



Judicial Council of California

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-080

For business meeting on May 12, 2023

Title

Criminal Procedure: Defendant's Financial Statement

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form CR-105

Effective Date

September 1, 2023

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Date of Report

April 6, 2023

Contact

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Executive Summary

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 for the record on appeal at public expense to reflect statutory changes removing the authority of the court to make a post-proceeding determination of the defendant's ability to pay and to order the defendant to reimburse the county for the costs of the public defender.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council revise form CR-105, effective September 1, 2023, to:

1. Change 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 Statement on Eligibility for Appointment of Counsel and Reimbursement and Record on Appeal at Public Expense");
2. Change the form's short title to "Defendant's Financial Statement" (formerly "Defendant's Financial Statement and Notice to Defendant");

3. 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 Pen. Code, § 987.8(f));
4. Delete a statement under Declaration of Defendant that the defendant understands the notice contained in item 13; and
5. Delete a reference to Penal Code 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.

The proposed revised form is attached at pages 4–5.

Relevant Previous Council Action

Form CR-105 was adopted by the Judicial Council as form MC-210 and renumbered, effective September 1, 2018, as part of a larger effort to limit the use of the *Miscellaneous* designation. Form CR-105 was most substantially revised, effective January 1, 2009, to accommodate its use by defendants seeking a record of the oral proceedings in the trial court at public expense.

Analysis/Rationale

The recommended revisions to form CR-105 reflect the repeal of Penal Code section 987.8 by Assembly Bill 1869 (Stats. 2020, ch. 92).

Penal Code section 987.8 authorized the court to order a defendant to reimburse the county all or a portion of the cost of appointed counsel. If made, this order would occur at the conclusion of criminal proceedings, after notice and hearing, and upon a determination of the defendant's ability to pay. Subdivision (f) required the court to notify the defendant, prior to the appointment of counsel or legal assistance, that reimbursement to the county could be ordered.

In light of the statute's repeal, this recommendation (1) removes the 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; (2) revises the form title and short title to reflect this change; and (3) replaces the reference to Penal Code section 987.8 with Penal Code section 987. Penal Code section 987(c) authorizes the court to "require a defendant to file a financial statement or other financial information under penalty of perjury" as part of the court's determination whether to appoint counsel.

Policy implications

This proposal has no major policy implications because the recommendation is to implement new legislation.

Comments

The proposal circulated for comment from December 9, 2022, to January 20, 2023. The committee received one comment from the Orange County Bar Association agreeing with the proposal.

Alternatives considered

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

Fiscal and Operational Impacts

Any impacts will arise from the repealed statutory provisions, rather than council action.

Attachments and Links

1. Form CR-105, at pages 4–5
2. Chart of comments, at page 6
3. Assembly Bill 1869 (Stats. 2020, ch. 92),
https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1869

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

PEOPLE OF THE STATE OF CALIFORNIA v.
DEFENDANT:

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**

CASE NUMBER:

1. a. Defendant's name: _____
- b. Other names used: _____
- c. Address: _____
- d. Date of birth: _____
- e. Telephone number: _____
- 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: _____
- b. Other names used: _____
- c. Address: _____
- d. Date of birth: _____
- e. Telephone number: _____
- 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
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

PEOPLE OF THE STATE OF CALIFORNIA v. DEFENDANT:	CASE NUMBER:
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9.	<u>Defendant</u>	OTHER MONTHLY INCOME	<u>Spouse</u>
	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
	Total:	\$ _____	Total:

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)
			Total (a-j):

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.	_____	\$ _____	\$ _____
		Total:	Total:

12. What do you own? (State value):			
ASSETS			
	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.)	\$ _____	
		Total:	

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

W23-06

Defendant's Financial Statement (Revise form CR-105)

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael A. Gregg, President	A	<ul style="list-style-type: none">• <i>Does the proposal appropriately address the stated purpose?</i> Accurately reflects changes to PC 987.8 deleting ability of court to order Defendant to reimburse county for legal expenses. The proposal appropriately addresses the stated purpose.	No response required.