



THE CAPITOL CONNECTION

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LEGISLATIVE
CALENDAR:

Summer Recess Begins
July 20

Legislature Reconvenes
August 20

Last Day of Session
September 14

Last Day for Governor to Sign or Veto
October 14

EXPANSION OF DNA USE SOUGHT BY LEGISLATURE

The Legislature again this year is focusing attention on the use of emerging forensic science, particularly in the area of DNA testing. Forensic evidence like DNA is useful both as an investigative crime-solving tool, and to exonerate wrongfully charged or convicted individuals. Legislation moving this year builds on recent legislative initiatives.

DNA evidence can help solve crimes

Legislation enacted in 1998 expanded the DNA and Forensic Identification Data Bank to assist federal, state, and local criminal justice and law enforcement agencies in the expeditious detection and prosecution of people responsible for sex offenses and other violent crimes, the exoneration of suspects under investigation, and the identification of missing and unidentified people. Persons convicted of murder or sex offenses under this legislation must give DNA samples to be included in the DNA data bank. These samples can then be matched with crime scene evidence stored in the data bank to solve investigations in which there were previously no suspects.

AB 673, introduced this year by Assembly Member Carole Migden (D – San Francisco),

would expand the categories of convicted criminals submitting samples to the data bank to include residential burglaries, first-degree robbery, arson, and carjacking. AB 673 also would impose civil and criminal penalties for the knowing misuse of an offender's sample.

The experience of other states, the majority of which include some or all of these crimes in

(Continued on page 2)

Have you heard...



The new California Courts Online Self-Help Center offers free and low-cost legal help, step-by-step instructions on court procedures, and more about the law and how the courts work. The site is the first official, comprehensive resource designed especially for court users.

GOVERNOR SIGNS 2001/2002 BUDGET

The state's budget has been approved by the Legislature and signed by Governor Davis.

The \$101 billion spending plan had been stalled in the Assembly after Republican members refused to approve it. The primary sticking point was their concern that the budget would trigger the reinstatement of a quarter-cent sales tax increase, which had been suspended last year. The quarter-cent sales tax increase is designed to ensure sufficient revenue during difficult economic times. When the state's General Fund reserve is four percent of projected revenue for two consecutive years, the quarter-cent sales tax is suspended.

To secure the necessary Republican votes to pass the budget with the required two-thirds majority, a compromise was reached whereby the threshold reserve needed to suspend the sales tax increase was lowered to three percent in any single year.

Another significant issue was the sales tax on gasoline. Republicans sought some assurance that this revenue would be dedicated to transportation projects. Democrats agreed to place a proposed constitutional amendment that would com-

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DNA LEGISLATION

(Continued from page 1)

their databanks, is significant, according to Assembly Member Migden. Virginia, for example, has solved 283 crimes with their data bank since 1992. At least 56 percent of those cases would have not been solved if Virginia had not collected DNA samples from offenders convicted of the crimes AB 673 proposes to add to California's DNA data bank.

Opponents of AB 673 argue that the nonconsensual extraction of biological samples of blood and saliva from an individual by the government violates the U.S. Constitution's Fourth Amendment protection against unreasonable search or seizure. The bill is set for hearing in the Senate Appropriations Committee on August 20th.

DNA evidence can also exonerate the innocent

According to research conducted by the National Institute of Justice, since 1987 when U.S. courts began allowing DNA evidence, more than 70 individuals have been freed because of DNA tests that conclusively proved their innocence. At least nine were on death row, and one was just five days from being executed.

While the appropriate use of DNA evidence in criminal proceed-

ings is becoming as common as fingerprinting, the technology was not available to many who are currently incarcerated.

Legislation enacted in 2000 allows a currently incarcerated person to make a motion for DNA testing on evidence that has a reasonable potential to exonerate the individual. SB 1342 (Stats. 2000, ch. 821) also authorized appointment of counsel for inmates seeking DNA testing. This post-conviction testing provision indicates the state's clear intent to avoid wrongful conviction and to offer a remedy to those who have been wrongfully convicted.

Legislation introduced this year by Senator Bruce McPherson, and funded in this year's Budget Act at the request of Senator McPherson and Senate President pro tem John Burton, helps carry out the goals set forth in SB 1342 by creating the California Innocence Protection

Program within the Office of Criminal Justice Planning. The California Innocence Protection Program will provide funds to assist convicted persons who are attempting to

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From the archives...



Weakened by earthquakes and characterized by "improper ventilation and foul odors," Yolo County's first courthouse was condemned in 1911 as "unsanitary and unfit for the transactions of the court."

GOVERNOR SIGNS BUDGET

(Continued from page 1)

mit this money to transportation on the ballot in the March 2002 primary election.

Seeking to increase the state's General Fund reserve, the Governor eliminated more than \$500 million from the budget as passed by the Legislature. As expected, most of the spending for the judicial branch remained intact. One hit was the Equal Access Fund. The budget passed by the Legislature included a \$5 million augmentation that had been eliminated in the Governor's May revise. This augmentation was again eliminated. In his veto message, the Governor pointed to the state's softening economy and the need to increase the reserve as his reasons for this cut. Also, funding of a dedicated truancy court in Los Angeles County was eliminated. The Governor stated that "it is not clear that further delineation of areas of responsibility within the courts is necessary."

Drug Court Funding Whipsawed in Budget Process

Continued funding for two ongoing drug court programs survived the vicissitudes of the budget process.

Earlier this year, the governor's May Revision of the budget reduced the Department of Alcohol and Drug Programs' (DADP) baseline budget for drug court programs by \$8.5 million. The Legislature's joint conference committee, however, voted to restore full funding of \$18 million for the two ongoing drug court programs, the Drug Court Partnership Act and the Comprehensive Drug Court Implementation Act.

In the budget signed this week, the Governor reduced the drug court funding from \$18 million to \$15 million.

TRIAL COURT GROUP ASSISTS IN JUDICIAL COUNCIL ADVOCACY

The Trial Courts Consolidated Legislation Committee (TCCLC) assists the Office of Governmental Affairs (OGA) in refining Judicial Council's legislative advocacy. TCCLC's contributions are especially valuable at this point in the legislative cycle, after the budget has been signed, and many bills are pending in the appropriations committee of the second house.

At this stage, OGA staff is intensely involved in working with appropriations committee staff to identify potential costs and/or benefits to the courts of pending bills. These include not only council-sponsored bills and bills on which the council has taken a position, but also any other bill that might impose a new duty or a fiscal impact on the courts. The Judicial Council's Policy Coordination and Liaison Committee and OGA rely on an array of sources for this type of information. One of

the most significant and helpful collaborations in this area is with the TCCLC.

The TCCLC is a 16-member group of managers, supervisors, and other trial court personnel who review legislation and provide input to the Judicial Council and OGA. TCCLC points out implementation and operational issues, and also suggests proposals for new legislation to make the courts more efficient. Because of its connection with line staff in the trial courts, the TCCLC is uniquely positioned to offer advice about a proposal's potential impact on the day-to-day operations of the trial courts. This is just the sort of information the council and the Legislature are looking for when considering pending bills.

The TCCLC has been active for about nine years, and reviews more than 1,000 bills each year. The TCCLC also assists OGA in the development of summaries of all new legislation that affects the courts.

Courts Today...



Yolo County's first courthouse was replaced in 1917 by an expanded, classically inspired courthouse that is still in use. The building was restored in the 1980s and placed on the National Register of Historic Places in 1986.

TCCLC Membership:

Larry Jackson, Co-chair	Los Angeles Superior Court
Mike Tozzi, Co-chair	Stanislaus Superior Court
Jay Widdows, Co-chair	Ventura Superior Court
W. Paul Ammon	Shasta Superior Court
James Brighton	Alameda Superior Court
Scott Brown	San Diego Superior Court
Clarice Bush	Contra Costa Superior Court
Patricia Chandler	Kern Superior Court
Alisa Hollander	San Francisco Superior Court
Jodi Leveque	Napa Superior Court
Allan Lott	Los Angeles Superior Court
Jeanette McSkane	Orange Superior Court
Mary Melvin	San Francisco Superior Court
Mark Nance	Santa Clara Superior Court
Mike Terry	Santa Clara Superior Court
Kathy Visco	Los Angeles Superior Court

Legislative Review on Hiatus

The Capitol Connection regularly features an update of selected bills of interest to the judiciary. With the Legislature on its summer recess until August 20th, there is little to report for this issue. Look for a legislative update in the next issue. If you are looking for Judicial Council positions on legislation, the Office of Governmental Affairs updates a chart after each Policy Coordination and Liaison Committee (PCLC) meeting showing the status of legislation on which the PCLC has adopted a position. The chart provides details such as the source of the bill and the bill's current status in the Legislature. The bills are listed in numerical order and indexed by subject. To get a copy of the status chart, visit us on the web at <http://www.courtinfo.ca.gov/courtadmin/aoc/oga.htm>.

RIPPED FROM THE HEADLINES...

“Ripped from the Headlines” highlights recent news stories of interest including headlines and lead paragraphs, without *Capitol Connection* editorial comment.

“Failure Rate High for Pilot Program in O.C.” *Los Angeles Times* (July 15, 2001)

As Proposition 36 takes effect across the state, officials are viewing with concern an Orange County pilot program in which 40% of defendants who received treatment failed to complete the program.

The data—the most extensive barometer so far of how state-wide drug treatment might fare—leave some judges and prosecutors pessimistic, fearing that Proposition 36 is too lax to ensure widespread success. “I just wonder if these people are going to be motivated to pursue a treatment program,” said Superior Court Judge Ronald Kreber. “I don’t know that there’s much the court can do to motivate them.”

“Prop. 21 not Filling Prisons with Juveniles” *The Sacramento Bee* (July 15, 2001)

Sixteen months ago, California voters passed Proposition 21, which mandated that teens as young as 14 get adult prison sentences for specific crimes. The measure, approved by 62 percent of voters, was billed as a way to keep young murderers such as Jeremy in prison beyond age 25, at which age they are required to be released by the California Youth Authority. Though many expected the number of youthful offenders serving time in adult prison to grow under the new guidelines, their numbers have decreased in the past year, a trend some experts say coincides with an overall decline in juvenile crime rates.

“Battle Brewing on Change in Term Limits Law: A Proposed Initiative Faces an Uphill Effort; most voters still support restrictions” *The Sacramento Bee* (July 16, 2001)

A proposed initiative to relax legislative term limits in California is drawing applause from some legislators and fire from advocates of the 11-year-old law, which still enjoys broad support from voters.

It also has prompted term-limits backers to launch a retaliatory ballot measure designed to severely restrict the effectiveness of the effort.

Despite polls showing the 1990 term limits law remains extremely popular with Californians of all political persuasions, a group of Democratic legislators and a labor-backed senior group is pushing a constitutional amendment that would allow lawmakers to serve an additional four years in the Assembly and the Senate.

“Providing Counsel for Kids in Court Will Be Costly” *Daily Journal* (July 18, 2001)

A new state law requiring legal counsel for children in dependency proceedings will tax already overworked family law attorneys and strain the court’s budget, according to lawyers and court officers.

“There is an additional burden, no question,” said Judge Donna Hitchens, supervisor of the San Francisco family court. “But we’ve been recruiting attorneys and we don’t anticipate this bringing us to a standstill or be such a great burden that it thwarts the intention of the law.”

The law covers children whose parents have been stripped of their parental authority for neglecting or in some way abusing their kids. Whether they remain in the home or are placed with relatives or foster care, the children’s situations are subject to frequent review by court personnel.

“Many Pay for Doing Civic Duty. Courts: Jurors frequently foot the bill, a report shows, as more employers offer no paid leave and others refuse to cover long trials.” *Los Angeles Times* (July 18, 2001)

The juror had nothing against doing his civic duty. But he hadn’t planned on digging into his own pocket to pay for it.

The Delta Air Lines worker had hit the company’s limit for paid jury leave after 15 days on the Rampart police corruption trial. But the case would take two weeks or more.

Los Angeles Superior Court Judge Jacqueline Connor felt she could not let the juror go in mid-trial. Connor phoned Delta repeatedly to plead for more paid days off. The airline ultimately refused, Connor recalled, and the juror used his vacation days to cover his time off work.

Those in the business community say employers have become less willing to pay for jury service because of pressures of lower costs, especially as the economy has slowed. This comes as California courts have shown an increasing unwillingness to excuse jurors who claim financial hardship.

“Time Is Up but They Stay in Jail” *Los Angeles Times* (July 21, 2001)

It is rare for county jailers to let inmates get away. The bigger problem is releasing them when their time is up.

More than 2,000 inmates were jailed past their release dates between 1997 and 2000, some wrongfully denied their freedom for months, according to county reports.

The release errors occur largely because the jails must rely on handwritten instructions from the courts on what to do with each inmate, according to county reports. As a result, there are misinterpretations and clerical errors.

The solution—linking the courts’ computers to the jails’ computers—was identified in the mid-1990s, yet the paper system continues as the county bureaucracy slowly pecks away at the electronic challenge. The new computer system probably will not be running at all courthouses until spring 2003, county officials say.

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RIPPED FROM THE HEADLINES...

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“Prop. 36 Eligibility Debated in Courts. An appeals panel will determine whether drug defendants convicted before the measure went into effect can be given treatment rather than jail time” *Los Angeles Times* (July 24, 2001)

Entering the debate over Proposition 36, a state appeals court has agreed to hear arguments on whether drug defendants convicted before the measure took effect July 1 can be sentenced to drug treatment rather than time behind bars.

As courts grapple with how to implement the law, legal challenges are occurring around the state. In Orange County, prosecutors have appealed judges’ rulings that authorized drug treatment for defendants whose crimes they say are not covered by the initiative. Los Angeles County prosecutors, meanwhile, are studying the possibility of appealing rulings that have allowed drug offenders arrested before July 1 to participate in Proposition 36 programs.

Democrats Rule the Redistricting Roost in California. The GOP holds no majority in the Legislature. But kicking them while they’re down could backfire” *Los Angeles Times* (July 25, 2001)

For California’s battered Republican Party, good news is a relative thing. And when it comes to redistricting, the best news is that things can’t get much worse. In gaining seats in the last several elections, Democrats have knocked just about all the vulnerable GOP incumbents out of Washington and Sacramento.

The Democrats now enjoy virtually unfettered control of the process to remap the state’s congressional and legislative lines: For the first time in nearly 20 years, the same party holds both the Legislature and the governorship. So they might be tempted to try to pad their majorities by drawing the maximum number of Democratic seats possible, giving them a shot at a veto-proof two-thirds super-majority in both houses of the state Legislature. But doing so could put some of their own incumbents at risk. “It becomes a zero-sum game,” said Tim Hodson, director of the Center for California Studies at Cal State Sacramento.

“A Strange Budget Trip” *The Sacramento Bee* (July 26, 2001)

In the end, the blunt leader of the state Senate, John Burton of San Francisco, summed up what many felt about the long overdue passage of the state’s \$101 billion budget. “It was a goofy year,” he said.

The goofiness, if that’s what it was, could be traced to an array of factors, insiders said: the distractions of the energy crisis, procedural miscues, a shrinking treasury, and even the California requirement -- one of only three such state laws in the United States -- that the budget be approved by a super-majority. The constitutional provision guarantees that the minority party, in this case the Republicans, can block the budget until at least some of its concerns are addressed.

“New Budget Cuts Legal Fund for the Poor” *Daily Journal* (July 27, 2001)

Gov. Gray Davis signed a new state budget Thursday and, while his cuts to the judiciary were mostly minor, an expanded legal fund for the poor felt the sharpest sting of his scalpel.

From the Legislature’s 2001-02 fiscal year proposal, Davis pared some \$600 million, including \$5 million from the proposed expansion of the Equal Access Fund. That left \$10 million in base funding. The judiciary had asked for \$20 million. The fund, established last year, helps low-income parties obtain legal representation.

“California is heading into a difficult year with its softening economy and substantial revenue decreases,” Davis said in a statement explaining his line-item veto. “Consequently, the General Fund expenditures in this budget are down 1.7 percent over the prior year. “I am open to considering funding for this worthy program in the future when the economy improves,” he added.

“Foster care legislation stripped, delayed a year. Only jobs-and-housing reform bill manages to squeak by” *San Francisco Chronicle* (July 31, 2001)

A comprehensive package of bills designed to reform California’s downtrodden and under-funded foster care system has been whittled down and delayed another year because of budget deficits.

Yesterday, Gov. Gray Davis signed the only major foster care reform measure that will survive this session. The \$18 million jobs-and-housing program, which is part of the 2001-02 state budget, is designed to help teenagers who leave foster care.

“There was a good-faith effort, but unfortunately we ran into a train wreck, and that was the energy crisis,” said Alan Watahara, president of the California Children’s Lobby in Sacramento.

Even the measure Davis signed yesterday was trimmed from an earlier version.

“High-Voltage Fight Over Inquiry. Enron suit raises specter of constitutional crisis” *The Recorder* (July 31, 2001)

In a legal action not seen in California since 1929, Delaware-based Enron Corp. – one of the leading providers of wholesale energy to the state – is challenging a Senate committee’s power to subpoena internal documents as part of a state investigation into energy price manipulation.

The suit, which was filed in Sacramento County Superior Court earlier this month, not only questions whether the Legislature has the authority to subpoena documents from out of state, but also questions whether the Senate has the power to sanction the company for failing to comply.



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DNA Legislation

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establish their actual innocence for the crime for which they are currently incarcerated. The funding will be available to qualified non-profit organizations, public defenders, and private counsel to research, investigate and represent California cases of wrongful conviction.

Senator Burton has also introduced legislation this year to clarify the timing of the appointment of counsel when an inmate seeks DNA testing.

Around the Courts...



Riverside Superior Court Juror Supervisor Manuel Gonzalez (left) provides instructions to prospective jurors and other court users waiting to enter the Robert Presley Hall of Justice, situated across a courtyard from the main courthouse.

DNA Bills at a glance...

AB 453 (Correa)

Allows a forensic scientist required to perform DNA or other forensic analysis to seek to have the sample tested for HIV.

Status: Senate Appropriations Committee

AB 673 (Migden)

Expands the categories of convicted criminals submitting samples to the DNA data bank to include residential burglaries, first-degree robbery, arson, and carjacking. Imposes civil and criminal penalties for the knowing misuse of an offender's sample.

Status: Senate Appropriations Committee

SB 83 (Burton)

Allows an indigent convicted person to request appointment of counsel by sending a written request for post-conviction DNA testing to the court, and requires the court to appoint counsel in specified cases.

Status: Assembly Appropriations Committee suspense file

SB 1026 (McPherson)

Establishes the California Innocence Protection Program to provide funds for the purpose of assisting convicted persons who are attempting to establish their actual innocence for the crime for which they are currently incarcerated.

Status: Assembly floor (Funded in the Budget Act of 2001.)

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