



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 27–28, 2016

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Title

Criminal Law: Judicial Council Appointment  
to Sex Offender Management Board

Agenda Item Type

Action Required

Effective Date

November 1, 2016

Rules, Forms, Standards, or Statutes Affected  
None

Date of Report

October 21, 2016

Recommended by

Executive and Planning Committee  
Hon. Douglas P. Miller, Chair

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### Executive Summary

The Executive and Planning Committee recommends that the Judicial Council appoint Judge Brett H. Morgan, Superior Court of San Joaquin County, to the Sex Offender Management Board (“the board”). Enactment of Assembly Bill 1015 (2006) created the board, under the jurisdiction of the Department of Corrections and Rehabilitation, which is composed of 17 members and includes “[o]ne California state judge, appointed by the Judicial Council.” (Pen. Code, § 9001(b)(1)(D).)

### Recommendation

The Executive and Planning Committee recommends that the Judicial Council appoint Judge Brett H. Morgan, Superior Court of San Joaquin County, to the Sex Offender Management Board effective November 1, 2016.

## **Previous Council Action**

The Legislature directed that appointees to the board, “regardless of the appointing authority, shall have the following characteristics:

- (1) Substantial prior knowledge of issues related to sex offenders, at least insofar as related to his or her own agency’s practices.
- (2) Decisionmaking authority for, or direct access to those who have decisionmaking authority for, the agency or constituency he or she represents.
- (3) A willingness to serve on the board and a commitment to contribute to the board’s work.”

(Pen. Code, § 9001(a).)

The council appointed Judge Peter Paul Espinoza, Superior Court of Los Angeles County, to the board effective June 29, 2007. Judge Espinoza completed his service on June 6, 2016.

## **Rationale for Recommendation**

### **Mission and Responsibilities**

The mission of the board includes:

- Addressing any issues, concerns, and problems related to the community management of adult sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization.
- Conducting public hearings, as it deems necessary, to provide opportunities for gathering information and receiving input regarding the work of the board from concerned stakeholders and the public.

(Pen. Code, § 9002(a)–(b).)

### **Membership**

The board consists of 17 members including participation from the Attorney General or his or her designee; Secretary of the Department of Corrections and Rehabilitation or his or her designee; Director of Adult Parole Services or his or her designee; one California state judge appointed by the Judicial Council; Director of State Hospitals or his or her designee; three members who represent law enforcement appointed by the Governor; one member who represents prosecuting attorneys appointed by the Senate Committee on Rules; one member who represents probation officers appointed by the Speaker of the Assembly; one member who represents criminal defense attorneys appointed by the Speaker of the Assembly; one member who is currently a county administrator appointed by the Governor; one member who is a city manager or his or her designee appointed by the Speaker of the Assembly; two members who are licensed mental health professionals; and two members who are recognized experts in the field of sexual assault and represent sexual assault victims. (Pen. Code, § 9001(b).)

Judge Morgan was selected because of his direct and significant judicial knowledge of sex offender issues. He currently presides over a courtroom which daily assigns to other courtrooms—and retains and conducts himself—preliminary hearings and other evidentiary hearings in felony cases, including cases alleging violations of homicide, rape, child molestation, robbery, and other violent and serious criminal offenses.

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

Public comment has not been solicited on this recommendation.

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

The board members serve without compensation. (Pen. Code, § 9001(d).)

### **Attachment**

1. Attachment A: Pen. Code, §§ 9000–9003

# **PENAL CODE**

## **SECTION 9000-9003**

9000. As used in this chapter, the following definitions apply:

(a) "Board" means the Sex Offender Management Board created in this chapter.

(b) "Sex Offender" means any person who is required to register as a sex offender under Section 290 of the Penal Code.

(c) "Treatment" means a set of specialized interventions delivered by qualified mental health professionals and designed to address the multiple psychological and physiological factors found to be associated with sexual offending.

(d) "Management" means a comprehensive and collaborative team approach to regulating, controlling, monitoring, and otherwise influencing the current and, insofar as is possible, the future behavior of sex offenders who are living in the community and are directly under the authority of the criminal justice system or of another governmental agency performing similar functions. The overriding purpose of management of sex offenders is to enhance community safety by preventing future sexual victimization. Management includes supervision and specialized treatment as well as a variety of other interventions.

(e) "Supervision" means a specialized approach to the process of overseeing, insofar as authority to do so is granted to the supervising agency, all significant aspects of the lives of sex offenders who are being managed, as described in subdivision (d). This approach includes traditional methods as well as techniques and tools specifically designed to respond to the risks to community safety raised by sex offenders. Supervision is one component of management.

9001. (a) The Sex Offender Management Board which is hereby created under the jurisdiction of the Department of Corrections and Rehabilitation, shall consist of 17 members. The membership of the board shall reflect, to the extent possible, representation of northern, central, and southern California as well as both urban and rural areas. Each appointee to the board, regardless of the appointing authority, shall have the following characteristics:

(1) Substantial prior knowledge of issues related to sex offenders, at least insofar as related to his or her own agency's practices.

(2) Decisionmaking authority for, or direct access to those who have decisionmaking authority for, the agency or constituency he or she represents.

(3) A willingness to serve on the board and a commitment to contribute to the board's work.

(b) The membership of the board shall consist of the following persons:

(1) State government agencies:

(A) The Attorney General or his or her designee who shall be an authority in policy areas pertaining to sex offenders and shall have expertise in dealing with sex offender registration, notification, and enforcement.

(B) The Secretary of the Department of Corrections and Rehabilitation or his or her designee who has expertise in parole policies and practices.

(C) The Director of Adult Parole Services or his or her designee.

(D) One California state judge, appointed by the Judicial Council.

(E) The Director of State Hospitals or his or her designee who is a licensed mental health professional with recognized expertise in the treatment of sex offenders.

(2) Local government agencies:

(A) Three members who represent law enforcement, appointed by the Governor. One member shall possess investigative expertise and one member shall have law enforcement duties that include registration and notification responsibilities, and one shall be a chief probation officer.

(B) One member who represents prosecuting attorneys, appointed by the Senate Committee on Rules. He or she shall have expertise in dealing with adult sex offenders.

(C) One member who represents probation officers, appointed by the Speaker of the Assembly.

(D) One member who represents criminal defense attorneys, appointed by the Speaker of the Assembly.

(E) One member who is a county administrator, appointed by the Governor.

(F) One member who is a city manager or his or her designee, appointed by the Speaker of the Assembly.

(3) Nongovernmental agencies:

(A) Two members who are licensed mental health professionals with recognized experience in working with sex offenders and who can represent, through their established involvement in a formal statewide professional organization, those who provide evaluation and treatment for adult sex offenders, appointed by the Senate Committee on Rules.

(B) Two members who are recognized experts in the field of sexual assault and represent sexual assault victims, both adults and children, and rape crisis centers, appointed by the Governor.

(c) The board shall appoint a chair from among the members appointed pursuant to subdivision (b). The chair shall serve in that capacity at the pleasure of the board.

(d) Each member of the board who is appointed pursuant to this section shall serve without compensation.

(e) If a board member is unable to adequately perform his or her duties or is unable to attend more than three meetings in a single 12-month period, he or she is subject to removal from the board by a majority vote of the full board.

(f) Any vacancies on the board as a result of the removal of a member shall be filled by the appointing authority of the removed member within 30 days of the vacancy.

(g) The board may create, at its discretion, subcommittees or task forces to address specific issues. These may include board members as well as invited experts and other participants.

(h) The board shall hire a coordinator who has relevant experience in policy research. The board may hire other staff as funding permits.

(i) In the course of performing its duties, the board shall, when possible, make use of the available resources of research agencies such as the Legislative Analyst's Office, the California Research Bureau, the California State University system, including schools of public policy and criminology, and other similar sources of assistance.

(j) Staff support services for the board shall be provided by staff of the Department of Corrections and Rehabilitation as directed by the secretary.

9002. (a) The board shall address any issues, concerns, and problems related to the community management of adult sex offenders. The main objective of the board, which shall be used to guide the

board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization.

(b) The board shall conduct public hearings, as it deems necessary, to provide opportunities for gathering information and receiving input regarding the work of the board from concerned stakeholders and the public.

(c) The members of the board shall be immune from liability for good faith conduct under this chapter.

9003. (a) On or before July 1, 2011, the board shall develop and update standards for certification of sex offender management professionals. All those professionals who provide sex offender management programs and risk assessments, pursuant to Section 290.09, shall be certified by the board according to these standards. The standards shall be published on the board's Internet Web site. Professionals may apply to the board for certification on or after August 1, 2011.

(1) (A) The board shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all sex offender management applicants, as defined by subdivision (a), for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state arrests or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(B) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board.

(C) The Department of Justice shall provide a state and federal response to the board pursuant to paragraph (1) of subdivision (1) of Section 11105.

(D) The board shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2, for persons described in subdivision (a).

(2) The board shall require any person who applies for certification under this section to submit information relevant to the applicant's fitness to provide sex offender management services. Any person who knowingly provides false information under this paragraph shall be subject to a civil penalty in an amount up to one thousand five hundred dollars (\$1,500), in addition to any other remedies available to the board. An action for a civil penalty under this provision may be brought by any public prosecutor in the name of the people of the State of California.

(3) The board shall assess a fee to the applicant not to exceed one hundred eighty dollars (\$180) per application. The board shall pay a fee to the Department of Justice sufficient to cover the cost of processing the criminal background request specified in this section.

(b) On or before July 1, 2011, the board shall develop and update standards for certification of sex offender management programs, which shall include treatment, as specified, and dynamic and future violence risk assessments pursuant to Section 290.09. The standards shall be published on the board's Internet Web site. All those programs shall include polygraph examinations by a certified polygraph examiner, which shall be conducted as needed during the period that the offender is in the sex offender management program. Only certified sex offender management professionals whose programs

meet the standards set by the board are eligible to provide sex offender management programs pursuant to Section 290.09.

(c) Certified sex offender management professionals, who provide sex offender management programs and risk assessments pursuant to Section 290.09, shall not be held civilly liable for any criminal acts committed by the persons on parole, probation, or judicial commitment status who receive supervision or treatment. This waiver of liability shall apply to certified sex offender management professionals, administrators of the programs provided by those professionals, and to agencies or persons under contract to those professionals who provide screening, clinical evaluation, risk assessment, supervision, or treatment to sex offender parolees, probationers, or persons on conditional release pursuant to Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(d) On or before July 1, 2011, the board shall develop and update standards for certification of polygraph examiners. The standards shall be published on the board's Internet Web site.

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