



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 16, 2016

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Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Applying the Electronic Filing and Service Provisions of Code of Civ. Proc., § 1010.6(a) and (b) to Criminal Actions	Action Required
	Effective Date
	December 16, 2016
Rules, Forms, Standards, or Statutes Affected	Date of Report
Add Pen. Code, § 690.5	October 28, 2016
Recommended by	Contact
Policy Coordination and Liaison Committee	Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov
Hon. Kenneth K. So, Chair	Tara Lundstrom, 415-865-7995 tara.lundstrom@jud.ca.gov
Criminal Law Advisory Committee	Sharon Reilly, 916-323-3121 sharon.reilly@jud.ca.gov
Hon. Tricia Ann Bigelow, Chair	
Information Technology Advisory Committee	
Hon. Sheila F. Hanson, Chair	

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### Executive Summary

The Information Technology Advisory Committee is leading a modernization project to amend the statutes and California Rules of Court to facilitate electronic filing and service and to foster modern e-business practices. The Policy Coordination and Liaison Committee, Information Technology Advisory Committee, and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to add Penal Code section 690.5 to provide express authority for permissive electronic filing and service in criminal proceedings by applying the electronic filing and service provisions of Code of Civil Procedure section 1010.6 to criminal actions.

## **Recommendation**

The Policy Coordination and Liaison Committee, Information Technology Committee, and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation enacting new Penal Code section 690.5, effective January 1, 2018.

The text of the new statute is attached at page 4.

## **Previous Council Action**

Superior courts across the state are implementing new case management systems that have electronic filing capabilities. Since 1999, the Judicial Council has sponsored and supported a number of bills addressing electronic filing and service in the superior courts:

- Sponsored Senate Bill 367 (Stats. 1999, ch. 514, § 1), which enacted Code of Civil Procedure section 1010.6 to authorize permissive electronic filing and service in the superior courts.<sup>1</sup>
- Sponsored Assembly Bill 1700 (Stats. 2001, ch. 824, § 10), which made technical amendments to section 1010.6.
- Supported AB 496 (Stats. 2005, ch. 300, § 5), which amended section 1010.6 to require courts to keep a summons in its records when electronically transmitting a copy to the requesting party.
- Sponsored SB 1274 (Stats. 2010, ch. 156, § 1), which amended section 1010.6 to recognize electronic service of documents by transmission and by notification.
- Supported AB 2073 (Stats. 2012, ch. 320, § 1), which authorized the Superior Court of Orange County to implement a mandatory electronic filing and service pilot project, instructed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service in specified civil actions, and allowed superior courts to require mandatory electronic filing by local rule following adoption of the uniform rules.<sup>2</sup>

The council has also sponsored and supported bills to promote the use of technology in criminal courts:

- Sponsored AB 1004 (Stats. 2013, ch. 460, § 1), which amended Penal Code sections 817 and 1526 to authorize the use of digital and electronic signatures on probable cause declarations and on search and arrest warrants.

## **Rationale for Recommendation**

Code of Civil Procedure section 1010.6 authorizes the electronic filing and service of documents in civil proceedings (see Cal. Rules of Court, rule 2.253(a), which provides that “[a] court may

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<sup>1</sup> In 2002, the Judicial Council adopted statewide rules implementing permissive electronic filing and service in the trial courts. (See Cal. Rules of Court, rules 2.250–2.259.)

<sup>2</sup> Effective July 1, 2013, the council adopted uniform rules providing for mandatory electronic filing and service in civil cases. The trial court rules now provide a framework for mandatory and permissive filing and service. (See Cal. Rules of Court, rules 2.250–2.259.)

permit parties by local rule to file documents electronically in any types of cases, directly or through approved electronic service providers, subject to the conditions in Code of Civil Procedure section 1010.6 ...”). No corresponding express authority exists in the Penal Code to authorize the electronic filing and service of documents in criminal cases. This proposal will add section 690.5 to part 2 of the Penal Code to expressly apply section 1010.6(a) and (b) to criminal proceedings.

Because some county justice partners may not have sufficient resources to undertake electronic filing and service in criminal cases, new Penal Code section 690.5 will incorporate only the permissive provisions of section 1010.6 into the Penal Code. Under this proposal, courts will not be authorized to require mandatory electronic filing and service in criminal actions. Rather, for those courts with the resources to implement electronic filing and service in criminal matters, this proposal will provide them with express authority to do so, provided the parties consent to electronic filing and service.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal circulated for public comment during the spring 2016 cycle. Three comments were received in response; all three agreed with the proposal. The comments are available in the attached comment chart at pages 5–6.

The committees considered proposing amendments to the criminal rules of the California Rules of Court authorizing electronic filing and service. They concluded that express statutory authority would provide more clarity.

### **Implementation Requirements, Costs, and Operational Impacts**

Because the proposal is permissive, rather than mandatory, county justice partners would not be required to electronically file and serve in criminal proceedings. Rather, the proposal will provide the option where county justice partners are technologically capable of making the transition and where the court allows for electronic filing. Hence, no implementation costs or operational impacts will be forced on courts or counties. Efficiencies and cost savings gained through implementing electronic filing and service procedures in criminal proceedings will likely offset any significant costs or operational impacts on participating courts and counties.

### **Attachments**

1. Text of proposed Penal Code section 690.5, at page 4
2. Chart of comments, at pages 5–6

Section 690.5 of the Penal Code would be added, effective January 1, 2018, to read:

1 **§ 690.5. Applicability of Code of Civil Procedure section 1010.6; exceptions**

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3 (a) Subdivisions (a) and (b) of Code of Civil Procedure section 1010.6 are applicable  
4 to criminal actions, except as otherwise provided in this code.

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6 (b) The Judicial Council shall adopt uniform rules for the electronic filing and service  
7 of documents in criminal cases in the trial courts of this state.

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## LEG16-03

### Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Orange County Bar Association By Todd Friedland President	A		The committees appreciate the support of the Orange County Bar Association
2.	State Bar of California, Standing Committee on the Delivery of Legal Services By Phong S. Wong Chair	A	<p><u>Does the proposal appropriately address the stated purpose?</u></p> <p>Yes. In an effort to reduce the inefficiencies and economic burdens in our court systems associated with paper filings and hard-copy service of process, the Information Technology Advisory Committee for the Judicial Council is leading a modernization project to facilitate electronic filings and service. Up until now, although the Code of Civil Procedure authorizes electronic filing and service in civil proceedings, there is no corresponding authority in the Penal Code that would authorize such filings in criminal cases.</p> <p>This proposed legislative amendment would authorize such electronic filings in criminal cases, but would not make such electronic process mandatory. Such process would only be permissive and applicable where the courts in a particular jurisdiction have the resources to implement electronic filing and service in criminal matters, and only where the parties consent to electronic filing and service. Given the language in the amendment that requires the affected parties to consent to electronic filing and service, this amendment would have no impact on persons of low income or other</p>	<p>The committees appreciate the input of the State Bar's Standing Committee on the Delivery of Legal Services.</p> <p>No response required.</p> <p>No response required.</p>

**LEG16-03****Criminal Procedure: Application of Code of Civil Procedure section 1010.6(a) and (b) to Criminal Actions**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			vulnerable populations who may not have access to electronic methods of service: those persons simply would not consent to electronic service of process and would continue to receive hard-copy notices and hard-copy service of process.	
3.	Superior Court of California, County of San Diego By Mike Roddy Executive Officer	A		The committees appreciate the support of the Superior Court of San Diego County.