

Invitation to Comment

Title	Criminal Procedure: Imposition of Enhancements (amend Cal. Rules of Court, rule 4.428)
Summary	The proposed amendments to rule 4.428 clarify that courts must impose prison terms for enhancements that serve the interest of justice and must state the reasons for the sentence choices on the record at the time of sentencing. The proposed amendments are required by recently enacted legislation that eliminated presumptive middle terms for enhancements.
Source	Criminal Law Advisory Committee Justice Steven Z. Perren, Chair
Staff	Arturo Castro, Committee Counsel, 415-865-7702, arturo.castro@jud.ca.gov

Senate Bill 150 (Wright; Stats. 2009, ch. 171) recently revised Penal Code section 1170.1(d) to eliminate presumptive middle terms for enhancements and clarify that “[i]f an enhancement is punishable by one of three terms, the court shall, in its discretion, impose the term that best serves the interest of justice, and state the reasons for its sentence choice on the record at the time of sentencing.”

Current rule 4.428, which generally prescribes criteria affecting the imposition of enhancements under Penal Code section 1170.1(d), contains the following obsolete provision: “No reason need be given for imposing a term for an enhancement that was charged and found true.”

To conform the rule to the revised statute, the proposed amendments clarify that courts must impose prison terms for enhancements that best serve the interest of justice and must state the reasons for the sentence choices on the record at the time of sentencing.

Rule 4.428 of the California Rules of Court would be amended, effective January 2011, to read:

1 **Rule 4.428. Criteria affecting imposition of enhancements**

2
3 ~~No reason need be given for imposing a term for an enhancement that was charged~~
4 ~~and found true. If an enhancement is punishable by one of three terms, the court~~
5 ~~must, in its discretion, impose the term that best serves the interest of justice and~~
6 ~~state the reasons for its sentence choice on the record at the time of sentencing.~~

7
8 If the judge has statutory discretion to strike the additional term for an
9 enhancement in the furtherance of justice under section 1385(c) or based on
10 circumstances in mitigation, the court may consider and apply any of the
11 circumstances in mitigation enumerated in these rules or, under rule 4.408, any
12 other reasonable circumstances in mitigation or in the furtherance of justice.

13
14 The judge should not strike the allegation of the enhancement.

Item SPR10-24 Response Form

Title: **Criminal Procedure: Imposition of Enhancements** (amend Cal. Rules of Court, rule 4.428)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.