



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 14, 2010

Title	Agenda Item Type
Judicial Council-sponsored Legislation (Criminal Procedure): Obtaining Thumbprints of Felony Defendants	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 992	December 14, 2010
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Marvin R. Baxter, Chair Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	October 29, 2010
	Contact
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Executive Summary

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend subdivision (a) of Penal Code section 992 to authorize courts to obtain thumbprints of felony defendants at the earliest possible time but no later than at the arraignment on the information or indictment or upon entry of a guilty or no contest plea under Penal Code section 859a.

Recommendation

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 992(a) to:

1. Delete the requirement that courts obtain thumbprints “immediately following the arraignment in the superior court”; and
2. Prescribe that “[u]nless the court has obtained the thumbprint at an earlier proceeding, it shall do so at the arraignment on the information or indictment, or upon entry of a guilty or no contest plea under Penal Code section 859a.”

The text of the proposed amendments is attached at page 5.

Previous Council Action

There is no previous Judicial Council action to report.

Rationale for Recommendation

Overview

Penal Code section 992, subdivision (a), requires all felony defendants to provide courts with right thumbprints “immediately following the arraignment in the superior court.” Section 992 was added before trial court unification, so “arraignment in superior court” was intended to mean the arraignment on the information or indictment, not the earlier arraignment on the complaint. After trial court unification, however, the language of the statute remained unchanged. As a result, courts across the state interpret “arraignment in the superior court” differently. Some courts interpret the provision to mean the arraignment on the information or indictment, while others interpret the provision to include the arraignment on the complaint.

Legislative History

Subdivision (a) of Penal Code section 992 was added in 1995 by Assembly Bill 1111 (Stats. 1995, ch. 159). The purpose of the bill was “to provide positive identification of the defendant for use in subsequent actions” by requiring defendants to provide fingerprints that would be permanently maintained in the court file. (Sen. Com. on Criminal Procedure, Analysis of Assem. Bill No. 1111 (1995–1996 Reg. Sess., May 16, 1995).) The first iteration of the bill would have required fingerprinting upon conviction, but the bill was later amended to require fingerprinting at the arraignment on the information or indictment in order to “assist the court in proving the identity of a defendant who flees or fails to appear *prior to conviction*.” (Assem. Floor Analysis of Assem. Bill No. 1111 (1995–1996 Reg. Sess.), Concurrence in Sen. Amendments. Italics added.)

Purpose

The purpose of the proposal is twofold. First, the proposal is designed to eliminate any confusion caused by the outdated language of the statute by clarifying that, unless thumbprints are obtained at an earlier proceeding, courts must obtain thumbprints no later than at the arraignment on the information or indictment or on entry of a guilty or no contest plea under Penal Code section 859a.¹

Second, it is not uncommon for defendants to fail to appear or plead guilty or no contest *before* the arraignment on the information. In the latter instances, the proposal is designed to ensure that thumbprints are obtained upon entry of a guilty or no contest plea, even when the plea is entered *before* the arraignment on the information.

¹ Penal Code section 859a generally authorizes noncapital felony defendants to plead guilty or no contest prior to being held to answer on the charges: “While the charge remains pending before the magistrate and when the defendant’s counsel is present, the defendant may plead guilty to the offense charged, or, with the consent of the magistrate and the district attorney or other counsel for the people, plead nolo contendere to the offense charged or plead guilty or nolo contendere to any other offense the commission of which is necessarily included in that which he or she is charged, or to an attempt to commit the offense charged and to the previous conviction or convictions of crime if charged upon a plea of guilty or nolo contendere.”

The proposal is designed to authorize courts to obtain thumbprints as early in the proceedings as feasible in light of local calendar management practices and caseload volume. By doing so, the proposal would enable some courts to secure the identity of more felony defendants without unduly burdening those courts that cannot obtain thumbprints until the arraignment on the information or indictment or upon entry of a guilty or no contest plea.

Comments, Alternatives Considered, and Policy Implications

Alternatives considered

The advisory committee initially considered a proposal to require courts to obtain thumbprints at the very first appearance of the defendant to ensure that courts secure the identity of the defendant as early as possible. However, the advisory committee declined that proposal as unduly burdensome on certain courts, particularly courts that handle a high volume of felony arraignments.

The advisory committee also considered a proposal to authorize courts to obtain thumbprints at the arraignment on the complaint and, if not so obtained, to require courts to obtain thumbprints at the arraignment on the information or indictment, without regard to whether the defendant pleads guilty or no contest *before* the arraignment on the information. The advisory committee approved that proposal to circulate for public comment and, as explained below, modified the proposal to its current form in response to a suggestion that courts should be authorized to obtain thumbprints at proceedings other than arraignments, including upon entry of a plea under Penal Code section 859a.

Comments

The proposal was circulated for public comment during the spring 2010 cycle. Five comments were received. Of those, four agreed with the proposal and one agreed with the proposal if modified. A chart of comments received and the advisory committee responses is attached at pages 6–7.

As noted above, the proposal that circulated for public comment would have authorized courts to obtain thumbprints at the arraignment on the complaint and, if not so obtained, would have required courts to obtain thumbprints at the arraignment on the information or indictment. The commentator who agreed with the proposal if modified suggested that the statute be amended to authorize courts to obtain thumbprints at other proceedings—including when defendants are held to answer or upon entry of a plea under Penal Code section 859a—to avoid unduly burdening certain courts. Recognizing that local caseload volume and calendar management practices dictate the optimal opportunity to obtain thumbprints, the advisory committee modified the proposal to provide courts with flexibility to obtain thumbprints at other proceedings.

In addition, to address concerns that thumbprints may not be obtained in cases in which the defendant pleads guilty or no contest *before* the arraignment on the information—for example, at an early disposition hearing held prior to the preliminary examination—the advisory committee decided to modify the proposal to require courts to obtain thumbprints upon entry of a guilty or no contest plea under Penal Code section 859a.

Implementation Requirements, Costs, and Operational Impacts

Expected costs and operational impacts would be limited to costs associated with training of court staff and judicial officers.

Attachments

1. Penal Code section 992, at page 5
2. Chart of comments, at pages 6–7

Penal Code section 992 would be amended to read as follows:

1 §992. Thumbprint; form; attachment to sentencing order; database use; effect of similar county
2 programs

3
4 (a) In any case in which the defendant is charged with a felony, the court, ~~immediately~~
5 ~~following the arraignment in the superior court,~~ shall require the defendant to provide a
6 right thumbprint on a form developed for this purpose. Unless the court has obtained the
7 thumbprint at an earlier proceeding, it shall do so at the arraignment on the information or
8 indictment, or upon entry of a guilty or no contest plea under Penal Code section 859a.
9 ~~This~~ The fingerprint form shall include the name and superior court case number of the
10 defendant, the date, and the printed name, position, and badge or serial number of the court
11 bailiff who imprints the defendant's thumbprint. In the event the defendant is physically
12 unable to provide a right thumbprint, the defendant shall provide a left thumbprint. In the
13 event the defendant is physically unable to provide a left thumbprint, the court shall make a
14 determination as to how the defendant might otherwise provide a suitable identifying
15 characteristic to be imprinted on the judgment of conviction. The clerk shall note on the
16 fingerprint form which digit, if any, of the defendant's was imprinted thereon. In the event
17 that the defendant is convicted, this fingerprint form shall be attached to the minute order
18 reflecting the defendant's sentence. The fingerprint form shall be permanently maintained
19 in the superior court file.

20
21 This thumbprint or fingerprint shall not be used to create a database. The Judicial Council
22 shall develop a form to implement this section.

23
24 (b) ***
25
26
27

LEG10-02**Criminal Procedure: Obtaining Thumbprints of Felony Defendants** (amend Penal Code section 992)

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

	Commentator	Position	Comment	Committee Response
1.	California Judges Association Jordan Posamentier Legislative Counsel	A	We support the proposed amendment to Penal Code section 992, which (1) authorizes courts to obtain the thumbprint at the arraignment on the complaint, and (2) if no thumbprint is obtained at the arraignment on the complaint, requires courts to obtain the thumbprint at the arraignment on the information or indictment. Allowing flexibility as to when to obtain the thumbprint relieves the courts of the burden of having to obtain the thumbprint early in the process.	To provide courts with more flexibility, the committee has decided to modify the proposal to authorize courts to obtain thumbprints at proceedings other than arraignments.
2.	Court of Appeal, Second Appellate District Katherine Lynn Managing Attorney	A	I agree with the proposed changes.	No response required.
3.	Hon. Douglas M. Elwell Presiding Judge Superior Court of San Bernardino County	AM	It is suggested that the proposed amendment to [Penal Code section] 992 allow for thumbprints to be taken at the arraignment on indictment, at the time of the 859a plea, or when defendant is ordered held to answer. It is a burden on the courts to obtain thumbprints at the first arraignment at the limited jurisdiction level.	The committee agrees that courts should be authorized to obtain thumbprints at proceedings other than arraignments, including when the defendant is held to answer or upon entry of a plea under Penal Code section 859a. Recognizing that local caseload volume and calendar management practices dictate the optimal opportunity to obtain thumbprints, the committee has decided to modify the proposal to provide courts with flexibility to obtain thumbprints at other proceedings.
4.	Orange County Bar Association	A	No specific comment.	No response required.

LEG10-02**Criminal Procedure: Obtaining Thumbprints of Felony Defendants** (amend Penal Code section 992)

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

	Commentator	Position	Comment	Committee Response
	Lei Lei Wang Ekvall President			
5.	Superior Court of San Diego County Michael M. Roddy Court Executive Officer	A	No specific comment.	No response required.