

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

W23-06

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<b>Title</b>	<b>Action Requested</b>
Criminal Procedure: Defendant’s Financial Statement	Review and submit comments by January 20, 2023
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Revise form CR-105	September 1, 2023
<b>Proposed by</b>	<b>Contact</b>
Criminal Law Advisory Committee Hon. Brian M. Hoffstadt, Chair	Sarah Fleischer-Ihn, 415-865-7702 <a href="mailto:Sarah.Fleischer-Ihn@jud.ca.gov">Sarah.Fleischer-Ihn@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee recommends revisions to the optional Judicial Council form used by defendants to state financial eligibility for appointment of counsel and record on appeal at public expense to reflect the repeal of Penal Code section 987.8 by Assembly Bill 1869 (Stats. 2020, ch. 92). The repeal of section 987.8 removed the authority of the court to make a postproceeding determination of the defendant’s ability to pay and to order the defendant to reimburse the county for the costs of the public defender.

### Background

AB 1869, effective July 1, 2021, repealed Penal Code section 987.8, which allowed the court to make a determination of the defendant’s present ability to pay all or a portion of the cost of appointed counsel, on the conclusion of criminal proceedings and after notice and a hearing. If the court determined that the defendant had the present ability to pay all or a part of the cost, the court would order an amount for reimbursement to the county. Section 987.8(f) required the court to provide to the defendant, before the furnishing of counsel or legal assistance, notice that the court may require reimbursement.

### The Proposal

This proposal would revise form CR-105 to reflect the repeal of section 987.8, as follows:

- Revise the form title to “Defendant’s Financial Statement on Eligibility for Appointment of Counsel and Record on Appeal at Public Expense,” (formerly “Defendant’s Financial

*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 It is circulated for comment purposes only.*

Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense”);

- Revise the form’s short title to “Defendant’s Financial Statement” (formerly “Defendant’s Financial Statement and Notice to Defendant”)
- Delete item 13, *Eligibility for Appointment of Counsel and Notice to Defendant*, a notice to the defendant stating that if an attorney was appointed to represent the defendant, the court could hold a hearing to determine the defendant’s ability to pay all or a portion of the cost of the attorney and order the defendant to pay all or part of such cost (former section 987.8(f));
- Delete a statement in the declaration of the defendant that the defendant understands the notice contained in item 13; and
- Delete a reference to section 987.8 in the footer and replace it with a reference to section 987, which allows the court to require a defendant to file a financial statement to determine whether the defendant is able to employ counsel in a criminal case.

### **Alternatives Considered**

The committee did not consider the alternative of taking no action, determining that it was important to revise the forms to implement legislative changes.

### **Fiscal and Operational Impacts**

As an optional form, expected costs should be limited to training, possible case management system updates, and the production of new forms. No other implementation requirements or operational impacts are expected.

### **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. Form CR-105, at pages 4–5

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**  
 STREET ADDRESS:  
 MAILING ADDRESS:  
 CITY AND ZIP CODE:  
 BRANCH NAME:

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**PEOPLE OF THE STATE OF CALIFORNIA v.**  
**DEFENDANT:**

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**DEFENDANT'S FINANCIAL STATEMENT**  
*(check all that apply)*

**ELIGIBILITY FOR APPOINTMENT OF COUNSEL**

**ELIGIBILITY FOR RECORD ON APPEAL AT PUBLIC EXPENSE**

*FOR COURT USE ONLY*

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

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CASE NUMBER:

1. a. Defendant's name: \_\_\_\_\_ d. Date of birth: \_\_\_\_\_  
 b. Other names used: \_\_\_\_\_ e. Telephone number: \_\_\_\_\_  
 c. Address: \_\_\_\_\_ f. Driver's license number: \_\_\_\_\_
2. Defendant's present employment
  - a. Occupation: \_\_\_\_\_
  - b. Name of employer: \_\_\_\_\_
  - c. Address: \_\_\_\_\_
  - d. Gross pay per month: \$ \_\_\_\_\_ week: \$ \_\_\_\_\_ day: \$ \_\_\_\_\_
  - e. Take-home pay per month: \$ \_\_\_\_\_ week: \$ \_\_\_\_\_ day: \$ \_\_\_\_\_
  - f. Name of union: \_\_\_\_\_
  - g. Name of credit union: \_\_\_\_\_
3. If defendant is not now working, state the name and address of defendant's last employer and the last date defendant was employed.
  - a. Name: \_\_\_\_\_
  - b. Address: \_\_\_\_\_
  - c. Last date of employment: \_\_\_\_\_
4. Defendant  is  is not married.
5. a. Spouse's name: \_\_\_\_\_ d. Date of birth: \_\_\_\_\_  
 b. Other names used: \_\_\_\_\_ e. Telephone number: \_\_\_\_\_  
 c. Address: \_\_\_\_\_ f. Driver's license number: \_\_\_\_\_
6. Spouse's present employment
  - a. Occupation: \_\_\_\_\_
  - b. Name of employer: \_\_\_\_\_
  - c. Address: \_\_\_\_\_
  - d. Gross pay per month: \$ \_\_\_\_\_ week: \$ \_\_\_\_\_ day: \$ \_\_\_\_\_
  - e. Take-home pay per month: \$ \_\_\_\_\_ week: \$ \_\_\_\_\_ day: \$ \_\_\_\_\_
  - f. Name of union: \_\_\_\_\_
  - g. Name of credit union: \_\_\_\_\_
7. If spouse is not now working, state the name and address of spouse's last employer and the last date spouse was employed.
  - a. Name: \_\_\_\_\_
  - b. Address: \_\_\_\_\_
  - c. Last date of employment: \_\_\_\_\_

8. Dependents	Name	Address	Relationship	Age
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

<b>PEOPLE OF THE STATE OF CALIFORNIA v.</b> <b>DEFENDANT:</b>	CASE NUMBER:
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	<u>Defendant</u>	OTHER MONTHLY INCOME	<u>Spouse</u>	
9.	a. Unemployment and disability	\$ _____	a. Unemployment and disability	\$ _____
	b. Social Security	\$ _____	b. Social Security	\$ _____
	c. Welfare, TANF	\$ _____	c. Welfare, TANF	\$ _____
	d. Veteran's benefits	\$ _____	d. Veteran's benefits	\$ _____
	e. Worker's compensation	\$ _____	e. Worker's compensation	\$ _____
	f. Child support payments	\$ _____	f. Child support payments	\$ _____
	g. Spousal support payments	\$ _____	g. Spousal support payments	\$ _____
	h. All other income not elsewhere listed	\$ _____	h. All other income not elsewhere listed	\$ _____
	<b>Total:</b>	\$ _____	<b>Total:</b>	\$ _____

EXPENSES				
10.	Monthly expenses being paid by defendant alone or by defendant and spouse			
	a. Rent or house payments	\$ _____	f. Clothing and laundry	\$ _____
	b. Car payments	\$ _____	g. Food	\$ _____
	c. Transportation payments	\$ _____	h. Support payments	\$ _____
	d. Medical and dental payments	\$ _____	i. Insurance payments	\$ _____
	e. Loan payments	\$ _____	j. Other payments (union, taxes, utilities)	\$ _____
			<b>Total (a-j):</b>	\$ _____

11.	Installment payments other than those listed in item 10.		
	<u>Name of Creditor</u>	<u>Monthly Payment</u>	<u>Balance Owed</u>
	a. _____	\$ _____	\$ _____
	b. _____	\$ _____	\$ _____
	c. _____	\$ _____	\$ _____
	d. _____	\$ _____	\$ _____
	e. _____	\$ _____	\$ _____
		<b>Total:</b>	<b>Total:</b>

ASSETS		
12.	What do you own? (State value):	
	a. Cash	\$ _____
	b. House equity	\$ _____
	c. Cars, other vehicles and boat equity (List make, year, and license number of each)	\$ _____
	d. Checking, savings, and credit union accounts (List name and account number of each)	\$ _____
	e. Other real estate equity	\$ _____
	f. Income tax refunds due	\$ _____
	g. Life insurance policies (ordinary life, face value)	\$ _____ Length of ownership _____
	h. Other personal property (jewelry, furniture, furs, stocks and bonds, etc.)	\$ _____
	<b>Total:</b>	\$ _____

**Declaration of Defendant**

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

Date: \_\_\_\_\_ ▶  
SIGNATURE OF DEFENDANT