

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### LEG16-04

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Title	Action Requested
Criminal Procedure: Multiple County Sentencing Under Penal Code Section 1170(h)	Review and submit comments by June 14, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code sections 1170 and 1170.3	January 1, 2018
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Adrienne Toomey, 415-865-7977 adrienne.toomey@jud.ca.gov

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to Penal Code sections 1170 and 1170.3<sup>1</sup> to promote uniformity and clarify judicial sentencing authority when imposing concurrent or consecutive judgments under section 1170(h) implicating multiple counties. Specifically, the proposed amendment to section 1170 would direct that when the court imposes a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant. The proposed amendment to section 1170.3 would direct the Judicial Council to adopt rules providing criteria for courts to determine the appropriate county or counties of incarceration and supervision in such cases.

### Background

The Criminal Justice Realignment Act made significant changes to the sentencing and supervision of persons convicted of felony offenses and sentenced on or after October 1, 2011. Many defendants are convicted of felonies and not granted probation now serve their incarceration term in county jail instead of state prison. (Pen. Code, § 1170(h).)

Under realignment, when sentencing defendants eligible for county jail under section 1170(h), judges must suspend execution of a concluding portion of the term and order the defendant to be supervised by the county probation department, unless the court finds, in the interests of justice,

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<sup>1</sup> All statutory references are to the Penal Code.

*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.*

that such suspension is not appropriate in a particular case. (Pen. Code, § 1170(h)(5)(A).) This term of supervision is referred to as “mandatory supervision.” (Pen. Code, § 1170(h)(5)(B).) The realignment act also created “postrelease community supervision,” whereby certain offenders being released from state prison are no longer supervised by the state parole system, but instead supervised by a local county supervision agency. (Pen. Code, §§ 3450–3465.) And following the realignment act, parole revocation proceedings are no longer administrative proceedings under the jurisdiction of the Board of Parole Hearings, but instead adversarial judicial proceedings conducted in county superior courts. (Pen. Code, § 1203.2.)

The realignment legislation is silent on the issue of sentences from multiple jurisdictions. The issue is significant because now counties must carry the cost and burdens of local incarceration and supervision. Section 1170.1, which governs multiple count and multiple case sentencing for commitments to state prison and county jail, and California Rules of Court, Rule 4.452 require the second judge in a consecutive sentencing case to “resentence” the defendant on any prior case. Currently, there is no existing rule or procedure to determine where the sentence is to be served if the court is imposing a judgment under section 1170(h) that is concurrent or consecutive to a judgment or judgments previously imposed in another county or counties.

### **The Proposal**

The proposal is intended to provide uniformity and guidance to courts when imposing concurrent or consecutive judgments under Penal Code section 1170(h) implicating multiple counties.

The Criminal Law Advisory Committee proposes amending section 1170 and 1170.3 as follows:

- Amend section 1170(h)(6) to provide: “When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.” Renumber current subdivisions (h)(6) and (h)(7) to (h)(7) and (h)(8) respectively.
- Amend section 1170.3 by adding subdivision (a)(7), which reads: “Determine the county or counties of incarceration and supervision when the court is imposing a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county or counties.”

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

The committee considered the potential burdens that any legislative and rule changes may place on the courts. The committee, however, determined that these amendments are appropriate because they are necessary to provide uniformity and guidance to courts on this issue, which has significant financial and other impacts on courts and counties.

## **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 appropriately address the stated purpose?

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

- Would the proposal provide cost savings? If so please quantify.
- Would the proposal provide other efficiencies? If so please quantify.
- 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 systems, or modifying case management systems.

### **Attachments**

1. Proposed amendments to Penal Code sections 1170 and 1170.3, at pages 4–5

Sections 1170 and 1170.3 of the Penal Code would be amended, effective January 1, 2018, to read:

1 **1170.**

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4 (h) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision  
5 where the term is not specified in the underlying offense shall be punishable by a term of  
6 imprisonment in a county jail for 16 months, or two or three years.

7 (2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be  
8 punishable by imprisonment in a county jail for the term described in the underlying offense.

9 (3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony  
10 conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or  
11 current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a  
12 prior felony conviction in another jurisdiction for an offense that has all the elements of a serious  
13 felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision  
14 (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5  
15 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of  
16 the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a  
17 felony punishable pursuant to this subdivision shall be served in state prison.

18 (4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by  
19 law, including pretrial diversion, deferred entry of judgment, or an order granting probation  
20 pursuant to Section 1203.1.

21 (5) (A) Unless the court finds that, in the interests of justice, it is not appropriate in a particular  
22 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend  
23 execution of a concluding portion of the term for a period selected at the court's discretion.

24 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph  
25 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall  
26 commence upon release from physical custody or an alternative custody program, whichever is  
27 later. During the period of mandatory supervision, the defendant shall be supervised by the  
28 county probation officer in accordance with the terms, conditions, and procedures generally  
29 applicable to persons placed on probation, for the remaining unserved portion of the sentence  
30 imposed by the court. The period of supervision shall be mandatory, and may not be earlier  
31 terminated except by court order. Any proceeding to revoke or modify mandatory supervision  
32 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section  
33 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless  
34 in actual custody related to the sentence imposed by the court, the defendant shall be entitled to  
35 only actual time credit against the term of imprisonment imposed by the court. Any time period  
36 which is suspended because a person has absconded shall not be credited toward the period of  
37 supervision.

38 (6) When the court is imposing a judgment pursuant to this subdivision concurrent or  
39 consecutive to a judgment or judgments previously imposed pursuant to this subdivision in  
40 another county or counties, the court rendering the second or other subsequent judgment shall  
41 determine the county or counties of incarceration and supervision of the defendant.

1 (~~6~~ 7) The sentencing changes made by the act that added this subdivision shall be applied  
2 prospectively to any person sentenced on or after October 1, 2011.

3 (7 8) The sentencing changes made to paragraph (5) by the act that added this paragraph shall  
4 become effective and operative on January 1, 2015, and shall be applied prospectively to any  
5 person sentenced on or after January 1, 2015.

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7 **1170.3.**

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9 The Judicial Council shall seek to promote uniformity in sentencing under Section 1170 by:

10 (a) The adoption of rules providing criteria for the consideration of the trial judge at the time of  
11 sentencing regarding the court's decision to:

12 (1) Grant or deny probation.

13 (2) Impose the lower, middle, or upper prison term.

14 (3) Impose the lower, middle, or upper term pursuant to paragraph (1) or (2) of subdivision (h) of  
15 Section 1170.

16 (4) Impose concurrent or consecutive sentences.

17 (5) Determine whether or not to impose an enhancement where that determination is permitted  
18 by law.

19 (6) Deny a period of mandatory supervision in the interests of justice under paragraph (5) of  
20 subdivision (h) of Section 1170 or determine the appropriate period and conditions of mandatory  
21 supervision. The rules implementing this paragraph shall be adopted no later than January 1,  
22 2015.

23 (7) Determine the county or counties of incarceration and supervision when the court is imposing  
24 a judgment pursuant to subdivision (h) of Section 1170 concurrent or consecutive to a judgment  
25 or judgments previously imposed pursuant to subdivision (h) of Section 1170 in another county  
26 or counties.

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