

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP14-08

Title	Action Requested
Criminal Justice Realignment: Imposition of Mandatory Supervision	Review and submit comments by September 19, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415	January 1, 2015
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Arturo Castro, Supervising Attorney Arturo.Castro@jud.ca.gov 415-865-7702

Executive Summary and Origin

The Criminal Law Advisory Committee proposes amendments to rules 4.411 and 4.411.5 of the California Rules of Court and adoption of a new rule to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5), including criteria for court consideration and contents and requirements for related probation reports. The proposal was developed in response to recent legislation that requires the Judicial Council to adopt these rules by January 1, 2015.

Background

Criminal justice realignment implemented broad changes to felony sentencing laws, including replacing prison sentences with county jail sentences for certain felonies and authorizing courts to impose a period of mandatory supervision upon release from county jail. Recent realignment-related legislation¹ has amended several statutory provisions that govern the imposition of mandatory supervision.

First, Penal Code section 1170(h)(5)(A) was amended, effective January 1, 2015, to require courts to impose mandatory supervision for all felony county jail sentences unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case.

Second, Penal Code section 1170.3(a) was amended to require the Judicial Council to adopt rules of court to prescribe criteria for the court to consider when deciding whether to deny a period of mandatory supervision “in the interests of justice” under Penal Code section 1170(h)(5)(A) and

¹ Assem. Bill 1468 (Comm. On Budget); Stats. 2014, ch. 26.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

when determining the appropriate period and conditions of mandatory supervision. The new rules of court must be adopted by the Judicial Council effective January 1, 2015. (Pen. Code, § 1170.3(a)(5).)

Lastly, Penal Code section 1170.3(b) was amended to require the Judicial Council to adopt rules of court to govern the content and sequential presentation of information in probation reports submitted to the court regarding the imposition of mandatory supervision.

The Proposal

Imposition of Mandatory Supervision

In light of the recent statutory amendments regarding the imposition of mandatory supervision, the Criminal Law Advisory Committee proposes adoption of a new rule (rule 4.415) to prescribe criteria for the court to consider when deciding the length and conditions of mandatory supervision and whether to deny a period of mandatory supervision in the interests of justice. In short, the new rule would:

- Explain the new statutory presumption in favor of the imposition of mandatory supervision for all county jail felony sentences;
- Prescribe criteria for the court to consider when exercising discretion to select the appropriate period and conditions of mandatory supervision, including victim issues, custody credits, and the defendant's suitability for treatment and supervision;
- Prescribe criteria for the court to consider when determining whether to deny a period of mandatory supervision in the interests of justice;
- Require courts to state on the record the reasons for a denial of a period of mandatory supervision in the interests of justice; and
- Include an advisory committee comment to explain the statutory bases for specific provisions of the new rule, including criteria related to custody credits and reintegration of the defendant into the community.

Content of Probation Reports

Rule 4.411 prescribes several requirements for the use of probation department presentence reports by courts. Rule 4.411.5 establishes the requisite content and sequential presentation of the information contained in those reports. To avoid confusion and promote uniformity, the committee proposes amending rules 4.411 and 4.411.5 to require inclusion of information about mandatory supervision in presentence probation department reports when applicable.

Specifically, the proposed amendments to rule 4.411 would:

- Require courts to order probation department reports whenever the defendant is eligible for a county jail sentence under Penal Code section 1170(h)(5);
- Encourage courts to order presentence reports even if the defendant is not eligible for a county jail sentence under Penal Code section 1170(h)(5);
- Clarify that the purposes of probation presentence reports include decisions related to the imposition of mandatory supervision; and
- Add an advisory committee comment to clarify the statutory bases for the amendments.

The proposed amendments to rule 4.411.5 would require presentence reports to include recommendations regarding:

- The court's decision to impose a county jail term under Penal Code section 1170(h)(5);
- The defendant's suitability for specific terms and length of mandatory supervision; and
- The denial of a period of mandatory supervision in the interests of justice, including the criteria prescribed by rule 4.415.

To enhance the information and recommendations contained in the reports, the proposed amendments would also require reports to include information from any available risk/needs assessments² conducted by the probation department.

Alternatives Considered

No alternatives were considered because the proposed rules are required by statute.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are expected.

² The Criminal Law Advisory Committee is separately developing rules of court and standards of judicial administration to provide guidance regarding the use of risk/needs assessments by courts at sentencing.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on whether the proposal appropriately addresses the stated purpose.

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.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- How well would this proposal work in courts of different sizes?

Attachments and Links

Text of proposed rule 4.415 and amendments to rules 4.411 and 4.411.5 of the California Rules of Court

1 Rules 4.411 and 4.411.5 of the California Rules of Court would be amended, and rule
2 4.415 would be adopted, effective January 1, 2015, to read:

3
4
5 **Rule 4.411. Presentence investigations and reports**

6
7 **(a) Eligible defendant**

8
9 If the defendant is eligible for probation or county jail sentence under section
10 1170(h), the court must refer the matter to the probation officer for a presentence
11 investigation and report. Waivers of the presentence report should not be accepted
12 except in unusual circumstances.

13
14 **(b) Ineligible defendant**

15
16 Even if the defendant is not eligible for probation or county jail sentence under
17 section 1170(h), the court should refer the matter to the probation officer for a
18 presentence investigation and report.

19
20 **(c) Supplemental reports**

21
22 The court must order a supplemental probation officer's report in preparation for
23 sentencing proceedings that occur a significant period of time after the original
24 report was prepared.

25
26 **(d) Purpose of presentence investigation report**

27
28 Probation officers' reports are used by judges in determining the appropriate term
29 of imprisonment in length of a prison or county jail sentence under section 1170(h)
30 and by the Department of Corrections and Rehabilitation, Division of Adult
31 Operations in deciding on the type of facility and program in which to place a
32 defendant. The reports are also used by courts in deciding whether probation
33 is appropriate and whether a period of mandatory supervision should be denied in
34 the interests of justice under section 1170(h). Section 1203c requires a probation
35 officer's report on every person sentenced to prison; ordering the report before
36 sentencing in probation-ineligible cases will help ensure a well-prepared report.

37
38 **Advisory Committee Comment**

39
40 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
41 for probation. Subdivision (a) also requires a presentence report in every felony case in which the
42 defendant is eligible for a county jail sentence under section 1170(h). Because such a probation
43 investigation and report are valuable to the judge and to the jail and prison authorities, waivers of

1 the report and requests for immediate sentencing are discouraged, even when the defendant and
2 counsel have agreed to a prison or county jail sentence under section 1170(h).
3 Notwithstanding a defendant's statutory ineligibility for probation or county jail sentence under
4 section 1170(h), a presentence investigation and report should be ordered to assist the court in
5 deciding the appropriate sentence and to facilitate compliance with section 1203c.

6
7 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.

8
9 Subdivision (c) is based on case law that generally requires a supplemental report if the defendant
10 is to be resentenced a significant time after the original sentencing, as, for example, after a
11 remand by an appellate court, or after the apprehension of a defendant who failed to appear at
12 sentencing. The rule is not intended to expand on the requirements of those cases.

13
14 The rule does not require a new investigation and report if a recent report is available and can be
15 incorporated by reference and there is no indication of changed circumstances. This is particularly
16 true if a report is needed only for the Department of Corrections and Rehabilitation because the
17 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
18 another case in the same or another jurisdiction within the preceeding [sic] six months, during
19 which time the defendant was in custody, and that report is available to the Department of
20 Corrections and Rehabilitation, it is unlikely that a new investigation is needed.

21
22
23 **Rule 4.411.5. Probation officer's presentence investigation report**

24
25 **(a) Contents**

26
27 A probation officer's presentence investigation report in a felony case must include
28 at least the following:

- 29
30 (1) A face sheet showing at least:
- 31 (A) The defendant's name and other identifying data;
 - 32 (B) The case number;
 - 33 (C) The crime of which the defendant was convicted;
 - 34 (D) The date of commission of the crime, the date of conviction, and any
35 other dates relevant to sentencing;
 - 36 (E) The defendant's custody status; and
 - 37 (F) The terms of any agreement on which a plea of guilty was based.
- 38
39
40
41
42
43

- 1 (2) The facts and circumstances of the crime and the defendant's arrest, including
2 information concerning any co-defendants and the status or disposition of
3 their cases. The source of all such information must be stated.
4
- 5 (3) A summary of the defendant's record of prior criminal conduct, including
6 convictions as an adult and sustained petitions in juvenile delinquency
7 proceedings. Records of an arrest or charge not leading to a conviction or the
8 sustaining of a petition may not be included unless supported by facts
9 concerning the arrest or charge.
10
- 11 (4) Any statement made by the defendant to the probation officer, or a summary
12 thereof, including the defendant's account of the circumstances of the crime.
13
- 14 (5) Information concerning the victim of the crime, including:
15
- 16 (A) The victim's statement or a summary thereof, if available;
17
- 18 (B) The amount of the victim's loss, and whether or not it is covered by
19 insurance; and
20
- 21 (C) Any information required by law.
22
- 23 (6) Any relevant facts concerning the defendant's social history, including those
24 categories enumerated in section 1203.10, organized under appropriate
25 subheadings, including, whenever applicable, "Family," "Education,"
26 "Employment and income," "Military," "Medical/psychological," "Record of
27 substance abuse or lack thereof," and any other relevant subheadings.
28
- 29 (7) Collateral information, including written statements from:
30
- 31 (A) Official sources such as defense and prosecuting attorneys, police
32 (subsequent to any police reports used to summarize the crime),
33 probation and parole officers who have had prior experience with the
34 defendant, and correctional personnel who observed the defendant's
35 behavior during any period of presentence incarceration; and
36
- 37 (B) Interested persons, including family members and others who have
38 written letters concerning the defendant.
39
- 40 (8) Any available, reliable risk/needs assessment information.
41
- 42 ~~(8)~~ (9) An evaluation of factors relating to disposition. This section must include:
43

1 (A) A reasoned discussion of the defendant's suitability and eligibility for
2 probation, and, if probation is recommended, a proposed plan including
3 recommendation for the conditions of probation and any special need
4 for supervision;

5
6 (B) If a sentence in prison sentence or county jail under section 1170(h) is
7 recommended or is likely to be imposed, a reasoned discussion of
8 aggravating and mitigating factors affecting the sentence length; ~~and~~

9
10 (C) If a sentence in county jail under section 1170(h) is recommended, a
11 reasoned discussion of the defendant's suitability for specific terms and
12 length of period of mandatory supervision;

13
14 (D) If denial of a period of mandatory supervision in the interests of justice
15 is recommended, a reasoned discussion of the factors prescribed by rule
16 4.415; and

17
18 ~~(C)~~(E) A discussion of the defendant's ability to make restitution, pay any
19 fine or penalty that may be recommended, or satisfy any special
20 conditions of probation that are proposed.

21
22 Discussions of factors affecting suitability for probation and affecting
23 the sentence length must refer to any sentencing rule directly relevant
24 to the facts of the case, but no rule may be cited without a reasoned
25 discussion of its relevance and relative importance.

26
27 ~~(9)~~(10) The probation officer's recommendation. When requested by the
28 sentencing judge or by standing instructions to the probation department, the
29 report must include recommendations concerning the length of any prison or
30 county jail term under section 1170(h) that may be imposed, including the
31 base term, the imposition of concurrent or consecutive sentences, and the
32 imposition or striking of the additional terms for enhancements charged and
33 found.

34
35 ~~(10)~~(11) Detailed information on presentence time spent by the defendant in
36 custody, including the beginning and ending dates of the period or periods of
37 custody; the existence of any other sentences imposed on the defendant
38 during the period of custody; the amount of good behavior, work, or
39 participation credit to which the defendant is entitled; and whether the sheriff
40 or other officer holding custody, the prosecution, or the defense wishes that a
41 hearing be held for the purposes of denying good behavior, work, or
42 participation credit.

1 ~~(11)~~(12) A statement of mandatory and recommended restitution, restitution
2 fines, other fines, and costs to be assessed against the defendant, including
3 chargeable probation services and attorney fees under section 987.8 when
4 appropriate, findings concerning the defendant's ability to pay, and a
5 recommendation whether any restitution order should become a judgment
6 under section 1203(j) if unpaid.

7
8 **(b) Format**

9
10 The report must be on paper 8- 1/2 by 11 inches in size and must follow the
11 sequence set out in (a) to the extent possible.

12
13 **(c) Sources**

14
15 The source of all information must be stated. Any person who has furnished
16 information included in the report must be identified by name or official capacity
17 unless a reason is given for not disclosing the person's identity.

18
19
20 **Rule 4.415. Criteria Affecting the Imposition of Mandatory Supervision**

21
22 **(a) Presumption**

23
24 When imposing a county jail sentence under section 1170(h)(5), the court must
25 suspend execution of a concluding portion of the term to be served as a period of
26 mandatory supervision unless the court finds, in the interests of justice, that
27 mandatory supervision is not appropriate in a particular case.

28
29 **(b) Criteria affecting conditions and length of mandatory supervision**

30
31 In exercising discretion to select the appropriate period and conditions of
32 mandatory supervision, factors the court may consider include:

- 33
34 (1) Availability of appropriate community corrections programs;
35
36 (2) Victim restitution;
37
38 (3) Promotion of the successful reintegration of the defendant into the
39 community;
40
41 (4) Public safety, including protection of any victims and witnesses;
42

- 1 (5) Past performance and present status on probation, mandatory supervision,
2 postrelease community supervision, and parole;
- 3
- 4 (6) Defendant’s suitability for treatment and supervision;
- 5
- 6 (7) The balance of custody exposure after imposition of custody credits;
- 7
- 8 (8) Consideration of the difference between statutory accrual of custody credits
9 for mandatory supervision under section 1170(h)(5)(B) and straight county
10 jail terms under section 4019(a)(6);
- 11
- 12 (9) Consideration of length and conditions of supervision commensurate with the
13 defendant’s level of risk of reoffense;
- 14
- 15 (10) The defendant’s specific needs and risk factors identified by any validated
16 risk/needs assessments;
- 17
- 18 (11) Any other factor reasonably related to the sentencing decision.
- 19

20 **(c) Criteria for denying mandatory supervision in the interest of justice**

21

22 In determining that mandatory supervision is not appropriate in the interests of
23 justice, the court’s determination must be based on factors that are specific to a
24 particular case or defendant. Factors the court may consider include:

- 25
- 26 (1) The nature, seriousness, and circumstances of the crime;
- 27
- 28 (2) The likelihood that the defendant will be a danger to others if not imprisoned;
- 29
- 30 (3) The defendant’s lack of suitability and amenability to treatment or
31 supervision;
- 32
- 33 (4) Consideration of the balance of custody exposure available after imposition
34 of custody credits;
- 35
- 36 (5) The defendant’s present status on probation, mandatory supervision,
37 postrelease community supervision, or parole; and
- 38
- 39 (6) Any other factor reasonably related to the court’s determination that
40 mandatory supervision is not appropriate in the interests of justice.
- 41

42 **(d) Statement of reasons for denial of mandatory supervision**

1 Notwithstanding rule 4.412(a), when a court denies a period of mandatory
2 supervision in the interests of justice, the court must state the reasons for the denial
3 on the record.

4
5 **Advisory Committee Comment**

6
7 Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe
8 criteria for the consideration of the court at the time of sentencing regarding the court's decision
9 to “[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of
10 subdivision (h) of Section 1170 or determine the appropriate period of and conditions of
11 mandatory supervision.”

12
13 **Subdivision (a):** Penal Code section 1170(h)(5)(A): “Unless the court finds, in the interest of
14 justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant
15 to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the
16 term for a period selected at the court's discretion.”

17
18 **Subdivision (b)(3):** The Legislature has declared “[t]hat strategies supporting reentering
19 offenders through practices and programs, such as standardized risk and needs assessments,
20 transitional community housing, treatment, medical and mental health services, and employment,
21 have been demonstrated to significantly reduce recidivism among offenders in other states.” (Pen.
22 Code, § 17.7.)

23
24 **Subdivision (b)(8):** Under Penal Code section 1170(h)(5)(B), defendants serving a period of
25 mandatory supervision are entitled to day-for-day credits: “During the period when the defendant
26 is under such supervision, unless in actual custody related to the sentence imposed by the court,
27 the defendant shall be entitled to only actual time credit against the term of imprisonment
28 imposed by the court.” In contrast, defendants serving county jail terms under Penal Code section
29 1170(h)(5)(B) are entitled to enhanced conduct credits under Penal Code section 4019(a)(6).