



JUDICIAL COUNCIL OF CALIFORNIA

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

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-01

Title

Judicial Council: Approval of Judicial Council Consent Agenda Items Pending from the March 24, 2020 Business Meeting (Cancelled)

Judicial Branch Administration: Policies on Workplace Conduct

Rules, Forms, Standards, or Statutes Affected

Revise forms FW-001, FW-001-GC, APP-015/FW-015-INFO, JV-132, and ICWA-020; and Amend Cal. Rules of Court, rules 10.10, 10.12, 10.13, 10.16, 10.20, 10.21, 10.22, 10.34, 10.351, and Appendix D

Recommended by

Hon. Marsha G. Slough, Chair
Executive and Planning Committee

Action Requested

VOTING MEMBERS ONLY: Vote and return by responding to the email. Additionally, return original signature page.

Please Respond By

April 15, 2020, 12:00 p.m.

Date of Report

April 8, 2020

Contact

Amber Barnett, 916-263-1398
amber.barnett@jud.ca.gov

Executive Summary

The chair of the Executive and Planning Committee recommends the Judicial Council approve the recommendations outlined in Judicial Council Consent Agenda Items: 20-108, 20-101, 20-107, 20-113, 20-068, 20-081, 20-106, 20-098, and 20-109. These items were submitted for the March 24, 2020 Judicial Council meeting cancelled in the wake of the COVID-19 pandemic.

Additionally, the chair of the Executive and Planning Committee recommends that the Judicial Council approve the recommendation outlined in 20-138 Judicial Branch Administration: Policies on Workplace Conduct.

The Judicial Council reports in conjunction with these items are attached.

Recommendation

The chair of the Executive and Planning Committee recommends that the Judicial Council approve the recommendations outlined in the following Judicial Council consent agenda items:

- 20-108, *Allocations and Reimbursements to Trial Courts: Model Self-Help Pilot Program Midyear Reallocation*;
- 20-101, *Child Support: Midyear Funding Reallocation for Fiscal Year 2019–20 and Base Funding Allocation for Fiscal Year 2020–21 for the Child Support Commissioner and Family Law Facilitator Program*;
- 20-107, *Court Facilities: Request to Rename West Justice Center in Westminster (Orange County)*;
- 20-113, *Judicial Council Administration: Internal Committee Names*;
- 20-068, *Jury Instructions: Revisions to Criminal Jury Instructions*;
- 20-081, *Report to the Legislature: Trial Court Interpreters Program Expenditure Report for Fiscal Year 2018–19*;
- 20-106, *Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines*;
- 20-098, *Rules and Forms: Technical Revision to Form ICWA-020*; and
- 20-109, *Trial Courts: Trial Court Trust Fund Funds Held on Behalf of the Trial Courts*

The Executive and Planning Committee also recommends that the Judicial Council approve the recommendation outlined in 20-138, *Judicial Branch Administration: Policies on Workplace Conduct* to amend California Rule of Court, rule 10.351, to extend its implementation date from June 30, 2020 to December 31, 2020, to allow all parties additional time, in light of current events, to reasonably conform with the requirements of the rule.

Analysis/Rationale

In the wake of the COVID-19 pandemic, and in her role as Chair of the Judicial Council of California, Chief Justice Tani G. Cantil-Sakauye cancelled the Judicial Council meeting scheduled for March 24, 2020. The Judicial Council is therefore asked to approve the attached Judicial Council reports by circulating order to allow implementation of recommendations outlined in the various reports and reduce delays in reallocation of midyear funds.

Attachments and Links

1. Voting instructions, at page 3
2. Voting and signature pages, at pages 4–5
3. Reports for 20-108, 20-101, 20-107, 20-113, 20-068, 20-081, 20-106, 20-098, 20-109, and 20-138

Instructions for Review and Action by Circulating Order

Voting members

- Please indicate your **vote** by replying to the email message with “I approve,” “I disapprove,” or “I abstain” by **12:00 p.m., April 15, 2020**.
- If you are unable to reply by **April 15, 2020**, please do so as soon as possible thereafter.
- Additionally, **return the original** signature page to Judicial Council and Trial Court Leadership, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, California, 94102-3688. **Please keep a copy for your records.**

Advisory members

The circulating order is being emailed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages**

Effective immediately, the Judicial Council approves the recommendations outlined in the following Judicial Council Consent Agenda Items: 20-108, 20-101, 20-107, 20-113, 20-068, 20-081, 20-106, 20-098, 20-109, and 20-138.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Richard Bloom

_____/s/
C. Todd Bottke

_____/s/
Stacy Boulware Eurie

_____/s/
Kyle S. Brodie

Ming W. Chin

_____/s/
Jonathan B. Conklin

_____/s/
Samuel K. Feng

_____/s/
Brad R. Hill

_____/s/
Rachel W. Hill

_____/s/
Harold W. Hopp

_____/s/
Harry E. Hull, Jr.

_____/s/
Hannah-Beth Jackson

My vote is as follows:

Approve Disapprove Abstain

_____/s/
Patrick M. Kelly

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

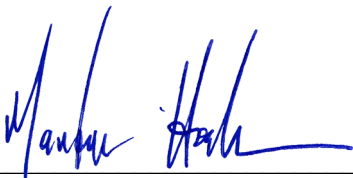
_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Eric C. Taylor

Date: April 16, 2020

Attest:



Administrative Director and
Secretary of the Judicial Council



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-108

For business meeting on March 24, 2020

Title

Allocations and Reimbursements to Trial Courts: Model Self-Help Pilot Program Midyear Reallocation

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

February 28, 2020

Recommended by

Trial Court Budget Advisory Committee
Hon. Jonathan B. Conklin, Chair

Contact

Bonnie Rose Hough, 415-865-7668
Principal Managing Attorney
Center for Families, Children & the Courts
bonnie.hough@jud.ca.gov

Executive Summary

The Model Self-Help Pilot Program has been operating in five California courts since 2002. The Superior Court of Contra Costa County has determined not to continue its participation with its technology model project and the Trial Court Budget Advisory Committee recommends making a midyear reallocation to the four remaining projects for fiscal year 2019–20 to expand their pilot projects using technology.

Recommendation

The Trial Court Budget Advisory Committee recommends that the Judicial Council, effective March 24, 2020:

1. Approve a midyear reallocation of \$191,400 in Model Self-Help Pilot Program grant funds for fiscal year 2019–20 from the Model Self-Help Technology project to the four remaining projects; and

2. Direct staff to submit an informational report to the Trial Court Budget Advisory Committee and the Judicial Council later this fiscal year with a recommendation for the ongoing use of these funds for the next fiscal year.

Relevant Previous Council Action

The Budget Act of 2001 provided funding for the Judicial Council to establish five model self-help center pilot projects in response to a budget change proposal submitted by the agency. A special Selection Review Committee reviewed the proposals submitted by interested courts and made recommendations about funding. Those recommendations were then reviewed by the Task Force on Self-Represented Litigants and approved by the Executive and Planning Committee and reported to the Judicial Council at its meeting on April 19, 2002.

The approved programs were:

- Superior Court of Butte County: *Regional Model*
- Superior Court of Contra Costa County: *Technology Model*
- Superior Court of Fresno County: *Spanish-Speaking Model*
- Superior Court of Los Angeles County: *Urban Collaboration Model*
- Superior Court of San Francisco County: *Multilingual Model*

An extensive evaluation of the project was submitted to the Legislature on March 1, 2005, demonstrating the benefits of these programs. Funding has been included as a line item for local assistance in the Budget Act in the Trial Court Trust Fund since that time and the grants were continued with each court receiving \$191,400 per year. The projects continue to model innovative practices and report to Judicial Council staff on their activities.

Analysis/Rationale

On September 16, 2019, the Superior Court of Contra Costa County informed the Judicial Council that they will no longer be able to participate in the Model Self-Help Pilot. The court was modeling technological methods, including their Virtual Self-Help Center website, to provide services to self-represented litigants. The lead attorney on that project has joined the Judicial Council staff and the court has determined to end work on the grant so that they can focus on a successful implementation of their new case management system.

After continuing discussion with the court and a review of options, staff with the Judicial Council's Center for Families, Children & the Courts recommended that the \$191,400 in funding that the court would have received be reallocated to the remaining four pilot projects in lieu of having the dollars revert to the General Fund. The projects would be invited to apply for the funding based on a short application process. The funding would be used for technology-related services to improve services for self-represented litigants. There is not sufficient time in this fiscal year for a full application process that would be open to all courts since the funds would have to be encumbered or spent by the end of this fiscal year.

The remaining pilot courts could propose using all or a portion of the unused funds for the project, allowing funds to be used for the intended purpose and expand services to self-represented litigants. Staff will develop a recommendation for a process for distribution of the Model Self-Help Pilot funds for next fiscal year.

Policy implications

Approval of this recommendation allows for the use of the Model Self-Help Pilot funds for the intended purpose. There is insufficient time in this fiscal year for a full application process that would be open to all courts because the funds would have to be encumbered or spent by the end of this fiscal year. Any unspent funds would revert to the State General Fund. Reallocation of the funds will allow the existing pilot programs to use technology to enhance their model programs. It will also allow for development of a plan for future distribution of these funds.

Comments

This proposal did not circulate for public comment.

Alternatives considered

Several alternatives were considered. One alternative was to make no allocation for the \$191,400 this fiscal year. The funds would revert to the State General Fund and the remaining projects would not have the ability to utilize them to enhance their model self-help services using technology.

Another option considered was to open the opportunity to all courts. While this is appealing, there is limited time to develop an application process, provide courts sufficient time to apply, make recommendations, obtain approval, and disburse funds to the courts before the end of this fiscal year. Thus, the committee recommended that staff develop a process for reallocation for the coming year that will allow courts enough time to develop and implement a proposal.

Fiscal and Operational Impacts

If the reallocation is approved, the four remaining Model Self-Help Pilot projects will receive additional funding to provide expanded services in their model using technology. There will be Judicial Council and court staff costs associated with this reallocation, but these will be mitigated by the expansion of services and opportunity to share best practices and materials developed with courts throughout the state.

Attachments and Links

None.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-101

For business meeting on March 24, 2020

Title

Child Support: Midyear Funding
Reallocation for Fiscal Year 2019–20 and
Base Funding Allocation for Fiscal Year
2020–21 for the Child Support
Commissioner and Family Law Facilitator
Program

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Date of Report

January 22, 2020

Rules, Forms, Standards, or Statutes Affected

None

Contact

Anna L. Maves, 916-263-8624
anna.maves@jud.ca.gov

Recommended by

Trial Court Budget Advisory Committee
Hon. Jonathan B. Conklin, Chair
Family and Juvenile Law Advisory
Committee
Hon. Jerilyn L. Borack, Cochair
Hon. Mark A. Juhas, Cochair

Executive Summary

The Trial Court Budget Advisory Committee and the Family and Juvenile Law Advisory Committee recommend approving the reallocation of funding for the Child Support Commissioner and Family Law Facilitator Program for the remainder of fiscal year (FY) 2019–20 and the allocation of funding for this same program for FY 2020–21, as required by Assembly Bill 1058 (Stats. 1996, ch. 957). The funds are provided through a cooperative agreement between the California Department of Child Support Services and the Judicial Council.

Recommendation

The Trial Court Budget Advisory Committee and the Family and Juvenile Law Advisory Committee recommend that the Judicial Council, effective March 24, 2020:

1. Approve reallocation for funding of child support commissioners for FY 2019–20, subject to the state Budget Act;
2. Approve reallocation for funding of family law facilitators for FY 2019–20, subject to the state Budget Act;
3. Approve allocation for funding of child support commissioners for FY 2020–21, subject to the state Budget Act; and
4. Approve allocation for funding of family law facilitators for FY 2020–21, subject to the state Budget Act.

Attachments A through D contain tables detailing the recommended reallocations and allocations of funding.

Relevant Previous Council Action

The Judicial Council is required annually to allocate nontrial court funding to the Child Support Commissioner and Family Law Facilitator Program and has done so since 1997.¹ A cooperative agreement between the California Department of Child Support Services (DCSS) and the Judicial Council provides the funds for this program and requires the council to approve the funding allocation annually. Two-thirds of the funds are federal, and one-third comes from the state General Fund (nontrial court funding). Any funds left unspent during the fiscal year revert to the state General Fund and cannot be used in subsequent years.

Historically, the Judicial Council at midyear redistributes—to courts with a documented need for additional funds—any available funds from courts that are projected not to spend their full grants. In addition, in FY 2007–08, DCSS and the Judicial Council provided a mechanism for the courts to recover two-thirds of additional program costs beyond the contract maximum covered by local trial court funds. This federal drawdown option continues to be available for FY 2020–21.

On January 15, 2019, the Judicial Council approved the recommendations of the AB 1058 Funding Allocation Joint Subcommittee to:

1. Adopt a new funding methodology for the base funding for AB 1058 child support commissioner side of the program that is workload-based and employs the same workload and cost structures as the Workload Formula, caps increases or decreases of funding at 5 percent, maintains current funding levels for smaller courts to ensure continued operation of their programs, and reviews the workload measure biannually;

¹ AB 1058 added article 4 to chapter 2 of part 2 of division 9 of the Family Code, which at section 4252(b)(6) requires the Judicial Council to “[e]stablish procedures for the distribution of funding to the courts for child support commissioners, family law facilitators pursuant to [Family Code] Division 14 (commencing with Section 10000), and related allowable costs.”

2. Based on recommendations of the Family and Juvenile Law Advisory Committee, allocate federal title IV-D (of the Social Security Act) drawdown funds (to be matched by the trial courts) to each court in proportion to the total funds, up to the amount the court requests and is prepared to match; and
3. Maintain the historical funding methodology for the family law facilitator side of the program until FY 2021–22.

Analysis/Rationale

Midyear reallocation, FY 2019–2020

The midyear reallocation process is a review of each court’s program funding in the current fiscal year, conducted through a questionnaire distributed to each court, to allow courts to indicate whether they anticipate having additional funds that can be reallocated to courts that have demonstrated a need for additional funds. Historically, the midyear reallocation is to meet one-time, nonrecurring special needs, such as equipment purchases or temporary help to clear work backlogs. However, because AB 1058 program funding has been flat since 2008, a number of courts indicated a need for additional funds just to maintain current service levels resulting from increased costs of doing business.

In FY 2007–08, an additional procedure—the federal drawdown option—was put in place to assist in covering the cost of maintaining current program service levels using local trial court funds as a match to obtain additional federal funds for the program. Like state funds, federal drawdown funds voluntarily returned by courts are also available to be redistributed to courts that have requested additional federal drawdown funds.

Base funds and funds under the federal drawdown option not requested or allocated at the beginning of the fiscal year but returned by courts unable to use all the funds are proposed for reallocation during this midyear process consistent with the funding made available under the contract between DCSS and the Judicial Council. As a result of the midyear reallocation process for the child support commissioner portion of the program, a total of \$2,219,180 is available: \$188,414 in base funds from unallocated funds at the beginning of the fiscal year and from 5 courts that volunteered to return funds and \$2,030,766² in federal drawdown option funds from 15 courts that volunteered to return funds that they do not anticipate needing during fiscal year 2019–20. For the family law facilitator portion of the program, a total of \$345,266 is available: \$46,999 in base funds that 4 courts volunteered to return and \$298,267 in federal drawdown option funds from unallocated funds at the beginning of the fiscal year and from 5 courts that have volunteered to return federal drawdown option funds for allocation to other courts.

² Of the \$2,030,766 in federal drawdown funds made available by courts for reallocation, courts requested \$1,211,413 in additional federal drawdown funds, leaving an unallocated balance of \$819,353. Program staff will monitor court spending through the fiscal year and make these funds available to courts that exhaust their allocation.

Under an established procedure described in the standard agreement with each superior court, a questionnaire is sent to each court requesting the information needed to evaluate appropriate funding levels. In addition to compiling questionnaire responses, Judicial Council staff gather information on each court's historical spending patterns and calculate projected spending based on invoices received to date for the current fiscal year. The Family and Juvenile Law Advisory Committee then recommends proposed funding changes. The criteria for consideration of court requests are caseload, funds available for redistribution, historical spending patterns, special needs, and staffing levels. Funds returned by courts with a historical pattern of underspending, funds voluntarily returned, and any previously unallocated funds are redistributed to courts with documented needs.

This midyear reallocation process ensures that the highest proportion of total funds allocated to the courts is spent where funding is needed. This process also minimizes the amount of unspent funds that revert to the state General Fund.

As stated above, \$2,219,180 was available for reallocation to the child support commissioner component of the program. A total of 38 courts requested no change to their child support commissioner base allocations, 28 requested no change to their federal drawdown option, 5 courts offered to return base funds, 15 offered to return federal drawdown option funds, 14 requested additional base funds, and 14 requested additional federal drawdown option funds.

Likewise, \$345,266 was available for reallocation to the family law facilitator component of the program. A total of 33 courts requested no change to their family law facilitator base allocations, 46 requested no change to their federal drawdown option, 4 courts offered to return base funds, 5 offered to return federal drawdown option funds, 21 requested additional base funds, and 7 requested additional federal drawdown option funds.

All allocations to courts requesting additional funding have been based on proportionately allocating the available base and federal drawdown funds among the courts requesting additional funds proportionate to their share of the total base funding. Under the established allocation procedures for this program, the request was reviewed by the Family and Juvenile Law Advisory Committee. The committee recommends that the Judicial Council adopt the allocations for the Child Support Commissioner Program detailed in Attachment A and the allocations for the Family Law Facilitator Program detailed in Attachment B.

Base funding, FY 2020–21

The Judicial Council is also responsible for the allocation of base program funding at the beginning of each fiscal year. In 1997, the Judicial Council established staffing standards for child support commissioners under Family Code section 4252(b)(3). Staffing standards are based on the number of local child support agency cases that have established child support orders. In addition, under an established procedure described in the standard agreement with each superior court, questionnaires are sent annually to each court requesting the information needed to evaluate appropriate funding levels in case of any exceptional needs.

Funding for FY 2020–21 for the child support commissioner component of the program will be \$31,616,936 in base funding and \$13,038,952 for the federal drawdown option; funding for the family law facilitator component will be \$10,789,626 in base funding and \$4,449,685 from the federal drawdown option. The total program base allocation will be \$42.4 million, and the total federal drawdown allocation will be \$17.4 million.

On January 15, 2019, the council approved a new funding methodology for base funding for the child support commissioner program, while maintaining the historical methodology for base funding for the family law facilitator program. The committees recommend that the Judicial Council adopt the allocations for the child support commissioner program detailed in Attachment C and the allocations for the family law facilitator program detailed in Attachment D, which follow the respective approved methodologies for each program as described below.

Child support commissioner program funding allocations, FY 2019–20

The approved child support commissioner program base funding allocation methodology estimates the workload-based need for child support commissioners and the staff to support those commissioners, excluding the family law facilitator, using the same principles and model parameters as the Resource Assessment Study (RAS) model and the Workload Formula. Child support commissioner need is estimated by taking a three-year average of governmental child support filings (FY 2014–15 through FY 2016–17) and multiplying that average by the case weight as determined by the RAS for cases in the Family Law—Other Petitions category (i.e., 46 minutes), which includes title IV-D child support cases. The product is then divided by the judicial workload year value (i.e., the estimated yearly workload for judicial officers measured in minutes). The result is an estimate of the full-time equivalent (FTE) positions needed for the workload. A similar approach is taken to estimate the workload-based need for staff support, with estimates for managers/supervisors and administrative staff (human resources, information technology, finance) included by using the same ratios of line staff to supervisory/administrative staff as in the RAS model. A ratio of 1.25 court reporters to each judicial officer needed is used to establish a court reporter need, and the salary, benefits, and labor costs for each staff position (following the Workload Formula framework) are used to convert the FTE need to dollars. Finally, the Operating Expenses & Equipment factor used in the Workload Formula was also applied on the staff side. Applying this methodology shows that the amount needed to fully fund the program greatly exceeds the funding available.

However, because this methodology would result in dramatic funding cuts or increases in most courts, which would impact the courts' ability to provide the services required to meet federal and state law and contractual provisions associated with the funding, the council approved the joint subcommittee's recommendation that the initial reallocation be capped at 5 percent of the total amount that each court's program can be cut or increased. Additionally, recognizing the important collaborations between small courts via intra-branch agreements to share child support commissioners to ensure that each court's limited funding does not prevent it from being able to meet federal, state, and contractual requirements, the council approved the joint subcommittee's recommendation that these courts (cluster 1 courts and any courts with an existing intra-branch

agreement with another court for AB 1058 services) be funded at no less than their current levels for FY 2019–20 and FY 2020–21.

With these new child support commissioner program base allocations, courts were directed to reassess their federal drawdown funding need and request a federal drawdown amount for FY 2020–21 by responding to a questionnaire distributed to the courts. The council adopted the joint subcommittee’s recommendation that federal drawdown funds be allocated proportionally to each court based on the new funding allocations up to the amount that a court requests and can match. The council further determined that if the request for federal drawdown funds exceeds the amount available to allocate, these funds should be allocated in proportion to a court’s base funding. This proportional allocation is continued until all drawdown funds are allocated to those courts that are willing and able to provide the matching funds.

The committees recommend that courts be allocated base and federal drawdown funding for the child support commissioner program for FY 2020–21 following these methodologies, as shown on Attachment C.

Family law facilitator program funding allocations, FY 2019–20

Per the historic funding allocation methodology, a questionnaire is sent to each court requesting the information needed to evaluate appropriate funding levels for the family law facilitator base funds and family law facilitator federal drawdown funds. The committees recommend that courts be allocated base and/or federal drawdown funding, less any amount a court indicated that it wishes to relinquish, for the family law facilitator program as in FY 2019–20, but that each court requesting increased base funding, federal drawdown funding, or both be allocated additional funding in proportion to overall funding available for program funding.

The Trial Court Budget Advisory Committee reviewed the allocation of base funding for the Child Support Commissioner and the Family Law Facilitator Program, and the Family and Juvenile Law Advisory Committee reviewed the allocation of the federal drawdown funding for the Child Support Commissioner and the Family Law Facilitator Program, as directed by the Judicial Council. The committees recommend adopting the base funding and federal drawdown allocations for FY 20120–21 as shown on Attachments C and D.

Policy Implications

Approval of these recommendations allows for the continued funding of the Child Support Commissioner and Family Law Facilitator Program, supporting courts in meeting their mandates under Family Code sections 4251 and 10002 to hire sufficient child support commissioners and family law facilitators, respectively, to provide AB 1058 services to the public. Approval of these recommendations also fulfills the requirements of the contract between the Judicial Council and DCSS.

Comments

This proposal did not circulate for public comment; however, a detailed funding questionnaire was completed by all 58 courts and used to develop the allocation recommendations.

Alternatives considered

The committee considered taking no action but rejected this option as inconsistent with Judicial Council goals because it would result in the reversion of unspent funds to the General Fund. Taking no action would also deprive courts of the option of using federal financial participation to cover two-thirds of some of the existing court contributions to the programs. A number of courts commented in their questionnaires about continued shortfalls in program funding, and these concerns have been forwarded to DCSS.

Fiscal and Operational Impacts

To draw down federal funds, federal provisions require payment of a state share of one-third of total expenditures. Therefore, each participating court will need to provide the one-third share of the court's total cost to draw down two-thirds of total expenditures from federal participation.

Attachments

1. Attachment A: Child Support Commissioner Program Midyear Reallocation, FY 2019–2020
2. Attachment B: Family Law Facilitator Program Midyear Reallocation, FY 2019–2020
3. Attachment C: Child Support Commissioner Program Allocation, FY 2020–2021
4. Attachment D: Family Law Facilitator Program Allocation, FY 2020–2021

Attachment A

Child Support Commissioner Program Midyear Reallocation, FY 2019-2020											
		A	B	C	D	E	F	G	H	I	J
#	CSC Court	Beginning Base Funding Allocation	Beginning Federal Drawdown Option	Mid-Year Changes to Base Allocation	Mid-Year Changes to Federal Drawdown Option	Recommended Base Funding Allocation (A + C)	Recommended Federal Drawdown Option Allocation (B + D)	Federal Share 66% (Column F * .66)	Court Share 34% (Column F * .34)	Total Allocation (E + F)	Contract Amount (E + G)
1	Alameda	1,119,358	549,815	0	0	1,119,358	549,815	362,878	186,937	1,669,173	1,482,236
2	Alpine	0	0	0	0	0	0	0	0	0	0
3	Amador	140,250	45,736	0	0	140,250	45,736	30,186	15,550	185,986	170,436
4	Butte	250,000	0	-20,000	0	230,000	0	0	0	230,000	230,000
5	Calaveras	132,667	10,000	0	-6,000	132,667	4,000	2,640	1,360	136,667	135,307
6	Colusa	45,691	20,809	0	0	45,691	20,809	13,734	7,075	66,500	59,425
7	Contra Costa	835,291	0	10,000	10,000	845,291	10,000	6,600	3,400	855,291	851,891
8	Del Norte	50,404	29,023	0	0	50,404	29,023	19,155	9,868	79,427	69,559
9	El Dorado	203,169	100,382	0	0	203,169	100,382	66,252	34,130	303,551	269,421
10	Fresno	1,547,773	843,800	0	0	1,547,773	843,800	556,908	286,892	2,391,573	2,104,681
11	Glenn	120,030	63,012	0	-53,012	120,030	10,000	6,600	3,400	130,030	126,630
12	Humboldt	117,835	59,801	0	0	117,835	59,801	39,469	20,332	177,636	157,304
13	Imperial	173,631	99,977	4,164	104,590	177,795	204,567	135,014	69,553	382,362	312,809
14	Inyo	79,264	45,640	0	-41,640	79,264	4,000	2,640	1,360	83,264	81,904
15	Kern	704,023	405,377	-45,000	-45,000	659,023	360,377	237,849	122,528	1,019,400	896,872
16	Kings	289,538	166,716	6,944	75,045	296,482	241,761	159,562	82,199	538,243	456,044
17	Lake	148,425	37,000	3,560	60,690	151,985	97,690	64,475	33,215	249,675	216,460
18	Lassen	60,000	0	1,439	124,599	61,439	124,599	82,235	42,364	186,038	143,674
19	Los Angeles	5,554,479	3,198,270	0	-574,270	5,554,479	2,624,000	1,731,840	892,160	8,178,479	7,286,319
20	Madera	205,992	83,000	4,940	55,900	210,932	138,900	91,674	47,226	349,832	302,606
21	Marin	120,757	34,980	2,896	10,020	123,653	45,000	29,700	15,300	168,653	153,353
22	Mariposa	75,216	0	-27,946	0	47,270	0	0	0	47,270	47,270
23	Mendocino	162,914	51,250	0	0	162,914	51,250	33,825	17,425	214,164	196,739
24	Merced	516,419	297,354	12,385	13,652	528,804	311,006	205,264	105,742	839,810	734,068
25	Modoc	0	0	0	0	0	0	0	0	0	0
26	Mono	45,974	5,000	0	0	45,974	5,000	3,300	1,700	50,974	49,274
27	Monterey	375,757	100,556	0	0	375,757	100,556	66,367	34,189	476,313	442,124
28	Napa	100,465	0	0	0	100,465	0	0	0	100,465	100,465
29	Nevada	327,593	0	0	0	327,593	0	0	0	327,593	327,593
30	Orange	2,199,809	326,142	-43,709	-326,142	2,156,100	0	0	0	2,156,100	2,156,100
31	Placer	328,758	51,092	0	-12,092	328,758	39,000	25,740	13,260	367,758	354,498
32	Plumas	95,777	0	0	0	95,777	0	0	0	95,777	95,777
33	Riverside	1,055,625	244,375	0	-70,000	1,055,625	174,375	115,088	59,288	1,230,000	1,170,713
34	Sacramento	1,096,727	500,000	0	-100,000	1,096,727	400,000	264,000	136,000	1,496,727	1,360,727
35	San Benito	135,384	30,000	0	0	135,384	30,000	19,800	10,200	165,384	155,184
36	San Bernardino	2,698,328	1,393,318	64,713	372,576	2,763,041	1,765,894	1,165,490	600,404	4,528,935	3,928,531
37	San Diego	1,755,653	1,010,906	0	0	1,755,653	1,010,906	667,198	343,708	2,766,559	2,422,851
38	San Francisco	863,471	111,854	0	-441,796	863,471	0	0	0	863,471	863,471
39	San Joaquin	719,254	50,000	10,000	25,000	729,254	75,000	49,500	25,500	804,254	778,754
40	San Luis Obispo	220,725	127,093	0	0	220,725	127,093	83,881	43,212	347,818	304,606
41	San Mateo	372,835	214,678	0	-107,591	372,835	107,087	70,677	36,410	479,922	443,512
42	Santa Barbara	458,012	149,724	10,984	109,000	468,996	258,724	170,758	87,966	727,720	639,754
43	Santa Clara	1,697,087	977,183	40,700	171,164	1,737,787	1,148,347	757,909	390,438	2,886,134	2,495,696
44	Santa Cruz	186,631	36,000	0	-6,122	186,631	29,878	19,719	10,159	216,509	206,350
45	Shasta	417,575	205,874	0	-205,874	417,575	0	0	0	417,575	417,575
46	Sierra	0	0	0	0	0	0	0	0	0	0
47	Siskiyou	124,720	0	-14,720	0	110,000	0	0	0	110,000	110,000
48	Solano	493,537	95,481	0	0	493,537	95,481	63,017	32,464	589,018	556,554
49	Sonoma	477,253	221,104	0	0	477,253	221,104	145,929	75,175	698,357	623,182
50	Stanislaus	737,802	260,000	0	-35,000	737,802	225,000	148,500	76,500	962,802	886,302
51	Sutter	192,235	63,487	0	0	192,235	63,487	41,901	21,586	255,722	234,136
52	Tehama	98,961	56,982	2,374	19,256	101,335	76,238	50,317	25,921	177,573	151,652
53	Trinity	0	0	0	0	0	0	0	0	0	0
54	Tulare	534,195	68,348	0	-6,227	534,195	62,121	41,000	21,121	596,316	575,195
55	Tuolumne	158,566	78,346	0	0	158,566	78,346	51,708	26,638	236,912	210,274
56	Ventura	555,211	106,527	13,315	59,921	568,526	166,448	109,856	56,592	734,974	678,382
57	Yolo	199,702	33,000	0	0	199,702	33,000	21,780	11,220	232,702	221,482
58	Yuba	203,149	50,000	0	0	203,149	50,000	33,000	17,000	253,149	236,149
	TOTAL	31,579,897	12,709,012	37,039	-819,353	31,616,936	12,219,601	8,064,937	4,154,664	43,836,537	39,681,873

CSC Base Funds 31,616,936
 CSC Federal Drawdown 13,038,954
 Total Funding Allocated 44,655,890

31,616,936 Final CSC Base Funds
 12,219,601 Final CSC FDD
 43,836,537 Total Funding Allocated

Attachment B

Family Law Facilitator Program Midyear Reallocation, FY 2019–2020

		A	B	C	D	E	F	G	H	I	J
#	FLF Court	Beginning Base Funding Allocation	Beginning Federal Drawdown Option	Mid-Year Changes to Base Allocation	Mid-Year Changes to Federal Drawdown Option	Recommended Base Funding Allocation (A + C)	Recommended Federal Drawdown Option Allocation (B + D)	Federal Share 66% (Column F * .66)	Court Share 34% (Column F * .34)	Total Allocation (E + F)	Contract Amount (E + G)
1	Alameda	362,939	215,080	4,119	0	367,058	215,080	141,953	73,127	582,138	509,011
2	Alpine	0	0	0	0	0	0	0	0	0	0
3	Amador	46,885	4,701	0	0	46,885	4,701	3,103	1,598	51,586	49,988
4	Butte	101,754	61,250	0	0	101,754	61,250	40,425	20,825	163,004	142,179
5	Calaveras	70,655	8,000	802	10,000	71,457	18,000	11,880	6,120	89,457	83,337
6	Colusa	35,600	8,900	0	0	35,600	8,900	5,874	3,026	44,500	41,474
7	Contra Costa	345,518	0	-15,000	0	330,518	0	0	0	330,518	330,518
8	Del Norte	50,002	5,971	0	0	50,002	5,971	3,941	2,030	55,973	53,943
9	El Dorado	106,037	50,384	0	0	106,037	50,384	33,253	17,131	156,421	139,290
10	Fresno	394,558	186,596	0	0	394,558	186,596	123,153	63,443	581,154	517,711
11	Glenn	75,808	0	860	0	76,668	0	0	0	76,668	76,668
12	Humboldt	89,185	9,774	0	0	89,185	9,774	6,451	3,323	98,959	95,636
13	Imperial	52,865	36,086	0	0	52,865	36,086	23,817	12,269	88,951	76,682
14	Inyo	57,185	27,171	-17,185	-27,171	40,000	0	0	0	40,000	40,000
15	Kern	355,141	200,000	4,031	150,000	359,172	350,000	231,000	119,000	709,172	590,172
16	Kings	58,493	32,000	0	0	58,493	32,000	21,120	10,880	90,493	79,613
17	Lake	57,569	26,836	0	0	57,569	26,836	17,712	9,124	84,405	75,281
18	Lassen	65,000	0	738	0	65,738	0	0	0	65,738	65,738
19	Los Angeles	1,890,029	803,431	0	0	1,890,029	803,431	530,264	273,167	2,693,460	2,420,293
20	Madera	80,794	25,383	0	0	80,794	25,383	16,753	8,630	106,177	97,547
21	Marin	136,581	0	0	0	136,581	0	0	0	136,581	136,581
22	Mariposa	45,390	0	-5,188	0	40,202	0	0	0	40,202	40,202
23	Mendocino	60,462	30,000	686	8,425	61,148	38,425	25,361	13,065	99,573	86,509
24	Merced	98,847	67,473	0	52,035	98,847	119,508	78,875	40,633	218,355	177,722
25	Modoc	70,941	1,247	0	0	70,941	1,247	823	424	72,188	71,764
26	Mono	48,246	1,350	0	0	48,246	1,350	891	459	49,596	49,137
27	Monterey	120,688	57,179	1,370	0	122,058	57,179	37,738	19,441	179,237	159,796
28	Napa	61,820	40,000	702	0	62,522	40,000	26,400	13,600	102,522	88,922
29	Nevada	116,010	0	0	0	116,010	0	0	0	116,010	116,010
30	Orange	537,209	114,738	0	-75,849	537,209	38,889	25,667	13,222	576,098	562,876
31	Placer	89,626	0	-9,626	0	80,000	0	0	0	80,000	80,000
32	Plumas	55,827	7,803	0	0	55,827	7,803	5,150	2,653	63,630	60,977
33	Riverside	665,441	218,500	0	0	665,441	218,500	144,210	74,290	883,941	809,651
34	Sacramento	309,597	211,331	3,514	0	313,111	211,331	139,478	71,853	524,442	452,589
35	San Benito	60,289	29,151	0	0	60,289	29,151	19,240	9,911	89,440	79,529
36	San Bernardino	459,342	313,548	5,213	0	464,555	313,548	206,942	106,606	778,103	671,497
37	San Diego	605,937	253,614	6,877	0	612,814	253,614	167,385	86,229	866,428	780,199
38	San Francisco	245,257	62,362	0	0	245,257	62,362	41,159	21,203	307,619	286,416
39	San Joaquin	214,154	78,238	2,431	-8,238	216,585	70,000	46,200	23,800	286,585	262,785
40	San Luis Obispo	67,010	32,246	761	0	67,771	32,246	21,282	10,964	100,017	89,053
41	San Mateo	126,800	86,554	1,439	0	128,239	86,554	57,126	29,428	214,793	185,365
42	Santa Barbara	170,705	77,323	1,937	-10,000	172,642	67,323	44,433	22,890	239,965	217,075
43	Santa Clara	445,545	210,712	5,057	0	450,602	210,712	139,070	71,642	661,314	589,672
44	Santa Cruz	74,335	43,000	0	574	74,335	43,574	28,759	14,815	117,909	103,094
45	Shasta	185,447	111,913	0	-92,913	185,447	19,000	12,540	6,460	204,447	197,987
46	Sierra	0	0	0	0	0	0	0	0	0	0
47	Siskiyou	74,650	35,000	847	10,000	75,497	45,000	29,700	15,300	120,497	105,197
48	Solano	129,070	39,710	0	0	129,070	39,710	26,209	13,501	168,780	155,279
49	Sonoma	138,141	65,519	1,568	0	139,709	65,519	43,243	22,276	205,228	182,952
50	Stanislaus	219,062	120,000	0	0	219,062	120,000	79,200	40,800	339,062	298,262
51	Sutter	66,292	31,409	0	0	66,292	31,409	20,730	10,679	97,701	87,022
52	Tehama	27,294	3,535	310	0	27,604	3,535	2,333	1,202	31,139	29,937
53	Trinity	0	0	0	0	0	0	0	0	0	0
54	Tulare	307,882	132,293	0	67,233	307,882	199,526	131,687	67,839	507,408	439,569
55	Tuolumne	64,534	30,084	0	0	64,534	30,084	19,855	10,229	94,618	84,389
56	Ventura	252,718	77,864	2,868	0	255,586	77,864	51,390	26,474	333,450	306,976
57	Yolo	76,604	35,377	869	0	77,473	35,377	23,349	12,028	112,850	100,822
58	Yuba	65,856	44,953	0	0	65,856	44,953	29,669	15,284	110,809	95,525
	TOTAL	10,789,626	4,365,589	0	84,096	10,789,626	4,449,685	2,936,792	1,512,893	15,239,311	13,726,418

FLF Base Funds 10,789,626
 FLF Federal Drawdown 4,449,685
 Total 15,239,311

10,789,626 Final FLF Base Funds
 4,449,685 Final FLF FDD
 15,239,311 Total Funding Allocated

Attachment C

Child Support Commissioner Program Allocation, FY 2020-2021						
	A	B	C	D	E	F
CSC Court	Beginning Base Funding Allocation	Beginning Federal Drawdown Option	Federal Share 66% (Column B * .66)	Court Share 34% (Column B * .34)	Total Allocation (A + B)	Contract Amount (A + C)
Alameda	1,119,358	549,815	362,878	186,937	1,669,173	1,482,236
Alpine (see El Dorado)	0	0	0	0	0	0
Amador	140,250	45,736	30,186	15,550	185,986	170,436
Butte	287,042	0	0	0	287,042	287,042
Calaveras	132,667	10,000	6,600	3,400	142,667	139,267
Colusa	45,691	20,809	13,734	7,075	66,500	59,425
Contra Costa	835,291	0	0	0	835,291	835,291
Del Norte	50,404	29,023	19,155	9,868	79,427	69,559
El Dorado	203,169	100,382	66,252	34,130	303,551	269,421
Fresno	1,547,773	843,800	556,908	286,892	2,391,573	2,104,681
Glenn	120,030	63,012	41,588	21,424	183,042	161,618
Humboldt	117,835	59,801	39,469	20,332	177,636	157,304
Imperial	173,631	99,977	65,985	33,992	273,608	239,616
Inyo	79,264	45,640	30,122	15,518	124,904	109,386
Kern	704,023	405,377	267,548	137,828	1,109,399	971,571
Kings	289,538	166,716	110,033	56,683	456,254	399,571
Lake	148,425	37,000	24,420	12,580	185,425	172,845
Lassen	60,000	0	0	0	60,000	60,000
Los Angeles	5,554,479	3,198,270	2,110,858	1,087,412	8,752,749	7,665,337
Madera	205,992	83,000	54,780	28,220	288,992	260,772
Marin	120,757	34,980	23,087	11,893	155,737	143,844
Mariposa	75,216	0	0	0	75,216	75,216
Mendocino	162,914	51,250	33,825	17,425	214,164	196,739
Merced	516,419	297,354	196,254	101,100	813,773	712,673
Modoc	0	0	0	0	0	0
Mono	45,974	5,000	3,300	1,700	50,974	49,274
Monterey	375,757	100,556	66,367	34,189	476,313	442,124
Napa	100,465	0	0	0	100,465	100,465
Nevada	327,593	0	0	0	327,593	327,593
Orange	2,199,809	326,142	215,254	110,888	2,525,951	2,415,063
Placer	328,758	51,092	33,721	17,371	379,850	362,479
Plumas	95,777	0	0	0	95,777	95,777
Riverside	1,055,625	244,375	161,288	83,088	1,300,000	1,216,913
Sacramento	1,096,727	500,000	330,000	170,000	1,596,727	1,426,727
San Benito	135,384	30,000	19,800	10,200	165,384	155,184
San Bernardino	2,698,328	1,393,318	919,590	473,728	4,091,646	3,617,918
San Diego	1,755,653	1,010,905	667,197	343,708	2,766,558	2,422,850
San Francisco	863,471	441,796	291,585	150,211	1,305,267	1,155,056
San Joaquin	719,254	50,000	33,000	17,000	769,254	752,254
San Luis Obispo	220,725	127,093	83,881	43,212	347,818	304,606
San Mateo	372,835	214,678	141,687	72,991	587,513	514,522
Santa Barbara	458,012	149,724	98,818	50,906	607,736	556,830
Santa Clara	1,697,087	977,183	644,941	332,242	2,674,270	2,342,028
Santa Cruz	186,631	36,000	23,760	12,240	222,631	210,391
Shasta	417,575	205,874	135,877	69,997	623,449	553,452
Sierra (see Nevada)	0	0	0	0	0	0
Siskiyou	124,720	0	0	0	124,720	124,720
Solano	493,537	95,481	63,017	32,464	589,018	556,554
Sonoma	477,253	221,104	145,929	75,175	698,357	623,182
Stanislaus	737,802	260,000	171,600	88,400	997,802	909,402
Sutter	192,235	63,487	41,901	21,586	255,722	234,136
Tehama	98,961	56,982	37,608	19,374	155,943	136,569
Trinity (see Shasta)	0	0	0	0	0	0
Tulare	534,195	68,348	45,110	23,238	602,543	579,305
Tuolumne	158,566	78,346	51,708	26,638	236,912	210,274
Ventura	555,211	106,527	70,308	36,219	661,738	625,519
Yolo	199,702	33,000	21,780	11,220	232,702	221,482
Yuba	203,149	50,000	33,000	17,000	253,149	236,149
Total	31,616,936	13,038,953	8,605,709	4,433,244	44,655,889	40,222,648

CSC Base Funds 31,616,936
 CSC Federal Drawdown 13,038,953
 Total Funding Allocated 44,655,889

Attachment D

Family Law Facilitator Program Allocation, FY 2020-2021						
	A	B	C	D	E	F
FLF Court	Beginning Base Funding Allocation	Beginning Federal Drawdown Option	Federal Share 66% (Column B * .66)	Court Share 34% (Column B * .34)	Total Allocation (A + B)	Contract Amount (A + C)
Alameda	362,939	247,743	163,510	84,233	610,682	526,449
Alpine (see El Dorado)			0	0	0	0
Amador	46,885	4,701	3,103	1,598	51,586	49,988
Butte	101,754	61,250	40,425	20,825	163,004	142,179
Calaveras	70,655	8,000	5,280	2,720	78,655	75,935
Colusa	35,600	8,900	5,874	3,026	44,500	41,474
Contra Costa	345,518	0	0	0	345,518	345,518
Del Norte	50,002	5,971	3,941	2,030	55,973	53,943
El Dorado	106,037	50,384	33,253	17,131	156,421	139,290
Fresno	394,558	186,596	123,153	63,443	581,154	517,711
Glenn	75,808	0	0	0	75,808	75,808
Humboldt	89,185	9,774	6,451	3,323	98,959	95,636
Imperial	52,865	36,086	23,817	12,269	88,951	76,682
Inyo	57,185	27,171	17,933	9,238	84,356	75,118
Kern	355,141	200,000	132,000	68,000	555,141	487,141
Kings	58,493	32,000	21,120	10,880	90,493	79,613
Lake	57,569	26,836	17,712	9,124	84,405	75,281
Lassen	65,000	0	0	0	65,000	65,000
Los Angeles	1,890,029	803,431	530,264	273,167	2,693,460	2,420,293
Madera	80,794	25,383	16,753	8,630	106,177	97,547
Marin	136,581	0	0	0	136,581	136,581
Mariposa	45,390	0	0	0	45,390	45,390
Mendocino	60,462	30,000	19,800	10,200	90,462	80,262
Merced	98,847	67,473	44,532	22,941	166,320	143,379
Modoc	70,941	1,247	823	424	72,188	71,764
Mono	48,246	1,350	891	459	49,596	49,137
Monterey	120,688	57,179	37,738	19,441	177,867	158,426
Napa	61,820	40,000	26,400	13,600	101,820	88,220
Nevada	116,010	0	0	0	116,010	116,010
Orange	537,209	114,738	75,727	39,011	651,947	612,936
Placer	89,626	0	0	0	89,626	89,626
Plumas	55,827	7,803	5,150	2,653	63,630	60,977
Riverside	665,441	218,500	144,210	74,290	883,941	809,651
Sacramento	309,597	211,331	139,478	71,853	520,928	449,075
San Benito	60,289	29,151	19,240	9,911	89,440	79,529
San Bernardino	459,342	313,548	206,942	106,606	772,890	666,284
San Diego	605,937	253,614	167,385	86,229	859,551	773,322
San Francisco	245,257	113,795	75,105	38,690	359,052	320,362
San Joaquin	214,154	78,238	51,637	26,601	292,392	265,791
San Luis Obispo	67,010	32,246	21,282	10,964	99,256	88,292
San Mateo	126,800	86,554	57,126	29,428	213,354	183,926
Santa Barbara	170,705	77,323	51,033	26,290	248,028	221,738
Santa Clara	445,545	210,712	139,070	71,642	656,257	584,615
Santa Cruz	74,335	43,000	28,380	14,620	117,335	102,715
Shasta	185,447	111,913	73,863	38,050	297,360	259,310
Sierra (see Nevada)	0	0	0	0	0	0
Siskiyou	74,650	35,000	23,100	11,900	109,650	97,750
Solano	129,070	39,710	26,209	13,501	168,780	155,279
Sonoma	138,141	65,519	43,243	22,276	203,660	181,384
Stanislaus	219,062	120,000	79,200	40,800	339,062	298,262
Sutter	66,292	31,409	20,730	10,679	97,701	87,022
Tehama	27,294	3,535	2,333	1,202	30,829	29,627
Trinity (see Shasta)	0	0	0	0	0	0
Tulare	307,882	132,293	87,313	44,980	440,175	395,195
Tuolumne	64,534	30,084	19,855	10,229	94,618	84,389
Ventura	252,718	77,864	51,390	26,474	330,582	304,108
Yolo	76,604	35,377	23,349	12,028	111,981	99,953
Yuba	65,856	44,953	29,669	15,284	110,809	95,525
Total	10,789,626	4,449,685	2,936,792	1,512,893	15,239,311	13,726,418

FLF Base Funds 10,789,626
 FLF Federal Drawdown 4,449,685
 Total 15,239,311



JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-107

For business meeting on March 24, 2020

Title

Court Facilities: Request to Rename
West Justice Center in Westminster
(Orange County)

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

March 3, 2020

Recommended by

Court Facilities Advisory Committee
Hon. Brad R. Hill, Chair
Hon. Patricia M. Lucas, Vice-Chair
Hon. Keith D. Davis, Chair of the
Subcommittee on Courthouse Names

Contact

Mike Courtney, 916-263-2981
mike.courtney@jud.ca.gov
Chris Magnusson, 415-865-4041
chris.magnusson@jud.ca.gov

Executive Summary

The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names recommend approving the request of the Superior Court of Orange County to rename the existing West Justice Center in the City of Westminster as the Stephen K. Tamura Court. This approval provides a name for the existing courthouse that honors Justice Tamura's service with distinction to the Superior Court of Orange County, the California Court of Appeal, and the Supreme Court of California.

Recommendation

The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names recommend that the Judicial Council, effective March 24, 2020, approve the request to rename the existing West Justice Center as the Orange County Superior Court, West Justice Center, Stephen K. Tamura Court.

Relevant Previous Council Action

The council has taken no previous action on this courthouse naming request. In April 2014, the council adopted its revised *Courthouse Naming Policy* (see Link A).

Analysis/Rationale

Currently, the Superior Court of Orange County provides service from its West Justice Center in the City of Westminster to the western communities of Westminster, Garden Grove, and Fountain Valley. This facility is a county-owned facility built in 1967. The superior court is the majority tenant of the building and has a total of 17 courtrooms processing criminal, civil, and traffic cases.

Justice Tamura had attended high school within the judicial district, and to honor his many contributions to the legal community for over 43 years of service, the superior court requests that the existing West Justice Center be named after Justice Stephen K. Tamura—a former member of their bench who passed away in 1982 (see Attachment A). In addition to the information below, further details on his background are described in Attachment B.

Justice Tamura was a trailblazer and a legal icon in Orange County who:

- Was the first Asian American attorney in Orange County. He was admitted to the State Bar of California in 1937 and opened his practice in the City of Santa Ana in 1938.
- Was interned with his family under Executive Order 9066 at the Poston Relocation Center in Arizona in 1942 during World War II. He was permitted by the War Relocation Authority to study at Harvard Law School in 1943.
- Enlisted in the United States Army during World War II and served in Italy during the war with the all-Nisei (second-generation Japanese American) “Go For Broke” 442nd Infantry Regimental Combat Team.
- Worked for 12 years in the Orange County Counsel’s Office prior to his appointment as a superior court judge.
- Was the first Asian American superior court judge in Orange County. He was appointed to the superior court in 1961.
- Was the first Asian American presiding judge in Orange County.
- Was the first Japanese American and first Asian American to sit on the California Court of Appeal, which made him the first Asian American appellate court justice in the continental United States, and. He was appointed to the Court of Appeal, Fourth Appellate District, Division Two, in 1966.

- Served as a justice pro tempore on the Supreme Court of California until his retirement in 1981.
- Received the Franklin G. West Award from the Orange County Bar Association in 1972. This award is the association's highest honor bestowed to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law.
- Served as a member of the Judicial Council from 1979 to 1981.
- Was a founding member of the Orange County Japanese American Citizens League.
- Was a founding member of the Japanese American Cultural and Community Center in Los Angeles.
- Was posthumously awarded the Congressional Gold Medal in 2011, awarded collectively to the U.S. Army's 100th Infantry Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service—also known as the Nisei Soldiers of World War II.

The superior court has reached out to the Tamura family, whose members have expressed their strong support for the naming request (see Attachments C, D, E, and F). There is also local community support for this request, as expressed by numerous professionals, organizations, and educational institutions (see Attachments G through X).

The advisory committee and its Subcommittee on Courthouse Names reviewed the naming request against section III.B.2.b of the council's *Courthouse Naming Policy* and found that it complies with all requirements. To that end, the committees have been made aware by the superior court that a probate matter, referenced in the court's letter (see Attachment A), has been closed.

Policy implications

Per the council's naming policy, requests involving names of persons for court facilities require evaluation by the advisory committee's Subcommittee on Courthouse Names, with a recommendation to the full advisory committee. These evaluations were carried out at public meetings as described below.

Comments

On January 17, 2020, the Subcommittee on Courthouse Names held a public meeting for the evaluation of the naming request, voting unanimously that the council approve the request. In advance of that public meeting, this naming request was posted for public comment on January 10, 2020, and no public comments were received.

On February 5, 2020, the full advisory committee held a public meeting for the evaluation of its subcommittee's recommendation, voting unanimously to affirm that recommendation. In

advance of that meeting, this naming request was posted for public comment on January 29, 2020, and no public comments were received.

Alternatives considered

Because of Justice Tamura's service with distinction as a jurist on the Superior Court of Orange County, the California Court of Appeal, and the Supreme Court of California, as well as his service to the United States as a veteran, the strong community support reflected in the attachments to this proposal, and the naming request's precise compliance with the council's naming policy, no alternatives to the recommended action were considered. The Court Facilities Advisory Committee and its Subcommittee on Courthouse Names strongly support this proposal.

Fiscal and Operational Impacts

The costs of designing and fabricating the signage for the existing courthouse in the City of Westminster would be paid from the operating budget of the Superior Court of Orange County. Because the superior court initiated this naming request, it is aware of its responsibility for the expenditures.

Attachments and Links

1. Attachment A: Courthouse naming request from Presiding Judge Kirk H. Nakamura, Superior Court of California, County of Orange, November 7, 2019
2. Attachment B: "The Honorable Stephen K. Tamura: Lawyer, Judge, Wintersburg Mission Congregant," *Historic Wintersburg* blog, September 6, 2012, <http://historicwintersburg.blogspot.com/2012/09/the-honorable-stephen-k-tamura-lawyer.html>
3. Attachment C: Letter supporting the naming request from Susan Tamura Kawaichi, daughter of Justice Stephen K. Tamura
4. Attachment D: Letter supporting the naming request from John D. Tamura, son of Justice Stephen K. Tamura, September 18, 2019
5. Attachment E: Letter supporting the naming request from Daniel H. Tamura, DDS, Tamura Dentistry
6. Attachment F: Letter supporting the naming request from Robert Tamura, son of Justice Stephen K. Tamura, September 14, 2019
7. Attachment G: Letter supporting the naming request from Dale Minami, Minami Tamaki LLP, August 1, 2019
8. Attachment H: Letter supporting the naming request from Mike Madokoro, president of the Japanese American Bar Association, August 21, 2019
9. Attachment I: Letter supporting the naming request from Diane Kawata Watanabe, president of the Orange County Nikkei Coordinating Council, August 30, 2019
10. Attachment J: Letter supporting the naming request from Rody Yoshinaka, M.D., Sports Elder, Wintersburg Sports Ministry, Wintersburg Presbyterian Church, August 21, 2019
11. Attachment K: Letter supporting the naming request from Douglas G. Erber, president of the Japan America Society of Southern California, August 12, 2019

12. Attachment L: Letter supporting the naming request from Kristine Dennehy, Ph.D., Department of History, California State University, Fullerton, August 12, 2019
13. Attachment M: Letter supporting the naming request from Susie Ling, Associate Professor, History and Asian American Studies, Pasadena City College, July 15, 2019
14. Attachment N: Letter supporting the naming request from G. Gabrielle Star, president of Pomona College, July 23, 2019
15. Attachment O: Letter supporting the naming request from Timothy K. Asamen, chairman of the Japanese American Gallery
16. Attachment P: Letter supporting the naming request from Ryan Yoshikawa, President, SELANOCO Chapter, Japanese American Citizens League, July 26, 2019
17. Attachment Q: Letter supporting the naming request from Kerry Yo Nakagawa, Project Director, Nisei Baseball Research Project, August 20, 2019
18. Attachment R: Letter supporting the naming request from Naomi Hirahara, author of the Mas Arai Mystery Series, August 17, 2019
19. Attachment S: Letter supporting the naming request from Kenneth S. Hayashi, president of the Veterans Memorial Court Alliance, August 15, 2019
20. Attachment T: Letter supporting the naming request from James T. Nakamura, Post 3670 Commander, Veterans of Foreign Wars, August 17, 2019
21. Attachment U: Letter supporting the naming request from Betty O. Yamashiro, attorney, and Kenneth M. Yamashiro, M.D., August 21, 2019
22. Attachment V: Letter supporting the naming request from Kerry G. Osaki, Wheatley & Osaki, August 6, 2019
23. Attachment W: Letter supporting the naming request from Patricia Ihara, Law Office of Patricia Ihara, August 3, 2019
24. Attachment X: Letter supporting the naming request from the Johnsen Family of Cypress, California, August 28, 2019
25. Link A: *Courthouse Naming Policy*, April 25, 2014, www.courts.ca.gov/documents/jc-20140425-itemJ.pdf



CHAMBERS OF
KIRK H. NAKAMURA
PRESIDING JUDGE

Superior Court of California County of Orange

OFFICE OF THE PRESIDING JUDGE
CENTRAL JUSTICE CENTER
700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701-4045
(657) 622-7011

November 7, 2019

Hon. Brad R. Hill, Chair
Court Facilities Advisory Committee
Administrative Presiding Justice of the
Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721

Hon. Keith D. Davis, Chair
Subcommittee on Courthouse Names
Superior Court of California, County of San Bernardino
247 W. 3rd Street, Department S25
San Bernardino, CA 92415

Dear Justice Hill and Judge Davis,

As the current Presiding Judge of the Orange County Superior Court, it gives me great pleasure to propose renaming our West Justice Center in Westminster, California to name of "Orange County Superior Court, West Justice Center, Stephen K. Tamura Court."

Justice Tamura was a trailblazer and is a legal icon in Orange County. He was the first Asian American attorney in Orange County. He was the first Asian American Superior Court Judge in Orange County. He was the first Asian American Presiding Judge in Orange County. He was the first Asian American Appeals Court Justice in the continental United States. He served in each capacity with distinction.

Justice Tamura attended Huntington Beach High School in our WJC judicial district. The Tamura's attended Wintersburg Church in the district.

Justice Tamura was the recipient of the Franklin G. West award, the highest honor bestowed by the Orange County Bar Association. He was interned, like all Japanese Americans, during the second World War under Executive Order 9066, but also served in the famed 442nd infantry battalion, the most decorated unit of its size in the second world war.

I believe the application meets the criteria set forth in the Judicial Council naming policy.

1. He has made recognizable, significant contributions to the state and national justice system.
2. He has been deceased for over 10 years. He passed away in 1982.
3. There is a probate matter that will soon be dismissed by his heirs in our Central Justice Center. I am informed by his daughter that she is not otherwise aware of any other litigation.

**Superior Court of California
County of Orange**

4. The naming of the Justice Center does not present a potential conflict of interest as viewed by the public, governmental entities or private businesses.
5. The request is consistent with the California Code of Judicial Ethics.

I believe this request is timely. I hope that the Facilities Committee can expedite this request, so approval can be made on December 18, 2019, the 75th anniversary of the Korematsu decision. I have the full support of our court's executive committee.

Enclosed are letters of support for this application.

Thank you for your attention to this matter.

Very truly yours,

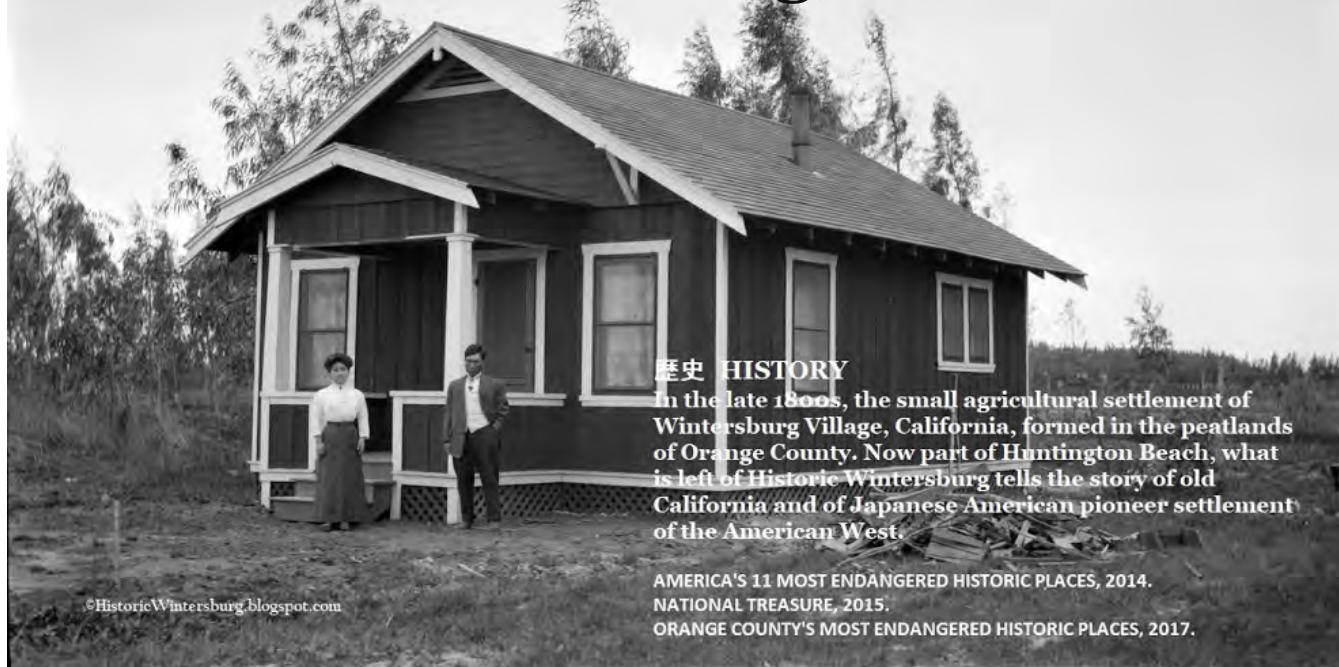


Kirk H. Nakamura
Presiding Judge

KN:cr

Enclosures

Historic Wintersburg, California



歴史 HISTORY

In the late 1800s, the small agricultural settlement of Wintersburg Village, California, formed in the peatlands of Orange County. Now part of Huntington Beach, what is left of Historic Wintersburg tells the story of old California and of Japanese American pioneer settlement of the American West.

AMERICA'S 11 MOST ENDANGERED HISTORIC PLACES, 2014.
NATIONAL TREASURE, 2015.
ORANGE COUNTY'S MOST ENDANGERED HISTORIC PLACES, 2017.

©HistoricWintersburg.blogspot.com

Thursday, September 6, 2012

The Honorable Stephen K. Tamura: Lawyer, Judge, Wintersburg Mission congregant



LEFT: The first Japanese American appellate judge in the continental U.S. and Orange County's first Japanese attorney, Justice Stephen Kosako Tamura (1911-1982), one of the "Sunday school boys" at the Wintersburg Japanese Presbyterian Mission. (Photo, Japanese American Bar Association)

Many of the oral histories of early Wintersburg residents excerpted on the Historic Wintersburg blog were part of a larger effort during the late 1960s to 1980s to capture the memories of Orange County's Japanese American community.

The **Honorable Stephen K. Tamura Orange County Japanese American Oral History Project*** was named for Stephen Kosako Tamura "in recognition of his rise from roots in the local Japanese American community to appointment, in 1966, as the first Japanese American appellate judge in the continental United States."

Stephen K. Tamura also was a congregant of the **Wintersburg Japanese Presbyterian Mission** during his childhood. Tamura was remembered, along with other notable Wintersburg congregants, by **Reverend Kenji Kikuchi** in his 1981 oral history interview for the **Honorable Stephen K. Tamura Orange County Japanese American Oral History Project** as one of "my Sunday school boys."



ABOVE: "The only attorney listed in 1940 Japanese American directories for Orange County," Stephen Kosaku Tamura opened his first law office at 202 E. Fourth Street, Santa Ana, in 1938. (Notation and photo, Preserving California's Japantowns, www.californiajapantowns.org)

The path to legal eagle

Stephen K. Tamura first attended **Pomona College**, then the **University of California- Berkeley**, and finally **Harvard University School of Law**. He was the first Asian American attorney in Orange County, opening his practice in 1938 and later serving as Superior Court Judge. His law office building at 202 E. Fourth Street, Santa Ana, California, stands today.

The law office building was listed as a historical structure by the **Bower's Museum Japanese American Council's Historic Building Survey** in 1986, and more recently by **Preserving California's Japantowns**.

While the Tamura family was interned in 1942 at the **Poston Arizona Relocation Center** during World War II, Tamura was permitted by the **War Relocation Authority** to study at **Harvard School of Law** in 1943. He enlisted in the Army in 1945, serving in Italy with the all-Nisei "Go for Broke" **442nd Regimental Combat Team**.



ABOVE: The future Justice Tamura, far left. From the War Relocation Authority files: "Legal staff at Poston Camp No. 1. These are all lawyers, and Mr. Kido is National President of the J.A.C.L. (L to R)"

Cap Tamura, Franklyn Sugijama, Tom Masuda, Elmer Yamamoto, Saburo Kido." (Photographer: Stewart, Francis, Poston, Arizona, January 4, 1943)

In 1956, Tamura acted as **Deputy County Counsel** representing Orange Coast College in **Orange Coast Junior College District of Orange County v. Henry Clinton St. John** (<http://law.justia.com/cases/california/calapp2d/146/455.html>). St. John, a teacher, was charged with not signing a loyalty oath regarding non affiliation with the Communist party as required then by the Education Code.

Tamura would have recognized the unsettling irony in a loyalty oath. As relayed by **Densho, The Japanese American Legacy Project**, "*In February 1943, the U.S. War Department and the War Relocation Authority decided to test the loyalty of all people of Japanese ancestry who were incarcerated in the WRA camps. They required all those 17 years of age and older to answer a questionnaire that became known as the 'loyalty questionnaire.' Their answers would be used to decide whether they were loyal or disloyal to the United States.*"

In 1961, **Governor Pat Brown** appointed Tamura to the **Orange County Superior Court**, during which time he heard the highly contentious case in 1964 in which county supervisors blocked incorporation of the City of **Yorba Linda**.

Justice Tamura was the first Japanese American and first Asian American to sit on the **California Court of Appeal** in 1966, and also served as Justice Pro Tem on the **California Supreme Court** until his retirement. He then served as a member of the **California Judicial Council** from 1979 to 1981. Justice Tamura passed away in 1982, after which the oral history project was named in his honor.

In addition to his 43 years in the law, Tamura was a founding board member of the **Orange County Japanese American Citizens League** and the **Japanese American Cultural and Community Center** in Los Angeles.

Fellow Appellate Court **Justice John G. Gabbert**, referring to him by his nickname, "Captain Tamura," during his during his interview for the California Appellate Court Legacy Project, said Tamura was "*the most interesting fellow...*" and "*a very able guy and a wonderful personality and a great fellow to talk to...*"

A career interrupted

Before enlisting in 1945 in the U.S. Army, Tamura and his wife are listed at the **Granada War Relocation Center** (also known as Camp Amache, in Colorado) before leaving in 1943 for **Harvard School of Law**. The **War Relocation Authority** (WRA) documented, for public relations purposes, relocated Japanese Americans in often awkwardly staged settings.

The WRA reported "*Mr. Tamura is a lawyer by profession, a member of the California bar, and had a private practice at Santa Ana, California. He received his education at Pomona College, and LL.B. from the University of California. At Granada he was employed in the project attorney's office. Mrs. Tamura is a graduate of the University of California and at Granada, she worked as librarian. Mr. and Mrs. Tamura arrived at Boston in October, 1943.*"

Mr. Tamura enrolled for graduate work at Harvard University and has carried on some research work in addition to his regular studies. Mrs. Tamura is employed at the law library in Harvard University. Inasmuch as both are busy throughout the day they have made their home at 32 Braddock Park, Boston, a boarding house with a fine reputation of Japanese and American cooking."



ABOVE: From the War Relocation Authority files: "Mr. and Mrs. Kosaku Steven (sic) Tamura (Granada) at the famous Minute Man statue on the battlefield at Concord, Mass., where the shot was fired that was heard 'round the world.'" (Photographer Hikaru Iwasaki, August 1944)



ABOVE: From the War Relocation Authority files: "Mr. and Mrs. Kosaku Steven (sic) Tamura (Granada), Ben Yashikawa (Tule), and Tsetsu Morita (Minidoka) at the Concord River where the Minute Men stopped in British April 19, 1775." The WRA indicated their respective internment camps in parenthesis, including Tule Lake in northern California and Minidoka in Idaho. (Photographer Hikaru Iwasaki, August 1944)



ABOVE: From the War Relocation Authority files: "Mr. and Mrs. Kosaku Steven (sic) Tamura (Granada), Ben Yashikawa (Tule), and Tsetsu Morita (Minidoka) at the famous bridge of the Revolutionary battlefield at Concord, Mass." (Photographer Hikaru Iwasaki, August 1944)

The Tamura family

Stephen Tamura's father, **Hisamatsu Tamura**, was remembered by another **Wintersburg Japanese Presbyterian Mission** congregant, **Clarence Nishizu**, in his 1982 oral history interview for the **Honorable Stephen K. Tamura Orange County Japanese American Oral History Project** as one of "the original Talbert (Fountain Valley) pioneer Issei who first moved into this area to farm various vegetable crops and they were the ones who, with the future in mind, purchased the land in Talbert to build the Japanese language school."



ABOVE: Six-horse team hauling hay in Talbert (present day Fountain Valley). (Photo courtesy of Orange County Archives)

Hisamatsu Tamura--along with fellow farmer **Isojiro Oka** and other Issei--purchased "an old Standard Oil Company wooden building" to serve as the school and an old house to serve as the teacher's residence, moving both buildings to the school site.

Orange County pioneers Hisamatsu Tamura and Isajiro Oka's efforts to provide children's education is honored today: the **Isojiro Oka Elementary School** in **Huntington Beach** and the **Hisamatsu Tamura Elementary School** in **Fountain Valley**.

Hisamatsu Tamura also served as president of the **Smeltzer Japanese Association** (Smeltzer is part of present-day Huntington Beach), as had **Charles Mitsuji Furuta** (Historic Wintersburg's Furuta farm), **Gunjiro Tajima** (Junjiro Tashima, Wintersburg's **Tashima Market**), and **Charles Kyutaro Ishii** (an elder with the **Wintersburg Japanese Presbyterian Mission**).

Although Tamura's brother, **Noboru**, was the eldest, he stayed working the family farm in **Talbert** in order to fund Stephen's early college education. For the *Issei* and *Nisei*, it was simply understood they would make a commitment for the next generation in the spirit of "*kodomo no tame ni*" or, "*for the sake of the children.*"

In his blog, **[My Visit to Manzanar - My journey to Japanese America and more](#)**, Taka Go explains "it is important to describe that...a sense of collectivism among a family was integral for Japanese American families and communities, and it meant that the Tamura family supported Judge Tamura to achieve his goal....In other words, filial piety toward their family was considered very important, and parents supported their son well. Then, the sons supported their grandsons well."

Legacy

When questioned about their experience, many *Nisei* talk about their belief in their country and their focus on the future, which gave them strength to endure. It can be difficult for younger generations to understand, looking back today at the clear civil liberties issues faced by *Issei* and *Nisei*.

During his 1971 oral history interview for the then **California State College, Fullerton, Japanese American Oral History Project**, Newport Beach resident **Mas Ueysugi** explained to his interviewer **John McFarlane**.

"...the *Sansei* and the *Yonsei* question us and they bombard us with these things. You know: 'Why? Why didn't you resist the evacuation? If we went through the same process now, would we accept it?' Sure, hypothetically we can say this, and we can say that. Or if you get in a position where a person points a gun at you, or you point a gun at them, you can certainly rationalize and say things now, but you don't know what your reaction will be at the time when something happens for real," said Ueysugi.

"So the only rebuttal that I have for our children is that they'll have to make their own decisions. We all have to make decisions, small or large, every day of our lives...Decisions are not always something so catastrophic as the evacuation. We tell them, "Well, these are things that were accomplished through perseverance and tenacity..."

Ueysugi pointed to **Justice Tamura** as an example.

"Our **Justice Stephen K. Tamura**, he recalls when he was refused entry to a public pool; in fact, they asked for his birth certificate when he tried to enter the swimming pool here at Memorial Park--who carries a certificate to a pool--or he had to sit up in the balcony--Is this possible? In Orange County?--here at West Coast Theatre," recalled Ueysugi. "People remember these things. Despite that, he has excelled because of his excellence."

***The Honorable Stephen K. Tamura Orange County Japanese American Oral History Project was cosponsored by the Historical and Cultural Foundation of Orange County, Japanese American Council and California State University, Fullerton, Oral History Program, Japanese American Project.**

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Susan Tamura Kawaichi
14 Mesa Avenue
Piedmont, CA 94611

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Re: Justice Stephen K. Tamura

Dear Members of the Judicial Council

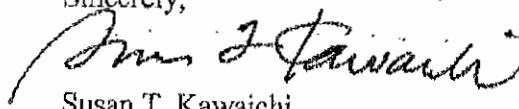
My family is proud to support the Orange County Superior Court application to name the West Justice Center after my father; Stephen K. Tamura.

My father had the privilege of being a first: the first in his family to attend college, the first Japanese-American attorney in Orange County, the first Asian-American to serve as County Counsel for Orange County, the first Asian-American trial court judge in Orange County and the first Asian-American justice of the appellate court. I believe that he made a valuable contribution to California jurisprudence through his work and reputation as a trial court judge and through his published opinions as an appellate court justice.

My father would not have been able to attend college and law school without the support of his family, particularly his brother Noboru Tamura, and his community. Rev. Kikuchi, a minister at the Wintersburg Church encouraged him to pursue law. Dad always acknowledged that his accomplishments were achieved through the support of his family and community. The naming of a courthouse in his memory would not only recognize his contributions to the legal community of Orange County, but it would also acknowledge the contributions of his family and community.

Thank you for your consideration.

Sincerely,



Susan T. Kawaichi

September 18, 2019

John D. Tamura
2-3-2 Honamanuma
Suginami-ku, Tokyo
Japan

Subcommittee on Courthouse Names
Court Facilities Advisory Committee
Judicial Council of California

Dear Subcommittee on Courthouse Names,

It is a real privilege to have this opportunity to write to you in support of the naming of the West Justice Center after my father, Stephen K. Tamura.

Public spaces and buildings of all sorts, from schools to streets, are named after prominent people, but courthouses hold a near sacred presence in the body politic, rightfully necessitating a careful consideration of their naming. The possibility of the naming of the West Justice Center after my father is an extraordinary honor for him and our family.

As a layman, it is difficult to make a substantive argument for my father's fulfilling of the first criterion for the naming — a recognizable and significant contribution to the law. However, I do know that in his early years as Orange County Counsel, my father won a landmark case protecting the rights of consumers against unscrupulous used-cars dealers. Over his long career as a jurist on the Superior and the Appellate Courts, he certainly added positively, through countless decisions and opinions, to the advancement of the law.

I would also suggest that in addition to his contribution to the justice system, my father contributed to the community of the law. That is, as one of the first Asian attorneys and judges in Orange County, California, and indeed the nation, he opened the possibility of law accessible to Asian Americans and other minorities through his example. Certainly as a pioneer in the field of law for Asians, he inspired young Asian-Americans to pursue a similar career, thus further broadening this community of the law.

As far as the other criteria, during the nearly 40 years since my father's death, his reputation as grown, as evidenced by scholarships and honors under his name, and I can assure you that nothing will arise to besmirch it. My family and I have no litigation before any court, and any potential for conflict of interest is non-existent.

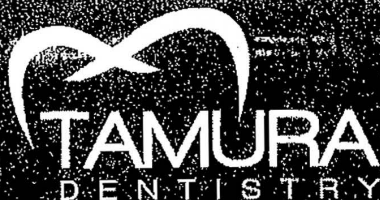
Justice Antonin Scalia famously quipped that the Constitution is "dead, dead, dead," meaning, as far as I gather, that the original intent of the Constitution is settled. Be that as it may, surely the spirit of these Charters still animates all courtrooms, whether grand or humble, where this spirit is given the greatest breath. The locational naming of courthouses is certainly functional, but sometimes one hopes that the animating spirit

behind the letter of the law will be refreshed by the memory of a person who represents that spirit. I humbly submit that my father was such a person.

Sincerely yours,

John D. Tamura

John D. Tamura



Daniel Tamura DDS
A Professional Corporation

6200 Wilshire Blvd., Suite 1209
Los Angeles, CA 90048
Office: (323) 937-0197
office@danieldtamuraDDS.com

tamuradentistry.com

RE: Courthouse Naming - West Justice Center, Stephen K. Courthouse
County of Orange

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, serving for 12 years before his appointment as a Superior Court Judge. He was elected Presiding Judge of The Orange County Superior Court. In 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeals. He also served as Justice Pro Tem on the California Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeals until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442 Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law". Throughout his judicial career, he was known for accessibility, fairness, wisdom, humility and kindness. Thank you for your consideration.

Sincerely,

Daniel H. Tamura, DDS

September 14, 2019

California Judicial Council

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse County of Orange

To Whom It May Concern:

My name is Robert Tamura, my father was the oldest son of the Hisamatsu Tamura Family. I remember the stories my dad had told me about my Uncle Stephen. My father, Noboru, was the patriarch of the family because their mother passed away and their father remarried. Being the oldest, he and wife Marie helped raise Stephen, Kimio, Hideo and Mike. My father Noboru was able to help Uncle Stephen go to college: Pomona College, UC Berkeley, and Harvard University School of Law. Stephen was a gifted scholar and my dad knew he was destined to be a "Special Person".

I remember going over to my Uncle's home in the later years when Stephen was a lawyer, we knew him as Uncle Kap. He was very down to earth and always had time to ask us how we were and what we were doing. Uncle Kap was also proud of his three kids, John, Susan, and Jeffrey. Susan and Jeffrey became lawyers and John went on to become a professor of conversational English and an interpreter for a University in Japan.

My father would get so thrilled when Stephen would receive special awards. One of the proudest moments for the brothers, Noboru, Kimio, and Hideo was when Stephen was sworn in as the first Japanese American Appellate Judge in the continental United States.

Uncle Kap's passion later in life was going to Mammoth Lakes, California. He loved relaxing and fishing on June lake with his youngest son Jeffrey and wife, Kazuko.

As a "Tamura", I'm so proud of the Stephen Tamura Legacy.

Thank you,

Robert Tamura



Dale Minami
 Direct Line: 415.788-2713
 Fax: 415.398-3887
 Email: dminami@MinamiTamaki.com

August 1, 2019

Judge Kirk Nakamura
 Orange County Superior Court
 700 Civic Center Drive West
 Santa Ana, CA 92701

RE: Courthouse Naming - West Justice Center, Stephen K. Tamura Courthouse

Dear Judge Nakamura,

The purpose of this letter is to express our full enthusiastic support for the application of the County Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

By way of introduction, I am an attorney who has practiced for 47 years in the Bay Area, and am currently a Senior Counsel and former partner at the firm of Minami Tamaki LLP in San Francisco. I have been involved in the both the legal and Asian Pacific American ("APA") community since my graduation from law school in 1971. In the public arena, I served on the State Commission on Judicial Nominees Evaluation ("CJNE"), as a member of Senator Barbara Boxer's Judicial Appointments Review Committee, as a Commissioner on the Fair Employment and Housing Commission, and as the Chair of the Civil Liberties Public Education Fund, appointed by President Clinton. I also helped found the Asian Law Caucus, Inc., a community-interest law firm, the Asian American Bar Association of the Greater Bay Area ("AABA"), and the Asian Pacific Bar of California.

I met Justice Tamura at the beginning of my career and was inspired to learn that as one of the few APA attorneys practicing in the years before me, he not only ascended to the appellate bench but maintained his connection with the APA community. What impressed me the most, however, was his kindness and support for the young APA attorneys associations which formed throughout the state.

I know that he was a well-respected jurist in Orange County for decades and was the first Asian American attorney in Orange County. As such, he set a standard for all of us young attorneys to emulate. And not just through his achievements but through his civil and

gracious demeanor. He never condescended or patronized as his achievements spoke for themselves.

And while others can cite his achievements and career, I believe the inspiration he offered – to young attorneys, to a bar which demanded diversity, to a career in public service, were as important as his individual accomplishments.

I believe it is totally appropriate, in fact, obligatory to honor this exceptional lawyer and jurist of extraordinary fairness and the very best this APA community could offer to this County, State and Country.

Very truly yours,

MINAMI TAMAKI LLP

A handwritten signature in cursive script that reads "Dale Minami". The signature is written in black ink and is positioned below the typed name.

Dale Minami

DM/dm



OFFICERS

August, 21 2019

Mike H. Madokoro
 Catherine Endo Chuck
 Harumi Hata
 Emily Kuwahara
 Staci Tomita
 Kira N. Teshima
 Ryan Iwasaka (*ex officio*)

Judicial Council of California
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688

Dear Judicial Council,

BOARD OF GOVERNORS

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Re: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse
 County of Orange

Dear Judicial Council Members,

It is an honor and privilege for the Japanese American Bar Association to offer this letter of support to name the West Justice Center of the Orange County Superior Court the “Justice Stephen K. Tamura Courthouse.”

Mike Suzuki
 Diane Tan
 Kenneth Tanaka
 Gary Tokumori
 Ayano Wolff
 Steven K. Yoda
 Dennis T. Yokoyama
 Stephanie Yonekura
 David Yoshida

Justice Tamura had a long and distinguished career as a highly respected jurist in Orange County. After passing the bar in 1937, he opened his own law practice the following year, becoming the first Asian American attorney in Orange County. Later, he worked for the Orange County Counsel’s Office before being appointed a Superior Court Judge, eventually becoming Presiding Judge. Thereafter, he was appointed to the Fourth District, Division Two, of the California Court of Appeal, and he also served as Justice Pro Tem on the California Supreme Court until retiring in 1981. He continued to serve on assignment in the Court of Appeal until his death in 1982.

Justice Tamura’s legal career is all the more remarkable because it was profoundly interrupted soon after it began, by the internment of Japanese Americans in 1942, followed by Justice Tamura’s enlisting in the all-Nisei 442nd Regimental Combat Team in 1945 at the age of 34 (for which he was posthumously awarded the Congressional Gold Medal).

The Japanese American Bar Association was started 43 years ago. We have grown to over 370 members, including a thriving and expanding presence in Orange County. Our founders and many of our members share a painful history of racial exclusion and injustice in this country. Yet Justice Tamura

JAPANESE AMERICAN BAR ASSOCIATION

P.O. Box 71961
 Los Angeles, California 90071
www.jabaonline.org

Judicial Council of California

Re: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse

August 21, 2019

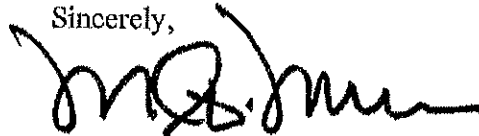
Page 2

exemplified the resilience of the human spirit and the strength to rise above the suffering of horrific injustice by dedicating his life toward advancing justice for others. He remains an inspiration to many young people. Indeed, the Justice Stephen K. Tamura Scholarship is awarded annually by the Japanese American Bar Association Educational Foundation to deserving law students.

Naming the West Justice Center of the Orange County Superior Court after Justice Stephen K. Tamura would be an inspirational and profoundly fitting tribute to a remarkable man and a true leader in the legal community.

We thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Madokoro". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mike Madokoro

President

Japanese American Bar Association

ORANGE COUNTY NIKKEI COORDINATING COUNCIL

August 30, 2019

Judicial Council of California

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse
County of Orange

Dear Judicial Council Members:

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, service for 12 years before his appointment as a Superior Court judge. He was elected Presiding Judge of the Orange County Superior Court. In 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness. Thank you for your consideration.

Very truly yours,



Diane Kawata Watanabe
President

Orange Coast Optimist Club • Orange Coast Sports Association
Orange County Japanese American Association • Orange County Queen's Council • SELANOCO Chapter, JAACL
South East Youth Organization • Suburban Optimist Club • VFW Post 3670 • VFW Youth Group

P.O. Box 28802

• Santa Ana

• California

• 92799



www.wpcsportsministry.org 2000 Fairview Street, Santa Ana, CA 92706 714-740-9400

September 11, 2019

RE: Courthouse name - West Justice Center, Stephen K. Tamura Courthouse

To Whom It May Concern:

On behalf of the Wintersburg Presbyterian Sports Ministry, I would like to express our full enthusiastic support for the county of Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura has a very storied history as a jurist, patriot, and citizen. He was the first asian American attorney in Orange County. He worked for the Orange County Counsel's office. He was elected presiding judge of the Orange County Superior Court. He was elevated to the 4th district, division 2, of the California Court of Appeal. He served as Justice Pro Team on the California Supreme Court until his retirement in 1981.

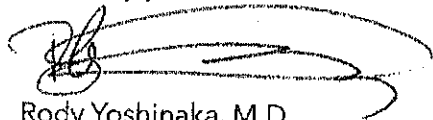
Following the attack by Japan at Pearl Harbor, Justice Tamura had a leadership role with the Japanese American Citizens League (JACL) board of governors. He denounced the attack along with other JACL members. He continued to be a voice advocating for the citizenship and loyalty of Japanese Americans during World War 2. He served in Italy with the all-Nisei "Go For Broke" 442nd Regimental Combat team at a time when his family was incarcerated at the Colorado River Relocation Center (Poston) in Arizona. He was posthumously awarded the Congressional Gold Medal in 2011.

As a child, he was a congregant of Wintersburg Presbyterian mission which later became Wintersburg Presbyterian Church (WPC). The mission, which is located in Huntington Beach later became a National historic site for its role in Japanese American settlement in the west. Today, WPC is a thriving community church located in Santa Ana with an active sports ministry typically enrolling 300 kids into our basketball sports program. While in high school in 1927, he was a guest writer

for the Santa Ana Register covering a story on the construction of Huntington Beach High School. He later was a founding board member of the Orange County JACL and Community Center of Los Angeles.

From his humble beginnings and throughout his judicial career, Justice Tamura sought to advance justice and the law. He left an indelible mark in Japanese American history and the fruit of his labors continue to have an impact in the benefits we experience today. He is a role model for all Americans. Thank you for your consideration,

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Rody Yoshinaka', enclosed within a large, loopy oval flourish.

Rody Yoshinaka, M.D.

Sports Elder, Wintersburg Sports Ministry
Wintersburg Presbyterian Church
email: information@wpcsportsministry.org



Japan America Society of Southern California
1411 West 190th Street, Suite 380
Gardena, California 90248-4361 U.S.A.
tel +1 310 965 9050 fax +1 310 965 9010 www.jas-socal.org

August 12, 2019

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse
County of Orange

Dear Honorable Judicial Council:

The purpose of this letter is to express my full and enthusiastic support for the application of the County Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for more than 40 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, service for twelve years before his appointment as a Superior Court judge. Justice Tamura was elected Presiding Judge of the Orange County Superior Court.

In 1966 Governor Pat Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. Justice Tamura also served as Justice Pro Tem on the California Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

During WWII, Justice Tamura served in the United States Army and fought in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011, along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, Justice Tamura was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness.

Thank you very much for your consideration.

Sincerely,

Douglas G. Erber
President



CALIFORNIA STATE UNIVERSITY, FULLERTON

Humanities and Social Sciences

Department of History

P.O. Box 6846, Fullerton, CA 92834-6846 / T 657-278-3474 / F 657-278-2101

August 12, 2019

Judge Kirk Nakamura
Orange County Superior Court
700 Civic Center Dr. West
Santa Ana, CA 92701

Dear Judge Nakamura,

Greetings from the History Dept. at California State University Fullerton (CSUF). I am writing today to join in fully supporting the naming of the West Justice Center Courthouse after Judge Stephen K. Tamura. As a faculty member of the only campus in the California State University system in Orange County (out of 23 campuses state-wide), I enthusiastically support this naming for many reasons related to our public educational mission, both inside and outside the classroom. Although I was originally hired in 2002 to teach Japanese and Korean history, I soon realized the rare value of our Japanese American oral history collection named after Judge Tamura, as a tool for research, teaching, and community engagement. As explained below, for the same reasons that this archival collection bears the name and legacy of Judge Tamura, it is more than fitting that the courthouse in Westminster should bear his name, stand as a testament to his accomplishments, and serve as a source of inspiration for the wider public in Orange County.

Among Judge Tamura's many contributions to our regional and national history, his participation in World War II as a member of the segregated 442nd Regimental Combat Team is one of the most noteworthy. In 2008, I had the privilege of interviewing several veterans who had served in this same capacity in Europe. While I did not know Judge Tamura personally, his part in this collective demonstration of patriotism and sacrifice serves as a valuable lesson for our young people today, most of whom have not experienced the horrors of war firsthand. In this way, the naming of the courthouse after Judge Tamura demonstrates our collective gratitude for these selfless acts of all our veterans here in Orange County.

For the last several years, I have asked my students to analyze an oral history transcript from the Judge Tamura collection as a way to understand the history of the Japanese American internment from a grassroots perspective, and to appreciate the role of ordinary people in the making of history. Without fail, students of all backgrounds are surprised to hear and read about the accomplishments of various racial and ethnic minorities in Orange County that have been left out of our textbooks and conventional curricula. The following student comment is typical: "I knew about Martin Luther King, Jr. but I didn't know Japanese Americans fought for civil rights too." Adding the name of Judge Tamura to the architectural and legal landscape of Orange County will go a long way towards rectifying this deficit in our collective memory.

In a seminar we call "Historical Thinking" I have increased the time and attention given to the subfield of "Public History" as a way to push students to think about the connections between our academic understanding of history and the ways history is presented to and consumed by the public more broadly. By naming the courthouse in Westminster after Judge Tamura, we can serve as a model to other public entities with this tangible demonstration of our values of

THE CALIFORNIA STATE UNIVERSITY

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CALIFORNIA STATE UNIVERSITY, FULLERTON

Humanities and Social Sciences

Department of History

P.O. Box 6846, Fullerton, CA 92834-6846 / T 657-278-3474 / F 657-278-2101

inclusivity, diversity and all the qualities Judge Tamura embodied during his illustrious career and lifetime. Thank you for your consideration of this appeal.

Sincerely,

Kristine Dennehy, Ph.D.

CSUF Dept. of History

Professor and Teaching Credential Adviser

THE CALIFORNIA STATE UNIVERSITY

Bakersfield / Channel Islands / Chico / Dominguez Hills / East Bay / Fresno / Fullerton / Humboldt / Long Beach / Los Angeles / Maritime Academy
Monterey Bay / Northridge / Pomona / Sacramento / San Bernardino / San Diego / San Francisco / San Jose / San Luis Obispo / San Marcos / Sonoma / Stanislaus



Social Sciences Division

15 July 2019

To all it may concern:

May I add my voice to the chorus of voices encouraging the renaming of Westminster's West Justice Center to honor Justice Stephen K. Tamura. This American hero is awe-inspiring, and reminds us all of the power of perseverance.

Just recently in my town of Monrovia, a "Neighborhood Treasure" plaque was put up to honor the contributions of Japanese Americans. I truly was amazed at how such a gesture already brought together so much good will. Our City Council simply wanted to acknowledge the diversity of our history. But the gesture brought an outpouring of appreciation - which I tried to capture in the article cited below. One neighbor said that he so appreciates such plaques as it offers opportunity for him to walk with his son to appreciate its art, and a reminder of how people from our town stood strong against adversity.

<https://www.monroviaweekly.com/community/neighborhood-treasure-reunites-japanese-community-of-monrovia/>

Respectfully,

A handwritten signature in cursive script that reads 'Susie Ling'.

Susie Ling

Associate Professor, History and Asian American Studies
shling@pasadena.edu

PRESIDENT G. GABRIELLE STARR



July 23, 2019

Kurtis Nakagawa
P.O. Box 397
Placentia, CA 92871

Dear Mr. Nakagawa,

The purpose of this letter is to express my support for the application to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Stephen K. Tamura graduated from Pomona College in 1933. In 1976 Justice Tamura was awarded an Honorary Degree from Pomona College's seventh president David Alexander, who presented him with a Doctorate in Civil Law. Pomona College was fortunate to have additional Tamura family connections, as Justice Tamura's daughter and granddaughter also attended Pomona College.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office for 12 years before his appointment as a Superior Court judge. He was elected Presiding Judge of the Orange County Superior Court. In 1966 Governor Brown elevated him to the Fourth District, Division Two of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Council from 1979 to 1981.

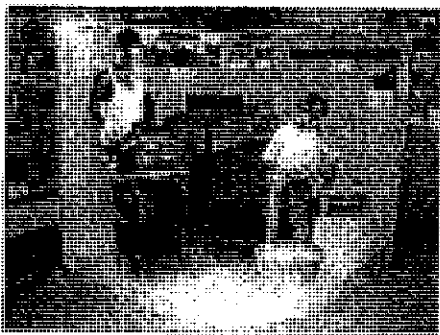
Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011, along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read 'G. Gabrielle Starr', with a long horizontal flourish extending to the right.

G. Gabrielle Starr



JAPANESE AMERICAN GALLERY

Imperial Valley Pioneers Museum

373 East Aten Road • Imperial, California 92251

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse County of Orange

The purpose of this letter is to express our full enthusiastic support for the application of the County Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, service for 12 years before his appointment as a Superior Court judge. He was elected Presiding Judge of the Orange County Superior Court. In 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness. Thank you for your consideration.

Sincerely,

Timothy K. Asamen, Chairman
Japanese American Gallery

THANK YOU FOR YOUR SUPPORT!



JAPANESE AMERICAN CITIZENS LEAGUE
SELANOCO CHAPTER
(South East Los Angeles, North Orange County)

To: Judicial Council of California

RE: Courthouse Naming – West justice Center, Stephen K. Tamura Courthouse County of Orange

SELANOCO chapter of the Japanese American Citizen League fully supports the application to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office for 12 years before his appointment as a Superior Court judge. He was elected Presiding Judge of the Orange County superior court. In 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011.

In 1972 he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law". Thank you for your consideration.

Sincerely,

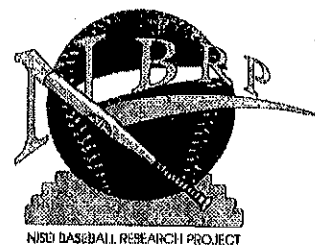
Ryan Yoshikawa, President

SELANOCO Chapter of the Japanese American Citizen League

July 26th 2019

NISEI BASEBALL RESEARCH PROJECT

Kerry Yo Nakagawa
Project Director



NISEI BASEBALL RESEARCH PROJECT

501(c)3 #77-0431278

August 20, 2019

RE: Courthouse Naming-West Justice Center, Stephen K. Tamura Courthouse, County of Orange

To whom it may concern:

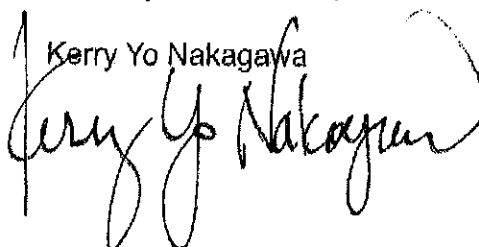
The intention of this letter is to express our full passionate and enthusiastic support for the application of the County Orange to name the West Justice Center in Westminster in honor of Justice Stephen K. Tamura.

For over forty-three years Justice Tamura was a well-respected and admired jurist for Orange County and the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. His sterling record working for the Orange County Counsel's office for twelve years led to his appointment as a Superior Court Judge. He was elected presiding Judge of the Orange County Superior Court. Elected Presiding Judge of the Orange County Superior Court and in 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. He also served as a member of the California Judicial Council from 1979 to 1981.

Like our Uncle John T. Suzuki, (who served as Senator Inouye's radioman in 'E' Company of the 442 that saved the 'Lost Battalion' in France; Justice Tamura served in Italy with the famed all-Nisei "Go For Broke" 442. Justice Tamura was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." His legacy as a Judge of accessibility, fairness, wisdom, humility and kindness followed him throughout his career. Thank you for your consideration of this magnificent man.

Health, Spirit and Aloha,

Kerry Yo Nakagawa


4728 North Glenn Avenue • Fresno, California 93704
 Phone & Fax: (559) 222-5763 • Cell (559) 824-3210
 E-Mail: NBRP@comcast.net

NAOMI HIRAHARA
P.O. BOX 60614
PASADENA, CA 91116

August 17, 2019

Re: Courthouse Naming - West Justice Center, Stephen K. Tamura Courthouse
County of Orange

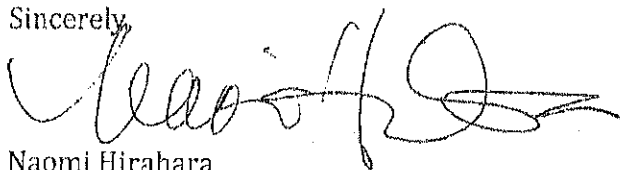
To Whom It May Concern:

A former editor of *The Rafu Shimpo* newspaper, I am a writer and social historian who has been active with Japanese American oral history projects based out of Cal State Fullerton as well as various book projects connected with the Japanese American National Museum in Los Angeles. I wanted to express my full support for the naming of the West Justice Center in Westminster in honor of Justice Stephen K. Tamura.

Westminster is one of the geographic historic centers of Japanese American life in Orange County and it would only be fitting that such an esteemed representative like Judge Tamura be recognized in this way. He, like my father-in-law, was a member of the 442nd Regimental Combat Team and their military exploits and sacrifice should never be forgotten. From an incarceration camp in Colorado, Judge Tamura went on to pursue his law degree at Harvard—an inspiration to any young person facing life obstacles today.

Thank you for your consideration.

Sincerely,



Naomi Hirahara
Edgar Award-winning author of the Mas Arai mystery series



August 15, 2019

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse

Dear Judicial Council:

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster, California, in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years. His family was one of the pioneers in the Japanese American community. He was a congregant of the Wintersburg Japanese Mission in what is now Huntington Beach. His family was incarcerated in Poston, Arizona during WWII. He was permitted by the War Relocation Authority to pursue graduate studies at Harvard School of Law in 1943. He later enlisted in the Army in 1945 and served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. Justice Tamura was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

Justice Tamura was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He became Deputy Counsel for the Orange County Counsel's Office serving for 12 years before his appointment as a Superior Court Judge. He was elected Presiding Judge of the Superior Court. In 1966, Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law."

Thank you for your consideration.

Sincerely,

Kenneth S. Hayashi

President



August 17, 2019

RE: Courthouse Naming – West Justice Center, Stephen K. Tamura Courthouse County of Orange

Dear Judicial Council:

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster, California, in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. His family was incarcerated in Poston, Arizona during WWII. He was permitted by the War Relocation Authority to pursue graduate studies at Harvard School of Law in 1943. He later enlisted in the Army in 1945 and served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. Justice Tamura was a charter member and helped started the Kazuo Masuda Memorial VFW Post 3670 in Orange County in 1957. Justice Tamura was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

Justice Tamura became deputy Counsel for the Orange County Counsel's Office serving 12 years before his appointment as a Superior Court Judge. He was elected Presiding Judge of the Superior Court. In 1966, Governor Brown elevated him to the Fourth District, Division Two, of the California Court Appeal. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Thank you for your time.

Sincerely,

James T. Nakamura

VFW Post 3670 Commander

BETTY O. YAMASHIRO
10922 Lake Court Road
Santa Ana, CA 92705-2524

August 21, 2019

To the Honorable Judicial Council:

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian-American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, service for 12 years before his appointment as a Superior Court Judge. He was elected Presiding Judge of the Orange County Superior Court. In 1966, Governor Brown elevated him to the Fourth District, Division Two of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

In 1971, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law." Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness.

Thank you for your consideration.

Sincerely,

Betty O. Yamashiro

Betty O. Yamashiro, retired attorney

Kenneth M. Yamashiro MD.

Kenneth M. Yamashiro, retired physician

Established in 1972
Specializing in Construction
Law and Trust Matters

577 WHEATLEY (1927 1934)

WHEATLEY & OSAKI
A PROFESSIONAL LAW CORPORATION
1940 W. Orangewood Avenue • Suite 110
Orange, California 92868

TELEPHONE:
(714) 456-1885
FACSIMILE:
(888) 210-4623
EMAIL:
imrmo11@verizon.net

August 6, 2019

California Judicial Council

**Re: Courthouse Naming - West Justice Center, Stephen K. Tamura Courthouse
County of Orange**

To Whom It May Concern:


Joining many others in the community, I write this letter to express my full support for the Application of the County Orange to name the West Justice Center located Westminster in honor of Justice Stephen K. Tamura.

Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. For all that he accomplished in an incredible career, he serves as a bright example of the best of who we are. From humble beginnings as an immigrant's son on a small farm in Orange County, he grew up to attend and graduate from both Boalt Hall and Harvard Law School, served with the famed 442nd Regimental Combat Team during WWII (which service was recognized with a Congressional Gold Medal), worked for 12 years in the Orange County Counsel's Office, was elected Presiding Judge of the Orange County Superior Court and then appointed as a Justice on the California Appellate Court, Fourth District where he served until he retired. By naming the West Justice Center after him in Orange County, we recognize the remarkable journey of a native son. No one will ever say it was easy. He lived through the Great Depression, the Internment camps and the Evacuation, and served with the most decorated unit (with the most casualties) for its size during WWII. He was the first to accomplish what he did (as a Japanese American attorney/judge) and did so at a time when bigotry could not be ignored. Yet, with every challenge, he was always able to overcome and do so with a sense of accessibility, fairness, wisdom, humility and kindness that left an indelible mark on all those he met along the way.

Back in 1974 while in my last year of college pondering my future, I found myself sitting in his living room in Santa Ana, California with him telling me about the rewards of serving my community as a lawyer, and that sometimes it was not just a privilege but a duty to so serve. 45 years later, I gratefully thank "Kap" Tamura for being the role model that he was for a generation of lawyers and the advice that he gave. This man is deserving of the honor requested by the County of Orange. Thank you for your consideration.

Very truly yours,

WHEATLEY & OSAKI



KERRY G. OSAKI

LAW OFFICE OF PATRICIA IHARA
4521 CAMPUS DRIVE #175
IRVINE, CA 92612
Tel. (949) 733-0746

August 3, 2019

RE: Courthouse Naming -- West Justice Center, Stephen K. Tamura Courthouse County of Orange

To the Honorable Judicial Council:

The purpose of this letter is to express my full enthusiastic support for the application of the County Orange to name the West Justice Center located in Westminster in honor of Justice Stephen K. Tamura.

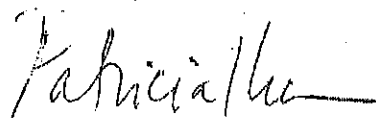
Justice Tamura was a well-respected jurist in Orange County for over 43 years and was the first Asian American attorney in Orange County. He was admitted to the California Bar in 1937. He worked for the Orange County Counsel's Office, service for 12 years before his appointment as a Superior Court judge. He was elected Presiding Judge of the Orange County Superior Court. In 1966 Governor Brown elevated him to the Fourth District, Division Two, of the California Court of Appeal. He also served as Justice Pro Tem on the CA Supreme Court until his retirement in 1981. Justice Tamura continued to serve on assignment in the Court of Appeal until his passing in 1982. He also served as a member of the California Judicial Council from 1979 to 1981.

Justice Tamura served in Italy with the all-Nisei "Go for Broke" 442nd Regimental Combat Team. He was posthumously awarded the Congressional Gold Medal in 2011 along with the 100th Infantry Battalion and Military Intelligence Service.

In 1972, he was honored with the Orange County Bar Association's Franklin G. West Award, the "highest honor presented to outstanding attorneys and judges whose lifetime achievements have advanced justice and the law."

Throughout his judicial career, he was known for his accessibility, fairness, wisdom, humility and kindness. Thank you for your consideration.

Sincerely,



Patricia Ihara

August 28, 2019

To Whom It May Concern:

The purpose of this letter is to express our full enthusiastic support for the application of the County of Orange to name the West Justice Center located in Westminster in the honor of Justice Stephen K Tamura.

His tenor and reputation of fairness, wisdom, accessibility, humility and kindness have made him a well respected jurist over a long spanning career of over 43 years in Orange County. His achievements and awards such as being the first Asian American attorney in Orange County, serving as a Superior Court judge and as Justice Pro Tem on the California Supreme Court, have cemented his role as a beacon of justice. He was awarded the Franklin G. West Award for his lifetime achievements for advancing justice and the law.

With humble respect, we are asking that you consider his name to be a part of the Orange County Justice Center as a reminder of his legacy within our community.

Thank you,

Johnsen Family
of Cypress, CA



JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-113

For business meeting on: March 24, 2020

Title

Judicial Council Administration: Internal
Committee Names

Agenda Item Type

Action Required

Effective Date

March 25, 2020

Date of Report

March 4, 2020

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rules 10.10,
10.12, 10.13, 10.16, 10.20, 10.21, 10.22,
10.34, and Appendix D

Contact

Susan McMullan, 415-865-7990

susan.mcmullan@jud.ca.gov

Recommended by

Hon. Marsha G. Slough, Chair
Executive and Planning Committee
Hon. Marla O. Anderson, Chair
Policy Coordination and Liaison Committee
Hon. Harry E. Hull, Jr., Chair
Rules and Projects Committee
Hon. David M. Rubin, Chair
Litigation Management Committee and
Judicial Branch Budget Committee
Hon. Kyle S. Brodie, Chair
Judicial Council Technology Committee

Executive Summary

The chairs of the six Judicial Council internal committees recommend minor changes to several California Rules of Court governing internal committees and to the Judicial Council Governance Policies in Appendix D to the California Rules of Court to change the names of the Policy Coordination and Liaison Committee and the Rules and Projects Committee.

Recommendation

The chairs of the Executive and Planning Committee, Policy Coordination and Liaison Committee, Rules and Projects Committee, Litigation Management Committee, Judicial Council

Technology Committee, and Judicial Branch Budget Committee recommend that the Judicial Council, effective March 25, 2020, amend the California Rules of Court as follows:

1. Rule 10.10 to change the names of the Policy Coordination and Liaison Committee and the Rules and Projects Committee;
2. Rules 10.12, 10.16, and 10.34 to change the name of the Policy Coordination and Liaison Committee;
3. Rules 10.13, 10.21, and 10.22 to change the name of the Rules and Projects Committee;
4. Appendix D, Judicial Council Governance Policies, 5.b., to change the name of the Rules and Projects Committee; and
5. Appendix D, Judicial Council Governance Policies, 5.c. and 6.iii., to change the name of the Policy Coordination and Liaison Committee.

The text of the amended rules and Appendix D is attached at pages 4–9.

Relevant Previous Council Action

The Judicial Council adopted rules 10.10, 10.12, 10.13, 10.20, and 10.34 (then numbered as rules 6.10, 6.12, 6.13, 6.20, and 6.34) effective January 1, 1999. Each of the rules has since been amended to add or change provisions, but none of the amendments are relevant to this proposal. The council adopted rules 10.21 and 10.22 (then numbered as rules 6.21 and 6.22), governing proposals from members of the public for changes to rules, standards, or forms; and rule-making procedures, respectively effective January 1, 2002, and has made minor amendments since then, though none affected the name of a committee.

The council adopted rule 10.16, establishing by rule the Judicial Council Technology Committee, effective February 20, 2014, and has made several amendments since then. The council adopted Judicial Council Governance Policies, effective June 23, 2008. Effective August 14, 2009, the council amended rule 1.4 to add the Judicial Council Governance Policies to the rules of court as Appendix D, and amendments not relevant to this proposal were made to the Governance Policies effective January 1, 2018.

Analysis/Rationale

This proposal amends the California Rules of Court to change the names of two Judicial Council internal committees. The Policy Coordination and Liaison Committee is proposed to be changed to the Legislation Committee, and the Rules and Projects Committee is proposed to be changed to the Rules Committee.

The council has six internal committees. The committee names are intended to describe the general focus of each committee's work responsibilities. Amending the rules to change the

names of two committees—the Legislation Committee and the Rules Committee—is intended to shorten and simplify the names and to have the names reflect the core functions of the two internal committees. The new committee names use words that are more understandable within and outside the judicial branch. The committees’ responsibilities remain the same.

The name of the Policy Coordination and Liaison Committee would be changed to the Legislation Committee in rules 10.10(a)(2); 10.12(a); 10.16(b); 10.34(a)(3); and Appendix D, Judicial Council Governance Policies, 5.c. and 6.iii. The name of the Rules and Projects Committee would be changed to the Rules Committee in rules 10.10(a)(3); 10.13(a) and (c); 10.20(b); 10.21(c); 10.22(c); and Appendix D, Judicial Council Governance Policies, 5.b.

Policy implications

The policy implications of this proposal are limited. The role and scope of responsibility of the internal committees are unchanged by these rule amendments.

Comments

The proposal did not circulate for comment as this proposal concerns a nonsubstantive technical change. Under rule 10.22(d)(2), a proposal may be recommended for council adoption without circulating it for comment if the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy.

Alternatives considered

The internal committee chairs did not consider alternatives because they determined that the rule amendments to change the two committee names were desirable for clarity and simplicity.

Fiscal and Operational Impacts

There are no fiscal or operational impacts resulting from this proposal.

Attachments and Links

1. Cal. Rules of Court, rules 10.10, 10.12, 10.13, 10.16, 10.20, 10.21, 10.22, 10.34, and Appendix D, at pages 4–9

1 **Rule 10.10. Judicial Council internal committees**

2
3 **(a) Judicial Council internal committees**

4
5 The internal committees are:

- 6
7 (1) Executive and Planning Committee;
8
9 (2) ~~Policy Coordination and Liaison~~ Legislation Committee;
10
11 (3) Rules ~~and Projects~~ Committee;
12
13 (4) Litigation Management Committee;
14
15 (5) Technology Committee; and
16
17 (6) Judicial Branch Budget Committee.

18
19 **(b)–(h) * * ***

20
21 **Rule 10.12. ~~Policy Coordination and Liaison~~ Legislation Committee**

22
23 **(a) Legislative activities**

24
25 The ~~Policy Coordination and Liaison~~ Legislation Committee performs the
26 following functions:

- 27
28 (1)–(3) * * *

29
30 **(b)–(d) * * ***

31
32 **Rule 10.13. Rules ~~and Projects~~ Committee**

33
34 **(a) Rules, standards, and forms**

35
36 The Rules ~~and Projects~~ Committee establishes and maintains a rule-making process
37 that is understandable and accessible to justice system partners and the public. The
38 committee:

- 39
40 (1)–(6) * * *

41
42 **(b) * * ***

1 **(c) Recommendations**

2
3 The Rules ~~and Projects~~ Committee assists the council in making informed decisions
4 about rules of court, forms, standards of judicial administration, and jury
5 instructions. The committee:

- 6
7 (1) Recommends whether the council should approve, modify, or reject each
8 proposal;
9
10 (2) Recommends to the Executive and Planning Committee whether a proposal
11 should be on the council’s consent or discussion agenda and how much time
12 should be allocated for discussion; and
13
14 (3) When appropriate, identifies issues for discussion.

15
16 If the Rules ~~and Projects~~ Committee recommends against approval, it states the
17 reasons for its recommendation.

18
19 **(d)–(e) * * ***

20
21 **Rule 10.16. Technology Committee**

22
23 **(a) * * ***

24
25 **(b) Coordination**

26
27 The committee coordinates the activities of the Administrative Director, council
28 internal committees and advisory committees, the courts, justice partners, and
29 stakeholders on matters relating to court information technology. The committee
30 also, in collaboration or consultation with the ~~Policy Coordination and Liaison~~
31 Legislation Committee, coordinates with other branches of government on
32 information technology issues.

33
34 **(c)–(i) * * ***

35
36 **Rule 10.20. Proposals for new or amended rules, standards, or forms;**
37 **rule-making process in general**

38
39 **(a) * * ***

40
41 **(b) Proposals**

1 The council will consider proposals that are submitted to it by an internal
2 committee, an advisory committee, a task force, or Judicial Council staff, in
3 accordance with rule 10.22 and any policies and procedures established by the
4 Rules and Projects Committee.
5

6 (c) * * *

7
8 **Rule 10.21. Proposals from members of the public for changes to rules, standards,
9 or forms**

10
11 (a)–(b) * * *

12
13 (c) **Advisory committee’s review of proposal**

14
15 The Chief Counsel must refer each proposal from a member of the public to an
16 appropriate advisory committee for consideration and recommendation, or, if no
17 appropriate advisory committee exists, to the Rules and Projects Committee. A
18 Judicial Council staff member may independently review the proposal and present
19 an analysis and a recommendation to the committee. The committee may take one
20 of the following actions:

21
22 (1)–(3) * * *

23
24 **Rule 10.22. Rule-making procedures**

25
26 (a)–(b) * * *

27 Legal Services and any appropriate advisory committee, the proponent must submit
28 the proposal to the Rules and Projects Committee with a recommendation that it be
29 (1) circulated for public comment or (2) submitted to the council for approval
30 without public comment.

31
32 (d) **Review by Rules and Projects Committee**

33
34 The Rules and Projects Committee must review the recommendation and may take
35 one of the following actions:

36
37 (1)–(4) * * *

38
39 (e) * * *

40
41 (f) **Submission to council**

42

1 If, after reviewing the comments, the proponent recommends that the council adopt
2 the proposal, the matter will be placed on the council’s agenda. The Rules ~~and~~
3 ~~Projects~~ Committee must review the recommendation and submit its own
4 recommendation to the council. The council may adopt, modify, or reject the
5 proposal.

6
7 **(g) Compelling circumstances**

8
9 The procedures established in this rule must be followed unless the Rules ~~and~~
10 ~~Projects~~ Committee finds that compelling circumstances necessitate a different
11 procedure. The committee’s finding and a summary of the procedure used must be
12 presented to the council with any recommendation to the council made under this
13 subdivision.

14
15 **Rule 10.34. Duties and responsibilities of advisory committees**

16
17 **(a) Role**

18
19 Advisory committees are standing committees created by rule of court or the Chief
20 Justice to make recommendations and offer policy alternatives to the Judicial
21 Council for improving the administration of justice within their designated areas of
22 focus by doing the following:

- 23
24 (1) Identifying issues and concerns affecting court administration and
25 recommending solutions to the council;
26
27 (2) Proposing necessary changes to rules, standards, forms, and jury instructions;
28
29 (3) Reviewing pending legislation and making recommendations to the ~~Policy~~
30 ~~Coordination and Liaison~~ Legislation Committee on whether to support or
31 oppose it;
32
33 (4) Recommending new legislation to the council;
34
35 (5) Recommending to the council pilot projects and other programs to evaluate
36 new procedures or practices;
37
38 (6) Acting on assignments referred by the council or an internal committee; and
39
40 (7) Making other appropriate recommendations to the council.

41
42 **(b)–(f) * * ***

1 **Appendix D: Judicial Council Governance Policies**

2
3 * * *

4
5 **Governance Process**

6
7 **1.-4. * * ***

8
9 **5. Internal Committees**

10
11 **a. * * ***

12
13 **b. ~~Rules and Projects~~ Committee**

14 The ~~Rules and Projects~~ Committee under California Rules of Court, rule
15 10.13 makes regular reports to the full council on its actions. Its
16 responsibilities are described below.

- 17
18 i. Identifies the need for new rules, standards, and forms;
19 ii. Establishes and publishes procedures for the proposal,
20 adoption, and approval of rules of court, forms, and
21 standards of judicial administration that ensure that
22 relevant input from the public is solicited and
23 considered;
24 iii. Reviews proposed rules, standards, and forms,
25 and circulates those proposals for public
26 comment in accordance with its procedures and
27 guidelines;
28 iv. Provides guidelines for the style and format of rules,
29 forms, and standards and ensures that proposals are
30 consistent with the guidelines;
31 v. Ensures that proposals for new or amended rules,
32 standards, and forms do not conflict with statutes or
33 other rules; and
34 vi. Determines whether proposals for new or amended
35 rules, standards, or forms have complied with its
36 procedures.

37 **c. ~~Policy Coordination and Liaison~~ Legislation Committee**

38 The ~~Policy Coordination and Liaison~~ Legislation Committee under
39 California Rules of Court, rule 10.12 makes regular reports to the full
40 council on its actions. Its responsibilities include those described below.
41

1 The committee represents the Judicial Council’s position with other
2 agencies and entities, such as the Legislature, the Governor’s Office, the
3 State Bar of California, local government, local bar associations, and other
4 court-related professional associations; reviews and makes
5 recommendations on proposals for Judicial Council–sponsored legislation;
6 reviews pending bills; determines positions consistent with the council’s
7 previous policy decisions; and oversees advocacy for these positions.
8

9 d–f * * *

10 11 **6. Role of Advisory Committees**

12 Advisory committees under California Rules of Court, rule 10.34(a) are standing
13 committees created by rule of court or the Chief Justice to make recommendations and
14 offer policy alternatives to the Judicial Council for improving the administration of
15 justice within their designated areas of focus by doing the following:

- 16 i. Identifying issues and concerns affecting court administration and
17 recommending solutions to the council;
- 18 ii. Proposing necessary changes to rules, standards, forms, and jury
19 instructions;
- 20 iii. Reviewing pending legislation and making recommendations to the ~~Policy~~
21 ~~Coordination and Liaison~~ Legislation Committee on whether to support or
22 oppose it;
- 23 iv. Recommending new legislation to the council;
- 24 v. Recommending to the council pilot projects and other programs to evaluate
25 new procedures or practices;
- 26 vi. Acting on assignments referred by the council or an
27 internal committee; and
- 28 vii. Making other appropriate recommendations to the council.



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-068

For business meeting on: March 24, 2020

Title

Jury Instructions: Revisions to Criminal Jury Instructions

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Date of Report

January 14, 2020

Rules, Forms, Standards, or Statutes Affected

Judicial Council of California Criminal Jury Instructions (CALCRIM)

Contact

Kara Portnow, 415-865-4961

kara.portnow@jud.ca.gov

Recommended by

Advisory Committee on Criminal Jury Instructions
Hon. Peter J. Siggins, Chair

Executive Summary

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2020 edition of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Recommendation

The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective March 24, 2020, approve the following changes to the criminal jury instructions prepared by the committee:

1. Revisions to CALCRIM Nos. 101, 200, 334, 361, 377, 507, 540B, 540C, 548, 594, 600, 703, 850, 860, 1045, 1047, 1048, 1049, 1050, 1051, 1151, 1192, 1193, 1200, 1201, 1203, 1215, 1500, 1501, 1502, 1515, and 1801; and

2. Updates to the Guide For Using Judicial Council of California Criminal Jury Instructions to include a section about nonbinary personal pronouns and to clarify that the legal publisher is responsible for maintaining the most recent edition information for secondary sources.

A table of contents and the full text of the revised instructions are attached at pages 17–155.

Relevant Previous Council Action

At its meeting on July 16, 2003, the Judicial Council adopted what is now rule 10.59 of the California Rules of Court, which established the Advisory Committee on Criminal Jury Instructions and its charge.¹ In August 2005, the council voted to approve the *CALCRIM* instructions under what is now rule 2.1050 of the California Rules of Court.

Since that time, the committee has complied with both rules by regularly proposing to the council additions and changes to *CALCRIM*. The council approved the last *CALCRIM* release at its September 2019 meeting.

Analysis/Rationale

The committee revised the instructions based on comments and suggestions from justices, judges, and attorneys; proposals by staff and committee members; and recent developments in the law.

Below is an overview of some of the proposed changes.

Failure to Explain or Deny Adverse Testimony (CALCRIM No. 361)

In *People v. Grandberry* (2019) 35 Cal.App.5th 599 [247 Cal.Rptr.3d 258], the defendant was charged with possession of a dirk or dagger in prison and testified that he did not know there was a weapon in his cell. During cross-examination, the defendant denied making statements attributed to him during a previous administrative hearing for the weapons violation. The prosecutor requested CALCRIM No. 361, arguing that the defendant failed to explain why he did not appeal the ruling of the administrative hearing where he was found to have possessed the weapon. On appeal, the court upheld this instruction over the defense objection that the prosecutor had failed to ask the defendant why he had not appealed his administrative hearing. Finding no error, *Grandberry* found that *People v. Saddler* authorizes this instruction whenever the defendant failed to explain or deny any fact of evidence that was within the scope of relevant cross-examination” and is not limited only to testimony that was adduced during cross-examination. In reaching this conclusion, *Grandberry* disagreed with case law that holds that this instruction should only be given if the defendant had failed to explain or deny adverse testimony in response to a question. In response to *Grandberry*, the committee noted the split in authority

¹ Rule 10.59(a) states: “The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.”

and modified the bench notes to provide guidance when the trial court should give this instruction, depending on which case the court decides to follow.

Justifiable Homicide: By Public Officer (CALCRIM No. 507)

Assembly Bill 392 amended Penal Code sections 196 and 835a to limit the lawful use of deadly force by a peace officer. Among other changes, this legislation redefined justifiable homicide by a peace officer to require a reasonable belief on the part of the officer, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person. The legislation also authorizes the use of deadly force to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, provided that the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately stopped. In response to this legislation, the committee substantially revised this instruction to conform with the new statutory requirements.

Felony Murder (CALCRIM Nos. 540B, 540C, and 703)

During the public comment period last summer, two commenters suggested that these instructions include the factors delineated in *People v. Clark* (2016) 63 Cal.4th 522 [203 Cal.Rptr.3d 407, 372 P.3d 811] to help guide the jury in determining whether the defendant acted with reckless indifference to human life. In response to these suggestions, the committee incorporated the *Clark* factors in all three instructions. The committee also reorganized them as bullet points instead of numbers, to allow trial courts more flexibility in choosing which factors may apply in a given case.

Attempted Murder (CALCRIM No. 600)

In *People v. Canizales* (2019) 7 Cal.5th 591, 608 [248 Cal.Rptr.3d 370, 442 P.3d 686], the California Supreme Court held that a jury may rely on kill zone theory to convict a defendant of attempted murder when “there is sufficient evidence to support a jury determination that the *only* reasonable inference from the circumstances of the offense is that a defendant intended to kill everyone in the zone of fatal harm.” The court also set forth specific findings that the jury should make in order to base an attempted murder conviction on a kill zone theory. Based on this case, the committee revised the kill zone theory section of the attempted murder instruction.

Sexual Penetration Offenses (CALCRIM Nos. 1045, 1047, 1048, 1049, 1050, 1051)

People v. McCoy (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382] held that “the crime of unlawful sexual penetration requires specific intent to gain sexual arousal or gratification or to inflict abuse on the victim.” A user suggested that the sexual penetration offense instructions include a reference to this case to clarify that these offenses require specific intent. In response to this suggestion, the committee added the case to the authority sections.

Pandering (CALCRIM No. 1151)

In *People v. Jacobo* (2019) 37 Cal.App.5th 32 [249 Cal.Rptr.3d 236], the court upheld a pandering conviction where the evidence showed that the defendant offered and paid the victims money to have sex with him, and not with anyone else. The *Jacobo* court found that a violation

of Penal Code section 266i(a)(2) does not require a third person. In reaching this conclusion, *Jacobo* rejected the holding of *People v. Dixon* (2011) 191 Cal.App.4th 1154, 1159–1160 [119 Cal.Rptr.3d 901], which held that the pandering statute requires a third person. The committee added a bench note to the instruction that describes the split of authority and added brackets around the sentence: “Pandering requires that an intended act of prostitution be with someone other than the defendant.”

Kidnapping Offenses (CALCRIM Nos. 1200, 1201, 1203, 1215)

People v. Fontenot (2019) 8 Cal.5th 57, 65–71 [251 Cal.Rptr.3d 341, 447 P.3d 252] held that attempted kidnapping is not a lesser included offense of kidnapping under Penal Code section 207(a). The committee replaced the reference to attempted kidnapping in the lesser included offenses sections with this case holding.

Arson Offenses (CALCRIM Nos. 1500, 1501, 1502, 1515)

In *People v. Shiga* (2019) 34 Cal.App.5th 466, 475 [246 Cal.Rptr.3d 198], the defendant had set fire to a church and the fire spread to an adjacent rectory where two priests lived. The jury convicted him of three counts of arson: aggravated arson (under Pen. Code, § 451.5), arson of a structure (under Pen. Code, § 451(c)), and arson of an inhabited structure or inhabited property (under Pen. Code, § 451(b)). Holding that Penal Code section 451 defines a single offense of arson, *Shiga* reversed the convictions for subdivisions (b) and (c) and remanded the case for the trial court to enter a conviction on only one of these subdivisions. In response to this holding, the committee added a note in the Related Issues section entitled “Dual Convictions Prohibited” with a citation to the case.

Guide for Using Judicial Council of California Criminal Jury Instructions (CALCRIM)

The committee revised the guide in two ways. First, a member of the CACI advisory committee suggested that the guide contain information about using a nonbinary gender category for personal pronouns, to be consistent with the spirit of California’s Gender Recognition Act of 2017. As a result, the committee added a section about personal pronouns. Second, several users have noted that the secondary sources for some of the instructions contain out of date edition information. This problem occurred because the official publisher had previously been updating the secondary source citations only for instructions that the Judicial Council was independently revising. To rectify this problem, the legal publisher has agreed to update the secondary source citations for all instructions. The committee has added language to the user guide that clarifies that the legal publisher—and not the Judicial Council—remains responsible for updating the secondary source citations.

Policy implications

Rule 2.1050 of the California Rules of Court requires the committee to regularly update, amend, and add topics to *CALCRIM* and to submit its recommendations to the council for approval. This proposal fulfills that requirement.

Comments

The proposed additions and revisions to *CALCRIM* circulated for public comment from November 19 through December 20, 2019. The committee received responses from two commenters. The text of all comments received and the committee's responses are included in a comments chart attached at pages 6–16.

Alternatives considered

The proposed revisions are necessary to ensure that the instructions remain clear, accurate, and complete; therefore, the advisory committee considered no alternative actions.

Fiscal and Operational Impacts

No implementation costs are associated with this proposal. To the contrary, under the publication agreement, the official publisher, LexisNexis, will print a new edition and pay royalties to the Judicial Council. The council's contract with West Publishing provides additional royalty revenue.

The official publisher will also make the revised content available free of charge to all judicial officers in both print and HotDocs document assembly software. With respect to commercial publishers, the council will register the copyright of this work and continue to license its publication of the instructions under provisions that govern accuracy, completeness, attribution, copyright, fees and royalties, and other publication matters. To continue to make the instructions freely available for use and reproduction by parties, attorneys, and the public, the council provides a broad public license for their noncommercial use and reproduction.

Attachments and Links

1. Chart of comments, at pages 6–16
2. Full text of revised *CALCRIM* instructions, including table of contents, at pages 17–155

CALCRIM-2019-02 Invitation to Comment

Revised CALCRIM Instructions

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

Instruction	Commentator	Comment	Response
101, 200, 334, 377, 507, 540B, 540C, 548, 594, 600, 703, 850, 860, 1045, 1047, 1048, 1049, 1050, 1051, 1192, 1193, 1200, 1201, 1203, 1215, 1500, 1501, 1502, 1515, 1801	Deirdre Kelly, president, on behalf of Orange County Bar Association	Agree.	No response necessary.
361	Deirdre Kelly, President, on behalf of Orange County Bar Association	<p>Agree as modified.</p> <p>The proposed instruction highlights for the court and parties the split of authority and the issues the trial court must determine as a matter of law. The one suggested modification is to change the if clause statements to questions and make four instead of three, in the bench notes of the second paragraph of page 23, as follows:</p> <p>“If the court follows <i>Grandberry</i>, the trial court must ascertain as a matter of law:</p> <ol style="list-style-type: none"> 1) Was the matter within the scope of relevant cross-examination? 2) Did the defendant know the facts necessary to explain or deny incriminating evidence? 3) Did some circumstance preclude the defendant from knowing such facts? 4) Did the defendant fail to explain the incriminating evidence? <p>If the court follows <i>Roehler</i>, the trial court must ascertain as a matter of law:</p> <ol style="list-style-type: none"> 1) Was a question asked calling for an explanation or denial of incriminating evidence? 2) Did the defendant know the facts necessary to answer the question? 3) Did some circumstance preclude the defendant from knowing such facts? 4) Did the defendant fail to deny or explain the incriminating evidence when answering the question? 	The committee considered the commenter’s alternate version but prefers the draft as currently written.
507	Peter Bibring, Director of Police Practices,	On behalf of the ACLU of California, I write to provide comment on the recent proposed revisions to the California Criminal Jury Instructions, and specifically the proposed revisions to Instruction 507, concerning justifiable homicide by a peace officer.	No response necessary.

CALCRIM-2019-02 Invitation to Comment

Revised CALCRIM Instructions

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

Instruction	Commentator	Comment	Response
	on behalf of the ACLU of California	<p>As a cosponsor of both AB 392, which amended Penal Code sections 196 and 835a¹ and gave rise to this proposed revision, and AB 931, a similar bill advanced in the prior legislative session, the ACLU of California has worked closely on the changes to California’s law on police use of force, the standards advanced by AB 392 and that bill’s language and interaction with prior law. The ACLU of California has also filed amicus briefs on the legal standards for police use of force, including in <i>County of Los Angeles v. Mendez</i>, 137 S. Ct. 1539 (2017) and 897 F.3d 1067 (9th Cir. 2018), <i>Nehad v. Browder</i>, 929 F.3d 1125 (9th Cir. 2019), and <i>Jessop v. City of Fresno</i>, 936 F.3d 937 (9th Cir. 2019) (en banc), and has frequently testified, commented, or otherwise advocated on the standards governing police use of force in both law and agency policy across California.</p> <p>I. Background of AB 392</p> <p>In an effort to address the number of deadly police shootings in California, the California legislature this year passed AB 392, revising California’s laws on the use of deadly force by police. AB 392 marks a significant shift in the law that unquestionably requires updating jury instructions relating to the use of deadly force by peace officers.</p> <p>Prior to AB 392, Penal Code section 196, providing for the defense of justifiable homicide by a public officer, had not been amended since California first adopted the Penal Code in 1872. The language of that statute on its face provided a defense of justifiable homicide for homicides “necessarily committed in overcoming actual resistance ... in the discharge of any other legal duty” or in arresting escaped felons or persons charged with a felony. Section 196. Importantly, the statute on its face required no threat of harm for such a homicide to be justified.</p> <p>In contrast to the defense to criminal liability for homicide provided in section 196, section 835a provided an affirmative authorization for police use of force that mirrored the constitutional limitations set by the Supreme Court’s decisions. In <i>Tennessee v. Garner</i>, 471 U.S. 1 (1985), and <i>Graham v. Connor</i>, 490 U.S. 386 (1989), the Supreme Court analyzed police use of force under the “reasonableness” standard of the Fourth Amendment, balancing the nature of the government interest and the “nature and quality of the intrusion on the individual’s Fourth Amendment interests” to determine “whether</p>	

¹ All statutory references are to the Penal Code unless otherwise specified.

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Instruction	Commentator	Comment	Response
		<p>the force used to effect a particular seizure is ‘reasonable.’” <i>Graham v. Connor</i>, 490 U.S. at 396. As the Supreme Court clarified in 2007, the constitutional standard for police use of deadly force is the same as for any force: “<i>Graham</i> did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute ‘deadly force.’ ... Whether or not [the police officer's] actions constituted application of ‘deadly force,’ all that matters is whether [the officer's] actions were reasonable.” <i>Scott v. Harris</i>, 550 U.S. 372, 382-83 (2007). Prior to the passage of AB 392, section 835a set a similar “reasonable force” standard, providing that peace officers “may use reasonable force to effect ... arrest, to prevent escape or to overcome resistance.”</p> <p>AB 392, which goes into effect on January 1, 2020, preserves the “reasonable force” standard for nondeadly force, but creates a separate, higher standard that authorizes police use of deadly force only when “necessary.” Specifically, AB 392 provides that a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:</p> <p>(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.</p> <p>(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.</p> <p>Penal Code § 835a(c)(1) (as amended by AB 392, effective Jan. 1, 2020).</p> <p>Along with the stricter legal standards for use of deadly force, AB 392 “clarifies that de-escalation techniques should be used by law enforcement agencies in California.” Senate Floor Analysis at 7. The bill contains three provisions that work to require de-escalation. First, it imposes an express requirement that “[i]n determining whether deadly force is necessary, officers ... shall use other available resources and techniques if reasonably safe</p>	

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Instruction	Commentator	Comment	Response
		<p>and feasible to an objectively reasonable officer.” § 835a(a)(2). Second, the new language clarifies that the “totality of the circumstances” which the factfinder considers in determining whether deadly force is necessary includes “the conduct of the officer ... leading up to the use of deadly force.” § 835a(e)(3). Finally, the bill adds to existing language providing that officers have no duty to retreat in the face of resistance clarifying that this does not mean that they have no duty to de-escalate. See § 835a(d) (“For purposes of this subdivision, ‘retreat’ does not mean tactical repositioning or other deescalation tactics.”).</p> <p>AB 392 makes other modifications as well. It clarifies that while the standard for deadly force has changed to a “necessary” standard, the perspective used for the analysis remains the “reasonable officer” perspective based on the facts known to the officer at the time, generally consistent with both state tort law and constitutional law. <i>Id.</i> § 835a(a)(4), (d). Finally, the bill emphasizes the role physical and mental disability plays in police shooting, and expressly prohibits use of deadly force against a person solely based on the threat they pose to themselves. <i>Id.</i> § 835a(a)(5), (c)(2).</p> <p>II. Support for Proposed Jury Instruction</p> <p>We agree there is urgent need to revise CalCrim 507 to reflect the changed standards for justifiable homicide set forth in Penal Code sections 196 and 835a, as amended by AB 392, which goes into effect on January 1, 2020. We also strongly support most of the proposed revision as faithful to the language and structure of the newly amended Penal Code sections 196 and 835a. Specifically, we strongly support the following aspects of the Proposed Instruction:</p> <ul style="list-style-type: none"> • The language and structure of Section 2-A and 2-B of the Proposed Instruction, which substantially mirror the operative standard for justified police use of deadly force, now set forth in section 835a(c)(1) and (2); • The definition of an “imminent” threat, which is a crucial term in the standard, for which the Proposed Instruction repeats verbatim the definition made applicable to deadly force in section 835a(e)(2); • The definition of “totality of the circumstances,” another crucial term in the standard, and for which the Proposed Instruction also repeats the statute’s definition as set forth in section 835a(e)(3); 	

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

Instruction	Commentator	Comment	Response
		<ul style="list-style-type: none"> • The definition of “serious bodily injury,” consistent with the statutory definition in section 243(f)(4); • The deletion of the paragraph in the current instruction describing the constitutional standard for police use of deadly force in <i>Tennessee v. Garner</i>, 471 U.S. 1, (1985), and California state cases interpreting that standard, as the revisions to section 835a and 196 now set a higher standard under California criminal law than this this constitutional minimum. Indeed, as set forth below, we recommend deleting <i>Garner</i> from the list of authorities for this instruction. 	
507	Peter Bibring, Director of Police Practices, on behalf of the ACLU of California	<p>III. Recommended Changes to Proposed Jury Instruction</p> <p>While we agree with and strongly support much of the revised Proposed Instruction, we recommend changes to correct several crucial omissions, and one inapposite reference to standard for unconstitutional force, which does not govern the standard for criminal defense to homicide under California state law.</p> <p>A. The Instruction Omits Key Statutory Language Regarding De-escalation from the Paragraph Providing Officers Need Not Retreat From Resistance</p> <p>In amending section 835a, the Legislature preserved language in the current statute providing that officers have no duty to retreat in the face of resistance, but added an important qualification that tactical repositioning and other de-escalation tactics are not retreat for such purposes, as follows:</p> <p style="padding-left: 40px;">(d) A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. <u>For the purposes of this subdivision, “retreat” does not mean tactical repositioning or other de-escalation tactics.</u></p> <p>Section 835a(d) (as amended, emphasis added). The Proposed Instruction includes substantially similar language to the first two sentences, but omits the crucial final sentence regarding de-escalation.</p> <p>The final sentence plays a vital role in explaining that the lack of any duty to retreat does not mean an officer has no duty to engage in de-escalation, where reasonable. The</p>	The committee disagrees with the recommendation to add the sentence about retreat. By clarifying that tactical repositioning is not retreat, the statute does not clearly create a duty of repositioning. Therefore, the committee believes that adding the proposed sentence is unnecessary.

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Revised CALCRIM Instructions

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		<p>sentence specifically refers to “tactical repositioning,” a common de-escalation tactic, described in the Consensus Policy on Use of Force drafted by eleven national law enforcement groups as follows:</p> <p style="padding-left: 40px;">De-escalation is defined as “taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary.” ...</p> <p style="padding-left: 40px;">[One] de-escalation technique is tactical repositioning. In many cases, officers can move to another location that lessens the level of danger. An example is an incident involving an individual with a knife. By increasing the distance from the individual, officers greatly reduce the risk to their safety and can explore additional options before resorting to a use of force, notwithstanding the need to control the threat to others.</p> <p>National Consensus Policy on Use of Force, International Ass’n of Chiefs of Police, at 6 (Dec. 2017) https://noblenational.org/wp-content/uploads/2017/10/Consensus-Policy-and-Discussion-2017.pdf</p> <p>The statutory language addresses a specific concern among law enforcement leadership and use of force experts – that de-escalation tactics that involve slowing a situation down, and most specifically “tactical repositioning” involving moving away from a suspect to reduce risk, might be interpreted by officers – or by factfinders – as “retreat,” so that the statute would be wrongly read to instruct that they have no need to de-escalate. As one police chief and official with the Police Executive Research Forum characterized the problem, “We’ve created a culture in policing where officers believe repositioning is retreating.”²</p> <p>The suggestion that officers need not engage in tactical repositioning and other de-escalation techniques is not only at odds with the express clarification of the meaning of “retreat,” but also conflicts with the revised statute’s requirement that officers use</p>	

² Tom Jackman, *De-escalation training to reduce police shootings facing mixed reviews at launch*, Washington Post (Oct. 15, 2016) https://www.washingtonpost.com/local/public-safety/de-escalation-training-to-reduce-police-shootings-facing-mixed-reviews-at-launch/2016/10/14/d6d96c74-9159-11e6-9c85-ac42097b8cc0_story.html

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		<p>available resources and techniques other than deadly force whenever reasonably safe and feasible to an objectively reasonable officer. It is crucial that these conflicts be resolved by including the full statutory language.</p> <p>Recommendation: We strongly urge Judicial Council not to omit this key language, but to set forth the full paragraph from the statute, section 835a(d) (as amended) regarding peace officers’ duty to retreat, including the crucial sentence that clarifies that de-escalation, as follows:</p> <p style="padding-left: 40px;">A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. <u>For purposes of this instruction, “retreat” does not mean tactical repositioning or other deescalation tactics.</u> A peace officer does not lose (his/her) right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance.</p> <p><i>See Proposed Instructions, at 28.</i></p>	
507	Peter Bibring, Director of Police Practices, on behalf of the ACLU of California	<p>B. The Instruction Omits The Requirement That Officers Use Other Available Resources And Techniques If Reasonably Safe And Feasible</p> <p>As one of the important elements requiring officers de-escalate rather than use deadly force, where appropriate, the amended section 835a inserts a specific requirement regarding de-escalation, that “officers ... shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” § 835a(a)(2). As set forth, this use of other resources and techniques is a requirement and not merely a consideration in whether force was “necessary.” The Proposed Instruction incorporates other language verbatim from the subsection (a) of section 835a. It should include this important requirement as well.</p> <p>Recommendation: We recommend that the Proposed Instruction simply follow the text of the statute and insert the language from section 835a(a)(2) as a freestanding instruction, immediately before the definition of “serious bodily injury” (on p.27) follows:</p> <p style="padding-left: 40px;">[An officer/The defendant] is justified in using deadly force only when necessary in defense of human life. An officer must use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.</p>	The committee disagrees with this recommendation. The committee has incorporated the statutory requirements of section 835a(c) which sets forth when deadly force is authorized. The committee does not believe that the proposed addition from the legislative findings and declarations, rather than the definitional or directive portion of the statute, creates an additional statutory element of proof.

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507	Peter Bibring, Director of Police Practices, on behalf of the ACLU of California	<p>C. The Reference to <i>Tennessee v. Garner</i> Should Be Removed From the List of Authorities for the Instruction</p> <p>The first line of the authority section cites legal authority for the standard under which officers may invoke the defense of justifiable homicide: Penal Code section 835a setting forth the authority of police use of deadly force, and sections 196 and 199 which make the criminal defense of justifiable homicide congruent with that authority. But the Proposed Instruction also here cites <i>Tennessee v. Garner, supra</i>, the leading case establishing the public’s right against excessive force by police under the U.S. Constitution. But that constitutional standard – the standard for when force by police is excessive to the point that it violates the rights of the subject under the U.S. Constitution – is not relevant to the question of this instruction, and should be deleted.</p> <p>The Proposed Instruction addresses when, under California law, an officer’s use of deadly force resulting in homicide constitutes a crime and when it can be excused as justifiable homicide. The standard for when police use of force violates the subject’s rights under the U.S. Constitution has no direct bearing on this – California could decide to set a lower standard, and allow that some use of excessive force in violation of the Constitution does not expose police to criminal charges, or it could (as it has done in the amendments to Penal Code 196 and 835a impose a higher standard and provide that even some use of deadly force that does not violate the constitution is nonetheless prohibited in California and subject to criminal penalties. Importantly, <i>Tennessee v. Garner</i> only establishes a constitutional right for the public to be free of some degree of excessive force. It does not confer on police any particular right to use force. The constitutional standard is a minimum for police, as states and local departments may establish higher standards more restrictive of police force.</p> <p>Recommendation: We recommend the reference to <i>Tennessee v. Garner</i> be deleted from the “Authority” section of the Proposed Instruction. The amendments to section 196 and 835a set a higher standard than the “reasonable” standard of <i>Garner</i>. See Senate Floor Analysis of AB 392, Sen. Rules Committee, at 6 (June 26, 2019) at 6 (“Unlike existing California statutory law, the provisions of this bill would exceed the standards articulated and set forth by the U.S. Supreme Court in <i>Graham</i> and <i>Garner</i>.”). The proposed instruction should not confuse this point by citing to a different standard that is no longer applicable.</p>	The committee agrees with this suggestion and has removed the citation to <i>Tennessee v. Garner</i> .

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

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507	Peter Bibring, Director of Police Practices, on behalf of the ACLU of California	<p>D. The Instruction Omits The Prohibition in Section 835a(c)(2) on Using Deadly Force Against A Person Based Solely On the Danger They Pose to Themselves</p> <p>The amended statute adds a specific limitation against the use of deadly force against someone based solely on the threat they pose to themselves. Section 835a(c)(2) provides:</p> <p style="padding-left: 40px;">A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.</p> <p>The Proposed Instruction contains no mention of this important provision. While not relevant in every case, it should be included as an optional instruction where relevant.</p> <p>Recommendation: We recommend the limitation set forth in section 835a(c)(2) that deadly force not be used against a person based solely on the threat they pose to themselves be added verbatim to the Instructions as a bracketed optional instruction.</p>	<p>The committee disagrees with this suggestion. Because the proposed language would not be relevant in every case, it is unnecessary to include. Instead, trial counsel may request a pinpoint instruction when the issue arises.</p>
507	Peter Bibring, Director of Police Practices, on behalf of the ACLU of California	<p>E. The List of Permissive Considerations Includes Requirements That Should Be Presented As Mandatory</p> <p>The Proposed Instruction includes a list of considerations that jurors may weigh in evaluating the “totality of the circumstances”:</p> <p style="padding-left: 40px;">[In considering the totality of circumstances, you may consider whether:</p> <ul style="list-style-type: none"> [● A reasonable officer would have believed that _____<insert name of fleeing felon> posed an imminent threat of death or serious bodily injury to the defendant or to another person(;/.)] [● Prior to the use of force, the defendant [identified] [or] [attempted to identify] him or herself as a peace officer and [warned] [or] [attempted to warn] that deadly force may be used(;/.)] [● Prior to the use of force, the defendant had objectively reasonable grounds to believe the person was aware that the defendant was a peace officer and that deadly force may be used(;/.)] [● [The defendant was able, under the circumstances, to [identify] [or] [attempt to identify] him or herself as a peace officer] [and] [to warn] [or] [attempt to warn] that deadly force may be used.]] 	<p>The committee disagrees with the recommendation to remove the permissive factors and to include a mandatory finding about police officer identification. However, the committee determined that the first bullet point in the list of permissive factors could be confusing when compared with the instructional language in 2B. Therefore, the committee has removed this bullet point from the list.</p>

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Instruction	Commentator	Comment	Response
		<p>Proposed Instruction, at 28. This presentation wrongly characterizes each of these questions as factors that jurors are permitted to consider, when they are mandatory requirements.</p> <p>Certainly, any use of deadly force where a reasonable officer would have believed the fleeing person did not pose a threat of death or serious bodily injury to the defendant or another person unless immediately apprehended would not be justifiable homicide under the statute, regardless of any other considerations. Section 835a(c)(2). That circumstance is already addressed as a mandatory instruction in the Proposed Instruction, section 2-B, and inclusion of a different articulation that is permissive and uses the “imminent” threat is an unnecessary and confusing departure from the statute that should be deleted.</p> <p>Similarly, the Proposed Instruction incorrectly characterizes the requirement that a peace officer identify themselves and give a warning as a as a permissive consideration, rather than a requirement. The amended statute includes a requirement that before using deadly force against a fleeing person in specified situations, officers must provide a warning, if feasible:</p> <p style="padding-left: 40px;">Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.</p> <p>Section 835a(c)(1)(B). The Proposed Instructions include this not as a requirement but as a consideration that jurors may weigh in evaluating the “totality of the circumstances.” This improperly de-values the statutory provision regarding warning and identification, which is a requirement not merely a consideration.</p> <p>Notably, other instructions on justifiable homicide and self-defense in CALCRIM 505, 3470, and 3471 do not include a list of permissive “considerations,” but instead list the elements of the defense followed by various clarifying requirements.</p> <p>Recommendation: We recommend that the list of permissive factors a jury “may consider” in evaluating the totality of the circumstances be deleted, and the provision</p>	

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		<p>requiring a warning and identification of a peace officer be included as a freestanding mandatory provision by setting forth the statutory language of section 835a(c)(1)(B): Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.</p>	
507	<p>Peter Bibring, Director of Police Practices, on behalf of the ACLU of California</p>	<p>F. The Legislature’s Findings on Disability Should Be Added as “Bench Notes” In the findings section of AB 392, the Legislature took special care to highlight the role of physical and mental disability in contributing to encounters where police use deadly force:</p> <p>(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.</p> <p>Section 835a(a)(5). While this language creates no binding limitation, the role of disability provides important context. Inclusion in the Bench Notes may help allow courts to craft special instructions on this issue as appropriate.</p> <p>We thank the Advisory Committee for its work and respectfully submit these recommendations, which we believe are necessary to give full effect to the Legislature’s intent in passing AB 392.</p>	<p>The committee disagrees with the suggestion to add a bench note about disability. There are a number of factors, including disability, that may be relevant in any given case. The committee does not believe that it is necessary to highlight this particular factor.</p>

CALCRIM Proposed Changes

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101. Cautionary Admonitions: Jury Conduct (Before, During, or After Jury Is Selected)

Our system of justice requires that trials be conducted in open court with the parties presenting evidence and the judge deciding the law that applies to the case. It is unfair to the parties if you receive additional information from any other source because that information may be unreliable or irrelevant and the parties will not have had the opportunity to examine and respond to it. Your verdict must be based only on the evidence presented during trial in this court and the law as I provide it to you.

During the trial, do not talk about the case or about any of the people or any subject involved in the case with anyone, not even your family, friends, spiritual advisors, or therapists. You may only say that you are on a jury and the anticipated length of the trial, and you may inform others of scheduling and emergency contact information. Do not share any information about the case by any means of communication, including in writing, by email, by telephone, on the Internet, social media, Internet chat rooms, and blogs ~~or by any other means of communication~~. You must not talk about these things with other jurors either, until you begin deliberating.

As jurors, you may discuss the case together only after all of the evidence has been presented, the attorneys have completed their arguments, and I have instructed you on the law. After I tell you to begin your deliberations, you may discuss the case only in the jury room, and only when all jurors are present.

You must not allow anything that happens outside of the courtroom to affect your decision [unless I tell you otherwise]. During the trial, do not read, listen to, or watch any news report or commentary about the case from any source.

Do not use the Internet (, a dictionary/[, or _____ *<insert other relevant source of information or means of communication>*]) in any way in connection with this case, either on your own or as a group. Do not investigate the facts or the law or do any research regarding this case or any of its participants. Do not conduct any tests or experiments, or visit the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

[If you have a cell phone or other electronic device, keep it turned off while you are in the courtroom and during jury deliberations. An electronic device includes any data storage device. If someone needs to contact you in an emergency, the court can receive messages that it will deliver to you without delay.]

During the trial, do not speak to a defendant, witness, lawyer, or anyone associated with them. Do not listen to anyone who tries to talk to you about the case or about any of the people or subjects involved in it. If someone asks you about the case, tell him or her that you cannot discuss it. If that person keeps talking to you about the case, you must end the conversation.

If you receive any information about this case from any source outside of the trial, even unintentionally, do not share that information with any other juror. If you do receive such information, or if anyone tries to influence you or any juror, you must immediately tell the bailiff.

Keep an open mind throughout the trial. Do not make up your mind about the verdict or any issue until after you have discussed the case with the other jurors during deliberations. Do not take anything I say or do during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be.

-You must not let bias, sympathy, prejudice, or public opinion influence your assessment of the evidence or your decision. Many people have assumptions and biases about or stereotypes of other people and may be unaware of them. You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, [or] age (./,) [or socioeconomic status] (./,) [or _____ <insert any other impermissible form of bias>.]

You must reach your verdict without any consideration of punishment.

I want to emphasize that you may not use any form of research or communication, including electronic or wireless research or communication, to research, share, communicate, or allow someone else to communicate with you regarding any subject of the trial. [If you violate this rule, you may be subject to jail time, a fine, or other punishment.]

When the trial has ended and you have been released as jurors, you may discuss the case with anyone. [But under California law, you must wait at least 90 days before negotiating or agreeing to accept any payment for information about the case.]

New January 2006; Revised June 2007, April 2008, December 2008, April 2010, October 2010, April 2011, February 2012, August 2012, August 2014, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jurors on how they must conduct themselves during trial. (Pen. Code, § 1122.) See also California Rules of Court Rule 2.1035.

When giving this instruction during the penalty phase of a capital case, the court has a **sua sponte** duty to delete the sentence which reads “Do not let bias, sympathy, prejudice, or public opinion influence your decision.” (*People v. Lanphear* (1984) 36 Cal.3d 163, 165 [203 Cal.Rptr. 122, 680 P.2d 1081]; *California v. Brown* (1987) 479 U.S. 538, 545 [107 S.Ct. 837, 93 L.Ed.2d 934].) The court should also delete the following sentence: “You must reach your verdict without any consideration of punishment.”

If there will be a jury view, give the bracketed phrase “unless I tell you otherwise” in the fourth paragraph. (Pen. Code, § 1119.)

AUTHORITY

- Statutory Admonitions. ▶ Pen. Code, § 1122.
- Avoid Discussing the Case. ▶ *People v. Pierce* (1979) 24 Cal.3d 199 [155 Cal.Rptr. 657, 595 P.2d 91]; *In re Hitchings* (1993) 6 Cal.4th 97 [24 Cal.Rptr.2d 74, 860 P.2d 466]; *In re Carpenter* (1995) 9 Cal.4th 634, 646–658 [38 Cal.Rptr.2d 665, 889 P.2d 985].
- Avoid News Reports. ▶ *People v. Holloway* (1990) 50 Cal.3d 1098, 1108–1111 [269 Cal.Rptr. 530, 790 P.2d 1327], disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830 [38 Cal.Rptr.2d. 394, 889 P.2d 588].
- Judge’s Conduct as Indication of Verdict. ▶ *People v. Hunt* (1915) 26 Cal.App. 514, 517 [147 P. 476].
- No Bias, Sympathy, or Prejudice. ▶ *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- No Independent Research. ▶ *People v. Karis* (1988) 46 Cal.3d 612, 642 [250 Cal.Rptr. 659, 758 P.2d 1189]; *People v. Castro* (1986) 184 Cal.App.3d 849,

853 [229 Cal.Rptr. 280]; *People v. Sutter* (1982) 134 Cal.App.3d 806, 820 [184 Cal.Rptr. 829].

- Prior Version of This Instruction Upheld. ▶ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1182–1183 [67 Cal.Rptr.3d 871].
- Court’s Contempt Power for Violations of Admonitions. ▶ Pen. Code, § 1122(a)(1); Code Civ. Proc. § 1209(a)(6) (effective 1/1/12).

RELATED ISSUES

Admonition Not to Discuss Case With Anyone

In *People v. Danks* (2004) 32 Cal.4th 269, 298–300 [8 Cal.Rptr.3d 767, 82 P.3d 1249], a capital case, two jurors violated the court’s admonition not to discuss the case with anyone by consulting with their pastors regarding the death penalty. The Supreme Court stated:

It is troubling that during deliberations not one but two jurors had conversations with their pastors that ultimately addressed the issue being resolved at the penalty phase in this case. Because jurors instructed not to speak to anyone about the case except a fellow juror during deliberations . . . may assume such an instruction does not apply to confidential relationships, we recommend the jury be expressly instructed that they may not speak to anyone about the case, except a fellow juror during deliberations, and that this includes, but is not limited to, spouses, spiritual leaders or advisers, or therapists. Moreover, the jury should also be instructed that if anyone, other than a fellow juror during deliberations, tells a juror his or her view of the evidence in the case, the juror should report that conversation immediately to the court.

(*Id.* at p. 306, fn. 11.)

The court may, at its discretion, add the suggested language to the second paragraph of this instruction.

Jury Misconduct

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

SECONDARY SOURCES

5 Witkin & Epstein, *California Criminal Law* (4th ed. 2012), Criminal Trial § 726.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 81, *Jury Selection and Opening Statement*, § 81.06[1], Ch. 85, *Submission to Jury and Verdict*, § 85.05[1], [4] (Matthew Bender).

200. Duties of Judge and Jury

Members of the jury, I will now instruct you on the law that applies to this case. [I will give you a copy of the instructions to use in the jury room.] [Each of you has a copy of these instructions to use in the jury room.] [The instructions that you receive may be printed, typed, or written by hand. Certain sections may have been crossed-out or added. Disregard any deleted sections and do not try to guess what they might have been. Only consider the final version of the instructions in your deliberations.]

You must decide what the facts are. It is up to all of you, and you alone, to decide what happened, based only on the evidence that has been presented to you in this trial.

You must not let bias, sympathy, prejudice, or public opinion influence your assessment of the evidence or your decision. Many people have assumptions and biases about or stereotypes of other people and may be unaware of them. You must not be biased in favor of or against any party, witness, attorney, defendant[s], or alleged victim because of his or her disability, gender, nationality, national origin, race or ethnicity, religion, gender identity, sexual orientation, [or] age (./) [or socioeconomic status] (./) [or _____ <insert any other impermissible form of bias>.]

You must follow the law as I explain it to you, even if you disagree with it. If you believe that the attorneys' comments on the law conflict with my instructions, you must follow my instructions.

Pay careful attention to all of these instructions and consider them together. If I repeat any instruction or idea, do not conclude that it is more important than any other instruction or idea just because I repeated it.

Some words or phrases used during this trial have legal meanings that are different from their meanings in everyday use. These words and phrases will be specifically defined in these instructions. Please be sure to listen carefully and follow the definitions that I give you. Words and phrases not specifically defined in these instructions are to be applied using their ordinary, everyday meanings.

Some of these instructions may not apply, depending on your findings about the facts of the case. [Do not assume just because I give a particular instruction that I am suggesting anything about the facts.] After you have

decided what the facts are, follow the instructions that do apply to the facts as you find them.

New January 2006; Revised June 2007, April 2008, December 2008, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct that the jurors are the exclusive judges of the facts and that they are entitled to a copy of the written instructions when they deliberate. (Pen. Code, §§ 1093(f), 1137.) Although there is no sua sponte duty to instruct on the other topics described in this instruction, there is authority approving instruction on these topics.

In the first paragraph, select the appropriate bracketed alternative on written instructions. Penal Code section 1093(f) requires the court to give the jury a written copy of the instructions on request. The committee believes that the better practice is to always provide the jury with written instructions. If the court, in the absence of a jury request, elects not to provide jurors with written instructions, the court must modify the first paragraph to inform the jurors that they may request a written copy of the instructions.

Do not instruct a jury in the penalty phase of a capital case that they cannot consider sympathy. (*People v. Easley* (1982) 34 Cal.3d 858, 875–880 [196 Cal.Rptr. 309, 671 P.2d 813].) Instead of this instruction, CALCRIM 761 is the proper introductory instruction for the penalty phase of a capital case.

Do not give the bracketed sentence in the final paragraph if the court will be commenting on the evidence pursuant to Penal Code section 1127.

AUTHORITY

- Copies of Instructions. ▶ Pen. Code, §§ 1093(f), 1137.
- Judge Determines Law. ▶ Pen. Code, §§ 1124, 1126; *People v. Como* (2002) 95 Cal.App.4th 1088, 1091 [115 Cal.Rptr.2d 922]; see *People v. Williams* (2001) 25 Cal.4th 441, 455 [106 Cal.Rptr.2d 295, 21 P.3d 1209].
- Jury to Decide the Facts. ▶ Pen. Code, § 1127.
- Attorney’s Comments Are Not Evidence. ▶ *People v. Stuart* (1959) 168 Cal.App.2d 57, 60–61 [335 P.2d 189].

- Consider All Instructions Together. ▶ *People v. Osband* (1996) 13 Cal.4th 622, 679 [55 Cal.Rptr.2d 26, 919 P.2d 640]; *People v. Rivers* (1993) 20 Cal.App.4th 1040, 1046 [25 Cal.Rptr.2d 602]; *People v. Shaw* (1965) 237 Cal.App.2d 606, 623 [47 Cal.Rptr. 96].
- Follow Applicable Instructions ▶ *People v. Palmer* (1946) 76 Cal.App.2d 679, 686–687 [173 P.2d 680].
- No Bias, Sympathy, or Prejudice ▶ Pen. Code, § 1127h; *People v. Hawthorne* (1992) 4 Cal.4th 43, 73 [14 Cal.Rptr.2d 133, 841 P.2d 118].
- This Instruction Upheld ▶ *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1185 [67 Cal.Rptr.3d 871].

RELATED ISSUES

Jury Misconduct

It is error to instruct the jury to immediately advise the court if a juror refuses to deliberate or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis. (*People v. Engelman* (2002) 28 Cal.4th 436, 449 [121 Cal.Rptr.2d 862, 49 P.3d 209].)

SECONDARY SOURCES

5 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Criminal Trial, §§ 726, 727.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 80, *Defendant's Trial Rights*, § 80.05[1], Ch. 83, *Evidence*, § 83.02, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[1], [2][c], 85.03[1], 85.05[2], [4] (Matthew Bender).

Evidence

334. Accomplice Testimony Must Be Corroborated: Dispute Whether Witness Is Accomplice

Before you may consider the (statement/ [or] testimony) of _____ *<insert name[s] of witness[es]>* as evidence against (the defendant/ _____ *<insert names of defendants>*) [regarding the crime[s] of _____ *<insert name[s] of crime[s] if corroboration only required for some crime[s]>*], you must decide whether _____ *<insert name[s] of witness[es]>* (was/were) [an] accomplice[s] [to (that/those) crime[s]]. A person is an *accomplice* if he or she is subject to prosecution for the identical crime charged against the defendant. Someone is subject to prosecution if:

1. He or she personally committed the crime;

OR

2. He or she knew of the criminal purpose of the person who committed the crime;

AND

3. He or she intended to, and did in fact, (aid, facilitate, promote, encourage, or instigate the commission of the crime[;]/ [or] participate in a criminal conspiracy to commit the crime).

[The burden is on the defendant to prove that it is more likely than not that _____ *<insert name[s] of witness[es]>* (was/were) [an] accomplice[s].]

[An accomplice does not need to be present when the crime is committed. On the other hand, a person is not an accomplice just because he or she is present at the scene of a crime, even if he or she knows that a crime will be committed or is being committed and does nothing to stop it.]

[A person who lacks criminal intent but who pretends to join in a crime only to detect or prosecute those who commit that crime is not an accomplice.]

[A person may be an accomplice even if he or she is not actually prosecuted for the crime.]

[You may not conclude that a child under 14 years old was an accomplice unless you also decide that when the child acted, (he/she) understood:

- 1. The nature and effect of the criminal conduct;**
- 2. That the conduct was wrongful and forbidden;**

AND

- 3. That (he/she) could be punished for participating in the conduct.]**

If you decide that a (declarant/ [or] witness) was not an accomplice, then supporting evidence is not required and you should evaluate his or her (statement/ [or] testimony) as you would that of any other witness.

If you decide that a (declarant/ [or] witness) was an accomplice, then you may not convict the defendant of _____ *<insert charged crime[s]>* based on his or her (statement/ [or] testimony) alone. You may use (a statement/ [or] testimony) of an accomplice that tends to incriminate the defendant to convict the defendant only if:

- 1. The accomplice's (statement/ [or] testimony) is supported by other evidence that you believe;**
- 2. That supporting evidence is independent of the accomplice's (statement/ [or] testimony);**

AND

- 3. That supporting evidence tends to connect the defendant to the commission of the crime[s].**

Supporting evidence, however, may be slight. It does not need to be enough, by itself, to prove that the defendant is guilty of the charged crime[s], and it does not need to support every fact (mentioned by the accomplice in the statement/ [or] about which the accomplice testified). On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.

[The evidence needed to support the (statement/ [or] testimony) of one accomplice cannot be provided by the (statement/ [or] testimony) of another accomplice.]

Any (statement/ [or] testimony) of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that (statement/ [or] testimony) the weight you think it deserves after examining it with care and caution and in the light of all the other evidence.

New January 2006; Revised June 2007, April 2010, April 2011, February 2016, March 2019, March 2020

BENCH NOTES

Instructional Duty

There is a **sua sponte** duty to instruct on the principles governing the law of accomplices, including the need for corroboration, if the evidence at trial suggests that a witness could be an accomplice. (*People v. Tobias* (2001) 25 Cal.4th 327, 331 [106 Cal.Rptr.2d 80, 21 P.3d 758]; *People v. Guiuan* (1998) 18 Cal.4th 558, 569 [76 Cal.Rptr.2d 239, 957 P.2d 928].)

“Whether a person is an accomplice is a question of fact for the jury unless the facts and the inferences to be drawn therefrom are undisputed.” (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 104 [17 Cal.Rptr.3d 710, 96 P.3d 30].) When the court concludes that the witness is an accomplice as a matter of law or the parties agree about the witness’s status as an accomplice, do not give this instruction. Give CALCRIM No. 335, *Accomplice Testimony: No Dispute Whether Witness Is Accomplice*.

If a codefendant’s testimony tends to incriminate another defendant, the court **must give** an appropriate instruction on accomplice testimony. (*People v. Avila* (2006) 38 Cal.4th 491, 562 [43 Cal.Rptr.3d 1, 133 P.3d 1076]; *citing People v. Box* (2000) 23 Cal.4th 1153, 1209 [99 Cal.Rptr.2d 69, 5 P.3d 130]; *People v. Alvarez* (1996) 14 Cal.4th 155, 218 [58 Cal.Rptr.2d 385, 926 P.2d 365].) The court **must** also instruct on accomplice testimony when two codefendants testify against each other and blame each other for the crime. (*Id.* at 218–219).

When the witness is a codefendant whose testimony includes incriminating statements, the court **should not** instruct that the witness is an accomplice as a matter of law. (*People v. Hill* (1967) 66 Cal.2d 536, 555 [58 Cal.Rptr. 340, 426 P.2d 908].) Instead, the court should give this instruction, informing the jury that it must decide whether the testifying codefendant is an accomplice. In addition, the court should instruct that when the jury considers this testimony as it relates to the testifying codefendant’s defense, the jury should evaluate the testimony using the general rules of credibility, but if the jury considers testimony as incriminating evidence against the non-testifying codefendant, the

testimony must be corroborated and should be viewed with caution. (See *People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 105 [17 Cal.Rptr.3d 710, 96 P.3d 30].)

Do not give this instruction if accomplice testimony is solely exculpatory or neutral. (*People v. Smith* (2017) 12 Cal.App.5th 766, 778-780 [218 Cal.Rptr.3d 892] [telling jurors that corroboration is required to support neutral or exonerating accomplice testimony was prejudicial error].)

If the court concludes that the corroboration requirement applies to an out-of-court statement, use the word “statement” throughout the instruction. (See discussion in Related Issues section below.)

In a multiple codefendant case, if the corroboration requirement does not apply to all defendants, insert the names of the defendants for whom corroboration is required where indicated in the first sentence.

If the witness was an accomplice to only one or some of the crimes he or she testified about, the corroboration requirement only applies to those crimes and not to other crimes he or she may have testified about. (*People v. Wynkoop* (1958) 165 Cal.App.2d 540, 546 [331 P.2d 1040].) In such cases, the court may insert the specific crime or crimes requiring corroboration in the first sentence.

Give the bracketed paragraph that begins with “A person who lacks criminal intent” when the evidence suggests that the witness did not share the defendant’s specific criminal intent, e.g., witness was an undercover police officer or an unwitting assistant.

Give the bracketed paragraph that begins with “You may not conclude that a child under 14 years old” on request if the defendant claims that a child witness’s testimony must be corroborated because the child acted as an accomplice. (Pen. Code, § 26; *People v. Williams* (1936) 12 Cal.App.2d 207, 209 [55 P.2d 223].)

Give the bracketed sentence that begins with “The burden is on the defendant” unless acting with an accomplice is an element of the charged crime. (*People v. Martinez* (2019) 34 Cal.App.5th 721, 723 [246 Cal.Rptr.3d 442].) *Martinez* only involved charges where acting as an accomplice was an element.

AUTHORITY

- Instructional Requirements. Pen. Code, § 1111; *People v. Guiuan* (1998) 18 Cal.4th 558, 569 [76 Cal.Rptr.2d 239, 957 P.2d 928].
- Accomplice May Not Provide Sole Basis for Admission of Other Evidence. *People v. Bowley* (1963) 59 Cal.2d 855, 863 [31 Cal.Rptr. 471, 382 P.2d 591].

- Consideration of Incriminating Testimony. *People v. Guiuan* (1998) 18 Cal.4th 558, 569 [76 Cal.Rptr.2d 239, 957 P.2d 928].
- Defendant’s Burden of Proof. *People v. Belton* (1979) 23 Cal.3d 516, 523 [153 Cal.Rptr. 195, 591 P.2d 485].
- Defense Admissions May Provide Necessary Corroboration. *People v. Williams* (1997) 16 Cal.4th 635, 680 [66 Cal.Rptr.2d 573, 941 P.2d 752].
- Accomplice Includes Co-perpetrator. *People v. Felton* (2004) 122 Cal.App.4th 260, 268 [18 Cal.Rptr.3d 626].
- Definition of Accomplice as Aider and Abettor. *People v. Stankewitz* (1990) 51 Cal.3d 72, 90–91 [270 Cal.Rptr. 817, 793 P.2d 23].
- Extent of Corroboration Required. *People v. Szeto* (1981) 29 Cal.3d 20, 27 [171 Cal.Rptr. 652, 623 P.2d 213].
- One Accomplice May Not Corroborate Another. *People v. Montgomery* (1941) 47 Cal.App.2d 1, 15 [117 P.2d 437], disapproved on other grounds in *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301, fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44] and *People v. Dillon* (1983) 34 Cal.3d 441, 454, fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697].
- Presence or Knowledge Insufficient. *People v. Boyd* (1990) 222 Cal.App.3d 541, 557, fn. 14 [271 Cal.Rptr. 738]; *In re Michael T.* (1978) 84 Cal.App.3d 907, 911 [149 Cal.Rptr. 87].
- Testimony of Feigned Accomplice Need Not Be Corroborated. *People v. Salazar* (1962) 201 Cal.App.2d 284, 287 [20 Cal.Rptr. 25]; but see *People v. Brocklehurst* (1971) 14 Cal.App.3d 473, 476 [92 Cal.Rptr. 340]; *People v. Bohmer* (1975) 46 Cal.App.3d 185, 191–193 [120 Cal.Rptr. 136].
- Uncorroborated Accomplice Testimony May Establish Corpus Delicti. *People v. Williams* (1988) 45 Cal.3d 1268, 1317 [248 Cal.Rptr. 834, 756 P.2d 221].
- Witness an Accomplice as a Matter of Law. *People v. Williams* (1997) 16 Cal.4th 635, 679 [66 Cal.Rptr.2d 573, 941 P.2d 752].
- In-Custody Informant Testimony and Accomplice Testimony May Corroborate Each Other ▶ *People v. Huggins* (2015) 235 Cal.App.4th 715, 719-720 [185 Cal.Rptr.3d 672].• No Corroboration Requirement for Exculpatory Accomplice Testimony ▶ *People v. Smith* (2017) 12 Cal.App.5th 766, 778-780 [218 Cal.Rptr.3d 892].

RELATED ISSUES

Out-of-Court Statements

The out-of court statement of a witness *may* constitute “testimony” within the meaning of

Penal Code section 1111, and may require corroboration. (*People v. Williams* (1997) 16 Cal.4th 153, 245 [66 Cal.Rptr.2d 123, 940 P.2d 710]; *People v. Belton* (1979) 23 Cal.3d 516, 526 [153 Cal.Rptr. 195, 591 P.2d 485].) The Supreme Court has quoted with approval the following summary of the corroboration requirement for out-of-court statements:

‘[T]estimony’ within the meaning of ... section 1111 includes ... all out-of-court statements of accomplices and coconspirators used as substantive evidence of guilt which are made under suspect circumstances. The most obvious suspect circumstances occur when the accomplice has been arrested or is questioned by the police. [Citation.] On the other hand, when the out-of-court statements are not given under suspect circumstances, those statements do not qualify as ‘testimony’ and hence need not be corroborated under ... section 1111.

(*People v. Williams, supra*, 16 Cal.4th at p. 245 [quoting *People v. Jeffery* (1995) 37 Cal.App.4th 209, 218 [43 Cal.Rptr.2d 526] [quotation marks, citations, and italics removed]; see also *People v. Sully* (1991) 53 Cal.3d 1195, 1230 [283 Cal.Rptr. 144, 812 P.2d 163] [out-of-court statement admitted as excited utterance did not require corroboration].) The court must determine whether the out-of-court statement requires corroboration and, accordingly, whether this instruction is appropriate. The court should also determine whether the statement is testimonial, as defined in *Crawford v. Washington* (2004) 541 U.S. 36 [124 S.Ct. 1354, 158 L.Ed.2d 177], and whether the *Crawford* holding effects the corroboration requirement of Penal Code section 1111.

Incest With a Minor

Accomplice instructions are not appropriate in a trial for incest with a minor. A minor is a victim, not an accomplice, to incest. (*People v. Tobias* (2001) 25 Cal.4th 327, 334 [106 Cal.Rptr.2d 80, 21 P.3d 758]; see CALCRIM No. 1180, *Incest*.)

Liable to Prosecution When Crime Committed

The test for determining if a witness is an accomplice is not whether that person is subject to trial when he or she testifies, but whether he or she was liable to prosecution for the same offense at the time the acts were committed. (*People v. Gordon* (1973) 10 Cal.3d 460, 469 [110 Cal.Rptr. 906, 516 P.2d 298].) However, the fact that a witness was charged for the same crime and then granted immunity does not necessarily establish that he or she is an accomplice. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 90 [270 Cal.Rptr. 817, 793 P.2d 23].)

Threats and Fear of Bodily Harm

A person who is induced by threats and fear of bodily harm to participate in a crime, other than murder, is not an accomplice. (*People v. Brown* (1970) 6 Cal.App.3d 619, 624 [86 Cal.Rptr. 149]; *People v. Perez* (1973) 9 Cal.3d 651, 659–660 [108 Cal.Rptr. 474, 510 P.2d 1026].)

Defense Witness

“[A]lthough an accomplice witness instruction must be properly formulated ... , there is no error in giving such an instruction when the accomplice’s testimony favors the defendant.” (*United States v. Tirouda* (9th Cir. 2005) 394 F.3d 683, 688.)

SECONDARY SOURCES

3 Witkin, *California Evidence* (5th ed. 2012) Presentation at Trial, §§ 110, 111, 118, 122.

4 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 82, *Witnesses*, § 82.03, Ch. 85, *Submission to Jury and Verdict*, §§ 85.02[2][b], 85.03[2][b], [d], Ch. 87, *Death Penalty*, § 87.23[4][b] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.02[5][b] (Matthew Bender).

Evidence

361. Failure to Explain or Deny Adverse ~~Testimony~~Evidence

If the defendant failed in (his/her) testimony to explain or deny evidence against (him/her), and if (he/she) could reasonably be expected to have done so based on what (he/she) knew, you may consider (his/her) failure to explain or deny in evaluating that evidence. Any such failure is not enough by itself to prove guilt. The People must still prove the defendant guilty beyond a reasonable doubt.

If the defendant failed to explain or deny, it is up to you to decide the meaning and importance of that failure.

New January 2006; Revised April 2010, February 2016, March 2017, March 2020

BENCH NOTES

Instructional Duty

No authority imposes a duty to give this instruction sua sponte. This instruction should only be given when the defendant testifies and the privilege against self-incrimination has not been successfully invoked. (*People v. Mask* (1986) 188 Cal.App.3d 450, 455 [233 Cal.Rptr. 181]; *People v. Haynes* (1983) 148 Cal.App.3d 1117, 1118 [196 Cal.Rptr. 450].)

There is a split in authority over the application of *People v. Saddler* (1979) 24 Cal.3d 671, 682–683 [156 Cal.Rptr. 871, 597 P.2d 130] [instruction erroneously given because there was no evidence that defendant failed to deny or explain incriminating evidence] and whether this instruction should be given when a testifying defendant fails to explain or deny incriminating evidence in the absence of a question. (Compare *People v. Grandberry* (2019) 35 Cal.App.5th 599, 609 [247 Cal.Rptr.3d 258] [approving use of the instruction “when a testifying defendant has failed to explain or deny matters within the scope of relevant cross-examination, not simply those matters that were asked of the defendant on cross-examination”] with *People v. Roehler* (1985) 167 Cal.App.3d 353, 392 [213 Cal.Rptr. 353] [“If a defendant has not been asked an appropriate question calling for either an explanation or denial, the instruction cannot be given, as a matter of law”] and *People v. Vega* (2015) 236 Cal.App.4th 484, 497 [186 Cal.Rptr.3d 671] [noting restrictions for when the instruction may be given and quoting *Roehler*].)

If the court follows *Grandberry*, the trial court **must** ascertain as a matter of law: (1) if the matter was within the scope of relevant cross-examination; (2) if the defendant knew the facts necessary to explain or deny incriminating evidence or if

some circumstance precluded the defendant from knowing such facts; and (3) if the defendant failed to explain or deny the incriminating evidence.

~~If the court follows *Roehler* Before an instruction on this principle may be given, the trial court **must** ascertain as a matter of law: (1) if a question was asked that called for an explanation or denial of incriminating evidence; (2) if the defendant knew the facts necessary to answer the question or if some circumstance precluded the defendant from knowing such facts; and (3) if the defendant failed to deny or explain the incriminating evidence when answering the question. (*People v. Saddler* (1979) 24 Cal.3d 671, 682–683 [156 Cal.Rptr. 871, 597 P.2d 130] [instruction erroneously given because there was no evidence that defendant failed to deny or explain incriminating evidence]; *People v. Marsh* (1985) 175 Cal.App.3d 987, 994 [221 Cal.Rptr. 311] [same]; *People v. De Larco* (1983) 142 Cal.App.3d 294, 309 [190 Cal.Rptr. 757] [same]; see also *People v. Marks* (1988) 45 Cal.3d 1335, 1346 [248 Cal.Rptr. 874, 756 P.2d 260].)~~

Contradiction of the state’s evidence is not by itself a failure to deny or explain. (*People v. Marks* (1988) 45 Cal.3d 1335, 1346 [248 Cal.Rptr. 874, 756 P.2d 260]; *People v. Peters* (1982) 128 Cal.App.3d 75, 86 [180 Cal.Rptr. 76].) Failure to recall is not an appropriate basis for this instruction. (*People v. De Larco* (1983) 142 Cal.App.3d 294, 309 [190 Cal.Rptr. 757].)

Give this instruction only when a testifying defendant completely fails to explain or deny incriminating evidence, or claims to lack knowledge although it appears from the evidence that defendant could reasonably be expected to have that knowledge. (*People v. Cortez* (2016) 63 Cal.4th 101, 117-118 [201 Cal.Rptr.3d 846, 369 P.3d 521].)

AUTHORITY

- Instructional Requirements ▶ Evid. Code, § 413.
- Cautionary Language ▶ *People v. Saddler* (1979) 24 Cal.3d 671, 683 [156 Cal.Rptr. 871, 597 P.2d 130].
- This Instruction Upheld ▶ *People v. Vega* (2015) 236 Cal.App.4th 484, 494-500 [186 Cal.Rptr.3d 671]; *People v. Rodriguez* (2009) 170 Cal.App.4th 1062, 1068 [88 Cal.Rptr.3d 749].

RELATED ISSUES

Bizarre or Implausible Answers

If the defendant’s denial or explanation is bizarre or implausible, several courts have held that the question whether his or her response is reasonable should be given to the jury with an instruction regarding adverse inferences. (*People v. Mask* (1986) 188 Cal.App.3d 450, 455 [233 Cal.Rptr.181]; *People v. Roehler* (1985) 167 Cal.App.3d 353, 392–393 [213 Cal.Rptr. 353].) However, in *People v. Kondor* (1988) 200 Cal.App.3d 52, 57 [245 Cal.Rptr. 750], the court stated, “the test for giving the instruction [on failure to deny or explain] is not whether the defendant’s testimony is believable. [The instruction] is unwarranted when a defendant explains or denies matters within his or her knowledge, no matter how improbable that explanation may appear.”

Facts Beyond the Scope of Examination

If the defendant has limited his or her testimony to a specific factual issue, it is error for the prosecutor to comment, or the trial court to instruct, on his or her failure to explain or deny other evidence against him or her that is beyond the scope of this testimony. (*People v. Tealer* (1975) 48 Cal.App.3d 598, 604–607 [122 Cal.Rptr. 144].)

SECONDARY SOURCES

3 Witkin, California Evidence (5th ed. 2012) Presentation at Trial, § 102.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 80, *Defendant’s Trial Rights*, § 80.08[6][a][i], Ch. 83, *Evidence*, § 83.01[2][b], Ch. 85, *Submission to Jury and Verdict*, §§ 85.01[5], 85.04[2][b] (Matthew Bender).

Evidence

377. Presence of Support Person/Dog/Dog Handler (Pen. Code, §§ 868.4, 868.5)

_____ *<insert name of =witness>* (will have/has/had) a (person/dog) present during (his/her) testimony. **-Do not consider the presence of the support (person²s/dog²s [and dog handler] ~~presence who (is/was) with the witness~~ for any purpose or allow it to distract you.**

New March 2018; Revised March 2020

BENCH NOTES

Instructional Duty

The court may give this instruction on request. If instructing on support persons, this instruction only applies to prosecution witnesses.

AUTHORITY

- Elements ▶ Pen. Code, §§ 868.4, 868.5.

378–399. Reserved for Future Use

Homicide

507 Justifiable Homicide: By ~~Public Peace~~ Officer

The defendant is not guilty of (murder/ [or] manslaughter/attempted murder/ [or] attempted voluntary manslaughter) if (he/she) (~~killed~~/attempted to kill/~~killed~~) someone while (acting as a ~~public peace~~ officer/obeying a ~~public peace~~ officer's command for aid and assistance). ~~Such (A/Ana/an)~~ [attempted] killing is justified, and therefore not unlawful, if:

1. The defendant was (a ~~public peace~~ officer/obeying a ~~public peace~~ officer's command for aid and assistance);

AND

2. The [attempted] killing was committed while the defendant either: (taking back into custody a convicted felon [or felons] who had escaped from prison or confinement[,] / arresting a person [or persons] charged with a felony who (was/were) resisting arrest or fleeing from justice[,] / overcoming actual resistance to some legal process[,] / [or] while performing any [other] legal duty);

A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

B1. _____ <insert name of fleeing felon> was fleeing;

B2. The force was necessary to arrest or detain _____ <insert name of fleeing felon > for the crime of _____ <insert name of felony >;

B3. The commission of the crime of _____ <insert name of felony> created a risk of or resulted in death or serious bodily injury to another person;

AND

B4. ~~_____ <insert name of fleeing felon > would cause death or serious bodily injury to another person unless immediately arrested or detained.~~

~~1. The [attempted] killing was necessary to accomplish (one of those/that) lawful purpose[s];~~

~~AND~~

~~2. The defendant had probable cause to believe that (_____ <insert name of decedent > posed a threat of death or great bodily injury, either to the defendant or to others/[or] that _____ <insert name of decedent > had committed (_____ <insert forcible and atrocious crime >/ _____ <insert crime decedent was suspected of committing, e.g., burglary >), and that crime threatened the defendant or others with death or great bodily injury)]. <See Bench Note discussing this element.>~~

~~A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.~~

~~[A *serious bodily injury* means a serious impairment of physical condition. Such an injury may include[, but is not limited to]: (loss of consciousness/ concussion/ bone fracture/ protracted loss or impairment of function of any bodily member or organ/ a wound requiring extensive suturing/ [and] serious disfigurement).]~~

~~[A threat of death or serious bodily injury is *imminent* when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.]~~

~~[*Totality of the circumstances* means all facts known to the defendant at the time, including the conduct of the defendant and _____ <insert name of decedent > leading up to the use of deadly force.]~~

[In considering the totality of circumstances, you may consider whether:

- [• Prior to the use of force, the defendant [identified] [or] [attempted to identify] him or herself as a peace officer and [warned] [or] [attempted to warn] that deadly force may be used(;/.)]
- [• Prior to the use of force, the defendant had objectively reasonable grounds to believe the person was aware that the defendant was a peace officer and that deadly force may be used(;/.)]
- [• [The defendant was able, under the circumstances, to [identify] [or] [attempt to identify] him or herself as a peace officer] [and] [to warn] [or] [attempt to warn] that deadly force may be used.]]

[A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. A peace officer does not lose (his/her) right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance.]

~~[An officer or employee of _____ <insert name of state or local government agency that employs public officer> is a public officer.]~~

~~Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.~~

[A person who is employed as a police officer by _____ <insert name of agency that employs police officer> is a peace officer.]

[A person employed by _____ <insert name of agency that employs peace officer, e.g., “the Department of Fish and Wildlife”> is a peace officer if

_____ <insert description of facts necessary to make employee a peace officer, e.g., “designated by the director of the agency as a peace officer”>.]

The People have the burden of proving beyond a reasonable doubt that the [attempted] killing was not justified. If the People have not met this burden, you must find the defendant not guilty of [attempted] (murder/ [or] manslaughter).

New January 2006; Revised April 2011, February 2012, August 2012, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on justifiable homicide when “it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the

defendant’s theory of the case.” (See *People v. Breverman* (1998) 19 Cal.4th 142, 156 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [addressing sua sponte duty to instruct on self-defense].)

Penal Code sections 196 and 835a, as amended by Statutes 2019, ch.170 (A.B. 392), became effective on January 1, 2020. If the defendant’s act occurred before this date, the court should give the prior version of this instruction.

~~In element 2, select the phrase appropriate for the facts of the case.~~

~~It is unclear whether the officer must always have probable cause to believe that the victim poses a threat of future harm or if it is sufficient if the officer has probable cause to believe that the victim committed a forcible and atrocious crime. In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, 11 [105 S.Ct. 1694, 85 L.Ed.2d 1], the Supreme Court held that, under the Fourth Amendment, deadly force may not be used to prevent the escape of an apparently unarmed suspected felon unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. “*Garner* necessarily limits the scope of justification for homicide under section 197, subdivision 4, and other similar statutes from the date of that decision.” (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124 [214 Cal.Rptr. 873].) In a footnote, *Garner*, *supra*, 471 U.S. 1, 16, fn. 15, noted that California law permits a killing in either situation, that is, when the suspect has committed an atrocious crime or when the suspect poses a threat of future harm. (See also *Long Beach Police Officers Assn v. City of Long Beach* (1976) 61 Cal.App.3d 364, 371-375 [132 Cal.Rptr. 348] [also stating the rule as “either” but quoting police regulations, which require that the officer always believe there is a risk of future harm.] The committee has provided both options, but see *People v. Ceballos* (1974) 12 Cal.3d 470, 478-479 [116 Cal.Rptr. 233, 526 P.2d 241]. The court should review relevant case law before giving the bracketed language.~~

~~As with a peace officer, †~~The jury must determine whether the defendant was a public peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444-445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury in the appropriate definition of “public peace officer” from the statute (e.g., “a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are public peace officers”). (*Ibid.*) However, the court may not instruct the jury that the defendant was a public peace officer as a matter of law (e.g., “Officer Reed was a public peace officer”). (*Ibid.*) If the defendant is a police officer, give the bracketed sentence that begins with “A person employed as a police officer.” If the defendant is another type of peace officer, give the bracketed sentence that begins with “A person employed by.”

Related Instructions

CALCRIM No. 508, *Justifiable Homicide: Citizen Arrest (Non-Peace Officer)*.

CALCRIM No. 509, *Justifiable Homicide: Non-Peace Officer Preserving the Peace*.

AUTHORITY

- Justifiable Homicide by ~~Public Peace~~ Officer. ▶ Pen. Code, §§ 196, 199, 835a.
- Burden of Proof. ▶ Pen. Code, § 189.5; *People v. Frye* (1992) 7 Cal.App.4th 1148, 1154–1155 [10 Cal.Rptr.2d 217]; *People v. Banks* (1976) 67 Cal.App.3d 379, 383–384 [137 Cal.Rptr. 652].
- ~~Public Peace Officer Defined.~~ ▶ ~~See~~ Pen. Code, § 830 et seq. ~~§ 831(a) [custodial officer], 831.4 [sheriff's or police security officer], 831.5 [custodial officer], 831.6 [transportation officer], 3089 [county parole officer]; *In re Frederick B.* (1987) 192 Cal.App.3d 79, 89–90 [237 Cal.Rptr. 338], disapproved on other grounds in *In re Randy G.* (2001) 26 Cal.4th 556, 567 fn. 2 [110 Cal.Rptr.2d 516, 28 P.3d 239] [“public officers” is broader category than “peace officers”]; see also Pen. Code, § 836.5(a) [authority to arrest without warrant].~~
- ~~Felony Must Pose Threat of Death or Great Bodily Injury.~~ ▶ ~~*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332–333 [138 Cal.Rptr. 26].~~ Serious Bodily Injury Defined. ▶ Pen. Code, § 243(f)(4); *People v. Taylor* (2004) 118 Cal.App.4th 11, 25, fn. 4 [12 Cal.Rptr.3d 693].

RELATED ISSUES**~~Killing Committed in Obedience to Judgment~~**

~~A homicide is also justifiable when committed by a public officer “in obedience to any judgment of a competent court.” (Pen. Code, § 196, subd. 1.) There are no reported cases construing this subdivision. This provision appears to apply exclusively to lawful executions.~~

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Defenses, §§ ~~92, 95, 275~~.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 73, *Defenses and Justifications*, § 73.15[1], ~~[2]~~ (Matthew Bender).

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 85, *Submission to Jury and Verdict*, § 85.04[1][c] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.01[1][b] (Matthew Bender).

Homicide

**540B Felony Murder: First Degree—Coparticipant Allegedly
Committed Fatal Act (Pen. Code, § 189)**

<Give the following introductory sentence when not giving CALCRIM No. 540A.>
[The defendant is charged [in Count ___] with murder, under a theory of first degree felony murder.]

The defendant may [also] be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

- 1. The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____ *<insert felony or felonies from Pen. Code, § 189>*;**
- 2. The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____ *<insert felony or felonies from Pen. Code, § 189>*;**
- 3. If the defendant did not personally commit [or attempt to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*, then a perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*;**
- 4. While committing [or attempting to commit] _____ *<insert felony or felonies from Pen. Code, § 189>*, the perpetrator caused the death of another person;**

<Alternative for Pen. Code § 189(e)(2) and (e)(3) liability>

[5A. The defendant intended to kill;

AND

5B. The defendant (aided and abetted[,]) / [or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of first degree murder(./;)]

[OR]

[(5A/6A). The defendant was a major participant in the _____ <insert felony or felonies from Pen. Code § 189>;

AND

(5B/6B). When the defendant participated in the _____ <insert felony or felonies from Pen. Code § 189>, (he/she) acted with reckless indifference to human life(./;)]

[OR]

<Alternative for Pen. Code § 189(f) liability>

[(5A/6A/7A). _____ <insert officer's name, excluding title> was a peace officer lawfully performing (his/her) duties as a peace officer;

AND

(5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____ <insert officer's name, excluding title> was a peace officer performing (his/her) duties.]

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ <insert felony or felonies from Pen. Code, § 189>, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____

<insert felony or felonies from Pen. Code, § 189> before or at the time of the death.]

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

[You may not find the defendant guilty of felony murder unless all of you agree that the defendant or a perpetrator caused the death of another. You do not all need to agree, however, whether the defendant or a perpetrator caused that death.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies>

[A person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[When you decide whether the defendant acted with reckless indifference to human life, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- [● Did the defendant know that [a] lethal weapon[s] would be present during the _____ <insert underlying felony>?]
- [● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]
- [● Did the defendant know that [a] lethal weapon[s] (was/were) used?]
- [● Did the defendant know the number of weapons involved?]
- [● Was the defendant near the person(s) killed when the killing occurred?]
- [● Did the defendant have an opportunity to stop the killing or to help the victim(s)?]
- [● How long did the crime last?]
- [● Was the defendant aware of anything that would make a coparticipant likely to kill?]
- [● Did the defendant try to minimize the possibility of violence?]

1. _____ *<insert any other relevant factors>* 11

[When you decide whether the defendant was a *major participant*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

- 1. ~~1.~~ What was the defendant's role in planning the crime that led to the death[s]? 1
- 2. ~~2.~~ What was the defendant's role in supplying or using lethal weapons? 1
- 3. ~~3.~~ What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]? 1
- 4. ~~4.~~ Was the defendant in a position to facilitate or to prevent the death? 1
- 5. ~~5.~~ Did the defendant's action or inaction play a role in the death? 1
- 6. ~~6.~~ What did the defendant do after lethal force was used? 1
- 7. ~~7.~~ _____ *<insert any other relevant factors.>* 11

~~No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.~~

<Give the following instructions when Pen. Code § 189(f) applies>

[A person who is employed as a police officer by _____ *<insert name of agency that employs police officer>* is a peace officer.]

[A person employed by _____ *<insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife">* is a peace officer if _____ *<insert description of facts necessary to make employee a peace officer, e.g., "designated by the director of the agency as a peace officer">*.]

[The duties of (a/an) _____ *<insert title of peace officer>* include _____ *<insert job duties>*.]

New January 2006; Revised April 2010, August 2013, February 2015, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

If the facts raise an issue whether the homicidal act caused the death, the court has a **sua sponte** duty to give CALCRIM No. 240, *Causation*.

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If the prosecution’s theory is that the defendant, as well as the perpetrator, committed or attempted to commit the underlying felony or felonies, then select “committed [or attempted to commit]” in element 1 and “intended to commit” in element 2. In addition, in the paragraph that begins with “To decide whether,” select both “the defendant and the perpetrator.” Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state “the defendant and the perpetrator each committed [the crime] if”

If the prosecution’s theory is that the defendant aided and abetted or conspired to commit the felony, select one or both of these options in element 1 and the corresponding intent requirements in element 2. In addition, in the paragraph that begins with “To decide whether,” select “the perpetrator” in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state “the perpetrator committed,” rather than “the defendant,” in the instructions on the underlying felony.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rptr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with “The defendant must have (intended to commit.” For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with “It is not required that the person die immediately” on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with “It is not required that the person killed be” on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain* (1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory].)

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

There must be a logical connection between the cause of death and the _____ <insert felony or felonies from Pen. Code, § 189> [or attempted _____ <insert felony or felonies from Pen. Code, § 189>]. The connection between the cause of death and the _____ <insert felony or felonies from Pen. Code, § 189> [or attempted _____ <insert felony or felonies from Pen. Code, § 189>] must involve more than just their occurrence at the same time and place.]

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rptr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

~~The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.~~

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts “in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders.” (*Id.* at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the prosecution alleges that a coparticipant in the felony committed the act causing the death.

When the alleged victim dies during the course of the felony as a result of a heart attack, a fire, or a similar cause, rather than as a result of some act of force or violence committed against the victim by one of the participants, give CALCRIM No. 540C, *Felony Murder: First Degree—Other Acts Allegedly Caused Death*. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166]; but see

People v. Gunnerson (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

If the evidence indicates that someone other than the defendant or a coparticipant committed the fatal act, then the crime is not felony murder. (*People v. Washington* (1965) 62 Cal.2d 777, 782–783 [44 Cal.Rptr. 442, 402 P.2d 130]; *People v. Caldwell* (1984) 36 Cal.3d 210, 216 [203 Cal.Rptr. 433, 681 P.2d 274]; see also *People v. Gardner* (1995) 37 Cal.App.4th 473, 477 [43 Cal.Rptr.2d 603].) Liability may be imposed, however, under the provocative act doctrine. (*Pizano v. Superior Court of Tulare County* (1978) 21 Cal.3d 128, 134 [145 Cal.Rptr. 524, 577 P.2d 659]; see CALCRIM No. 560, *Homicide: Provocative Act by Defendant*.)

Related Instructions

CALCRIM No. 400 et seq., *Aiding and Abetting: General Principles*.

CALCRIM No. 415 et seq., *Conspiracy*.

AUTHORITY

- Felony Murder: First Degree. ▶ Pen. Code, § 189.
- Specific Intent to Commit Felony Required. ▶ *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. ▶ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. ▶ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Logical Nexus Between Felony and Killing. ▶ *People v. Dominguez* (2006) 39 Cal.4th 1141]; *People v. Cavitt* (2004) 33 Cal.4th 187, 197–206].
- Merger Doctrine Does Not Apply to First Degree Felony Murder. ▶ *People v. Farley* (2009) 46 Cal.4th 1053, 1118–1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. ▶ *People v. Clark* (2016) 63 Cal.4th 522, 614–620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; [*People v. Banks* \(2015\) 61 Cal.4th 788, 807–811 \[189 Cal.Rptr.3d 208, 351 P.3d 330\]](#); *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▶ *People v. Banks* (2015) 61 Cal.4th 788, 803–808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

RELATED ISSUES

Conspiracy Liability—Natural and Probable Consequences

In the context of nonhomicide crimes, a coconspirator is liable for any crime committed by a member of the conspiracy that was a natural and probable consequence of the conspiracy. (*People v. Superior Court (Shamis)* (1997) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388].) This is analogous to the rule in aiding and abetting that the defendant may be held liable for any unintended crime that was the natural and probable consequence of the intended crime. (*People v. Nguyen* (1993) 21 Cal.App.4th 518, 531 [26 Cal.Rptr.2d 323].) In the context of felony murder, the Supreme Court has explicitly held that the natural and probable consequences doctrine does not apply to a defendant charged with felony murder based on aiding and abetting the underlying felony. (See *People v. Anderson* (1991) 233 Cal.App.3d 1646, 1658 [285 Cal.Rptr. 523].) The court has not explicitly addressed whether the natural and probable consequences doctrine continues to limit liability for felony murder where the defendant’s liability is based solely on being a member of a conspiracy. In *People v. Pulido* (1997) 15 Cal.4th 713, 724 [63 Cal.Rptr.2d 625, 936 P.2d 1235], the court stated in dicta, “[f]or purposes of complicity in a cofelon’s homicidal act, the conspirator and the abettor stand in the same position.” [Citation; quotation marks omitted.]

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Introduction to Crimes, §§ 98, 109.

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 151–168, 178.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 140, *Challenges to Crimes*, § 140.10[3][b], Ch. 142, *Crimes Against the Person*, § 142.01[1][e], [2][b] (Matthew Bender).

Homicide

**540C Felony Murder: First Degree—Other Acts Allegedly Caused
Death (Pen. Code, § 189)**

The defendant is charged [in Count __] with first degree murder, under a theory of felony murder.

The defendant may be guilty of murder, under a theory of felony murder, even if another person did the act that resulted in the death. I will call the other person the *perpetrator*.

To prove that the defendant is guilty of first degree murder under this theory, the People must prove that:

1. The defendant (committed [or attempted to commit][,]/ [or] aided and abetted[,]/ [or] was a member of a conspiracy to commit) _____ *<insert felony or felonies from Pen. Code, § 189>;*
2. The defendant (intended to commit[,]/ [or] intended to aid and abet the perpetrator in committing[,]/ [or] intended that one or more of the members of the conspiracy commit) _____ *<insert felony or felonies from Pen. Code, § 189>;*

<Give element 3 if defendant did not personally commit or attempt felony.>

- [3. A perpetrator, (whom the defendant was aiding and abetting/ [or] with whom the defendant conspired), personally committed [or attempted to commit] _____ *<insert felony or felonies from Pen. Code, § 189>;*]

- (3/4). The commission [or attempted commission] of the _____ *<insert felony or felonies from Pen. Code, § 189>* was a substantial factor in causing the death of another person;

<Alternative for Pen. Code § 189(e)(2) and (e)(3) liability>

- [(4A/5A). The defendant intended to kill;

AND

- (4B/5B). The defendant (aided and abetted[,]/[or] counseled[,]/ [or] commanded[,]/ [or] induced[,]/ [or] solicited[,]/ [or] requested[,]/ [or] assisted) the perpetrator in the commission of murder(./;)]

[OR]

[(4A/5A/6A). The defendant was a major participant in the _____ <insert felony or felonies from Pen. Code § 189>;

AND

(4B/5B/6B). When the defendant participated in the _____ <insert felony or felonies from Pen. Code § 189>, (he/she) acted with reckless indifference to human life(./;)]

[OR]

<Alternative for Pen. Code § 189(f) liability>

[(4A/5A/6A/7A). _____ <insert officer's name, excluding title> was a peace officer lawfully performing (his/her) duties as a peace officer;

AND

(4B/5B/6B/7B). When the defendant acted, (he/she) knew, or reasonably should have known, that _____ <insert officer's name, excluding title> was a peace officer performing (his/her) duties.]

[A person may be guilty of felony murder of a peace officer even if the killing was unintentional, accidental, or negligent.]

To decide whether (the defendant/ [and] the perpetrator) committed [or attempted to commit] _____ <insert felony or felonies from Pen. Code, § 189>, please refer to the separate instructions that I (will give/have given) you on (that/those) crime[s]. [To decide whether the defendant aided and abetted a crime, please refer to the separate instructions that I (will give/have given) you on aiding and abetting.] [To decide whether the defendant was a member of a conspiracy to commit a crime, please refer to the separate instructions that I (will give/have given) you on conspiracy.] You must apply those instructions when you decide whether the People have proved first degree murder under a theory of felony murder.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding

whether a consequence is natural and probable, consider all the circumstances established by the evidence.

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

[The defendant must have (intended to commit[,]/ [or] aid and abet[,]/ [or] been a member of a conspiracy to commit) the (felony/felonies) of _____
<insert felony or felonies from Pen. Code, § 189> before or at the time of the death.]

[It is not required that the person die immediately, as long as the act causing death occurred while the defendant was committing the (felony/felonies).]

[It is not required that the person killed be the (victim/intended victim) of the (felony/felonies).]

[It is not required that the defendant be present when the act causing the death occurs.]

<The following instructions can be given when reckless indifference and major participant under Pen. Code § 189(e)(3) applies>

[A person acts with reckless indifference to human life when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[When you decide whether the defendant acted with reckless indifference to human life, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- [● Did the defendant know that [a] lethal weapon[s] would be present during the _____ <insert underlying felony>?]**
- [● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]**
- [● Did the defendant know that [a] lethal weapon[s] (was/were) used?]**
- [● Did the defendant know the number of weapons involved?]**
- [● Was the defendant near the person(s) killed when the killing occurred?]**

- 1. Did the defendant have an opportunity to stop the killing or to help the victim(s)?
- 2. How long did the crime last?
- 3. Was the defendant aware of anything that would make a coparticipant likely to kill?
- 4. Did the defendant try to minimize the possibility of violence?
- 5. _____ <insert any other relevant factors>.

[When you decide whether the defendant was a *major participant*, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant. Among the factors you may consider are:

- 1. What was the defendant's role in planning the crime that led to the death[s]?
- 2. What was the defendant's role in supplying or using lethal weapons?
- 3. What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?
- 4. Was the defendant in a position to facilitate or to prevent the death?
- 5. Did the defendant's action or inaction play a role in the death?
- 6. What did the defendant do after lethal force was used?
- 7. _____ <insert any other relevant factors.>

~~No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.~~

<Give the following instructions when Pen. Code § 189(f) applies>

[A person who is employed as a police officer by _____ <insert name of agency that employs police officer> is a peace officer.]

[A person employed by _____ <insert name of agency that employs peace officer, e.g., "the Department of Fish and Wildlife"> is a peace officer if _____ <insert description of facts necessary to make employee a peace officer, e.g., "designated by the director of the agency as a peace officer">.]

[The duties of (a/an) _____ <insert title of peace officer> include _____ <insert job duties>.]

New January 2006; Revised April 2010, August 2013, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime. The court also has a **sua sponte** duty to instruct on the elements of any underlying felonies. (*People v. Cain* (1995) 10 Cal.4th 1, 36 [40 Cal.Rptr.2d 481, 892 P.2d 1224].)

The court has a **sua sponte** duty to instruct on aiding and abetting when the prosecutor relies on it as a theory of culpability. (*People v. Beeman* (1984) 35 Cal.3d 547, 560-561 [199 Cal.Rptr.60, 674 P.2d 1318].) The court has a **sua sponte** duty to instruct on conspiracy when the prosecution has introduced evidence of a conspiracy to prove liability for other offenses. (See, e.g., *People v. Pike* (1962) 58 Cal.2d 70, 88 [22 Cal.Rptr. 664, 372 P.2d 656]; *People v. Ditson* (1962) 57 Cal.2d 415, 447 [20 Cal.Rptr. 165, 369 P.2d 714].)

Give all appropriate instructions on all underlying felonies, aiding and abetting, and conspiracy.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401]; see generally, *People v. Cervantes* (2001) 26 Cal.4th 860, 866–874 [111 Cal.Rptr.2d 148, 29 P.3d 225].) Because causation is likely to be an issue in any case in which this instruction is given, the committee has included the paragraph that begins with “An act causes death if.” If there is evidence of multiple potential causes, the court should also give the bracketed paragraph that begins with “There may be more than one cause of death.” (*People v. Sanchez* (2001) 26 Cal.4th 834, 845–849 [111 Cal.Rptr.2d 129, 29 P.3d 209]; *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135].)

If the prosecution’s theory is that the defendant committed or attempted to commit the underlying felony, then select “committed [or attempted to commit]” in element 1 and “intended to commit” in element 2. In addition, in the paragraph that begins with “To decide whether,” select “the defendant” in the first sentence. Give all appropriate instructions on any underlying felonies with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense.

If the prosecution’s theory is that the defendant aided and abetted or conspired to commit the felony, select one of these options in element 1 and the corresponding intent requirement in element 2. Give bracketed element 3. Give the bracketed

sentence at the beginning of the instruction that begins with “The defendant may be guilty of murder.” In addition, in the paragraph that begins with “To decide whether,” select “the perpetrator” in the first sentence. Give the second and/or third bracketed sentences. Give all appropriate instructions on any underlying felonies and on aiding and abetting and/or conspiracy with this instruction. The court may need to modify the first sentence of the instruction on an underlying felony if the defendant is not separately charged with that offense. The court may also need to modify the instruction to state “the perpetrator committed,” rather than “the defendant,” in the instructions on the underlying felony.

If there is evidence that the defendant did not form the intent to commit the felony until after the homicide, or did not join the conspiracy or aid and abet the felony until after the homicide, the defendant is entitled on request to an instruction pinpointing this issue. (*People v. Hudson* (1955) 45 Cal.2d 121, 124–127 [287 P.2d 497]; *People v. Silva* (2001) 25 Cal.4th 345, 371 [106 Cal.Rptr.2d 93, 21 P.3d 769].) Give the bracketed sentence that begins with “The defendant must have (intended to commit.” For an instruction specially tailored to robbery-murder cases, see *People v. Turner* (1990) 50 Cal.3d 668, 691 [268 Cal.Rptr. 706, 789 P.2d 887].

Give the bracketed sentence that begins with “It is not required that the person die immediately” on request if relevant based on the evidence.

The felony-murder rule does not require that the person killed be the victim of the underlying felony. (*People v. Johnson* (1972) 28 Cal.App.3d 653, 658 [104 Cal.Rptr. 807] [accomplice]; *People v. Welch* (1972) 8 Cal.3d 106, 117–119 [104 Cal.Rptr. 217, 501 P.2d 225] [innocent bystander]; *People v. Salas* (1972) 7 Cal.3d 812, 823 [103 Cal.Rptr. 431, 500 P.2d 7] [police officer].) Give the bracketed sentence that begins with “It is not required that the person killed be” on request.

Give the last bracketed sentence, stating that the defendant need not be present, on request.

If the defendant was a nonkiller who fled, leaving behind an accomplice who killed, see *People v. Cavitt* (2004) 33 Cal.4th 187, 206, fn. 7 [14 Cal.Rptr.3d 281, 91 P.3d 222] [continuous transaction] and the discussion of *Cavitt* in *People v. Wilkins* (2013) 56 Cal.4th 333, 344 [153 Cal.Rptr.3d 519, 295 P.3d 903].

If the prosecutor is proceeding under both malice and felony-murder theories, or is proceeding under multiple felony-murder theories, give CALCRIM No. 548, *Murder: Alternative Theories*. If the prosecutor is relying only on a theory of felony murder, no instruction on malice should be given. (See *People v. Cain*

(1995) 10 Cal.4th 1, 35–37 [40 Cal.Rptr.2d 481, 892 P.2d 1224] [error to instruct on malice when felony murder only theory.]

There is **no** sua sponte duty to clarify the logical nexus between the felony and the homicidal act. If an issue about the logical nexus requirement arises, the court may give the following language:

There must be a logical connection between the cause of death and the _____ <insert felony or felonies from Pen. Code, § 189> [or attempted _____ <insert felony or felonies from Pen. Code, § 189>]. The connection between the cause of death and the _____ <insert felony or felonies from Pen. Code, § 189> [or attempted _____ <insert felony or felonies from Pen. Code, § 189>] must involve more than just their occurrence at the same time and place.]

People v. Cavitt (2004) 33 Cal.4th 187, 203-204 [14 Cal.Rptr.3d 281, 91 P.3d 222]; *People v. Wilkins* (2013) 56 Cal.4th 333, 347 [153 Cal.Rptr.3d 519, 295 P.3d 903].

~~The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.~~

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant but stopped short of holding that the court has a **sua sponte** duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

~~The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.~~

~~In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts “in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders.” (*Id.*~~

at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Related Instructions—Other Causes of Death

This instruction should be used only when the alleged victim dies during the course of the felony as a result of a heart attack, fire, or a similar cause rather than as a result of some act of force or violence committed against the victim by one of the participants in the felony. (Cf. *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].)

See the Bench Notes to CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*, for a discussion of other instructions to use if the evidence indicates a person committed an act of force or violence causing the death.

AUTHORITY

- Felony Murder: First Degree. ▶ Pen. Code, § 189.
- Specific Intent to Commit Felony Required. ▶ *People v. Gutierrez* (2002) 28 Cal.4th 1083, 1140 [124 Cal.Rptr.2d 373, 52 P.3d 572].
- Infliction of Fatal Injury. ▶ *People v. Alvarez* (1996) 14 Cal.4th 155, 222–223 [58 Cal.Rptr.2d 385, 926 P.2d 365].
- Defendant Must Join Felonious Enterprise Before or During Killing of Victim. ▶ *People v. Pulido* (1997) 15 Cal.4th 713, 726 [63 Cal.Rptr.2d 625, 936 P.2d 1235].
- Death Caused by Felony but Not by Act of Force or Violence Against Victim. ▶ *People v. Billa* (2003) 31 Cal.4th 1064, 1072 [6 Cal.Rptr.3d 425, 79 P.3d 542] [arson causing death of accomplice]; *People v. Stamp* (1969) 2 Cal.App.3d 203, 209–211 [82 Cal.Rptr. 598] [heart attack caused by robbery]; *People v. Hernandez* (1985) 169 Cal.App.3d 282, 287 [215 Cal.Rptr. 166] [same]; but see *People v. Gunnerson* (1977) 74 Cal.App.3d 370, 378–381 [141 Cal.Rptr. 488] [simultaneous or coincidental death is not killing].
- Logical Nexus Between Felony and Killing. ▶ *People v. Dominguez* (2006) 39 Cal.4th 1141 [47 Cal.Rptr.3d 575, 140 P.3d 866]; *People v. Cavitt* (2004) 33 Cal.4th 187, 197–206 [14 Cal.Rptr.3d 281, 91 P.3d 222].

- Merger Doctrine Does Not Apply to First Degree Felony Murder. ▶ *People v. Farley* (2009) 46 Cal.4th 1053, 1118-1120 [96 Cal.Rptr.3d 191, 210 P.3d 361].
- Reckless Indifference to Human Life. ▶ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; [*People v. Banks* \(2015\) 61 Cal.4th 788, 807-811 \[189 Cal.Rptr.3d 208, 351 P.3d 330\]](#); *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▶ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

RELATED ISSUES

See the Related Issues section of CALCRIM No. 540A, *Felony Murder: First Degree—Defendant Allegedly Committed Fatal Act*, and CALCRIM No. 540B, *Felony Murder: First Degree—Coparticipant Allegedly Committed Fatal Act*.

See the Related Issues section of CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 118–168.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 140, *Challenges to Crimes*, §§ 140.04, 140.10[3][b], Ch. 142, *Crimes Against the Person*, § 142.01[1][e], [2][b] (Matthew Bender).

541–547. Reserved for Future Use

Homicide

548. Murder: Alternative Theories

~~{The defendant has been prosecuted for murder under multiple ~~two~~ theories: (1) malice aforethought, and (2) felony murder.} [[In addition,] (T/t)he defendant has been prosecuted for murder under multiple theories of felony murder.}~~

Each theory of murder has different requirements, and I will instruct you on each.

You may not find the defendant guilty of murder unless all of you agree that the People have proved that the defendant committed murder-. You need not all agree on the same theory but you must unanimously agree on the degree of murder. under at least one of these theories. You do not all need to agree on the same theory[, but you must unanimously agree whether the murder is in the first or second degree].

New January 2006; Revised August 2014, February 2016, September 2019, March 2020

BENCH NOTES

Instructional Duty

~~This instruction is designed to be given when murder is charged on theories of malice and felony murder to help the jury distinguish between the two theories. This instruction is also designed to be given when felony murder is charged on multiple theories.~~ This instruction should be given after the court has given any applicable instructions on defenses to homicide and **before** CALCRIM No. 520, *Murder With Malice Aforethought*.

If there is evidence of multiple acts from which the jury might conclude that the defendant killed the decedent, the court may be required to give CALCRIM No. 3500, *Unanimity*. (See *People v. Dellinger* (1984) 163 Cal.App.3d 284, 300–302 [209 Cal.Rpt. 503] [error not to instruct on unanimity where evidence that the victim was killed either by blunt force or by injection of cocaine].) Review the Bench Notes for CALCRIM No. 3500 discussing when a unanimity instruction is required.

AUTHORITY

- Unanimity on Degrees of Crime and Lesser Included Offenses. ▶ Pen. Code §

1157; *People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1025 [164 Cal.Rptr.3d. 880]; *People v. Aikin* (1971) 19 Cal.App.3d 685, 704 [97 Cal.Rptr. 251], disapproved on other grounds in *People v. Lines* (1975) 13 Cal.3d 500, 512 [119 Cal.Rptr. 225].

- Alternate Theories May Support Different Degrees of Murder. ▶ *People v. Sanchez* (2013) 221 Cal.App.4th 1012, 1025 [164 Cal.Rptr.3d. 880].

Homicide

594 Vehicular Manslaughter: Collision for Financial Gain (Pen. Code, § 192(c)(43))

The defendant is charged [in Count __] with vehicular manslaughter by causing a collision for financial gain [in violation of Penal Code section 192(c)(43)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. While driving a vehicle, the defendant knowingly caused or participated in a vehicular collision;
2. When the defendant acted, (he/she) knew that the purpose of the vehicular collision was to make a false or fraudulent insurance claim for financial gain;
3. When the defendant acted, (he/she) did so with intent to defraud;

AND

4. The collision caused the death of another person.

A person *intends to defraud* if he or she intends to deceive another person in order to cause a loss of, or damage to, a legal, financial, or property right.

[For the purpose of this instruction, a *person* includes (a governmental agency/a corporation/a business/an association/the body politic).]

[An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A *natural and probable consequence* is one that a reasonable person would know is likely to happen if nothing unusual intervenes. In deciding whether a consequence is natural and probable, consider all of the circumstances established by the evidence.]

[There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A *substantial factor* is more than a trivial or remote factor. However, it does not need to be the only factor that causes the death.]

New January 2006; Revised March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

If causation is at issue, the court has a **sua sponte** duty to instruct on proximate cause. (*People v. Bernhardt* (1963) 222 Cal.App.2d 567, 590–591 [35 Cal.Rptr. 401].) If the evidence indicates that there was only one cause of death, the court should give the “direct, natural, and probable” language in the first bracketed paragraph on causation. If there is evidence of multiple causes of death, the court should also give the “substantial factor” instruction in the second bracketed paragraph on causation. (See *People v. Autry* (1995) 37 Cal.App.4th 351, 363 [43 Cal.Rptr.2d 135]; *People v. Pike* (1988) 197 Cal.App.3d 732, 746–747 [243 Cal.Rptr. 54].)

Give the bracketed sentence that begins with “For the purpose of this instruction” if the evidence shows an intent to defraud an entity or association rather than a natural person. (Pen. Code, § 8.)

Related Instructions

CALCRIM No. 2002, *Insurance Fraud: Vehicle Accident*.

AUTHORITY

- Elements. ▶ Pen. Code, § 192(c)(43).
- Causation. ▶ *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 440 [8 Cal.Rptr. 863].
- Intent to Defraud—Defined. ▶ *People v. Pugh* (2002) 104 Cal.App.4th 66, 72 [127 Cal.Rptr.2d 770]; *People v. Gual-Alexander* (1995) 32 Cal.App.4th 735, 745 [38 Cal.Rptr.2d 176].
- Intent to Defraud Entity. ▶ Pen. Code, § 8.

RELATED ISSUES

Does Not Preclude Murder Charge

Section 192(c)(43) of the Penal Code states that: “This ~~provision shall not be~~

~~construed to paragraph does not~~ prevent prosecution of a defendant for the crime of murder.”

Probable and Natural Consequences of a Conspiracy

A nondriver coconspirator may be liable for a death that results from a conspiracy to commit a vehicular collision for insurance fraud under the natural and probable consequences doctrine. (*People v. Superior Court (Shamis)* (1998) 58 Cal.App.4th 833, 842–843 [68 Cal.Rptr.2d 388].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 262-263.

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, § 222.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.04, Ch. 142, *Crimes Against the Person*, § 142.02[2][c], [4] (Matthew Bender).

Homicide

600 Attempted Murder (Pen. Code, §§ 21a, 663, 664)

The defendant is charged [in Count __] with attempted murder.

To prove that the defendant is guilty of attempted murder, the People must prove that:

1. The defendant took at least one direct but ineffective step toward killing (another person/ [or] a fetus);

AND

2. The defendant intended to kill (that/a) (person/ [or] fetus).

A direct step requires more than merely planning or preparing to commit murder or obtaining or arranging for something needed to commit murder. A direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action. A direct step indicates a definite and unambiguous intent to kill. It is a direct movement toward the commission of the crime after preparations are made. It is an immediate step that puts the plan in motion so that the plan would have been completed if some circumstance outside the plan had not interrupted the attempt.

[A person who attempts to commit murder is guilty of attempted murder even if, after taking a direct step toward killing, he or she abandons further efforts to complete the crime, or his or her attempt fails or is interrupted by someone or something beyond his or her control. On the other hand, if a person freely and voluntarily abandons his or her plans before taking a direct step toward committing the murder, then that person is not guilty of attempted murder.]

~~[A person may intend to kill a specific victim or victims and at the same time intend to kill everyone in a particular zone of harm or "kill zone." In order to convict the defendant of the attempted murder of _____ <insert name or description of victim charged in attempted murder count[s] on concurrent intent theory>, the People must prove that the defendant not only intended to kill _____ <insert name of primary target alleged> but also either intended to kill _____ <insert name or description of victim charged in attempted murder count[s] on concurrent intent theory>, or intended to kill everyone within the kill zone. If you have a reasonable doubt whether the defendant intended to kill _____ <insert name or description of victim charged in~~

~~attempted murder count[s] on concurrent-intent theory> or intended to kill
<insert name or description of primary target alleged> by killing
everyone in the kill zone, then you must find the defendant not guilty of the
attempted murder of <insert name or description of victim charged
in attempted murder count[s] on concurrent-intent theory>.~~

[The defendant may be guilty of attempted murder even if you conclude that murder was actually completed.]

[A *fetus* is an unborn human being that has progressed beyond the embryonic stage after major structures have been outlined, which typically occurs at seven to eight weeks after fertilization.]

<Give when kill zone theory applies>

[A person may intend to kill a primary target and also [a] secondary target[s] within a zone of fatal harm or “kill zone.” A “kill zone” is an area in which the defendant used lethal force that was designed and intended to kill everyone in the area around the primary target.

In order to convict the defendant of the attempted murder of
<insert name or description of victim charged in attempted murder count[s] on
concurrent-intent theory>, the People must prove that the defendant not only
intended to kill <insert name of primary target alleged> but also
either intended to kill <insert name or description of victim charged
in attempted murder count[s] on concurrent-intent theory>, or intended to kill
everyone within the kill zone.

In determining whether the defendant intended to kill <insert
name or description of victim charged in attempted murder count[s] on
concurrent-intent theory>, the People must prove that (1) the only reasonable
conclusion from the defendant’s use of lethal force, is that the defendant
intended to create a kill zone; and (2) <insert name or
description of victim charged in attempted murder count[s] on concurrent-intent
theory> was located within the kill zone.

In determining whether the defendant intended to create a “kill zone” and the
scope of such a zone, you should consider all of the circumstances including,
but not limited to, the following:

- [• The type of weapon used(;/.)]
- [• The number of shots fired(;/.)]

- The distance between the defendant and _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>(;/.)]**
- The distance between _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory> and the primary target.]**

If you have a reasonable doubt whether the defendant intended to kill _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory> or intended to kill _____ <insert name or description of primary target alleged> by killing everyone in the kill zone, then you must find the defendant not guilty of the attempted murder of _____ <insert name or description of victim charged in attempted murder count[s] on concurrent-intent theory>.]

New January 2006; Revised December 2008, August 2009, April 2011, August 2013, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct on the elements of the crime of attempted murder when charged, or if not charged, when the evidence raises a question whether all the elements of the charged offense are present. (See *People v. Breverman* (1998) 19 Cal.4th 142, 154 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [discussing duty to instruct on lesser included offenses in homicide generally].)

The second bracketed paragraph is provided for cases in which the prosecution theory is that the defendant created a “kill zone,” harboring the specific and concurrent intent to kill others in the zone. (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) “The conclusion that transferred intent does not apply to attempted murder still permits a person who shoots at a group of people to be punished for the actions towards everyone in the group even if that person primarily targeted only one of them.” (*Id.* at p. 329.)

The *Bland* court stated that a special instruction on this issue was not required. (*Id.* at p. 331, fn.6.) The bracketed language is provided for the court to use at its discretion.

Give the next-to-last bracketed paragraph when the defendant has been charged only with attempt to commit murder, but the evidence at trial reveals that the murder was actually completed. (See Pen. Code, § 663.)

Penal Code section 188, as amended by Statutes 2018, ch. 1015 (S.B. 1437), became effective January 1, 2019. The amendment added “malice shall not be imputed to a person based solely on his or her participation in a crime.” The natural and probable consequences doctrine as the basis for attempted murder may be affected by this statutory change.

Related Instructions

CALCRIM Nos. 3470–3477, Defense Instructions.

CALCRIM No. 601, *Attempted Murder: Deliberation and Premeditation*.

CALCRIM No. 602, *Attempted Murder: Peace Officer, Firefighter, Custodial Officer, or Custody Assistant*.

CALCRIM No. 603, *Attempted Voluntary Manslaughter: Heat of Passion—Lesser Included Offense*.

CALCRIM No. 604, *Attempted Voluntary Manslaughter: Imperfect Self-Defense—Lesser Included Offense*.

AUTHORITY

- Attempt Defined. ▶ Pen. Code, §§ 21a, 663, 664.
- Murder Defined. ▶ Pen. Code, § 187.
- Specific Intent to Kill Required. ▶ *People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].
- Fetus Defined. ▶ *People v. Davis* (1994) 7 Cal.4th 797, 814–815 [30 Cal.Rptr.2d 50, 872 P.2d 591]; *People v. Taylor* (2004) 32 Cal.4th 863, 867 [11 Cal.Rptr.3d 510, 86 P.3d 881].
- ~~Kill Zone Explained. ▶ *People v. Canizales* (2019) 7 Cal.5th 591, 607-608 [248 Cal.Rptr.3d 370, 442 P.3d 686]; *People v. Stone* (2009) 46 Cal.4th 131, 137–138 [92 Cal.Rptr.3d 362, 205 P.3d 272].~~
- ~~Killer Need Not Be Aware of Other Victims in Kill Zone. ▶ *People v. Adams* (2008) 169 Cal.App.4th 1009, 1023 [86 Cal.Rptr.3d 915].~~
- This Instruction Correctly States the Law of Attempted Murder. ▶ *People v. Lawrence* (2009) 177 Cal.App.4th 547, 556-557 [99 Cal.Rptr.3d 324].

LESSER INCLUDED OFFENSES

Attempted voluntary manslaughter is a lesser included offense. (*People v. Van Ronk* (1985) 171 Cal.App.3d 818, 824–825 [217 Cal.Rptr. 581]; *People v. Williams* (1980) 102 Cal.App.3d 1018, 1024–1026 [162 Cal.Rptr. 748].)

RELATED ISSUES

Specific Intent Required

“[T]he crime of attempted murder requires a specific intent to kill” (*People v. Guerra* (1985) 40 Cal.3d 377, 386 [220 Cal.Rptr. 374, 708 P.2d 1252].)

In instructing upon the crime of attempt to commit murder, there should never be any reference whatsoever to implied malice. Nothing less than a specific intent to kill must be found before a defendant can be convicted of attempt to commit murder, and the instructions in this respect should be lean and unequivocal in explaining to the jury that only a specific intent to kill will do. (*People v. Santascy* (1984) 153 Cal.App.3d 909, 918 [200 Cal.Rptr. 709].)

Solicitation

Attempted solicitation of murder is a crime. (*People v. Saepanh* (2000) 80 Cal.App.4th 451, 460 [94 Cal.Rptr.2d 910].)

Single Bullet, Two Victims

A shooter who fires a single bullet at two victims who are both in his line of fire can be found to have acted with express malice toward both victims. (*People v. Smith*) (2005) 37 Cal.4th 733, 744 [37 Cal.Rptr.3d 163, 124 P.3d 730]. See also *People v. Perez* (2010) 50 Cal.4th 222, 225 [112 Cal.Rptr.3d 310, 234 P.3d 557].)

No Attempted Involuntary Manslaughter

“[T]here is no such crime as attempted involuntary manslaughter.” (*People v. Johnson* (1996) 51 Cal.App.4th 1329, 1332 [59 Cal.Rptr.2d 798].)

Transferred and Concurrent Intent

“[T]he doctrine of transferred intent does not apply to attempted murder.” (*People v. Bland* (2002) 28 Cal.4th 313, 331 [121 Cal.Rptr.2d 546, 48 P.3d 1107].) “[T]he defendant may be convicted of the attempted murders of any[one] within the kill zone, although on a concurrent, not transferred, intent theory.” (*Id.*)

Kill Zone Theory

Give the kill zone instruction “only in those cases where the court concludes there is sufficient evidence to support a jury determination that the *only* reasonable inference from the circumstances of the offense is that a defendant intended to kill everyone in the zone of fatal harm. The use or attempted use of force that merely

endangered everyone in the area is insufficient to support a kill zone instruction.” (People v. Canizales (2019) 7 Cal.5th 591, 608 [248 Cal.Rptr.3d 37, 442 P.3d 686].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Elements, §§ 56–71.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 140, *Challenges to Crimes*, § 140.02[3]; Ch. 141, *Conspiracy, Solicitation, and Attempt*, § 141.20; Ch. 142, *Crimes Against the Person*, § 142.01[3][e] (Matthew Bender).

Homicide

**703 Special Circumstances: Intent Requirement for Accomplice
After June 5, 1990—Felony Murder (Pen. Code, § 190.2(d))**

If you decide that (the/a) defendant is guilty of first degree murder but was not the actual killer, then, when you consider the special circumstance[s] of _____ <insert felony murder special circumstance[s]>, you must also decide whether the defendant acted either with intent to kill or with reckless indifference to human life.

In order to prove (this/these) special circumstance[s] for a defendant who is not the actual killer but who is guilty of first degree murder as (an aider and abettor/ [or] a member of a conspiracy), the People must prove either that the defendant intended to kill, or the People must prove all of the following:

1. The defendant's participation in the crime began before or during the killing;
2. The defendant was a major participant in the crime;

AND

3. When the defendant participated in the crime, (he/she) acted with reckless indifference to human life.

[A person *acts with reckless indifference to human life* when he or she knowingly engages in criminal activity that he or she knows involves a grave risk of death.]

[The People do not have to prove that the actual killer acted with intent to kill or with reckless indifference to human life in order for the special circumstance[s] of _____ <insert felony-murder special circumstance[s]> to be true.]

[If you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer, then, in order to find (this/these) special circumstance[s] true, you must find either that the defendant acted with intent to kill or you must find that the defendant acted with reckless indifference to human life and was a *major participant* in the crime.]

[When you decide whether the defendant acted with reckless indifference to human life, consider all the evidence. No one of the following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant acted with reckless indifference to human life. Among the factors you may consider are:

- [● Did the defendant know that [a] lethal weapon[s] would be present during the *<insert underlying felony>?*]
- [● Did the defendant know that [a] lethal weapon[s] (was/were) likely to be used?]
- [● Did the defendant know that [a] lethal weapon[s] (was/were) used?]
- [● Did the defendant know the number of weapons involved?]
- [● Was the defendant near the person(s) killed when the killing occurred?]
- [● Did the defendant have an opportunity to stop the killing or to help the victim(s)?]
- [● How long did the crime last?]
- [● Was the defendant aware of anything that would make a coparticipant likely to kill?]
- [● Did the defendant try to minimize the possibility of violence?]
- [● *<insert any other relevant factors>*]

[When you decide whether the defendant was a *major participant*, consider all the evidence. ~~No one of these following factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.~~ Among the factors you may consider are:

- [● ~~1.~~ What was the defendant's role in planning the crime that led to the death[s]?]
- [● ~~2.~~ What was the defendant's role in supplying or using lethal weapons?]
- [● ~~3.~~ What did the defendant know about dangers posed by the crime, any weapons used, or past experience or conduct of the other participant[s]?]
- [● ~~4.~~ Was the defendant in a position to facilitate or to prevent the death?]
- [● ~~5.~~ Did the defendant's action or inaction play a role in the death?]
- [● ~~6.~~ What did the defendant do after lethal force was used?]
- [● ~~7.~~ *<insert any other relevant factors.>*]

~~No one of these factors is necessary, nor is any one of them necessarily enough, to determine whether the defendant was a major participant.]~~

If the defendant was not the actual killer, then the People have the burden of proving beyond a reasonable doubt that (he/she) acted with either the intent to kill or with reckless indifference to human life and was a major participant in the crime for the special circumstance[s] of _____ <insert felony murder special circumstance[s]> to be true. If the People have not met this burden, you must find (this/these) special circumstance[s] (has/have) not been proved true [for that defendant].

New January 2006; Revised April 2008, February 2016, August 2016, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to instruct the jury on the mental state required for accomplice liability when a special circumstance is charged and there is sufficient evidence to support the finding that the defendant was not the actual killer. (See *People v. Jones* (2003) 30 Cal.4th 1084, 1117 [135 Cal.Rptr.2d 370, 70 P.3d 359].) If there is sufficient evidence to show that the defendant may have been an accomplice and not the actual killer, the court has a **sua sponte** duty to give the accomplice intent instruction, regardless of the prosecution's theory of the case. (*Ibid.*)

Do not give this instruction when giving CALCRIM No. 731, Special Circumstances: Murder in Commission of Felony—Kidnapping With Intent to Kill After March 8, 2000 or CALCRIM No. 732, Special Circumstances: Murder in Commission of Felony—Arson With Intent to Kill. (*People v. Odom* (2016) 244 Cal.App.4th 237, 256–257 [197 Cal.Rptr.3d 774].)

When multiple special circumstances are charged, one or more of which require intent to kill, the court may need to modify this instruction.

Proposition 115 modified the intent requirement of the special circumstance law, codifying the decisions of *People v. Anderson* (1987) 43 Cal.3d 1104, 1147 [240 Cal.Rptr. 585, 742 P.2d 1306], and *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127]. The current law provides that the actual killer does not have to act with intent to kill unless the special circumstance specifically requires intent. (Pen. Code, § 190.2(b).) If the felony-murder special circumstance is charged, then the People must prove that a defendant who was not the actual killer was a major participant and acted with intent to kill or with reckless indifference to human life. (Pen. Code, § 190.2(d); *People v. Banks* (2015) 61 Cal.4th 788, 807-809 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada* (1995) 11 Cal.4th 568, 571 [46 Cal.Rptr.2d 586, 904 P.2d 1197].)

Use this instruction for any case in which the jury could conclude that the defendant was an accomplice to a killing that occurred after June 5, 1990, when the felony-murder special circumstance is charged.

Give the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer if there is a codefendant alleged to be the actual killer or if the jury could convict the defendant as either the actual killer or an accomplice.

If the jury could convict the defendant either as a principal or as an accomplice, the jury must find intent to kill or reckless indifference if they cannot agree that the defendant was the actual killer. (*People v. Jones* (2003) 30 Cal.4th 1084, 1117 [135 Cal.Rptr.2d 370, 70 P.3d 359].) In such cases, the court should give both the bracketed paragraph stating that the People do not have to prove intent to kill or reckless indifference on the part of the actual killer, and the bracketed paragraph that begins with “[I]f you decide that the defendant is guilty of first degree murder, but you cannot agree whether the defendant was the actual killer”

~~The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.~~

In *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330], the court identified certain factors to guide the jury in its determination of whether the defendant was a major participant, but stopped short of holding that the court has a sua sponte duty to instruct on those factors. The trial court should determine whether the *Banks* factors need be given.

The court does not have a sua sponte duty to define “reckless indifference to human life.” (*People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197].) However, this “holding should not be understood to discourage trial courts from amplifying the statutory language for the jury.” (*Id.* at p. 579.) The court may give the bracketed definition of reckless indifference if requested.

In *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811], the court identified certain factors to guide the jury in its determination of whether the defendant acted with reckless indifference to human life but did not hold that the court has a sua sponte duty to instruct on those factors. *Clark* noted that these factors had been applied by appellate courts “in cases involving nonshooter aiders and abettors to commercial armed robbery felony murders.” (*Id.*

at p. 618.) The trial court should determine whether the *Clark* factors need be given.

Do not give this instruction if accomplice liability is not at issue in the case.

AUTHORITY

- Accomplice Intent Requirement, Felony Murder. ▶ Pen. Code, § 190.2(d).
- Reckless Indifference to Human Life. ▶ *People v. Clark* (2016) 63 Cal.4th 522, 614-620 [203 Cal.Rptr.3d 407, 372 P.3d 811]; *People v. Banks* (2015) 61 Cal.4th 788, 807-811 [189 Cal.Rptr.3d 208, 351 P.3d 330]; *People v. Estrada* (1995) 11 Cal.4th 568, 578 [46 Cal.Rptr.2d 586, 904 P.2d 1197]; *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Constitutional Standard for Intent by Accomplice. ▶ *Tison v. Arizona* (1987) 481 U.S. 137, 157–158 [107 S.Ct. 1676, 95 L.Ed.2d 127].
- Major Participant. ▶ *People v. Banks* (2015) 61 Cal.4th 788, 803-808 [189 Cal.Rptr.3d 208, 351 P.3d 330].

SECONDARY SOURCES

3 Witkin & Epstein, California Criminal Law (4th ed. 2012) Punishment, §§ 536, 543.

4 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 87, Death Penalty, § 87.14[2][b][ii] (Matthew Bender).

850. Testimony on Intimate Partner Battering and Its Effects: Credibility of Complaining Witness

You have heard testimony from _____ <insert name of expert> regarding the effect of (battered women’s syndrome/intimate partner battering/ _____ <insert other description used by expert for syndrome>).

_____’s <insert name of expert> testimony about (battered women’s syndrome/intimate partner battering/ _____ <insert other description used by expert for syndrome>) is not evidence that the defendant committed any of the crimes charged against (him/her) for any conduct or crime[s] with which (he/she) was not charged.

You may consider this evidence only in deciding whether or not _____’s <insert name of alleged victim of abuse> conduct was not inconsistent with the conduct of someone who has been abused, and in evaluating the believability of (his/her) testimony.

New January 2006; Revised March 2017, March 2020

BENCH NOTES

Instructional Duty

Several courts of review have concluded there is no sua sponte duty to give a similar limiting instruction (see CALCRIM No. 1193, *Testimony on Child Sexual Abuse Accommodation Syndrome*) when an expert testifies on child sexual abuse accommodation syndrome. (*People v. Mateo* (2016) 243 Cal.App.4th 1063, 1073-1074 [197 Cal.Rptr.3d 248]; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 736 [256 Cal.Rptr. 446] and *People v. Stark* (1989) 213 Cal.App.3d 107, 116 [261 Cal.Rptr. 479] [instruction required only on request].) See also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5, 1090-1091, 1100 [56 Cal.Rptr.2d 142, 92 P.2d 1], which concludes that a limiting instruction on battered woman syndrome is required only on request. But see *People v. Housley* (1992) 6 Cal.App.4th 947, 958-959 [9 Cal.Rptr.2d 431], which did find a sua sponte duty to give CALCRIM No. 1193.

In *People v. Brown* (2004) 33 Cal.4th 892, 906-908 [16 Cal.Rptr.3d 447, 94 P.3d 574], the Supreme Court held that testimony from an expert in battered women’s syndrome could be admitted under Evidence Code section 801 even though there was no evidence of prior incidents of violence between the defendant and the alleged victim. The court held that the expert could testify generally about the “cycle of violence” and the frequency of recantation by victims of domestic abuse,

without testifying specifically about “battered women’s syndrome”. (*Ibid.*) It is unclear if the court is required to give a cautionary admonition sua sponte when such evidence is admitted.

Related Instructions

If this instruction is given, also give CALCRIM No. 303, *Limited Purpose Evidence in General*, and CALCRIM No. 332, *Expert Witness Testimony*.

See also CALCRIM No. 851, *Testimony on Intimate Partner Battering and Its Effects: Offered by the Defense*.

AUTHORITY

- Instructional Requirements ▶ See Evid. Code, § 1107(a); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5 [56 Cal.Rptr.2d 142, 921 P.2d 1].
- Abuse Defined ▶ Evid. Code, § 1107(c); Fam. Code, § 6203.
- Domestic Violence Defined ▶ Evid. Code, § 1107(c); Fam. Code, § 6211.
- Relevant After Single Incident of Abuse ▶ See *People v. Brown* (2004) 33 Cal.4th 892, 906–908 [16 Cal.Rptr.3d 447, 94 P.3d 574]; *People v. Williams* (2000) 78 Cal.App.4th 1118, 1129 [93 Cal.Rptr.2d 356].
- Relevant to Rehabilitate Victim’s Credibility ▶ *People v. Gadlin* (2000) 78 Cal.App.4th 587, 594–595 [92 Cal.Rptr.2d 890] [victim recanted incident and reunited with abuser]; *People v. Morgan* (1997) 58 Cal.App.4th 1210, 1215–1217 [68 Cal.Rptr.2d 772] [victim recanted].
- This Instruction Upheld ▶ *People v. Sexton* (2019) 37 Cal.App.5th 457, 465–468 [250 Cal.Rptr.3d 496].

RELATED ISSUES

Assumptions Underlying Expert Testimony

It is unnecessary, and potentially misleading, to instruct that the expert testimony assumes that physical or mental abuse has in fact occurred. (See *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387 [7 Cal.Rptr.2d 660] [in context of child sexual abuse accommodation syndrome].)

Definition and Preferred Name

In 2004, the Legislature amended Evidence Code section 1107(d), changing all references from “battered women’s syndrome” to “intimate partner battering and its effects.” Previous decisional law continues to apply. (Evid. Code, § 1107(f).) Battered women’s syndrome has been defined as “a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1083–1084 [56 Cal.Rptr.2d 142, 921 P.2d 1].) The Supreme Court had previously noted that experts prefer to call the syndrome “expert testimony on battered women’s experiences.” (See *People v. Humphrey, supra*, 13 Cal.4th at pp. 1083–1084, fn. 3.)

No Testimony on Actual State of Mind

While evidence is admissible “to explain how [a] defendant’s asserted subjective perception of a need to defend herself ‘would reasonably follow from the defendant’s experience as a battered woman,’ ” an expert may not give an opinion “that the defendant *actually perceived* that she was in danger and needed to defend herself.” (*People v. Erickson* (1997) 57 Cal.App.4th 1391, 1400, 1401 [67 Cal.Rptr.2d 740] [§ 1107(a) codifies existing rules regarding battered women’s syndrome testimony; original italics].) Section 1107 “does not create an exception to Penal Code section 29,” which prohibits an expert who is testifying about a mental defect from testifying about whether a defendant had a required mental state. (*People v. Erickson, supra*, 57 Cal.App.4th at pp. 1401–1402 [syndrome was characterized as mental defect].)

SECONDARY SOURCES

1 Witkin, California Evidence (5th ed. 2012) Opinion Evidence, §§ 49–52.

3 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 71, *Scientific and Expert Evidence*, § 71.04[1][d][v][C] (Matthew Bender).

**860. Assault on Firefighter or Peace Officer With Deadly Weapon
or Force Likely to Produce Great Bodily Injury (Pen. Code, §§ 240,
245(c) & (d))**

The defendant is charged [in Count __] with assault with (force likely to produce great bodily injury/a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) on a (firefighter/peace officer) [in violation of Penal Code section 245].

To prove that the defendant is guilty of this crime, the People must prove **either** that:

<Alternative 1A—force with weapon>

[**1A**. The defendant did an act with (a deadly weapon/a firearm/a semiautomatic firearm/a machine gun/an assault weapon/a .50 BMG rifle) that by its nature would directly and probably result in the application of force to a person;]

OR

<Alternative 1B—force without weapon>

[**1Bi**. The defendant did an act that by its nature would directly and probably result in the application of force to a person, and

1Bii. The force used was likely to produce great bodily injury;]

2. The defendant did that act willfully;
3. When the defendant acted, (he/she) was aware of facts that would lead a reasonable person to realize that (his/her) act by its nature would directly and probably result in the application of force to someone;
4. When the defendant acted, (he/she) had the present ability to apply force (likely to produce great bodily injury/with a deadly weapon/with a firearm/with a semiautomatic firearm/with a machine gun/with an assault weapon/with a .50 BMG rifle) to a person;
5. When the defendant acted, the person assaulted was lawfully performing (his/her) duties as a (firefighter/peace officer);

[AND]

6. When the defendant acted, (he/she) knew, or reasonably should have known, that the person assaulted was a (firefighter/peace officer) who was performing (his/her) duties(;/.)

<Give element 7 when instructing on self-defense or defense of another.>

[AND]

7. The defendant did not act (in self-defense/ [or] in defense of someone else).]

Someone commits an act *willfully* when he or she does it willingly or on purpose. It is not required that he or she intend to break the law, hurt someone else, or gain any advantage.

[The terms *application of force* and *apply force* mean to touch in a harmful or offensive manner. The slightest touching can be enough if it is done in a rude or angry way. Making contact with another person, including through his or her clothing, is enough. The touching does not have to cause pain or injury of any kind.]

[The touching can be done indirectly by causing an object [or someone else] to touch the other person.]

[The People are not required to prove that the defendant actually touched someone.]

The People are not required to prove that the defendant actually intended to use force against someone when (he/she) acted.

No one needs to actually have been injured by defendant's act. But if someone was injured, you may consider that fact, along with all the other evidence, in deciding whether the defendant committed an assault[, and if so, what kind of assault it was].

[Voluntary intoxication is not a defense to assault.]

[*Great bodily injury* means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.]

[A *deadly weapon* is any object, instrument, or weapon [that is inherently deadly or one] that is used in such a way that it is capable of causing and likely to cause death or great bodily injury.]

[An object is *inherently deadly* if it is deadly or dangerous in the ordinary use for which it is designed.]

[In deciding whether an object is a deadly weapon, consider all the surrounding circumstances.]

[A *firearm* is any device designed to be used as a weapon, from which a projectile is discharged or expelled through a barrel by the force of an explosion or other form of combustion.]

[A *semiautomatic firearm* extracts a fired cartridge and chambers a fresh cartridge with each single pull of the trigger.]

[A *machine gun* is any weapon that (shoots/is designed to shoot/ [or] can readily be restored to shoot) automatically more than one shot by a single function of the trigger and without manual reloading.]

[An *assault weapon* includes _____ <insert names of appropriate designated assault weapons listed in Pen. Code, § 30510 and further defined by Pen. Code § 30515>.]

[A *.50 BMG rifle* is a center fire rifle that can fire a .50 BMG cartridge [and that is not an assault weapon or a machine gun]. A *.50 BMG cartridge* is a cartridge that is designed and intended to be fired from a center fire rifle and that has all three of the following characteristics:

1. The overall length is 5.54 inches from the base of the cartridge to the tip of the bullet;
2. The bullet diameter for the cartridge is from .510 to, and including, .511 inch;

AND

3. The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.]

[The term[s] (*great bodily injury*[/,]/ *deadly weapon*[/,]/ *firearm*[/,]/ *machine gun*[/,]/ *assault weapon*[/,]/ [and] *.50 BMG rifle*) (is/are) defined in another instruction to which you should refer.]

[A person who is employed as a police officer by _____ <insert name of agency that employs police officer> is a **peace officer**.]

[A person employed by _____ <insert name of agency that employs peace officer, e.g., “the Department of Fish and Wildlife”> is a **peace officer** if _____ <insert description of facts necessary to make employee a peace officer, e.g., “designated by the director of the agency as a peace officer”>.]

[The duties of a _____ <insert title of officer> include _____ <insert job duties>.]

[A **firefighter** includes anyone who is an officer, employee, or member of a (governmentally operated (fire department/fire protection or firefighting agency) in this state/federal fire department/federal fire protection or firefighting agency), whether or not he or she is paid for his or her services.]

New January 2006; Revised April 2011, February 2012, February 2013, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

If there is sufficient evidence of self-defense or defense of another, the court has a **sua sponte** duty to instruct on the defense. Give bracketed element 7 and any appropriate defense instructions. (See CALCRIM Nos. 3470–3477.)

In addition, the court has a **sua sponte** duty to instruct on defendant’s reliance on self-defense as it relates to the use of excessive force. (*People v. White* (1980) 101 Cal.App.3d 161, 167–168 [161 Cal.Rptr. 541].) If excessive force is an issue, the court has a **sua sponte** duty to instruct the jury that the defendant is not guilty of the offense charged, or any lesser included offense in which lawful performance is an element, if the defendant used reasonable force in response to excessive force. (*People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 [173 Cal.Rptr. 663].) On request, the court must instruct that the prosecution has the burden of proving the lawfulness of the arrest beyond a reasonable doubt. (*People v. Castain* (1981) 122

Cal.App.3d 138, 145 [175 Cal.Rptr. 651].) If lawful performance is an issue, give the appropriate portions of CALCRIM No. 2670, *Lawful Performance: Peace Officer*. In addition, give CALCRIM No. 2672, *Lawful Performance: Resisting Unlawful Arrest With Force*, if requested.

Give element 1A if it is alleged the assault was committed with a deadly weapon, a firearm, a semiautomatic firearm, a machine gun, an assault weapon, or .50 BMG rifle. Give element 1B if it is alleged that the assault was committed with force likely to produce great bodily injury. (See Pen. Code, § 245(c) & (d).)

Give the bracketed definition of “application or force and apply force” on request.

Give the relevant bracketed definitions unless the court has already given the definition in other instructions. In such cases, the court may give the bracketed sentence stating that the term is defined elsewhere.

Give the bracketed phrase “that is inherently deadly or one” and give the bracketed definition of *inherently deadly* only if the object is a deadly weapon as a matter of law. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 317-318 [240 Cal.Rptr.3d 156].)

Give the bracketed portion that begins with “In deciding whether” if the object is not a weapon as a matter of law and is capable of innocent uses. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204]; *People v. Godwin* (1996) 50 Cal.App.4th 1562, 1573–1574 [58 Cal.Rptr.2d 545].)

If determining whether the item is an inherently deadly weapon requires resolution of a factual issue, give both bracketed instructions.

The jury must determine whether the alleged victim is a peace officer. (*People v. Brown* (1988) 46 Cal.3d 432, 444–445 [250 Cal.Rptr. 604, 758 P.2d 1135].) The court may instruct the jury on the appropriate definition of “peace officer” from the statute (e.g., “a Garden Grove Regular Police Officer and a Garden Grove Reserve Police Officer are peace officers”). (*Ibid.*) However, the court may not instruct the jury that the alleged victim was a peace officer as a matter of law (e.g., “Officer Reed was a peace officer”). (*Ibid.*) If the alleged victim is a police officer, give the bracketed sentence that begins with “A person employed as a police officer.” If the alleged victim is another type of peace officer, give the bracketed sentence that begins with “A person employed by.”

The court may give the bracketed sentence that begins, “The duties of a _____ <insert title> include,” on request. The court may insert a description of the officer’s duties such as “the correct service of a facially valid

search warrant.” (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222 [275 Cal.Rptr. 729, 800 P.2d 1159].)

Do not give an attempt instruction in conjunction with this instruction. There is no crime of “attempted assault” in California. (*In re James M.* (1973) 9 Cal.3d 517, 519, 521–522 [108 Cal.Rptr. 89, 510 P.2d 33].)

AUTHORITY

- Elements ▶ Pen. Code, §§ 240, 245(c) & (d)(1)–(3).
- Assault Weapon Defined ▶ Pen. Code, §§ 30510, 30515.
- Firearm Defined ▶ Pen. Code, § 16520.
- Machine Gun Defined ▶ Pen. Code, § 16880.
- Semiautomatic Pistol Defined ▶ Pen. Code, § 17140.
- .50 BMG Rifle Defined ▶ Pen. Code, § 30530.
- Peace Officer Defined ▶ Pen. Code, § 830 et seq.
- Firefighter Defined ▶ Pen. Code, § 245.1.
- Willful Defined ▶ Pen. Code, § 7(1); *People v. Lara* (1996) 44 Cal.App.4th 102, 107 [51 Cal.Rptr.2d 402].
- Deadly Weapon Defined ▶ *People v. Brown* (2012) 210 Cal.App.4th 1, 6–8 [147 Cal.Rptr.3d 848]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].
- Mental State for Assault ▶ *People v. Williams* (2001) 26 Cal.4th 779, 790 [111 Cal.Rptr.2d 114, 29 P.3d 197].
- Least Touching ▶ *People v. Myers* (1998) 61 Cal.App.4th 328, 335 [71 Cal.Rptr.2d 518] [citing *People v. Rocha* (1971) 3 Cal.3d 893, 899–900, fn. 12 [92 Cal.Rptr. 172, 479 P.2d 372]].
- Inherently Deadly Defined ▶ *People v. Perez* (2018) 4 Cal.5th 1055, 1065 [232 Cal.Rptr.3d 51, 416 P.3d 42]; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029 [68 Cal.Rptr.2d 655, 945 P.2d 1204].

LESSER INCLUDED OFFENSES

- Assault ▶ Pen. Code, § 240.
- Assault With a Deadly Weapon ▶ Pen. Code, § 245.
- Assault on a Peace Officer ▶ Pen. Code, § 241(b).

RELATED ISSUES

See the Related Issues section to CALCRIM No. 2670, *Lawful Performance: Peace Officer*.

Dual Convictions Prohibited

Penal Code § 245(c) describes a single offense. (*In re C.D.* (2017) 18 Cal.App.5th 1021, 1029 [227 Cal.Rptr.3d 360] [“Aggravated assault against a peace officer under section 245, subdivision (c), remains a single offense, and multiple violations of the statute cannot be found when they are based on the same act or course of conduct.”] See CALCRIM No. 3516, *Multiple Counts: Alternative Charges For One Event—Dual Conviction Prohibited*.

If both theories of assault are included in the case, the jury must unanimously agree which theory or theories are the basis for the verdict.

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) *Crimes Against the Person*, § 69.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.11; Ch. 144, *Crimes Against Order*, § 144.01[1][j] (Matthew Bender).

Sex Offenses

**1045 Sexual Penetration by Force, Fear, or Threats (Pen. Code, §
289(a)(1), (2), (g))**

The defendant is charged [in Count __] with sexual penetration by force [in violation of Penal Code section 289].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
3. The other person did not consent to the act;

AND

4. The defendant accomplished the act:

<Alternative 4A—force or fear>

[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury to another person.]

<Alternative 4B—future threats of bodily harm>

[by threatening to retaliate against someone when there was a reasonable possibility that the defendant would carry out the threat. A *threat to retaliate* is a threat to kidnap, unlawfully restrain or confine, or inflict extreme pain, serious bodily injury, or death.]

<Alternative 4C—threat of official action>

[by threatening to use the authority of a public office to incarcerate, arrest, or deport someone. A *public official* is a person employed by a government agency who has authority to incarcerate, arrest, or deport. The other person must have reasonably believed that the defendant was a public official even if (he/she) was not.]

***Sexual penetration* means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.**

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

[Evidence that the defendant and the other person (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the other person (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[An act is *accomplished by force* if a person uses enough physical force to overcome the other person's will.]

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do [or submit to] something that he or she would not otherwise do [or submit to]. When deciding whether the act was accomplished by duress, consider all the circumstances, including the age of the other person and (his/her) relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[An act is *accomplished by fear* if the other person is actually and reasonably afraid [or (he/she) is actually but unreasonably afraid and the defendant knows of (his/her) fear and takes advantage of it].]

<Defense: Reasonable Belief in Consent>

[The defendant is not guilty of forcible sexual penetration if (he/she) actually and reasonably believed that the other person consented to the act. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the other person consented. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; Revised August 2016, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of sexual penetration.

The court should select the appropriate alternative in element 4 to instruct how the sexual penetration was accomplished.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of reasonable belief in consent if there is “substantial evidence of equivocal conduct that would have led a defendant to reasonably and in good faith believe consent existed where it did not.” (See *People v. Williams* (1992) 4 Cal.4th 354, 362 [14 Cal.Rptr.2d 441, 841 P.2d 961]; *People v. Mayberry* (1975) 15 Cal.3d 143, 153–158 [125 Cal.Rptr. 745, 542 P.2d 1337].)

AUTHORITY

- Elements. ▶ Pen. Code, § 289(a)(1), (2), (g).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Consent Defined. ▶ Pen. Code, §§ 261.6, 261.7.
- Duress Defined. ▶ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221].

- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Menace Defined. ▶ Pen. Code, § 261(c) [in context of rape].
- Sexual Penetration Defined. ▶ Pen. Code, § 289(k); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Threatening to Retaliate Defined. ▶ Pen. Code, § 289(l).
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Fear Defined. ▶ *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651]; *People v. Iniguez* (1994) 7 Cal.4th 847 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [in context of rape].
- Force Defined. ▶ *People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089].
- Intent. ▶ *People v. Senior* (1992) 3 Cal.App.4th 765, 776 [5 Cal.Rptr.2d 14] [specific intent is “purpose of sexual arousal, gratification, or abuse”].
- Mistake of Fact Regarding Consent. ▶ See *People v. Mayberry* (1975) 15 Cal.3d 143, 153–158 [125 Cal.Rptr. 745, 542 P.2d 1337] [in context of kidnapping and rape].
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

COMMENTARY

Penal Code section 289 requires that the sexual penetration be “against the victim’s will.” (Pen. Code, § 289(a)(1), (2), (g).) “Against the will” has been defined as “without consent.” (See *People v. Key* (1984) 153 Cal.App.3d 888, 895 [203 Cal.Rptr. 144] [in context of rape]; see also *People v. Young* (1987) 190 Cal.App.3d 248, 257 [235 Cal.Rptr. 361].)

The instruction include an optional definition of the sufficiency of “fear” because that term has meaning in the context of forcible sex offenses that is technical and may not be readily apparent to jurors. (See *People v. Reyes* (1984) 153 Cal.App.3d 803, 810 [200 Cal.Rptr. 651] [fear in context of sodomy and oral copulation];

People v. Iniguez (1994) 7 Cal.4th 847, 856–857 [30 Cal.Rptr.2d 258, 872 P.2d 1183] [fear in context of rape].)

The court is not required to instruct sua sponte on the definition of “duress” or “menace” and Penal Code section 289 does not define either term. (*People v. Pitmon* (1985) 170 Cal.App.3d 38, 52 [216 Cal.Rptr. 221] [duress]). Optional definitions are provided for the court to use at its discretion. The definition of “duress” is based on *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071], and *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]. The definition of “menace” is based on the statutory definitions contained in Penal Code sections 261 and 262 [rape]. (See *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416] [using rape definition in case involving forcible lewd acts].) In *People v. Leal, supra*, 33 Cal.4th at pp. 1004–1010, the court held that the statutory definition of “duress” contained in Penal Code sections 261 and 262 does not apply to the use of that term in any other statute. The court did not discuss the statutory definition of “menace.” The court should consider the *Leal* opinion before giving the definition of “menace.”

The term “force” as used in the forcible sex offense statutes does not have a specialized meaning and court is not required to define the term sua sponte. (*People v. Griffin* (2004) 33 Cal.4th 1015, 1023–1024 [16 Cal.Rptr.3d 891, 94 P.3d 1089].) In *People v. Griffin, supra*, the Supreme Court further stated,

Nor is there anything in the common usage definitions of the term “force,” or in the express statutory language of section 261 itself, that suggests force in a forcible rape prosecution actually means force “*substantially* different from or *substantially* greater than” the physical force normally inherent in an act of consensual sexual intercourse. [*People v. Cicero* (1984) 157 Cal.App.3d 465, 474 [204 Cal.Rptr. 582].] To the contrary, it has long been recognized that “in order to establish force within the meaning of section 261, subdivision (2), the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim].” (*People v. Young* (1987) 190 Cal.App.3d 248, 257–258 [235 Cal.Rptr. 361])

(*Ibid.* at 1023–1024 [emphasis in original].)

The committee has provided a bracketed definition of “force,” consistent with *People v. Griffin, supra*, that the court may give on request.

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Assault With Intent to Commit Forcible Sexual Penetration. ▶ See Pen. Code, § 220; *In re Jose M.* (1994) 21 Cal.App.4th 1470, 1477 [27 Cal.Rptr.2d 55] [in context of rape].
- Attempted Forcible Sexual Penetration. ▶ Pen. Code, §§ 664, 289(a)(1), (2), (g).
- Battery. ▶ Pen. Code, § 242.
- Sexual Battery. Pen. Code, §§ 243.4(a), (e)(1) under the expanded accusatory pleading test; *People v. Ortega* (2015) 240 Cal.App.4th 956, 967–970 [193 Cal.Rptr.3d 142].

Nonforcible sex crimes requiring the perpetrator and victim to be within certain age limits are not lesser included offenses of forcible sex crimes. (*People v. Scott* (2000) 83 Cal.App.4th 784, 794 [100 Cal.Rptr.2d 70].)

RELATED ISSUES

Consent Obtained by Fraudulent Representation

A person may also induce someone else to consent to engage in sexual penetration by a false or fraudulent representation made with an intent to create fear, and which does induce fear and would cause a reasonable person to act contrary to his or her free will. (Pen. Code, § 266c [wobbler offense].) While section 266c requires coercion and fear to obtain consent, it does not involve physical force or violence. (See *People v. Cardenas* (1994) 21 Cal.App.4th 927, 937–938 [26 Cal.Rptr.2d 567] [rejecting defendant’s argument that certain acts were consensual and without physical force, and were only violations of section 266c].)

Consent Withdrawn

A forcible rape occurs when, during apparently consensual intercourse, the victim expresses an objection and attempts to stop the act and the defendant forcibly continues despite the objection. (*In re John Z.* (2003) 29 Cal.4th 756, 760 [128 Cal.Rptr.2d 783, 60 P.3d 183].) If there is an issue whether consent to sexual penetration was withdrawn, see CALCRIM No. 1000, *Rape or Spousal Rape by Force, Fear, or Threats*, for language that may be adapted for use in this instruction.

Minor Victim

When sexual penetration is committed against the will of a person who is incapable of consent, such as a baby, and is accomplished by physical force that results in physical injury to the victim, the statutory requirements “against the will” and “use of force” are fully satisfied. (*People v. White* (1986) 179 Cal.App.3d 193, 202 [224 Cal.Rptr. 467].)

Multiple Penetrations

A violation of section 289 is complete when “slight” penetration occurs. A new and separate violation is completed each time a new and separate penetration, however slight, occurs. (*People v. Harrison* (1989) 48 Cal.3d 321, 329, 334 [256 Cal.Rptr. 401, 768 P.2d 1078] [disapproving *People v. Hammon* (1987) 191 Cal.App.3d 1084, 1097 [236 Cal.Rptr. 822]].)

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 58, 178.

3 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Punishment, § 292.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [2] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

Sex Offenses

1047 Sexual Penetration of an Intoxicated Person (Pen. Code, § 289(e))

The defendant is charged [in Count __] with sexual penetration of a person while that person was intoxicated [in violation of Penal Code section 289(e)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
3. The effect of (a/an) (intoxicating/anesthetic/controlled) substance prevented the other person from resisting the act;

AND

4. The defendant knew or reasonably should have known that the effect of that substance prevented the other person from resisting the act.

Sexual penetration means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.

A person is *prevented from resisting* if he or she is so intoxicated that he or she cannot give legal consent. In order to give legal consent, a person must be able to exercise reasonable judgment. In other words, the person must be able to understand and weigh the physical nature of the act, its moral character, and probable consequences. Legal consent is consent given freely and voluntarily by someone who knows the nature of the act involved.

[_____ <If appropriate, insert controlled substance> (is/are) [a] controlled substance[s].]

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

<Defense: Reasonable Belief Capable of Consent>

[The defendant is not guilty of this crime if (he/she) actually and reasonably believed that the person was capable of consenting to the act, even if the defendant's belief was wrong. The People have the burden of proving beyond a reasonable doubt that the defendant did not actually and reasonably believe that the woman was capable of consenting. If the People have not met this burden, you must find the defendant not guilty.]

New January 2006; *Revised March 2020*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

A space is provided to identify controlled substances if the parties agree that there is no issue of fact.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of reasonable belief the person was capable of consent if there is sufficient evidence to support the defense. (See *People v. Giardino* (2000) 82 Cal.App.4th 454, 472 [98 Cal.Rptr.2d 315].)

Related Instructions

CALCRIM No. 1046, *Sexual Penetration in Concert*, may be given in conjunction with this instruction if appropriate.

AUTHORITY

- Elements. ▶ Pen. Code, § 289(e).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Controlled Substances Defined. ▶ Health & Safety Code, §§ 11054–11058; see *People v. Avila* (2000) 80 Cal.App.4th 791, 798, fn. 7 [95 Cal.Rptr.2d 651].
- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Sexual Penetration Defined. ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Anesthetic Effect Defined. ▶ See *People v. Avila* (2000) 80 Cal.App.4th 791, 798–799 [95 Cal.Rptr.2d 651] [in context of sodomy].
- Prevented From Resisting Defined. ▶ See *People v. Giardino* (2000) 82 Cal.App.4th 454, 465–467 [98 Cal.Rptr.2d 315] [in context of rape].
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Attempted Sexual Penetration. ▶ Pen. Code, §§ 664, 289(a)(1) & (2), (g).
- Attempted Sexual Penetration of Intoxicated Person. ▶ Pen. Code, §§ 663, 289(e).
- Battery. ▶ Pen. Code, § 242.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 59-61, 178.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [5] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

Sex Offenses

1048 Sexual Penetration of an Unconscious Person (Pen. Code, § 289(d))

The defendant is charged [in Count __] with sexual penetration of a person who was unconscious of the nature of the act [in violation of Penal Code section 289(d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
3. The other person was unable to resist because (he/she) was unconscious of the nature of the act;

AND

4. The defendant knew that the other person was unable to resist because (he/she) was unconscious of the nature of the act.

Sexual penetration means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.

A person is *unconscious of the nature of the act* if he or she is (unconscious or asleep/ [or] not aware that the act is occurring/ [or] not aware of the essential characteristics of the act because the perpetrator tricked, lied to, or concealed information from the person/ [or] not aware of the essential characteristics of the act because the perpetrator fraudulently represented that the sexual penetration served a professional purpose when it served no professional purpose).

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object penetrated the opening.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

New January 2006; Revised March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

CALCRIM No. 1046, *Sexual Penetration in Concert*, may be given in conjunction with this instruction if appropriate.

AUTHORITY

- Elements. ▶ Pen. Code, § 289(d).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); see *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Sexual Penetration Defined. ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].
- Unconscious of Nature of Act. ▶ *People v. Howard* (1981) 117 Cal.App.3d 53, 55 [172 Cal.Rptr. 539] [total unconsciousness is not required; in context of sodomy and oral copulation]; see *Boro v. Superior Court* (1985) 163 Cal.App.3d 1224, 1229–1231 [210 Cal.Rptr. 122] [rape victim not unconscious of nature of act; fraud in the inducement].

COMMENTARY

The statutory language describing unconsciousness includes “was not aware, knowing, perceiving, or cognizant that the act occurred.” (See Pen. Code, § 289(d)(2).) The committee did not discern any difference among the statutory terms and therefore used “aware” in the instruction. If there is an issue over a particular term, that term should be inserted in the instruction.

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Attempted Sexual Penetration of Unconscious Person. ▶ Pen. Code, §§ 664, 289(d).
- Battery. ▶ Pen. Code, § 242.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 59-61, 178.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [5] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

1049 Sexual Penetration of a Disabled Person (Pen. Code, § 289(b))

The defendant is charged [in Count __] with sexual penetration of a mentally or physically disabled person [in violation of Penal Code section 289(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
3. The other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;

AND

4. The defendant knew or reasonably should have known that the other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting.

Sexual penetration means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.

A person is *prevented from legally consenting* if he or she is unable to understand the act, its nature, and probable consequences.

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object was used to accomplish the penetration.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

New January 2006; *Revised March 2020*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

CALCRIM No. 1046, *Sexual Penetration in Concert*, may be given in conjunction with this instruction if appropriate.

AUTHORITY

- Elements. ▶ Pen. Code, § 289(b).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Consent Defined. ▶ Pen. Code, § 261.6; see *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].
- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); see *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Sexual Penetration Defined. ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Attempted Sexual Penetration of Disabled Person. ▶ Pen. Code, §§ 664, 289(b).
- Battery. ▶ Pen. Code, § 242.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*, and CALCRIM No. 1004, *Rape of a Disabled Woman*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 59-61, 178.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [5] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

Sex Offenses

**1050 Sexual Penetration of a Disabled Person in a Mental Hospital
(Pen. Code, § 289(c))**

The defendant is charged [in Count __] with sexual penetration of a mentally or physically disabled person in a mental hospital [in violation of Penal Code section 289(c)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
3. The other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;
4. The defendant knew or reasonably should have known that the other person had a (mental disorder/developmental or physical disability) that prevented (him/her) from legally consenting;

AND

5. At the time of the act, both people were confined in a state hospital or other mental health facility.

Sexual penetration means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.

A person is *prevented from legally consenting* if he or she is unable to understand the act, its nature, and probable consequences.

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object,

substance, instrument, or device, or any part of the body, including a penis, if it is not known what object was used to accomplish the penetration.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

[_____ <If appropriate, insert name of facility> is a (state hospital/mental health facility).] [A *state hospital or other mental health facility* includes a state hospital for the care and treatment of the mentally disordered or any other public or private facility approved by a county mental health director for the care and treatment of the mentally disordered.]

New January 2006; *Revised March 2020*

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

A space is provided to identify a facility as a state hospital or other mental health facility if the parties agree that there is no issue of fact. Alternatively, if there is a factual dispute about whether an institution is a state hospital or other mental health facility, give the final bracketed sentence. (See Pen. Code, § 289(c).)

Related Instructions

CALCRIM No. 1046, *Sexual Penetration in Concert*, may be given in conjunction with this instruction if appropriate.

AUTHORITY

- Elements. ▶ Pen. Code, § 289(c).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Consent Defined. ▶ Pen. Code, § 261.6; see *People v. Boggs* (1930) 107 Cal.App. 492, 495–496 [290 P. 618].
- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); see *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].

- Sexual Penetration Defined. ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- State Hospital or Mental Health Facility Defined. ▶ Pen. Code, § 289(c); see Welf. & Inst. Code, § 7100 [county psychiatric facilities], § 7200 [state hospitals for mentally disordered], § 7500 [state hospitals for developmentally disabled].
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Attempted Sexual Penetration of Disabled Person. ▶ Pen. Code, §§ 664, 289(c).
- Battery. ▶ Pen. Code, § 242.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*, and CALCRIM No. 1004, *Rape of a Disabled Woman*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, §§ 56, 59-61, 178.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [5] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

Sex Offenses

1051 Sexual Penetration by Fraud (Pen. Code, § 289(f))

The defendant is charged [in Count __] with sexual penetration by fraud [in violation of Penal Code section 289(f)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant committed an act of sexual penetration with another person;
2. At the time of the act, the defendant and the other person were not married to each other;
3. The penetration was accomplished by using (a/an) (foreign object[,]/ [or] substance[,]/ [or] instrument[,]/ [or] device[,]/ [or] unknown object);
4. The other person submitted to the act because (he/she) believed the person (committing the act/causing the act to be committed) was someone (he/she) knew, other than the defendant;

AND

5. The defendant tricked, lied, [used an artifice or pretense,] or concealed information, intending to make the other person believe that (he/she) was someone (he/she) knew, while intending to hide (his/her) own identity.

Sexual penetration means (penetration, however slight, of the genital or anal opening of the other person/ [or] causing the other person to penetrate, however slightly, the defendant's or someone else's genital or anal opening/ [or] causing the other person to penetrate, however slightly, his or her own genital or anal opening) for the purpose of sexual abuse, arousal, or gratification.

[A *foreign object, substance, instrument, or device* includes any part of the body except a sexual organ.] [An *unknown object* includes any foreign object, substance, instrument, or device, or any part of the body, including a penis, if it is not known what object was used to accomplish the penetration.]

[Penetration for *sexual abuse* means penetration for the purpose of causing pain, injury, or discomfort.]

New January 2006; Revised February 2015, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Penal Code section 289(f) was amended effective September 9, 2013, in response to *People v. Morales* (2013) 212 Cal.App.4th 583 [150 Cal.Rptr.3d 920].

Related Instructions

CALCRIM No. 1046, *Sexual Penetration in Concert*, may be given in conjunction with this instruction if appropriate.

AUTHORITY

- Elements. ▶ Pen. Code, § 289(f).
- Specific Intent Crime. ▶ *People v. McCoy* (2013) 215 Cal.App.4th 1510, 1538 [156 Cal.Rptr.3d 382].
- Foreign Object, Substance, Instrument, or Device Defined. ▶ Pen. Code, § 289(k)(2); see *People v. Wilcox* (1986) 177 Cal.App.3d 715, 717 [223 Cal.Rptr. 170] [a finger is a “foreign object”].
- Sexual Penetration Defined. ▶ Pen. Code, § 289(k)(1); see *People v. Quintana* (2001) 89 Cal.App.4th 1362, 1371 [108 Cal.Rptr.2d 235] [penetration of genital opening refers to penetration of labia majora, not the vagina].
- Unknown Object Defined. ▶ Pen. Code, § 289(k)(3).
- Sexual Abuse Defined. ▶ *People v. White* (1986) 179 Cal.App.3d 193, 205–206 [224 Cal.Rptr. 467].

LESSER INCLUDED OFFENSES

- Assault. ▶ Pen. Code, § 240.
- Attempted Sexual Penetration by Fraud. ▶ Pen. Code, §§ 664, 289(f).
- Battery. ▶ Pen. Code, § 242.

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1045, *Sexual Penetration by Force, Fear, or Threats*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 58.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.20[1][d], [6] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* §§ 12:16, 12:17 (The Rutter Group).

1151 Pandering (Pen. Code, § 266i)

The defendant is charged [in Count _____] with pandering [in violation of Penal Code section 266i].

To prove that the defendant is guilty of pandering, the People must prove that:

<Alternative 1A—persuaded/procured>

[1. The defendant successfully (persuaded/procured) _____ <insert name> to become a prostitute(;/.)]

<Alternative 1B—promises/threats/violence used to cause person to become prostitute>

[1. The defendant used (promises[,]/ threats[,]/ violence[,]/ [or] any device or scheme) to (cause/persuade/encourage/induce) _____ <insert name> to become a prostitute[, although the defendant’s efforts need not have been successful](;/.)]

<Alternative 1C—arranged/procured a position>

[1. The defendant (arranged/procured a position) for _____ <insert name> to be a prostitute in either a house of prostitution or any other place where prostitution is encouraged or allowed(;/.)]

<Alternative 1D—promises/threats/violence used to cause person to remain>

[1. The defendant used (promises[,]/ threats[,]/ violence[,]/ [or] any device or scheme) to (cause/persuade/encourage/induce) _____ <insert name> to remain as a prostitute in a house of prostitution or any other place where prostitution is encouraged or allowed(;/.)]

<Alternative 1E—used fraud>

[1. The defendant used fraud, trickery, or duress [or abused a position of confidence or authority] to (persuade/procure) _____ <insert name> to (be a prostitute/enter any place where prostitution is encouraged or allowed/enter or leave California for the purpose of prostitution)(;/.)]

<Alternative 1F—received money>

[1. The defendant (received/gave/agreed to receive/agreed to give) money or something of value in exchange for (persuading/attempting to persuade/procuring/attempting to procure) _____ <insert name> to (be a prostitute/enter or leave California for the purpose of prostitution)(;/.)]

AND

2. The defendant intended to influence _____ <insert name> to be a prostitute(;/.)

<Give element 3 when defendant charged with pandering a minor.>

[AND

3. _____ <insert name> was (~~over the age of 16 years old~~ or older/under the age of 16) at the time the defendant acted.]

[It does not matter whether = _____ <insert name> was (a prostitute already/ [or] an undercover police officer).]

A *prostitute* is a person who engages in sexual intercourse or any lewd act with another person in exchange for money [or other compensation].

[Pandering requires that an intended act of prostitution be with someone other than the defendant.] A *lewd act* means physical contact of the genitals, buttocks, or female breast of either the prostitute or customer with some part of the other person's body for the purpose of sexual arousal or gratification.

[*Duress* means a direct or implied threat of force, violence, danger, hardship, or retribution that would cause a reasonable person to do [or submit to] something that he or she would not do [or submit to] otherwise. When deciding whether the act was accomplished by duress, consider all the circumstances, including the person's age and (her/his) relationship to the defendant.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised April 2011, February 2012, August 2012, February 2015, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In element 1, give the appropriate alternative A-F depending on the evidence in the case. (See *People v. Montgomery* (1941) 47 Cal.App.2d 1, 12, 24, 27–28 [117 P.2d 437] [statutory alternatives are not mutually exclusive], disapproved on other grounds in *People v. Dillon* (1983) 34 Cal.3d 441, 454 fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697] and *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301 fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44].)

The committee included “persuade” and “arrange” as options in element one because the statutory language, “procure,” may be difficult for jurors to understand.

Give bracketed element 3 if it is alleged that the person procured, or otherwise caused to act, by the defendant was a minor “over” or “under” the age of 16 years. (Pen. Code, § 266i(b).)

Give the bracketed paragraph defining duress on request if there is sufficient evidence that duress was used to procure a person for prostitution. (Pen. Code, § 266i(a)(5); see *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071] [definition of “duress”].)

Give the bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

There is a split of authority on whether pandering requires that services be procured for a person other than the defendant. (*People v. Dixon* (2011) 191 Cal.App.4th 1154, 1159–1160 [119 Cal.Rptr.3d 901] [third person required]; *People v. Jacobo* (2019) 37 Cal.App.5th 32, 47 [249 Cal.Rptr.3d 236] [no third person required].) If the court concludes that Penal Code section 266i(a)(2) requires a third person, give the bracketed sentence that begins with “Pandering requires.”

Defenses—Instructional Duty

If necessary for the jury’s understanding of the case, the court must instruct **sua sponte** on a defense theory in evidence, for example, that nude modeling does not constitute an act of prostitution and that an act of procuring a person solely for the purpose of nude modeling does not violate either the pimping or pandering statute. (*People v. Hill* (1980) 103 Cal.App.3d 525, 536–537 [163 Cal.Rptr. 99].)

AUTHORITY

- Elements. ▶ Pen. Code, § 266i.
- Prostitution Defined. ▶ Pen. Code, § 647(b); *People v. Hill* (1980) 103 Cal.App.3d 525, 534–535 [163 Cal.Rptr. 99]; *People v. Romo* (1962) 200 Cal.App.2d 83, 90–91 [19 Cal.Rptr. 179]; *Wooten v. Superior Court* (2001) 93 Cal.App.4th 422, 431–433 [lewd act requires touching between prostitute and customer].
- Procurement Defined. ▶ *People v. Montgomery* (1941) 47 Cal.App.2d 1, 12 [117 P.2d 437], disapproved on other grounds in *People v. Dillon* (1983) 34 Cal.3d 441, 454 fn. 2 [194 Cal.Rptr. 390, 668 P.2d 697] and *Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 301 fn. 11 [124 Cal.Rptr. 204, 540 P.2d 44].
- Proof of Actual Prostitution Not Required. ▶ *People v. Osuna* (1967) 251 Cal.App.2d 528, 531–532 [59 Cal.Rptr. 559].
- Duress Defined. ▶ *People v. Leal* (2004) 33 Cal.4th 999, 1004–1010 [16 Cal.Rptr.3d 869, 94 P.3d 1071]; *People v. Pitmon* (1985) 170 Cal.App.3d 38, 50 [216 Cal.Rptr. 221]; *People v. Cochran* (2002) 103 Cal.App.4th 8, 13–14 [126 Cal.Rptr.2d 416].
- Good Faith Belief That Minor Is 18 No Defense to Pimping and Pandering. ▶ *People v. Branch* (2010) 184 Cal.App.4th 516, 521–522 [109 Cal.Rptr.3d 412].
- Specific Intent Crime. ▶ *People v. Zambia* (2011) 51 Cal.4th 965, 980 [127 Cal.Rptr.3d 662, 254 P.3d 965].
- Victim May [Appear to] Be a Prostitute Already. ▶ *People v. Zambia* (2011) 51 Cal.4th 965, 981 [127 Cal.Rptr.3d 662, 254 P.3d 965].
- ~~Pandering Requires Services Procured for Person Other Than Defendant. ▶ *People v. Dixon* (2011) 191 Cal.App.4th 1154, 1159–1160 [119 Cal.Rptr.3d 901].~~
- Encouraging Person to Become Prostitute Need Not Be Successful. *People v. Zambia* (2011) 51 Cal.4th 965, 980 [127 Cal.Rptr.3d 662, 254 P.3d 965].

LESSER INCLUDED OFFENSES

- Attempted Pandering. ▶ Pen. Code, §§ 664, 266i; *People v. Charles* (1963) 218 Cal.App.2d 812, 819 [32 Cal.Rptr. 653]; *People v. Benenato* (1946) 77 Cal.App.2d 350, 366–367 [175 P.2d 296], disapproved on other grounds in *In re Wright* (1967) 65 Cal.2d 650, 654–655, fn. 3 [56 Cal.Rptr. 110, 422 P.2d 998].

There is no crime of aiding and abetting prostitution. (*People v. Gibson* (2001) 90

Cal.App.4th 371, 385 [108 Cal.Rptr.2d 809].)

RELATED ISSUES

See Related Issues section to CALCRIM No. 1150, *Pimping*.

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Sex Offenses and Crimes Against Decency, § 85.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 144, *Crimes Against Order*, § 144.11[3] (Matthew Bender).

Couzens & Bigelow, Sex Crimes: California Law and Procedure §§ 12:16, 12:17 (The Rutter Group).

1192 Testimony on Rape Trauma Syndrome

You have heard testimony from _____ <insert name of expert> regarding rape trauma syndrome.

_____’s <insert name of expert> testimony about rape trauma syndrome is not evidence that the defendant committed any of the crimes charged against (him/her) **for any conduct or crime[s] with which (he/she) was not charged**].

You may consider this evidence only in deciding whether or not _____’s <insert name of alleged rape victim> conduct was not inconsistent with the conduct of someone who has been raped, and in evaluating the believability of her testimony.

New January 2006; Revised March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction if an expert testifies on rape trauma syndrome. (See *People v. Housley* (1992) 6 Cal.App.4th 947, 958–959 [8 Cal.Rptr.2d 431] [**sua sponte** duty in context of child sexual abuse accommodation syndrome (CSAAS)]; *CJER Mandatory Criminal Jury Instructions Handbook* (CJER ~~10th ed.~~ 2004~~19~~) Sua Sponte Instructions, § 2.1632; but see *People v. Sanchez* (1989) 208 Cal.App.3d 721, 736 [256 Cal.Rptr. 446] [instruction on CSAAS only required on request].)

Related Instructions

If this instruction is given, also give CALCRIM No. 303, *Limited Purpose Evidence in General*, and CALCRIM No. 332, *Expert Witness Testimony*.

AUTHORITY

- Rebut Inference That Victim’s Conduct Inconsistent With Claim of Rape. ▶ *People v. Bledsoe* (1984) 36 Cal.3d 236, 247–248 [203 Cal.Rptr. 450, 681 P.2d 291].
- Syndrome Evidence Not Admissible to Prove Rape Occurred. ▶ *People v. Bledsoe* (1984) 36 Cal.3d 236, 251 [203 Cal.Rptr. 450, 681 P.2d 291].

COMMENTARY

It is unnecessary and potentially misleading to instruct that the expert testimony assumes that a rape has in fact occurred. (See *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387 [7 Cal.Rptr.2d 660] [in context of child molestation].)

SECONDARY SOURCES

1 Witkin, *California Evidence* (5th ed. 2012) *Opinion Evidence*, § 53.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 71, *Scientific and Expert Evidence*, § 71.04[1][d][v][B] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.23[3][d] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* § 12:7 (The Rutter Group).

Sex Offenses

1193 Testimony on Child Sexual Abuse Accommodation Syndrome

You have heard testimony from _____ <insert name of expert> regarding child sexual abuse accommodation syndrome.

_____’s <insert name of expert> testimony about child sexual abuse accommodation syndrome is not evidence that the defendant committed any of the crimes charged against (him/her) **for any conduct or crime[s] with which (he/she) was not charged**.

You may consider this evidence only in deciding whether or not _____’s <insert name of alleged victim of abuse> conduct was not inconsistent with the conduct of someone who has been molested, and in evaluating the believability of (his/her) testimony.

New January 2006; Revised August 2016, March 2020

BENCH NOTES

Instructional Duty

Several courts of review have concluded there is no sua sponte duty to give this instruction when an expert testifies on child sexual abuse accommodation syndrome. (*People v. Mateo* (2016) 243 Cal.App.4th 1063, 1073-1074 [197 Cal.Rptr.3d 248]; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 736 [256 Cal.Rptr. 446] and *People v. Stark* (1989) 213 Cal.App.3d 107, 116 [261 Cal.Rptr. 479] [instruction required only on request].) See also *People v. Humphrey* (1996) 13 Cal.4th 1073, 1088, fn. 5, 1090-1091, 1100 [56 Cal.Rptr.2d 142, 921 P.2d 1], which concludes that a limiting instruction on battered woman syndrome is required only on request. But see *People v. Housley* (1992) 6 Cal.App.4th 947, 958–959 [9 Cal.Rptr.2d 431], which did find a sua sponte duty to give this instruction.

Related Instructions

If this instruction is given, also give CALCRIM No. 303, *Limited Purpose Evidence in General*, and CALCRIM No. 332, *Expert Witness*.

AUTHORITY

- Eliminate Juror Misconceptions or Rebut Attack on Victim’s Credibility. ▶ *People v. Bowker* (1988) 203 Cal.App.3d 385, 393–394 [249 Cal.Rptr. 886].

COMMENTARY

The jurors must understand that the research on child sexual abuse accommodation syndrome assumes a molestation occurred and seeks to describe and explain children’s common reactions to the experience. (*People v. Bowker* (1988) 203 Cal.App.3d 385, 394 [249 Cal.Rptr. 886].) However, it is unnecessary and potentially misleading to instruct that the expert testimony assumes that a molestation has in fact occurred. (See *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1387 [7 Cal.Rptr.2d 660].)

The prosecution must identify the myth or misconception the evidence is designed to rebut (*People v. Bowker, supra*, 203 Cal.App.3d at p. 394; *People v. Sanchez* (1989) 208 Cal.App.3d 721, 735 [256 Cal.Rptr. 446]; *People v. Harlan* (1990) 222 Cal.App.3d 439, 449–450 [271 Cal.Rptr. 653]), or the victim’s credibility must have been placed in issue (*People v. Patino* (1994) 26 Cal.App.4th 1737, 1744–1745 [32 Cal.Rptr.2d 345]).

RELATED ISSUES

Expert Testimony Regarding Parent’s Behavior

An expert may also testify regarding reasons why a parent may delay reporting molestation of his or her child. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1300–1301 [283 Cal.Rptr. 382, 812 P.2d 563].)

SECONDARY SOURCES

1 Witkin, *California Evidence* (5th ed. 2012) Opinion Evidence, §§ 54–56.

3 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 71, *Scientific and Expert Evidence*, § 71.04[1][d][v][B] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.23[3][d] (Matthew Bender).

Couzens & Bigelow, *Sex Crimes: California Law and Procedure* § 12:7 (The Rutter Group).

Kidnapping

1200 Kidnapping: For Child Molestation (Pen. Code, §§ 207(b), 288(a))

The defendant is charged [in Count __] with kidnapping for the purpose of child molestation [in violation of Penal Code section 207(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant (persuaded/hired/enticed/decoyed/ [or] seduced by false promises or misrepresentations) a child younger than 14 years old to go somewhere;
2. When the defendant did so, (he/she) intended to commit a lewd or lascivious act on the child;

AND

3. As a result of the defendant's conduct, the child then moved or was moved a substantial distance.

As used here, *substantial distance* means more than a slight or trivial distance. The movement must have increased the risk of [physical or psychological] harm to the person beyond that necessarily present in the molestation. In deciding whether the movement was sufficient, consider all the circumstances relating to the movement.

As used here, a *lewd or lascivious act* is any touching of a child with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of either the perpetrator or the child. Contact with the child's bare skin or private parts is not required. Any part of the child's body or the clothes the child is wearing may be touched. [A *lewd or lascivious act* includes causing a child to touch his or her own body, the perpetrator's body, or someone else's body at the instigation of a perpetrator who has the required intent.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised February 2012, February 2013, August 2013, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Give this instruction when the defendant is charged under Penal Code section 207(b) with kidnapping a child without the use of force for the purpose of committing a lewd or lascivious act. Give CALCRIM No. 1201, *Kidnapping: Child or Person Incapable of Consent*, when the defendant is charged under Penal Code section 207(a) with using force to kidnap an unresisting infant or child, or person with a mental impairment, who was incapable of consenting to the movement.

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Related Instructions

Kidnapping with intent to commit a rape or other specified sex crimes is a separate offense under Penal Code section 209(b). (*People v. Rayford* (1994) 9 Cal.4th 1, 8–11 [36 Cal.Rptr.2d 317, 884 P.2d 1369].) See CALCRIM No. 1203, *Kidnapping: For Robbery, Rape, or Other Sex Offenses*.

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions based on violations of Penal Code section 288, see CALCRIM No. 1110, *Lewd or Lascivious Acts: Child Under 14*, and the following instructions in that series.

AUTHORITY

- Elements. ▶ Pen. Code, §§ 207(b), 288(a).
- Increased Prison Term If Victim Under 14 Years of Age. ▶ Pen. Code, § 208(b).
- Asportation Requirement. ▶ See *People v. Robertson* (2012) 208 Cal. App. 4th 965, 982 [146 Cal.Rptr.3d 66]; *People v. Vines* (2011) 51 Cal.4th 830, 870 & fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; *People v. Martinez* (1999) 20

Cal.4th 225, 232 & fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512]; *People v. Rayford* (1994) 9 Cal.4th 1, 11–14, 20 [36 Cal.Rptr.2d 317, 884 P.2d 1369]; *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225].

- Lewd or Lascivious Acts Defined. ▶ *People v. Martinez* (1995) 11 Cal.4th 434, 452 [45 Cal.Rptr.2d 905, 903 P.2d 1037] [disapproving *People v. Wallace* (1992) 11 Cal.App.4th 568, 574–580 [14 Cal.Rptr.2d 67] and its progeny]; *People v. Levesque* (1995) 35 Cal.App.4th 530, 538–542 [41 Cal.Rptr.2d 439]; *People v. Marquez* (1994) 28 Cal.App.4th 1315, 1321–1326 [33 Cal.Rptr.2d 821].
- Movement of Victim Need Not Substantially Increase Risk of Harm to Victim. ▶ *People v. Robertson* (2012) 208 Cal.App.4th 965, 982 [146 Cal.Rptr.3d 66]; *People v. Vines* (2011) 51 Cal.4th 830, 870 & fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; *People v. Martinez* (1999) 20 Cal.4th 225, 232 & fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512].

LESSER INCLUDED OFFENSES

- Kidnapping. ▶ Pen. Code, § 207.
- ~~Attempted Kidnapping. ▶ Pen. Code, §§ 664, 207; *People v. Fields* (1976) 56 Cal.App.3d 954, 955–956 [129 Cal.Rptr. 24].~~

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

False imprisonment is a lesser included offense if there is an unlawful restraint of the child. (See Pen. Code, §§ 236, 237; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338].)

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 281–282, 291.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.14[1][a], [3] (Matthew Bender).

Kidnapping

1201 Kidnapping: Child or Person Incapable of Consent (Pen. Code, § 207(a), (e))

The defendant is charged [in Count __] with kidnapping (a child/ [or] a person with a mental impairment who was not capable of giving legal consent to the movement) [in violation of Penal Code section 207].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant used (physical force/deception) to take and carry away an unresisting (child/ [or] person with a mental impairment);
2. The defendant moved the (child/ [or] person with a mental impairment) a substantial distance(;/.)

[AND]

<Section 207(e)>

[3. The defendant moved the (~~child/ [or] mentally impaired person~~) with an illegal intent or for an illegal purpose(;/.)]

[AND]

<Alternative 4A—alleged victim under 14 years.>

[4. The child was under 14 years old at the time of the movement(;/.)]

<Alternative 4B—alleged victim has mental impairment.>

[(3/4). _____ <Insert name of complaining witness> suffered from a mental impairment that made (him/her) incapable of giving legal consent to the movement.]

***Substantial distance* means more than a slight or trivial distance. In deciding whether the distance was substantial, consider all the circumstances relating to the movement. [Thus, in addition to considering the actual distance moved, you may also consider other factors such as whether the movement increased the risk of [physical or psychological] harm, increased the danger of a foreseeable escape attempt, gave the attacker a greater opportunity to commit additional crimes, or decreased the likelihood of detection.]**

A person is incapable of giving legal consent if he or she is unable to understand the act, its nature, and possible consequences.

[Deception includes tricking the (child/mentally impaired person) into accompanying him or her a substantial distance for an illegal purpose.]

[Under the law, a person becomes one year older as soon as the first minute of his or her birthday has begun.]

New January 2006; Revised April 2008, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

Give alternative 4A if the defendant is charged with kidnapping a person under 14 years of age. (Pen. Code, § 208(b).) Do not use this bracketed language if a biological parent, a natural father, an adoptive parent, or someone with access to the child by a court order takes the child. (*Ibid.*) Give alternative 4B if the alleged victim has a mental impairment.

In the paragraph defining “substantial distance,” give the bracketed sentence listing factors that the jury may consider, when evidence permits, in evaluating the totality of the circumstances. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 [83 Cal.Rptr.2d 533, 973 P.2d 512].) However, in the case of simple kidnapping, if the movement was for a substantial distance, the jury does not need to consider any other factors. (*People v. Martinez, supra*, 20 Cal.4th at p. 237; see *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058].)

Give this instruction when the defendant is charged under Penal Code section 207(a) with using force to kidnap an unresisting infant or child, or person with a mental impairment, who was incapable of consenting to the movement. (See, e.g., *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; see also 2003 Amendments to Pen. Code, § 207(e) [codifying holding of *In re Michele D.*].) Give CALCRIM No. 1200, *Kidnapping: For Child Molestation*, when the defendant is charged under Penal Code section 207(b) with kidnapping a child without the use of force for the purpose of committing a lewd or lascivious act.

Give the final bracketed paragraph about calculating age if requested. (Fam. Code, § 6500; *In re Harris* (1993) 5 Cal.4th 813, 849–850 [21 Cal.Rptr.2d 373, 855 P.2d 391].)

Related Instructions

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*In re Michele D.* (2002) 29 Cal.4th 600, 614 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions relating to defenses to kidnapping, see CALCRIM No. 1225, *Defense to Kidnapping: Protecting Child From Imminent Harm*.

AUTHORITY

- Elements. ▶ Pen. Code, § 207(a), (e).
- Punishment If Victim Under 14 Years of Age. ▶ Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206] [ignorance of victim’s age not defense].
- Asportation Requirement. ▶ See *People v. Martinez* (1999) 20 Cal.4th 225, 235–237 [83 Cal.Rptr.2d 533, 973 P.2d 512] [adopting modified two-pronged asportation test from *People v. Rayford* (1994) 9 Cal.4th 1, 12–14 [36 Cal.Rptr.2d 317, 884 P.2d 1369] and *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225]].
- Force Required to Kidnap Unresisting Infant or Child. ▶ *In re Michele D.* (2002) 29 Cal.4th 600, 610 [128 Cal.Rptr.2d 92, 59 P.3d 164]; Pen. Code, § 207(e).
- Force Required to Kidnap Unconscious and Intoxicated Adult. ▶ *People v. Daniels* (2009) 176 Cal.App.4th 304, 333 [97 Cal.Rptr.3d 659].
- Movement Must Be for Illegal Purpose or Intent if Victim Incapable of Consent. ▶ *In re Michele D.* (2002) 29 Cal.4th 600, 610–611 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Oliver* (1961) 55 Cal.2d 761, 768 [12 Cal.Rptr. 865, 361 P.2d 593].
- Substantial Distance Requirement. ▶ *People v. Daniels* (1993) 18 Cal.App.4th 1046, 1053 [22 Cal.Rptr.2d 877]; *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058] [since movement must be more than slight or trivial, it must be substantial in character].

- Deceit May Substitute for Force. ▶ *People v. Dalerio* (2006) 144 Cal.App.4th 775, 783 [50 Cal.Rptr.3d 724] [taking requirement satisfied when defendant relies on deception to obtain child’s consent and through verbal directions and his constant physical presence takes the child substantial distance].

COMMENTARY

Penal Code section 207(a) uses the term “steals” in defining kidnapping not in the sense of a theft, but in the sense of taking away or forcible carrying away. (*People v. McCullough* (1979) 100 Cal.App.3d 169, 176 [160 Cal.Rptr. 831].) The instruction uses “take and carry away” as the more inclusive terms, but the statutory terms “steal,” “hold,” “detain” and “arrest” may be used if any of these more closely matches the evidence.

LESSER INCLUDED OFFENSES

~~• Attempted Kidnapping. ▶ Pen. Code, §§ 664, 207; *People v. Fields* (1976) 56 Cal.App.3d 954, 955-956 [129 Cal.Rptr. 24].~~

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Victim Must Be Alive

A victim must be alive when kidnapped. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 498 [117 Cal.Rptr.2d 45, 40 P.3d 754].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 286-289.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person* § 142.14[1], [2][a] (Matthew Bender).

Kidnapping

1203 Kidnapping: For Robbery, Rape, or Other Sex Offenses (Pen. Code, § 209(b))

The defendant is charged [in Count __] with kidnapping for the purpose of (robbery/rape/spousal rape/oral copulation/sodomy/sexual penetration) [in violation of Penal Code section 209(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>);
2. Acting with that intent, the defendant took, held, or detained another person by using force or by instilling a reasonable fear;
3. Using that force or fear, the defendant moved the other person [or made the other person move] a substantial distance;
4. The other person was moved or made to move a distance beyond that merely incidental to the commission of a (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>);
5. When that movement began, the defendant already intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>);

[AND]

6. The other person did not consent to the movement(;/.)

<Give element 7 if instructing on reasonable belief in consent.>

[AND]

7. The defendant did not actually and reasonably believe that the other person consented to the movement.]

As used here, *substantial distance* means more than a slight or trivial distance. The movement must have increased the risk of [physical or psychological] harm to the person beyond that necessarily present in the (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>). In deciding whether the movement was sufficient, consider all the circumstances relating to the movement.

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

[To be guilty of kidnapping for the purpose of (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration), the defendant does not actually have to commit the (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>).]

To decide whether the defendant intended to commit (robbery/ [or] rape/ [or] spousal rape/ [or] oral copulation/ [or] sodomy/ [or] sexual penetration/ [or] _____ <insert other offense specified in statute>), please refer to the separate instructions that I (will give/have given) you on that crime.

<Defense: Good Faith Belief in Consent>

[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the other person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Consent Given>

[The defendant is not guilty of kidnapping if the other person consented to go with the defendant. The other person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient mental capacity to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the other person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the other person withdrew consent, the defendant committed the crime as I have defined it.]

New January 2006; Revised June 2007, April 2008, February 2013, August 2013, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give this instruction defining the elements of the crime.

In addition, the court has a **sua sponte** duty to instruct on the elements of the alleged underlying crime.

Give the bracketed definition of “consent” on request.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913], overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) Give the bracketed paragraph on the defense of consent. On request, if supported by the evidence, also give the bracketed paragraph that begins with “Consent may be withdrawn.” (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The defendant’s reasonable and actual belief in the victim’s consent to go with the defendant may be a defense. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].)

Timing of Necessary Intent

No court has specifically stated whether the necessary intent must precede all movement of the victim, or only one phase of it involving an independently adequate asportation.

Related Instructions

Kidnapping a child for the purpose of committing a lewd or lascivious act is a separate crime under Penal Code section 207(b). See CALCRIM No. 1200, *Kidnapping: For Child Molestation*.

AUTHORITY

- Elements. ▶ Pen. Code, § 209(b)(1); *People v. Robertson* (2012) 208 Cal. App. 4th 965, 982 [146 Cal.Rptr.3d 66]; *People v. Vines* (2011) 51 Cal.4th 830, 869–870 & fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; *People v. Martinez* (1999) 20 Cal.4th 225, 232 & fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512]; *People v. Rayford* (1994) 9 Cal.4th 1 [36 Cal.Rptr.2d 317]; *People v. Daniels* (1969) 71 Cal.2d. 1119 [80 Cal.Rptr. 897, 459 P.2d 225].
- Robbery Defined. ▶ Pen. Code, § 211.
- Rape Defined. ▶ Pen. Code, § 261.
- Other Sex Offenses Defined. ▶ Pen. Code, §§ 262 [spousal rape], 264.1 [acting in concert], 286 [sodomy], 287 [oral copulation], 289 [sexual penetration].
- Intent to Commit Robbery Must Exist at Time of Original Taking. ▶ *People v. Tribble* (1971) 4 Cal.3d 826, 830–832 [94 Cal.Rptr. 613, 484 P.2d 589]; *People v. Bailey* (1974) 38 Cal.App.3d 693, 699 [113 Cal.Rptr. 514]; see *People v. Thornton* (1974) 11 Cal.3d 738, 769–770 [114 Cal.Rptr. 467], overruled on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668 [160 Cal.Rptr. 84, 603 P.2d 1].
- Kidnapping to Effect Escape From Robbery. ▶ *People v. Laursen* (1972) 8 Cal.3d 192, 199–200 [104 Cal.Rptr. 425, 501 P.2d 1145] [violation of section 209 even though intent to kidnap formed after robbery commenced].
- Kidnapping Victim Need Not Be Robbery Victim. ▶ *People v. Laursen* (1972) 8 Cal.3d 192, 200, fn. 7 [104 Cal.Rptr. 425, 501 P.2d 1145].
- Use of Force or Fear. ▶ See *People v. Martinez* (1984) 150 Cal.App.3d 579, 599–600 [198 Cal.Rptr. 565], disapproved on other grounds in *People v. Hayes* (1990) 52 Cal.3d 577, 627–628, fn. 10 [276 Cal.Rptr. 874, 802 P.2d 376]; *People v. Jones* (1997) 58 Cal.App.4th 693, 713–714 [68 Cal.Rptr.2d 506].
- Movement of Victim Need Not Substantially Increase Risk of Harm to Victim. ▶ *People v. Robertson* (2012) 208 Cal.App.4th 965, 982 [146 Cal.Rptr.3d 66]; *People v. Vines* (2011) 51 Cal.4th 830, 870 fn. 20 [124 Cal.Rptr.3d 830, 251 P.3d 943]; *People v. Martinez* (1999) 20 Cal.4th 225, 232 fn. 4 [83 Cal.Rptr.2d 533, 973 P.2d 512].

- Movement Must Be for Illegal Purpose or Intent if Victim Incapable of Consent. ▶ *In re Michele D.* (2002) 29 Cal.4th 600, 610–611 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Oliver* (1961) 55 Cal.2d 761, 768 [12 Cal.Rptr. 865, 361 P.2d 593].

LESSER INCLUDED OFFENSES

- Kidnapping. ▶ Pen. Code, § 207; *People v. Bailey* (1974) 38 Cal.App.3d 693, 699 [113 Cal.Rptr. 514]; see *People v. Jackson* (1998) 66 Cal.App.4th 182, 189 [77 Cal.Rptr.2d 564].
- ~~Attempted Kidnapping. ▶ Pen. Code, §§ 664, 207.~~
- False Imprisonment. ▶ Pen. Code, §§ 236, 237; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866]; *People v. Shadden* (2001) 93 Cal.App.4th 164, 171 [112 Cal.Rptr.2d 826].

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Psychological Harm

Psychological harm may be sufficient to support conviction for aggravated kidnapping under Penal Code section 209(b). An increased risk of harm is not limited to a risk of bodily harm. (*People v. Nguyen* (2000) 22 Cal.4th 872, 885–886 [95 Cal.Rptr.2d 178, 997 P.2d 493] [substantial movement of robbery victim that posed substantial increase in risk of psychological trauma beyond that expected from stationary robbery].)

SECONDARY SOURCES

1 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against the Person, §§ 293–300, 310, 311–313.

5 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 91, *Sentencing*, § 91.38[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

Kidnapping

1215 Kidnapping (Pen. Code, § 207(a))

The defendant is charged [in Count __] with kidnapping [in violation of Penal Code section 207(a)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant took, held, or detained another person by using force or by instilling reasonable fear;
2. Using that force or fear, the defendant moved the other person [or made the other person move] a substantial distance;

[AND]

3. The other person did not consent to the movement(;/.)

<Give element 4 when instructing on reasonable belief in consent.>

[AND]

4. The defendant did not actually and reasonably believe that the other person consented to the movement.]

[In order to *consent*, a person must act freely and voluntarily and know the nature of the act.]

Substantial distance means more than a slight or trivial distance. In deciding whether the distance was substantial, you must consider all the circumstances relating to the movement. [Thus, in addition to considering the actual distance moved, you may also consider other factors such as [whether the distance the other person was moved was beyond that merely incidental to the commission of _____ <insert associated crime>], whether the movement increased the risk of [physical or psychological] harm, increased the danger of a foreseeable escape attempt, or gave the attacker a greater opportunity to commit additional crimes, or decreased the likelihood of detection.]

<Defense: Good Faith Belief in Consent>

[The defendant is not guilty of kidnapping if (he/she) reasonably and actually believed that the other person consented to the movement. The People have the burden of proving beyond a reasonable doubt that the defendant did not reasonably and actually believe that the other person consented to the movement. If the People have not met this burden, you must find the defendant not guilty of this crime.]

<Defense: Consent Given>

[The defendant is not guilty of kidnapping if the other person consented to go with the defendant. The other person consented if (he/she) (1) freely and voluntarily agreed to go with or be moved by the defendant, (2) was aware of the movement, and (3) had sufficient maturity and understanding to choose to go with the defendant. The People have the burden of proving beyond a reasonable doubt that the other person did not consent to go with the defendant. If the People have not met this burden, you must find the defendant not guilty of this crime.]

[Consent may be withdrawn. If, at first, a person agreed to go with the defendant, that consent ended if the person changed his or her mind and no longer freely and voluntarily agreed to go with or be moved by the defendant. The defendant is guilty of kidnapping if after the other person withdrew consent, the defendant committed the crime as I have defined it.]

New January 2006; Revised October 2010, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

In the paragraph defining “substantial distance,” give the bracketed sentence listing factors that the jury may consider, when evidence permits, in evaluating the totality of the circumstances. (*People v. Martinez* (1999) 20 Cal.4th 225, 237 [83 Cal.Rptr.2d 533, 973 P.2d 512].) However, in the case of simple kidnapping, if the movement was for a substantial distance, the jury does not need to consider any other factors. (*People v. Martinez*, *supra*, 20 Cal.4th at p. 237; see *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058].)

The court must give the bracketed language on movement incidental to an associated crime when it is supported by the evidence. (*People v. Martinez*, *supra*,

20 Cal.4th at p. 237; *People v. Bell* (2009) 179 Cal.App.4th 428, 439 [102 Cal.Rptr.3d 300].)

Give the bracketed definition of “consent” on request.

Defenses—Instructional Duty

The court has a **sua sponte** duty to instruct on the defense of consent if there is sufficient evidence to support the defense. (See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [approving consent instruction as given]; see also *People v. Sedeno* (1974) 10 Cal.3d 703, 717, fn. 7 [112 Cal.Rptr. 1, 518 P.2d 913] overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165 [77 Cal.Rptr.2d 870, 960 P.2d 1094] [when court must instruct on defenses].) An optional paragraph is provided for this purpose, “Defense: Consent Given.”

On request, if supported by the evidence, also give the bracketed paragraph that begins with “Consent may be withdrawn.” (See *People v. Camden* (1976) 16 Cal.3d 808, 814 [129 Cal.Rptr. 438, 548 P.2d 1110].)

The court has a **sua sponte** duty to instruct on the defendant’s reasonable and actual belief in the victim’s consent to go with the defendant, if supported by the evidence. (See *People v. Greenberger* (1997) 58 Cal.App.4th 298, 375 [68 Cal.Rptr.2d 61]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279] [reasonable, good faith belief that victim consented to movement is a defense to kidnapping].) Give bracketed element 4 and the bracketed paragraph on the defense.

Related Instructions

If the victim is incapable of consent because of immaturity or mental condition, see CALCRIM No. 1201, *Kidnapping: Child or Person Incapable of Consent*.

A defendant may be prosecuted for both the crimes of child abduction and kidnapping. Child abduction or stealing is a crime against the parents, while kidnapping is a crime against the child. (*In re Michele D.* (2002) 29 Cal.4th 600, 614 [128 Cal.Rptr.2d 92, 59 P.3d 164]; *People v. Campos* (1982) 131 Cal.App.3d 894, 899 [182 Cal.Rptr. 698].) See CALCRIM No. 1250, *Child Abduction: No Right to Custody*.

For instructions relating to other defenses to kidnapping, see CALCRIM No. 1225, *Defense to Kidnapping: Protecting Child From Imminent Harm*, and CALCRIM No. 1226, *Defense to Kidnapping: Citizen’s Arrest*.

AUTHORITY

- Elements. ▶ Pen. Code, § 207(a).
- Punishment If Victim Under 14 Years of Age. ▶ Pen. Code, § 208(b); *People v. Magpuso* (1994) 23 Cal.App.4th 112, 118 [28 Cal.Rptr.2d 206] [ignorance of victim’s age not a defense].
- Asportation Requirement. ▶ *People v. Martinez* (1999) 20 Cal.4th 225, 235–237 [83 Cal.Rptr.2d 533, 973 P.2d 512] [adopting modified two-pronged asportation test from *People v. Rayford* (1994) 9 Cal.4th 1, 12–14 [36 Cal.Rptr.2d 317, 884 P.2d 1369], and *People v. Daniels* (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225]].
- Consent to Physical Movement. ▶ See *People v. Davis* (1995) 10 Cal.4th 463, 516–518 [41 Cal.Rptr.2d 826, 896 P.2d 119].
- Force or Fear Requirement. ▶ *People v. Moya* (1992) 4 Cal.App.4th 912, 916–917 [6 Cal.Rptr.2d 323]; *People v. Stephenson* (1974) 10 Cal.3d 652, 660 [111 Cal.Rptr. 556, 517 P.2d 820]; see *People v. Davis* (1995) 10 Cal.4th 463, 517, fn. 13, 518 [41 Cal.Rptr.2d 826, 896 P.2d 119] [kidnapping requires use of force or fear; consent not vitiated by fraud, deceit, or dissimulation].
- Good Faith Belief in Consent. ▶ Pen. Code, § 26(3) [mistake of fact]; *People v. Mayberry* (1975) 15 Cal.3d 143, 153–155 [125 Cal.Rptr. 745, 542 P.2d 1337]; *People v. Isitt* (1976) 55 Cal.App.3d 23, 28 [127 Cal.Rptr. 279]; *People v. Patrick* (1981) 126 Cal.App.3d 952, 968 [179 Cal.Rptr. 276].
- Incidental Movement Test. ▶ *People v. Martinez* (1999) 20 Cal.4th 225, 237–238 [83 Cal.Rptr.2d 533, 973 P.2d 512].
- Intent Requirement. ▶ *People v. Thornton* (1974) 11 Cal.3d 738, 765 [114 Cal.Rptr. 467, 523 P.2d 267], disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Davis* (1995) 10 Cal.4th 463, 519 [41 Cal.Rptr.2d 826, 896 P.2d 119]; *People v. Moya* (1992) 4 Cal.App.4th 912, 916 [6 Cal.Rptr.2d 323].
- Substantial Distance Requirement. ▶ *People v. Derek Daniels* (1993) 18 Cal.App.4th 1046, 1053; *People v. Stanworth* (1974) 11 Cal.3d 588, 600–601 [114 Cal.Rptr. 250, 522 P.2d 1058] [since movement must be more than slight or trivial, it must be substantial in character].

COMMENTARY

Penal Code section 207(a) uses the term “steals” in defining kidnapping not in the sense of a theft, but in the sense of taking away or forcible carrying away. (*People v. McCullough* (1979) 100 Cal.App.3d 169, 176 [160 Cal.Rptr. 831].) The instruction uses “take,” “hold,” or “detain” as the more inclusive terms, but

includes in brackets the statutory terms “steal” and “arrest” if either one more closely matches the evidence.

LESSER INCLUDED OFFENSES

~~• Attempted Kidnapping ▶ Pen. Code, §§ 664, 207; *People v. Fields* (1976) 56 Cal.App.3d 954, 955–956 [129 Cal.Rptr. 24].~~

- False Imprisonment ▶ Pen. Code, §§ 236, 237; *People v. Magana* (1991) 230 Cal.App.3d 1117, 1120–1121 [281 Cal.Rptr. 338]; *People v. Gibbs* (1970) 12 Cal.App.3d 526, 547 [90 Cal.Rptr. 866].

Attempted kidnapping is not a lesser included offense of simple kidnapping under subdivision (a) of section 207. (*People v. Fontenot* (2019) 8 Cal.5th 57, 65-71 [251 Cal.Rptr.3d 341, 447 P.3d 252].)

RELATED ISSUES

Victim Must Be Alive

A victim must be alive when kidnapped. (*People v. Hillhouse* (2002) 27 Cal.4th 469, 498 [117 Cal.Rptr.2d 45, 40 P.3d 754].)

Threat of Arrest

“[A]n implicit threat of arrest satisfies the force or fear element of section 207(a) kidnapping if the defendant’s conduct or statements cause the victim to believe that unless the victim accompanies the defendant the victim will be forced to do so, and the victim’s belief is objectively reasonable.” (*People v. Majors* (2004) 33 Cal.4th 321, 331 [14 Cal.Rptr.3d 870, 92 P.3d 360].)

SECONDARY SOURCES

1 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against the Person, §§ 281–291, 316.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.38 (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 142, *Crimes Against the Person*, § 142.14 (Matthew Bender).

Arson

1500. Aggravated Arson (Pen. Code, § 451.5)

If you find the defendant guilty of arson [as charged in Count[s] __], you must then decide whether[, for each crime of arson,] the People have proved the additional allegation that the arson was aggravated. [You must decide whether the People have proved this allegation for each crime of arson and return a separate finding for each crime of arson.]

To prove this allegation, the People must prove that:

1. The defendant acted willfully, maliciously, deliberately, and with premeditation;

[AND]

2. The defendant acted with intent to injure one or more persons, or to damage property under circumstances likely to injure one or more persons, or to damage one or more structures or inhabited dwellings(;/.)

[AND

<Alternative 3A—loss exceeding \$~~7~~8.3 million>

[3A. The fire caused property damage and other losses exceeding \$~~7~~8.3 million[, including the cost of fire suppression].]

[OR]

<Alternative 3B—destroyed five or more inhabited structures>

[3B. The fire damaged or destroyed five or more inhabited structures.]]

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

The defendant acted *deliberately* if (he/she) carefully weighed the considerations for and against (his/her) choice and, knowing the

consequences, decided to commit the arson. The defendant acted with *premeditation* if (he/she) decided to commit the arson before committing the act that caused the arson.

[The length of time the person spends considering whether to commit arson does not alone determine whether the arson is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to commit arson made rashly, impulsively, or without careful consideration of the choice and its consequences is not deliberate and premeditated. On the other hand, a cold, calculated decision to commit arson can be reached quickly. The test is the extent of the reflection, not the length of time.]

[A (dwelling/ [or] structure) is *inhabited* if someone lives there and either is present or has left but intends to return.]

[A (dwelling/ [or] structure) is *inhabited* if someone used it as a dwelling and left only because a natural or other disaster caused him or her to leave.]

[A (dwelling/ [or] structure) is not *inhabited* if the former residents have moved out and do not intend to return, even if some personal property remains inside.]

[A *dwelling* includes any (structure/garage/office/_____) that is attached to the house and functionally connected with it.]

The People have the burden of proving each allegation beyond a reasonable doubt. If the People have not met this burden, you must find that the allegation has not been proved.

New January 2006; Revised August 2015, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the sentencing factor if the defendant is charged with aggravated arson.

If the prosecution alleges that the fire caused more than 78.3 million dollars in damage, give alternative A in element 3. If the prosecution alleges that the fire damaged five or more inhabited structures, give alternative B in element 3.

If the prosecution alleges that the defendant was previously convicted of arson within ten years of the current offense, give elements 1 and 2 only. The court must also give either CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial*, or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*, unless the defendant has stipulated to the truth of the prior conviction.

The definitions of “deliberation” and “premeditation” and the bracketed paragraph that begins with “The length of time” are derived from the first degree murder instruction because no recorded case construes their meaning in the context of Penal Code section 451.5. (See CALCRIM No. 521, *Murder: Degrees*.)

Give the bracketed definitions of inhabited dwelling or structure if relevant.

If there is an issue as to whether the fire *caused* the property damage, give CALCRIM No. 240, *Causation*.

AUTHORITY

- Enhancement. ▶ Pen. Code, § 451.5.
- Inhabitation Defined. ▶ Pen. Code, § 459.
- House Not Inhabited Means Former Residents Not Returning ▶ *People v. Cardona* (1983) 142 Cal.App.3d 481, 483 [191 Cal.Rptr. 109].

LESSER INCLUDED OFFENSES

[Arson under section 451 is not a lesser included offense of aggravated arson. \(People v. Shiga \(2019\) 34 Cal.App.5th 466, 483 \[246 Cal.Rptr.3d 198\].\)](#)

RELATED ISSUES

See the Related Issues section to CALCRIM No. 1515, *Arson*.

SECONDARY SOURCES

2 Witkin & Epstein, *California Criminal Law* (4th ed. 2012) Crimes Against Property §§ 268-273.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1501. Arson: Great Bodily Injury (Pen. Code, § 451)

The defendant is charged [in Count __] with arson that caused great bodily injury [in violation of Penal Code section 451].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant set fire to or burned [or (counseled[,]/ [or] helped[,]/ [or] caused) the burning of] (a structure/forest land/property);
2. (He/She) acted willfully and maliciously;

AND

3. The fire caused great bodily injury to another person.

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

[A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent).]

[*Forest land* means brush-covered land, cut-over land, forest, grasslands, or woods.]

[*Property* means personal property or land other than forest land.]

[A person does not commit arson if the only thing burned is his or her own personal property, unless he or she acts with the intent to defraud, or the fire also injures someone else or someone else's structure, forest land, or property.]

New January 2006; Revised February 2013, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

AUTHORITY

- Elements ▶ Pen. Code, § 451.
- Great Bodily Injury ▶ Pen. Code, § 12022.7(f).
- Structure, Forest Land, and Maliciously Defined ▶ Pen. Code, § 450.
- To Burn Defined ▶ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Arson ▶ Pen. Code, § 451.
- Attempted Arson ▶ Pen. Code, § 455.
- Unlawfully Causing a Fire ▶ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

RELATED ISSUES

See the Related Issues section under CALCRIM No. 1515, *Arson*.

Dual Convictions Prohibited

A single act of arson cannot result in convictions under different subdivisions of Penal Code section 451. (*People v. Shiga* (2019) 34 Cal.App.5th 466, 475 [246 Cal.Rptr.3d 198].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268-276.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

Arson

1502. Arson: Inhabited Structure or Property (Pen. Code, § 451(b))

The defendant is charged [in Count __] with arson that burned an (inhabited structure /[or] inhabited property) [in violation of Penal Code section 451(b)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant set fire to or burned [or (counseled[,]/ [or] helped[,]/ [or] caused) the burning of] (a structure/[or] property);
2. (He/She) acted willfully and maliciously;

AND

3. The fire burned an (inhabited structure /[or] inhabited property).

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.

A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent.)

A (structure /[or] property) is *inhabited* if someone uses it as a dwelling, whether or not someone is inside at the time of the fire. An (inhabited structure /[or] inhabited property) does not include the land on which it is located.

[*Property* means personal property or land other than forest land.]

New January 2006; Revised February 2013, August 2016, March 2017, September 2019, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

AUTHORITY

- Elements ▶ Pen. Code, § 451(b).
- Inhabited Defined ▶ Pen. Code, § 450; *People v. Jones* (1988) 199 Cal.App.3d 543 [245 Cal.Rptr. 85].
- Inhabitant Must Be Alive at Time of Arson ▶ *People v. Vang* (2016) 1 Cal.App.5th 377, 382-387 [204 Cal.Rptr.3d 455].
- Structure and Maliciously Defined ▶ Pen. Code, § 450.
- To Burn Defined ▶ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Arson ▶ Pen. Code, § 451.
- Attempted Arson ▶ Pen. Code, § 455.
- Unlawfully Causing a Fire ▶ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

RELATED ISSUES

Inhabited Apartment

Defendant's conviction for arson of an inhabited structure was proper where he set fire to his estranged wife's apartment several days after she had vacated it. Although his wife's apartment was not occupied, it was in a large apartment building where many people lived; it was, therefore, occupied for purposes of the

arson statute. (*People v. Green* (1983) 146 Cal.App.3d 369, 378–379 [194 Cal.Rptr. 128].)

Dual Convictions Prohibited

A single act of arson cannot result in convictions under different subdivisions of Penal Code section 451. (*People v. Shiga* (2019) 34 Cal.App.5th 466, 475 [246 Cal.Rptr.3d 198].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268-276.

5 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 91, *Sentencing*, § 91.47[1] (Matthew Bender).

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1503–1514. Reserved for Future Use

Arson

1515. Arson (Pen. Code, § 451(c-d))

The defendant is charged [in Count __] with arson [in violation of Penal Code section 451(c/d)].

To prove that the defendant is guilty of this crime, the People must prove that:

1. The defendant set fire to or burned [or (counseled[,]/ [or] helped[,]/ [or] caused) the burning of] (a structure/forest land/property);

AND

2. (He/She) acted willfully and maliciously.

To *set fire to or burn* means to damage or destroy with fire either all or part of something, no matter how small the part.

Someone commits an act *willfully* when he or she does it willingly or on purpose.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to defraud, annoy, or injure someone else.

[A *structure* is any (building/bridge/tunnel/power plant/commercial or public tent).]

[*Forest land* means brush-covered land, cut-over land, forest, grasslands, or woods.]

[*Property* means personal property or land other than forest land.]

[A person does not commit arson if the only thing burned is his or her own personal property, unless he or she acts with the intent to defraud, or the fire also injures someone else or someone else's structure, forest land, or property.]

New January 2006; Revised February 2013, August 2016, March 2020

BENCH NOTES***Instructional Duty***

The court has a **sua sponte** duty to give an instruction defining the elements of the crime.

Related Instructions

If it is also alleged that the fire caused great bodily injury or burned an inhabited structure or property, see CALCRIM No. 1501, *Arson: Great Bodily Injury* and CALCRIM No. 1502, *Arson: Inhabited Structure*.

If attempted arson is charged, do not instruct generally on attempts but give CALCRIM No. 1520, *Attempted Arson*. (Pen. Code, § 455.)

AUTHORITY

- Elements ▶ Pen. Code, § 451(c-d).
- Structure, Forest Land, and Maliciously Defined ▶ Pen. Code, § 450; see *People v. Labaer* (2001) 88 Cal.App.4th 289, 293–294 [105 Cal.Rptr.2d 629] [“structure” does not require finished or completed building].
- General Intent Crime ▶ *People v. Atkins* (2001) 25 Cal.4th 76, 83–84, 86 [104 Cal.Rptr.2d 738, 18 P.3d 660] [evidence of voluntary intoxication not admissible to negate mental state].
- Property Defined ▶ *In re L.T.* (2002) 103 Cal.App.4th 262, 264–265 [126 Cal.Rptr.2d 778].
- To Burn Defined ▶ *People v. Haggerty* (1873) 46 Cal. 354, 355; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 166–167 [270 Cal.Rptr. 389].

LESSER INCLUDED OFFENSES

- Attempted Arson ▶ Pen. Code, § 455.
- Unlawfully Causing a Fire ▶ *People v. Hooper* (1986) 181 Cal.App.3d 1174, 1182 [226 Cal.Rptr. 810], disapproved of in *People v. Barton* (1995) 12 Cal.4th 186 [47 Cal.Rptr.2d 569, 906 P.2d 531] on its holding that failure to instruct on this crime as a lesser included offense of arson was invited error because defense counsel objected to such instruction; *People v. Schwartz* (1992) 2 Cal.App.4th 1319, 1324 [3 Cal.Rptr.2d 816].

RELATED ISSUES**Fixtures**

Fire damage to fixtures within a building may satisfy the burning requirement if the fixtures are an integral part of the structure. (*In re Jesse L.* (1990) 221

Cal.App.3d 161, 167–168 [270 Cal.Rptr. 389]; *People v. Lee* (1994) 24 Cal.App.4th 1773, 1778 [30 Cal.Rptr.2d 224] [whether wall-to-wall carpeting is a fixture is question of fact for jury.]

Property: Clothing

Arson includes burning a victim’s clothing. (*People v. Reese* (1986) 182 Cal.App.3d 737, 739–740 [227 Cal.Rptr. 526].)

Property: Trash

Burning trash that does not belong to the defendant is arson. There is no requirement for arson that the property belong to anyone. (*In re L.T.* (2002) 103 Cal.App.4th 262, 264 [126 Cal.Rptr.2d 778].)

Dual Convictions Prohibited

A single act of arson cannot result in convictions under different subdivisions of Penal Code section 451. (*People v. Shiga* (2019) 34 Cal.App.5th 466, 475 [246 Cal.Rptr.3d 198].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property, §§ 268-276.

6 Millman, Sevilla & Tarlow, California Criminal Defense Practice, Ch. 143, *Crimes Against Property*, § 143.11 (Matthew Bender).

1516–1519. Reserved for Future Use

Theft and Extortion

1801. Grand and Petty Theft (Pen. Code, §§ 486, 487–488, 490.2, 491)

If you conclude that the defendant committed a theft, you must decide whether the crime was grand theft or petty theft.

[The defendant committed petty theft if (he/she) stole property [or services] worth \$950 or less.]

[The defendant committed grand theft if the value of the property [or services] is more than \$950.]

[Theft of property from the person is grand theft if the value of the property is more than \$950. Theft is *from the person* if the property taken was in the clothing of, on the body of, or in a container held or carried by, that person.]

[Theft of (an automobile/ ~~a firearm~~/a horse/ _____ <insert other item listed in statute>) is grand theft if the value of the property is more than \$950.]

[Theft of a firearm is grand theft.]

[Theft of (fruit/nuts/ _____ <insert other item listed in statute>) worth more than \$950 is grand theft.]

[Theft of (fish/shellfish/aquacultural products/ _____ <insert other item listed in statute>) worth more than \$950 is grand theft if (it/they) (is/are) taken from a (commercial fishery/research operation).]

[The value of _____ <insert relevant item enumerated in Pen. Code, § 487(b)(1)(B)> may be established by evidence proving that on the day of the theft, the same items of the same variety and weight as those stolen had a wholesale value of more than \$950.]

[The value of (property/services) is the fair (market value of the property/market wage for the services performed).]

<Fair Market Value—Generally>

[Fair market value is the highest price the property would reasonably have been sold for in the open market at the time of, and in the general location of, the theft.]

<Fair Market Value—Urgent Sale>

[Fair market value is the price a reasonable buyer and seller would agree on if the buyer wanted to buy the property and the seller wanted to sell it, but neither was under an urgent need to buy or sell.]

The People have the burden of proving beyond a reasonable doubt that the theft was grand theft rather than a lesser crime. If the People have not met this burden, you must find the defendant not guilty of grand theft.

New January 2006; Revised February 2012, August 2015, March 2020

BENCH NOTES

Instructional Duty

The court has a **sua sponte** duty to give an instruction if grand theft has been charged.

When the People allege the defendant has a prior conviction for an offense listed in Penal Code section 667(e)(2)(C)(iv) or for an offense requiring registration pursuant to subdivision (c) of section 290, give CALCRIM No. 3100, *Prior Conviction: Nonbifurcated Trial* or CALCRIM No. 3101, *Prior Conviction: Bifurcated Trial*.

If the evidence raises an issue that the value of the property may be inflated or deflated because of some urgency on the part of either the buyer or seller, the second bracketed paragraph on fair market value should be given.

AUTHORITY

- Determination of Grand vs. Petty Theft ▶ Pen. Code, §§ 486, 487–488, 490.2, 491.
- Value/Nature of Property/Theft from the Person ▶ Pen. Code, §§ 487(b)-(d), 487a.
- Theft of a firearm is grand theft ▶ Pen. Code, §§ 487(d)(2), 490.2(c)

RELATED ISSUES

Proposition 47 (Penal Code Section 490.2)

After the passage of Proposition 47 in 2014, theft is defined in Penal Code section 487 as a misdemeanor unless the value of the property taken exceeds \$950. Pen. Code, § 490.2. This represents a change from the way grand theft was defined under Penal Code section 487(b)-(d) before the enactment of Proposition 47. In

2016, Proposition 63 added subdivision (c) to Pen. Code, § 490.2 (excepting theft of a firearm).

Taking From the Person

To constitute a taking from the person, the property must, in some way, be physically attached to the person. (*People v. Williams* (1992) 9 Cal.App.4th 1465, 1472 [12 Cal.Rptr.2d 243].) Applying this rule, the court in *Williams* held that a purse taken from the passenger seat next to the driver was not a taking from the person. (*Ibid.* [see generally for court’s discussion of origins of this rule].)

Williams was distinguished by the court in *People v. Huggins* (1997) 51 Cal.App.4th 1654, 1656–1657 [60 Cal.Rptr.2d 177], where evidence that the defendant took a purse placed on the floor next to and touching the victim’s foot was held sufficient to establish a taking from the person. The victim intentionally placed her foot next to her purse, physically touching it and thereby maintaining dominion and control over it.

Theft of Fish, Shellfish, or Aquacultural Products

Fish taken from public waters are not “property of another” within the meaning of Penal Code section 484 and 487; only the Fish and Game Code applies to such takings. (*People v. Brady* (1991) 234 Cal.App.3d 954, 959, 961–962 [286 Cal.Rptr. 19]; see, e.g., Fish & Game Code, § 12006.6 [unlawful taking of abalone].)

Value of Written Instrument

If the thing stolen is evidence of a debt or some other written instrument, its value is (1) the amount due or secured that is unpaid, or that might be collected in any contingency, (2) the value of the property, title to which is shown in the instrument, or (3) or the sum that might be recovered in the instrument’s absence. (Pen. Code, § 492; see *Buck v. Superior Court* (1966) 245 Cal.App.2d 431, 438 [54 Cal.Rptr. 282] [trust deed securing debt]; *People v. Frankfort* (1952) 114 Cal.App.2d 680, 703 [251 P.2d 401] [promissory notes and contracts securing debt]; *People v. Quiel* (1945) 68 Cal.App.2d 674, 678 [157 P.2d 446] [unpaid bank checks]; see also Pen. Code, §§ 493 [value of stolen passage tickets], 494 [completed written instrument need not be issued or delivered].) If evidence of a debt or right of action is embezzled, its value is the sum due on or secured by the instrument. (Pen. Code, § 514.) Section 492 only applies if the written instrument has value and is taken from a victim. (See *People v. Sanders* (1998) 67 Cal.App.4th 1403, 1414, fn. 16 [79 Cal.Rptr.2d 806].)

SECONDARY SOURCES

2 Witkin & Epstein, California Criminal Law (4th ed. 2012) Crimes Against Property §§ 4, 8.

6 Millman, Sevilla & Tarlow, *California Criminal Defense Practice*, Ch. 143, *Crimes Against Property*, § 143.01 (Matthew Bender).

Guide

Guide for Using Judicial Council of California Criminal Jury Instructions (CALCRIM)

The Judicial Council jury instructions are accurate, designed to be easy to understand, and easy to use. This guide provides an introduction to the instructions and explains conventions and features that will assist in their use.

In order to fulfill its mandate pursuant to Rule 10.59 of the California Rules of Court¹ to maintain the criminal jury instructions, members of the advisory committee meet several times a year to consider changes in statutes, appellate opinions, and suggestions from practitioners. *It bears emphasis that when the committee proposes changing a jury instruction, that does not necessarily mean the previous version of the instruction was incorrect.* Often the committee proposes changes for reasons of style, consistency among similar instructions, and to improve clarity.

Judicial Council Instructions Endorsed by Rule of Court

Rule 2.1050 of the California Rules of Court provides:

The California jury instructions approved by the Judicial Council are the official instructions for use in the state of California ...

The Judicial Council endorses these instructions for use and makes every effort to ensure that they accurately state existing law ...

Use of the Judicial Council instructions is strongly encouraged.

Using the Instructions

Bench Notes

The text of each instruction is followed by a section in the Bench Notes titled “Instructional Duty,” which alerts the user to any *sua sponte* duties to instruct and special circumstances raised by the instruction. It may also include references to other instructions that should or should not be used. In some instances, the directions include suggestions for modification. In the “Authority” section, all of the pertinent sources for the instruction are listed, ~~including secondary source materials~~. Some of the instructions also have sections containing “Related Issues” and “Commentary.” The Bench Notes also refer to any relevant lesser included offenses. Secondary sources appear at the end of instructions. The official publisher, and not the Judicial Council, is responsible for updating the citations for secondary sources. Users should consult the Bench Notes before using an instruction. Italicized notes between angle brackets in the language of the instruction itself signal important issues or choices. For example, in instruction 1750, Receiving Stolen Property, optional element 3 is introduced thus: *<Give element 3 when instructing on knowledge of presence of property; see Bench Notes>*.

Multiple-Defendant and Multiple-Count Cases

These instructions were drafted for the common case in which a single defendant is on trial. The HotDocs document assembly program from the Judicial Council’s official publisher, LexisNexis, will modify the instructions for use in multi-defendant cases. It will also allow the user to name the defendants charged in a particular instruction if the instruction applies only to some of the defendants on trial in the case.

¹Rule 10.59(a) states: “The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council’s criminal jury instructions.”

It is impossible to predict the possible fact combinations that may be present when a crime is charged multiple times or committed by different defendants against different victims involving different facts. Thus, when an instruction is being used for more than one count and the factual basis for the instruction is different for the different counts, the user will need to modify the instruction as appropriate.

Related California Jury Instructions, Criminal (CALJIC)

The CALJIC and CALCRIM instructions should *never* be used together. While the legal principles are obviously the same, the organization of concepts is approached differently. Mixing the two sets of instructions into a unified whole cannot be done and may result in omissions or confusion that could severely compromise clarity and accuracy. Nevertheless, for convenient reference this publication includes tables of related CALJIC instructions.

Titles and Definitions

The titles of the instructions are directed to lawyers and sometimes use words and phrases not used in the instructions themselves. The title is not a part of the instruction. The titles may be removed before presentation to the jury.

The instructions avoid separate definitions of legal terms whenever possible. Instead, definitions have been incorporated into the language of the instructions in which the terms appear. When a definition is lengthy, a cross-reference to that definition is provided.

Defined terms are printed in italics in the text of the definition.

Alternatives vs. Options

When the user must choose one of two or more options in order to complete the instruction, the choice of necessary alternatives is presented in parentheses thus: *When the defendant acted, George Jones was performing (his/her) duties as a school employee.*

The instructions use brackets to provide optional choices that may be necessary or appropriate, depending on the individual circumstances of the case: *[If you find that George Jones threatened or harmed the defendant [or others] in the past, you may consider that information in evaluating the defendant's beliefs.]*

Finally, both parentheses and brackets may appear in the same sentence to indicate options that arise depending on which necessary alternatives are selected: *[It is not required that the person killed be the (victim/intended victim) of the (felony/ [or] felonies).]*

General and Specific Intent

The instructions do not use the terms general and specific intent because while these terms are very familiar to judges and lawyers, they are novel and often confusing to many jurors. Instead, if the defendant must specifically intend to commit an act, the particular intent required is expressed without using the term of art “specific intent.” Instructions 250–254 provide jurors with additional guidance on specific vs. general intent crimes and the union of act and intent.

Organization of the Instructions

The instructions are organized into 24 series, which reflect broad categories of crime (e.g., Homicide) and other components of the trial (e.g., Evidence). The series, and the instructions within each series, are presented in the order in which they are likely to be given in an actual trial. As a result, greater offenses (like DUI with injury) come before lesser offenses (DUI). All of the defenses are grouped together at the end of the instructions, rather than dispersed throughout. The misdemeanors are placed within the category of instructions to which they belong, so simple battery is found with the other battery instructions rather than in a stand-alone misdemeanor section.

Lesser Included Offenses

Users may wish to modify instructions used to explain lesser included offenses by replacing the standard introductory sentence, “**The defendant is charged with A .**” with “**The crime of _____ (e.g., false imprisonment) is a lesser offense than the crime of _____ (e.g., kidnapping)**” to amplify the explanation provided in instructions 3517–3519: “**_____ <insert crime> is a lesser crime of _____ <insert crime> [charged in Count _____].**”

When giving the lesser included offense instructions 640 and 641 (homicide) or instructions 3517–3519 (non-homicide), no further modification of the corresponding instructions on lesser crimes is necessary to

comply with the requirements of *People v. Dewberry* (1959) 51 Cal.2d 548.

Burden of Production/Burden of Proof

The instructions never refer to the “burden of producing evidence.” The drafters concluded that it is the court’s decision whether the party has met the burden of production. If the burden is not met, no further instruction is necessary. The question for the jury is whether a party has met its properly allocated burden based on the evidence received.

Instruction 103 on Reasonable Doubt states, “Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt [unless I specifically tell you otherwise].” Thus, when the concept of reasonable doubt is explained and defined, the jury is told that it is the standard that applies to every issue the People must prove, unless the court specifically informs the jury otherwise.

Sentencing Factors and Enhancements

Because the law is rapidly evolving regarding when sentencing factors and enhancements must be submitted to the jury, we have provided “template” instructions 3250 and 3251 so that the court may tailor an appropriate instruction that corresponds to this emerging body of law.

Personal pronouns

Many instructions include an option to insert the personal pronouns "he/she," "his/her," or "him/her." The committee does not intend these options to be limiting. It is the policy of the State of California that nonbinary people are entitled to full legal recognition and equal treatment under the law. In accordance with this policy, attorneys and courts should ensure that they are using preferred personal pronouns.



JUDICIAL COUNCIL OF CALIFORNIA

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

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No. 20-081

For business meeting on March 24, 2020

Title

Report to the Legislature: Trial Court
Interpreters Program Expenditure Report for
Fiscal Year 2018–19

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

February 14, 2020

Recommended by

Judicial Council staff
Douglas G. Denton, Principal Manager
Language Access Services
Center for Families, Children & the Courts

Contact

Douglas G. Denton, 415-865-7870
douglas.denton@jud.ca.gov

Executive Summary

The Judicial Council's Language Access Services recommends approving the annual report on trial court interpreter expenditures for submission to the Legislature and the Department of Finance. This report is required by the Budget Act of 2018 (Stats. 2018, ch. 29).

Recommendation

Language Access Services recommends that the Judicial Council, effective March 24, 2020:

1. Approve the report to the Legislature summarizing the fiscal year 2018–19 trial court interpreter expenditures as required by the Budget Act of 2018; and
2. Direct staff to submit the report to the Legislature and the Department of Finance.

The *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2018–19* is included as Attachment A to this report.

Relevant Previous Council Action

At the Judicial Council business meeting on January 17, 2020, the council approved the *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2017–18* for submission to the Legislature, summarizing the fiscal year 2017–18 trial court interpreter expenditures under the requirements of the Budget Act of 2017 (Stats. 2017, ch. 14), and directed submission of the report to the Legislature and the Department of Finance. The Judicial Council has approved all previous reports submitted in prior years. Copies of previous reports may be accessed at www.courts.ca.gov/7466.htm.

Analysis/Rationale

The Budget Act of 2018, item 0250-101-0932, Schedule (4), provides an appropriation from the Trial Court Trust Fund for the services of court interpreters. Provision 3 states that “[t]he Judicial Council shall report to the Legislature and the Director of Finance annually regarding expenditures from Schedule (4).” In fulfillment of that provision, this report details trial court expenditures for court interpreters.

Policy implications

No policy implications are associated with the approval of this report.

Comments

This report did not circulate for comment.

Alternatives considered

Preparation and submission of this report is mandated by the annual Budget Act, and thus no alternatives were considered.

Fiscal and Operational Impacts

No costs or operational impacts are associated with the approval of this report.

Attachments and Links

1. Attachment A: *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2018–19*

Attachment A



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue
San Francisco, CA 94102-3688
Tel 415-865-4200
TDD 415-865-4272
Fax 415-865-4205
www.courts.ca.gov

HON. TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

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Chair, Executive and Planning Committee

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Chair, Judicial Branch Budget Committee
Chair, Litigation Management Committee

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Administrative Director,
Judicial Council

Report title: *Trial Court Interpreters Program Expenditure Report for Fiscal Year 2018–19*

Statutory citation: Budget Act of 2018 (Stats. 2018, ch. 29)

Date of report: March 24, 2020

The Judicial Council has submitted a report to the Legislature and the Department of Finance in accordance with provision 3 of item 0250-101-0932 of the Budget Act of 2018.

The following summary of the report is provided under the requirements of Government Code section 9795.

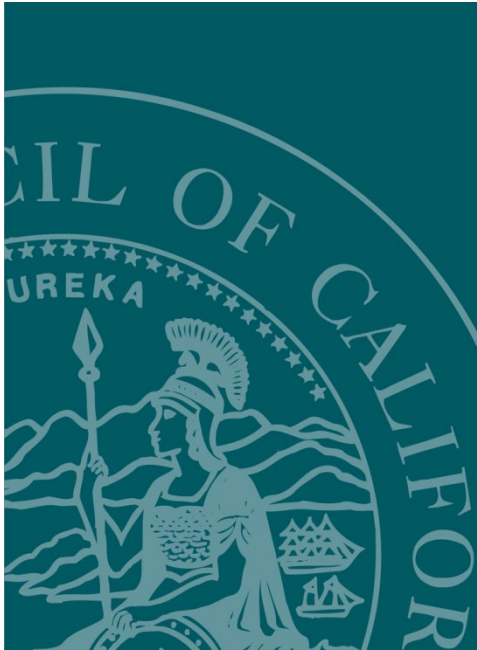
The total appropriation for fiscal year (FY) 2018–19, including \$87,000 for maintenance of the Court Interpreter Data Collection System, was \$108,960,000, of which \$108,873,000 was available for reimbursement of eligible court interpreter expenditures.

The appropriation increased by \$1,072,000 for trial court employee health benefit adjustments, \$256,000 for court interpreters for two new judges in Riverside County, and \$4 million in one-time funding through a budget change proposal. Total court interpreter expenditures reported for FY 2018–19 eligible for reimbursement from the Trial Court Trust Fund Program 0150037 were \$122,872,321—an increase of \$8,690,378, or 7.61 percent, over expenditures in FY 2017–18. Those expenditures exceeded the appropriation by \$13,999,321.

The expansion of interpreter services for civil matters and increased costs in mandated cases have led to shortfalls that require ongoing resources. It is anticipated that as courts continue to expand interpreter services to include all civil proceedings, and with ongoing collective bargaining agreements resulting in higher salaries and benefits and the increased use of contract interpreters, the program will continue to experience increases in expenditures for the use of California court interpreters.

The full report can be accessed at www.courts.ca.gov/7466.htm.

A printed copy of the report may be obtained by calling 415-865-7870.



Trial Court Interpreters Program Expenditure Report for Fiscal Year 2018–19

REPORT TO THE LEGISLATURE
JANUARY 2020



JUDICIAL COUNCIL
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

JUDICIAL COUNCIL OF CALIFORNIA

Hon. Tani G. Cantil-Sakauye
*Chief Justice of California and
Chair of the Judicial Council*

Martin Hoshino
*Administrative Director
Judicial Council*

OPERATIONS AND PROGRAMS DIVISION

Robert Oyung
Chief Operating Officer

CENTER FOR FAMILIES, CHILDREN & THE COURTS

Charlene Depner
Director

LANGUAGE ACCESS SERVICES

Douglas G. Denton
Principal Manager

I. Background

Mandates to Provide Court Interpreting Services

Article I, section 14 of the California Constitution was amended in 1974 to provide that “[a] person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.” This provision establishes a mandate for courts to provide interpreters in criminal matters to all defendants who have a limited ability to understand or speak English.

Judicial Council and Legislative Actions

Effective January 1, 2015, Assembly Bill 1657 (Stats. 2014, ch. 721) added section 756 to the Evidence Code. Section 756 requires the Judicial Council to “reimburse courts for court interpreter services provided in civil actions and proceedings to any party who is present in court and who does not proficiently speak or understand the English language.” (Evid. Code, § 756(a).) The statute also provides that if appropriated funds are insufficient to provide an interpreter to every party that meets the standard of eligibility, interpreter services in civil cases should be prioritized by case type, as specified.

Also in January 2015, the Judicial Council approved and adopted the *Strategic Plan for Language Access in the California Courts* (Language Access Plan). Of the eight major goals identified in the Language Access Plan, Goal 2—Provide Qualified Language Access Services in All Judicial Proceedings—states: “By 2017, and beginning immediately where resources permit, qualified interpreters will be provided in the California courts to LEP [limited English proficient] court users in all courtroom proceedings and, by 2020, in all court-ordered, court-operated events.”¹

This report outlines the expenditures by court for reimbursable court interpreter services provided by the courts for fiscal year (FY) 2018–19. This report also provides an overview of the expenditures provided in civil cases reported by the courts.²

Statutory Requirement to Report on Expenditures

The Budget Act of 2018 (Stats. 2018, ch. 29), item 0250-101-0932, Schedule (4), provides an appropriation from the Trial Court Trust Fund (TCTF) for the services of court interpreters. Provision 3 states that “[t]he Judicial Council shall report to the Legislature and the Director of Finance annually regarding expenditures from Schedule (4).” Consistent with these requirements, this report details trial court expenditures for court interpreter services.

¹ The Language Access Plan is available at www.courts.ca.gov/languageaccess.htm.

² Under federal law, individuals who are deaf or hard of hearing and who require sign language interpreters must receive court interpreter services at no cost in all court proceedings.

Trial Court Trust Fund Program 150037 Funding for FY 2018–19

- The 2018–19 appropriation of \$108,960,000 included \$1,072,000 for trial court employee health benefit adjustments related to court interpreters, \$256,000 for court interpreters for two new judges in Riverside County, and \$4.0 million in one-time funding through a budget change proposal to further advance the implementation of the Judicial Council’s *Strategic Plan for Language Access in the California Courts*.
- Funding included \$108,873,000 for reimbursement of court interpreter costs and \$87,000 for the Court Interpreter Data Collection System (CIDCS).
- The total of statewide court interpreter expenditures incurred during FY 2018–19 eligible to be reimbursed from TCTF Program 150037 was \$122,872,321. (See Attachment 1 for a breakdown of expenditures by court.)
- Because the surplus in the TCTF Program 150037 was depleted, and to address an anticipated shortfall in interpreter funding for FY 2018–19, the Judicial Council requested an increase of \$13.5 million in expenditure authority.
- Table 1 shows that mandated cases accounted for \$116,664,867 of the reported expenditures eligible for reimbursement (95 percent).³ Civil cases (including domestic violence cases) accounted for \$6,207,454 of the reported expenditures eligible for reimbursement (5 percent).
- Court interpreter reimbursed expenditures exceeded the FY 2018–19 appropriation by \$13,999,321 and increased by \$8,690,378 over expenditures in FY 2017–18 (7.6 percent) (see table 1 and table 4).

Table 1. Expenditures by case type, FY 2018–19

Case Type	Amount	Percentage of Total Reimbursement
1. Mandated	\$116,664,867	94.9%
2. Domestic Violence (DV)—reported by courts	\$1,370,252	1.12
o Domestic Violence and Family Law with DV	\$1,013,470	
o Civil Harassment	330,774	
o Case type not specified	\$26,008	
3. Civil—reported by courts	\$4,837,202	3.94
o Unlawful Detainer	\$1,405,752	
o Parental Termination	\$21,956	
o Conservatorship/Guardianship	\$186,327	
o Custody/Visitation	\$219,006	
o Other Family Law	\$2,127,042	
o Other Civil	\$877,118	
Court reimbursements (sum of 1, 2 & 3)	\$122,872,321	100%
Appropriation available to the courts FY 2018–19	\$108,873,000	(Does not include \$87,000 for CIDCS)
Amount over appropriation	\$13,999,321	

³ The provision of interpreter services is mandated for criminal, traffic, juvenile delinquency or dependency, mental competency hearings with appointed counsel, and other mandated civil cases.

II. Allowable Expenditures

The following expenditures qualify for reimbursement under TCTF Program 150037:

- Contract court interpreters, including per diems (see section III) and travel;
- Certified and registered court interpreters employed by the courts, including salaries, benefits, and travel;⁴
- Court interpreter coordinators who are certified or registered court interpreters, including salaries and benefits;⁵ and
- Four court interpreter supervisor positions: two in Los Angeles County, one in Orange County, and one in San Diego County. These are the only positions funded under TCTF Program 150037 that include funding for standard operating expenses and equipment.

III. Rates of Pay for Contract Court Interpreters

The Judicial Council first established statewide standards for contract court interpreter compensation in January 1999 at two defined levels, a full-day rate and a half-day rate.

Individual California courts negotiate rates with independent contractors on a case-by-case basis, and rates paid to contract interpreters often exceed the statewide standards that are described below. For languages other than Spanish, including rare languages or even certified languages where there are not enough interpreters for the state, the costs of court interpreter services for contract court interpreters may vary dramatically across the state. These wide variations in contractor costs, often well above the statewide standards, partly contribute to the rise in court interpreter expenditures, as described in section IV below.

Certified and Registered Contract Court Interpreters

Effective September 1, 2007, the Judicial Council set the statewide minimum pay rate for certified and registered independent contractor interpreters to \$282.23 for a full day and \$156.56 for a half day. The rate has remained unchanged since 2007.

⁴ Only interpreters who pass the Bilingual Interpreter Exam (BIE)—or passed the legal specialist (SC:L) exam previously administered by the Registry of Interpreters for the Deaf (RID) for American Sign Language—and fulfill the corresponding Judicial Council requirements are referred to as *certified* interpreters. Languages certified for court interpreters include American Sign Language and 15 spoken languages—Arabic, Eastern Armenian, Western Armenian, Cantonese, Farsi, Japanese, Khmer, Korean, Mandarin, Portuguese, Punjabi, Russian, Spanish, Tagalog, and Vietnamese (note: Western Armenian and Japanese currently remain certified languages, but there is no BIE available in those languages). Interpreters of other spoken languages for which there is no state-certifying exam are required to pass the Written Exam and Oral Proficiency Exams (OPE) in both English and in their non-English language if available and fulfill the corresponding Judicial Council requirements in order to become a *registered* interpreter. The OPE is available in Spanish and 69 other languages.

⁵ Limited by item 0250-101-0932, provision 3, of the Budget Act of 2018 to 1.0 personnel year (PY) each for counties in classes 1–15, 0.5 PY each for counties in classes 16–31, and 0.25 PY each for counties in classes 32–58. The Budget Act of 2018 defines county classes based on size of population: counties in classes 1–15 have populations of more than 500,000; classes 16–31 have populations between 130,000 and 500,000; and classes 32–58 have populations of fewer than 130,000.

Noncertified and Nonregistered Contract Interpreters

The statewide minimum rate for noncertified and nonregistered interpreters is \$175 for a full day and \$92 for a half day. The rate was established by the Judicial Council in July 1999.

Noncertified and nonregistered court interpreters who have not taken or passed the required examinations to become certified or registered court interpreters but who demonstrate language proficiency and meet the requirements in place for provisional qualification may be provisionally qualified by the court. They may be used when no certified or registered interpreter is available.⁶

Rates paid to contract interpreters often exceed the statewide minimum because each assignment must be negotiated by the trial court and is subject to current market rates, travel and lodging expenditures, and supply and demand.

Comparison With Federal Rates

Provision 3 of item 0250-101-0932 of the Budget Act of 2018 states, “[T]he Judicial Council shall set statewide or regional rates and policies for payment of court interpreters, not to exceed the rate paid to certified interpreters in the federal court system.” The current federal rate for contract court interpreters is \$418 for a full day, \$226 for a half day for certified and registered interpreters, and \$59 per hour for overtime. The federal rate for noncertified and nonregistered interpreters is \$202 for a full day and \$111 for a half day.⁷

Court interpreters who are California court employees negotiate salaries, benefits, and working conditions regionally. The federal system relies almost exclusively on contract interpreters. By contrast, court interpreter assignments in California courts are largely performed by employee court interpreters as illustrated in table 2.

IV. Expenditures for Employee and Contract Interpreters

Certified and Registered Employee and Contract Interpreters

Table 2 details reimbursed expenditures for employee-related and contract court interpreter costs. Total employee-related expenditures represented 75.17 percent of total interpreter reimbursements in FY 2018–19 (table 2).

⁶ The court is required to appoint a *certified* interpreter to interpret in a language designated by the Judicial Council. (Gov. Code, § 68561.) The court is required to appoint a *registered* interpreter to interpret in a language not designated by the Judicial Council. The court may appoint a noncertified interpreter if the court (1) on the record finds good cause to appoint a noncertified interpreter and finds the interpreter to be qualified, and (2) follows the procedures adopted by the Judicial Council. (Gov. Code, §§ 68561(c), 68564(d) and (e); Cal. Rules of Court, rule 2.893.) The court may appoint nonregistered interpreters only if (1) a registered interpreter is unavailable and (2) the good cause qualifications and procedures adopted by the Judicial Council under Government Code section 68561(c) have been followed. (See Gov. Code, § 71802(b)(1) and (d).)

⁷ Federal rates of pay for court interpreters are available at www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/DistrictCourts/CourtInterpreters/ContractInterpretersFees.aspx.

Contract interpreter expenditures for FY 2018–19 represented 24.83 percent of total reimbursements (table 2). As a percentage of total expenditures, contractor costs have risen steadily over the past five years (*ibid.*). This increase may be due to the expansion of interpreter services to cases in civil matters, requiring interpretation of languages of lesser diffusion, as well as languages not provided by current employees. It should be noted that expenditures for all contract interpreters increased by \$3,559,975 (13.2 percent) versus a \$5,130,5403 increase (5.8 percent) for court employees. (See Attachment 1.)

Table 2. Expenditures for certified and registered employee and contract interpreters

Fiscal Year	2014–15	2015–16	2016–17	2017–18	2018–19
Total Employee-Related Expenditures	\$78,573,771	\$80,942,575	\$82,610,361	\$87,231,671	\$92,362,074
Percentage of Total	83.14%	80.59%	77.84%	76.40%	75.17%
Total Contractor Expenditures	\$15,934,550	\$19,489,630	\$23,524,630	\$26,950,272	\$30,510,247
Percentage of Total	16.86%	19.41%	22.16%	23.60%	24.83%
Total Expenditures	\$94,508,321	\$100,432,20	\$106,134,73	\$114,181,943	\$122,872,321
Percentage Change Over Prior Year	2.20%	6.27%	5.68%	7.58%	7.61%

FY 2013–14 reimbursements were \$90,028,734.

Noncertified and Nonregistered Contract Interpreters

During FY 2018–19, statewide expenditures for noncertified and nonregistered contract interpreters equaled \$4,984,449, or 4.06 percent of total statewide expenditures.

Table 3 illustrates annual statewide expenditures over the past five years (excluding travel) for noncertified and nonregistered interpreters, and the percentage of the total reimbursements for court interpreter services.

Table 3. Expenditures for noncertified and nonregistered contract interpreters and corresponding percentage of total expenditures

Fiscal Year	2014–15	2015–16	2016-17	2017-18	2018-19
Noncertified Expenditures	\$1,493,856	\$1,844,648	\$2,312,752	\$2,715,378	\$3,195,466
	1.58%	1.81%	2.18%	2.38%	2.60%
Nonregistered Expenditures	\$922,538	\$1007,345	\$1,267,986	\$1,406,780	\$1,788,983
	0.98%	1.00%	1.19%	1.23%	1.46%
Combined Expenditures	\$2,416,394	\$2,851,993	\$3,580,783	\$4,122,157	\$4,984,449
	2.56%	2.84%	3.37%	3.61%	4.06%

Table 4 lists the top 10 court reimbursements for allowable court interpreter expenditures incurred in FY 2017–18 as compared to those in FY 2018–19.

Table 4. Distribution of reimbursed expenditures to top 10 courts

Superior Court	FY 2017–18 Reimbursed Expenditures (\$)	FY 2017–18 Percentage of Statewide Total	FY 2018–19 Reimbursed Expenditures (\$)	FY 2018–19 Percentage of Statewide Total	\$ Change from FY 2017–18	Percentage Change from FY 2017–18
Los Angeles	\$35,688,712	31.26%	\$38,540,226	31.37%	\$2,851,514	7.99%
Orange	10,886,950	9.53	10,734,638	8.74	(152,312)	-1.40
Santa Clara	7,056,941	6.18	7,289,792	5.93	232,851	3.30
San Diego	5,924,143	5.19	6,024,074	4.90	99,931	1.69
San Bernardino	5,653,715	4.95	6,074,705	4.94	420,990	7.45
Riverside	5,314,665	4.65	5,301,396	4.31	(13,269)	-0.25
Alameda	4,994,709	4.37	5,491,760	4.47	497,051	9.95
Sacramento	4,083,870	3.58	4,345,704	3.54	261,834	6.41
San Francisco	3,372,792	2.95	3,840,708	3.13	467,916	13.87
Kern	3,224,330	2.82	3,646,134	2.97	421,804	13.08
Subtotal	\$86,200,827	75.49%	\$91,289,137	74.30%	\$5,088,310	5.90%
Remaining Courts	27,981,116	24.51	31,583,184	25.70	3,602,068	12.87
Statewide Total	\$114,181,943	100.00%	\$122,872,321	100.00%	\$8,690,378	7.61%

V. Conclusion

In FY 2018–19, the state appropriation fell short in providing the courts with enough funding for full reimbursement of their reported allowable court interpreter expenditures. The expansion of interpreter services for civil matters, and increased costs in mandated cases, have led to shortfalls that require ongoing resources. As courts continue to expand interpreter services to include all civil proceedings, and with ongoing collective bargaining agreements resulting in higher salaries and benefits and the increased use of contract interpreters, the program will continue to experience increases in expenditures for the use of California court interpreters.

VI. Attachments

1. FY 2018–19 Total Trial Court Interpreter Reimbursed Expenditures—All Case Types
2. FY 2018–19 Trial Court Interpreter Reimbursed Expenditures—Civil Cases

2018-19 Total Trial Court Interpreter Reimbursed Expenditures

All Case Types

Courts	All Cases -- Reimbursed Employee-Related Interpreter Costs						
	Staff Interpreter Salaries & Benefits	Staff Interpreter Travel	Staff Cross Assignments	Total Staff Interpreter Salaries, Benefits & Travel	Interpreter Coordinator Reimbursed Amount	Supervisor Salaries, Benefits & OE&E (\$12,500/FTE)	Total Employee-Related Costs
	A	B	C	D	E	F	G (D+E+F)
Alameda	4,172,041	16,598	-	4,188,639	-	-	4,188,639
Alpine	-	-	-	-	-	-	-
Amador	-	-	-	-	-	-	-
Butte	-	-	-	-	32,079	-	32,079
Calaveras	-	-	-	-	17,555	-	17,555
Colusa	15,709	-	-	15,709	-	-	15,709
Contra Costa	2,060,530	215	-	2,060,745	-	-	2,060,745
Del Norte	-	-	-	-	-	-	-
El Dorado	-	-	-	-	31,470	-	31,470
Fresno	1,238,281	17,969	-	1,256,251	-	-	1,256,251
Glenn	21,068	501	-	21,569	-	-	21,569
Humboldt	36,650	-	-	36,650	-	-	36,650
Imperial	417,284	279	-	417,564	-	-	417,564
Inyo	20,707	-	-	20,707	-	-	20,707
Kern	2,768,512	13,813	-	2,782,325	-	-	2,782,325
Kings	193,520	-	-	193,520	-	-	193,520
Lake	28	-	-	28	-	-	28
Lassen	-	-	-	-	25,712	-	25,712
Los Angeles	35,926,870	1,953	207,126	36,135,949	119,648	345,051	36,600,648
Madera	391,364	-	-	391,364	-	-	391,364
Marin	440,436	440	-	440,875	44,965	-	485,840
Mariposa	-	-	-	-	-	-	-
Mendocino	194,004	320	-	194,324	-	-	194,324
Merced	333,426	432	-	333,858	-	-	333,858
Modoc	-	-	-	-	-	-	-
Mono	37,786	362	-	38,148	-	-	38,148
Monterey	940,745	1,364	-	942,109	-	-	942,109
Napa	299,134	-	-	299,134	57,213	-	356,346
Nevada	20,298	-	-	20,298	-	-	20,298
Orange	8,834,575	7,198	120,594	8,962,366	-	175,066	9,137,432
Placer	221,769	2,327	-	224,096	63,370	-	287,466
Plumas	7,883	-	-	7,883	-	-	7,883
Riverside	4,006,571	9,774	-	4,016,345	315,248	-	4,331,593
Sacramento	3,421,861	24,139	46,002	3,492,002	-	-	3,492,002

2018-19 Total Trial Court Interpreter Reimbursed Expenditures

All Case Types

Courts	All Cases -- Reimbursed Employee-Related Interpreter Costs						
	Staff Interpreter Salaries & Benefits	Staff Interpreter Travel	Staff Cross Assignments	Total Staff Interpreter Salaries, Benefits & Travel	Interpreter Coordinator Reimbursed Amount	Supervisor Salaries, Benefits & OE&E (\$12,500/FTE)	Total Employee-Related Costs
	A	B	C	D	E	F	G (D+E+F)
San Benito	-	-	-	-	-	-	-
San Bernardino	5,325,679	10,441	63,768	5,399,888	177,929	-	5,577,817
San Diego	4,782,160	19,393	-	4,801,553	106,589	81,615	4,989,757
San Francisco	2,621,140	9,939	-	2,631,080	-	-	2,631,080
San Joaquin	784,340	7,895	63,680	855,914	-	-	855,914
San Luis Obispo	617,516	952	-	618,468	45,205	-	663,673
San Mateo	942,526	1,178	-	943,704	-	-	943,704
Santa Barbara	1,382,437	258	-	1,382,695	-	-	1,382,695
Santa Clara	3,569,120	2,451	-	3,571,571	-	-	3,571,571
Santa Cruz	742,119	611	-	742,730	-	-	742,730
Shasta	-	-	-	-	-	-	-
Sierra	-	-	-	-	-	-	-
Siskiyou	-	-	-	-	-	-	-
Solano	248,936	-	-	248,936	49,229	-	298,164
Sonoma	786,531	-	-	786,531	-	-	786,531
Stanislaus	296,298	1,239	-	297,537	-	-	297,537
Sutter	154,261	-	-	154,261	23,632	-	177,893
Tehama	121,249	-	-	121,249	26,769	-	148,018
Trinity	25,454	-	-	25,454	-	-	25,454
Tulare	432,583	-	-	432,583	-	-	432,583
Tuolumne	20,599	-	-	20,599	-	-	20,599
Ventura	808,875	-	-	808,875	119,936	-	928,811
Yolo	146,393	-	-	146,393	-	-	146,393
Yuba	21,317	-	-	21,317	-	-	21,317
Total:	89,850,583	152,041	501,169	90,503,794	1,256,548	601,732	92,362,074

2018-19 Total Trial Court Interpreter Reimbursed Expenditures

All Case Types

Courts	All Cases -- Reimbursed Contractor-Related Interpreter Costs										All Cases Total Reimbursed Expenditures
	Registered Contractor Per Diems	Certified Contractor Per Diems	Non-Registered Contractor Per Diems	Non-Certified Contractor Per Diems	ASL Contractor Per Diems	Telephonic Interpreting	Court Interpreter Services	Total Contractor Per Diems	Contractor Travel, Mileage, Meals & Lodging	Total Contractor-Related Costs	
	H	I	J	K	L	M	N	O (H thru N)	P	Q (O + P)	
Alameda	76,270	326,556	208,878	231,443	200,973	-	-	1,044,120	259,001	1,303,121	5,491,760
Alpine	-	2,100	-	-	-	-	-	2,100	236	2,336	2,336
Amador	-	32,891	8,125	-	564	-	-	41,581	23,243	64,824	64,824
Butte	3,326	109,964	-	1,712	-	163	-	115,165	63,262	178,427	210,505
Calaveras	764	25,941	470	1,347	1,693	-	-	30,215	13,184	43,400	60,955
Colusa	425	73,916	-	300	-	-	-	74,641	34,456	109,097	124,806
Contra Costa	103,977	825,272	56,495	194,980	-	-	-	1,180,723	91,895	1,272,618	3,333,363
Del Norte	-	51,279	-	-	-	-	-	51,279	9,784	61,063	61,063
El Dorado	-	146,469	-	-	-	601	-	147,070	71,422	218,492	249,962
Fresno	10,858	408,613	8,390	58,930	45,939	1,095	-	533,825	593,431	1,127,255	2,383,506
Glenn	-	61,635	-	6,235	282	453	-	68,605	39,960	108,565	130,134
Humboldt	-	122,370	-	184	-	-	-	122,554	70,738	193,292	229,942
Imperial	-	94,904	-	-	-	237	-	95,141	56,588	151,729	569,293
Inyo	-	32,915	-	-	-	600	-	33,515	18,131	51,646	72,353
Kern	76,285	360,458	9,018	110,568	143,520	-	-	699,849	163,960	863,809	3,646,134
Kings	-	189,661	9,444	-	2,446	-	-	201,551	75,924	277,475	470,995
Lake	-	109,853	-	-	564	-	-	110,417	4,544	114,961	114,989
Lassen	-	11,679	-	543	993	-	-	13,215	9,486	22,702	48,414
Los Angeles	406,203	175,300	389,061	486,610	37,219	-	75,785	1,570,178	369,399	1,939,577	38,540,226
Madera	-	89,597	-	54,375	-	-	-	143,973	57,382	201,354	592,718
Marin	-	162,777	-	10,684	-	-	-	173,461	32,545	206,005	691,846
Mariposa	840	18,305	-	-	3,540	105	-	22,790	18,584	41,374	41,374
Mendocino	2,648	58,224	-	-	5,832	-	-	66,704	115,588	182,292	376,616
Merced	11,474	364,539	4,321	36,976	37,509	-	67	454,887	267,555	722,442	1,056,300
Modoc	21	-	3,680	-	-	-	-	3,701	3,500	7,201	7,201
Mono	-	3,770	-	-	-	-	-	3,770	6,138	9,908	48,056
Monterey	19,899	67,878	122,345	101,533	10,250	28,886	-	350,791	-	350,791	1,292,899
Napa	-	236,287	-	157	-	3,480	-	239,923	83,717	323,640	679,987
Nevada	829	30,727	-	5,370	3,612	4,684	-	45,222	7,987	53,209	73,507
Orange	89,108	818,106	79,375	182,387	308,875	1,551	-	1,479,402	117,804	1,597,206	10,734,638
Placer	12,678	135,819	5,056	20,296	20,370	-	-	194,219	67,903	262,122	549,588
Plumas	-	1,601	-	-	640	-	-	2,241	4,913	7,153	15,036
Riverside	17,967	293,720	62,668	71,619	185,484	735	-	632,192	337,611	969,803	5,301,396
Sacramento	85,038	383,361	50,981	116,748	34,984	-	-	671,110	182,592	853,702	4,345,704

2018-19 Total Trial Court Interpreter Reimbursed Expenditures

All Case Types

Courts	All Cases -- Reimbursed Contractor-Related Interpreter Costs										All Cases Total Reimbursed Expenditures
	Registered Contractor Per Diems	Certified Contractor Per Diems	Non-Registered Contractor Per Diems	Non-Certified Contractor Per Diems	ASL Contractor Per Diems	Telephonic Interpreting	Court Interpreter Services	Total Contractor Per Diems	Contractor Travel, Mileage, Meals & Lodging	Total Contractor-Related Costs	
	H	I	J	K	L	M	N	O (H thru N)	P	Q (O + P)	
San Benito	-	98,526	-	16,907	-	-	-	115,433	1,055	116,488	116,488
San Bernardino	29,852	186,534	46,372	55,779	130,459	2,062	-	451,059	45,828	496,888	6,074,705
San Diego	98,094	497,629	96,829	181,527	564	1,492	-	876,136	158,182	1,034,317	6,024,074
San Francisco	83,591	504,740	-	339,777	145,989	-	-	1,074,097	135,532	1,209,628	3,840,708
San Joaquin	31,939	656,892	33,758	109,688	-	-	-	832,276	122,412	954,688	1,810,602
San Luis Obispo	17,422	42,633	1,270	8,927	36,200	-	-	106,452	44,682	151,134	814,806
San Mateo	62,189	1,018,124	31,775	111,591	37,717	-	-	1,261,397	386,256	1,647,654	2,591,358
Santa Barbara	12,579	397,918	198,653	1,339	9,170	32	-	619,692	134,151	753,843	2,136,538
Santa Clara	61,621	2,052,622	100,681	181,736	85,472	-	-	2,482,132	1,236,089	3,718,221	7,289,792
Santa Cruz	25,634	64,929	3,162	35,515	25,670	12,639	-	167,549	1,127	168,676	911,406
Shasta	40,473	67,826	105	21,265	33,449	-	-	163,118	202,840	365,959	365,959
Sierra	-	-	-	-	-	371	-	371	-	371	371
Siskiyou	-	32,852	-	700	-	201	-	33,753	18,454	52,207	52,207
Solano	19,025	240,389	13,331	45,733	18,819	-	-	337,297	40,478	377,774	675,939
Sonoma	32,253	490,503	37,615	39,595	32,623	-	-	632,589	119,256	751,845	1,538,376
Stanislaus	21,404	465,224	14,511	173,186	35,705	32	-	710,062	544,879	1,254,941	1,552,478
Sutter	1,456	62,065	597	20,233	4,236	260	-	88,846	78,144	166,991	344,883
Tehama	2,383	16,406	-	-	1,712	-	-	20,501	20,710	41,211	189,229
Trinity	2,540	9,703	-	-	-	-	-	12,243	11,487	23,730	49,184
Tulare	16,141	852,013	123,761	77,856	-	-	-	1,069,771	230,786	1,300,557	1,733,140
Tuolumne	26,265	-	5,715	282	-	-	-	32,263	8,553	40,816	61,415
Ventura	22,923	918,626	55,101	68,196	-	-	-	1,064,846	74,184	1,139,030	2,067,841
Yolo	24,321	553,646	7,159	11,508	7,134	-	-	603,768	193,179	796,947	943,340
Yuba	6,701	29,676	282	1,129	-	2,202	-	39,990	13,750	53,740	75,057
Total:	1,557,415	15,085,963	1,788,983	3,195,466	1,650,210	61,880	75,852	23,415,770	7,094,478	30,510,247	122,872,321

FY 2018-2019

**Trial Court Interpreter Reimbursed
Expenditures Civil Cases**

Courts	Staff Interpreter Salaries & Benefits	Staff Interpreter Travel	Total Staff Interpreter Salaries, Benefits & Travel
	A	B	D
Alameda	-	-	-
Alpine	-	-	-
Amador	-	-	-
Butte	-	-	-
Calaveras	-	-	-
Colusa	-	-	-
Contra Costa	-	-	-
Del Norte	-	-	-
El Dorado	-	-	-
Fresno	-	-	-
Glenn	-	-	-
Humboldt	-	-	-
Imperial	45,446	-	45,446
Inyo	-	-	-
Kern	-	-	-
Kings	-	-	-
Lake	-	-	-
Lassen	-	-	-
Los Angeles	2,363,345	-	2,363,345
Madera	-	-	-
Marin	-	-	-
Mariposa	-	-	-
Mendocino	-	-	-
Merced	-	-	-
Modoc	-	-	-
Mono	2,133	-	2,133
Monterey	-	-	-
Napa	29,071	-	29,071
Nevada	-	-	-
Orange	157,563	-	157,563
Placer	-	-	-
Plumas	-	-	-
Riverside	-	-	-
Sacramento	224,598	-	224,598
San Benito	-	-	-
San Bernardino	3,441	-	3,441
San Diego	-	-	-
San Francisco	-	-	-
San Joaquin	19,542	-	19,542
San Luis Obispo	-	-	-
San Mateo	-	-	-
Santa Barbara	-	-	-
Santa Clara	-	-	-
Santa Cruz	-	-	-
Shasta	-	-	-
Sierra	-	-	-
Siskiyou	-	-	-
Solano	-	-	-
Sonoma	8,227	-	8,227

FY 2018-2019

**Trial Court Interpreter Reimbursed
Expenditures Civil Cases**

Courts	Staff Interpreter Salaries & Benefits	Staff Interpreter Travel	Total Staff Interpreter Salaries, Benefits & Travel
	A	B	D
Stanislaus	22,907	-	22,907
Sutter	-	-	-
Tehama	-	-	-
Trinity	-	-	-
Tulare	-	-	-
Tuolumne	-	-	-
Ventura	61,661	-	61,661
Yolo	-	-	-
Yuba	-	-	-
Total:	2,937,933	-	2,937,933

FY 2018-2019
 Trial Court Interpreter Reimbursed
 Expenditures Civil Cases

Courts	Interpreter Coordinator Reimbursed Amount	Supervisor Salaries, Benefits & OE&E (\$12,500/FTE)	Total Employee-Related Costs	Registered Contractor Per Diems	Certified Contractor Per Diems	Non-Registered Contractor Per Diems	Non-Certified Contractor Per Diems	ASL Contractor Per Diems	Telephonic Interpreting	Court Interpreter Services	Total Contractor Per Diems	Contractor Travel, Mileage, Meals & Lodging	Total Contractor-Related Costs	Civil Cases Total Reimbursed Expenditures
	E	F	G (D+E+F)	H	I	J	K	L	M	N	O (H thru N)	P	Q (O + P)	R (G + Q)
Alameda	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Alpine	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Amador	-	-	-	-	2,755	4,375	-	-	-	-	7,130	3,053	10,184	10,184
Butte	-	-	-	320	16,920	-	184	-	-	-	17,424	15,307	32,731	32,731
Calaveras	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Colusa	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contra Costa	-	-	-	18,502	136,280	7,445	35,777	-	-	-	198,004	17,716	215,721	215,721
Del Norte	-	-	-	-	-	-	-	-	-	-	-	-	-	-
El Dorado	-	-	-	-	44,992	-	-	-	601	-	45,593	17,646	63,239	63,239
Fresno	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Glenn	-	-	-	-	905	-	153	-	-	-	1,057	937	1,994	1,994
Humboldt	-	-	-	-	9,196	-	92	-	-	-	9,288	4,068	13,357	13,357
Imperial	-	-	45,446	-	-	-	-	-	-	-	-	-	-	45,446
Inyo	-	-	-	-	7,312	-	-	-	-	-	7,312	4,061	11,372	11,372
Kern	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Kings	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lake	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lassen	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Los Angeles	-	-	2,363,345	6,970	17,349	6,993	10,992	1,022	-	19,805	63,131	-	63,131	2,426,476
Madera	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Marin	-	-	-	-	13,575	-	1,357	-	-	-	14,932	2,766	17,698	17,698
Mariposa	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Mendocino	-	-	-	-	10,791	-	-	2,596	-	-	13,387	22,796	36,183	36,183
Merced	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Modoc	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Mono	-	-	2,133	-	-	-	-	-	-	-	-	154	154	2,287
Monterey	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Napa	-	-	29,071	-	23,261	-	-	-	-	-	23,261	8,603	31,864	60,935
Nevada	-	-	-	-	2,033	-	543	282	-	-	2,858	578	3,436	3,436
Orange	-	-	157,563	275	282	200	675	1,450	217	-	3,099	325	3,424	160,987
Placer	-	-	-	-	13,469	515	1,797	4,132	-	-	19,913	6,492	26,405	26,405
Plumas	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Riverside	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sacramento	-	-	224,598	20,229	89,628	12,423	23,611	7,522	-	-	153,414	42,753	196,167	420,765
San Benito	-	-	-	-	-	-	-	-	-	-	-	-	-	-
San Bernardino	-	-	3,441	-	-	-	-	-	-	-	-	-	-	3,441
San Diego	-	-	-	-	-	-	-	-	-	-	-	-	-	-
San Francisco	-	-	-	8,994	55,935	-	92,224	12,207	-	-	169,360	28,189	197,549	197,549
San Joaquin	-	-	19,542	1,611	73,995	3,304	12,615	-	-	-	91,526	13,726	105,251	124,793
San Luis Obispo	-	-	-	-	-	-	-	-	-	-	-	-	-	-
San Mateo	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Santa Barbara	-	-	-	795	126,548	5,072	423	3,872	-	-	136,710	24,834	161,544	161,544
Santa Clara	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Santa Cruz	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Shasta	-	-	-	886	16,758	-	3,546	10,143	-	-	31,333	36,495	67,829	67,829
Sierra	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Siskiyou	-	-	-	-	2,333	-	175	-	-	-	2,508	427	2,935	2,935
Solano	-	-	-	1,248	27,944	1,400	8,952	3,963	-	-	43,507	5,118	48,625	48,625
Sonoma	-	-	8,227	-	-	-	-	-	-	-	-	-	-	8,227

FY 2018-2019

Trial Court Interpreter Reimbursed

Expenditures Civil Cases

Courts	Interpreter Coordinator Reimbursed Amount	Supervisor Salaries, Benefits & OE&E (\$12,500/FTE)	Total Employee- Related Costs	Registered Contractor Per Diems	Certified Contractor Per Diems	Non- Registered Contractor Per Diems	Non-Certified Contractor Per Diems	ASL Contractor Per Diems	Telephonic Interpreting	Court Interpreter Services	Total Contractor Per Diems	Contractor Travel, Mileage, Meals & Lodging	Total Contractor- Related Costs	Civil Cases Total Reimbursed Expenditures
	E	F	G (D+E+F)	H	I	J	K	L	M	N	O (H thru N)	P	Q (O + P)	R (G + Q)
Stanislaus	-	-	22,907	4,897	108,798	3,107	13,407	8,136	-	-	138,345	111,025	249,370	272,277
Sutter	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tehama	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Trinity	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Tulare	-	-	-	2,000	38,800	43,622	3,958	-	-	-	88,380	13,479	101,859	101,859
Tuolumne	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Ventura	-	-	61,661	11,495	179,663	11,857	12,697	-	-	-	215,711	14,035	229,746	291,407
Yolo	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Yuba	-	-	-	1,693	3,176	-	282	-	10	-	5,162	2,341	7,503	7,503
Total:	-	-	2,937,933	79,916	1,022,697	100,313	223,460	55,325	828	19,805	1,502,344	396,925	1,899,269	4,837,202



JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-106

For business meeting on: March 24, 2020

Title

Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines

Rules, Forms, Standards, or Statutes Affected

Revise forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132

Recommended by

Judicial Council staff
Susan R. McMullan, Supervising Attorney
Legal Services

Agenda Item Type

Action Required

Effective Date

March 24, 2020

Date of Report

January 21, 2020

Contact

Anne Ronan, 415-865-8933
anne.ronan@jud.ca.gov
Christy Simons, 415-865-7694
christy.simons@jud.ca.gov
Corby Sturges, 415-865-4507
corby.sturges@jud.ca.gov

Executive Summary

Judicial Council staff recommend the revision of four Judicial Council forms containing figures based on the federal poverty guidelines to reflect the changes in those guidelines recently published by the federal government.

Recommendation

Judicial Council staff recommend that the Judicial Council, effective March 24, 2020, revise the following documents to reflect 2020 increases in the federal poverty guidelines:

- *Request to Waive Court Fees* (form FW-001)
- *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC)
- *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO)
- *Financial Declaration—Juvenile Dependency* (form JV-132)

The revised forms are attached at pages 5–15.

Relevant Previous Council Action

The council last revised these four forms on March 15, 2019, to reflect the last change in the federal poverty guidelines.

Analysis/Rationale

Judicial Council forms containing figures based on the federal poverty guidelines need to be revised to reflect the changes in those guidelines recently published by the federal government.

Fee waiver forms

The eligibility of indigent litigants to proceed without paying filing fees or other court costs is determined by California Government Code section 68632. Among other things, section 68632(b) provides that a fee waiver will be granted to litigants whose household monthly income is 125 percent or less of the current poverty guidelines established by the U.S. Department of Health and Human Services (HHS).

The Judicial Council has adopted rules of court and forms for litigants to obtain fee waivers. Three of the forms—*Request to Waive Court Fees* (form FW-001), *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC), and *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO)—contain figures based on the monthly poverty guidelines. The tables in item 5b on the general fee waiver application form, in item 8(b) on the probate fee waiver form, and on page 1 of the appellate court information sheet provide monthly income figures on which a court may base a decision to grant a fee waiver in accordance with Government Code section 68632.

Juvenile form

The Judicial Council administers a program under Welfare and Institutions Code section 903.47 to collect reimbursement of the cost of court-appointed counsel in dependency proceedings from liable persons found able to pay. Under the statewide standard adopted by the council, an otherwise liable person is presumed to be unable to pay reimbursement if that person’s monthly household income is 125 percent or less of the HHS current federal poverty guidelines established by the HHS.

Financial Declaration—Juvenile Dependency (form JV-132) contains figures based on the poverty guidelines. The table in item 3 provides monthly income levels below which an individual is presumed to be unable to pay reimbursement for the cost of court-appointed counsel.¹

¹ As part of the ongoing effort to revise Judicial Council forms to use gender-neutral terms, staff also recommends replacing “Mother” and “Father” with “Parent” and eliminating one check box in line 4 of item 1 of form JV-132.

Revisions required

The monthly income figures currently on the four forms reflect 125 percent of the 2019 poverty guidelines established by the HHS. The HHS released revised federal poverty guidelines on January 14, 2020.² As a result, these items on the Judicial Council forms must be revised to reflect the 2020 federal poverty guideline revisions.

To determine the new monthly income figures for the forms, the federal poverty guidelines must be multiplied by 125 percent and divided by 12.³ The new figures are reflected in the revised tables on the attached forms.

Policy implications

Staff monitors revisions to the poverty guidelines and ensures that the forms are revised as necessary and submitted to the council. Revised forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132 should take effect immediately to ensure that litigants and courts are provided with accurate monthly income guidelines on which a court may base a decision regarding fee waivers or financial liability. This rapid change is necessary because the revised poverty guidelines take effect immediately on release. Once adopted, the revised forms will be distributed to the courts and forms publishers and posted to the California Courts website.

Comments

These proposals were not circulated for public comment because they are noncontroversial, involve technical revisions, and are therefore within the Judicial Council's purview to adopt without circulation. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The alternative to updating the income tables using the 2020 federal poverty guidelines would be *not* to update them. Staff did not consider this option because of the provisions in Government Code section 68632 and in Judicial Council standard on financial liability.

Fiscal and Operational Impacts

If a court provides free copies of these forms to parties, it will incur costs to print or duplicate the forms. However, the revisions are required to make the forms consistent with current law.

Attachments and Links

1. Forms FW-001, FW-001-GC, APP-015/FW-015-INFO, and JV-132, at pages 5–15.
2. Attachment A: Computation Sheet at 16.

² The 2020 figures have been published in the Federal Register. See Annual Update of Federal Poverty Guidelines, U.S. Department of Health and Human Services, 85 FR 3060.

³ See Attachment A for the Computation Sheet. The monthly income figures in the tables on the forms slightly exceed 125 percent of the poverty guidelines because they are rounded up to the nearest cent. The language on the forms reflects this slight excess in stating that the item should be checked if the household income is "less than" the amount in the chart.

3. Link A: Annual Update of Federal Poverty Guidelines,
<https://www.federalregister.gov/documents/2020/01/17/2020-00858/annual-update-of-the-hhs-poverty-guidelines>

If you are getting public benefits, are a low-income person, or do not have enough income to pay for your household's basic needs and your court fees, you may use this form to ask the court to waive your court fees. The court may order you to answer questions about your finances. If the court waives the fees, you may still have to pay later if:

- You cannot give the court proof of your eligibility,
- Your financial situation improves during this case, or
- You settle your civil case for **\$10,000** or more. The trial court that waives your fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge you any collection costs.

Clerk stamps date here when form is filed.

DRAFT
01/21/2020
Not approved by
the Judicial Council

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information (person asking the court to waive the fees):

Name: _____
Street or mailing address: _____
City: _____ State: ____ Zip: _____
Phone: _____

2 Your Job, if you have one (job title): _____

Name of employer: _____
Employer's address: _____

3 Your Lawyer, if you have one (name, firm or affiliation, address, phone number, and State Bar number): _____

a. The lawyer has agreed to advance all or a portion of your fees or costs (check one): Yes No

b. (If yes, your lawyer must sign here) Lawyer's signature: _____
If your lawyer is not providing legal-aid type services based on your low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

4 What court's fees or costs are you asking to be waived?

- Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
- Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

5 Why are you asking the court to waive your court fees?

- a. I receive (check all that apply; see form FW-001-INFO for definitions): Food Stamps Supp. Sec. Inc. SSP Medi-Cal County Relief/Gen. Assist. IHSS CalWORKS or Tribal TANF CAPI
- b. My gross monthly household income (before deductions for taxes) is less than the amount listed below. (If you check 5b, you must fill out 7, 8, and 9 on page 2 of this form.)

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$466.67 for each extra person.
1	\$1,329.17	3	\$2,262.50	5	\$3,195.84	
2	\$1,795.84	4	\$2,729.17	6	\$3,662.50	

c. I do not have enough income to pay for my household's basic needs and the court fees. I ask the court to: (check one and you **must** fill out page 2):

- waive all court fees and costs waive some of the court fees
- let me make payments over time

6 Check here if you asked the court to waive your court fees for this case in the last six months. (If your previous request is reasonably available, please attach it to this form and check here:)

I declare under penalty of perjury under the laws of the State of California that the information I have provided on this form and all attachments is true and correct.

Date: _____

Print your name here

Sign here

Case Number: _____

Your name: _____

If you checked 5a on page 1, do not fill out below. If you checked 5b, fill out questions 7, 8, and 9 only. If you checked 5c, you must fill out this entire page. If you need more space, attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

7 Check here if your income changes a lot from month to month. If it does, complete the form based on your average income for the past 12 months.

8 Your Gross Monthly Income

a. List the source and amount of any income you get each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

- (1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____

b. Your total monthly income: \$ _____

9 Household Income

a. List the income of all other persons living in your home who depend in whole or in part on you for support, or on whom you depend in whole or in part for support.

Table with columns: Name, Age, Relationship, Gross Monthly Income. Rows (1) through (4) with blank lines for entry.

b. Total monthly income of persons above: \$ _____

Total monthly income and household income (8b plus 9b): \$ _____

10 Your Money and Property

a. Cash \$ _____

b. All financial accounts (List bank name and amount):

- (1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

c. Cars, boats, and other vehicles

Table with columns: Make / Year, Fair Market Value, How Much You Still Owe. Rows (1) through (3) with blank lines for entry.

d. Real estate

Table with columns: Address, Fair Market Value, How Much You Still Owe. Rows (1) through (2) with blank lines for entry.

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

Table with columns: Describe, Fair Market Value, How Much You Still Owe. Rows (1) through (2) with blank lines for entry.

11 Your Monthly Deductions and Expenses

a. List any payroll deductions and the monthly amount below:

- (1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____
(4) _____ \$ _____

b. Rent or house payment & maintenance \$ _____

c. Food and household supplies \$ _____

d. Utilities and telephone \$ _____

e. Clothing \$ _____

f. Laundry and cleaning \$ _____

g. Medical and dental expenses \$ _____

h. Insurance (life, health, accident, etc.) \$ _____

i. School, child care \$ _____

j. Child, spousal support (another marriage) \$ _____

k. Transportation, gas, auto repair and insurance \$ _____

l. Installment payments (list each below):

- Paid to:
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

m. Wages/earnings withheld by court order \$ _____

n. Any other monthly expenses (list each below).

- Paid to: How Much?
(1) _____ \$ _____
(2) _____ \$ _____
(3) _____ \$ _____

Total monthly expenses (add 11a - 11n above): \$ _____

To list any other facts you want the court to know, such as unusual medical expenses, etc., attach form MC-025 or attach a sheet of paper and write Financial Information and your name and case number at the top.

Check here if you attach another page.

Important! If your financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010.

Clerk stamps date here when form is filed.

**DRAFT
01-28-2020
Not approved by
the Judicial Council**

This form must be used by a guardian or conservator, or by a petitioner for the appointment of a guardian or conservator, to request a waiver of court fees in the guardianship or conservatorship court proceeding or in any other civil action in which the guardian or conservator represents the interests of the ward or conservatee as a plaintiff or defendant.

If the ward or conservatee (including a proposed ward or conservatee if a petition for appointment of a guardian or conservator has been filed but has not yet been decided by the court) directly receives public benefits or is supported by public benefits received by another for his or her support, is a low-income person, or does not have enough income to pay for his or her household's basic needs and the court fees, you may use this form to ask the court to waive the court fees. The court may order you to answer questions about the finances of the ward or conservatee. If the court waives the fees, the ward or conservatee, his or her estate, or someone with a duty to support the ward or conservatee, may still have to pay later if:

- You cannot give the court proof of the ward's or conservatee's eligibility,
- The ward's or conservatee's financial situation improves during this case, or
- You settle the civil case on behalf of the ward or conservatee for **\$10,000** or more. The trial court that waives fees will have a lien on any such settlement in the amount of the waived fees and costs. The court may also charge the ward or conservatee, or his or her estate, any collection costs.

Fill in court name and street address:

Superior Court of California, County of

Fill in case number and name:

Case Number:

Case Name:

1 Your Information (*guardian or conservator, or person asking the court to appoint a guardian or conservator*):

Name: _____ Phone: () - _____

Street or mailing address: _____

City: _____ State: ____ Zip: _____

2 Your Lawyer (*if you have one*): Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: () - _____

City: _____ State: ____ Zip: _____ E-mail: _____

a. The lawyer has agreed to advance all or a portion of court fees or costs (*check one*): Yes No

b. (*If yes, your lawyer must sign here.*) Lawyer's signature: _____

If your lawyer is not providing legal-aid type services based on your or the ward's or conservatee's low income, you may have to go to a hearing to explain why you are asking the court to waive the fees.

3 Ward's or Conservatee's Information (*file a separate Request for each ward in a multiward case*):

Name: _____ Age and date of birth (*ward only*): _____

Street or mailing address: _____

City: _____ State: ____ Zip: _____

Phone: () - _____

4 Ward's or Conservatee's Lawyer, if any: Name: _____

Firm or Affiliation: _____ State Bar No.: _____

Address: _____ Phone: () - _____

City: _____ State: ____ Zip: _____ E-mail: _____

5 Ward or Conservatee's Job (*job title; if not employed, so state*): _____

Name of employer: _____

Employer's address: _____ State: ____ Zip: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

6 What court's fees or costs are you asking to be waived?

- Superior Court (See *Information Sheet on Waiver of Superior Court Fees and Costs* (form FW-001-INFO).)
- Supreme Court, Court of Appeal, or Appellate Division of Superior Court (See *Information Sheet on Waiver of Appellate Court Fees* (form APP-015/FW-015-INFO).)

7 Check here if you asked the court to waive court fees for this case in the last six months.
(If your previous request is reasonably available, please attach it to this form and check here):

8 Why are you asking the court to waive the ward's or conservatee's court fees?

- a. The ward or one or both of the ward's parents, or the conservatee or the conservatee's spouse or registered domestic partner, receive (check all that apply):
- Supplemental Security Income (SSI) State Supplemental Payment (SSP) SNAP (Food Stamps)
 - IHSS (In-Home Supportive Services) CalWORKS or Tribal TANF Medi-Cal
 - County Relief/General Assistance CAPI (Cash Assistance Program for Aged, Blind, and Disabled)
- (Names and relationships to ward or conservatee of persons who receive the public benefits listed above):
- _____
- _____

b. The gross monthly income of the ward's or conservatee's household (before deductions for taxes) is less than the amount listed below. (If you check 8b, you **must** fill out items 14, 15, and 16 on page 4 of this form.)*

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$466.67 for each extra person.
1	\$1,329.17	3	\$2,262.50	5	\$3,195.84	
2	\$1,795.84	4	\$2,729.17	6	\$3,662.50	

- c. The ward's or conservatee's household does not have enough income to pay for its basic needs and the court fees. I ask the court to (check one, and you **must** fill out items 14, 15, 16, 17, and 18 on page 4):*
- (1) Waive all court fees and costs. (2) Waive some court fees and costs.
- (3) Let the (proposed) guardian or conservator, on behalf of the (proposed) ward or conservatee, make payments over time.

* (Do not include income of guardian or conservator living in the household in 8b or 8c or count him or her in family size in 8b. unless he or she is a parent of the ward or the spouse or registered domestic partner of the conservatee.)

Guardians or petitioners for their appointment must complete items 9 and 10.

9 Ward's Estate: Person only, no estate. Inventory or petition estimated value:

Source (e.g., gift, inheritance, settlement, judgment, insurance): _____ Est. collection date: _____

10 Ward's Parents' Information:

a. Name of ward's father: _____ Deceased (date of death): _____
 Street or mailing address: _____
 City: _____ State: ____ Zip: _____
 Phone: () - _____

b. Name of ward's mother: _____ Deceased (date of death): _____
 Street or mailing address: _____
 City: _____ State: ____ Zip: _____
 Phone: () - _____

c. Ward's parents are (check all that apply): married living together separated divorced
 Support order for ward? No Yes Payable to (name): _____
 Payor (name): _____
 Court: _____ Case Number: _____
 Date of order (if multiple, date of latest): _____ Monthly amount: _____



Name of (Proposed) Ward or Conservatee: _____

Case Number: _____

Conservators or petitioners for their appointment must complete items 11–13.

11 Conservatee's Estate: Person only, no estate.

Inventory or petition estimated value: _____ Est. collection date: _____

12 Conservatee's Spouse's or Registered Domestic Partner's Information:

Name of conservatee's spouse or registered domestic partner: _____ Spouse Partner

Date of marriage or partnership: _____ Deceased (date of death): _____

Street or mailing address: _____ Phone: (____) ____ - _____

City: _____ State: ____ Zip: _____

Name of employer (if none, so state): _____

Employer's address: _____ State: ____ Zip: _____

The conservatee's spouse or partner is is not managing, or following appointment of a conservator is planning to manage, some or all of the couple's community property outside the conservatorship estate.

If you selected "is" above: The income, money, and property shown on page 4 includes does not include the income and property managed, or expected to be managed, by the spouse/partner outside the estate.

Divorced (date of final judgment or decree): _____

Court: _____

Case Number: _____ Support order for conservatee? No Yes

Date of support order (if multiple, date of latest): _____ Monthly amount: _____

13 The Conservatee and Trusts:

The conservatee:

a. is is not a trustor or settlor of a trust.

b. is is not a beneficiary of a trust.

If you selected "Is" to complete any of the above statements, identify and provide, in an attachment to this Request, the current address and telephone number of the current trustee(s) of each trust, describe the general terms of and value of each trust and the nature and value of the conservatee's interest in each trust, and the amount(s) and frequency of any distributions to or for the benefit of the conservatee prior to your appointment as conservator of which you are aware. (You may use Judicial Council form MC-025 for this purpose.)

All applicants who checked item 8b or item 8c on page 2 must continue to and follow the instructions for completion of items 14–16 or items 14–18 on page 4, before signing below.

The information I have provided on this form and all attachments about the (proposed) ward or conservatee is true and correct to the best of my information and belief. The information I have provided on this form and all attachments concerning myself is true and correct. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

Print your name here

Sign here



Name of (Proposed) Ward or Conservatee:

Case Number:

If you checked 8a on page 2, do not fill out below. If you checked 8b, you must answer questions 14-16. If you checked 8c, you must answer questions 14-18. If you need more space, attach form MC-025 or attach a sheet of paper, and write "Financial Information" and the ward's or conservatee's name and case number at the top.

14 Check here if the ward's or conservatee's income changes a lot from month to month. If it does, complete the form based on his or her average income for the past 12 months.

15 Ward's or Conservatee's Gross Monthly Income

a. List the source and amount of any income the ward or conservatee gets each month, including: wages or other income from work before deductions, spousal/child support, retirement, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest, trust income, annuities, net business or rental income, reimbursement for job-related expenses, gambling or lottery winnings, etc.

- (1) \$
(2) \$
(3) \$
(4) \$
(5) \$

b. Total monthly income: \$

16 Ward's or Conservatee's Household's Income

a. List the income of all other persons living in the ward's or conservatee's home who depend in whole or in part on him or her for support, or on whom he or she depends in whole or in part for support.

Table with columns: Name, Age, Relationship, Gross Monthly Income. Rows 1-10.

b. Total monthly income of persons above: \$

Total monthly income and household income (15b plus 16b): \$

To list any other facts you want the court to know, such as the (proposed) ward's or conservatee's unusual medical expenses, etc, attach form MC-025 or attach a sheet of paper and write "Financial Information" and the (proposed) ward's or conservatee's name and case number at the top.

Check here if you attach another page.

Important! If the ward's or conservatee's financial situation or ability to pay court fees improves, you must notify the court within five days on form FW-010-GC.

Do not include income of guardian or conservator living in the household in item 16, his or her money and property in item 17, or his or her deductions and expenses in item 18 unless he or she is a parent of the ward or the spouse or registered domestic partner of the conservatee.

17 Ward's or Conservatee's Household's Money and Property

a. Cash \$

b. All financial accounts (list bank name and amount):

- (1) \$
(2) \$
(3) \$

c. Cars, boats, and other vehicles

Table with columns: Make / Year, Fair Market Value, How Much You Still Owe. Rows 1-3.

d. Real estate

Table with columns: Address, Fair Market Value, How Much You Still Owe. Rows 1-2.

e. Other personal property (jewelry, furniture, furs, stocks, bonds, etc.):

Table with columns: Describe, Fair Market Value, How Much You Still Owe. Rows 1-2.

18 Ward's or Conservatee's Household's Monthly Deductions and Expenses

a. List any payroll deductions and the monthly amount below:

- (1) \$
(2) \$
(3) \$
(4) \$

b. Rent or house payment and maintenance \$

c. Food and household supplies \$

d. Utilities and telephone \$

e. Clothing \$

f. Laundry and cleaning \$

g. Medical and dental expenses \$

h. Insurance (life, health, accident, etc.) \$

i. School, child care \$

j. Child, spousal support (another marriage) \$

k. Transportation, gas, auto repair and insurance \$

l. Installment payments (list each below):

Table with columns: Paid to, How Much? Rows 1-3.

m. Wages/earnings withheld by court order \$

n. Any other monthly expenses (list each below):

Table with columns: Paid to, How Much? Rows 1-3.

Total monthly expenses (add 18a-18n above): \$

**INFORMATION SHEET ON WAIVER OF APPELLATE COURT FEES—
SUPREME COURT, COURT OF APPEAL, APPELLATE DIVISION**

If you file an appeal, a petition for a writ, or a petition for review in a civil case, such as a family law case or a case in which you sued someone or someone sued you, you must generally pay a filing fee to the court. If you are a party other than the party who filed the appeal or the petition, you must also generally pay a fee when you file your first document in a case in the Court of Appeal or Supreme Court. You and the other parties in the case may also have to pay other court fees in these proceedings, such as fees to prepare or get a copy of a clerk’s transcript in an appeal. However, if you cannot afford to pay these court fees and costs, you may ask the court to issue an order saying you do not have to pay these fees (this is called “waiving” these fees).

1. Who can get their court fees waived? The court will waive your court fees and costs if:

- **You are getting public assistance**, such as Medi-Cal, Food Stamps, Supplemental Security Income (not Social Security), State Supplemental Payment, County Relief/General Assistance, In-Home Supportive Services, CalWORKS, Tribal Temporary Assistance for Needy Families, or Cash Assistance Program for Aged, Blind, and Disabled.
- **You have a low income level.** Under the law you are considered a low-income person if the gross monthly income (before deductions for taxes) of your household is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income
1	\$1,329.17	3	\$2,262.50	5	\$3,195.84
2	\$1,795.84	4	\$2,729.17	6	\$3,662.50

If more than 6 people at home, add \$466.67 for each extra person.

- **You do not have enough income to pay for your household’s basic needs *and* your court fees.**

2. What fees and costs will the court waive? If you qualify for a fee waiver, the Supreme Court, Court of Appeal, or Appellate Division will waive the filing fee for the notice of appeal, a petition for a writ, a petition for review, or the first document filed by a party other than the party who filed the appeal or petition, and any court fee for participating in oral argument by telephone. The trial court will also waive costs related to the clerk’s transcript on appeal, the fee for the court to hold in trust the deposit for a reporter’s transcript on appeal under rule 8.130(b) or rule 8.834(b) of the California Rules of Court, and the fees for making a transcript or copy of an official electronic recording under rule 8.835. If you are the appellant (the person who is appealing the trial court decision), the fees waived include the deposit required under Government Code section 68926.1 and the costs for preparing and certifying the clerk’s transcript and sending the original to the reviewing court and one copy to you. If you are the respondent (a party other than the appellant in a case that is being appealed), the fees waived include the costs for sending you a copy of the clerk’s transcript. You can also ask the trial court to waive other necessary court fees and costs.

The court **cannot** waive the fees for preparing a reporter’s transcript in a civil case. A special fund, called the Transcript Reimbursement Fund, may help pay for the transcript. (See www.courtreportersboard.ca.gov/consumers/index.shtml#trf and Business and Professions Code sections 8030.2 and following for more information about this fund.) If you are unable to pay the cost of a reporter’s transcript, a record of the oral proceedings can be prepared in other ways, by preparing an agreed statement or, in some circumstances, a statement on appeal or settled statement.

3. How do I ask the court to waive my fees?

- **Appeal in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** In a limited civil case, if the trial court already issued an order waiving your court fees *and that fee waiver has not ended* (fee waivers automatically end 60 days after the judgment), the fees and costs identified in item 2 above are already waived; just give the court a copy of your current fee waiver. If you do not already have an order waiving your fees or you had a fee waiver but it has ended, you must complete and file a *Request to Waive Court Fees* (form FW-001). If you are the appellant (the party who is appealing), you should check both boxes in item 4 on FW-001 and file the completed form with your notice of appeal. If you are the respondent (a party other than the appellant in a case that is being appealed), the completed form should be filed in the court when the fees you are requesting to be waived, such as the fee for the clerk’s transcript or telephonic oral argument, are due.

- **Writ Proceeding in Limited Civil Case (civil case in which the amount of money claimed is \$25,000 or less).** If you want the Superior Court to waive the fees in a writ proceeding in a limited civil case, you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box. The completed form should be filed with your petition for a writ.
- **If You Are a Guardian or Conservator.** If you are a guardian or conservator or a petitioner for the appointment of a guardian or conservator, special rules apply to your request for a fee waiver on an appeal from an order in the guardianship or conservatorship proceeding or in a civil action in which you are a party acting on behalf of your ward or conservatee. Complete and submit a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC) to request a fee waiver. See California Rules of Court, rule 7.5.
- **Appeal in Other Civil Cases.** If you want the court to waive fees and costs in an appeal in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). In item 4 on FW-001, check the second box to ask the Court of Appeal to waive the fee for filing the notice of appeal or, if you are a respondent (a party other than the one who filed the appeal), the fee for the first document you file in the Court of Appeal. Check both boxes if you also want the trial court to waive your costs for the clerk's transcript (if the trial court already issued an order waiving your fees *and that fee waiver has not ended*, you do not need to check the first box; the fees and costs identified in item 2 above are already waived, just give the court a copy of your current fee waiver). If you are the appellant, the completed form should be submitted with your notice of appeal (if you check both boxes in item 4, the court may ask for two signed copies of this form). If you are the respondent, the completed form should be submitted at the time the fee you are asking the court to waive is due. For example, file the form in the trial court with your request for a copy of the clerk's transcript if you are asking the court to waive the transcript fee or file the form in the Court of Appeal with the first document you file in that court if you are asking the court to waive the fee for filing that document. To request waiver of a court fee for telephonic oral argument, you should file the completed form in the Court of Appeal when the fee for telephonic oral argument is due.
- **Writ Proceeding in Other Civil Cases.** If you want the Supreme Court or Court of Appeal to waive the fees and costs in a writ proceeding in a civil case other than a limited civil case, such as a family law case or an unlimited civil case (a civil case in which the amount of money claimed is more than \$25,000), you must complete a *Request to Waive Court Fees* (form FW-001). If you are the petitioner (the party filing the petition), the completed form should be submitted with your petition for a writ in the Supreme Court or Court of Appeal clerk's office. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court or Court of Appeal.
- **Petition for Review.** If you want to request that the Supreme Court waive the fees in a petition for review proceeding, you must complete a *Request to Waive Court Fees* (form FW-001) or a *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC). If you are the petitioner, you should submit the completed form with your petition for review. If you are a party other than the petitioner, the completed form should be filed with the first document you file in the Supreme Court.

IMPORTANT INFORMATION!

- **Fill out your request completely and truthfully.** When you sign your request for a fee waiver, you are declaring under penalty of perjury that the information you have provided is true and correct.
- **The court may ask you for information and evidence.** You may be ordered to go to court to answer questions about your ability to pay court fees and costs and to provide proof of eligibility. Any initial fee waiver you are granted may be ended if you do not go to court when asked. You may be ordered to repay amounts that were waived if the court finds you were not eligible for the fee waiver.
- **If you receive a fee waiver, you must tell the court if there is a change in your finances.** You must tell the court immediately if your finances improve or if you become able to pay court fees or costs during this case (file form FW-010 with the court). You may be ordered to repay any amounts that were waived after your eligibility ended. If the trial court waived your fees and costs and you settle your case for \$10,000 or more, the trial court will have a lien on the settlement in the amount of the waived fees.
- **The fee waiver ends.** The fee waiver expires 60 days after the judgment, dismissal, or other final disposition of the case or when the court finds that you are not eligible for a fee waiver.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
CHILDREN'S NAMES:	
FINANCIAL DECLARATION—JUVENILE DEPENDENCY	CASE NUMBER:

1. Personal Information:

Name:		Social Security Number:	
Other names used:			
I.D. or Driver's License Number:		Date of Birth:	Age:
Relationship to Child: <input type="checkbox"/> Parent <input type="checkbox"/> Other Responsible Person (specify):			
Street or Mailing Address:			
City:	State:	Zip:	Phone: Alternate Phone:
Marital Status: <input type="checkbox"/> Married <input type="checkbox"/> Single <input type="checkbox"/> Domestic partner <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
Name of Spouse/Partner:		Number of dependents living with you:	
Names and ages of dependents:			

2. I receive (check all that apply): Medi-Cal SNAP (food stamps) SSI SSP
 County Relief/General Assistance CalWORKS or Tribal TANF (Temporary Assistance to Needy Families)
 IHSS (In-Home Supportive Services) CAPI (Case Assistance Program for Aged, Blind, and Disabled)

3. My gross monthly household income (before deductions for taxes) is less than the amount listed below:

Family Size	Family Income	Family Size	Family Income	Family Size	Family Income	If more than 6 people at home, add \$466.67 for each extra person.
1	\$1,329.17	3	\$2,262.50	5	\$3,195.84	
2	\$1,795.84	4	\$2,729.17	6	\$3,662.50	

4. I have been reunified with my child(ren) under a court order (attached).

5. I am receiving court-ordered reunification services.

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

6. Employment:

Your Employment				Your Spouse/Partner's Employment			
Employer:				Employer:			
Address:				Address:			
City and Zip Code:		Phone:		City and Zip Code:		Phone:	
Type of Job:				Type of Job:			
How long employed:	Working now?	Monthly salary:	Take home pay:	How long employed:	Working now?	Monthly salary:	Take home pay:
If not now employed, who was your last employer? <i>(Name, Address, City, and Zip Code):</i>				If not now employed, who was this person's last employer? <i>(Name, Address, City, and Zip Code):</i>			
Phone number of last employer:				Phone number of last employer:			

7. Other Monthly Income and Assets:

Other Income	Assets: What Do You Own?
Unemployment\$	Cash \$
Disability \$	Real Property/Equity \$
Social Security \$	Cars and Other Vehicles \$
Workers' Compensation \$	Life Insurance \$
Child Support Payments \$	Bank Accounts <i>(list below)</i> \$
Foster Care Payments \$	Stocks and Bonds \$
Other Income \$	Business Interest \$
Total \$	Other Assets \$
	Total \$
	Name and branch of bank:
	 Account numbers:

CHILDREN'S NAMES:	CASE NUMBER:
RESPONSIBLE PERSON'S NAME:	

8. Expenses:

Monthly Household Expenses	Reunification Plan: Monthly Cost of Required Services
Rent or Mortgage Payment \$	Parenting Classes \$
Car Payment \$	Substance Abuse Treatment \$
Gas and Car Insurance \$	Therapy/Counseling \$
Public Transportation \$	Medical Care/Medications \$
Utilities (Gas, Electric, Phone, Water, etc.)... \$	Domestic Violence Counseling \$
Food \$	Batterers' Intervention \$
Clothing and Laundry \$	Victim Support \$
Child Care \$	Regional Center Programs \$
Child Support Payments \$	Transportation \$
Medical Payments \$	In-Home Services \$
Other Necessary Monthly Expenses	Other \$
Total \$	Total \$

9. Loan/Expense Payments (other than mortgage or car loan):

Name of lender and type of loan/expense	Monthly payment	Balance owed
	\$	\$
	\$	\$
	\$	\$
	\$	\$

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF DECLARANT)

FOR FINANCIAL EVALUATION OFFICER USE ONLY

TOTAL INCOME	\$	COST OF LEGAL SERVICES	\$
TOTAL EXPENSES	\$	MONTHLY PAYMENT	\$
NET DISPOSABLE INCOME	\$	TOTAL COST ASSESSED	\$

The above-named responsible person is presumed unable to pay reimbursement for the cost of legal services in this proceeding and is eligible for a waiver of liability because

- he or she receives qualifying public benefits
- his or her household income falls below 125% of the current federal poverty guidelines
- he or she has been reunified with the child(ren) under a court order and payment of reimbursement would harm his or her ability to support the child(ren).

Date:

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF FINANCIAL EVALUATION OFFICER)

Computation Sheet

Number in Family	2020 Federal Poverty Guidelines (A)	125% of Poverty Guidelines (B) (B = A x 125%)	2020 California Monthly Income (C) (C = B / 12)*
1	\$12,760.00	\$15,950.00	\$1,329.17
2	17,240.00	21,550.00	1,795.84
3	21,720.00	27,150.00	2,262.50
4	26,200.00	32,750.00	2,729.17
5	30,680.00	38,350.00	3,195.84
6	35,160.00	43,950.00	3,662.50
7	39,640.00	49,550.00	4,129.17
8	44,120.00	55,150.00	4,595.84
For each additional person, add:	4,480.00	5,600.00	466.67

*These amounts have been rounded up to the nearest whole cent. Language on the forms reflects this slight excess by stating that the household income is “less than” the amounts in the chart.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-098

For business meeting on: March 24, 2020

Title

Rules and Forms: Technical Revision to
Form ICWA-020

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Revise form ICWA-020

Effective Date

March 25, 2020

Recommended by

Family and Juvenile Law Advisory
Committee

Hon. Jerilyn L. Borack, Cochair

Hon. Mark A. Juhas, Cochair

Date of Report

February 28, 2020

Contact

Ann Gilmour, 415-865-4207

ann.gilmour@jud.ca.gov

Tribal Court–State Court Forum

Hon. Abby Abinanti, Cochair

Hon. Suzanne N. Kingsbury, Cochair

Executive Summary

The Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum recommend that *Parental Notification of Indian Status* (form ICWA-020) be revised to correct an omission in the form that is causing confusion for judicial officers and justice partners.

Recommendation

The Family and Juvenile Law Advisory Committee and the Tribal Court–State Court Forum recommend that the Judicial Council, effective March 25, 2020, revise *Parental Notification of Indian Status* (form ICWA-020) to add a check box to item 3 of the form to be checked if none of the factors that give the court “reason to know” a child is an Indian child apply to the case.

The revised form is attached at page 5.

Relevant Previous Council Action

The *Parental Notification of Indian Status* (form ICWA-020) was adopted by the Judicial Council for mandatory use effective January 1, 2008, as part of a large rules and forms proposal implementing Senate Bill 678 (Ducheny; Stats. 2006, ch. 838) which wove the requirements of the Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq. “ICWA”) into the California Family, Probate, and Welfare and Institutions Codes.¹ The form was revised effective January 1, 2020, as part of a large rules and forms proposal implementing Assembly Bill 3176 (Waldron; Stats. 2018, ch. 833), which revised the Welfare and Institutions Code to conform California law to the requirements of the federal ICWA regulations found at 25 Code of Federal Regulations part 23 that were enacted in 2016.²

Analysis/Rationale

The *Parental Notification of Indian Status* (form ICWA-020) is a mandatory form used in all case types where inquiry about the child’s Indian status is required for purposes of determining whether ICWA applies. The form is completed under penalty of perjury by each of the child’s parents, and the child’s Indian custodian, guardian, or other individual of whom ICWA inquiry is required.

The original form ICWA-020 included the following options with respect to an individual’s Indian status:

3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe(s) (name each): _____
Name of band (if applicable): _____
- b. I may have Indian ancestry. _____
Name of tribe(s): _____
Name of band (if applicable): _____
- c. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe (name each): _____
Name of band (if applicable): _____
- d. I have no Indian ancestry as far as I know.
- e. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
Name of tribe (name each): _____
Name of band (if applicable): _____
Name and relationship of ancestor(s): _____

When the form was revised during the spring 2019 RUPRO cycle, all of these options were revised to conform to the factors set out in the 2016 federal regulations and the Welfare and Institutions Code as amended by AB 3176 that give the court “reason to know” the child is an

¹ The Rules and Forms package implementing SB 678 was approved at the Judicial Council’s meeting on October 26, 2007, as Item A27. That item is available here: <https://www.courts.ca.gov/documents/102607ItemA27.pdf>.

² The Rules and Forms package implementing AB 3176 was approved at the Judicial Council’s meeting on September 24, 2019, as Item 19-195. That item is available here: <https://jcc.legistar.com/View.ashx?M=F&ID=7684873&GUID=52B4C6B1-F704-458F-BF42-EB1AA4F82000>.

Indian child.³ Simply having Indian ancestry is not among the factors that give the court “reason to know” a child is an Indian child. Therefore, both items “3. b. I may have Indian ancestry.” and “3. d. I have no Indian ancestry as far as I know.” were removed from the form. The proposed revisions were circulated for public comment during the spring 2019 RUPRO comment cycle.

The revised form as effective January 1, 2020, contains the following options with respect to Indian status:

3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe(s) (*name each*): _____
Location of tribe(s): _____
- b. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
Name of tribe(s) (*name each*): _____
Location of tribe(s): _____
- c. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
Name of tribe(s) (*name each*): _____
Location of tribe(s): _____
Name and relationship of ancestor(s): _____
- d. I am a resident of or am domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- e. The child is a resident of or is domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- f. The child is or has been a ward of a tribal court.
- g. Either parent or the child possesses an Indian identification card indicating membership or citizenship in an Indian tribe.
Name of tribe(s) (*name each*): _____
Membership or citizenship number (*if any*): _____

Since the revised form’s effective date, staff have received numerous expressions of concern from judicial officers, attorneys, and other justice partners that there is no longer a box to be affirmatively checked under penalty of perjury if the individual does not claim any affiliation that would trigger ICWA application in the case.

This proposal would correct this omission by adding to item 3 a further option as follows: “h. None of the above apply.” The addition is noncontroversial and is required to correct confusion. The proposal comes within the scope of Rule 10.22(d)(2) as a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy that can be adopted without circulating it for comment.

Policy implications

This proposal has no major policy implications and is important to avoid confusion.

Comments

The recent changes to *Parental Notification of Indian Status* (form ICWA-020) were circulated for public comment from April 11 through June 10, 2019, as part of the spring 2019 invitation-to-comment cycle. That invitation to comment specifically asked whether the questions about

³ The factors are set out at 25 C.F.R. § 23.107(c) and Welf. & Inst. Code, § 224.3(d).

Indian status in the proposed form ICWA-020 were sufficient. Comments were received on the ICWA-020, and revisions were made in response to those comments. However, this issue—the need for an option to state “None of the above apply”—was not raised during the comment period.

This minor change has not been circulated for public comment as it is not substantive or controversial and is urgently needed to avoid confusion. The proposal comes within the scope of Rule 10.22(d)(2) as a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy that can be adopted without circulating it for comment.

Alternatives considered

The committee and forum have considered whether this change could wait for the regular RUPRO cycle and circulate for public comment but have concluded that it is important to make this correction as soon as possible.

Fiscal and Operational Impacts

No fiscal or operational impacts are anticipated.

Attachments and Links

1. Form ICWA-020, at page 5

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NUMBER: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ EMAIL ADDRESS: _____ ATTORNEY FOR (name): _____	FOR COURT USE ONLY DRAFT Not Approved by the Judicial Council
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CHILD'S NAME: _____	
PARENTAL NOTIFICATION OF INDIAN STATUS	CASE NUMBER: _____

To the parent, Indian custodian, or guardian of the above named child: You must provide all the requested information about the child's Indian status by completing this form. If you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court.

1. Name: _____
2. Relationship to child: Parent Indian custodian Guardian Other:

Indian Status

3. a. I am or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe(s) (name each): _____
 Location of tribe(s): _____
- b. The child is or may be a member of, or eligible for membership in, a federally recognized Indian tribe.
 Name of tribe(s) (name each): _____
 Location of tribe(s): _____
- c. One or more of my parents, grandparents, or other lineal ancestors is or was a member of a federally recognized tribe.
 Name of tribe(s) (name each): _____
 Location of tribe(s): _____
 Name and relationship of ancestor(s): _____
- d. I am a resident of or am domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- e. The child is a resident of or is domiciled on a reservation, rancheria, Alaska Native village, or other tribal trust land.
- f. The child is or has been a ward of a tribal court.
- g. Either parent or the child possesses an Indian identification card indicating membership or citizenship in an Indian tribe.
 Name of tribe(s) (name each): _____
 Membership or citizenship number (if any): _____

h. None of the above apply.

4. A previous form ICWA-020 has has not been filed with the court.

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

Date: _____

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE)

Note: This form is not intended to constitute a complete inquiry into Indian heritage. Further inquiry may be required by the Indian Child Welfare Act.



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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-109

For business meeting on March 24, 2020

Title	Agenda Item Type
Trial Courts: Trial Court Trust Fund Funds Held on Behalf of the Trial Courts	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	March 24, 2020
Recommended by	Date of Report
Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee Hon. Jonathan B. Conklin, Chair	March 5, 2020
	Contact
	Catrayel Wood, 916-643-7008 Catrayel.Wood@jud.ca.gov

Executive Summary

The Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends approving four new requests and two amended requests from three trial courts for Trial Court Trust Fund funds to be held on behalf of the trial courts. Under the Judicial Council–adopted process, a court may request reduced funding as a result of a court’s exceeding the 1 percent fund balance cap, to be retained in the Trial Court Trust Fund for the benefit of that court.

Recommendation

Based on actions taken at its meetings on November 21, 2019, the Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends that the Judicial Council, effective March 24, 2020:

1. Approve the following new requests totaling \$629,318 (Attachment A):
 - a. \$45,000 request of the Superior Court of Mono County for desktop computer replacements;
 - b. \$36,898 request of the Superior Court of Mono County for digital scanning and storing services;

- c. \$40,000 request of the Superior Court of Mono County for a car replacement; and
- d. \$507,420 request of the Superior Court of Orange County to replace its Voice over Internet Protocol system.

2. Approve the following amended requests totaling \$377,929 (Attachment F):

- a. \$163,939 request of the Superior Court of Mono County, which decreases its original request of \$183,939 by \$20,000, for case management system replacement; and
- b. \$213,990 request of the Superior Court of San Mateo County, which increases its original request of \$208,123 by \$5,867, for flooring and carpeting repair and/or replacement.

Relevant Previous Council Action

On April 15, 2016, the council approved the Trial Court Budget Advisory Committee’s recommended process, criteria, and required information for trial courts to request that Trial Court Trust Fund (TCTF)-reduced allocations related to the 1 percent fund balance cap be retained in the TCTF as restricted fund balance for the benefit of those courts.¹ This retention allows the courts to prudently plan for and fund necessary court infrastructure projects such as technology or infrastructure improvements; facilities maintenance and repair allowed under California Rules of Court, rule 10.810; court efficiencies projects; and other court infrastructure projects that would not be possible as an unintended consequence of the 1 percent fund balance cap.

The criterion for eligibility is that a court have significant court expenditures that cannot be financed within its annual budget. The submission, review, and approval process and the allowance for additional appropriate terms and conditions are consistent with the process for supplemental funding requests.

The requirements for submission of an amended or new request are intended to ensure that the council is aware of any modifications to an approved plan and has given its explicit approval. Post-completion reporting and audit requirements provide final review of the plans and their adherence to the approved purpose.

In 2016, the Judicial Council approved 18 requests from 15 trial courts totaling \$8.3 million that fiscal year 2016–17 allocations reduced as a result of a court exceeding the 1 percent fund balance cap be retained in the TCTF for the benefit of those courts. In 2017, the council approved 28 requests from 18 trial courts totaling \$8.1 million in anticipation of reductions from the 1 percent fund balance cap at the end of fiscal year 2017–18. In 2018, the council approved 23 requests from 15 trial courts totaling \$7.3 million in anticipation of reductions from the 1 percent fund balance cap at the end of fiscal year 2018–19.

¹ Judicial Council of Cal., Advisory Com. Rep., *Trial Court Allocations: Trial Court Reserves Held in the Trial Court Trust Fund* (Mar. 25, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4378277&GUID=57D6B686-EA95-497E-9A07-226CA724ADCB>.

In January 2020, the Judicial Council adopted the Trial Court Budget Advisory Committee's recommendation to adopt revisions to the *Judicial Council-Approved Process, Criteria, and Required Information for Trial Court Trust Fund Balance Held on Behalf of the Courts*, including streamlining the submission schedule, making a change to the recipient of the request, and providing language corrections to better align with court year-end closing, trial court allocation offsets, and requests to amend previously reviewed requests.²

Analysis/Rationale

A TCTF fund balance held on behalf of the trial courts allows the courts to meet contractual obligations and fund necessary court infrastructure projects, such as technology improvements or infrastructure, rule 10.810-allowable facilities maintenance and repair, court efficiencies projects, and other court infrastructure projects whose work extends beyond the three-year term of the contract encumbrance.

Under Government Code section 77203,³ before June 30, 2014, a trial court could carry over all unexpended funds from the court's operating budget from the prior fiscal year. Commencing June 30, 2014, and concluding June 30, 2019, a trial court could carry over unexpended funds in an amount not to exceed 1 percent of the court's operating budget from the prior fiscal year. Commencing June 30, 2020, a trial court may carry over unexpended funds in an amount not to exceed 3 percent of the court's operating budget from the prior fiscal year.

Government Code section 68502.5(c)(2)(A) requires the Judicial Council, when setting the allocations for trial courts, to set a preliminary allocation in July of each fiscal year. Further, in January of each fiscal year, after review of available trial court reserves as of June 30 of the prior fiscal year, the Judicial Council shall finalize allocations to trial courts and each court's finalized allocation shall be offset by the amount of reserves in excess of the amount authorized to be carried over under Government Code section 77203(b).

Policy implications

None.

Comments

This item did not circulate for comment and received no public comment.

Alternatives considered

Each court detailed specific alternatives in their attached applications. Overall, if the requests are not approved, the courts will either use other resources from their operating budgets, which in

² Judicial Council of Cal., Advisory Com. Rep., *Updates to the Funds Held on Behalf of the Trial Courts Policy* (Jan. 17, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=7977186&GUID=6B519461-BD50-4F19-9B80-CD40F8FD64FE>.

³ Added as part of Senate Bill 1021 (Stats. 2012, ch. 41), later amended by Senate Bill 95 (Stats. 2019, ch. 36, § 2), effective June 27, 2019.

turn would cut into other resources; postpone implementation of the requested actions; or reduce services to the public.

Fiscal and Operational Impacts

Allocating funds beyond the amount requested incurs no additional cost, and operational impacts are absorbed in Judicial Council staff workload. If the requests are not approved, the courts' budgets will be negatively affected as well as the courts' ability to adequately and efficiently serve the public.

Attachments and Links

1. Attachment A: Summary of New Requests, at page 1
2. Attachment B: Application—Request for Mono Superior Court, at page 2
3. Attachment C: Application—Request for Mono Superior Court, at page 18
4. Attachment D: Application—Request for Mono Superior Court, at page 34
5. Attachment E: Application—Request for Orange Superior Court, at page 50
6. Attachment F: Summary of Amended Requests, at page 67
7. Attachment G: Application—Request for Mono Superior Court, at page 68
8. Attachment H: Application—Request for San Mateo Superior Court, at page 85
9. Attachment I: *Summary of Recommended Process, Criteria, and Required Information for Trial Court Trust Fund Fund Balance Held on Behalf of the Courts*, at page 105


Summary of Requests for Trial Court Trust Fund Funds to be Held on Behalf of the Court (New Requests)

Table 1: New Request for March 23—24, 2020 Judicial Council Meeting

Court	Request Number	Amount Requested	Category	High Level Summary
Mono	26-19-01-01	45,000	IT	Desktop computer replacement for all employees
Mono	26-19-01-02	36,898	IT	Digital scanning/storing services
Mono	26-19-01-03	40,000	Vehicle	Replacement of 2012 Ford Escape
Orange	30-19-01-01	507,420	IT	Voice Over Internet Protocol (VoIP)

629,318

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

<p>Please check the type of request:</p> <p><input checked="" type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i></p> <p><input type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i></p>	
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SECTION I: GENERAL INFORMATION

<p>SUPERIOR COURT: Click here to enter court MONO</p>	<p>PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> Lester Perpall</p>	
<p>CONTACT PERSON AND CONTACT INFO: Tammy Laframboise 760-923-2304</p>		
<p>DATE OF SUBMISSION: Click here to enter a date. 10/25/19</p>	<p>TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: FY 18-19 – FY 21-22</p>	<p>REQUESTED AMOUNT: \$45,000</p>

REASON FOR REQUEST *(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):*

Technology request to hold TCTF funds for desktop computer replacement for all employees. The average lifespan of desktop computers is three to five years. While many computers can remain operational several years after their projected lifespan, the accumulation of files, software, and updates take a toll on the hardware. Mono replaced all desktop computers in FY 16-17, so they are getting close to the end of their lifespan. Due to our IT resources we are implementing a replacement plan of half of our hardware one year and the next half the subsequent year.

SECTION II: AMENDED REQUEST CHANGES

A. Identify sections and answers amended.

B. Provide a summary of the changes to the request.

SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE

A. Explain why the request does not fit within the court’s annual operational budget process and the three-year encumbrance term.

Now that our court has filled all positions in our schedule 7A, we do not have the budget flexibility to expend the amount requested. It would be difficult to fit this substantial amount of funding into our regular operational budget. Due to the volatility in the pricing of computer hardware, we are unable to encumber for that far in advance.

- A. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?**

Having a replacement plan in place will assure that all staff will be able to perform their jobs more efficiently with newer equipment. Having older hardware for longer periods of time risks system failures.

- B. If a cost efficiency, please provide cost comparison (table template provided).**
- C. Describe the consequences to the court's operations if the court request is not approved.**
The deputy clerks would not be able to perform their duties.
- D. Describe the consequences to the public and access to justice if the court request is not approved.**
See answers to A and C.
- E. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?**
We believe that use of our own funding is preferable to requesting supplemental funding.

SECTION IV: FINANCIAL INFORMATION

Please provide the following (*table template provided for each*):

- A. Three-year history of year-end fund balances, revenues, and expenditures**
SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. A TAB
- B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf**
SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. B TAB
- C. Identification of all costs, by category and amount, needed to fully implement the project**
SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. C TAB
- D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year**
SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. D TAB

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Cumulative Cost Savings		-	-	-	-
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If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2018-19	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	233,692	37,878						271,570
Revenues	2,227,592	81,276	101,621					2,410,489
Expenditures	2,249,509	68,319	104,970					2,422,798
Operating Transfers In (Out)	(3,891)	542	3,349					-
Ending Fund Balance	207,884	51,377	-	-	-	-	-	259,261

FY 2017-18	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	162,304	25,025	-					187,329
Revenues	2,076,735	59,092	151,540					2,287,367
Expenditures	1,997,052	46,239	159,835					2,203,126
Operating Transfers In (Out)	(8,295)	-	8,295					-
Ending Fund Balance	233,692	37,878	-	-	-	-	-	271,570

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	31,473	12,461	-					43,934
Revenues	1,972,136	58,145	144,531					2,174,812
Expenditures	1,839,786	46,036	145,596					2,031,418
Operating Transfers In (Out)	(1,519)	454	1,065					-
Ending Fund Balance	162,304	25,024	-	-	-	-	-	187,328

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2018-19		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,149,604	10,547						2,160,151
Grants			98,533					98,533
Other Financing Sources	37,563	68,739						106,302
TOTAL REVENUES	2,187,168	79,286	98,533	-	-	-	-	2,364,987
EXPENDITURES								
Salaries	842,282	21,011	14,370					877,663
Staff Benefits	706,124	23,296	9,930					739,351
General Expense	91,455	700	8,676					100,831
Printing	1,265	48	436					1,748
Telecommunications	10,793	843	5,939					17,575
Postage	7,591	396	13					8,000
Insurance	2,108	-	-					2,108
Travel in State	3,285	5	1,533					4,823
Travel Out of State	-	-	-					-
Training	553		508					1,061
Security	327	32	295					655
Facilities Operations	15,351	1,198	11,705					28,255
Utilities	-	-	-					-
Contracted Services	240,595	10,687	42,353					293,635
Consulting and Professional Services - County Provided	40	-	-					40
Information Technology (IT)	154,537	7,476	2,196					164,210
Major Equipment	-	-	-					-
Other Items of Expense	2,287	3	104					2,393
Juror Costs	222							222
Other	520							520
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,079,333	65,698	98,058	-	-	-	-	2,243,089
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)								-
Ending Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898

Current detailed budget projection on court's behalf

	FY 2020-21		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,286,833	12,646						2,299,479
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	2,319,879	79,778	102,411	-	-	-	-	2,502,068
EXPENDITURES								
Salaries	953,561	22,062	30,886					1,006,508
Staff Benefits	757,977	24,701	9,155					791,833
General Expense	105,212	840	7,792					113,844
Printing	938	-	-					938
Telecommunications	20,227	866	5,145					26,238
Postage	13,821	420	-					14,241
Insurance	2,422	-	-					2,422
Travel in State	16,097	-	1,155					17,252
Travel Out of State	-	-	-					-
Training	5,374	-	525					5,899
Security	936	-	-					936
Facilities Operations	21,694	1,260	8,731					31,685
Utilities								-
Contracted Services	607,918	10,391	44,100					662,409
Consulting and Professional Services - County Provided	17,157	-	-					17,157
Information Technology (IT)	142,382	7,665	525					150,572
Major Equipment	4,277	-	-					4,277
Other Items of Expense	3,452	-	315					3,767
Juror Costs	715	75						790
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,674,159	68,280	108,329	-	-	-	-	2,850,768
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898
Ending Balance (Deficit)	(246,446)	25,086	(5,442)	-	-	-	-	(226,802)

Current detailed budget projection:

	FY 2021-22		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,287,074	12,646						2,299,720
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	2,320,120	79,778	102,411	-	-	-	-	2,502,309
EXPENDITURES								
Salaries	977,400	23,165	32,430					1,032,994
Staff Benefits	776,927	25,936	9,613					812,476
General Expense	110,473	882	8,182					119,536
Printing	985	-	-					985
Telecommunications	21,239	910	5,402					27,550
Postage	14,512	441	-					14,953
Insurance	2,543	-	-					2,543
Travel in State	16,901	-	1,213					18,114
Travel Out of State	-	-	-					-
Training	5,643	-	551					6,194
Security	982	-	-					982
Facilities Operations	22,779	1,323	9,167					33,269
Utilities								-
Contracted Services	298,679	10,910	46,305					355,894
Consulting and Professional Services - County Provided	18,015	-	-					18,015
Information Technology (IT)	40,931	8,048	551					49,531
Major Equipment	4,490	-	-					4,490
Other Items of Expense	3,625	-	331					3,956
Juror Costs	751	75						826
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,316,874	71,690	113,745	-	-	-	-	2,502,309
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(246,446)	25,086	(5,442)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)
Ending Balance (Deficit)	(243,200)	33,174	(16,776)	-	-	-	-	(226,802)

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	
910000	Staff Benefits	
920001	General Expense	45,000
924000	Printing	
925000	Telecommunications	
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	
945000	Major Equipment	
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		45,000

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2018-19 ▼	FY 2020-21 ▼	FY 2021-22 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	45,000								45,000
Expenditures		22,500	22,500						45,000
Cumulative Balance	45,000	22,500	-	-	-	-	-	-	-

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Original Request:

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution										-
Expenditures										-
Cumulative Balance	-	-	-	-	-	-	-	-	-	-

Amended request

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution										-
Expenditures										-
Cumulative Balance	-	-	-	-	-	-	-	-	-	-

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

Please check the type of request:

NEW REQUEST *(Complete Section I, III, and IV only.)*

AMENDED REQUEST *(Complete Sections I through IV.)*



SECTION I: GENERAL INFORMATION

SUPERIOR COURT:

Click here to enter court

MONO

PERSON AUTHORIZING REQUEST *(Presiding Judge or Court Executive Officer):*

Lester Perpoll

CONTACT PERSON AND CONTACT INFO:

Tammy Laframboise 760-923-2304

DATE OF SUBMISSION:

Click here to enter a date.

10/25/19

TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE:

FY 18-19 – FY 21-22

REQUESTED AMOUNT:

\$36,898

REASON FOR REQUEST *(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):*

Request to hold TCTF funds for technology need-document digital scanning/storing services. Our court wants to scan hard copy paper court records to convert them into digital files at our Bridgeport location. This would allow the court to be prepared for the future deployment of a new case management system that will allow digital court record document management and eliminate paper court record files. This would alleviate an ongoing struggle for many courts, which is finding physical storage space for hard copy paper court records.

SECTION II: AMENDED REQUEST CHANGES

A. Identify sections and answers amended.

B. Provide a summary of the changes to the request.

SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE

A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term.

Now that our court has filled all positions in our schedule 7 a, we do not have the budget flexibility to expend the amount requested. We were not confident about the amount of our budget surplus to have sufficient time to do a request for proposal process, contract with a vendor and encumber the funding to take advantage of the three-year encumbrance term.

- A. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?**

The ability to scan court file records and have them in a searchable digital format will allow the court to respond to justice partner and public records requests much more promptly and efficiently. We currently store many of our older case record files in our Bridgeport branch court location which is only staffed 2 days a week and is 50 miles away from the main courthouse. Consequently, it may take 2 to 3 weeks to fulfill a records request if the records are located at our branch court location. Scanning and digitizing the court file records will reduce the need for physical file record space and create more usable workspace at both our courthouse locations.

- B. If a cost efficiency, please provide cost comparison (table template provided).**

- C. Describe the consequences to the court's operations if the court request is not approved.**

The inability to scan and digitize our court record files will prevent the court from taking advantage of important functions that will be available in a new case management system, such as e-filing and creating a paperless digital work environment that makes case record information easily available and easily shared.

- D. Describe the consequences to the public and access to justice if the court request is not approved.**

Justice partner and public records requests would continue to take excessive amount of time to respond to since court staff would need to continue to search hard copy court records.

- E. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?**

We believe that use of our own funding is preferable to requesting supplemental funding.

SECTION IV: FINANCIAL INFORMATION

Please provide the following (*table template provided for each*):

- A. Three-year history of year-end fund balances, revenues, and expenditures**

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. A TAB

- B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf**

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. B TAB

- C. Identification of all costs, by category and amount, needed to fully implement the project**

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. C TAB

- D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year**

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. D TAB

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Cumulative Cost Savings		-	-	-	-
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If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2018-19	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	233,692	37,878						271,570
Revenues	2,227,592	81,276	101,621					2,410,489
Expenditures	2,249,509	68,319	104,970					2,422,798
Operating Transfers In (Out)	(3,891)	542	3,349					-
Ending Fund Balance	207,884	51,377	-	-	-	-	-	259,261

FY 2017-18	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	162,304	25,025	-					187,329
Revenues	2,076,735	59,092	151,540					2,287,367
Expenditures	1,997,052	46,239	159,835					2,203,126
Operating Transfers In (Out)	(8,295)	-	8,295					-
Ending Fund Balance	233,692	37,878	-	-	-	-	-	271,570

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	31,473	12,461	-					43,934
Revenues	1,972,136	58,145	144,531					2,174,812
Expenditures	1,839,786	46,036	145,596					2,031,418
Operating Transfers In (Out)	(1,519)	454	1,065					-
Ending Fund Balance	162,304	25,024	-	-	-	-	-	187,328

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2018-19		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,149,604	10,547						2,160,151
Grants			98,533					98,533
Other Financing Sources	37,563	68,739						106,302
TOTAL REVENUES	2,187,168	79,286	98,533	-	-	-	-	2,364,987
EXPENDITURES								
Salaries	842,282	21,011	14,370					877,663
Staff Benefits	706,124	23,296	9,930					739,351
General Expense	91,455	700	8,676					100,831
Printing	1,265	48	436					1,748
Telecommunications	10,793	843	5,939					17,575
Postage	7,591	396	13					8,000
Insurance	2,108	-	-					2,108
Travel in State	3,285	5	1,533					4,823
Travel Out of State	-	-	-					-
Training	553		508					1,061
Security	327	32	295					655
Facilities Operations	15,351	1,198	11,705					28,255
Utilities	-	-	-					-
Contracted Services	240,595	10,687	42,353					293,635
Consulting and Professional Services - County Provided	40	-	-					40
Information Technology (IT)	154,537	7,476	2,196					164,210
Major Equipment	-	-	-					-
Other Items of Expense	2,287	3	104					2,393
Juror Costs	222							222
Other	520							520
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,079,333	65,698	98,058	-	-	-	-	2,243,089
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)								-
Ending Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898

Current detailed budget projection on court's behalf

	FY 2021-22		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,287,074	12,646						2,299,720
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	2,320,120	79,778	102,411	-	-	-	-	2,502,309
EXPENDITURES								
Salaries	977,400	23,165	32,430					1,032,994
Staff Benefits	776,927	25,936	9,613					812,476
General Expense	110,473	882	8,182					119,536
Printing	985	-	-					985
Telecommunications	21,239	910	5,402					27,550
Postage	14,512	441	-					14,953
Insurance	2,543	-	-					2,543
Travel in State	16,901	-	1,213					18,114
Travel Out of State	-	-	-					-
Training	5,643	-	551					6,194
Security	982	-	-					982
Facilities Operations	22,779	1,323	9,167					33,269
Utilities								-
Contracted Services	298,679	10,910	46,305					355,894
Consulting and Professional Services - County Provided	18,015	-	-					18,015
Information Technology (IT)	40,931	8,048	551					49,531
Major Equipment	4,490	-	-					4,490
Other Items of Expense	3,625	-	331					3,956
Juror Costs	751	75						826
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,316,874	71,690	113,745	-	-	-	-	2,502,309
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898
Ending Balance (Deficit)	111,081	21,676	(10,859)	-	-	-	-	121,898

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	
910000	Staff Benefits	
920001	General Expense	
924000	Printing	
925000	Telecommunications	
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	36,898
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	
945000	Major Equipment	
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		36,898

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2018-19 ▼	FY 2020-21 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	36,898									36,898
Expenditures		36,898								36,898
Cumulative Balance	36,898	-	-	-	-	-	-	-	-	-

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year


Original Request:

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution										-
Expenditures										-
Cumulative Balance	-	-	-	-	-	-	-	-	-	-

Amended request

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution										-
Expenditures										-
Cumulative Balance	-	-	-	-	-	-	-	-	-	-

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

Please check the type of request: <input checked="" type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i> <input type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i>		
SECTION I: GENERAL INFORMATION		
SUPERIOR COURT: Click here to enter court MONO	PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> Lester Perpall	
	CONTACT PERSON AND CONTACT INFO: Tammy Laframboise 760-923-2304	
DATE OF SUBMISSION: Click here to enter a date. 10/25/19	TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: FY 18-19 – FY 22-23	REQUESTED AMOUNT: \$40,000
REASON FOR REQUEST <i>(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):</i> Request to hold TCTF funds for vehicle replacement of our 2012 Ford Escape. We consider a 10-year lifespan for a vehicle in the mountainous, winter driving environment of Mono County to be appropriate with regard to safety and reliability.		
SECTION II: AMENDED REQUEST CHANGES		
A. Identify sections and answers amended. B. Provide a summary of the changes to the request.		
SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE		
A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term. Now that our court has filled all positions in our schedule 7A, we do not have the budget flexibility to expend the amount requested. The courts oldest vehicle has approximately 47,000 miles on it so there are still several years of useful life which most likely will extend beyond the three-year encumbrance term. Once the court needs a new vehicle, we would like the funding to be available.		
APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT (Continued)		

- A. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?

We have two day per week travel of employees to our Bridgeport courthouse that is 50 miles away, over two mountain passes. Without reliable transportation, we possibility would not be able to staff the courthouse.

- B. If a cost efficiency, please provide cost comparison (table template provided).

- C. Describe the consequences to the court's operations if the court request is not approved.
Limited access to the Court for geographically over half of the county.

- D. Describe the consequences to the public and access to justice if the court request is not approved.
See C above.

- E. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?
We believe that use of our own funding is preferable to requesting supplemental funding.

SECTION IV: FINANCIAL INFORMATION

Please provide the following (*table template provided for each*):

- A. Three-year history of year-end fund balances, revenues, and expenditures

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. A TAB

- B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. B TAB

- C. Identification of all costs, by category and amount, needed to fully implement the project

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. C TAB

- D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year

SEE ATTACHED TCTF FUNDS HELD ON BEHALF TABLES TEMPLATE – FINAL, SEC. IV. D TAB

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Cumulative Cost Savings		-	-	-	-
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If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2018-19	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	233,692	37,878						271,570
Revenues	2,227,592	81,276	101,621					2,410,489
Expenditures	2,249,509	68,319	104,970					2,422,798
Operating Transfers In (Out)	(3,891)	542	3,349					-
Ending Fund Balance	207,884	51,377	-	-	-	-	-	259,261

FY 2017-18	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	162,304	25,025	-					187,329
Revenues	2,076,735	59,092	151,540					2,287,367
Expenditures	1,997,052	46,239	159,835					2,203,126
Operating Transfers In (Out)	(8,295)	-	8,295					-
Ending Fund Balance	233,692	37,878	-	-	-	-	-	271,570

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	31,473	12,461	-					43,934
Revenues	1,972,136	58,145	144,531					2,174,812
Expenditures	1,839,786	46,036	145,596					2,031,418
Operating Transfers In (Out)	(1,519)	454	1,065					-
Ending Fund Balance	162,304	25,024	-	-	-	-	-	187,328

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2018-19		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,149,604	10,547						2,160,151
Grants			98,533					98,533
Other Financing Sources	37,563	68,739						106,302
TOTAL REVENUES	2,187,168	79,286	98,533	-	-	-	-	2,364,987
EXPENDITURES								
Salaries	842,282	21,011	14,370					877,663
Staff Benefits	706,124	23,296	9,930					739,351
General Expense	91,455	700	8,676					100,831
Printing	1,265	48	436					1,748
Telecommunications	10,793	843	5,939					17,575
Postage	7,591	396	13					8,000
Insurance	2,108	-	-					2,108
Travel in State	3,285	5	1,533					4,823
Travel Out of State	-	-	-					-
Training	553		508					1,061
Security	327	32	295					655
Facilities Operations	15,351	1,198	11,705					28,255
Utilities	-	-	-					-
Contracted Services	240,595	10,687	42,353					293,635
Consulting and Professional Services - County Provided	40	-	-					40
Information Technology (IT)	154,537	7,476	2,196					164,210
Major Equipment	-	-	-					-
Other Items of Expense	2,287	3	104					2,393
Juror Costs	222							222
Other	520							520
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,079,333	65,698	98,058	-	-	-	-	2,243,089
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)								-
Ending Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898

Current detailed budget projection on court's behalf

	FY 2022-23		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,011,737	12,646						2,024,383
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	2,044,783	79,778	102,411	-	-	-	-	2,226,972
EXPENDITURES								
Salaries	1,001,835	24,323	34,052					1,060,209
Staff Benefits	796,350	27,233	10,093					833,676
General Expense	115,996	926	8,591					125,513
Printing	1,034	-	-					1,034
Telecommunications	22,300	955	5,672					28,928
Postage	15,238	463	-					15,701
Insurance	2,671	-	-					2,671
Travel in State	17,746	-	1,273					19,020
Travel Out of State	-	-	-					-
Training	5,925	-	579					6,504
Security	1,031	-	-					1,031
Facilities Operations	23,918	1,389	9,626					34,932
Utilities								-
Contracted Services	-	11,456	48,620					60,076
Consulting and Professional Services - County Provided	18,916	-	-					18,916
Information Technology (IT)	-	8,451	579					9,029
Major Equipment	4,715	-	-					4,715
Other Items of Expense	3,806	-	347					4,154
Juror Costs	788	75						863
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,032,269	75,271	119,432	-	-	-	-	2,226,972
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	107,835	13,588	475	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898
Ending Balance (Deficit)	120,349	18,095	(16,546)	-	-	-	-	121,898

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	
910000	Staff Benefits	
920001	General Expense	
924000	Printing	
925000	Telecommunications	
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	
945000	Major Equipment	40,000
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		40,000

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2018-19 ▼	FY 2022-23 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	40,000									40,000
Expenditures		40,000								40,000
Cumulative Balance	40,000	-	-	-	-	-	-	-	-	-

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year


Original Request:

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution									-
Expenditures									-
Cumulative Balance	-	-	-	-	-	-	-	-	-

Amended request

Description	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution									-
Expenditures									-
Cumulative Balance	-	-	-	-	-	-	-	-	-

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

Please check the type of request:		
<input checked="" type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i> <input type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i>		
SECTION I: GENERAL INFORMATION		
SUPERIOR COURT: Orange	PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> David Yamasaki, Court Executive Officer	
	CONTACT PERSON AND CONTACT INFO: Katrina Coreces, Financial Planning Analyst, kcoreces@occourts.org	
DATE OF SUBMISSION: 11/6/2019	TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: 6/30/19-6/30/20	REQUESTED AMOUNT: \$507,420
REASON FOR REQUEST <i>(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):</i>		
<p>In March 2010, the Court completed its implementation of Voice Over Internet Protocol (VoIP) using Nortel Networks voice technology. This legacy voice technology has reached its End of Sale (EOS) and End of Life (EOL). The following are examples of the difficulties and risks of working with a system that is EOS and EOL:</p> <ul style="list-style-type: none"> • Voice parts are hard to obtain. The Court relies on its vendor to find parts, which are all refurbished. Once the Court receives the parts, court staff must then make further adjustments to work with the system. • The system's core software is supported by Windows 2008. This version of Windows is no longer supported. As Microsoft does not support patch management, the Court's servers are vulnerable to viruses, malware, and other threats. • Backups are taken of the database; however, the Court has no way of validating if it has been corrupted. • About 13% of the Court's total remote transactions are processed using interactive voice response (IVR). If the core phone system functionality fails, then most of the IVR's features will not be operational. • Enhanced 911, or E911, is a system to automatically provide the caller's location to 911 dispatchers. The Court's system is old and is an administrative drain to maintain. <p>At this stage, the Court's VoIP system has risks of multiple single point of failures. Until a replacement system is implemented, the Court is challenged with keeping the existing system operational and mitigating the impact of component failure where feasible and cost effective. The Court has reduced the potential impact of a component failure by procuring refurbished replacement/inventory parts including a Call Pilot (voicemail) server. Nevertheless, there is still risk of failure that will require an attempt at remediation by an outside resource.</p>		
SECTION II: AMENDED REQUEST CHANGES		
<p>A. Identify sections and answers amended. Not applicable</p> <p>B. Provide a summary of the changes to the request. Not applicable</p>		

A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term.

Depending on the selected vendor and solution, a replacement VoIP system is expected to cost \$1,000,000. Due to the 1% Fund Balance limit, the Court is not in a financial situation that would support a \$1,000,000 expenditure in one year. The Court does not have a reserve from which to draw funds as it still cannot carryover more than 1% of its operating budget (which amounts to about \$2 million or three days of payroll). The 2% Automation Fund reserves have already been earmarked for case management system replacements.

SECTION III (continued): TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE**B. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?**

While there may be greater integration opportunities with a new system, including improved security in holding cells with video and VoIP technology, the driving factor is that the existing system has been in place for several years, has reached its EOS and EOL, and operational risks exist.

C. If a cost efficiency, please provide cost comparison (table template provided).

There might be cost efficiencies in future years due to the Court not having to pay a premium on discontinued parts. There might also be greater integration opportunities with a new system. However, the efficiencies won't be realized until the system is installed and paid.

D. Describe the consequences to the court's operations if the court request is not approved.

If the Court's request is not approved and its VoIP system fails, this would be a major disruption to operations in all the Court's justice centers. The telephone system is still the primary means for staff to receive assistance from other departments, particularly end-user support and facilities. A telephone system failure will delay services, especially to those having email and other connectivity issues. Court users, on average, use telephone interpreting services 200 times per year. Not having a telephone system will necessitate having to bring in a Court Interpreter, causing delays and increasing costs. As previously mentioned, IVR accounts for about 13% of the Court's total remote transactions. Many IVR features will not be operational if the phone system fails. E911 is antiquated and will not work if the system fails to tell the operator where the call is originating. Finally, due to the current system being old, it cannot integrate other business unit needs and it cannot take advantage of newer technologies to improve operations and service delivery.

E. Describe the consequences to the public and access to justice if the court request is not approved.

Although the Court offers online and in-person services, some members of the public, especially the elderly and those without internet access, still prefer to use the telephone. Access to justice means providing as many avenues to the public as possible. A system failure may mean the inability for members of the public to access the Court by telephone for a prolonged period.

F. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?

The Court can keep positions vacant to generate savings. Currently, the Court is operating at a 6.9% vacancy rate. 1% of additional vacancy generates about \$1,400,000. This means that the Court would have to keep at least 15 more positions than it already has vacant for an entire year. In other words, it can bring up its vacancy rate to 8% for the entire year in order to purchase a telephone system. For a court that has already reduced its positions by nearly 25% over the past decade, this is not a sustainable and effective way to operate.

The Court can use its 1% reserve. However, this would mean that it will not have even one day of payroll in its reserves.

Holding funding in the TCTF is the preferred alternative to allow the Court to save funds over two years while continuing to operate in the best possible manner given limited resources.

Please provide the following (*table template provided for each*):

- A. **Three-year history of year-end fund balances, revenues, and expenditures**
See table

- B. **Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf**
See table

- C. **Identification of all costs, by category and amount, needed to fully implement the project**
See table

- D. **A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year**
See table

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

53					
Cumulative Cost Savings		-	-	-	-

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2015-16	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	4,607,940	4,333,210	-					8,941,150
Revenues	178,010,314	17,048,394	2,955,220					198,013,928
Expenditures	176,405,890	15,589,350	3,040,362					195,035,602
Operating Transfers In (Out)	-	-	-					-
Ending Fund Balance	6,212,364	5,792,254	(85,142)	-	-	-	-	11,919,476

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	6,127,222	5,792,254	-					11,919,476
Revenues	175,367,311	17,378,898	2,881,468					195,627,676
Expenditures	178,177,267	17,282,492	2,881,468					198,341,227
Operating Transfers In (Out)	-	-	-					-
Ending Fund Balance	3,317,266	5,888,660	-	-	-	-	-	9,205,925

FY 2017-18	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	3,317,266	5,888,660	-					9,205,925
Revenues	172,150,336	18,257,499	3,013,595					193,421,430
Expenditures	171,089,973	17,959,008	3,002,456					192,051,437
Operating Transfers In (Out)	-	-	-					-
Ending Fund Balance	4,377,629	6,187,150	11,139	-	-	-	-	10,575,918

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2018-19		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	180,340,394							180,340,394
Grants			4,712,771					4,712,771
Other Financing Sources		17,668,156						17,668,156
TOTAL REVENUES	180,340,394	17,668,156	4,712,771	-	-	-	-	202,721,321
EXPENDITURES								
Salaries	97,936,756	5,431,613	1,295,529					104,663,898
Staff Benefits	52,312,917	2,735,676	813,361					55,861,954
General Expense	5,872,797	122,720	39,870					6,035,387
Printing	208,872	69,750	3,000					281,622
Telecommunications	1,047,767	9,382	11,250					1,068,399
Postage	593,170	261,000						854,170
Insurance	53,600							53,600
Travel in State	205,275	22,579	10,107					237,960
Travel Out of State	51,348	8,251	33,933					93,533
Training	330,646	10,727	33,518					374,891
Security	7,049	5,150						12,199
Facilities Operations	2,647,799	1,412,639						4,060,438
Utilities								-
Contracted Services	11,078,222	6,181,961	755,140					18,015,322
Consulting and Professional Services - County Provided	638,075							638,075
Information Technology (IT)	5,714,589	131,580	1,315,855					7,162,025
Major Equipment	2,913,298	733	92,639					3,006,670
Other Items of Expense	38,750							38,750
Juror Costs	888,200							888,200
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation	(1,500,899)	844,222	454,677					(202,000)
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	181,038,231	17,247,984	4,858,879	-	-	-	-	203,145,094
Operating Transfers In (Out)	(146,108)		146,108					-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	10,575,918							10,575,918
Ending Balance (Deficit)	9,731,973	420,172	0	-	-	-	-	10,152,145

Current detailed budget projection on court's behalf

	FY 2019-20		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	184,422,705							184,422,705
Grants			3,670,190					3,670,190
Other Financing Sources		17,773,278						17,773,278
TOTAL REVENUES	184,422,705	17,773,278	3,670,190	-	-	-	-	205,866,173
EXPENDITURES								
Salaries	102,591,601	5,427,015	1,672,115					109,690,731
Staff Benefits	57,706,515	2,629,278	894,610					61,230,403
General Expense	3,381,829	98,686	5,300					3,485,815
Printing	222,190	70,250	3,000					295,440
Telecommunications	960,500							960,500
Postage	629,400	251,000						880,400
Insurance	60,045							60,045
Travel in State	272,104	18,195	4,705					295,004
Travel Out of State	40,000	12,320	7,800					60,120
Training	284,448	8,600	42,648					335,696
Security	10,055							10,055
Facilities Operations	2,912,666							2,912,666
Utilities								-
Contracted Services	11,803,411	5,900,545	426,123					18,130,079
Consulting and Professional Services - County Provided	923,430							923,430
Information Technology (IT)	5,952,751	63,495	992,985					7,009,231
Major Equipment	613,000	5,000	76,500					694,500
Other Items of Expense	24,700							24,700
Juror Costs	960,000							960,000
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation	(948,195)	948,195						-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	188,400,450	15,432,579	4,125,786	-	-	-	-	207,958,815
Operating Transfers In (Out)	(455,596)		455,596					-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	9,731,973	420,172	0	-	-	-	-	10,152,145
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503
Ending Balance (Deficit)	5,298,632	2,760,871	-	-	-	-	-	8,059,503

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	
910000	Staff Benefits	
920001	General Expense	
924000	Printing	
925000	Telecommunications	1,000,000
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	
945000	Major Equipment	
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		1,000,000

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	507,420	492,580							1,000,000
Expenditures									-
Cumulative Balance	507,420	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Original Request:

Description	FY 2016-17 ▼	FY 2017-18 ▼	FY 2018-19 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution									-
Expenditures									-
Cumulative Balance	-	-	-	-	-	-	-	-	-

Amended request


Description	Select Fiscal Year ▼	Select Fiscal Year ▼	FY 2018-19 ▼	FY 2019-20 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution									-
Expenditures									-
Cumulative Balance	-	-	-	-	-	-	-	-	-

Summary of Requests for Trial Court Trust Fund Funds to be Held on Behalf of the Court (Amended Requests)

Table 2: Amended Requests for March 23—24, 2020 Judicial Council Meeting

Court	Request Number	Does Request Change \$\$ Amount?	If Yes - \$\$ Change +/-	Current Approved Requests by Fiscal Year					Amended Requests by Fiscal Year					Category	High-Level Summary	
				2016-17	2017-18	2018-19	2019-20	2020-21	2016-17	2017-18	2018-19	2019-20	2020-21			
Mono	26-17-01-A2	No	(20,000)	93,729	70,210	20,000			93,729	70,210				IT	Case Management System	
San Mateo	41-18-01-A1	Yes	5,867		208,123						213,990			Facility	Floor repairs	
				<u>(14,133)</u>	<u>93,729</u>	<u>278,333</u>	<u>20,000</u>	<u>-</u>	<u>-</u>	<u>93,729</u>	<u>70,210</u>	<u>213,990</u>	<u>-</u>	<u>-</u>		
				<u>392,062</u>					<u>377,929</u>							
										Difference Between Amended and Original Requests		<u><u>(14,133)</u></u>				

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

Please check the type of request: <input type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i> <input checked="" type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i>		
SECTION I: GENERAL INFORMATION		
SUPERIOR COURT: Click here to enter court MONO	PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> Lester Perpall	
	CONTACT PERSON AND CONTACT INFO: Tammy Laframboise 760-923-2304	
DATE OF SUBMISSION: 10/25/2019	TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: FY 16-17 – FY 20-21	REQUESTED AMOUNT: \$163,939
REASON FOR REQUEST <i>(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):</i> Mono Court needs to replace the current case management system that is over 18 years old. It is being phased out by our current vendor who will no longer offer technical support after 6/30/2021.		
SECTION II: AMENDED REQUEST CHANGES		
A. Identify sections and answers amended. Section I, Requested Amount & Reason for Request, Section II, Section IV. A tab, B tab, C tab & Section IV.D tabs, Section III, A		
B. Provide a summary of the changes to the request. Now that FY 18-19 has been finalized, the FY 18-19 contribution amount changed from \$20,000 to none as the BCP funding has been approved. Additionally, the cost of the Case Management System increased from \$500,000 to \$1,409,239 as we received more accurate estimates from vendors.		
SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE		
A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term. The preliminary estimate for a new Case Management System is approximately \$1,409,239 including all hardware, software and staff training. This is over half of our annual budget so it would be very difficult to cover that expenditure as well as the operating expenses without assistance.		

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT (Continued)**SECTION III (continued): TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE****B. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?**

Funding is needed to replace our case management system that provides the foundation of important operational functions such as maintenance of case information, defendant information, party information and attorney information. Current case management system is antiquated and is still a DOS based system. It is difficult to use since it requires keyboard stroke commands and is highly inefficient given the amount of staff time necessary to use the system. Replacing it with a graphic user interface Windows based system will increase staff productivity.

C. If a cost efficiency, please provide cost comparison (table template provided).

Cost efficiency is not the main benefit. Replacement of the current case management system with a reliable system that will be supported is the main benefit and increased staff productivity is a secondary benefit.

D. Describe the consequences to the court's operations if the court request is not approved.

Current case management system is operating; however, it needs frequent technical support. Our current case management vendor is creating a new case management system platform that will replace the current system and has indicated that at some point in the future, technical support will not be provided for the old system. Failure to replace our current case management system will leave us vulnerable to system failures which could lead to the inability to do our basic court operations and the potential loss of irreplaceable court case data.

E. Describe the consequences to the public and access to justice if the court request is not approved.

Court customer service to the public would be substantially impaired and significantly delayed if our case management system is not replaced and becomes unreliable. We may not be able to fulfill the public's request for case information or for search requests. We will have difficulty providing necessary information for our justice partners which will also negatively impact the flow of cases.

F. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?

If necessary, our court will seek supplemental funding from the Judicial Council. However, we believe that use of our own funding to reduce the amount of supplemental funding needed from the Judicial Council will place us in a stronger position to be approved for supplemental funding. Rather than expend all our surplus funds on vitally important materials supplies and equipment, we decided it would be a better long-term investment to place the money in the Judicial Council holding fund.

Please provide the following (*table template provided for each*):

A. Three-year history of year-end fund balances, revenues, and expenditures

See attached TCTF Funds Held on Behalf Tables Template – Final, Sec. IV. A tab

B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf

See attached TCTF Funds Held on Behalf Tables Template – Final, Sec. IV. D tab

C. Identification of all costs, by category and amount, needed to fully implement the project

See attached TCTF Funds Held on Behalf Tables Template – Final, Sec. IV. C tab

D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year

See attached TCTF Funds Held on Behalf Tables Template – Final, Sec. IV. B tab

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Cumulative Cost Savings		-	-	-	-
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If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2018-19	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	233,692	37,878						271,570
Revenues	2,227,592	81,276	101,621					2,410,489
Expenditures	2,249,509	68,319	104,970					2,422,798
Operating Transfers In (Out)	(3,891)	542	3,349					-
Ending Fund Balance	207,884	51,377	-	-	-	-	-	259,261

FY 2017-18	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	162,304	25,025	-					187,329
Revenues	2,076,735	59,092	151,540					2,287,367
Expenditures	1,997,052	46,239	159,835					2,203,126
Operating Transfers In (Out)	(8,295)	-	8,295					-
Ending Fund Balance	233,692	37,878	-	-	-	-	-	271,570

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	31,473	12,461	-					43,934
Revenues	1,972,136	58,145	144,531					2,174,812
Expenditures	1,839,786	46,036	145,596					2,031,418
Operating Transfers In (Out)	(1,519)	454	1,065					-
Ending Fund Balance	162,304	25,024	-	-	-	-	-	187,328

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2016-17		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	1,936,627	12,694						1,949,321
Grants			145,596					145,596
Other Financing Sources	33,990	45,905						79,895
TOTAL REVENUES	1,970,617	58,599	145,596	-	-	-	-	2,174,812
EXPENDITURES								
Salaries	732,060	23,985	17,371					773,417
Staff Benefits	589,045	4,059	10,746					603,849
General Expense	141,467	1,746	11,451					154,664
Printing	1,449	112	186					1,747
Telecommunications	18,251	1,065	4,269					23,586
Postage	10,180	784	79					11,043
Insurance	1,813	-	-					1,813
Travel in State	1,193	-	1,000					2,193
Travel Out of State	-	-	-					-
Training	495	-	115					610
Security	900	-	230					1,131
Facilities Operations	28,556	3	10,050					38,609
Utilities	-	-	-					-
Contracted Services	196,381	4,677	89,272					290,330
Consulting and Professional Services - County Provided	4,353	-	-					4,353
Information Technology (IT)	114,666	7,350	2,838					124,853
Major Equipment	42,480	-	-					42,480
Other Items of Expense	4,802	-	724					5,527
Juror Costs	589							589
Other		290						290
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	1,888,680	44,071	148,332	-	-	-	-	2,081,084
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)								-
Ending Balance (Deficit)	81,937	14,528	(2,736)	-	-	-	-	93,729

Current detailed budget projection on court's behalf

	FY 2017-18		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,124,714	12,596						2,137,310
Grants			159,835					159,835
Other Financing Sources	37,455	46,496						83,951
TOTAL REVENUES	2,162,169	59,092	159,835	-	-	-	-	2,381,096
EXPENDITURES								
Salaries	832,654	24,081	10,539					867,274
Staff Benefits	610,596	1,300	7,103					618,998
General Expense	106,836	944	22,072					129,852
Printing	1,454	42	-					1,496
Telecommunications	23,218	1,280	8,101					32,599
Postage	11,863	900	292					13,055
Insurance	1,582	-	-					1,582
Travel in State	4,187	60	1,182					5,429
Travel Out of State	-	-	-					-
Training	545	-	163					708
Security	474	-	414					888
Facilities Operations	13,048	-	10,084					23,132
Utilities	-	-	-					-
Contracted Services	248,672	6,418	94,459					349,549
Consulting and Professional Services - County Provided	-	-	-					-
Information Technology (IT)	155,373	8,194	3,337					166,904
Major Equipment	6,545	-	-					6,545
Other Items of Expense	2,876	-	-					2,876
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,019,921	43,219	157,746	-	-	-	-	2,220,886
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	81,937	14,528	(2,736)	-	-	-	-	93,729
Ending Balance (Deficit)	224,185	30,402	(647)	-	-	-	-	253,939

Current detailed budget projection:

	FY 2018-19		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,149,604	10,547						2,160,151
Grants			98,533					98,533
Other Financing Sources	37,563	68,739						106,302
TOTAL REVENUES	2,187,168	79,286	98,533	-	-	-	-	2,364,987
EXPENDITURES								
Salaries	842,282	21,011	14,370					877,663
Staff Benefits	706,124	23,296	9,930					739,351
General Expense	91,455	700	8,676					100,831
Printing	1,265	48	436					1,748
Telecommunications	10,793	843	5,939					17,575
Postage	7,591	396	13					8,000
Insurance	2,108	-	-					2,108
Travel in State	3,285	5	1,533					4,823
Travel Out of State	-	-	-					-
Training	553		508					1,061
Security	327	32	295					655
Facilities Operations	15,351	1,198	11,705					28,255
Utilities	-	-	-					-
Contracted Services	240,595	10,687	42,353					293,635
Consulting and Professional Services - County Provided	40	-	-					40
Information Technology (IT)	154,537	7,476	2,196					164,210
Major Equipment	-	-	-					-
Other Items of Expense	2,287	3	104					2,393
Juror Costs	222							222
Other	520							520
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,079,333	65,698	98,058	-	-	-	-	2,243,089
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	224,185	30,402	(647)	-	-	-	-	253,939
Ending Balance (Deficit)	332,020	43,989	(172)	-	-	-	-	375,837

Current detailed budget projection:

	FY 2019-20		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	3,394,709	12,646						3,407,355
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	3,427,755	79,778	102,411	-	-	-	-	3,609,944
EXPENDITURES								
Salaries	1,005,303	21,011	29,415					1,055,729
Staff Benefits	789,490	23,525	8,719					821,734
General Expense	100,202	800	7,421					108,423
Printing	893							893
Telecommunications	19,264	825	4,900					24,989
Postage	13,163	400						13,563
Insurance	2,307							2,307
Travel in State	15,330		1,100					16,430
Travel Out of State	-							-
Training	5,118		500					5,618
Security	891							891
Facilities Operations	20,661	1,200	8,315					30,176
Utilities								-
Contracted Services	385,456	9,896	42,000					437,352
Consulting and Professional Services - County Provided	16,340							16,340
Information Technology (IT)	710,582	7,300	500					718,382
Major Equipment	4,073							4,073
Other Items of Expense	3,288		300					3,588
Juror Costs	681	75						756
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	3,093,042	65,032	103,170	-	-	-	-	3,261,244
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	332,020	43,989	(172)	-	-	-	-	375,837
Ending Balance (Deficit)	666,733	58,735	(931)	-	-	-	-	724,537

Current detailed budget projection:

	FY 2020-21		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	2,122,894	12,646						2,135,540
Grants			102,411					102,411
Other Financing Sources	33,046	67,132						100,178
TOTAL REVENUES	2,155,940	79,778	102,411	-	-	-	-	2,338,129
EXPENDITURES								
Salaries	953,561	22,062	30,886					1,006,508
Staff Benefits	757,977	24,701	9,155					791,833
General Expense	105,212	840	7,792					113,844
Printing	938	-	-					938
Telecommunications	20,227	866	5,145					26,238
Postage	13,821	420	-					14,241
Insurance	2,422	-	-					2,422
Travel in State	16,097	-	1,155					17,252
Travel Out of State	-	-	-					-
Training	5,374	-	525					5,899
Security	936	-	-					936
Facilities Operations	21,694	1,260	8,731					31,685
Utilities								-
Contracted Services	607,918	10,391	44,100					662,409
Consulting and Professional Services - County Provided	17,157	-	-					17,157
Information Technology (IT)	142,382	7,665	525					150,572
Major Equipment	4,277	-	-					4,277
Other Items of Expense	3,452	-	315					3,767
Juror Costs	715	75						790
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	2,674,159	68,280	108,329	-	-	-	-	2,850,768
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	666,733	58,735	(931)	-	-	-	-	724,537
Ending Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899
Ending Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899
Ending Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899
Ending Balance (Deficit)	148,513	70,234	(6,849)	-	-	-	-	211,899

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	75,000
910000	Staff Benefits	50,000
920001	General Expense	
924000	Printing	
925000	Telecommunications	
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	409,239
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	875,000
945000	Major Equipment	
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		1,409,239

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2016-17 ▼	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	93,729	70,210		1,245,300					1,409,239
Expenditures				896,600	512,639				1,409,239
Cumulative Balance	93,729	163,939	163,939	512,639	-	-	-	-	-

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Original Request:

Description	FY 2016-17 ▼	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	93,729	70,210	20,000	316,061					500,000
Expenditures					500,000				500,000
Cumulative Balance	93,729	163,939	183,939	500,000	-	-	-	-	-

Amended request

Description	FY 2016-17 ▼	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	93,729	70,210		1,245,300					1,409,239
Expenditures				896,600	512,639				1,409,239
Cumulative Balance	93,729	163,939	163,939	512,639	-	-	-	-	-



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
400 COUNTY CENTER
REDWOOD CITY, CA 94063-1655

NEAL I. TANIGUCHI
COURT EXECUTIVE OFFICER
CLERK & JURY COMMISSIONER

Tel: (650)261-5030
Fax: (650)261-5147

October 3, 2019

Martin Hoshino
Administrative Director
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

RE: Application for Funds to be Held in the Trial Court Trust Fund on Behalf of San Mateo Superior Court – Amended Request

Dear Mr. Hoshino:

Enclosed is the San Mateo Superior Court's completed amended request for funds to be held in the state TCTF on behalf of San Mateo Superior Court. The court requests that the amended request be considered for approval by the Judicial Council at its business meeting in January 2020.

If you or your staff have any questions regarding the application, please contact Steven Chang, Finance Director, at stevenchang@sanmateocourt.org.


Sincerely,

A handwritten signature in blue ink that reads "Neal Taniguchi".

Neal Taniguchi
Court Executive Officer

Cc: Zlatko Theodorovic, Director, Budget Services, Judicial Council of California

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT Attachment H

<p>Please check the type of request:</p> <p><input type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i></p> <p><input checked="" type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i></p>	
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SECTION I: GENERAL INFORMATION

SUPERIOR COURT: San Mateo	PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> Neal Taniguchi, Court Executive Officer	
	CONTACT PERSON AND CONTACT INFO: Steven Chang, 650-261-5046, stevenchang@sanmateocourt.org	
DATE OF SUBMISSION: 10/4/2019	TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: JULY 2018 TO JUNE 2024	REQUESTED AMOUNT: \$5,867

REASON FOR REQUEST *(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):*

The Court would like to accumulate savings in the most fiscally prudent and operationally sound manner that will allow it to repair and/or replace up to approximately 230,000 square feet of worn and damaged 30-year-old flooring and carpeting, which pose increasing health and safety risks, throughout the Court's Hall of Justice facility in Redwood City. In addition, when carpet or flooring is replaced, the Court will be replacing/relocating loose wiring to accommodate the increased use of computer equipment in the courtroom, as the Court transitions to paperless, electronic processes. Given the need to temporarily move/relocate a large number of staff, judicial officers and furniture, and in order to minimize or prevent significant disruptions to Court operations, both in the courtrooms and various Court divisions, the project must be done in phases. Therefore, we anticipate that the project could take as long as six years to complete from start to finish.

SECTION II: AMENDED REQUEST CHANGES

A. Identify sections and answers amended.

None.

B. Provide a summary of the changes to the request.

This request is to contribute additional monies as requested and approved in the original request. The estimated contribution amounts and expenditures per year have been updated in Section IV.D. Amended Requests.

SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE

A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term.

Given logistical, financial, and operational constraints, the entire project could take up to six years to complete. In 2017-18, the only way the Court could have accumulated fund balance that amounted to the total estimated cost of the project would have been to, unnecessarily, cut back on other critical operating costs. Accumulating savings across multiple fiscal years allows the Court to avoid harmful and unnecessary budgetary reductions.

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT (Continued)

SECTION III (continued): TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE**B. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?**

By replacing old and worn out flooring and carpeting, the Court will improve the environment, by making it safer and healthier, for the public in general, including jurors and litigants, court staff, and judicial officers. As noted above, the Court is also replacing/relocating loose wiring to better accommodate current and future equipment needs and to eliminate tripping hazards resulting from the increased use of computer equipment in the courtroom and the staff offices.

C. If a cost efficiency, please provide cost comparison (table template provided).**D. Describe the consequences to the court's operations if the court request is not approved.**

The Court might have to postpone replacing or repairing any other flooring or carpeting for the foreseeable future or make significant cuts in other needed operating costs, unless discretionary funding dramatically increases. The health and safety risks to the public, judicial officers, and court staff will increase due to continued damage and wear to carpeting and flooring.

E. Describe the consequences to the public and access to justice if the court request is not approved.

The 30-year-old flooring is deteriorating rapidly, which has led to health and tripping hazards throughout the facility. Electrical upgrades are necessary to support the increased technological needs of the Court and its justice partners. Currently power and data cords are temporarily installed and exposed across the floor, creating uneven surfaces, and other hazards, which puts the public, court staff, and judicial officers at a higher risk of injury from tripping and falling in the courtrooms. The Court could be at risk of litigation due to these unsafe, unsightly, and unsanitary conditions. These conditions undermine the dignity of the Court as well.

F. What alternatives has the court identified if the request is not approved, and why is holding funding in the TCTF the preferred alternative?

If the request is not approved, the Court will either postpone replacing or repairing the much needed flooring for the foreseeable future or implement it sooner, but in a way that would be financially and operationally riskier than if monies were held in reserve within the TCTF. Holding reserve funds in the TCTF affords the Court greater latitude in implementing a logistically and operationally challenging multi-year project.

SECTION IV: FINANCIAL INFORMATION

Please provide the following (*table template provided for each*): see attached templates

A. Three-year history of year-end fund balances, revenues, and expenditures**B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf****C. Identification of all costs, by category and amount, needed to fully implement the project****D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year**

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year


Original Request:

Description	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	Select Fiscal Year	Select Fiscal Year	Total
Contribution	250,000	250,000	150,000	50,000	50,000	50,000			800,000
Expenditures		200,000	250,000	150,000	100,000	100,000			800,000
Cumulative Balance	250,000	300,000	200,000	100,000	50,000	-			-

Amended request:

Description	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23	Select Fiscal Year	Select Fiscal Year	Total
Contribution	208,123	5,867	300,000	346,010	40,000	-			900,000
Expenditures			250,000	250,000	250,000	150,000			900,000
Cumulative Balance	208,123	213,990	263,990	360,000	150,000	-			-

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT

Please check the type of request: <input type="checkbox"/> NEW REQUEST <i>(Complete Section I, III, and IV only.)</i> <input checked="" type="checkbox"/> AMENDED REQUEST <i>(Complete Sections I through IV.)</i>		
SECTION I: GENERAL INFORMATION		
SUPERIOR COURT: San Mateo	PERSON AUTHORIZING REQUEST <i>(Presiding Judge or Court Executive Officer):</i> Neal Taniguchi, Court Executive Officer	
	CONTACT PERSON AND CONTACT INFO: Steven Chang, 650-261-5046, stevenchang@sanmateocourt.org	
DATE OF SUBMISSION: 10/4/2019	TIME PERIOD COVERED BY THE REQUEST, INCLUDING CONTRIBUTION AND EXPENDITURE: JULY 2018 TO JUNE 2024	REQUESTED AMOUNT: \$5,867
REASON FOR REQUEST <i>(Please briefly summarize the purpose for this request, including a brief description of the project/proposal. Use attachments if additional space is needed.):</i> <p>The Court would like to accumulate savings in the most fiscally prudent and operationally sound manner that will allow it to repair and/or replace up to approximately 230,000 square feet of worn and damaged 30-year-old flooring and carpeting, which pose increasing health and safety risks, throughout the Court's Hall of Justice facility in Redwood City. In addition, when carpet or flooring is replaced, the Court will be replacing/relocating loose wiring to accommodate the increased use of computer equipment in the courtroom, as the Court transitions to paperless, electronic processes. Given the need to temporarily move/relocate a large number of staff, judicial officers and furniture, and in order to minimize or prevent significant disruptions to Court operations, both in the courtrooms and various Court divisions, the project must be done in phases. Therefore, we anticipate that the project could take as long as six years to complete from start to finish.</p>		
SECTION II: AMENDED REQUEST CHANGES		
A. Identify sections and answers amended. None.		
B. Provide a summary of the changes to the request. This request is to contribute additional monies as requested and approved in the original request. The estimated contribution amounts and expenditures per year have been updated in Section IV.D. Amended Requests.		
SECTION III: TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE		
A. Explain why the request does not fit within the court's annual operational budget process and the three-year encumbrance term. Given logistical, financial, and operational constraints, the entire project could take up to six years to complete. In 2017-18, the only way the Court could have accumulated fund balance that amounted to the total estimated cost of the project would have been to, unnecessarily, cut back on other critical operating costs. Accumulating savings across multiple fiscal years allows the Court to avoid harmful and unnecessary budgetary reductions.		

APPLICATION FOR TCTF FUNDS HELD ON BEHALF OF THE COURT (Continued)

SECTION III (continued): TRIAL COURT OPERATIONS AND ACCESS TO JUSTICE

B. How will the request enhance the efficiency and/or effectiveness of court operations, and/or increase the availability of court services and programs?

By replacing old and worn out flooring and carpeting, the Court will improve the environment, by making it safer and healthier, for the public in general, including jurors and litigants, court staff, and judicial officers. As noted above, the Court is also replacing/relocating loose wiring to better accommodate current and future equipment needs and to eliminate tripping hazards resulting from the increased use of computer equipment in the courtroom and the staff offices.

C. If a cost efficiency, please provide cost comparison (table template provided).

D. Describe the consequences to the court's operations if the court request is not approved.

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SECTION IV: FINANCIAL INFORMATION

Please provide the following (*table template provided for each*): see attached templates

- A. Three-year history of year-end fund balances, revenues, and expenditures**
- B. Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the court's behalf**
- C. Identification of all costs, by category and amount, needed to fully implement the project**
- D. A specific funding and expenditure schedule identifying the amounts to be contributed and expended, by fiscal year**

If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Proposed Project		Amount	Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)				
900000	Salaries				
910000	Staff Benefits				
920001	General Expense				
924000	Printing				
925000	Telecommunications				
926000	Postage				
928000	Insurance				
929000	Travel in State				
931000	Travel Out of State				
933000	Training				
934000	Security				
935000	Facilities Operations				
936000	Utilities				
938000	Contracted Services				
940000	Consulting and Professional Services - County Provided				
943000	Information Technology (IT)				
945000	Major Equipment				
950000	Other Items of Expense				
972000	Other				
973000	Debt Service				
983000	Court Construction				
990000	Distributed Administration & Allocation				
Net Revenue (Expense)		-	-	-	-

Cumulative Cost Savings		-	-	-	-
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If a cost efficiency, please provide cost comparison

Status Quo		Select Fiscal Year ▼	Select Fiscal Year ▼	Select Fiscal Year ▼
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Proposed Project		Amount	Amount	Amount
GL Account	Description	Amount	Amount	Amount
N/A	Dedicated Revenue Stream (if applicable)			
900000	Salaries			
910000	Staff Benefits			
920001	General Expense			
924000	Printing			
925000	Telecommunications			
926000	Postage			
928000	Insurance			
929000	Travel in State			
931000	Travel Out of State			
933000	Training			
934000	Security			
935000	Facilities Operations			
936000	Utilities			
938000	Contracted Services			
940000	Consulting and Professional Services - County Provided			
943000	Information Technology (IT)			
945000	Major Equipment			
950000	Other Items of Expense			
972000	Other			
973000	Debt Service			
983000	Court Construction			
990000	Distributed Administration & Allocation			
Net Revenue (Expense)		-	-	-

Cumulative Cost Savings		-	-	-
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Prior three-year history of year-end fund balances, revenues, and expenditures

FY 2014-15	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	2,774,656	1,980,187						4,754,843
Revenues	38,724,146	1,118,676	787,639					40,630,461
Expenditures	38,767,339	1,646,986	929,811					41,344,136
Operating Transfers In (Out)	(181,591)	39,419	142,172					-
Ending Fund Balance	2,549,872	1,491,296	-	-	-	-	-	4,041,168

FY 2015-16	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	2,549,872	1,491,296						4,041,168
Revenues	40,471,299	989,482	1,024,440					42,485,221
Expenditures	42,018,078	1,259,364	1,158,236					44,435,678
Operating Transfers In (Out)	(244,194)	110,399	133,796					1
Ending Fund Balance	758,899	1,331,813	-	-	-	-	-	2,090,712

FY 2016-17	FUNDS							
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
Beginning Balance	758,899	1,331,813						2,090,712
Revenues	41,076,050	909,295	974,471					42,959,816
Expenditures	39,940,964	939,620	1,110,183					41,990,767
Operating Transfers In (Out)	(435,648)	299,936	135,712					-
Ending Fund Balance	1,458,338	1,601,423	-	-	-	-	-	3,059,761

Current detailed budget projections for the fiscal years the trial court would either be contributing to or receiving distributions from the TCTF fund balance held on the cc

	FY 2017-18		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources	39,848,471	1,418,409						41,266,880
Grants			1,731,024					1,731,024
Other Financing Sources								-
TOTAL REVENUES	39,848,471	1,418,409	1,731,024	-	-	-	-	42,997,904
EXPENDITURES								
Salaries	22,320,252	725,843	749,970					23,796,065
Staff Benefits	11,577,706	161,924	391,512					12,131,142
General Expense	759,497		8,928					768,425
Printing	80,080							80,080
Telecommunications	519,850							519,850
Postage	242,630							242,630
Insurance	7,479							7,479
Travel in State	56,640		13,768					70,408
Travel Out of State								-
Training	25,280							25,280
Security	448,277							448,277
Facilities Operations	80,316							80,316
Utilities								-
Contracted Services	2,822,945	392,813	561,846					3,777,604
Consulting and Professional Services - County Provided	643,796	140,800						784,596
Information Technology (IT)	458,951	607,041	5,000					1,070,992
Major Equipment	234,453							234,453
Other Items of Expense	9,280							9,280
Juror Costs	320,670							320,670
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	40,608,102	2,028,421	1,731,024	-	-	-	-	44,367,547
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	1,458,338	1,601,423						3,059,761
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection on court's behalf

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year ▼		FUNDS					
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Current detailed budget projection:

	Select Fiscal Year	FUNDS						
Description	General	Special Revenue Non-Grant	Special Revenue Grant	Capital Projects	Debt Service	Proprietary	Fiduciary	TOTAL
REVENUES								
State Financing Sources								-
Grants								-
Other Financing Sources								-
TOTAL REVENUES	-	-	-	-	-	-	-	-
EXPENDITURES								
Salaries								-
Staff Benefits								-
General Expense								-
Printing								-
Telecommunications								-
Postage								-
Insurance								-
Travel in State								-
Travel Out of State								-
Training								-
Security								-
Facilities Operations								-
Utilities								-
Contracted Services								-
Consulting and Professional Services - County Provided								-
Information Technology (IT)								-
Major Equipment								-
Other Items of Expense								-
Juror Costs								-
Other								-
Debt Service								-
Court Construction								-
Distributed Administration & Allocation								-
Prior Year Expense Adjustment								-
TOTAL EXPENDITURES	-	-	-	-	-	-	-	-
Operating Transfers In (Out)								-
Fund Balance (Deficit)								
Beginning Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118
Ending Balance (Deficit)	698,707	991,411	-	-	-	-	-	1,690,118

Identification of all costs, by category and amount, needed to fully implement the project

Expenses Category		Amount
GL Account	Description	
900000	Salaries	
910000	Staff Benefits	
920001	General Expense	
924000	Printing	
925000	Telecommunications	
926000	Postage	
928000	Insurance	
929000	Travel in State	
931000	Travel Out of State	
933000	Training	
934000	Security	
935000	Facilities Operations	
936000	Utilities	
938000	Contracted Services	2,000,000
940000	Consulting and Professional Services - County Provided	
943000	Information Technology (IT)	
945000	Major Equipment	
950000	Other Items of Expense	
972000	Other	
973000	Debt Service	
983000	Court Construction	
990000	Distributed Administration & Allocation	
Total		2,000,000

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Description	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	FY 2021-22 ▼	FY 2022-23 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	250,000	250,000	150,000	50,000	50,000	50,000			800,000
Expenditures		200,000	250,000	150,000	100,000	100,000			800,000
Cumulative Balance	250,000	300,000	200,000	100,000	50,000	-	-	-	-

A specific funding and expenditure schedule identifying the amounts related to the proposal to be contributed and expended, by fiscal year

Original Request:

Description	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	FY 2021-22 ▼	FY 2022-23 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	250,000	250,000	150,000	50,000	50,000	50,000			800,000
Expenditures		200,000	250,000	150,000	100,000	100,000			800,000
Cumulative Balance	250,000	300,000	200,000	100,000	50,000	-	-	-	-

Amended request

Description	FY 2017-18 ▼	FY 2018-19 ▼	FY 2019-20 ▼	FY 2020-21 ▼	FY 2021-22 ▼	FY 2022-23 ▼	Select Fiscal Year ▼	Select Fiscal Year ▼	Total
Contribution	208,123	5,867	300,000	346,010	40,000	-			900,000
Expenditures			250,000	250,000	250,000	150,000			900,000
Cumulative Balance	208,123	213,990	263,990	360,000	150,000	-	-	-	-

1 **Summary of Recommended Process, Criteria, and Required Information for**
2 **Trial Court Trust Fund Fund Balance Held on Behalf of the Courts**

3
4 **Recommended Process for Trial Court Trust Fund Fund Balance Held on Behalf**
5 **of the Courts**

- 6
7 1. Trial Court Trust Fund fund balance will be held on behalf of trial courts only for
8 expenditures or projects that cannot be funded by a court's annual budget or three-year
9 encumbrance term and that require multiyear savings to implement.
- 10 a. Categories or activities include, but are not limited to:
- 11 i) Projects that extend beyond the original planned three-year term process such as
12 expenses related to the delayed opening of new facilities or delayed deployment of
13 new information systems;
- 14 ii) Technology improvements or infrastructure such as installing a local data center, data
15 center equipment replacement, case management system deployment, converting to a
16 VoIP telephone system, desktop computer replacement, and replacement of backup
17 emergency power systems;
- 18 iii) Facilities maintenance and repair allowed under rule 10.810 of the California Rules of
19 Court such as flooring replacement and renovation as well as professional facilities
20 maintenance equipment;
- 21 iv) Court efficiencies projects such as online and smart forms for court users and RFID
22 systems for tracking case files; and
- 23 v) Other court infrastructure projects such as vehicle replacement and copymachine
24 replacement.
- 25
- 26 2. The submission, review, and approval process is as follows:
- 27 a. All requests will be submitted to the Judicial Council for consideration.
- 28 b. Requests will be submitted to the *director of Budget Services* by the court's presiding
29 judge or court executive officer.
- 30 c. *Budget Services* staff will review the request, ask the court to provide any missing or
31 incomplete information, draft a preliminary report, share the preliminary report with the
32 court for its comments, revise as necessary, and issue the report to the *Fiscal Planning*
33 *Subcommittee of the Trial Court Budget Advisory Committee (TCBAC)*; the
34 *subcommittee* will meet to review the request, hear any presentation of the court
35 representative, and ask questions of the representative if one participates on behalf of the
36 court; and *Budget Services* office staff will issue a final report on behalf of the
37 *subcommittee* for the council.
- 38 d. The final report to the *subcommittee* and the Judicial Council will be provided to the
39 requesting court before the report is made publicly available on the California Courts
40 website.
- 41 e. The court may send a representative to the *subcommittee* and Judicial Council meetings
42 to present its request and respond to questions.
- 43

- 44 3. To be considered at a scheduled Judicial Council business meeting, requests must be
45 submitted to the *director of Budget Services* at least 40 business days (approximately
46 eight weeks) before that business meeting.
- 47
- 48 4. The Judicial Council may consider including appropriate terms and conditions that courts
49 must accept for the council to approve designating TCTF fund balance on the court's behalf.
50 a. Failure to comply with the terms and conditions would result in the immediate change in
51 the designation of the related TCTF fund balance from restricted to unrestricted and no
52 longer held on behalf of the court unless the council specifies an alternative action.
- 53
- 54 5. Approved requests that courts subsequently determine need to be revised to reflect a change
55 (1) in the amounts by year to be distributed to the court for the planned annual expenditures
56 and/or encumbrances, (2) in the total amount of the planned expenditures, or (3) of more than
57 10 percent of the total request among the categories of expense will need to be amended and
58 resubmitted following the submission, review, and approval process discussed in 1–3 above.
59 a. Denied revised requests will result in the immediate change in the designation of the
60 related TCTF fund balance from restricted to unrestricted and no longer held on behalf of
61 the court unless the council specifies an alternative action.
- 62
- 63 6. Approved requests that courts subsequently determine have a change in purpose will need to
64 be amended and resubmitted following the submission, review, and approval process
65 discussed in 1–3 above, along with a request that the TCTF funds held on behalf of the court
66 for the previously approved request continue to be held on behalf of the court for this new
67 purpose.
68 a. Denied new requests tied to previously approved requests will result in the immediate
69 change in the designation of the related TCTF fund balance from restricted to unrestricted
70 and no longer held on behalf of the court unless the council specifies an alternative
71 action.
- 72
- 73 7. On completion of the project or planned expenditure, courts are required to report to the Trial
74 Court Budget Advisory Committee within 90 days on the project or planned expenditure and
75 how the funds were expended.
- 76
- 77 8. As part of the courts' audits in the scope of the normal audit cycle, a review of any funds that
78 were held on behalf of the courts will be made to confirm that they were used for their stated
79 approved purpose.

80 **Recommended Criteria for Eligibility for TCTF Fund Balance Held on Behalf of the**
81 **Courts**

82 TCTF fund balance will be held on behalf of the trial courts only for expenditures or projects that
83 cannot be funded by the court's annual budget or three-year encumbrance term and that require
84 multiyear savings to implement.

85
86 **Recommended Information Required to Be Provided by Trial Courts for TCTF**
87 **Fund Balance Held on Behalf of the Courts**

88 Below is the information required to be provided by trial courts on the *Application for TCTF*
89 *Funds Held on Behalf of the Court*:

90
91 **SECTION I**
92 **General Information**

- 93 • Superior court
- 94 • Date of submission
- 95 • Person authorizing the request
- 96 • Contact person and contact information
- 97 • Time period covered by the request (includes contribution and expenditure)
- 98 • Requested amount
- 99 • A description providing a brief summary of the request

100
101 **SECTION II**
102 **Amended Request Changes**

- 103 • Sections and answers amended
- 104 • A summary of changes to request

105
106 **SECTION III**
107 **Trial Court Operations and Access to Justice**

- 108 • An explanation as to why the request does not fit within the court's annual operational
109 budget process and the three-year encumbrance term
- 110 • A description of how the request will enhance the efficiency and/or effectiveness of court
111 operations, and/or increase the availability of court services and programs
- 112 • If a cost efficiency, cost comparison (*table template provided*)
- 113 • A description of the consequences to the court's operations if the court request is not
114 approved
- 115 • A description of the consequences to the public and access to justice if the court request is
116 not approved
- 117 • The alternatives that the court has identified if the request is not approved, and the reason
118 why holding funding in the TCTF is the preferred alternative

119 **SECTION IV**120 **Financial Information**

- 121 • Three-year history of year-end fund balances, revenues, and expenditures (*table template*
122 *provided*)
- 123 • Current detailed budget projections for the fiscal years during which the trial court would
124 either be contributing to the TCTF fund balance held on the court's behalf or receiving
125 distributions from the TCTF fund balance held on the court's behalf (*table template*
126 *provided*)
- 127 • Identification of all costs, by category and amount, needed to fully implement the project
128 (*table template provided*)
- 129 • A specific funding and expenditure schedule identifying the amounts to be contributed and
130 expended, by fiscal year (*table template provided*)



JUDICIAL COUNCIL OF CALIFORNIA

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

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 20-138

For circulating order: CO 20-01

Title

Judicial Branch Administration: Policies on Workplace Conduct

Agenda Item Type

Action Required

Effective Date

Effective Immediately

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 10.351

Date of Report

April 8, 2020

Recommended by

Hon. Harry E. Hull, Jr., Chair
Rules Committee

Contact

Deborah Brown, Chief Counsel
415-865-7667
deborah.brown@jud.ca.gov

Michael Etchepare, Supervising Attorney
916-643-7019
michael.etchepare@jud.ca.gov

Executive Summary

In light of the global COVID-19 pandemic, including the related California state of emergency, national emergency, California statewide stay-at-home orders, and a statewide emergency order signed by Chief Justice Tani G. Cantil-Sakauye on March 30, 2020, the chair of the Rules Committee recommends that the Judicial Council amend California Rules of Court, rule 10.351, to extend its implementation date from June 30, 2020, to December 31, 2020. Rule 10.351 requires courts, by June 30, 2020, to establish policies on the prevention of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification that comply with the baseline requirements set forth in the rule. This proposal would allow courts additional time, in light of current events, to draft and revise the required policies and discuss those policies with labor organizations prior to implementation.

Recommendation

The chair of the Rules Committee recommends that the Judicial Council:

1. Amend rule 10.351(d) of the California Rules of Court to change the implementation date of rule 10.351 from June 30, 2020, to December 31, 2020.

Relevant Previous Council Action

In April 2018, Chief Justice Tani G. Cantil-Sakauye asked the Judicial Council to take immediate action to amend the rule of court on public records to clarify that settlement agreements to resolve sexual harassment and discrimination complaints against judicial officers must be publicly disclosed in response to public records requests. She also created the Rule 10.500 Working Group to develop the necessary rule changes required to achieve this goal. Through developing its proposals, the Rule 10.500 Working Group identified other related issues that were beyond its scope, including harassment and discrimination prevention by the courts.

In October 2018, the Chief Justice appointed the Work Group for the Prevention of Discrimination and Harassment (Work Group) to examine these related issues and further support the judicial branch's commitment to a workplace free of harassment and discrimination. The Work Group ultimately proposed recommendations to the Judicial Council, including, among others, that the Rules Committee "oversee the rulemaking process to propose a rule of court clarifying the responsibility of courts to adopt updated policies that: (a) prohibit harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; (b) contain definitions and examples of prohibited harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification; and (c) address and clarify complaint reporting and response procedures."¹ Those recommendations were approved by the Judicial Council on July 19, 2019.

In response, the Rules Committee drafted and recommended rule 10.351, Judicial Branch Policies on Workplace Conduct, and this rule was adopted by the Judicial Council on January 17, 2020. The rule requires courts to adopt updated policies on the prevention, reporting, and resolution of complaints of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, and establishes minimum branchwide requirements for such policies. Judicial Council staff was tasked with drafting sample policy language that would satisfy the requirements of the rule. Pursuant to rule 10.351(d), courts were required to implement new policies no later than June 30, 2020.

Analysis/Rationale

Given the rapid escalation of the COVID-19 pandemic and the related challenges to court and Judicial Council staff operations, and with no known timetable for the end of the COVID-19

¹ Judicial Council of Cal., Adv. Body Rep., *Judicial Branch Administration: Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification* (June 12, 2019), p. 2.

pandemic, it is recommended that the implementation date of rule 10.351, stated in rule 10.351(d), be extended until December 31, 2020. Specifically, it is unlikely that courts will be able to thoughtfully review the requirements of rule 10.351, consider sample policy language created by Judicial Council staff, draft new policies or revise existing policies, and meaningfully meet and confer regarding the content of those policies with any applicable labor organizations by the current June 30, 2020 implementation date. The proposal to extend this implementation date by six months allows courts and Judicial Council staff to direct their immediate focus on issues related to the COVID-19 pandemic, and to return to the important requirements of rule 10.351 once the COVID-19 pandemic has passed.

Policy implications

Given the importance of rule 10.351 and the branchwide emphasis on preventing harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification, serious consideration was given to not extending the implementation date. Conversely, given the significant impacts of the COVID-19 pandemic and the lack of certainty as to when courts will be able to resume normal operations, serious consideration was also given to extending the implementation date beyond six months. Ultimately, the recommendation to extend the implementation date by six months balances those two competing policies by alleviating the pressure on courts to immediately comply with rule 10.351 in the face of the COVID-19 pandemic, while also maintaining an implementation date that will require courts to address the issue of modernizing and improving their harassment prevention policies in the near future.

Comments

The recommendation to amend rule 10.351 to extend the implementation date by six months, to December 31, 2020, was not circulated for public comment.

Alternatives considered

As discussed in the Policy Implications section, two alternatives were considered: (1) to not amend the rule; and (2) to extend the implementation date for longer than six months. Ultimately, the recommendation to extend the implementation date by six months was decided to balance the important policy interests underlying both alternatives.

Fiscal and Operational Impacts

The proposed amendment of rule 10.351 will not create any significant one-time or sustained annual costs. The proposed amendment will create positive operational impacts for courts, as it will alleviate the requirement for courts to comply with rule 10.351 by June 30, 2020, while courts are simultaneously addressing the impacts of the COVID-19 pandemic.

Attachments and Links

1. Cal. Rules of Court, rule 10.351, at page 4.

Effective immediately, Rule 10.351 of the California Rules of Court is amended, to read:

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Title 10. Judicial Administration Rules

Division 2. Administration of the Judicial Branch

Chapter 5. Management of Human Resources

Rule 10.351. Judicial branch policies on workplace conduct

The judicial branch is committed to providing a workplace free of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. Consistent with this commitment, each court must take reasonable steps to prevent and address such conduct, including adopting policies prohibiting harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification and establishing for such conduct complaint reporting and response procedures that satisfy the minimum requirements stated in this rule.

(a)–(c) * * *

(d) Implementation

All courts must implement the requirements of this rule by ~~June 30, 2020~~
December 31, 2020, or as soon thereafter as possible, subject to any applicable obligations to meet and confer or consult with recognized employee organizations.