

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

LEG13-05

Title	Action Requested
Proposed Legislation: Joinder of Probation in Mental Health Cases	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Add Penal Code § XXX	January 1, 2015
Proposed by	Contact
Mental Health Issues Implementation Task Force	Carrie Zoller, 415-865-8829 carrie.zoller@jud.ca.gov
Hon. Richard J. Loftus, Jr., Chair	

Executive Summary and Origin

The Mental Health Issues Implementation Task Force proposes that the Judicial Council sponsor legislation to add a new section to the Penal Code that would enable judicial officers to make specific orders about the care, supervision, custody, conduct, maintenance, and support of mentally ill offenders on probation, under mandatory supervision, or placed on postrelease community supervision. The legislation would also give the court the ability to join to the criminal proceeding any agency or private sector service provider that the court determines has failed to meet a legal obligation to provide services to the offender. This legislation would increase the options available to the court when handling criminal cases involving mentally ill offenders and improve service provider accountability in instances where that is an issue.

Background

California's criminal courts process the cases of a disproportionate number of individuals who have a severe mental disorder that is not in remission or cannot be kept in remission without treatment ("mental illness"). People with mental illness are more likely to be arrested than those in the general population for similar offenses, and many enter the criminal justice system as a direct result of their unmanaged mental illness. By extension, people with mental illness also are overrepresented among offender populations, with estimates ranging from two to four times that of the general population. Many offenders with mental illness live in poverty, are unemployed, and have little social support, which can make it difficult for this population to meet supervision

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

requirements. People with mental illness may have functional impairments, and thus experience relapses that further complicate their ability to adhere to supervision conditions. Moreover, many offenders have their public benefits terminated or suspended while incarcerated and, without this public assistance, are not able to access community services or reinstate those benefits, that are essential to successful supervision adherence. It is, therefore, not surprising that people with mental illness under community supervision are more likely to violate their terms of supervision and have their community supervision revoked.¹ Studies have reported that parolees with mental illness have a 70 percent higher than average risk of committing technical violations (excluding absconding),² and are twice as likely as parolees without mental illness to have their parole suspended.³ The repeated filing of new criminal cases and probation violations inextricably links the recidivism and supervision violation rates of mentally ill offenders to criminal court case loads. As the jurisdiction of local courts expands under criminal justice realignment, the courts can anticipate the mentally ill offender population to have an even greater impact on court calendars.

As part of a national project designed to assist state judicial leaders in their efforts to improve responses to people with mental illnesses in the criminal justice system, in 2008 then-Chief Justice Ronald M. George established the Task Force for Criminal Justice Collaboration on Mental Health Issues (task force). The task force was charged with developing recommendations for policymakers, including the Judicial Council and its advisory committees, to improve systemwide responses to offenders with mental illness. The final report of the task force was issued in April 2011. On January 1, 2012, Chief Justice Tani G. Cantil-Sakauye appointed the Mental Health Issues Implementation Task Force (MHIITF) to develop a plan to implement the recommendations in the report.

The task force determined that the treatment of mentally ill offenders would benefit from empowering and encouraging judicial officers to make specific orders concerning the care of mentally ill offenders when the judicial officer determines that issuing such directives is necessary. Similarly, the task force also found that judicial officers should have express authority to hold government agencies and service providers accountable when the agencies fail to meet their legal obligations. Thus, the MHIITF is recommending Judicial Council sponsorship of the proposed legislation addressing these issues. If passed, the legislation will provide a much-needed tool for courts to use when dealing with offenders who suffer from mental illness. Local jurisdictions will be empowered to better ensure that government agencies and private sector service providers cooperate and coordinate to provide mentally ill offenders with needed supervision and care. It will improve agency and service provider accountability in cases lacking such accountability. It will also encourage judicial officers in courts that have less developed

¹ Lorena L. Dauphinot, "The efficacy of community correctional supervision for offenders with severe mental illness," 57(9-B) *Dissertation Abstracts International: Section B: The Sciences and Engineering* 5912 (March 1997).

² Ryken Grattet, Joan Petersilia, and Jeffrey Lin, "Parole Violations and Revocations in California" (Washington, D.C.: National Institute of Justice, October 2008), www.ncjrs.gov/pdffiles1/nij/grants/224521.pdf.

³ Frank J. Porporino and Laurence L. Motiuk, "The prison careers of mentally disordered offenders," *International Journal of Law and Psychiatry* 18 (1995), pp. 29–44.

strategies for addressing the needs of mentally ill offenders to consider a broader range of treatment and service options. Moreover, the proposed legislation offers a balanced approach by ensuring due process for the agencies and service providers involved, prohibiting the courts from imposing duties on service providers beyond those mandated by law, and restricting the courts from ordering agencies to provide services to offenders who are not eligible for them.

The Proposal

The proposed legislation would:

- Enable judicial officers to make any reasonable orders they believe are necessary for the care, supervision, custody, conduct, maintenance, and support of mentally ill offenders, including medical treatment, as long as the offender is eligible for the services.
- Allow the court to join to the proceeding any agency or private sector service provider that the court determines has failed to meet a legal obligation to provide services to the mentally ill offender. Due process would be preserved by giving the affected entity notice and an opportunity to be heard at a hearing.
- Allow agencies and service providers to meet prior to any hearing to coordinate services for the mentally ill offender. This will encourage early intervention by service providers and government agencies.
- Augment local efforts by providing clarity on a statewide basis that courts have the authority to make reasonable orders for the care, supervision, custody, conduct, maintenance, and support of mentally ill offenders, including medical treatment, and to join service providers to the criminal proceeding as a means of facilitating the delivery of those services. Such clarity will enable courts to order appropriate treatment for mentally ill offenders without posing a danger to the health and safety of others. This change should improve the outcomes for offenders with mental health issues.
- Benefit the judicial branch, along with court users, by facilitating coordination and cooperation between government agencies and service providers as well as increasing the treatment options available to mentally ill offenders.

Alternatives Considered

The MHIITF considered not addressing the issues of joining agencies to the criminal case, as well as the authority for specific court orders for an offender's treatment and care. However, the absence of either of these options would fail to provide tools to the court at a time when additional resources are greatly needed to work with mentally ill offenders. It also would deny the courts a chance to improve government agency and service provider involvement and coordination of services.

Implementation Requirements, Costs, and Operational Impacts

The sponsoring Judicial Council task force is proposing this legislation because it has concluded that its adoption, over time, would reduce costs currently incurred by courts and by justice system partners. This would be accomplished by helping to ensure that courts consider the service and treatment needs of mentally ill offenders, and by providing courts with the authority

to join service providers to the criminal proceeding to facilitate cooperation and enhance coordination of services. The proposal ultimately will lead to reduced recidivism by providing mentally ill offenders appropriate, timely treatment in cost-effective settings.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachments and Links

1. The text of the proposed legislation is attached at page 5.

Section XXX of the Penal Code would be added, effective January 1, 2015, to read as follows:

(a) When a defendant is granted probation, is ordered to mandatory supervision pursuant to section 1170(h)(5)(B), or is placed on postrelease community supervision pursuant to section 3450 and the court finds by a preponderance of the evidence that the defendant has a severe mental disorder that is not in remission or cannot be kept in remission without treatment, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the defendant, including medical treatment, subject to further order of the court.

(b) To facilitate coordination and cooperation among government agencies or private sector service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the criminal court proceedings any agency or private sector service provider that the court determines has failed to meet a legal obligation to provide services to the defendant. In any proceeding in which an agency or private sector service provider is joined, the court shall not impose duties upon the agency or private sector service provider beyond those mandated by law. Nothing in this section shall prohibit agencies or private sector service providers that have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the defendant.

(c) The court may only order services if an agency that has been joined as a party has determined that the defendant is eligible for those services.