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Title Criminal Law: Felony Sentencing (Action Required)

Summary

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect amendments and updates related to changes in California's Determinate Sentencing Law, indeterminate sentences, and sentencing enhancements; (2) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act; (3) provide guidance to courts on the referral of cases to probation for investigation reports; (4) clarify the use of risk/needs assessments in a probation officer's presentence report; (5) add the reporting requirements of Penal Code section 29810(c)(2) to the contents of a probation officer's presentence report; and (6) make nonsubstantive technical amendments.

Recommendation

The Criminal Law Advisory Committee (CLAC) recommends that the Judicial Council, effective January 1, 2018:

1. Amend rules 4.405, 4.406, 4.408, 4.410, 4.420, 4.421, 4.423, 4.428, and 4.452 and/or the corresponding advisory committee comments to reflect changes to California's Determinate Sentencing Law (DSL) after the U.S. Supreme Court's decision in *Cunningham v. California* (2007) 549 U.S. 270 and the legislative responses to that decision, and provide further guidance to judges in exercising sentencing discretion under the DSL.
2. Amend the title of division 5 from "Sentencing Determinate" to "Felony Sentencing Law."
3. Amend rules 4.403, 4.405, and 4.451 and/or the corresponding advisory comments to expand the application of the rules to certain indeterminate sentences.
4. Add subdivision (b) to rule 4.428 to clarify the court's authority to strike an enhancement or the punishment for an enhancement under section 1385(a) and (c), and to identify factors a court may consider in determining whether to strike the entire enhancement or only the punishment for the enhancement.
5. Add subdivision (b) to rule 4.447 to provide guidance to courts for when a defendant is convicted of multiple enhancements of the same type.
6. Amend rule 4.447's advisory committee comment to provide that a court may stay an enhancement if

section 654 applies.

7. Amend rules 4.405, 4.411.5, 4.412, 4.435, and 4.451 and/or the corresponding advisory committee comments to incorporate terms relevant to the Criminal Justice Realignment Act (mandatory supervision, postrelease community supervision, term of imprisonment, and supervision).
8. Further amend rule 4.435 to (1) provide that in determining whether to permanently revoke supervision, a judge may consider the nature of the violation and the defendant's past performance on supervision; and (2) amend the advisory committee comment to explain that the holding in *People v. Griffith* (1984) 153 Cal.App.3d 796 refers only to probation, but likely applies to any form of supervision.
9. Amend rule 4.411 to (1) identify when a court must refer to probation for investigations and reports, and (2) rephrase the statement in subdivision (d) addressing the purpose of presentence investigation reports and move it to the advisory committee comment. Upon further review post-circulation, the chairs recommend amending the Advisory Committee Comment around uses of probation officer reports to also include "the probation department in supervising the defendant."
10. Further amend rule 4.411 to (1) strike the statement in subdivision (a) that reads, "Waivers of the presentence report should not be accepted except in unusual circumstances"; (2) strike the statement in the advisory committee comment discouraging waivers; (3) state how parties may waive the report; (4) identify criteria a court should consider in deciding whether to consent to a waiver; and (5) clarify that a waiver does not affect the requirement under section 1203c that probation create a report whenever the court commits a person to state prison.
11. Amend subdivision (a)(5) of rule 4.111.5 to provide that the presentence investigation report must include information about "[a]ny physical or psychological injuries suffered by the victim" and to clarify that the amount of a victim's loss refers to monetary losses.
12. Further amend rule 4.411.5 to include reporting requirements under Penal Code section 29810(c)(2).
13. Amend rules 4.405, 4.411.5, 4.413, and 4.415 and/or corresponding advisory committee comments to address risk/needs assessments and their use by courts.
14. Further amend rules 4.405, 4.408, 4.409, 4.410, 4.412, 4.413, 4.420, 4.425, 4.427, 4.428, 4.437, and 4.447 and/or relevant portions of advisory committee comments for technical and nonsubstantive amendments. Upon further review post-circulation, the chairs recommend an additional technical and nonsubstantive amendment to rule 4.420.