

THE CAPITOL CONNECTION

SPECIAL EDITION

SESSION ENDS WITH A FLURRY OF ACTIVITY

The 2001-2002 legislative session came to a close on August 31 with both houses putting in long hours in the final days. Lawmakers scrambled to ensure bills and the past-due state budget, made it to the governor's desk in time for consideration. Governor Davis will have until September 30 to sign or veto bills. Among these are a number of bills that are of interest to the courts, several of which are sponsored by the Judicial Council. *The Capitol Connection* has been reporting regularly on these measures as they have moved through the Legislature. Here is a summary of court-related legislation that is awaiting action by the governor, as well as some that didn't make it that far.

CIVIL AND SMALL CLAIMS

AB 3027 (Committee on Judiciary) – Civil procedure

Requires parties seeking a jury trial to post advance deposit of jury fees at the same time in order to avoid gamesmanship. Provides that if more than one party demands a jury, the amount to be paid daily by each party making such a demand shall be determined by stipulation of the parties or by order of the court. Clarifies that the existing requirement for the posting of jury fees and mileage for the "second day's session" refers to the second day of any use of jurors, regardless of whether the jury has been sworn or is still in the voir dire stage. Conforms the service of opposition and reply papers in summary judgment proceedings to existing requirements in other motions to ensure timely service. Clarifies that independent contractors providing advice to small claims litigants have same immunity from liability that is provided to county or court employees and volunteers performing this same function. Extends deadlines for service of a claim and order on a defendant in small claims court. Clarifies procedures for requesting a postponement of small claims court hearings. Deletes obsolete provisions regarding the transfer of cases between a municipal and superior court. Requires notice and an opportunity to be heard for parties facing penalties for failure to comply with local court rules. Makes technical corrections to the oath statute. Updates the clergy-penitent privilege statutes with gender neutral language.

JC Position: Sponsor

Status: Governor's desk

AB 3036 (Corbett) – Guardianship of minors: annual status reports

Among other things, requires the court, *to the extent resources are available*, to implement procedures to ensure that every guardian annually completes and returns a status report. Pro-

vides for the confidentiality of the report. Requires the clerk of the court to mail a notice of the required filing one month before the filing is due, and to include a blank status report form with the notice. Requires the court to attempt to obtain the information required in the report from the guardian or from other sources if the status report is not completed and returned or if the court finds that further information is needed. Also requires the court to order the guardian to make himself or herself available to the investigator for the purposes of investigation of the guardianship, or to show cause why the guardian should not be removed, if the court is unable to obtain the information required in the report within 30 days after the status report is due. Requires the Judicial Council to develop a standard status report form, and report to the Legislature no later than December 31, 2004, regarding the costs and benefits of utilizing the annual status reports.

JC Position: Neutral

Status: Governor's desk

CRIMINAL LAW

AB 444 (Committee on Budget) – Budget trailer bill

Directs continued Judicial Council collaboration with the Department of Alcohol and Drug Programs to develop and evaluate modified drug court program.

Status: Governor's desk

AB 2211 (Horton) – Criminal procedure: sentencing: Community Impact Statement

Requires the Judicial Council to study the potential effects, implementation issues, and alternatives to a policy requiring the courts, prior to judgment and sentencing of misdemeanor crimes, to consider community impact statements. Requires the

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Judicial Council to report to the Legislature by December 31, 2004.

JC Position: Neutral

Status: Governor's desk

AB 2899 (Migden) – Homeless courts

Establishes a 4-year "Homeless Court Pilot Project" in three superior courts selected by the Judicial Council on a competitive basis. Requires the Judicial Council to evaluate the costs, benefits, efficiency, and desirability of maintaining these courts.

JC Position: Support

Status: Governor's desk

SB 1391 (Burton) - Habeas corpus

Creates a process in which the habeas attorney in a death penalty or life imprisonment case can have access to discovery materials in the possession of the prosecution or law enforcement at the time of trial when the trial attorney's file is unobtainable. Creates a process by which a convicted person who is no longer in custody or on probation or parole can move to have the judgment vacated when there has been fraud or fraudulent testimony by a government official.

Status: Governor's desk

SB 1497 (Polanco) – Parole: life prisoners: review by three-judge panel

Provides for a one-time review of the custody status of life prisoners who have been in prison beyond a date specified in certain regulatory matrices. Requires a three-judge panel from the sentencing jurisdiction to consider various matters as to each prisoner qualifying for the review, and either order the immediate release of the prisoner, set a fixed parole date, or order the inmate to remain in custody, pending the hearing process of the Board of Prison Terms.

JC Position: Oppose

Status: Failed Passage

SB 1793 (Burton) – Youthful offenders

Requires the juvenile court to set an initial parole consideration date for a ward and to set a maximum term of physical confinement based upon the facts and circumstances of the matter or matters which brought or continued the minor under the jurisdiction of the juvenile court. Authorizes the Judicial Council to promulgate rules of court that establish guidelines for setting initial parole consideration dates.

Status: Governor's desk

FAMILY LAW

AB 2030 (Goldberg) – Protective orders: service of process

Provides that there shall be no fee for service of process in proceedings under the Domestic Violence Prevention Act and other specified proceedings. Allows the sheriff to submit billings to the court for reimbursement of the cost of serving process in these proceedings

JC Position: Oppose unless funded

Status: Governor's desk

AB 2240 (Wright) – Paternity testing

Permits a previously established father who is not the biological father of a child, who proves that another man is the biological father, to bring a civil action against the biological father for damages. Creates procedures for vacating a default judgment of paternity beyond other existing statutes of limitations. Actions must be brought within 3 years of when the person bringing the motion becomes aware, or should have through reasonable diligence, that the previously identified father may not be the genetic father. Requires the court to vacate an order if genetic tests exclude the previously established father as the biological father of the child unless the court finds that to do so is not in the best interests of the child, based on the consideration of specified factors. Excludes from this procedure judgments entered in marital dissolution, legal separation, or nullity actions, as well as children presumed to be of the marriage pursuant to Family Code 7540.

JC Position: Neutral

Status: Governor's desk

SB 1627 (Kuehl) – Protective orders

Revises existing law to require a law enforcement agency to enter proof of service of protective order served by the agency into the Domestic Violence Restraining Order System. For orders not served by law enforcement, the court would be required to either enter the proof of service in the system or send a copy of the proof to law enforcement for entry.

JC Position: Support

Status: Signed by Governor

SB 174 (Kuehl) – Child custody mediation

Requires, in at least four volunteer courts with family law filings in excess of 1,000 that currently employ a non-confidential child custody mediation process, that initial child custody mediation sessions be confidential, with an allowance for subsequent recommending mediation if conducted by a different mediator. The four volunteer courts are to be determined by the Judicial Council. Implementation of these provisions is contingent upon funding in the Budget Act.

JC Position: Neutral

Status: Governor's desk

JUDGES

AB 2065 (Nakano) – Confidentiality of home addresses

Provides that an assessee may request in writing that property address information maintained by the assessor, but not required to be part of the assessment roll, be made available for internal purposes and not subject to public disclosure. Authorizes the assessor to impose a fee for the actual costs of performing his or her duties under this subdivision.

Status: The bill was gutted and amended to be a trailer bill unrelated to courts.

AB 2879 (Strom-Martin) – Judges' retirement and assign-

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ment

Allows a judge to designate a beneficiary other than his or her spouse to receive the non-community property portion of his or her retirement benefit upon the judge's death; conforms the compensation of a retired judge assigned to an appellate court with that of a retired judge assigned to a trial court; in the event of the death of both the judge and the spousal survivor, provides a return of undistributed employee contributions and interest to the estate.

JC Position: Co-sponsor with the California Judges Association

Status: Governor's desk

JURIES

AB 1970 (Matthews) - Juries: peace officer exemptions

Exempts parole officers, probation officers and correctional peace officers from jury service.

JC Position: Oppose

Status: Failed passage

TRAFFIC

SB 1969 (Machado) - Traffic violator schools: fees

Requires the court to collect the fee charged by the Department of Motor Vehicles (DMV) for certificates of completion issued by traffic violator schools (TVS) when the traffic violator submits the certificate to the court. Requires the DMV to provide certificates of completion to instructor-taught TVSSs at no cost. Requires the court to transmit the fees to the DMV each quarter. Prohibits the court from dismissing complaints against traffic violators who attend traffic school unless the fee for the certificate is submitted to the court. If the fee is not paid to the court when the certificate is submitted, allows the court to recover costs for subsequent dismissal of the traffic complaint if the fee is ultimately submitted. Requires the court to revise their courtesy notices to include a statement informing the traffic violator of his or her responsibility to submit the completion certificate fee.

JC Position: Oppose

Status: Vetoed by Governor

TRIAL COURT FUNDING AND ADMINISTRATION

AB 2690 (Cardoza) - Court financial statements: audits

Requires the Judicial Council to select five courts to participate in a pilot project to prepare and transmit to the Bureau of State Audits an annual financial statement showing the status of the fines, forfeitures, penalty assessments, and civil assessments imposed for failure to appear.

JC Position: Oppose

Status: Failed passage

AB 2321 (Hertzberg) – Tort Claims Act

Clarifies the procedure for presenting claims against the trial courts, Courts of Appeal, the Supreme Court, the Judicial Council, and the Administrative Office of the Courts.

JC Position: Sponsor

Status: Governor's desk

AB 3000 (Committee on Budget) – Budget Trailer Bill

Requires a 10 percent surcharge on all civil filing fees. Requires a 20 percent surcharge on all criminal fines. Provides for a new distribution of criminal fines.

Status: Governor's desk

AB 3028 (Committee on Judiciary) – Court operations

Eliminates "loss of hearing" as a basis for general disqualification of a prospective juror. Provides a 2 percent pay differential for presiding judges in courts with fewer than 4 judges during the Presiding Judge's term. Permits a total fee that is subject to a surcharge to be rounded to the nearest whole dollar. Permits courts to hold sessions outside of the county, pursuant to rules of court and with the parties' consent. Authorizes direct payment by the Judicial Council of costs for trial court programs, contract costs, or legal and financial services. Clarifies the ability of counsel to receive relevant reports in family and juvenile law cases. Extends to courts the authority to assess the existing fee for guardianship investigations when the court, rather than the county, undertakes the investigations. Requires that service on wards and dependents not in parental custody shall be made upon the designated agent for service of process. Changes a statutory due date for a report from the Judicial Council to the Legislature on the use of involuntary references and deletes an incorrect a statutory cross-reference related to disqualification of an arbitrator.

JC Position: Sponsor

Status: Governor's desk

SB 371 (Escutia) – Court interpreters

Establishes the Trial Court Interpreter Employment and Labor Relations Act setting forth provisions and procedures governing the employment and compensation of certified and registered trial court interpreters, and court interpreters pro tempore, employed by the trial courts.

JC Position: Support

Status: Governor's desk

SB 1732 (Escutia) – Trial court facilities

Establishes a process for the transfer of responsibility for court facilities from counties to the state. Establishes a process for calculating county facility payments to the state for those buildings whose responsibility transfers. Creates a dispute resolution committee to make recommendations to the Director of Finance. Establishes the Court Facilities Trust Fund and the State Courthouse Construction Fund. Creates a new statewide filing fee surcharge for courthouse construction. Increases the local penalty assessment for courthouse construction funds to \$5.

JC Position: Co-sponsor with the California State Association of Counties

Status: Governor's desk

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SB 1396 (Dunn) – Court security

Clarifies allowable and unallowable state costs for court security. Requires each court to prepare and implement a court security plan. Requires each Sheriff or Marshall to prepare and implement a law enforcement security plan. Requires the Judicial Council to adopt a rule establishing a working group on court security.

JC Position: Co-sponsor with the California State Sheriffs' Association

Status: Governor's desk

SB 2011 (Burton) - Workers compensation

Defines the superior courts as the state for the purposes of workers' compensation coverage. Establishes the Judicial Branch

Workers' Compensation Fund. Also includes union-sponsored provision related to the Trial Court Employee Protection and Governance Act.

JC Position: Sponsor

Status: Governor's desk

MISCELLANEOUS

AB 1698 (Committee on Judiciary) – Legal Document Assistant registration program

Repeals the sunset date for the Legal Document Assistant registration program and amends the program to enhance disclosure requirements and restrict advertising.

JC Position: Sponsor

Status: Governor's desk

Status Chart of Pending Legislation

Looking for Judicial Council positions on legislation? The Office of Governmental Affairs prepares 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 news stories of interest including headlines and lead paragraphs, without editorial comment from *The Capitol Connection*.

"Assembly OKs Taking Inmates' DNA by force" *Contra Costa Times* (August 16, 2002)

The state Assembly approved a bill Thursday that would let local jails as well as state prisons use "reasonable force" to take DNA samples from inmates.

Written by Sen. James Brulte, the bill requires officials to videotape any forceful removal of inmates from cells to take the samples. That will protect both inmates and the guards who may later be accused of being too rough, said Brulte, R-Rancho Cucamonga.

The bill includes guidelines for local jailers, a definition of reasonable force, and requirements that supervisors approve any forceful testing.

Refusal to give DNA samples currently is a misdemeanor, which prison officials say doesn't deter inmates serving long sentences who fear their samples can link them to other crimes.

"Labor Bills Test Davis the Centrist" *Los Angeles Times* (August 20, 2002)

Shortly after Gray Davis was elected governor in 1998, jubilant labor leaders—statehouse pariahs during 16 years of Republican rule—handed the victorious Democrat a lengthy wish list.

Davis scanned labor's pie-in-the-sky priorities for his first year in office, then offered a gentle rebuke. His advice to labor, aides

recall: Spread the shopping spree over four years.

Now, as the final legislative session of Davis' first term draws to a close nearly four years later, labor groups are lined up at the Capitol checkout counter with a cart full of bills.

"Cotchett Hired to Defend Judicial Council" *Daily Journal* (August 20, 2002)

The state Judicial Council has hired high-powered attorney Joseph Cotchett of Burlingame to defend it against a federal suit filed by two securities groups last month attacking the council's new rules regulating arbitrators.

"At a time when the nation's confidence in the stock market is wavering, it is unfortunate that these stock exchanges are opposing ethics standards designed to help protect investors who are required to have their dispute resolved by arbitration rather than in court," said Cotchett, of Cotchett, Pitre, Simon & McCarthy of Burlingame.

Last week the author of the legislation leading to the new rules, state Sen. Martha Escutia, D-Whittier, joined Senate president pro tem John Burton, D-San Francisco, in filing a complaint with the SEC, asserting the stock exchange groups are illegally refusing to proceed with arbitration claims by California investors in retaliation for the tough new rules.

"The NYSE and NASD are not above the law," the legislators wrote. "They cannot simply shrug off legal and appropriate

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state standards and hold the claims of California investors hostage.”

“Much-Vaunted Committee System May Be As Relevant As Dodo Bird” *Sacramento Bee* (August 27, 2002)

Those who serve in legislative bodies often sing the praises of the “committee system” that processes and supposedly reshapes raw legislative proposals into workable finished products.

In theory, those who sit on committees develop expertise in the specialized topics so as to shape consistent and effective public policy. Committee hearings, moreover, give both advocates and opponents of a proposed law an opportunity to make their cases, for the media and public to become aware of what’s afoot, and for members of both political parties to have their say.

In practice, committees in the California Legislature and other bodies rarely function as precisely or as effectively as lawmakers claim. With term limits, committee chairs, members and staffers turn over rapidly. Purely political factors – special interest campaign contributions, directions from the legislative leaders and vote trading – are often more influential than logic or even ideology. And when someone in power decrees that something should happen, committees may be bypassed altogether or conduct embarrassingly perfunctory hearings that effectively exclude the public.

Whatever its historic shortcomings, the committee process has in recent years become increasingly irrelevant in the Capitol, its deterioration evident on matters large and small.

The process always takes a beating in the final days of a legislative session as entirely new versions of legislation, sometimes entirely new bills never seen in any form, surface through various parliamentary devices without little or no committee hearings or public input.

“Senate OK’s State Bill on Treating Mentally Ill” *San Diego Union Tribune* (August 29, 2002)

Taking a cue from New York lawmakers, the state Senate yesterday passed a bill that allows relatives and friends of the mentally ill to petition courts to order them into outpatient treatment. Police officers and mental health professionals could also initiate the process into counties that choose to use the law, if it passes the Assembly and is signed by Gov. Gray Davis.

AB 1421 was characterized by opponents as a heavy-handed assault on individual liberties, and a partial return to earlier decades when family members could order troublesome relatives into mental hospitals. It also allows courts to detain those who don’t cooperate for up to three days in a hospital to evaluate their condition.

Supporters called the bill “the beginning of an answer” to deal with thousands of mentally ill Californians who resist voluntary treatment.

“Plaintiffs Lawyers Get Pair of Bills Through Assembly - Business interests and the defense bar were particularly opposed to a bill to extend the limit for filing injury suits”

The Daily Journal (August 30, 2002)

Trial lawyers succeeded Thursday in a last-minute effort to get state Assembly approval for lengthening the statute of limitations on personal injury claims and reforming summary judgment procedures to make it easier to bring a claim to trial.

As soon as the bill was approved, the Assembly passed a measure addressing construction defect litigation, prompting some observers to wonder if there was a deal by trial lawyers and lawmakers to tie the two measures together to win passage.

“It sure smells that way,” said John Sullivan, president of the Civil Justice Association of California, a tort reform group.

Robert Cartwright Jr., president of Consumer Attorneys of California, said there was no deal. “The two bills really are completely separate and unrelated,” Cartwright said.

“Term Limits Hinder Legislative Diligence” *Los Angeles Times* (September 2, 2002)

In the building where the biggest issues facing California are weighed, inexperience was evident, campaign money was ever-present and decisions important and petty emerged from the chaos that marked the close of the Legislature’s two-year term.

When all actions are tallied, the production of the session that ended Sunday shortly past midnight likely will match that of recent years. There were bills on vital issues ranging from school construction and renewable energy to water delivery, recycling and mass transit. But to Capitol veterans, the scene seemed haphazard, rushed, increasingly partisan and perhaps very influenced by special interests.

In what many see as indicative of a new seat-of-the-pants Legislature, lawmakers repeatedly bypassed the spirit if not the letter of their internal rules. They convened perfunctory hearings on significant policy matters late at night and performed a procedure called “gut and amend,” in which legislators hijack one another’s bills, remove the original content and substitute new language, often dealing with entirely different subject matter.

“Bill Banning Executions Of Retarded Fails to Pass - The legislation followed the U.S. Supreme Court’s finding of cruel and unusual punishment.” *The Daily Journal* (September 5, 2002)

A measure that would have implemented the U.S. Supreme Court’s ban on executing the mentally retarded was among the bills that failed in the final frenzy of this year’s legislative session.

AB 557, introduced by Assemblywoman Dion Aroner, D-

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“Eye of the Beholder” Headlines...

“Court Limits Access to Cop Misconduct Files”

The Recorder (August 27, 2002)

“Court Expands Access to Cops’ Records”

The San Francisco Chronicle (August 27, 2002)



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Berkeley, was pulled from the Assembly floor because it lacked enough votes to pass and could have met with a veto from Gov. Gray Davis, according to sources.

In an election year, legislators were fearful of supporting a bill that could allow their opponents to label them as being against the death penalty, the sources said.

That was true even though Aroner's bill responded to the high court's requirement in *Atkins v. Virginia*, that the states establish criteria and procedures for deciding if defendants are mentally retarded.

"Arbitration Protection Bills On Davis' Desk – 7 measures give California consumers strongest safeguards in the nation" *San Francisco Chronicle* (September 5, 2002)

A sweeping package of measures designed to strengthen consumers' rights in mandatory arbitration awaits Gov. Gray Davis' signature after barely surviving intense opposition from firms that run the private, quasi-legal system of resolving disputes.

The six bills passed late last week would give California the strongest protections in the nation for consumers required to resolve their disputes through binding arbitration. They would require arbitration firms as well as arbitrators to disclose far more financial information and would allow individuals a greater say in selecting the arbitrators who hear their cases.

The bills address a number of problems that critics of mandatory arbitration say make the system unfair to individuals.

"These bills are a great step forward in shedding light on the arbitration industry," said Assemblyman Darrell Steinberg, D-Sacramento, a sponsor of one of the bills. "Now I'd like to see what the governor does."

Davis has not indicated whether he will sign any of the bills, and the American Arbitration Association --the nation's largest arbitration firm -- has threatened to pull out of California if he signs two of the more stringent measures.

"Bill Would Tie DNA to Child Support" *Los Angeles Times* (September 5, 2002)

Among the hundreds of bills piled on Gov. Gray Davis' desk is one that delves into one of the most tangled issues of family law: Should men who have been treated as fathers by the courts but are later proved to have no biological relationship to children still be required to pay child support?

AB 2240 would allow men to extract themselves from some child-support judgments if they can prove they are not the biological father. The bill passed overwhelmingly in the Legislature. It follows a nationwide trend in states rewriting laws to let men escape support obligations if they can prove, using DNA technology, no biological relationship.

"Both houses of the Legislature, in excess of two-thirds, said this just and fair," said Assemblyman Roderick Wright, D-Los Angeles, the bill's author. "Why should a guy who's not the father of a child be forced to pay for something he's not responsible for?"

But some advocates for women and children say the bill is poorly written and does not correctly address the knotty problem.

"Budget Just Postpones State's Pain" *Los Angeles Times* (September 6, 2002)

Gov. Gray Davis on Thursday signed into law a \$99-billion budget that came more than two months after the deadline in the state Constitution and largely postpones difficult decisions on taxes and spending until after this November's election.

The budget bridges a \$24-billion shortfall with relatively modest program cuts. It contains no general tax increases and higher public school spending. That combination virtually ensures that whoever wins the election, Davis or his Republican challenger, Bill Simon Jr., will have to offer voters higher taxes and reduced government services next year, experts warned.

"It's a get-out-alive budget," Senate President Pro Tem John Burton, D-San Francisco, said. "The problems next year, no matter what happens, will be severe."

Burton's judgment was echoed from the other side of the political fence. "There's no question in my mind that the tough decisions have been put on hold until after Nov. 5," said Sen. Bruce McPherson, R-Santa Cruz.