

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR20-12

Title	Action Requested
Criminal Procedure: Multicounty Incarceration and Supervision	Review and submit comments by June 9, 2020
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.452	January 1, 2021
Proposed by	Contact
Criminal Law Advisory Committee Hon. J. Richard Couzens, Chair	Sarah Fleischer-Ihn, 415-865-7702 Sarah.Fleischer-Ihn@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.452, to (1) clarify that certain provisions apply only to sentences under Penal Code section 1170(h), (2) add procedures for when a subsequent court sentences a defendant to state prison when the prior sentence was under section 1170(h), and (3) clarify that subsequent courts may not increase the custody or mandatory supervision portion of the sentence imposed by the previous court. The amendments were suggested by a prosecutor and a committee member.

Background

Senate Bill 670 (Stats. 2017, ch. 287) (see Link A) amended Penal Code section 1170(h) (see Link B), effective January 1, 2018, requiring courts to determine the county or counties of incarceration and supervision for defendants when imposing judgments concurrent with or consecutive to another judgment or judgments previously imposed under section 1170(h) in another county or counties. SB 670 also amended section 1170.3 (see Link C), requiring the Judicial Council to adopt rules of court providing criteria for trial judges to consider at the time of sentencing when determining the county or counties of incarceration and supervision. Accordingly, the Criminal Law Advisory Committee proposed amendments to rule 4.452 to guide the second or subsequent court when determining the county or counties of supervision. The amendments were approved by the Judicial Council, effective July 1, 2019.

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It is circulated for comment purposes only.*

The Proposal

This proposal would amend rule 4.452 to further instruct courts on multiple county sentencing by adding the following:

- Clarification that (4), which states that the second or subsequent court has the discretion to specify whether the previous sentence is to be served in custody or on mandatory supervision, applies only if the previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h).
- Procedures for when a subsequent court sentences a defendant to state prison when the prior sentence was under section 1170(h), including a referral to the original sentencing court for potential resentencing on any case sentenced under section 1170(h). The referral to the previous court is required because the defendant is entitled to a violation hearing on the section 1170(h) sentence; the subsequent court may not summarily revoke the remaining mandatory supervision and impose a prison term.
- Clarification that subsequent courts may not increase the custody or mandatory supervision portion of the sentence imposed by the previous court.
- Technical, nonsubstantive amendments.

Alternatives Considered

The committee considered a suggestion to add procedures for multicounty sentences involving mandatory supervision under section 1170(h), where the principal term of the prior sentence becomes a consecutive subordinate term as a result of what the second or subsequent court does in the sentencing of the current case. In these circumstances, the length of the prior term is reduced by operation of law rather than by exercise of discretion by the second or subsequent court, and the routine judicial response is for the prior court to restructure the earlier sentence. The committee did not think it was necessary to further clarify this procedure in the rule.

Fiscal and Operational Impacts

The recommended amendments clarify procedures on multiple county sentencing. No additional fiscal and operational impacts are anticipated as a result of amending rule 4.452.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

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

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

Attachments and Links

1. Cal. Rules of Court, rule 4.452, at pages 4–6
2. Link A: Senate Bill 670 (Stats. 2017, ch. 287),
http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB670
3. Link B: Penal Code section 1170,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.&lawCode=PEN
4. Link C: Penal Code section 1170.3,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1170.3.&lawCode=PEN

Rule 4.452 of the California Rules of Court would be amended, effective January 1, 2021, to read:

1 **Rule 4.452. Determinate sentence consecutive to prior determinate sentence**

2
3 **(a)** If a determinate sentence is imposed under section 1170.1(a) consecutive to one or
4 more determinate sentences imposed previously in the same court or in other
5 courts, the court in the current case must pronounce a single aggregate term, as
6 defined in section 1170.1(a), stating the result of combining the previous and
7 current sentences. In those situations:

8
9 (1) The sentences on all determinately sentenced counts in all the cases on which
10 a sentence was or is being imposed must be combined as though they were all
11 counts in the current case.

12
13 (2) The ~~judge~~ court in the current case must make a new determination of which
14 count, in the combined cases, represents the principal term, as defined in
15 section 1170.1(a). The principal term is the term with the greatest punishment
16 imposed including conduct enhancements. If two terms of imprisonment have
17 the same punishment, either term may be selected as the principal term.

18
19 (3) Discretionary decisions of ~~the judges~~ courts in previous cases may not be
20 changed by the ~~judge~~ court in the current case. Such decisions include the
21 decision to impose one of the three authorized terms of imprisonment
22 referred to in section 1170(b), making counts in prior cases concurrent with
23 or consecutive to each other, or the decision that circumstances in mitigation
24 or in the furtherance of justice justified striking the punishment for an
25 enhancement. However, if a previously designated principal term becomes a
26 subordinate term after the resentencing, the subordinate term will be limited
27 to one-third the middle base term as provided in section 1170.1(a).

28
29 (4) If all previously imposed sentences and the current sentence being imposed
30 by the second or subsequent court are under section 1170(h), ~~the second or~~
31 ~~subsequent~~ judge court has the discretion to specify whether a previous
32 sentence is to be served in custody or on mandatory supervision and the terms
33 of such supervision, but may not, without express consent of the defendant,
34 modify the sentence on the earlier sentenced charges in any manner that will
35 (i) increase the total length of the sentence imposed by the previous court;
36 (ii) increase the total length of the ~~actual~~ custody time portion of the sentence
37 imposed by the previous court; (iii) increase the total length of the mandatory
38 supervision portion of the sentence imposed by the previous court; or
39 (iv) impose additional, more onerous, or more restrictive conditions of
40 release for any previously imposed period of mandatory supervision.

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(5) If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. Number (4) does not apply—and the consent of the defendant is not required—for this conversion and resentencing.

~~(5)~~(6) In cases in which a sentence is imposed under the provisions of section 1170(h) and the sentence has been imposed by courts in two or more counties, the second or subsequent court must determine the county or counties of incarceration or supervision, including the order of service of such incarceration or supervision. To the extent reasonably possible, the period of mandatory supervision must be served in one county and after completion of any period of incarceration. In accordance with rule 4.472, the second or subsequent court must calculate the defendant's remaining custody and supervision time.

~~(6)~~(7) In making the determination under ~~subdivision (a)(5)~~ (6), the court must exercise its discretion after consideration of the following factors:

(A)-(H)***

~~(7)~~(8) If after the court's determination in accordance with ~~subdivision (a)(5)-(6)~~ the defendant is ordered to serve only a custody term without supervision in another county, the defendant must be transported at such time and under such circumstances as the court directs to the county where the custody term is to be served. The defendant must be transported with an abstract of the court's judgment as required by section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence. The court may order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530.

