



## JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: March 15, 2019

---

**Title**

Criminal Procedure: Multicounty  
Incarceration and Supervision

**Agenda Item Type**

Action Required

**Effective Date**

July 1, 2019

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

Amend Cal. Rules of Court, rule 4.452

**Date of Report**

December 20, 2018

**Recommended by**

Criminal Law Advisory Committee  
Hon. Tricia Ann Bigelow, Chair

**Contact**

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

---

### Executive Summary

The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.452, to implement section 1170.3 of the Penal Code to guide the second or subsequent court when determining the county (or counties) of incarceration and supervision in multicounty sentencing.

### Recommendation

The Criminal Law Advisory Committee recommends that the council, effective July 1, 2019, amend rule 4.452 of the California Rules of Court to guide courts on multicounty sentencing under Penal Code section 1170(h) by adding the following:

1. Clarification that the second or subsequent court has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision—and the terms of such supervision—but may not:
  - a. Increase the total length of the sentence imposed by the previous court;
  - b. Increase the total length of the actual custody time imposed by the previous court;

- c. Increase the total length of mandatory supervision imposed by the previous court; or
  - d. Impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.
- 2. A requirement that the second or subsequent court determine the county or counties of incarceration or supervision, including the order of service of incarceration or supervision.
- 3. A requirement that to the extent reasonably possible, the period of mandatory supervision be served in one county and after completion of any period of incarceration.
- 4. A requirement that the second or subsequent court calculate the defendant's remaining custody and supervision time in accordance with rule 4.472.
- 5. Specific factors for the court to consider when making its sentencing determination, including factors relevant to the appropriateness of supervision and incarceration in each respective county.
- 6. A requirement that if 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.
- 7. A requirement that the defendant be transported with an abstract of the court's judgment as required by Penal Code section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence.
- 8. Discretion for the court to order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530.
- 9. A requirement that if the defendant is ordered to serve a period of supervision in another county, with or without a term of custody, the matter must be transferred for the period of supervision in accordance with designated provisions of rule 4.530.

The text of the amended rule is attached at pages 7–8.

### **Relevant Previous Council Action**

The Judicial Council amended rule 4.452, effective January 1, 2018, to reflect changes to California's Determinate Sentencing Law (DSL) after the U.S. Supreme Court's decision in *Cunningham v. California* (2007) 549 U.S. 270 and the legislative responses to that decision, and to provide further guidance to judges in exercising sentencing discretion under the DSL.

## **Analysis/Rationale**

Senate Bill 670 (Jackson; Stats. 2017, ch. 287) amended Penal Code section 1170(h),<sup>1</sup> effective January 1, 2018, requiring courts to determine the county (or counties) of incarceration and supervision for defendants when imposing judgments concurrent 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, requiring the Judicial Council to adopt rules of court providing criteria for the consideration of trial judges at the time of sentencing when determining the county (or counties) of incarceration and supervision.

Rule 4.452 and section 1170.1, which govern multiple-count and multiple-case sentencing for commitments to state prison and county jail, require courts rendering second or subsequent judgments under section 1170(h) to “resentence” the defendant to a single aggregate term. Until SB 670, sponsored by the Judicial Council, was passed, realignment was silent on the issue of sentences from multiple jurisdictions.

SB 670 added to section 1170 subdivision (h)(6), which requires that, when the court is imposing a judgment concurrent or consecutive with a judgment or judgments previously imposed in another county, the court rendering the second or subsequent judgment is required to determine the county or counties of incarceration and supervision of the defendant. The Judicial Council is mandated to adopt rules of court that provide criteria for the second or subsequent court to consider when determining the county or counties of incarceration and supervision. (Pen. Code, § 1170.3(a)(7).)

## **Policy implications**

Prior to the passage of SB 670, sentencing law was silent on the issue of sentences from multiple jurisdictions. SB 670 amended section 1170 by adding subdivision (h)(6) and requiring the Judicial Council to adopt rules of court to implement the new law. Concerns raised by commenters to the proposed addition of subdivision (h)(6) prompted the committee to incorporate additional protections for defendants.

## **Comments**

This proposal first circulated for comment from April 9 through June 8, 2018, receiving four comments. The Superior Court of San Diego County agreed with the proposal in its entirety, the Orange County Bar Association and the Orange County Public Defender agreed with the proposal if modified, and an analyst with the Superior Court of Orange County indicated neither agreement nor disagreement but made several suggestions regarding implementation.<sup>2</sup>

The Superior Court of Orange County suggested, for cases involving transfers of persons on mandatory supervision, more specifically listing the provisions required to be followed under rule 4.530, which applies to all intercounty transfers of persons on mandatory supervision. The

---

<sup>1</sup> All further statutory references are to the Penal Code.

<sup>2</sup> Two additional submissions were received but did not address the proposal in any way.

committee agrees with the suggestion and recommends that the Judicial Council revise proposed rule 4.452(a)(8) to specifically cite subdivisions (f), (g), and (h) of rule 4.530.

Both the Orange County Bar Association and the Orange County Public Defender agreed with the proposal but suggested modifications to proposed subdivision (a)(4) of rule 4.452. The Orange County Public Defender raised concerns that the proposal gave too much discretion to the second or subsequent judge, undermining the finality of judgments, and that it potentially violated defendants' constitutional rights and plea agreements and likely would result in plea withdrawals or requests for specific enforcement of previously imposed dispositions. To avoid those potential violations, the Orange County Public Defender proposed a modification to proposed subdivision(a)(4) of rule 4.452. The committee agrees with the modification, with minor editorial changes, and recirculated the proposal from October 15 to November 9, 2018, to allow for public comment on the proposed modification:

~~Notwithstanding paragraph (3),~~ The second or subsequent judge has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not without express consent of the defendant, modify the sentence on the earlier sentenced charges in any manner that will: (i) increase the total length of the sentence imposed by the previous court; (ii) increase the total length of the actual custody time imposed by the previous court; (iii) increase the total length of mandatory supervision imposed by the previous court; or (iv) impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.

In the recirculation period from October 15 to November 9, 2018, four comments were received. A commenter from the Superior Court of Orange County and the Joint Rules Subcommittee for the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee agreed with the proposal in its entirety. Commenters from the Superior Court of Alameda County and the Superior Court of San Diego County agreed with the proposal but suggested modifications.

The Superior Court of Alameda County suggested a rule to encourage courts to have residents of their own counties return there, rather than shift them onto other counties. The committee notes that the proposed language of the rule already directs courts to consider a defendant's ties to a community, including permanency of the person's residence, when determining the county or counties of incarceration or supervision. The court also recommended that the committee review forms CR-290 and CR-290.1, the criminal abstract of judgment forms, for alignment with the multicounty incarceration and sentencing options presented in proposed rule 4.452. The committee will undertake review of forms CR-290 and CR-290.1 in the upcoming invitation-to-comment cycle and determine if changes are necessary.

The Superior Court of San Diego County suggested adding qualifying language to two factors in proposed subdivision (a)(6), which lists the factors that the court must consider before deciding whether the defendant will complete his sentence in this or another county. The commenter suggested adding “if known” to subdivision (a)(6)(C), “the nature and quality of treatment programs available in each county” and, to subdivision (a)(6)(F), “the nature and extent of supervision available in each county,” reasoning that a judge is unlikely to know the nature and quality of treatment programs or nature and extent of supervision available in another county. The committee recommends that these additions be made to subdivisions (a)(6)(C) and (a)(6)(F).

### **Alternatives considered**

During the initial comment period in spring 2018, the Superior Court of Orange County suggested the creation of a resource to assist sentencing judges when determining the nature and extent of supervision available in other counties because of the current lack of accurate information regarding available programs by county. The committee declined the suggestion but notes, in the future, that it may consider developing such a resource.

During the recirculation comment period in the winter of 2018, the Superior Court of San Diego County commented that adding the following underlined language to subdivision (a)(3) would be sufficient to address the Orange County Public Defender’s concerns about giving the second or subsequent judge too much discretion. The commenter reasoned that subdivision (a)(3) “already forbids the second judge from changing the discretionary decisions of the first judge, so the additions to [subdivision (a)(4)] are unnecessary and overly broad. By simply adding ‘but not limited to’ to the language of [subdivision (a)(3)], the rule could easily alleviate the Public Defender’s concerns.”

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

The committee declined the suggestion, concluding that subdivisions (a)(3) and (a)(4) served distinct purposes. Unlike subdivision (a)(3), which prohibits the judge in the current case from changing a discretionary decision made by the judge in the previous case, subdivision (a)(4) grants the second or subsequent judge the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision. Further, the committee notes that subdivision (a)(4) limits that discretion by requiring the consent of the

defendant in specified situations as to avoid any potential violation of a defendant's constitutional rights.

### **Fiscal and Operational Impacts**

Operational impacts are expected to be minor.

### **Attachments and Links**

1. Cal. Rules of Court, rule 4.452, at pages 7–9
2. Spring 2018 chart of comments, at pages 10–19
3. Fall 2018 chart of comments, at pages 20–30

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

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

- (1) The sentences on all determinately sentenced counts in all of the cases on which a sentence was or is being imposed must be combined as though they were all counts in the current case.
- (2) The judge in the current case must make a new determination of which count, in the combined cases, represents the principal term, as defined in section 1170.1(a). The principal term is the term with the greatest punishment imposed including conduct enhancements. If two terms of imprisonment have the same punishment, either term may be selected as the principal term.
- (3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include the decision to impose one of the three authorized terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement. However, if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).
- (4) The second or subsequent judge has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not, without express consent of the defendant, modify the sentence on the earlier sentenced charges in any manner that will (i) increase the total length of the sentence imposed by the previous court; (ii) increase the total length of the actual custody time imposed by the previous court; (iii) increase the total length of mandatory supervision imposed by the previous court; or (iv) impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.
- (5) 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

1 such incarceration or supervision. To the extent reasonably possible, the  
2 period of mandatory supervision must be served in one county and after  
3 completion of any period of incarceration. In accordance with rule 4.472, the  
4 second or subsequent court must calculate the defendant's remaining custody  
5 and supervision time.

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

9  
10 (A) The relative length of custody or supervision required for each case;

11  
12 (B) Whether the cases in each county are to be served concurrently or  
13 consecutively;

14  
15 (C) The nature and quality of treatment programs available in each county,  
16 if known;

17  
18 (D) The nature and extent of the defendant's current enrollment and  
19 participation in any treatment program;

20  
21 (E) The nature and extent of the defendant's ties to the community,  
22 including employment, duration of residence, family attachments, and  
23 property holdings;

24  
25 (F) The nature and extent of supervision available in each county, if  
26 known;

27  
28 (G) The factors listed in rule 4.530(f); and

29  
30 (H) Any other factor relevant to such determination.

31  
32 (7) If after the court's determination in accordance with subdivision (a)(5) the  
33 defendant is ordered to serve only a custody term without supervision in  
34 another county, the defendant must be transported at such time and under  
35 such circumstances as the court directs to the county where the custody term  
36 is to be served. The defendant must be transported with an abstract of the  
37 court's judgment as required by section 1213(a), or other suitable  
38 documentation showing the term imposed by the court and any custody  
39 credits against the sentence. The court may order the custody term to be  
40 served in another county without also transferring jurisdiction of the case in  
41 accordance with rule 4.530.  
42



1       (8)   If after the court's determination in accordance with subdivision (a)(5) the  
2       defendant is ordered to serve a period of supervision in another county,  
3       whether with or without a term of custody, the matter must be transferred for  
4       the period of supervision in accordance with provisions of rule 4.530(f), (g),  
5       and (h).  
6

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

	Commenter	Position	Comment	Committee Response
1.	Albert De la Isla, Principal Analyst IMPACT Team—Criminal Operations Superior Court of California, County of Orange	NI	<p><b><i>Does the proposal appropriately address the stated purpose?</i></b> Yes, however issues remain. See ‘Discussion’ below.</p> <p><b><i>Would the proposal provide cost savings?</i></b> No</p> <p><b><i>What would the implementation requirements be for courts?</i></b> Implementation costs would include judicial training as mentioned in the Invitation to Comment as well as staff training to orient court clerks with appropriate methods for multiple jurisdiction sentencings. It is possible that case processing staff will need training and a mechanism for the creation of the abstract to be transported with the defendant to another jurisdiction unless all counties<sup>1</sup> agree to accept minute orders from other counties. Docket codes may need to be added or updated to accommodate these types of sentences.</p> <p><b>Discussion</b> CRC rule 4.452, subsection [(a)] 8 as proposed states that ‘<i>If after the court’s determination in accordance with [subdivision (a)](5) the defendant is ordered to serve a period of supervision in another county, whether with or without a term of custody, the matter shall be transferred for the period of supervision in accordance with provisions of rule 4.530.</i>’</p>	<p>The committee appreciates the comments.</p> <p>No response required.</p> <p>No response required.</p> <p>No response required.</p>

<sup>1</sup> County entities such as the Probation Department, County Sheriff, and others who are to receive such documentation.

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>Rule 4.530 applies to intercounty transfer of probation and mandatory supervision cases under Penal Code section 1203.9.</p> <p>Among other provisions, rule 4.530 requires the following:</p> <ul style="list-style-type: none"><li>• A noticed motion made in the transferring court (Subsection (c)).</li><li>• Notice of the motion be given at least 60 days before the date set for hearing on the motion (Subsection (d)(4)).</li><li>• Confirmation by the transferring court that notice was given to the receiving court (Subsection (d)(5)).</li><li>• An opportunity for the receiving court to provide comment regarding the pending transfer (Subsection (e)).</li></ul> <p>It appears that the totality of requirements listed in rule 4.530 are inconsistent with the intended purpose of rule 4.452, specifically subsections [(a)] 4 and [(a)] 5 which give the second or subsequent judge discretion to determine the length and location of supervision for a single aggregate term. It seems that a narrower listing of the provisions required for the transfer of mandatory supervision should be contemplated which would more readily harmonize with the spirit and intent of rule 4.452.</p> <p>Another issue which may be difficult to implement in a practical sense relates to rule 4.452 subsections [(a)](6)(C) and [(a)](6)(F) which envision a sentencing judge in a second or subsequent county being able to discern the</p>	<p>The committee accepts the suggestion and will propose revisions of Rule 4.452 to specifically list subdivisions (f), (g) and (h) of Rule 4.530.</p> <p>The committee declines the suggestion but, in future, may consider developing such a resource.</p>
--	--	--	--

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

			nature and quality of treatment programs available in each county and the nature and extent of supervision available in each county to determine where a defendant should serve term(s) of incarceration or supervision. Unless some resource is available to the sentencing judge to assist with these items, it seems difficult if not impossible to be able to address these two factors.	
2.	Orange County Bar Association By Nikki P. Miliband President	AM	Criminal justice realignment, enacted via the Budget Act of 2011 and various budget trailer bills, realigns the responsibility for managing and supervising non-serious, non-violent, non-sexual felony offenders who are not granted probation, from the state to county governments. Supervision in these cases is carried out by county probation departments. When inmates are serving either consecutive or concurrent sentences out of more than one jurisdiction, there is no statutory guidance on which county's probation department is responsible for supervision. The proposal seeks to amend rule 4.452 of the California Rules of Court to require the court at the time of sentencing, or at the time of the latest sentencing when a defendant has cases in more than one jurisdiction, to determine which county will be required to supervise the defendant and provides criteria for the court to consider making the determination. The proposed amendments implement Penal Code section 1170.3, subdivision (a)(7), which requires the Judicial Council to adopt rules requiring the	The committee appreciates the comments. The committee declines the suggestion in light of the modifications proposed by the Orange County Public Defender (see below).

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>court imposing judgment to determine where a defendant will be supervised.</p> <p>However, the proposed amendment to subdivision [(a)] (4) of rule 4.452 go far beyond the call of Penal Code section 1170.3, subdivision (a)(7), and allow the second sentencing judge to change the discretionary decisions of the first sentencing judge. By way of example, assume a judge sentences a defendant to a 16 month term with an eight month period of custody followed by an eight month period of mandatory supervision. That judge can only arrive at that sentence after considering rule 4.415, and in particular subdivision (c)—“Criteria affecting conditions and length of mandatory supervision.” The proposed amendment would allow a second sentencing judge who is imposing an eight month consecutive sentence to re-sentence the defendant to 24 months and reconfigure how that sentence would be split, abrogating the discretion exercised by the first sentencing judge in determining the appropriate period of supervision. Under the proposal, the second sentencing judge could order a 20 month period of incarceration followed by a four month period of supervision, effectively nullifying the first judge’s order that an eight month period of supervision is necessary for the defendant’s re-entry into the community. [Subdivision (a)] (3) of rule 4.452 recognizes the importance of leaving prior discretionary decisions intact but curiously omits the length of supervision.</p>	
--	--	---	--

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

			<p>Accordingly, we recommend the following change to [subdivision (a)] (4):</p> <p>Notwithstanding [subdivision (a)] (3), the second or subsequent judge has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not increase the total length of the sentence imposed <i>or shorten the period of mandatory supervision ordered by the previous court.</i></p>	
3.	Orange County Public Defender By Miles David Jessup Senior Deputy Public Defender	AM	<p>We agree that to the proposed new Rule 4.452, as modified herein.</p> <p>Realignment promoted the concept that counties were to be laboratories of ideas, fostering innovations that can come with diverse approaches under local control of treatment and supervision. Also, each local jurisdiction was expected to take more responsibility for the expenses of its felony criminal justice approach. This rule change should offer guidance on the "where" questions of aggregate sentencing across county lines in context of Penal Code § 1170(h), but it is not supposed to denigrate the discretionary determinations of earlier in time sentencing judges with respect to substantive sentencing terms.</p> <p>Felony sentencing across jurisdictions has proved to be an area that needed some guidance after Realignment: with county jail sentences and county based community treatment imposed by courts of multiple counties, where should such jail custody and/or supervision be</p>	The committee appreciates the comments.

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>completed. To that end alone, the Legislature adopted Senate Bill 670 (2017 - Jackson). That bill amended Penal Code sections 1170 (adding subdivision (h)(6)1) and 1170.3 (adding subdivision (a)(7)(2)) mandating new court rules effective January 1, 2018. The rules called for are important but very limited and do not justify the confusing and problematic rule changes proposed here as new [subdivision (a)] (4) to Rule 4.452. The rule change is confusing not by its plain words, but by its seemingly sweeping authorization to disregard [subdivision (a)] (3), a well-reasoned and understandable constraint on resentencing by last-in-time judges who impose aggregate sentences. Furthermore, adoption of the proposed [subdivision (a)] (4) of Rule 4.452 would risk undermining finality of judgments and producing a vast class of defendants entitled to plea withdrawals or enforcement of previously imposed dispositions, worse yet, raising possible resort to litigation back across county lines.</p> <p>The proposed rule change here goes beyond the scope of the legislative authorization relied upon, and does so in a way that risks unauthorized and problematic sentencing practices. The proposed new rule would seem to authorize unilateral deviation from agreed upon dispositions that were the bases of guilty pleas. Moreover, the new rule would expressly disclaim restraint under the current rule ([subdivision (a)] (3) and seems to authorize disregard for important discretionary</p>	<p>The committee agrees with the suggestion and has revised the proposed amendment to subdivision (a)(4) of Rule 4.452 accordingly to incorporate the suggested restrictions.</p>
--	--	---	---

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>judgments of prior sentencing courts, even those going to the core of sentencing to be imposed. In particular, the proposed new [subdivision (a)] (4) of Rule of Court 4.452 purports to create a wholesale exception to existing [subdivision (a)] (3), thereby granting later-sentencing courts free reign to run amok over judicially approved and implemented plea bargains, and more generally to disregard discretionary sentencing decisions of prior judges. The proposed new [subdivision (a)] (4) expressly approves disregard of earlier judicial determinations as to appropriate conditions of community supervision, and indeed as to utility of community supervision at all, subject only to direction to not "increase the total length of the sentence imposed by the previous court."</p> <p>While this entire proposed [subdivision (a)] (4) is outside the legislative authorization invoked by the Judicial Counsel, it could at least avoid serious statutory and Constitutional defect by reformation to reflect appropriate limitations on discretion of last-sentencing judges in this setting. To avoid problems, unless specifically approved by the defendant, the last-in-time judge must NOT impose modifications to earlier sentencing decisions that violate Rule 4.452 [subdivision (a)] (3) and must not otherwise:</p> <ol style="list-style-type: none"><li>1) increase the total sentence on the earlier charges;</li><li>2) increase the custodial portion of the sentence on the earlier charges;</li></ol>	
--	--	--	--



## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>3) increase the supervisory portion of the sentence on the earlier charges; or</p> <p>4) impose additional or more restrictive conditions of release (at least for the previously imposed period of supervision).</p> <p>Accordingly, if proposed [subdivision (a)] (4) is to remain in the newly enacted rule we recommend the following changes:</p> <p>Notwithstanding [subdivision (a)] (3), the second or subsequent judge has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not without express consent of the defendant. modify the sentence on the earlier sentenced charges in any manner that will: (i) increase the total length of the sentence imposed, (ii) increase the total length of the actual custody time imposed by the previous court. (iii) increase the total length of mandatory supervision imposed by the previous court or (iv) impose additional, more onerous or more restrictive conditions of release for any previously imposed period of mandatory supervision.</p> <p>A defendant in a criminal case has both a statutory right and Constitutional due process right to enforcement of his plea bargain. (Pen. Code § 1192.5; <i>People v. Villalobos</i> (2012) 54 Cal.4th 177, 181-182; <i>Brown v. Poole</i> (9th Cir. 2003) 337 F.3d 1155, 1159; <i>People v. Walker</i> (1991) 54 Cal.3d 1013, 1025.) Note that</p>	
--	--	---	--

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

		<p>defendants negotiating sentencing under § 1170(h) may prefer quicker completion (straight jail), or a longer period of less restricted freedom (mandatory supervision), or a combination thereof. In enforcement of the plea bargain contract:</p> <p>"we employ objective standards-it is the parties' or defendant's reasonable beliefs that control.. .. The construction we adopt, however, incorporates the general rule that ambiguities are construed in favor of the defendant. Focusing on the defendant's reasonable understanding also reflects the proper constitutional focus on what induced the defendant to plead guilty."</p> <p>(<i>Brown v. Poole, supra</i>, 337 F.3d at p. 1160 [emphasis in original].) In the event that a sentencing judge exercises its discretion to refuse to honor a plea agreement as made, and insists upon any significant change to the terms of the plea bargain (including imposition of additional terms of supervision, or revocation of conditional release), this should trigger an immediate duty to advise the defendant of his right to withdraw his plea and admissions. (Pen. Code § 1192.5; <i>People v. Villalobos</i> (2012) 54 Cal.4th 177.) Once the plea bargain has been approved or detrimentally relied upon by the defendant, the defendant is generally entitled to specific enforcement of that agreement. (<i>People v. Cantu</i> (2010) 183 Cal.App.4th 604, 607.) Plea withdrawal would</p>	
--	--	--	--

## SPR18-19: Spring 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

			<p>send the open case back to the earlier sentencing county with new issues.</p> <p>Proposed Rule 4.452 [subdivision (a)] (4) is outside the scope of Senate Bill 670 and runs contrary to the Realignment goals of local experimentation and local responsibility, while likely undermining finality of many criminal convictions by triggering twin rights to plea withdrawals under California law and to actions at specific enforcement of plea agreements under federal constitutional guarantees to due process. [Subdivision (a)] 4 is a mistake and needs to be fixed.</p>	
4.	Superior Court of California, County of San Diego By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.

**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	<b>Commenter</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Superior Court of Alameda County Hon. Michael Gaffey,	NI	<p>This letter is in response to the proposed amendment to Rule 4.452 of California Rules of Court of the Court of Alameda County. This Court is specifically responding to the Judicial Council of California's (JCC) has request for comments to the following points.</p> <p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>It does address the state purpose, but the confluence of [subdivisions (a)] 5, 6, and 7 create an invitation to possible appearance of contrived or inadvertent hijinx. First, we recognize that Rule 4.452, [subdivision (a)](6) sets out factors on which a sentencing court is to base its decision. However, Rule 4.452, [subdivision (a)](5) states the second court “shall determine the county of incarceration or supervision, including the order of service.” The JCC may wish to consider a rule to encourage courts to have residents of their own counties return there, rather than shift them other counties. A person released can always petition for a change of supervision, under Penal Code §1203.9, but that might result in unnecessary burden and labor for the felon, the courts, and two probation departments.</p>	<p>The committee appreciates the comments.</p> <p>The proposed language of rule 4.452, subdivision (a)(6)(E) directs the court to consider “the nature and extent of the defendant’s ties to the community, including employment, duration of residence, family attachments, and property holdings . . .” when determining the county or counties of incarceration or supervision. Additionally, the proposed language of rule 4.452, subdivision (a)(6)(G) directs the court to consider the permanency of the supervised person’s residence.</p>

## SP 18-19: Fall 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

	Commenter	Position	Comment	Committee Response
			<p><b><i>Would the proposal provide cost savings?</i></b></p> <p>It is hard to identify any foreseeable or quantifiable savings.</p>	No response required.
			<p><b><i>What would the implementation requirements be for courts?</i></b></p> <p><i>Training staff</i> - the amendment seems to follow along with the current procedure, while perhaps being more complex. This is a specialized task for a small-medium number of the overall court staff, so court staff implementation should not be a problem.</p>	No response required.
			<p><i>Revising processes and procedures</i> -</p> <p>Currently, sentences are recorded using CR- 290 or CR-290.1, both of which were last revised in 2012. Perhaps the JCC would want to review the two forms to see if they continue to be adequate.</p>	The committee will undertake review of forms CR-290 and CR-290.1 in the upcoming invitation-to-comment cycle and determine if changes are necessary.
			<p>CR-290 boxes 4, 12 (supplemented by 13) and 15 (with " box e") seem flexible enough to be satisfactory.</p>	
			<p>CR-290.1 boxes 10 (mandatory supervision), 13 (custody time and location may need clarification), and 15 (who does sheriff deliver defendant to, so as to serve remaining sentence)</p>	

**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	Commenter	Position	Comment	Committee Response
			<p>are all similar to current practice, but may be clarified.</p> <p><i>Changing docket codes in CMS or modifying CMS - this is the hardest part for our court. This requires programmers' time to write code, etc. With no excess personnel in our IT, this needs significant lead time. As this relates to the next question, we would suggest 6 months from date of approval.</i></p> <p><b><i>Would 1 month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></b></p> <p>No. Our IT department would need some time for configuration and programming, so implementation no sooner than three (3) months would be preferred, as all our programming staff are currently engaged in projects.</p> <p><b><i>How well would this proposal work in courts of different sizes?</i></b></p> <p>In our case, this is not a problem, but the largest and smallest counties may have regional issues to address.</p>	<p>The committee recommends an effective date of July 1, 2019.</p> <p>The committee recommends an effective date of July 1, 2019.</p> <p>No response required.</p>

## SP 18-19: Fall 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

	Commenter	Position	Comment	Committee Response
2.	Michael M. Roddy, Executive Officer Superior Court of San Diego County	AM	<p>A couple comments on the proposed amendments to California Rules of Court, rule 4.452:</p> <p>[Subdivision (a)(4)] was written to “clarify that the second subsequent court has the discretion to specify whether a previous sentence is to be served in custody or mandatory supervision and terms of such supervision.” The Orange County Public Defender’s Office proposed changes to this paragraph essentially intended to prevent the second judge from imposing conditions that are more onerous than those originally mandated by the first judge. The concerns by the Orange County Public Defender could be rectified by adding the following highlighted language to [subdivision (a)(3)]:</p> <p>“(3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include, but are not limited to, the decision to impose one of the three authorized terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement. However, if a previously</p>	<p>The committee appreciates the comments.</p> <p>The committee declines to make the suggested addition. Unlike rule 4.452, subdivision (a)(3), which prohibits the judge in the current case from changing a discretionary decision made by the judge in the previous case, subdivision (a)(4) grants the second or subsequent judge the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision. Subdivision (a)(4) limits that discretion by requiring the consent of the defendant in specified</p>

**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	Commenter	Position	Comment	Committee Response
			<p>designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).”</p> <p>The changes as proposed to [subdivision (a)(4)] appear to render [subdivision (a)(4)] illusory all together. [Subdivision (a)(4)] purportedly allows the second judge to decide whether to impose the prior sentence as mandatory supervision or actual custody. However, then it states that the judge may not: “Increase the total length of the actual custody time imposed by the previous court” or “Increase the total length of mandatory supervision imposed by the previous court.” So, for example, a judge decides that the prior sentence, which was split as part actual custody and part mandatory supervision can now be served as all mandatory supervision...this would be a benefit to the defendant, but it would also be in violation of the [(a)(4)(iii)] which does not allow the judge to increase the total length of mandatory supervision. [Subdivision (a)(3)] already forbids the second judge from changing the discretionary decisions of the first judge, so the additions to [subdivision (a)(4)], are unnecessary and overly broad. By simply</p>	<p>situations and thus avoiding any potential violation of a defendant’s constitutional rights. In the example given in the comment, a defendant would likely consent to the second or subsequent judge sentencing the defendant to mandatory supervision rather than custody time.</p>



**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	Commenter	Position	Comment	Committee Response
			<p>adding “but not limited to” to the language of [subdivision (a)(3)], the rule could easily alleviate the Public Defender’s concerns.</p> <p>In [subdivision (a)(6)], which lists the factors that the court <b><i>shall</i></b> consider before deciding whether the defendant will complete his sentence in this or another county, its states that a judge must consider “[a](6)(C) the nature and quality of treatment program available in each county” and “[a](6)(F) the nature and extent of supervision available in each county.” A judge in Count A is unlikely to know the nature and quality of treatment programs or nature and extent of supervision available in Count B. Our court would recommend that “if known” be added to [(a)] (6)(C) and [(a)](6)(F).</p>	<p>The committee accepts the suggestion and will add the phrase “if known” to subdivisions (a)(6)(C) and (a)(6)(F).</p>
3.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC)	A	<p>The following comments are submitted by the TCPJAC/CEAC Joint Rules Subcommittee (JRS), on behalf of the Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC).</p> <p>Recommended JRS Position: Agree with proposed changes.</p> <p><i>Request for Specific Comments:</i></p>	<p>The committee appreciates the comments.</p>

**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	Commenter	Position	Comment	Committee Response
			<p><b><i>Would the proposal provide cost savings? If so, please quantify.</i></b></p> <p>The JRS does not believe that there would be cost savings based on the rule change. The factors in Rule 4.452 [subdivision (a)](6) could potentially require more time of probation offices from the “receiving court” to conduct research (i.e., 4.452[(a)](6)(C)) when there are two or more courts) to assist judicial officers in calculating the remaining custody time.</p> <p><b><i>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.</i></b></p> <p>The JRS does not see a significant operational impact from the implementation of the amendment. Some courts may need additional time to meet with probation departments to determine the need to revise local procedures.</p> <p><b><i>Would 1 month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></b></p>	<p>No response required.</p> <p>No response required.</p>

**SP 18-19: Fall 2018****Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**

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

	Commenter	Position	Comment	Committee Response
			<p>One month should be sufficient for implementation. More time may be needed as courts may need to work with probation offices to revise procedures and assess available resources.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>The geography of the courts and the types of transfer in cases may impact the courts differently. For example, Rule 4.452[(a)](6)(C) applies when there are two or more counties. For a court located in an area with larger counties, determining the nature and quality of available services in each county may take more time when compared to courts surrounded by smaller counties.</p>	<p>The committee recommends an effective date of July 1, 2019.</p> <p>No response required.</p>
4.	Superior Court of Orange County By: Randy Montejano, Court Operations Supervisor	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes, it appears to appropriately address the purpose of PC 1170.3.</p> <p><i>Would the proposal provide cost savings? If so please quantify.</i></p> <p>It seems it would be difficult to quantify cost savings at this time. It's possible cases could leave Orange County's jurisdiction for purposes of serving a sentence and it's just as possible</p>	<p>The committee appreciates the comments.</p> <p>No response required.</p>

## SP 18-19: Fall 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

	Commenter	Position	Comment	Committee Response
			<p>that cases from other jurisdictions could be sent to Orange County for purposes of serving sentences. In addition, for those defendants who are serving a sentence per PC 1170(h)(5) have the supervision component of their sentence that will have to be absorbed by the receiving county.</p> <p><i>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.</i></p> <ul style="list-style-type: none"><li>• Training staff of this change would be critical, as well as judicial officer training.</li><li>• The staff that would benefit from training are Courtroom Clerks and Clerk's Office staff, especially those who work at the Commitment/Abstract Desk, as well as staff who work at the PC 1203.9 desk (cases where supervision is being transferred to another county).</li><li>• It doesn't appear that modifying a case management system would be necessary.</li><li>• A new docket code would need to be created to reflect where the sentence would be served:</li><li>• Additionally, the issue of where supervision will take place once a sentence</li></ul>	No response required.

## SP 18-19: Fall 2018

### Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)

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

	Commenter	Position	Comment	Committee Response
			<p>is served per PC 1170(h)(5), would need to be decided, maybe at the time of sentencing so that there is no question about what county will be in charge of supervision once the custody time itself is served. This would usually happen by way of a PC 1203.9 petition.</p> <ul style="list-style-type: none"><li>Regarding 1170(h) sentences, it will need to be determined where the defendant will be responsible for paying the court fees/fine, and Restitution, if ordered. A docket code(s) may need to be created for this process.</li></ul> <p><i>Would 1 month from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>4-8 weeks would be more realistic for an implementation date, so long as the staff can be informed of the changes and the necessary docket code can be created or updated in that time frame.</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>Not knowing the processes of other courts, this is a difficult question to answer. The courts themselves will tend to the sentence itself, however, the larger impact appears to be on the county jail system in other counties, as well as</p>	<p>The committee recommends an effective date of July 1, 2018.</p> <p>No response required.</p>

**SP 18-19: Fall 2018**  
**Criminal Procedure: Multicounty Incarceration and Supervision (Rule 4.452)**  
All comments are verbatim unless indicated by an asterisk (\*).

	Commenter	Position	Comment	Committee Response
			probation/supervision departments in those counties.	