



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 16, 2016

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Multiple-County Sentencing Under Penal Code Section 1170(h)	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, §§ 1170 and 1170.3	December 16, 2016
Recommended by	Date of Report
Policy Coordination and Liaison Committee	November 7, 2016
Hon. Kenneth K. So, Chair	Contact
Criminal Law Advisory Committee	Adrienne Toomey, 415-865-7997
Hon. Tricia A. Bigelow, Chair	adrienne.toomey@jud.ca.gov
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Executive Summary

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee propose amendments to Penal Code sections 1170 and 1170.3 to promote uniformity and to clarify judicial sentencing authority when imposing concurrent or consecutive judgments under section 1170(h) implicating multiple counties. Specifically, the proposed amendment to section 1170 would direct that when the court imposes a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) and the Criminal Law Advisory Committee (CLAC) recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1170 and 1170.3,¹ effective January 1, 2018, as follows:

- Amend section 1170(h)(6) to provide: “When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and county or counties of supervision of the defendant. The court may determine that terms or portions of terms of incarceration and terms or portions of terms of supervision may be served in different counties.” Renumber current subdivisions (h)(6) and (h)(7) to (h)(7) and (h)(8), respectively.
- Amend section 1170.3 by adding subdivision (a)(7), which reads: “Determine the county or counties of incarceration and supervision when the court is imposing a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county or counties.”

Previous Council Action

The Judicial Council, at its December 2014 meeting, approved a legislative proposal to amend Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h). Staff was unable to secure an author for this proposal. However, Assembly Bill 1156 (Stats. 2015, ch. 378) included an identical proposal and the Judicial Council supported that bill. The council also supported another provision of AB 1156 that amended several provisions of law relating to criminal justice realignment that the council had identified as needing clarification.

At its December 2014 meeting, the council also approved an additional criminal justice realignment proposal to amend Penal Code sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c) to:

1. Provide courts with discretion to order the release of supervised persons from custody, unless otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued; and
2. Empower courts to fashion any terms and conditions of release deemed appropriate, in order to enhance public safety.

¹ All further undesignated statutory references are to the Penal Code.

Senator Bill Monning (D-Carmel) carried that proposal as Senate Bill 517, which was signed into law by the Governor (Stats. 2015, ch. 61).

Rationale for Recommendation

The 2011 Criminal Justice Realignment made significant changes to the sentencing and supervision of persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants who are convicted of felonies and not granted probation now serve their incarceration terms in county jail instead of state prison. (§ 1170(h).)

Under realignment, when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department unless the court finds, in the interests of justice, that such suspension is not appropriate in a particular case. (§ 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (§ 1170(h)(5)(B).) The realignment also created “postrelease community supervision” whereby certain offenders released from state prison are no longer supervised by the state parole system but by a local county supervision agency. (§§ 3450–3465.) And following the realignment, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings but instead adversarial judicial proceedings conducted in county superior courts. (§ 1203.2.)

The realignment legislation is silent on the issue of sentences from multiple jurisdictions. The issue is significant because now counties must carry the cost and burdens of local incarceration and supervision. Section 1170.1, which governs multiple-count and multiple-case sentencing for commitments to state prison and county jail, and California Rules of Court, rule 4.452, require the second judge in a consecutive sentencing case to “resentence” the defendant to a single aggregate term. Currently, there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

At its October 27, 2016 meeting, members of PCLC questioned whether this legislative proposal is intended to provide that the second sentencing court’s authority includes the authority to direct that the incarceration be served in a different county from the one in which supervision is served and to determine that the incarceration and/or supervision terms themselves may be split between two counties. Upon hearing from staff that that was CLAC’s intention, PCLC directed staff to revise the legislative proposal to make this intent explicit in the statute to avoid any confusion. Staff has revised the proposal accordingly.

The proposal is intended to provide uniformity and guidance to courts when imposing concurrent or consecutive judgments under section 1170(h) involving multiple counties.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment in the spring 2016 cycle and received six comments. Four agreed with the proposal: the superior courts of San Diego and Los Angeles Counties, the Orange County Bar Association, and the Riverside County Probation Department. The remaining two did not indicate a position but included feedback relevant to the underlying procedures and criteria for determining the county of incarceration or supervision in multicounty cases.

The purpose of the present legislative proposal is limited to clarifying by statute which court has the authority to determine the county or counties of incarceration and supervision of the defendant in multicounty cases. Assuming the Legislature amends sections 1170(h) and 1170.3 as proposed, the committee will then separately develop proposed rules of court for Judicial Council adoption that will provide criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases, and other procedural matters. CLAC will also circulate the proposed rules for public comment.

Alternatives

CLAC considered directly developing a proposed rule of court providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in cases with concurrent or consecutive judgments under section 1170(h). However, the committee determined that, first, statutory authority was necessary to clarify that the court rendering the second or other subsequent judgment in these multicounty cases has the authority to determine the county or counties of incarceration and supervision of the defendant.

Implementation Requirements, Costs, and Operational Impacts

The committees considered the potential burdens that any legislative and rule changes may place on the courts. The committees, however, determined that these amendments are appropriate because they are necessary to provide uniformity and guidance to courts on this issue, which has significant financial and other impacts on courts and counties.

Relevant Strategic Plan Goals and Operational Plan Objectives

The proposed amendments to sections 1170 and 1170.3 support the policies underlying Goal IV, Quality of Justice and Service to the Public, by promoting uniformity and clarifying judicial sentencing authority to enhance procedural fairness (Goal IV.5).

Attachments

1. Text of proposed Penal Code sections 1170 and 1170.3, at pages 5–6
2. Chart of comments, at pages 7–24

Sections 1170 and 1170.3 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **§ 1170.**

2 (a)–(g) * * *

3 (h)(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision
4 where the term is not specified in the underlying offense shall be punishable by a term of
5 imprisonment in a county jail for 16 months, or two or three years.

6 (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be
7 punishable by imprisonment in a county jail for the term described in the underlying offense.

8 (3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony
9 conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or
10 current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a
11 prior felony conviction in another jurisdiction for an offense that has all the elements of a serious
12 felony described in subdivision (c) of Section 1192.7 or a violent felony described in
13 subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to
14 Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
15 and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed
16 sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

17 (4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by
18 law, including pretrial diversion, deferred entry of judgment, or an order granting probation
19 pursuant to Section 1203.1.

20 (5)(A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular
21 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend
22 execution of a concluding portion of the term for a period selected at the court's discretion.

23 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph
24 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall
25 commence upon release from physical custody or an alternative custody program, whichever is
26 later. During the period of mandatory supervision, the defendant shall be supervised by the
27 county probation officer in accordance with the terms, conditions, and procedures generally
28 applicable to persons placed on probation, for the remaining unserved portion of the sentence
29 imposed by the court. The period of supervision shall be mandatory, and may not be earlier
30 terminated except by court order. Any proceeding to revoke or modify mandatory supervision
31 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of
32 Section 1203.2 or Section 1203.3. During the period when the defendant is under that
33 supervision, unless in actual custody related to the sentence imposed by the court, the defendant
34 shall be entitled to only actual time credit against the term of imprisonment imposed by the
35 court. Any time period which is suspended because a person has absconded shall not be credited
36 toward the period of supervision.

37 (6) When the court is imposing a judgment pursuant to this subdivision concurrent or
38 consecutive to a judgment or judgments previously imposed pursuant to this subdivision in
39 another county or counties, the court rendering the second or other subsequent judgment shall
40 determine the county or counties of incarceration and county or counties of supervision of the

1 defendant. The court may determine that terms or portions of terms of incarceration and terms or
2 portions of terms of supervision may be served in different counties.

3 (~~6~~7) The sentencing changes made by the act that added this subdivision shall be applied
4 prospectively to any person sentenced on or after October 1, 2011.

5 (~~7~~8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall
6 become effective and operative on January 1, 2015, and shall be applied prospectively to any
7 person sentenced on or after January 1, 2015.

8 (i) * * *

9

10 **§ 1170.3.**

11 The Judicial Council shall seek to promote uniformity in sentencing under Section 1170 by:

12 (a) The adoption of rules providing criteria for the consideration of the trial judge at the time of
13 sentencing regarding the court's decision to:

14 (1) Grant or deny probation.

15 (2) Impose the lower, middle, or upper prison term.

16 (3) Impose the lower, middle, or upper term pursuant to paragraph (1) or (2) of subdivision (h) of
17 Section 1170.

18 (4) Impose concurrent or consecutive sentences.

19 (5) Determine whether or not to impose an enhancement where that determination is permitted
20 by law.

21 (6) Deny a period of mandatory supervision in the interests of justice under paragraph (5) of
22 subdivision (h) of Section 1170 or determine the appropriate period and conditions of mandatory
23 supervision. The rules implementing this paragraph shall be adopted no later than January 1,
24 2015.

25 (7) Determine the county or counties of incarceration and supervision when the court is imposing
26 a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment
27 or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county
28 or counties.

29 (b)–(c) * * *

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Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)

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

	Commentator	Position	Comment	Committee Response
1.	Albert De La Isla Principal Administrative Analyst Superior Court of California, Orange County	N/I	<p>•Does the proposal appropriately address the stated purpose? Yes, however issues remain (see ‘Discussion’ below).</p> <p>•Would the proposal provide cost savings? No</p> <p>•Would the proposal provide other efficiencies? No</p> <p>•What would the implementation requirements be for courts? This is difficult to determine until the Judicial Council adopts rules as proposed under Penal Code 1170.3 (see ‘Discussion’ below)</p> <p>Discussion The proposal put forth by the Judicial Council seeks to provide a similar structure for PC 1170(h) sentenced offenders as is currently the practice for state prison sentences for defendants with convictions arising from multiple jurisdictions. Although there is a need to address this population, it is important to consider that the uniqueness of PC 1170(h) sentences provide challenges not encountered with state prison sentences.</p> <p>Although the proposal under consideration may be helpful in accomplishing the stated objectives as far as uniformity and clarification of sentencing authority, logistical issues remain for multi-jurisdictional cases based on the nature of Penal Code 1170(h) sentences themselves. The major issue is what works when sentencing a person to state prison</p>	<p>Proposed Response: The purpose of the present legislative proposal is to clarify by statute the following authority for courts: when the court imposes a judgment under Penal Code section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.</p> <p>Assuming the Legislature amends section 1170(h) and 1170.3 as proposed, the Criminal Law Advisory Committee will separately develop proposed rules of court for Judicial Council adoption providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases, and other procedural matters. The Committee will circulate the proposed rules for public comment.</p> <p>The bulk of this comment pertains to the substance of the potential rules of court. Since the details of the proposed rules of court are not presently at issue, specific responses are not currently needed.</p>

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			<p>(a single institution, in that all prisons in California are administered by one entity – the CDCR) may be cumbersome and impractical when applied to sentences involving multiple counties which each have their own courts, county jails, Probation Departments, and varying resources allocated to the Criminal Realignment population. The fact that PC 1170(h) sentences are not administered at a centralized location makes a resolution to multi-county sentences more challenging than simply applying statutes and guidelines that work for prison cases to a similar, but very distinct, case type. It is believed, therefore, that when the Judicial Council adopts rules to provide criteria for the courts as directed by PC 1170.3, such issues will be considered and addressed.</p> <p>The document ‘Felony Sentencing After Realignment – May 2016’ authored by Judges Couzens and Bigelow which discusses Criminal Realignment, is helpful in understanding the challenges of fashioning an equitable solution for multi-county PC 1170(h) sentences (see pages 64-70). Judges Couzens and Bigelow state that “...[t]he original objective of [Penal Code] section 1170.1 and [California Rules of Court] Rule 4.452 was to create a single sentence for CDCR... The requirement is reasonable and appropriate when the sentence is to be served in a single institution – state prison.”</p>	

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			<p>The authors discuss this subject and propose a solution for sentencing defendants with PC 1170(h) cases in multiple jurisdictions in a proper and fair manner “[u]ntil the Legislature addresses the multi-jurisdiction problem...”. Their suggestion is to “... have the sentences physically served in proportion to the amount of time ordered by each county.” While this idea would be optimal in terms of fairness, it may not be viable in practice due to the realities of county budgets, transportation of inmates, coordination of effort, and other considerations which would require administering an incarceration and supervision program proportionately across multiple counties.</p> <p>If the Judicial Council looks to this formula some concerns might be examined:</p> <ul style="list-style-type: none">•Does a judicial officer in one county have the authority to resentence and remand a defendant to another county’s jail or to the supervision of another county’s Probation Department?•If a judicial officer on a subsequent sentencing remands the defendant back to the first county to serve all incarceration and supervision for all sentences would a Penal Code 1203.9 transfer of the defendant’s case(s) be required? If so, what modifications, if any, would be required to accommodate the transfer process under such circumstances?•Since PC 1170(h) sentences are relatively short, is there a compelling reason for a	

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			<p>defendant with multiple-jurisdictional sentences to serve custody time in multiple locations? •How does the transfer of an incarcerated defendant from one jurisdiction to another contribute to positive rehabilitation and reintegration back into the community without being burdensome and disruptive, especially when treatment, education, and other opportunities may be available in one jurisdiction and not another?</p> <p>Besides the challenge of the location of the defendant due to the nature of these sentences, no information has been provided in the proposal indicating the size of the population of defendants currently included in the multi-jurisdictional category. It would be helpful to have an estimation of the size of this group in order to assess the proposal's viability, and an indication of any trends that are emerging with this subset[1].</p> <p>Conclusion As written, the proposal leaves much discretion and leeway to the judicial officer doing the second or subsequent sentencing for the determination of where the defendant's incarceration and supervision is to occur. Judicial discretion is important and should not be omitted; however, adequate guidance should also be provided by the Judicial Council in adopting rules as proposed under Penal Code 1170.3.</p>	

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			<p>As the Council further investigates this issue, the following ideas are offered:</p> <ul style="list-style-type: none">•Since county jails are now considered ‘prison’ for PC 1170(h) sentences after the institution of Criminal Realignment, perhaps a good solution would be to treat them as such[2]. That is, rather than seeking a proportionate dispensation of custody and supervision time allocated to multiple counties, a better solution may be that in all circumstances, one county would be designated as the location for incarceration, thereby eliminating the need for punishment to be carried out in specific jurisdictions. Unless compelling reasons[3] would dictate otherwise, perhaps the location where the defendant is to serve all custody[4] would be in the latest sentencing jurisdiction.•When the Judicial Council seeks comments on the criteria as outlined in Penal Code section 1170.3, it would be helpful to be provided as much information as possible regarding the size of this population and any emerging trends.	
2.	Trish Marez Director of Criminal Operations Superior Court of California, Sacramento County	N/I	<p>1) Does the proposal appropriately address the stated purpose?</p> <p>Yes, the stated purpose of the proposal is clear: The proposal seeks to clarify judicial sentencing when imposing concurrent or consecutive judgments under P.C. 1170(h) when a defendant is sentenced in multiple counties. The proposed amendment would direct</p>	<i>See Response to #1.</i>

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			<p>Judicial Council to institute rules/criteria for courts to use to determine the appropriate county or counties of incarceration and supervision.</p> <p>2) Would the proposal provide cost savings? If so, please quantify.</p> <p>There would be potential cost savings for a local court if supervision is determined to be in an alternate county and any violations of mandatory supervision could be handled in an alternate county. Cost savings could be mitigated if you have transfer-in cases equal to or greater than cases transferred out. Cost-savings could also be mitigated due to the resources consumed with the transfer of cases between the final sentencing county and the county or counties of incarceration and/or supervision.</p> <p>There are potential cost savings state-wide if all post-incarceration hearings are handled in one county/court as opposed to multiple counties/courts. The cost savings are difficult to quantify without having data on the number of mandatory supervision violations for defendants serving sentences in multiple counties and the number of court appearances necessary</p>	

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			<p>to resolve the violations. The cost-savings could be mitigated, however, due to the resources consumed with the transfer of cases between the final sentencing county and the county or counties of incarceration and/or supervision.</p> <p>3) Would the proposal provide other efficiencies? If so, please quantify.</p> <p>From a state-wide perspective, it would be a more efficient use of resources to have all post-incarceration hearings heard and adjudicated in one county as opposed to multiple counties, if that objective could be accomplished without consuming more resources transferring cases between counties than would be ultimately saved.</p> <p>4) What would be the implementation requirements for courts?</p> <p>It is difficult to determine the requirements for implementation without knowing what processes would be required. However, if the onus is on the final sentencing Court to identify sentences in other counties, court staff (most likely the courtroom clerk) would have to run criminal history reports on all defendants prior to sentencing to identify any sentences in any alternate</p>	

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			<p>county or counties. This would necessitate training for all courtroom clerks on how to run criminal history reports (approximately six hours of training per staff member). This would also necessitate granting access to iclets to court staff as well as paying any fees associated with said access.</p> <p>Impact: <i>This research would lead to delays in court proceedings. Once a defendant indicated they wished to enter a plea and be immediately sentenced, the research would have to be completed. This would most likely lead to continuances and extra court appearances in the Home Courts to gather the information for sentencing. Since the vast majority of cases are resolved in the home courts, this would negatively impact the Court's ability to effectively manage already burgeoning calendars.</i></p> <p>It would make the most sense for the local prosecutor to provide the information to the Court prior to sentencing. Ideally, all 58 counties would have one centralized location to report all sentences pursuant to P.C. 1170(h) – similar to the CDCR Legal Process Unit - a clearinghouse of sorts where all local prosecutors could retrieve the information prior to the</p>	

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			<p>resolution of the current charges in their respective counties.</p> <p>Once the judicial officer sentences a defendant; determines whether there are any other active sentences pursuant to P.C. 1170(h); establishes the defendant's permanent residence; applies rules and criteria adopted by Judicial Council to determine the appropriate county or counties of incarceration and sentencing, and identifies the same, the final sentencing Court would have to facilitate the following:</p> <ul style="list-style-type: none">• Transfer of the defendant to an incarceration facility in an alternate county, which would necessitate a judicial order and notification to the local Sheriff and receiving Court and Sheriff, either electronically or by manual process. <p>Impact: <i>This may require reprogramming of current case management systems or development of a manual process in all 58 counties.</i></p> <ul style="list-style-type: none">• The final sentencing court would need to ensure there	

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			<p>were comparable special conditions of mandatory supervision ordered by the Court, which would necessitate contacting Probation Departments in alternate counties. As an example, a judicial officer may require GPS monitoring of a defendant on Mandatory Supervision and participation in a specialized treatment program. If GPS monitoring or the treatment program wasn't available in the identified county of supervision, what would that mean? Does the court not order those conditions, even though deemed necessary? Does the Court change the county of supervision based on services and not the defendant's home address?</p> <p>Impact: <i>This would inevitably lead to delays in court proceedings while the information was being researched and analyzed and would most likely lead to continuances and extra court appearances in the Home Courts. Since the vast majority of cases are resolved in the</i></p>	

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			<p><i>home courts, this would negatively impact the Court's ability to effectively manage already burgeoning calendars.</i></p> <ul style="list-style-type: none">• The final sentencing Court would need to evaluate whether or not to transfer the collection of any fines, fees and restitution orders either in from, or out to, alternative counties. It would necessitate researching the method whereby fees are reported and collected in alternate counties. <p>Impact: <i>This may necessitate reprogramming of case management systems to capture fines, fees and restitution orders and then transmit them to alternate courts and/or collection entities, if not captured and collected through local court resources.</i></p> <ul style="list-style-type: none">• Court staff would have to transfer files to any alternate county or counties where the defendant is to serve the period of incarceration. If the incarceration county was the same as the supervision county,	

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			<p>this could be handled like a P.C. 1203.9 transfer. If the supervision county was different than the incarceration county, the sentencing county would have to transfer the file to the incarceration county with an order for the incarceration county to transfer the file to the supervision county once the period of incarceration concluded – thus creating two transfer processes.</p> <p><i>Impact: This would have a negative impact to all local court operations. Transferring a case out to a new jurisdiction necessitates a judicial order, the capture of the order by court staff and then processing of the file which may include termination of mandatory supervision in the sentencing county, copying of the entire file for local record keeping purposes and then transferring the original file to the alternate county. This process takes, on average, a total of 1.2 hours per case. If a defendant is serving any active grants of probation in any other matters, a determination would need to</i></p>	

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			<p><i>be made as to those matters as well.</i></p> <p><i>Transferring in a case from a new jurisdiction necessitates receipt of the order and file, review of the file to ensure receipt of all original documents, creation of the case in the case management system and creation of a physical file. This process takes, on average, a total of 1.8 hours per case.</i></p> <p>Additional Comments:</p> <p>The Courts already have a process when sentencing defendants to concurrent or consecutive time if the sentence from an alternate county is known. If the defendant is sentenced concurrently, the Court simply states on the record the local prison time is to be served concurrently to the time imposed in X-County. If the time is consecutive, the Court orders a hold placed on the defendant so that he/she can be transferred upon completion of the primary sentence. The Courts also currently have a protocol and process for the transfer of supervision between counties. Penal Code Section 1203.9 provides that persons released on mandatory supervision can have their cases transferred to any other county in which the person permanently resides. Penal Code Section 1203.9 also provides for a more</p>	

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			<p>thorough vetting process, which includes a probation investigation, evaluation and recommendation to the Court, including establishing the permanency of residence of the offender, local programs available, and any restitution orders and victim issues.</p> <p>There is apparent value in knowing about sentences in alternate counties, and it makes sense that this would be an important factor to consider at final sentencing. If we had a state-wide system set up like the California Department of Corrections and Rehabilitation, where no matter the county of incarceration there was one oversight entity for incarceration and post-incarceration supervision, we could manage offenders released more efficiently and effectively. With our current structure of 58 individual Courts with varying case management systems and differing local county resources, the proposal is, on its face, an unduly onerous one for local courts to try and successfully implement.</p> <p>Another consideration is potential financial impacts to our justice partners, i.e., will there be push back from other counties (Sheriff, Probation Department, District Attorney, Public Defender, County Service Providers, Department of Revenue Recovery) if a defendant is sentenced in one county is ordered to be incarcerated and/or supervised in another county and, by virtue of that transfer, consuming that county's resources?</p>	

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			Finally, if the defendant disagrees with the Court's determination of the county or counties of incarceration and/or supervision, a process would need to be in place to address an appeal of that decision.	
3.	Orange County Bar Association By Todd G. Friedland President	A	The proposal suggests amendments to Penal Code sections 1170 and 1170.3 to direct trial courts to designate which county will be charged with the supervision of a defendant who has been committed in cases by different counties which will result in a period of mandatory supervision or postrelease community supervision. The proposal would require the trial court which sentences the defendant last in time to designate which county will be charged with supervision of the defendant. Currently, there is no statutory guidance on who determines which county will supervise a defendant under these circumstances. The proposal provides clarity on the issue by requiring trial courts to make that determination.	<i>No response needed.</i>
4.	Riverside County Probation By Ronald Miller Chief Deputy Probation Officer	A	This is a common sense change that we would support. It would require courts to clearly specify which county will have the period of incarceration and supervision. For example, take a defendant that has pending cases in two counties. In county 1, he is sentenced to an 1170(h) sentence split – 16 months in and 16 months supervision. Prior to release, the defendant is transported to county 2 to face another pending charge. The second court	<i>No response needed.</i>

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			<p>imposes an 8 month period of supervision to be served consecutively to county 1 (for an aggregate sentence of 3 years 8 months). The second court would be required to re-state in which county (or counties) the defendant is going to do his aggregate sentence. So, the second court would state the aggregate sentence: 16 months custody and 24 months supervision. It would then define which jail the defendant would serve the period of incarceration and which probation department would have supervision jurisdiction.</p> <p>I would probably go a step further, though. I would recommend the court develop an 1170 abstract of judgment. Similar to a regular prison abstract, an 1170(h) abstract would advise jail officials and probation departments of the particulars of the aggregate sentence:</p> <ol style="list-style-type: none">1) Specify the case numbers of all cases on which the defendant was sentenced2) Which counties the case numbers belonged to3) The individual sentence on each case/count, including:<ol style="list-style-type: none">a. the length of incarceration on each case/countb. which county the incarceration should take placec. Any period of supervision on each case/count, including the probation department(s) with jurisdiction4) The aggregate sentence on all the defendants cases5) The ability to notify prior courts (i.e. county 1) that their abstract was amended	

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Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)

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	Commentator	Position	Comment	Committee Response
			a. (the second county in the example above will issue an “amended” abstract of judgment to override county 1’s abstract)	
5.	Superior Court of California, County of Los Angeles	A	<p>This proposed amendment to section 1170 would direct that when the court imposes a sentence under section 1170(h) (felony time to be served in county jail) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.</p> <p>This is a sensible provision and would make clear which county will have custody and supervision.</p> <p>This proposal needs to include mechanisms for transfer of incarceration and supervision as determined by the court rendering the second or subsequent judgment. Coordination between Probation offices and jails is required to ensure that the subsequent order is executed.</p>	<i>No response needed.</i>

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	Commentator	Position	Comment	Committee Response
6.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		<i>No response needed.</i>