

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG19-02

Title	Action Requested
Judicial Council–Sponsored Legislation: Electronic Delivery of Documents Currently Required to Be Mailed Following Conviction	Review and submit comments by June 7, 2019
Proposed Rules, Forms, Standards, or Statutes Amend Pen. Code, § 1203.01	Proposed Effective Date January 1, 2021
Proposed by Information Technology Advisory Committee Hon. Sheila F. Hanson, Chair	Contact Andrea L. Jaramillo, 916-263-0991 andrea.jaramillo@jud.ca.gov

Executive Summary and Origin

The Information Technology Advisory Committee (ITAC) recommends the Judicial Council sponsor legislation to amend Penal Code section 1203.01 to allow for electronic delivery of documents currently required to be mailed following conviction. The proposal originated with a recommendation of the Judicial Council Data Exchange Working Group, which is made up of court participants and justice partners and is working to develop standardized data exchanges.

Background

Under Penal Code section 1203.01, once judgment is pronounced in a criminal case, “the judge and the district attorney, respectively, may cause to be filed with the clerk of the court a brief statement of their views respecting the person convicted or sentenced and the crime committed, together with any reports the probation officer may have filed relative to the prisoner.” (Pen. Code, § 1203.01(a).) Counsel for the defendant and the law enforcement agency that investigated the case may also file statements with the clerk. (*Ibid.*) The clerk is then required to mail copies of the statements and reports to (1) the attorney for the defendant; and (2) to the defendant, in care of the California Department of Corrections and Rehabilitation (CDCR). (*Ibid.*) The attorney for the defendant may also file a statement and, in that event, the clerk is required to mail a copy of that statement to the district attorney. (*Ibid.*) The clerk is also required to mail certified copies of all statements and reports addressed to the CDCR at the prison or other institution to which the person convicted is delivered. (*Ibid.*)

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. It is circulated for comment purposes only.

In addition, the clerk is also required to mail to the prison or other institution to which the person convicted is delivered, copies of the charging documents and waiver and plea forms, if any. (Pen. Code, § 1203.01(b)(1)–(2).) Finally, when the sentence is death or of an indeterminate term, or upon request of CDCR, the inmate, or the inmate’s counsel, the clerk is required to mail the transcript of the proceedings at the time of sentencing, and, if applicable, the transcript of the proceedings at the time of the defendant’s guilty or nolo contendere plea. (*Ibid.*)

There is no option for the clerk to deliver the documents or data contained in the documents described in Penal Code section 1203.01 by electronic means rather than by mail.

The Proposal

The proposal would add a new subdivision to Penal Code section 1203.01 to create an option for electronic delivery of the material currently required to be mailed. Under the proposal, if a recipient consents to electronic delivery, the court may deliver the documents electronically rather than by mail. Accordingly, providing electronic delivery would be an option, though not a requirement for the court, and likewise, receiving documents electronically would be an option for the recipient.

A main concern of the committee with electronic delivery is that an incarcerated recipient may have unreliable access to electronic resources even if they had initially consented to electronic delivery rather than mail. To address this concern, the proposal includes a provision that would still require the court to mail the materials to an incarcerated recipient upon request of that recipient or their counsel even if they had had consented to electronic delivery.

The proposal is intended to reduce reliance on paper and improve efficiency by providing an electronic option where paper is currently required. The proposal advances the judicial branch goal of promoting rule and legislative changes that facilitate the use of technology in the courts. (Jud. Council of Cal., *Strategic Plan for Technology 2019–2022* (2018), pp. 14–15, <https://www.courts.ca.gov/documents/jctc-Court-Technology-Strategic-Plan.pdf> (as of Jan. 23, 2019).) In particular, it advances an objective of the goal to “[e]nsure current rules and legislation do not inhibit the use of technology solutions.” (*Id.* at p. 14.)

Alternatives Considered

ITAC considered alternatives for the terminology to use in the new subdivision to refer to the paper documents that Penal Code section 1203.01 currently requires to be mailed. Because data exchanges may not require the transmission of an electronic version of a paper document (e.g., a PDF), the term “document” alone seemed insufficient. The Data Exchange Working Group suggested “information” instead because the information contained in the documents is what is important. Because “information” has a particular meaning as an accusatory pleading in criminal law, the committee decided to use “documents, or the data contained in the documents” instead to convey that the document itself is not necessarily required.

The Data Exchange Working Group had suggested “the clerk of the court may deliver the information described in subdivisions (a) and (b) by electronic means in a mutually agreeable format . . .” but the committee did not include the “mutually agreeable format” language since the proposed new subdivision is already predicated on consent. If the recipient did not agree with the format the court had available, the recipient could simply not consent to electronic delivery.

To address the committee’s concern about incarcerated recipients having unreliable access to electronic resources to receive an electronic delivery from the court, the committee considered three options: (1) incarcerated recipients would continue to receive mail-only documents, but other recipients could opt-in for electronic delivery; (2) incarcerated recipients could opt-in for electronic delivery, but would receive mail-only documents as well; or (3) incarcerated recipients could opt-in for electronic delivery, but could still receive mailed documents upon request. ITAC chose the third option for the proposal because it removes all reliance on paper when recipients opt-in, but still ensures convicted persons can later obtain mailed paper copies if they request them. The committee believes that this option has the best balance of advancing the use of technology while mitigating against unreliable access to electronic resources that persons convicted may experience even if they had initially opted-in for electronic delivery.

Fiscal and Operational Impacts

The proposal does not require the courts to provide electronic delivery nor does it require recipients to opt-in to electronic delivery. As such, courts and recipients that do not have the current capability for electronic delivery should not be impacted. For courts and recipients that do have the capability, electronic delivery should be more efficient than mailing paper.

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 committee considered the following alternatives to the language proposed. Are either of these alternatives preferable to the proposed language, or is the proposed language preferable? Why?
 - Alternative 1: (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.

(2) Notwithstanding paragraph (1), the person convicted is not eligible to receive electronic delivery of the documents, or the data contained in the documents, described in subdivisions (a) and (b), and the clerk of the court must mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).

- Alternative 2: (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents, or the data contained in the documents, described in subdivisions (a) and (b) by electronic means rather than by mail.

(2) Notwithstanding paragraph (1), the clerk of the court must also mail with postage prepaid, to the prison or other institution to which the person convicted is delivered, copies of the documents described in subdivisions (a) and (b).

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.
- Does the proposal raise any concerns on means of transferring data? If so, should those concerns be addressed in statute or in some other way?
- Does the proposal raise any concerns on data being sent back to the court by the recipient (e.g., if the court delivers an electronic copy of a document by e-mail to a convicted person and the convicted person replies to that e-mail in an attempt to communicate with the court)? If so, should those concerns be addressed in statute or in some other way?
- The proposed amendment does not prescribe any particular method for how consent from the recipient would be documented. Is this something that should be addressed in statute, a rule of court, or in some other way?

- The proposed amendment does not address what the court should do if someone consents to electronic delivery, but when the court electronically transmits the document, it is undeliverable (e.g., the court emails the documents to an address the recipient provided, but then gets a message back that the email was undeliverable). Is this something that should be addressed in statute, a rule of court, or in some other way?

Attachments and Links

1. Pen. Code, § 1203.01, pages 6–7
2. Link A: Pen. Code, § 1203.01,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1203.01

Section 1203.01 of the Penal Code would be amended, effective January 1, 2021, to read:

1 **§ 1203.01**

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3 (a) Immediately after judgment has been pronounced, the judge and the district attorney,
4 respectively, may cause to be filed with the clerk of the court a brief statement of their
5 views respecting the person convicted or sentenced and the crime committed, together
6 with any reports the probation officer may have filed relative to the prisoner. The judge
7 and district attorney shall cause those statements to be filed if no probation officer's
8 report has been filed. The attorney for the defendant and the law enforcement agency that
9 investigated the case may likewise file with the clerk of the court statements of their
10 views respecting the defendant and the crime of which he or she was convicted.

11 Immediately after the filing of those statements and reports, the clerk of the court shall
12 mail a copy thereof, certified by that clerk, with postage prepaid, addressed to the
13 Department of Corrections and Rehabilitation at the prison or other institution to which
14 the person convicted is delivered. The clerk shall also mail a copy of any statement
15 submitted by the court, district attorney, or law enforcement agency, pursuant to this
16 section, with postage prepaid, addressed to the attorney for the defendant, if any, and to
17 the defendant, in care of the Department of Corrections and Rehabilitation, and a copy of
18 any statement submitted by the attorney for the defendant, with postage prepaid, shall be
19 mailed to the district attorney.

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21 (b)(1) In all cases in which the judgment imposed includes a sentence of death or an
22 indeterminate term with or without the possibility of parole, the clerk shall, within 60
23 days after judgment has been pronounced, mail with postage prepaid, to the prison or
24 other institution to which the person convicted is delivered, a copy of the charging
25 documents, a copy of waiver and plea forms, if any, the transcript of the proceedings at
26 the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded guilty
27 or nolo contendere, and the transcript of the proceedings at the time of sentencing.

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29 (2) In all other cases not described in paragraph (1), the clerk shall mail with postage
30 prepaid, to the prison or other institution to which the person convicted is delivered, a
31 copy of the charging documents, a copy of the waiver and plea forms, if any, and upon
32 written request by the Department of Corrections and Rehabilitation or by an inmate, or
33 by his or her counsel, for, among other purposes on a particular case, appeals, review of
34 custody credits and release dates, and restitution orders, the transcript of the proceedings
35 at the time of the defendant's guilty or nolo contendere plea, if the defendant pleaded
36 guilty or nolo contendere, and the transcript of the proceedings at the time of sentencing.

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38 (c)(1) With the consent of the recipient, the clerk of the court may deliver the documents,
39 or the data contained in the documents, described in subdivisions (a) and (b) by electronic
40 means rather than by mail.

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1 (2) Notwithstanding paragraph (1), upon written request by a person convicted or by his
2 or her counsel, the clerk shall also mail with postage prepaid, to the prison or other
3 institution to which the person convicted is delivered, copies of the documents described
4 in subdivisions (a) and (b).

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