

The Capitol Connection

A publication of the Judicial Council of California's Office of Governmental Affairs
770 L Street, Suite 700 ♦ Sacramento CA 95814 ♦ 916-323-3121

Volume 3, Issue 3

May 1, 2001

The Seventh Annual Judicial-Legislative-Executive Forum

After Chief Justice George delivered the State of the Judiciary Address to a joint session of the California Legislature on March 20, 2001, the Judicial Council hosted the Seventh Annual Judicial-Legislative-Executive Forum. Each year since 1995, the Forum has provided an opportunity for members of the three branches to meet informally and discuss various issues that affect the courts. Over 130 legislators, staff, and guests gathered this year in the Capitol Rotunda to meet with Chief Justice George and other court leaders from throughout the state.

Sweeping structural changes in the California courts "have resulted in innovations focused on improving service to the public at a rate unsurpassed at any time in our state's history," declared Chief Justice George during his address. The Chief Justice traced major reforms in recent years, as he prepares to mark his fifth anniversary in office on May 1, 2001. His remarks also provided insight into exciting changes related to court security, underrepresented litigants, jury reform, and Proposition 36.

At the Forum, members of the Legislature and representatives of the executive branch had an opportunity to meet the Chief Justice as well as other members of the California Supreme Court, the Judicial Council, and AOC staff. The evening was an excellent opportunity to review past achievements as well as provide the legislative and executive branches insight into the current challenges facing the courts. Veterans like Senator John Burton (D-San Francisco) joined newcomers like Assembly Members Juan Vargas (D-San Diego) and Dennis Mountjoy (R-Arcadia) at the Forum.

During the Forum, Senator Sheila Kuehl (D-Los Angeles) praised the Chief's speech and was struck by how much he has accomplished in five years. "He gave us specifics in areas that we need to deal with," she said.

Ripped from the Headlines

In this issue we are inaugurating a new feature, "Ripped from the Headlines." This feature will highlight recent news stories of interest including headlines and a lead paragraph, without *Capitol Connection* editorial comment. In some instances we have provided a hyperlink for full text viewing of an article on the originating newspapers' website.

"Trial as Adults Still Rare for Teens" *San Jose Mercury News* (April 1, 2001)

Granted the authority last year to decide whether to try teenage criminals as adults, prosecutors in California have used the power cautiously, sending only a small number of teenage offenders directly to adult court without a hearing before a judge.

The controversial Proposition 21, opponents had said, would flood adult courts and prisons with offenders as young as 14 and undermine the ability of the juvenile justice system to salvage young lives. That hasn't happened.

"Help for the Do-It-Yourselfers—Courts are changing their attitude and now trying to assist pro per litigants" *Daily Journal* (April 2, 2001)

Officials say there is a growing trend towards self-representation in the California courts – and the intensifying efforts by officials and the bar to meet those demands. In family law courts, over 160,000 cases are coming in annually, with over half with at least one of the parties not represented by a lawyer. Pro per litigants, those who come to court representing themselves, have traditionally been treated like orphans in the legal system: largely unwanted, often ignored and usually neglected.

Because they have historically been prisoners and poor or uneducated immigrants who can't afford lawyers or don't understand the legal system, they have long been widely regarded as a nuisance by the bar and the bench alike, critics say.

Please see HEADLINES, page 2...

IN THIS ISSUE

- 1 THE 7TH ANNUAL JUDICIAL-LEGISLATIVE-EXECUTIVE FORUM
- 1 RIPPED FROM THE HEADLINES
- 3 LEGISLATIVE BILL UPDATE

“Legislative Logjam in State Capitol – Unpassed bills caught in energy conundrum” *San Francisco Chronicle* (April 3, 2001)

While Gov. Gray Davis and legislative leaders have been totally preoccupied with the energy crisis, the Capitol hasn't stopped the usual tsunami of bills – all of them headed toward a gruesome pile-up this month. “It's going to be an absolute train wreck,” said one Assembly chief of staff, who asked to remain anonymous for fear of offending the Legislature's leadership.

“The Chief Justice Speaks about Initiative Reform” *The Sacramento Bee* (April 4, 2001)

Ever since the great glut of initiatives began crowding California ballots in the late 1970s, critics have argued that if state courts were more vigorous in enforcing constitutional restrictions – and especially the rule limiting initiatives to a single subject – they could quickly make the process more comprehensible and manageable.

Then in December 1999, after years in which the rule got the most liberal reading possible, the California Supreme Court used it to strike an initiative off the ballot. More important, the decision included language strongly indicating that the court might begin to be tougher on all future initiatives.

The other day, Chief Justice Ron George all but formally confirmed that that's indeed what the court intended.

“Courts Go High Tech, Sparks Fly – Internet use raises issue of privacy” *Daily Journal* (April 4, 2001)

Electronic access to court records has been hailed as a huge advancement for the traditionally low-tech judiciary.

As access is implemented, however, it is raising concerns among judges, litigants and First Amendment advocates dealing with the ramifications of having available to anyone with a computer detailed personal and financial information often contained in court pleadings.

“The Death-Case Backlog Lives On” *Daily Journal* (April 5, 2001)

There are 159 indigent Death Row inmates who don't even have lawyers despite reforms that took effect three years ago to speed up the appointment of counsel.

The Legislature has pumped tens of millions of dollars since 1998 into hiring government lawyers and recruiting private attorneys to handle appeals for condemned murderers.

Yet, little has changed since Chief Justice Ronald George, state lawmakers and then-Gov. Pete Wilson overhauled the process for appointing attorneys and expanded resources devoted to capital appeals.

“Big Bill Looms for Court Facilities” *The Recorder* (April 13, 2001)

California needs to come up with at least \$525 million every year for the next decade to maintain existing court buildings and make the necessary capital improvements to meet growth estimates, according to a report released Thursday by a state task force studying court facility funding.

The report recommends that the state take over full fiscal responsibility of all 451 facilities – historically administered by local county governments. It points to the need for critical repairs, basic safety upgrades, greater security and access for the disabled, and urges the Legislature to transfer responsibility to the state over the next three years. But legislators may be in no mood for the expensive proposals.

“No Pay Increase for State Officeholders...” *The Sacramento Bee* (April 13, 2001)

Gov. Gray Davis and other state officeholders will receive no pay raises this year after a depleted wage-setting commission Thursday decided against salary changes.

It marked the fifth time in 12 years that the California Citizens Compensation Commission rejected increases, a decision that typically has occurred under wavering economic conditions.

www.capitolalert.com/news/old/capalert02_20010413.html

“Initiative Campaign for Jury Trials in Dependency Court Gets Underway” *MetNews* (Unknown date)

An initiative measure that would make major changes in California's system of court protection for abused and neglected children has been cleared for circulation.

The initiative would, among other things, create a right to trial by jury with respect to abuse and neglect allegations in dependency cases, open dependency courts to the public in the absence of a judicial finding of harm to the child's best interest, limit continuances, and require greater efforts to place children with relatives rather than in foster care.

“Lawmakers Vow to Improve Foster Care” *LA Times* (April 18, 2001)

Leading Democratic lawmakers vowed Tuesday to make improving California's troubled foster care system their top priority this year.

Assembly Speaker Bob Hertzberg and a broad array of powerful legislators have introduced a \$300-million package of 13 bills intended to provide child welfare agencies with greater resources while holding them more accountable for results.

Please see HEADLINES, page 3...

The bills would improve training for adoptive parents, reduce caseloads for social workers, boost money for foster care providers and expand government programs for former foster children moving out on their own, among other things.

“Traffic Court Tussle” *The Recorder* (April 23, 2001)

Alameda County's public defender and the superior court presiding judge have jumped back in the ring over misdemeanor traffic court.

The latest flare-up stems from an April 9 memo issued by Supervising Judge Whitley. In it, Whitley argues there are no spare judges to cover misdemeanor traffic court. To help alleviate the problem, Whitley proposed that the court reassign a commissioner to 104.

“Judicial resources are stretched to the breaking point,” wrote Whitley in the memo, which was obtained by *The Recorder*.

“This somewhat tenuous structure suffered a serious blow when the public defender's office announced that it was discontinuing its policy of stipulating to a commissioner in Department 104,” Whitley wrote.

www.law.com/regionals/ca/stories/edt0423a.shtml

“Meaner Judicial Watchdog Wanted” *LA Times* (April 23, 2001)

One thing is clear from L'affaire Patrick Murphy: The state agency responsible for monitoring California's 1,500 judges badly needs an overhaul.

His supervisors first complained about Murphy's absenteeism two years ago to the Commission on Judicial Performance. For all this time, the agency's staff has been investigating what looked from the start like a slam-dunk case of malingering and lying. Indeed, that was the conclusion earlier this month of a three-judge panel charged with deciding whether grounds exist for the commission to remove Murphy from the bench. There seems little doubt that this will be the panel's recommendation when it meets next month. And thank goodness. But why did it take so long

“Tech Crash, Power Woes could change Surplus to Deficit” *The Sacramento Bee* (April 24, 2001)

Just a few months ago, Gov. Gray Davis and the Legislature were contemplating the not unpleasant chore of spending billions of surplus state dollars, either on new projects and programs or tax cuts. No more. California's economy is decelerating, and the state is spending many billions of dollars – how many, exactly, is still unknown – on power purchases to prevent blackouts. The combined effect of these separate, if interrelated, factors is to hammer the state budget in ways that no one in the Capitol considered possible.

http://www.capitolalert.com/news/capalert05_20010424.html

Legislative Bill Update

As we move through the legislative calendar, the Capitol Connection will regularly update a selection of bills that affect the judiciary. To view the latest version of 2001 bills we our tracking visit our website at www.courtinfo.ca.gov

CIVIL AND SMALL CLAIMS

AB 329 (JACKSON) – Court Proceedings: disqualification of judge

Requires that the reassignment of a judge in counties with five or more judges shall be made on a random basis.

Status: Assembly Judiciary Committee – No hearing date set.

AB 1067 (Jackson) – Arbitration

Expands the grounds and conditions for vacation of arbitration awards by requiring a court to hold a de novo hearing on the matter if it determines the award is the result of legal or factual error by the arbitrator.

Status: Assembly Judiciary Committee – Hearing date 5/1/01.

AB 1260 (Wayne) – Discovery: misuses of the process

Adds destruction of relevant evidence to those actions constituting misuses of the discovery process.

Status: Assembly Judiciary Committee – No hearing date set.

SB 110 (Ackerman) – Small claims court

Authorizes the filing or maintenance of a claim in small claims court by an assignee of a claim under \$850 provided the assignee reduces the claim by 10 percent and pays a special filing fee.

Provides that an action brought in small claims court by an individual acting in his or her individual capacity would have an automatic calendar preference. Limits the number of claims to five per day or a lesser number to be determined by the Judicial Council.

JC Position: Oppose.

Status: Senate Appropriations Committee – Hearing date 5/7/01.

CRIMINAL LAW

AB 299 (Rod Pacheco) – Criminal jurisdiction

Grants a court exercising jurisdiction over multiple offenses involving criminal sexual acts and stalking that occurred in more than one jurisdictional territory jurisdiction over properly joinable offenses.

JC Position: Support.

Status: Assembly Public Safety Committee – Hearing date 5/8/01.

Please see UPDATE, page 4...

AB 897 (Daucher) – Domestic Violence: sentencing

Eliminates the sentencing court's authority to waive mandatory imprisonment in a county jail in cases where a defendant convicted of willful infliction of a traumatic condition on a person with a specified relationship to the defendant has a specified prior conviction and is granted probation.

Status: Assembly Appropriations Committee – No hearing date set.

AB 1016 (Oropeza) – Bail: deportation

Specifies that deportation constitutes a form of inability to appear in court that can support a court's decision to vacate an order of forfeiture and exonerate bail.

Status: Assembly Public Safety Committee – Hearing set 5/8/01.

AB 1304 (Rod Pacheco) – Criminal procedure: motions to suppress: appeal

Specifies that if a defendant in a misdemeanor case appeals denial of his or her suppression motion, the trial court has discretion to grant a stay of the trial pending disposition of the appeal.

Status: Assembly Public Safety Committee – Hearing set 5/8/01.

AB 1317 (Liu) – Identifying information: alleged victims of crime

Requires that in any criminal action or proceeding in which a witness is alleged to be a victim of domestic violence, stalking, or identity theft, all identifying information, shall be redacted from any ruling, exhibit, or other evidence, including testimony before the court. Requires the Judicial Council to provide by rule for the sealing of existing case files containing the identity information, subject to examination only by the parties.

Status: Assembly Public Safety Committee – No hearing date set.

AB 1590 (Simitian) – Search or seizure hearing

Extends provisions regarding exclusion of potential witnesses to suppression motion hearings.

Status: Assembly Public Safety Committee – Hearing date 5/8/01.

AB 1652 (Goldberg) – Sentencing

Gives courts discretion in three strikes cases to impose sentences consecutively or concurrently and deletes the provisions providing that the length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of the sentence.

Status: Assembly Appropriations Committee – No hearing date set.

SB 177 (Haynes) – Property seizures

Provides that, for property seizures where there are not specific procedures for having the property returned, the property shall be returned within a maximum of 30 days from the date the case concludes. Provides that the individual or entity from whom the evidence is seized shall be advised of their right to request a hearing to determine whether or not the property is contraband that is subject to forfeiture.

JC Position: Oppose unless amended.

Status: Senate Appropriations Committee – No hearing date set.

SB 791 (McPherson) – Marijuana: penalties

Reclassifies as an infraction the possession of 28.5 grams or less of marijuana.

JC Position: Support.

Status: Senate Public Safety Committee – No hearing date set.

SB 1034 (Vincent) – Bail: procedures

Provides that where judgment is entered on a plea against a defendant who is free on bail, the defendant be remanded to the proper officer to await the judgment of the court, unless the court concludes that the evidence supports the court's decision to allow the defendant to remain free on bail. Also provides that if the court fails to remand the defendant or to make a finding on the record of the probability of the defendant failing to appear for the judgment of the court upon the verdict, or for sentencing, the bail would be exonerated.

Status: Senate Public Safety Committee – No hearing date set.

DOMESTIC VIOLENCE

AB 160 (Bates) – Domestic violence: protective orders

Specifies that the criminal restraining order or protective order has precedence over any civil court order.

JC Position: Support if amended.

Status: Assembly Judiciary Committee – Hearing date 5/1/01.

SB 66 (Kuehl) – Domestic violence: protective orders

Requires the court, when considering issuance of a protective order, to cause a search of specified records and data bases to determine if the proposed subject of the order has any specified prior criminal convictions or outstanding warrants, is on parole or probation, or is or was the subject of other protective or restraining orders.

JC Position: Oppose unless amended.

Status: Senate Rules Committee – No committee assignment yet.

SB 927 (Escutia) – Court interpreters

Requires an interpreter to be present for any party who needs an interpreter in a Domestic Violence Prevention Act proceeding, or in other settings mandated by the court, including mediation and supervised visitation. Requires the fees for interpreters for the deaf or hard of hearing to be paid by the county. Requires the fees for interpreters for all other parties to be paid by the court in DVPA-related proceedings.

JC Position: Oppose unless amended.

Status: Senate Appropriations Committee – No hearing date set.

SB 1221 (Romero) – Spousal support: domestic violence

Provides that in any proceeding for dissolution of marriage brought within 2 years before or after a criminal conviction for an act of domestic violence perpetrated by one spouse against the other spouse, there shall be a rebuttable presumption that any award of temporary or permanent spousal support to the abusive spouse otherwise awardable pursuant to the standards of the provisions governing the award of spousal support should be reduced by at least 20%. Authorizes the court to consider a convicted spouse's history as a victim of domestic violence as a condition for rebutting the presumption.

JC Position: Oppose unless amended.

Status: Senate Judiciary Committee – Passed as amended.

FAMILY LAW

SB 78 (Kuehl) – Premarital agreements

Sets forth specified findings that the court is required to make in order to find that a premarital agreement was executed voluntarily.

JC Position: None.

Status: Senate Judiciary Committee – Passed as amended.

SB 174 (Kuehl) – Child support: computer software

Requires the California Child Support Automation System to contain the official state computer software for the calculation of the appropriate amount of child support pursuant to California's child support guidelines and all applicable statutes and rules of court.

JC Position: None.

Status: Senate Judiciary Committee – No hearing date set.

SB 566 (Morrow) – Family law court files

Provides that files relating to dissolution, nullity, legal separation, and Uniform Parentage Act are confidential and may be inspected only by specified individuals (parties, attorneys, authorized people, law enforcement, court personnel, etc.).

Status: Senate Judiciary Committee – No hearing date set.

JUDGES

AB 1099 (Havice) – JRS II prior service credit

Permits a judge to buy back years of service as a court commissioner as credit toward retirement.

Status: Assembly Appropriations Committee – Hearing date 5/2/01

SB 1179 (Senate Committee on Public Employees and Retirement) – Judges retirement fund

States the Legislature's intent to fund the unfunded liability in the JRS over a 30-year period.

Status: Senate Public Employment and Retirement Committee – Hearing date 4/24/01.

ACA 1 (Nation) – Judicial elections

Eliminates elections to fill vacancies, providing instead that the Governor shall fill judicial vacancies. Provides that all judges appear on the ballot uncontested, with the question presented whether the candidate shall be elected.

Status: Assembly Judiciary Committee – No hearing date set.

JURIES

AB 1660 (McLeod) – Jury service excuse: pollworkers

Excuses a pollworker at a national, statewide, or local election from jury service for a period of one year following the date of the election at which the pollworker serves.

JC Position: Oppose.

Status: Assembly Judiciary Committee – Hearing date 5/1/01.

SB 303 (Torlakson) – Jury service exemption: peace officer

Adds the San Francisco Bay Area Rapid Transit District police to the list of peace officers exempt from both civil and criminal jury duty.

JC Position: Oppose.

Status: Senate Judiciary Committee – Hearing date 5/1/01.

Please see UPDATE, page 6...

TRAFFIC

AB 73 (Dunn) – Traffic violations: failure to appear: fines

Limits the amount of additional fines the court may assess to \$100 for a failure to appear when the underlying traffic violation is an infraction involving vehicle registration and equipment violations.

Status: Assembly Transportation Committee – Failed passage.

AB 241 (Dickerson) – Traffic offenses

Makes it a felony if a person is convicted of a DUI offense occurring within 10 years of 2 or more prior felony DUI convictions, or one prior felony DUI conviction. Requires any person so convicted to be designated an habitual traffic offender for a 10-year period.

JC Position: Oppose unless amended.

Status: Re-referred to the Assembly Transportation Committee – No hearing date set.

SB 255 (Speier) – Vehicles: children unattended: fine

Imposes a new fine of not more than \$100 to leave a child 6 years of age or younger unattended in a vehicle for more than one minute.

JC Position:

Status: Senate Appropriations Committee – No hearing date set.

TRIAL COURT FUNDING

AB 145 (Pacheco) – Credit cards

Authorizes credit card payments for the deposit of bail for any offense not declared to be a felony or for any court-ordered fee or fine.

JC Position: Sponsored.

Status: Assembly Rules Committee – No committee assignment yet.

AB 223 (Frommer) – Evidence: discovery

Authorizes the clerk of the court to issue a commission authorizing the deposition in another state or place. The commission would be issued to any party in any action pending in its venue without a noticed motion or court order. Requires the Judicial Council to develop and approve official form interrogatories and requests for admission for use in any other civil action in a state court as the Judicial Council deems appropriate.

JC Position: Sponsored.

Status: Assembly Appropriations Committee – Hearing date 5/2/01.

AB 1700 (Assembly Judiciary Committee) – Courts

Judicial Council sponsored bill amends portions of the Civil Code, Code of Civil Procedures, government Code, Penal Code, and Welfare and Institutions Code to make changes to the organizational and financial

arrangements between the Judicial Council, trial courts, counties and other state agencies.

JC Position: Sponsored.

Status: Assembly Appropriations Committee – 5/2/01.

SB 518 (Dunn) – Trial court funding

Reduces the trial court funding maintenance of effort for specified counties.

JC Position: Oppose unless amended.

Status: Senate Judiciary Committee – No hearing date set.

SB 82 (Burton) – Judicial salaries

Increases the salaries of justices and judges of the Supreme Court, courts of appeal and trial courts by 8.5 percent effective January 1, 2002.

JC Position: Sponsored.

Status: Senate Judiciary Committee – No hearing date set.

SB 805 (McPherson) – Court reporters: depositions

Excludes from recordings of a deposition available to parties any nonstenographic technology used by a deposition officer as well as any data recorded by means of nonstenographic technology.

Status: Senate Judiciary Committee – Hearing date 5/1/01.

SB 1153 (Johannessen) – Trial court funding: court operations

Includes within the definition of court operations the costs directly related to court security in counties with a population of 103,000 or less.

JC Position: Oppose unless amended.

Status: Senate Judiciary Committee – No hearing date set.

THE CAPITOL CONNECTION
JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF GOVERNMENTAL AFFAIRS
770 L Street, Suite 700, Sacramento, CA 95814
Phone (916) 323-3121 - Fax (916) 323-4347
WWW.COURTINFO.CA.GOV

The Capitol Connection is a publication of the Judicial Council's Office of Governmental Affairs and is designed to inform judges and court personnel of current events in and around the California Legislature.

Editorial Board:

Ray LeBov, Kate Howard, June Clark

Contributors:

Alex Ponce de Leon, Allyson Myers