

## Invitation to Comment

Title	Criminal Procedure: Thumbprints at Arraignment (amend Penal Code section 992).
Summary	This proposal would amend Penal Code section 992(a) to (1) authorize courts to obtain a felony defendant’s thumbprint at the arraignment on the complaint, and (2) if no thumbprint is obtained at the arraignment on the complaint, require courts to obtain the thumbprint at the arraignment on the information or indictment.
Source	Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair
Staff	Arturo Castro, Attorney, Office of the General Counsel, 415-865-7702, arturo.castro@jud.ca.gov

### Overview

Subdivision (a) of Penal Code section 992 requires all felony defendants to provide courts with right thumbprints “immediately following the arraignment in the superior court.” Because section 992 was added before trial court unification, “arraignment in superior court” was intended to mean the arraignment on the information or indictment, not the arraignment on the complaint.

After trial court unification, however, the language of the statute remained unchanged. As a result, courts across the state interpret “arraignment in the superior court” differently. Some courts interpret the provision to mean the arraignment on the information or indictment, while other courts interpret the provision to include the arraignment on the complaint.

### Legislative History

Penal Code section 992 was added in 1995 by Assembly Bill 1111 (Rogan; Stats. 1995, ch. 159). The purpose of the bill was “to provide positive identification of the defendant for use in subsequent actions” by requiring defendants to provide fingerprints that would be permanently maintained in the court file. (Sen. Com. on Criminal Procedure, Analysis of Assem. Bill No. 1111 (1995-96 Reg. Sess., May 16, 1995).)

The first iteration of the bill would have required fingerprinting upon conviction, but the bill was later revised to require fingerprinting at the arraignment on the information or indictment in order to “assist the court in proving the identity of a defendant who flees or fails to appear *prior to conviction*.” (Assembly Floor, Concurrence Analysis of Assembly Bill No. 1111 (1995-96 Reg. Sess., July 6, 1995.)) (Italics added.)

### Rationale

The committee initially considered recommending that section 992(a) be amended to clarify that “arraignment in the superior court” means the arraignment on the information or indictment. As a

practical matter, however, it is not uncommon for criminal defendants to fail to appear *before* the arraignment on the information or indictment.

Thus, the committee believes that the purpose of the statute—to assist courts in securing the identity of the defendant prior to conviction—would be achieved more effectively if the statute authorized fingerprinting as early as the arraignment on the complaint.

### **Alternative Considered**

The committee considered recommending that the statute be amended to *require* fingerprinting at the very first appearance of the defendant. The committee, however, declined to recommend that courts be required to obtain thumbprints at the first appearance in every case because such a requirement would be unduly burdensome on certain courts, particularly courts that handle a high volume of felony arraignments.

Instead, the committee decided to recommend that the statute be amended to (1) authorize courts to obtain the thumbprint at the arraignment on the complaint, and (2) if no thumbprint is obtained at the arraignment on the complaint, require courts to obtain the thumbprint at the arraignment on the information or indictment.

The committee believes that the proposed amendments would (1) eliminate any confusion caused by the outdated language of the statute, and (2) result in some courts securing the identity of defendants earlier in the proceedings, without unduly burdening those courts that cannot, as a practical matter, obtain the thumbprints until the arraignment on the information or indictment.

**§992. Thumbprint; form; attachment to sentencing order; database use; effect of similar county programs**

1 (a) In any case in which the defendant is charged with a felony, the court, ~~immediately~~  
2 ~~following the arraignment in the superior court, shall~~ may require the defendant to  
3 provide a right thumbprint on a form developed for this purpose at the arraignment  
4 on the complaint. If a thumbprint is not provided at the arraignment on the  
5 complaint, the court shall require the defendant to provide the thumbprint at the  
6 arraignment on the information or indictment. ~~This~~ The fingerprint form shall  
7 include the name and superior court case number of the defendant, the date, and the  
8 printed name, position, and badge or serial number of the court bailiff who imprints  
9 the defendant's thumbprint. In the event the defendant is physically unable to  
10 provide a right thumbprint, the defendant shall provide a left thumbprint. In the  
11 event the defendant is physically unable to provide a left thumbprint, the court shall  
12 make a determination as to how the defendant might otherwise provide a suitable  
13 identifying characteristic to be imprinted on the judgment of conviction. The clerk  
14 shall note on the fingerprint form which digit, if any, of the defendant's was  
15 imprinted thereon. In the event that the defendant is convicted, this fingerprint form  
16 shall be attached to the minute order reflecting the defendant's sentence. The  
17 fingerprint form shall be permanently maintained in the superior court file.

18  
19 This thumbprint or fingerprint shall not be used to create a database. The Judicial  
20 Council shall develop a form to implement this section.

21  
22 (b) \*\*\*

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## Item LEG10-02 Response Form

**Title:** **Criminal Procedure: Thumbprints at Arraignment** (amend Penal Code section 992)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
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**DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010**

*Circulation for comment does not imply endorsement by the Judicial Council or the PolicyCoordination and Liaison Committee. All comments will become part of the public record of the council's action.*