presiding judge or an immediate past presiding judge.

Background

Effective February 20, 2014, the council adopted rule 10.64 setting out the area of focus, additional duties, and membership provisions for the Trial Court Budget Advisory Committee.

The Proposal

The primary amendment to rule 10.64

Rule 10.64(c) would be amended to allow an immediate past presiding judge to serve as a member. Membership on the advisory committee is limited to presiding judges and court executive officers. Under the current rule, a judicial officer member must be a current presiding judge, although the rule permits a presiding judge to complete his or her term on the advisory committee even if his or her term as presiding judge of a trial court ends. Thus, a presiding judge could be appointed to the advisory committee at the beginning of his or her first or second year as presiding judge and continue to serve the three-year advisory committee term after stepping down as presiding judge.¹ But the committee has found that a member’s experience as a presiding judge is invaluable and believes that allowing an immediate past presiding judge to be

¹ Most advisory committee terms are three years. “The Chief Justice appoints advisory committee members to three-year terms unless another term is specified in these rules.” (Cal. Rules of Court, rule 10.31(b).)

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

appointed would benefit the work of the committee and, ultimately, the Judicial Council, as it makes decisions about the allocation of funds to trial courts. Presiding judges and court executives, who lead and manage trial courts and are most familiar with and experienced in courts' needs and budgets, are essential to the committee's work and exclusively make up its membership. A court executive officer usually remains in that position for many years beyond the three-year membership term of the advisory committee and can therefore serve multiple terms, if appropriate. A presiding judge, by contrast, usually serves for two years in that capacity and can serve out only one advisory committee term before becoming ineligible under the current rule. The proposal would rectify this problem by allowing an immediate past presiding judge to serve. A judge who just completed a term as presiding judge would have recent experience in leading and managing a court and would be well aware of a court's current needs and challenges, while also being removed from the day-to-day leadership of a trial court. A judge in this position would benefit the committee.

Allowing an immediate past presiding judge to complete his or her term is important for continuity of committee membership and to avoid having three-year terms cut unexpectedly. The amendment is drafted to accomplish this goal. For example, an immediate past presiding judge could be appointed to the committee and be succeeded on the court by another presiding judge, who could be succeeded by another presiding judge, all during the initial judge's three-year membership term on the committee. In this example, the initial judge—who is serving on the committee—would no longer be an immediate past presiding judge. But because the proposal would define *presiding judge* as a “current presiding judge or an immediate past presiding judge,” and current rule 10.64 permits a presiding judge on the committee to complete his or her term even if his or her term as presiding judge of a trial court ends, a member in this circumstance could complete his or her committee term. That person would be within the rule's definition of presiding judge and could complete his or her term.

The motivation for this change is to increase the pool of presiding judge applications for upcoming nomination cycles. In the 2014–2015 cycle, the number of presiding judge applicants was insufficient for the number of available membership slots. The proposed change would address these recruitment issues as well as provide a mechanism, as noted above, for retaining critical budget knowledge acquired by presiding judges.

Other amendments to rule 10.64

Rule 10.64(c)(2) would also be amended to provide that no more than two members of the committee may be from the same court. Currently, the rule provides that a presiding judge and a court executive officer may not be from the same court. With the amendment that defines a presiding judge as a “current presiding judge or an immediate past presiding judge,” two presiding judges and a court executive officer from the same court could simultaneously serve on the committee unless subdivision (c)(2) is changed as proposed.

Subdivision (c)(5) would be amended to replace “Administrative Office of the Courts’ ” with “Judicial Council’s,” reflecting the recent retirement of the name Administrative Office of the

Courts and to replace “director of the fiscal services office” with “director of Finance” reflecting a change in the name of that office. Also, a change in the cochair structure would be made by deleting subdivision (d), which currently provides that “[t]he Chief Justice appoints a presiding judge and the Director of the Fiscal Services Office to serve as cochairs.” With this amendment, the director of Finance would no longer serve as cochair. The rule would not need a provision concerning the chair or cochairs of the committee because rule 10.31(c) addresses this issue for all advisory committees.

Alternatives Considered

The rule could remain unchanged but the committee would not gain the benefits of an immediate past presiding judge’s experience and knowledge.

Implementation Requirements, Costs, and Operational Impacts

Immediately after the rule is amended, a solicitation for nominations for membership would occur for a period of approximately two weeks. This would allow the appointment of members who are immediate past presiding judges, among other members. Members would likely be appointed by January 1, 2015, so that the Trial Court Budget Advisory Committee could begin meeting when the Governor releases the January budget proposal. This timeline would allow continuity in membership through the budget cycle so that the advisory committee could most effectively analyze the proposed trial court budget and assist in developing data necessary to support trial court budget advocacy efforts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Executive and Planning Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Cal. Rules of Court, rule 10.64, at page 4

Rule 10.64 of the California Rules of Court would be amended, effective December 12, 2014, to read:

1 **Rule 10.64. Trial Court Budget Advisory Committee**

2
3 **(a)–(b) * * ***

4
5 **(c) Membership**

- 6
7 (1) The advisory committee consists of an equal number of trial court presiding
8 judges and court executive officers reflecting diverse aspects of state trial
9 courts, including urban, suburban, and rural locales; the size and adequacy of
10 budgets; and the number of authorized judgeships. For purposes of this rule,
11 “presiding judge” means a current presiding judge or an immediate past
12 presiding judge.
- 13
14 (2) ~~A presiding judge and court executive officer~~ No more than two members
15 may be from the same court.
- 16
17 (3) The chairs of the Trial Court Presiding Judges Advisory Committee and the
18 Court Executives Advisory Committee serve as ex officio voting members.
- 19
20 (4) Notwithstanding rule 10.31(e), a presiding judge is qualified to complete his
21 or her term on the advisory committee even if his or her term as presiding
22 judge of a trial court ends.
- 23
24 (5) ~~The Administrative Office of the Courts’~~ Judicial Council’s chief of staff,
25 chief administrative officer, chief operating officer, and director of ~~the fiscal~~
26 ~~services office~~ Finance serve as non-voting members.

27
28 **(d) Cochairs**

29
30 ~~The Chief Justice appoints a presiding judge and the Director of the Fiscal Services~~
31 ~~Office to serve as cochairs.~~

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INVITATION TO COMMENT SP14-07

Title	Action Requested
Judicial Administration: Rules for Advisory Groups	Review and submit comments by October 3, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 10.65, 10.66, and 10.67; amend rules 10.2 and 10.50; and revise <i>Trial Court Facility Modifications Policy</i>	December 12, 2014
	Contact
	Susan R. McMullan, 415-865-7990 susan.mcmullan@jud.ca.gov
Proposed by	
Executive and Planning Committee Hon. Douglas P. Miller, Chair	

Executive Summary and Origin

This proposal would adopt California Rules of Court for three Judicial Council advisory committees and amend three rules: two for advisory committees and one that addresses concurrent membership on the council and a council advisory committee. At its meeting on April 25, 2013, the Judicial Council approved the *Report and Recommendations to Improve the Governance, Structure, and Organization of Judicial Council Advisory Groups*¹ (*Report and Recommendations*) submitted by the Rules and Projects Committee (RUPRO), the Executive and Planning Committee (E&P), and the Technology Committee (JCTC). Among the recommendations was the establishment by rule of the Trial Court Facility Modification Advisory Committee (TCFMAC). This proposal would establish a rule for the TCFMAC, the Workload Assessment Advisory Committee, and the Judicial Branch Workers' Compensation Advisory Committee, and amend the rule for the Center for Judicial Education and Research (CJER) Governing Committee.²

¹ The report can be found at www.courts.ca.gov/documents/jc-20130426-item4.pdf.

² At the time the *Report and Recommendations* was approved, the Workload Assessment Advisory Committee was known as the Senate Bill 56 Working Group. The *Report and Recommendations* did not include recommendations to develop rules for the Workload Assessment Advisory Committee or the Judicial Branch Workers' Compensation Advisory Committee, or to amend the CJER Governing Committee rule; the recommendations for rules for those advisory groups followed.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Background

The council initiative for reviewing the governance, structure, and organization of the council's advisory groups had its genesis in its June 2011 planning meeting. In August 2011, E&P made this recommendation to the council:

The Judicial Council will review the structure and organization of its advisory groups, including its advisory committees and task forces, and their subcommittees and advisory groups.³

That review resulted in the *Report and Recommendations* and the adoption, amendment, or repeal of certain advisory committee rules and an internal committee rule. Effective October 25, 2013, the council adopted rules for the Tribal Court–State Court Forum and the Court Security Advisory Committee. Effective February 20, 2014, the council adopted rules for the Court Facilities Advisory Committee, the Trial Court Budget Advisory Committee, and the Advisory Committee on Financial Accountability and Efficiency, and amended four rules; the council also adopted a rule for the Judicial Council Technology Committee.

The Proposal

Council advisory committees provide policy recommendations and advice to the council on topics the Chief Justice or the council specifies using the individual and collective experience, opinions, and wisdom of their members. (See Cal. Rules of Court, rule 10.30(a).) This proposal would establish by rule of court the Trial Court Facility Modification Advisory Committee, the Workload Assessment Advisory Committee, and the Judicial Branch Workers' Compensation Advisory Committee and set out their areas of focus, responsibilities, and membership categories. Because existing rules address the nominations process, member selection, and appointment for advisory committees, the proposed new rules do not include such provisions.

Existing rules 10.31–10.34 address, respectively, council advisory bodies, advisory committee membership and terms, nominations and appointments to advisory committees, advisory committee meetings, and duties and responsibilities of advisory committees. Unless otherwise stated—or other provisions addressing these matters appear in proposed rules 10.65, 10.66, and 10.67—these rules apply to the rules establishing the Trial Court Facility Modification Advisory Committee, the Workload Assessment Advisory Committee, and the Judicial Branch Workers' Compensation Advisory Committee.

In addition, the proposal would amend the rule for the CJER Governing Committee to make changes that affect membership. Rule 10.2 on Judicial Council membership and terms would be amended to provide that restriction on advisory committee membership in that rule may be modified by other provisions in advisory committee rules.

³ Judicial Council meeting minutes, August 25–26, 2011, page 7, report from the Chair of the E&P: <http://www.courts.ca.gov/documents/jc-20110826-minutes.pdf>. See also, Minutes, August 12, 2011, E&P meeting: <http://www.courts.ca.gov/documents/jc-121311-comrep.pdf>.

This proposal will benefit the council and judicial branch by continuing to implement recommendations about specific subject matter advisory groups and their functions, charges, and oversight contained in the *Report and Recommendations*.

New Rules

Rule 10.65 and policy (Trial Court Facility Modification Advisory Committee). This rule would address the Trial Court Facility Modification Advisory Committee and provide that its area of focus is to make recommendations to the council on facilities modifications, maintenance, and operations; environmental services; and utility management. The committee's additional duties would be described in subdivision (b) as follows:

The committee:

- (1) Makes recommendations to the council on policy issues, business practices, and budget monitoring and control for all facility-related matters in existing branch facilities.
- (2) Makes recommendations to the council on funding and takes additional action in accordance with council policy, both for facility modifications and for operations and maintenance.
- (3) Collaborates with the Court Facilities Advisory Committee in the development of the capital program, including providing input to design standards, prioritization of capital projects, and methods to reduce construction cost without impacting long-term operations and maintenance cost.
- (4) Provides quarterly and annual reports on the facilities modification program in accordance with the council policy.

The committee has existed as a working group since 2005, functioning within the area of focus and duties that are proposed for rule 10.65. The rule would reference in subdivision (b)(2) and (4) (paragraphs (2) and (4) immediately above)—certain duties performed by the committee in accordance with council policy. That policy, identified in a proposed advisory committee comment to the rule, is the *Trial Court Facility Modifications Policy*, which was approved by the council in July 2012.⁴ This proposal would revise the policy to eliminate provisions inconsistent with the new rule, such as the provisions on membership criteria and terms of the former working group, as they are no longer needed.

⁴ The policy replaced and superseded the Judicial Council's *Prioritization Methodology for Modifications to Court Facilities*.

Rule 10.66 (Workload Assessment Advisory Committee). The rule governing the Workload Assessment Advisory Committee would provide that the committee's area of focus is to make recommendations to the council on judicial administration standards and measures that provide for the equitable allocation of resources across courts to promote the fair and efficient administration of justice. The rule would set out the following additional duties in subdivision (b):

The committee must recommend:

- (1) Improvements to performance measures and implementation plans and any modifications to the Judicial Workload Assessment and the Resource Assessment Study Model;
- (2) Processes, study design, and methodologies that should be used to measure and report on court administration; and
- (3) Studies and analyses to update and amend case weights through time studies, focus groups, or other methods.

The area of focus and additional duties are drawn from the charge to the predecessor working group to the committee, the Senate Bill (SB) 56 Working Group, which was established in 2009. The rule shifts some responsibilities contained in the charge to the new advisory committee and from staff to the former Administrative Office of the Courts (AOC). For example, the charge provided that the AOC Office of Court Research (OCR) was responsible for developing a comprehensive model for performance measures for court systems and for preparing amendments to the Judicial Workload Assessment and the Resource Assessment Study models, as they relate to standards and measures of court administration. Under the proposed rule, the committee would have these responsibilities. (Proposed rule 10.66(b)(2).)

In addition, the proposal made changes to certain criteria for membership, eliminating the requirement that a member has recently served on the Civil and Small Claims, Collaborative Justice Courts, Family and Juvenile Law, Criminal Law, Probate and Mental Health, or Traffic Advisory committee as it was determined to be unnecessary. The rule would provide that membership is made up of an equal number of superior court judicial officers and court executive officers reflecting diverse aspects of state trial courts.

Rule 10.67 (Judicial Branch Workers' Compensation Advisory Committee).

This advisory committee succeeds the Judicial Branch Workers' Compensation Oversight Committee, formerly a subcommittee of the Trial Court Budget Advisory Committee. It was created in 2001 to assist superior courts with the then-newly-established workers' compensation program. The workers' compensation program is no longer limited to the trial courts: it has expanded to include all judicial branch entities except the Superior Court of Los Angeles County. The rule would provide that the committee's area of focus is to make

recommendations to the council for improving the statewide administration of the Judicial Branch Workers' Compensation Program and on allocations to and from the Judicial Branch Workers' Compensation Fund established under Government Code section 68114.10. The rule would include an advisory committee comment that cross-references rule 10.350, which authorizes the Judicial Council staff to administer the workers' compensation program for the trial courts.

Amended Rules

Rule 10.2 (Judicial Council membership and terms).

Rule 10.2 would be amended to add the following underlined text:

Unless otherwise provided by these rules or the Chief Justice waives this provision, neither council members nor nonvoting advisory council members may concurrently serve on a council advisory committee.

This amendment would clarify that the chair of the Trial Court Presiding Judges Advisory Committee (TCPJAC), who also serves as an ex officio voting member of the Trial Court Budget Advisory Committee under rule 10.64(c)(3), may also serve on the council. The provision in rule 10.64(c)(3) that the chair of the TCPJAC serves as an ex officio member of the TCBAC fulfills the description of being "other provided by these rules" and therefore clarifies that a presiding judge may simultaneously serve on the council and the Trial Court Budget Advisory Committee.

Rule 10.50 (CJER Governing Committee).

Rule 10.50 would be amended to increase the number of judicial officer members from 8 to 11, and to provide for a member who is a supervisor or manager in a trial or appellate court. The Executive and Planning Committee, at its February 11, 2014 meeting, approved a recommendation from Justice Robert L. Dondero, Chair of the CJER Governing Committee, to expand the committee membership by the appointment of an additional three judges, one of which would be an immediate past presiding judge, and by the appointment of a supervisor or manager from the trial or appellate courts. Since the CJER Governing Committee changed its education development model in 2009 to include a comprehensive two-year education plan for the entire judicial branch, its responsibilities have dramatically increased. The CJER Governing Committee must oversee the successful execution of the plan, as well as adapt and revise the plan during its execution. This requires the membership to have a greater level of substantive expertise and a broader representation of the many judicial branch audiences that the education plan serves.

Alternatives Considered

During the review by three of the council's internal committees—RUPRO, E&P, and JCTC—which resulted in the *Report and Recommendations to Improve the Governance, Structure, and Organization of Judicial Council Advisory Groups*, the committees evaluated ways to achieve the following objectives:

1. Create efficiencies by consolidating certain committee activities and reducing overlapping responsibilities;
2. Reduce the costs associated with committee operations, including gaining a better understanding of the resources and staff support reasonably needed by the council's advisory groups;
3. Strengthen Judicial Council oversight of the groups that had not been directly overseen by the council, such as subcommittees and subgroups that had been created by the council's advisory groups; and
4. Create formal standing advisory committees to succeed task forces and working groups when the continued assistance of those groups is needed.

The internal committees concluded in the *Report and Recommendations* and decisions that followed that establishing the Trial Court Facility Modification Advisory Committee, the Workload Assessment Advisory Committee, and the Judicial Branch Workers Compensation Advisory Committee as standing advisory committees would assist in achieving these objectives. In addition, E&P recognized the need for amendments to the rule for the CJER Governing Committee and rule 10.2 on Judicial Council membership and terms.

Implementation Requirements, Costs, and Operational Impacts

Advisory committee costs include the costs of members' travel, meals and lodging (if needed) for in-person meetings, and the cost of telephone and video conferences; other costs include staff time. The council has determined that the subject areas of the three new advisory committees—all of which been in existence for several years as working groups—are ones in which both the council and judicial branch would benefit from policy recommendations and advice. It has also determined that it is appropriate to establish advisory groups of members with diverse experience to provide recommendations and advice in the needed subject areas.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Executive and Planning Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purposes?
- [Include any other specific issues for which the proponent seeks comments.]

Attachments and Links

1. California Rules of Court, rules 10.2, 10.50, and 10.65–10.67, at pages 7–10
2. *Trial Court Facility Modifications Policy* (revisions effective December 12, 2014), at pages 11–20

Rules 10.65, 10.66, and 10.67 of the California Rules of Court would be adopted and rules 10.2 and 10.50 would be amended, effective December 12, 2014, to read:

1 **Rule 10.2. Judicial Council membership and terms**

2
3 (a)–(d) * * *

4
5 (e) **Restrictions on advisory committee membership**

6
7 Unless otherwise provided by these rules or the Chief Justice waives this provision,
8 neither council members nor nonvoting advisory council members may
9 concurrently serve on a council advisory committee. This provision does not apply
10 to members of the following advisory committees:

- 11
12 (1) Administrative Presiding Justices;
13
14 (2) Trial Court Presiding Judges; and
15
16 (3) Court Executives.

17
18 **Rule 10.50. Governing Committee of the Center for Judicial Education and**
19 **Research**

20
21 (a)–(c) * * *

22
23 (d) **Membership**

24
25 The committee consists of at least the following members:

- 26
27 (1) ~~Eight~~ Eleven sitting judicial officers, including at least one appellate court
28 justice and one immediate past presiding judge;
29
30 (2) Three judicial administrators, including a supervisor or manager from a trial
31 or appellate court;
32
33 (3) The Administrative Director ~~of the Courts~~ as an advisory member;
34
35 (4) The president of the California Judges Association or his or her designee as
36 an advisory member; and
37
38 (5) Other advisory members as the Chief Justice may appoint.

39
40 (e)–(f) * * *

1 **Rule 10.65. Trial Court Facility Modification Advisory Committee**

2
3 **(a) Area of focus**

4
5 The committee makes recommendations to the council on facilities modifications,
6 maintenance, and operations; environmental services; and utility management.

7
8 **(b) Additional duties**

9
10 In addition to the duties specified in rule 10.34, the committee:

- 11
12 (1) Makes recommendations to the council on policy issues, business practices,
13 and budget monitoring and control for all facility-related matters in existing
14 branch facilities.
- 15
16 (2) Makes recommendations to the council on funding and takes additional
17 action in accordance with council policy, both for facility modifications and
18 for operations and maintenance.
- 19
20 (3) Collaborates with the Court Facilities Advisory Committee in the development
21 of the capital program, including providing input to design standards,
22 prioritization of capital projects, and methods to reduce construction cost without
23 impacting long-term operations and maintenance cost.
- 24
25 (4) Provides quarterly and annual reports on the facilities modification program
26 in accordance with the council policy.

27
28 **(c) Membership**

29
30 The committee consists of members from the following categories:

- 31
32 (1) Trial court judges; and
33
34 (2) Court executive officers.

35
36 The committee includes the chair and vice-chair of the Court Facilities Advisory
37 Committee, as non-voting members.

38
39 Advisory Committee Comment

40
41 The Judicial Council policy referred to in the rule is contained in the *Trial Court Facility*
42 *Modifications Policy* adopted by the council.

1 **Rule 10.66. Workload Assessment Advisory Committee**

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
11 In addition to the duties specified in rule 10.34, the committee must recommend:
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 **Rule 10.67. Judicial Branch Workers Compensation Advisory Committee**

34
35 **(a) Area of focus**

36
37 The committee makes recommendations to the council for improving the statewide
38 administration of the Judicial Branch Workers' Compensation Program and on
39 allocations to and from the Judicial Branch Workers' Compensation Fund
40 established under Government Code section 68114.10.
41

42 **(b) Additional duties**

1 In addition to the duties specified in rule 10.34, the committee must review:
2

3 (1) The progress of the Judicial Branch Workers' Compensation Program;
4

5 (2) The annual actuarial report; and
6

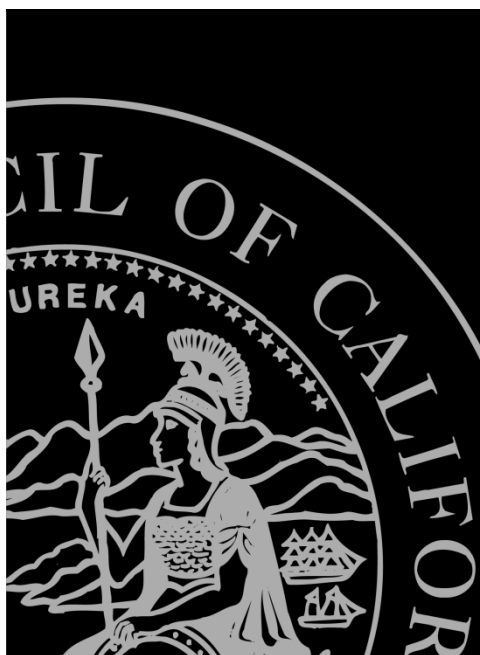
7 (3) The annual allocation, including any changes to existing methodologies for
8 allocating workers' compensation costs.
9

10 **(c) Membership**
11

12 The advisory committee consists of persons from trial courts and state judicial
13 branch entities knowledgeable about workers' compensation matters, including
14 court executive officers, appellate court clerk/administrators, and human resources
15 professionals.
16

17 Advisory Committee Comment
18

19 The Judicial Branch Workers' Compensation Program is administered by the Judicial Council
20 staff under rule 10.350.



Trial Court Facility Modifications Policy

ADOPTED AND EFFECTIVE
JULY 27, 2012

REVISED DECEMBER 12, 2014

I. Purpose

Government Code section 70391(h) requires the Judicial Council to allocate appropriated funds for the maintenance and construction of court facilities. Government Code section 70374(c)(1) authorizes the use of funds in the State Court Facilities Construction Fund for projects involving, among other things, rehabilitation, renovation, or replacement of court facilities. This document presents the methodology and process for identifying and prioritizing facility modifications (Facility Modifications) to be made to trial court facilities, the responsibility or title for which rests with the state.

~~This document~~ The Trial Court Facility Modifications Policy, initially approved and effective July 27, 2012, ~~replaced~~ replaces and ~~superseded~~ supersedes the Judicial Council's *Prioritization Methodology for Modifications to Court Facilities*, last revised April 24, 2009, and if approved, would become effective July 27, 2012. This revised Trial Court Facility Modifications Policy, if approved by the council, will become effective December 12, 2014.

II. Definitions

A. Facility Modification

A Facility Modification is a physical modification to a facility or its components that restores or improves the designed level of function of a facility or facility components. A Facility Modification may consist of:

- A modification that alters or increases the designed level of services of a building;
- A “special improvement” meaning a one-time modification to a facility that is not expected to be repeated during the lifetime of the facility;
- An alteration, addition to, or betterment of a facility that changes its function, layout, capacity, or quality;
- A rehabilitation, which restores a facility to its former state or capacity;
- A renovation, which restores a facility to a former or better state, including by repairing or reconstructing facility components;
- A replacement, which puts a new facility component of the same or better quality or function, in the place of an existing facility component;
- The addition of new systems, equipment, or components to a facility that would not otherwise exist;
- A modification to a facility that is required to bring the facility into compliance with law, including but not limited to the Americans with Disabilities Act, title 24 of the California Code of Regulations, and federal and state hazardous materials laws and regulations;
- Any of the foregoing where a facility or its components are damaged, seriously deteriorated, dysfunctional, subject to intermittent service outage,

or otherwise in insufficient operating condition as a result of deferred maintenance, emergency, acts of God, severe wind or weather conditions, vandalism, or criminal activity; and

- A correction of collateral damage arising from an emergency incident or unanticipated finding that is discovered during the performance of Facility Modification work.

A Facility Modification differs from routine maintenance and repair of a court facility, which is the routine, recurring, and generally anticipated work that must be performed periodically throughout the life of a facility to keep the building and its grounds, equipment, and utilities infrastructure in a condition adequate to support their designed level of service. Routine maintenance and repair includes annual or less frequent periodic repairs and replacements of building components and equipment consistent with manufacturers' recommendations or industry-recommended service cycles. While a Facility Modification may either restore or improve a facility's designed level of function, routine maintenance and repair always maintains, without materially improving, the facility and its components at their designed level of function. Routine maintenance and repair is the basic and ongoing work that is needed, as part of ordinary facility operation and management, to keep the facility and its components in a condition adequate to support existing facility operations and to prevent deterioration, break down, and service interruptions.

In some instances, it is difficult to distinguish between a Facility Modification, on the one hand, and routine maintenance and repair, on the other hand. Facility Modifications are distinguished from routine maintenance and repair based on the scope and complexity of the work to be performed, and the anticipated impact of the work on the ongoing operation of the facility. Factors to be considered in evaluating the scope, complexity, and impact of a project include:

- The amount of time and materials needed to complete the work;
- The number of steps involved in completing the project;
- The type and number of tools required to perform the work;
- The extent to which facility structures or equipment must be altered or moved to complete the project;
- Whether the facility component involved is a substantial part of a major facility system;
- Whether one or more facility systems will be disrupted or taken out of service as a result of the project; and
- Whether the project involves critical facility systems such as life safety or security equipment, HVAC equipment, utilities infrastructure, roofs and other structural components, or accessibility features (i.e., elevators, escalators, doors, parking lots and structures).

Projects of greater scope and complexity or with a more critical impact on the ongoing safe and secure operation of the court facility are more likely to be Facility Modifications; however, for projects that are more difficult to distinguish, case-by-case evaluation is required.

A Facility Modification differs from a capital project, which significantly increases the facility's gross area; substantially renovates the majority (more than 50 percent) of the facility; involves the construction of a new facility or a facility acquisition; or changes the use of the facility, as in a conversion from another use to court use.

B. Judicial Branch Facilities' Customer Service Center (CSC)

The Judicial Branch Facilities' Customer Service Center, or CSC, is a, 24-hour service center established to receive, track, and control all work statewide related to court facilities. The center is managed by ~~the Office of Court Construction~~ Real Estate and Facilities Management (OCCM), ~~a division of the Administrative Office of the Courts (AOC)~~ within the Judicial and Court Administrative Services Office. The CSC is the primary contact point for all Facility Modification requests and all maintenance services. The e-mail address is csc@jud.ca.gov.

C. Facility Modification Budget Allocation Categories

1. Statewide Facility Modifications Planning Allocation

The Statewide Facility Modifications Planning Allocation is the portion of the Facility Modifications budget set aside by the Judicial Council for planning, investigations, and other activities related to the identification, solution analysis or development of Facility Modification requirements, estimates, and plans. This includes studies of issues that may eventually require Facility Modifications as well as full facility assessments used for long-range planning of the Facility Modification program. This budget does not include detailed construction design work, which is incorporated into the cost of each specific Facility Modification.

2. Priority 1 Facility Modifications Allocation

The Priority 1 Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for performance of emergency Facility Modifications. Due to the unpredictable nature of these Facility Modifications funding must be set aside to ensure an adequate reserve to address any emergencies that may arise over the course of the ~~Fiscal Year~~ fiscal year.

3. Planned Facility Modifications Allocation

The Planned Facility Modifications Allocation is the portion of the Facility Modification budget set aside by the Judicial Council for Facility Modifications that the ~~TCFMWG~~ Trial Court Facility Modification Advisory Committee

(TCFMAC) has fully vetted and recommended for funding at the beginning of the ~~Fiscal Year~~ fiscal year and that are approved by the Judicial Council. Typically these Facility Modifications are considered to be among the highest priority from those *not* funded in the previous year due to budget constraints. Funds remaining in this allocation after all Planned Facility Modifications have been completed can be reallocated by the ~~TCFMWG~~ TCFMAC among the other Facilities Modification Budget Categories. The Judicial Council will be advised of any such reallocations in the annual information report submitted after the close of each fiscal year. The report also will indicate if any Planned Facility Modifications approved by the council are cancelled.

4. Priority 2–6 Facility Modifications Allocation

The remainder of the Facility Modifications budget is set aside by the Judicial Council for Priority 2–6 Facility Modifications that were either not received prior to the beginning of the fiscal year or involved lower-priority work not yet fully vetted and estimated but eligible for funding during the current fiscal year depending on funds available and priority of the requested modification.

This budget allocation is spread over the course of the ~~Fiscal Year~~ fiscal year by the ~~TCFMWG~~ TCFMAC to fund requests that are ad hoc or unplanned, but that rank among the highest priority Facility Modifications. The ~~TCFMWG~~ TCFMAC will determine at the beginning of the fiscal year the amount to be used at each of its meetings as part of a plan to stage the work over the course of the year. This will allow for funding decisions at each meeting to ensure funds are spent appropriately and fully for the fiscal year. Based on this funding determination the ~~AOC~~ Judicial Council staff will present a proposed list of Facility Modification at each meeting. The ~~TCFMWG~~ TCFMAC will then approve or disapprove funding for each of the proposed Facility Modifications.

III. Priority Categories

Priority Categories for Facility Modifications

Projects determined to be Facility Modifications will be assigned one of the six priority categories described below. These priority categories are based on methods commonly used by private sector facility management firms. Facility Modifications will be prioritized based on confirmation that the requested project qualifies as a Facility Modification under the criteria in section IIA above, as well as by priority category, specific justifications, effect on court operations, public and employee safety, risk management and mitigation, funding availability, equity among the courts, implementation feasibility, cost/benefit analysis, planning and design status, contribution to ADA compliance, and status of major capital improvements.

Facility Modifications determined to be Priority 1 will be addressed immediately and regardless of whether the court occupies a shared-use facility. Planned Priority 2–6 Facility Modifications requested for shared-use facilities will be assigned an appropriate priority category; their prioritization and implementation may be dependent, however, on financial participation by the county that shares the building.

Priority categories for Facility Modifications are as follows:

Priority 1—Immediately or Potentially Critical. A Priority 1 ranking is appropriate where a condition of the facility requires immediate action to return the facility to normal operations or where a condition exists that will become critical if not corrected expeditiously. Such conditions necessitate a Facility Modification to prevent accelerated deterioration, damage, or dysfunction; to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees; or to remedy intermittent function, service interruptions, or potential safety hazards. These conditions may include, but are not limited to, major flooding, substantial damage to roofs or other structural building components, or actual or imminent hazardous material release or exposure. Depending on scope, complexity, and impact, a severe deterioration in life safety or security components may also be considered a condition requiring a Priority 1 Facility Modification.

Owing to their critical nature, Priority 1 Facility Modification requests will be addressed immediately by AOC staff using internal procedures—including a method and a process for setting aside funds to address Priority 1 requests—that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions.

Priority 2—Necessary, But Not Yet Critical. A Priority 2 ranking is appropriate where a facility requires a modification to preclude deterioration, potential loss of function or service, or associated damage or higher costs if correction of a condition is further deferred.

Priority 3—Needed. A Priority 3 ranking is appropriate where addressing a Facility Modification will reduce long-term maintenance or repair costs or improve the functionality, usability, and accessibility of a court facility. Such a condition is not hindering to the most basic functions of the facility, but its correction will improve court operations.

Priority 4—Does Not Meet Current Codes or Standards. A Priority 4 ranking is appropriate where a facility or one or more of its components does not conform to current code requirements, despite having complied with all codes in place at the time of initial construction. Such conditions are considered *legally nonconforming*, and their modification to meet current code requirements is generally not required.

Priority 5—Beyond Rated Life, But Serviceable. A Priority 5 ranking is appropriate where a facility is currently adequate to support court operations but, owing to some condition, cannot be expected to fully and properly function as designed for more than one year without the requested Facility Modification.

Priority 6—Hazardous Materials, Managed But Not Abated. A Priority 6 ranking is appropriate for a Facility Modification where a facility contains hazardous materials, such as asbestos or lead-based paints, that are managed in place and not yet abated.

IV. Process for Requesting and Prioritizing Facility Modifications

A. Requesting Facility Modifications

Potential Facility Modifications will be identified by court and Judicial Council personnel through requests made to the CSC. The ~~AOC~~ Judicial Council staff in collaboration with the local court staff will:

- Confirm that each requested project is a Facility Modification under the criteria set forth above in section II;
 - Assign a priority category to each request;
 - Resolve any questions and develop a preliminary cost estimate; and
 - Finalize the scope of the Facility Modification.
1. **Priority 1 Requests.** Owing to their critical nature, Priority 1 requests will be addressed immediately by Judicial Council staff using internal procedures that ensure timely and effective responses to unplanned damage, deterioration, or dysfunction resulting from an emergency or other potentially critical conditions. Judicial Council staff will report to the ~~TCFMWG~~ TCFMAC on all Priority 1 requests as part of the next scheduled ~~TCFMWG~~ TCFMAC meeting.
 2. **Priority 2–6 Requests.** Requests for Priority 2–6 Facility Modifications will be tracked by the Judicial Council and the courts using the Judicial Council’s Computer Aided Facility Management (CAFM) database. Each request will outline the problem to be addressed and state the impact if the problem is not addressed. Requests will be processed by CSC staff and tracked in CAFM.

B. Prioritizing Requests for Priority 2–6 Facility Modifications

The following criteria will be used in ranking of all noncritical Facility Modifications:

- Priority category;
- Specific justifications, effect on court operations;
- Public and employee safety and security, and risk management;
- Funding availability;
- Equity among the courts;

- Implementation feasibility;
- Cost/benefit analysis;
- Design and plan status;
- Contribution to ADA compliance; and
- Planned major capital improvements.

~~V. Trial Court Facility Modifications Working Group~~

~~A. Trial Court Facility Modifications Working Group: Membership and Terms~~

~~The Trial Court Facility Modifications Working Group (TCFMWG) has been established by the Judicial Council to review Facility Modification needs across the state. Judges or court executive officers from any California court who have knowledge of or interest in facilities management or construction are eligible to apply for membership. The TCFMWG consists of five judges selected by the Trial Court Presiding Judges Advisory Committee and three Court Executive Officers selected by the Court Executive Officers Advisory Committee. Members serve a three-year term, though terms may be extended at the discretion of the chair of the Court Facilities Working Group (CFWG). The chair and vice chair of the TCFMWG are appointed from among the TCFMWG membership by the Chief Justice, with recommendations from the chair of the CFWG. AOC staff is responsible for notifying the pertinent selection committee when new members need to be appointed.~~

C. Trial Court Facility Modifications Working Group Advisory Committee: Duties and Procedures

The ~~TCFMWG~~ TCFMAC will meet as needed to review the ~~AOC~~ Judicial Council staff-prepared reports, which will include a suggested ranked list of all proposed Facility Modifications with fully developed scopes of work and cost estimates as well as current funding availability. The total cost of all modifications on the draft ranked list may not exceed total available funding for the current fiscal year. Based on a review of the ~~AOC~~ Judicial Council reports and any other available information, the ~~TCFMWG~~ TCFMAC will determine which modifications to recommend for funding in the current fiscal year and which should be deferred for future consideration based on funding availability. The group may also determine that certain items do not qualify as Facility Modifications and remove them from the list of recommended projects.

D. Trial Court Facility Modifications Working Group Advisory Committee: Annual Recommendation to the Judicial Council

1. The Legislature appropriates funding to the annual Facility Modification budget (annual budget) out of the State Court Facilities Construction Fund and the Immediate and Critical Needs Account.
2. Based on the annual budget, the ~~AOC~~ Judicial Council staff to the ~~TCFMWG~~ TCFMAC will develop a proposed allocation among the four Facility

Modification Budget Allocation Categories and a list of potential Planned Facility Modifications.

3. The ~~TCFMWG~~ TCFMAC will consider the ~~AOC~~ Judicial Council staff proposal and develop a recommended allocation among the four Facility Modification Budget Allocation Categories: Priority 1 Facility Modifications, Statewide Facility Modification Planning, Planned Facility Modifications, and Priority 2–6 Facility Modifications.
4. The ~~TCFMWG~~ TCFMAC will also use the ~~AOC~~ Judicial Council staff proposal to determine if there are high priority Facility Modifications that should be funded with the Planned Facility Modification allocation. A list of proposed Planned Facility Modifications, if any, will be developed, and will include the location, a short description, and estimated cost of each Planned Facility Modification. Based on the Annual Budget, the ~~TCFMWG~~ TCFMAC may recommend all funding be preserved for use on the highest priority Facility Modifications throughout the year and not recommend any Planned Facility Modifications.
5. The ~~TCFMWG's~~ TCFMAC's draft recommendations of the proposed funding allocation and the list of Planned Facility Modifications will be made available to the trial courts for comment by posting them on Serranus and e-mailing them to the ~~Presiding Judges~~ presiding judges and the ~~Court Executive Officers~~ court executive officers. The comments and the ~~TCFMWG's~~ TCFMAC's responses will be included with the final recommendations in a report to the Judicial Council.
6. Based upon comments received, the ~~TCFMWG~~ TCFMAC will determine its final recommended funding allocation and list of Planned Facility Modifications, which will be presented to the ~~CFWG~~ council for review and approval. ~~The CFWG may approve the TCFMWG recommendations in whole or it may revise the recommendations.~~

~~The CFWG will forward its recommended funding allocation and list of Planned Facility Modifications to E&P for placing on a Judicial Council business meeting agenda for the council's consideration and approval or revision.~~

7. This policy, and the budget allocations and list of Planned Facility Modifications approved by the Judicial Council will be the basis on which the ~~TCFMWG~~ TCFMAC and the ~~AOC~~ Judicial Council staff, in collaboration with the local courts, will proceed to implement Facility Modifications.

8. During the fiscal year, justifiable reasons may arise for reallocating funds among the four Facility Modification budget allocations—Statewide Facility Modification Planning, Priority 1, Planned, and Priorities 2–6. Under this policy, the Judicial Council delegates to the ~~TCFMWG~~ TCFMAC the authority to redistribute funds among the four budget allocations as necessary to ensure that the funds are used in the fiscal year and are used for the highest priority Facility Modifications, consistent with this policy and the criteria outlined in section IV.B above. All reallocations will be reported to the council as part of the annual report on the activities of the ~~TCFMWG~~ TCFMAC.

9. The Judicial Council also delegates to the ~~TCFMWG~~ TCFMAC the authority to approve Priority 1 and 2 Facility Modifications between the beginning of the fiscal year and the Judicial Council’s approval of the annual budget allocation and list of Planned Facility Modifications. This is necessary to ensure that emergency and necessary Facility Modifications that could impact court operations are not delayed. The ~~TCFMWG~~ TCFMAC will not expend more than 20% of the annual budget prior to the Judicial Council’s approval.

**E. Trial Court Facility Modifications ~~Working Group~~ Advisory Committee:
Annual Informational Report**

The ~~TCFMWG~~ TCFMAC will develop an informational annual report to the council summarizing its activities during the preceding fiscal year. Like the annual budget allocation recommendation, this report will be provided to the courts for comment in the same manner as the recommendations to the Judicial Council outlined above.

This report will be developed in the second quarter of the new fiscal year after all data is available and analyzed for the preceding year. This report will include data on actual expenditures, requests received, any backlog of work based on industry standard major facility systems, funding of modifications by priority, time required to complete each project, cancellation of any council-approved projects, redistribution of funding between categories, and other significant ~~TCFMWG~~ TCFMAC activities.

~~The CFWG will review this report and forward it to E&P for placing on a Judicial Council business meeting agenda as an informational item.~~

**F. Trial Court Facility Modifications ~~Working Group~~ Advisory Committee:
Quarterly Report to ~~E&P~~**

The ~~TCFMWG~~ TCFMAC will develop a quarterly report to ~~provide to E&P, which will also be provided to the Judicial Council at the next meeting~~ the council. The report will include a list of all Facility Modifications funded during the quarter, as well as any reallocation of funds between the funding categories. ~~The first of these reports will be presented to E&P in October 2012 covering the first quarter of FY 2012-2013.~~

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SP14-08

Title	Action Requested
Criminal Justice Realignment: Imposition of Mandatory Supervision	Review and submit comments by September 19, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415	January 1, 2015
Proposed by	Contact
Criminal Law Advisory Committee	Arturo Castro, Supervising Attorney
Hon. Tricia A. Bigelow, Chair	Arturo.Castro@jud.ca.gov 415-865-7702

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to rules 4.411 and 4.411.5 of the California Rules of Court and adoption of a new rule to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5), including criteria for court consideration and contents and requirements for related probation reports. The proposal was developed in response to recent legislation that requires the Judicial Council to adopt these rules by January 1, 2015.

Background

Criminal justice realignment implemented broad changes to felony sentencing laws, including replacing prison sentences with county jail sentences for certain felonies and authorizing courts to impose a period of mandatory supervision upon release from county jail. Recent realignment-related legislation¹ has amended several statutory provisions that govern the imposition of mandatory supervision.

First, Penal Code section 1170(h)(5)(A) was amended, effective January 1, 2015, to require courts to impose mandatory supervision for all felony county jail sentences unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case.

Second, Penal Code section 1170.3(a) was amended to require the Judicial Council to adopt rules of court to prescribe criteria for the court to consider when deciding whether to deny a period of mandatory supervision “in the interests of justice” under Penal Code section 1170(h)(5)(A) and

¹ Assem. Bill 1468 (Comm. On Budget); Stats. 2014, ch. 26.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

when determining the appropriate period and conditions of mandatory supervision. The new rules of court must be adopted by the Judicial Council effective January 1, 2015. (Pen. Code, § 1170.3(a)(5).)

Lastly, Penal Code section 1170.3(b) was amended to require the Judicial Council to adopt rules of court to govern the content and sequential presentation of information in probation reports submitted to the court regarding the imposition of mandatory supervision.

The Proposal

Imposition of Mandatory Supervision

In light of the recent statutory amendments regarding the imposition of mandatory supervision, the Criminal Law Advisory Committee proposes adoption of a new rule (rule 4.415) to prescribe criteria for the court to consider when deciding the length and conditions of mandatory supervision and whether to deny a period of mandatory supervision in the interests of justice. In short, the new rule would:

- Explain the new statutory presumption in favor of the imposition of mandatory supervision for all county jail felony sentences;
- Prescribe criteria for the court to consider when exercising discretion to select the appropriate period and conditions of mandatory supervision, including victim issues, custody credits, and the defendant's suitability for treatment and supervision;
- Prescribe criteria for the court to consider when determining whether to deny a period of mandatory supervision in the interests of justice;
- Require courts to state on the record the reasons for a denial of a period of mandatory supervision in the interests of justice; and
- Include an advisory committee comment to explain the statutory bases for specific provisions of the new rule, including criteria related to custody credits and reintegration of the defendant into the community.

Content of Probation Reports

Rule 4.411 prescribes several requirements for the use of probation department presentence reports by courts. Rule 4.411.5 establishes the requisite content and sequential presentation of the information contained in those reports. To avoid confusion and promote uniformity, the committee proposes amending rules 4.411 and 4.411.5 to require inclusion of information about mandatory supervision in presentence probation department reports when applicable.

Specifically, the proposed amendments to rule 4.411 would:

- Require courts to order probation department reports whenever the defendant is eligible for a county jail sentence under Penal Code section 1170(h)(5);
- Encourage courts to order presentence reports even if the defendant is not eligible for a county jail sentence under Penal Code section 1170(h)(5);
- Clarify that the purposes of probation presentence reports include decisions related to the imposition of mandatory supervision; and
- Add an advisory committee comment to clarify the statutory bases for the amendments.

The proposed amendments to rule 4.411.5 would require presentence reports to include recommendations regarding:

- The court's decision to impose a county jail term under Penal Code section 1170(h)(5);
- The defendant's suitability for specific terms and length of mandatory supervision; and
- The denial of a period of mandatory supervision in the interests of justice, including the criteria prescribed by rule 4.415.

To enhance the information and recommendations contained in the reports, the proposed amendments would also require reports to include information from any available risk/needs assessments² conducted by the probation department.

Alternatives Considered

No alternatives were considered because the proposed rules are required by statute.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are expected.

² The Criminal Law Advisory Committee is separately developing rules of court and standards of judicial administration to provide guidance regarding the use of risk/needs assessments by courts at sentencing.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- How well would this proposal work in courts of different sizes?

Attachments and Links

Text of proposed rule 4.415 and amendments to rules 4.411 and 4.411.5 of the California Rules of Court

1 Rules 4.411 and 4.411.5 of the California Rules of Court would be amended, and rule
2 4.415 would be adopted, effective January 1, 2015, to read:

3
4
5 **Rule 4.411. Presentence investigations and reports**

6
7 **(a) Eligible defendant**

8
9 If the defendant is eligible for probation or county jail sentence under section
10 1170(h), the court must refer the matter to the probation officer for a presentence
11 investigation and report. Waivers of the presentence report should not be accepted
12 except in unusual circumstances.

13
14 **(b) Ineligible defendant**

15
16 Even if the defendant is not eligible for probation or county jail sentence under
17 section 1170(h), the court should refer the matter to the probation officer for a
18 presentence investigation and report.

19
20 **(c) Supplemental reports**

21
22 The court must order a supplemental probation officer's report in preparation for
23 sentencing proceedings that occur a significant period of time after the original
24 report was prepared.

25
26 **(d) Purpose of presentence investigation report**

27
28 Probation officers' reports are used by judges in determining the appropriate term
29 of imprisonment in length of a prison or county jail sentence under section 1170(h)
30 and by the Department of Corrections and Rehabilitation, Division of Adult
31 Operations in deciding on the type of facility and program in which to place a
32 defendant. The reports are also used by courts in deciding whether probation
33 is appropriate and whether a period of mandatory supervision should be denied in
34 the interests of justice under section 1170(h). Section 1203c requires a probation
35 officer's report on every person sentenced to prison; ordering the report before
36 sentencing in probation-ineligible cases will help ensure a well-prepared report.

37
38 **Advisory Committee Comment**

39
40 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
41 for probation. Subdivision (a) also requires a presentence report in every felony case in which the
42 defendant is eligible for a county jail sentence under section 1170(h). Because such a probation
43 investigation and report are valuable to the judge and to the jail and prison authorities, waivers of

1 the report and requests for immediate sentencing are discouraged, even when the defendant and
2 counsel have agreed to a prison or county jail sentence under section 1170(h).
3 Notwithstanding a defendant's statutory ineligibility for probation or county jail sentence under
4 section 1170(h), a presentence investigation and report should be ordered to assist the court in
5 deciding the appropriate sentence and to facilitate compliance with section 1203c.

6
7 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.

8
9 Subdivision (c) is based on case law that generally requires a supplemental report if the defendant
10 is to be resentenced a significant time after the original sentencing, as, for example, after a
11 remand by an appellate court, or after the apprehension of a defendant who failed to appear at
12 sentencing. The rule is not intended to expand on the requirements of those cases.

13
14 The rule does not require a new investigation and report if a recent report is available and can be
15 incorporated by reference and there is no indication of changed circumstances. This is particularly
16 true if a report is needed only for the Department of Corrections and Rehabilitation because the
17 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
18 another case in the same or another jurisdiction within the preceeding [sic] six months, during
19 which time the defendant was in custody, and that report is available to the Department of
20 Corrections and Rehabilitation, it is unlikely that a new investigation is needed.

21
22
23 **Rule 4.411.5. Probation officer's presentence investigation report**

24
25 **(a) Contents**

26
27 A probation officer's presentence investigation report in a felony case must include
28 at least the following:

- 29
30 (1) A face sheet showing at least:
- 31 (A) The defendant's name and other identifying data;
 - 32 (B) The case number;
 - 33 (C) The crime of which the defendant was convicted;
 - 34 (D) The date of commission of the crime, the date of conviction, and any
35 other dates relevant to sentencing;
 - 36 (E) The defendant's custody status; and
 - 37 (F) The terms of any agreement on which a plea of guilty was based.
- 38
39
40
41
42
43

- 1 (2) The facts and circumstances of the crime and the defendant's arrest, including
2 information concerning any co-defendants and the status or disposition of
3 their cases. The source of all such information must be stated.
4
- 5 (3) A summary of the defendant's record of prior criminal conduct, including
6 convictions as an adult and sustained petitions in juvenile delinquency
7 proceedings. Records of an arrest or charge not leading to a conviction or the
8 sustaining of a petition may not be included unless supported by facts
9 concerning the arrest or charge.
10
- 11 (4) Any statement made by the defendant to the probation officer, or a summary
12 thereof, including the defendant's account of the circumstances of the crime.
13
- 14 (5) Information concerning the victim of the crime, including:
15
- 16 (A) The victim's statement or a summary thereof, if available;
17
- 18 (B) The amount of the victim's loss, and whether or not it is covered by
19 insurance; and
20
- 21 (C) Any information required by law.
22
- 23 (6) Any relevant facts concerning the defendant's social history, including those
24 categories enumerated in section 1203.10, organized under appropriate
25 subheadings, including, whenever applicable, "Family," "Education,"
26 "Employment and income," "Military," "Medical/psychological," "Record of
27 substance abuse or lack thereof," and any other relevant subheadings.
28
- 29 (7) Collateral information, including written statements from:
30
- 31 (A) Official sources such as defense and prosecuting attorneys, police
32 (subsequent to any police reports used to summarize the crime),
33 probation and parole officers who have had prior experience with the
34 defendant, and correctional personnel who observed the defendant's
35 behavior during any period of presentence incarceration; and
36
- 37 (B) Interested persons, including family members and others who have
38 written letters concerning the defendant.
39
- 40 (8) Any available, reliable risk/needs assessment information.
41
- 42 ~~(8)~~ (9) An evaluation of factors relating to disposition. This section must include:
43

- 1 (A) A reasoned discussion of the defendant's suitability and eligibility for
2 probation, and, if probation is recommended, a proposed plan including
3 recommendation for the conditions of probation and any special need
4 for supervision;
5
- 6 (B) If a sentence in prison sentence or county jail under section 1170(h) is
7 recommended or is likely to be imposed, a reasoned discussion of
8 aggravating and mitigating factors affecting the sentence length; ~~and~~
9
- 10 (C) If a sentence in county jail under section 1170(h) is recommended, a
11 reasoned discussion of the defendant's suitability for specific terms and
12 length of period of mandatory supervision;
13
- 14 (D) If denial of a period of mandatory supervision in the interests of justice
15 is recommended, a reasoned discussion of the factors prescribed by rule
16 4.415; and
17
- 18 ~~(C)~~(E) A discussion of the defendant's ability to make restitution, pay any
19 fine or penalty that may be recommended, or satisfy any special
20 conditions of probation that are proposed.
21

22 Discussions of factors affecting suitability for probation and affecting
23 the sentence length must refer to any sentencing rule directly relevant
24 to the facts of the case, but no rule may be cited without a reasoned
25 discussion of its relevance and relative importance.
26

- 27 ~~(9)~~(10) The probation officer's recommendation. When requested by the
28 sentencing judge or by standing instructions to the probation department, the
29 report must include recommendations concerning the length of any prison or
30 county jail term under section 1170(h) that may be imposed, including the
31 base term, the imposition of concurrent or consecutive sentences, and the
32 imposition or striking of the additional terms for enhancements charged and
33 found.
34
- 35 ~~(10)~~(11) Detailed information on presentence time spent by the defendant in
36 custody, including the beginning and ending dates of the period or periods of
37 custody; the existence of any other sentences imposed on the defendant
38 during the period of custody; the amount of good behavior, work, or
39 participation credit to which the defendant is entitled; and whether the sheriff
40 or other officer holding custody, the prosecution, or the defense wishes that a
41 hearing be held for the purposes of denying good behavior, work, or
42 participation credit.
43

1 ~~(11)~~(12) A statement of mandatory and recommended restitution, restitution
2 fines, other fines, and costs to be assessed against the defendant, including
3 chargeable probation services and attorney fees under section 987.8 when
4 appropriate, findings concerning the defendant's ability to pay, and a
5 recommendation whether any restitution order should become a judgment
6 under section 1203(j) if unpaid.

7
8 **(b) Format**

9
10 The report must be on paper 8- 1/2 by 11 inches in size and must follow the
11 sequence set out in (a) to the extent possible.

12
13 **(c) Sources**

14
15 The source of all information must be stated. Any person who has furnished
16 information included in the report must be identified by name or official capacity
17 unless a reason is given for not disclosing the person's identity.

18
19
20 **Rule 4.415. Criteria Affecting the Imposition of Mandatory Supervision**

21
22 **(a) Presumption**

23
24 When imposing a county jail sentence under section 1170(h)(5), the court must
25 suspend execution of a concluding portion of the term to be served as a period of
26 mandatory supervision unless the court finds, in the interests of justice, that
27 mandatory supervision is not appropriate in a particular case.

28
29 **(b) Criteria affecting conditions and length of mandatory supervision**

30
31 In exercising discretion to select the appropriate period and conditions of
32 mandatory supervision, factors the court may consider include:

- 33
34 (1) Availability of appropriate community corrections programs;
35
36 (2) Victim restitution;
37
38 (3) Promotion of the successful reintegration of the defendant into the
39 community;
40
41 (4) Public safety, including protection of any victims and witnesses;
42

- 1 (5) Past performance and present status on probation, mandatory supervision,
2 postrelease community supervision, and parole;
- 3
- 4 (6) Defendant’s suitability for treatment and supervision;
- 5
- 6 (7) The balance of custody exposure after imposition of custody credits;
- 7
- 8 (8) Consideration of the difference between statutory accrual of custody credits
9 for mandatory supervision under section 1170(h)(5)(B) and straight county
10 jail terms under section 4019(a)(6);
- 11
- 12 (9) Consideration of length and conditions of supervision commensurate with the
13 defendant’s level of risk of reoffense;
- 14
- 15 (10) The defendant’s specific needs and risk factors identified by any validated
16 risk/needs assessments;
- 17
- 18 (11) Any other factor reasonably related to the sentencing decision.
- 19

20 **(c) Criteria for denying mandatory supervision in the interest of justice**

21

22 In determining that mandatory supervision is not appropriate in the interests of
23 justice, the court’s determination must be based on factors that are specific to a
24 particular case or defendant. Factors the court may consider include:

- 25
- 26 (1) The nature, seriousness, and circumstances of the crime;
- 27
- 28 (2) The likelihood that the defendant will be a danger to others if not imprisoned;
- 29
- 30 (3) The defendant’s lack of suitability and amenability to treatment or
31 supervision;
- 32
- 33 (4) Consideration of the balance of custody exposure available after imposition
34 of custody credits;
- 35
- 36 (5) The defendant’s present status on probation, mandatory supervision,
37 postrelease community supervision, or parole; and
- 38
- 39 (6) Any other factor reasonably related to the court’s determination that
40 mandatory supervision is not appropriate in the interests of justice.
- 41

42 **(d) Statement of reasons for denial of mandatory supervision**

1 Notwithstanding rule 4.412(a), when a court denies a period of mandatory
2 supervision in the interests of justice, the court must state the reasons for the denial
3 on the record.

4
5 **Advisory Committee Comment**

6
7 Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe
8 criteria for the consideration of the court at the time of sentencing regarding the court's decision
9 to “[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of
10 subdivision (h) of Section 1170 or determine the appropriate period of and conditions of
11 mandatory supervision.”

12
13 **Subdivision (a):** Penal Code section 1170(h)(5)(A): “Unless the court finds, in the interest of
14 justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant
15 to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the
16 term for a period selected at the court's discretion.”

17
18 **Subdivision (b)(3):** The Legislature has declared “[t]hat strategies supporting reentering
19 offenders through practices and programs, such as standardized risk and needs assessments,
20 transitional community housing, treatment, medical and mental health services, and employment,
21 have been demonstrated to significantly reduce recidivism among offenders in other states.” (Pen.
22 Code, § 17.7.)

23
24 **Subdivision (b)(8):** Under Penal Code section 1170(h)(5)(B), defendants serving a period of
25 mandatory supervision are entitled to day-for-day credits: “During the period when the defendant
26 is under such supervision, unless in actual custody related to the sentence imposed by the court,
27 the defendant shall be entitled to only actual time credit against the term of imprisonment
28 imposed by the court.” In contrast, defendants serving county jail terms under Penal Code section
29 1170(h)(5)(B) are entitled to enhanced conduct credits under Penal Code section 4019(a)(6).