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INVITATION TO COMMENT LEG12-01

Title	Action Requested
Criminal Justice Realignment: Supervision Revocation Procedure	Review and submit comments by Tuesday, April 10, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Pen. Code §§ 1170, 1203.2, 3000, 3000.08, 3455, and 3456	July 1, 2013
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren	Arturo Castro, Attorney, Office of the General Counsel, 415-865-7702, arturo.castro@jud.ca.gov

Summary

Following the October 1, 2011, implementation of criminal justice realignment, courts are required to conduct supervision revocation proceedings for three categories of supervision—probation, mandatory supervision, and postrelease community supervision, each with distinct procedural requirements. A fourth category—revocation of state parole—becomes effective July 1, 2013. To reduce confusion and promote consistency across the four types of significantly similar proceedings, this proposal would amend various statutes to apply probation revocation procedures under Penal Code section 1203.2 to all four categories of supervision.

Discussion

Background

Recent criminal justice realignment legislation¹ enacted a number of changes to long-standing sentencing laws and parole procedures, including shifting parole revocation authority and the supervision of certain low-level parolees from the California Department of Corrections and Rehabilitation (CDCR) to courts and county supervising agencies. The legislation also eliminated prison as a sentence option for certain eligible defendants and authorized courts to impose a period of mandatory supervision upon a defendant's release from county jail under newly added Penal Code section 1170(h)(5)(B).²

¹ Assem. Bill 109 (Committee on Budget; Stats. 2011, ch. 15); Assem. Bill 117 (Committee on Budget; Stats. 2011, ch. 39); ABX1 17 (Blumenfield; Stats. 2011, ch. 12).

² All further statutory references are to the Penal Code.

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 These proposals are circulated for comment purposes only.

The new supervision and revocation schemes for low-level offenders—known as “postrelease community supervision”—and mandatory supervision under section 1170(h)(5)(B) became effective October 1, 2011. Court jurisdiction over parole revocation proceedings is scheduled to begin July 1, 2013.

Effective July 1, 2013, criminal courts will be responsible for conducting revocation proceedings for *four* distinct categories of supervision—probation, mandatory supervision, postrelease community supervision, and parole. Under the current statutory scheme, distinct procedural requirements are prescribed for each of the four types of supervision—section 1203.2 for probation, section 3455 and rules 4.540 and 4.541 of the California Rules of Court for postrelease community supervision, section 1170(h)(5)(B) for mandatory supervision, and section 3000.08 for parole.

The implementation of mandatory and postrelease community supervisions on October 1, 2011, has created considerable confusion regarding the procedural requirements and rights of supervised persons. As a result, disparate court practices have emerged statewide. Court implementation of parole revocations in July 2013 is expected to increase the confusion because parolees will continue to be supervised by CDCR, a *statewide* agency.

The Proposal

The Criminal Law Advisory Committee proposes to apply existing probation revocation procedures under section 1203.2 to the three new categories of revocation proceedings. Specifically, the proposal would:

- Amend sections 1170(h)(5)(B), 1203.2, 3000.08, and 3455 to require that court proceedings to revoke, modify, or terminate mandatory supervision, postrelease community supervision, and parole be conducted under the relevant procedural requirements currently in place for probation revocations under Penal Code section 1203.2;
- Amend section 1203.2 to prescribe a deadline for arraignments on petitions to revoke—no later than five court days after arrest but only if the supervised person is detained solely on the petition;
- Add subdivision (f) to section 1203.2 to preserve court authority to employ hearing officers under Government Code section 71622.5 to conduct parole and postrelease community supervision revocation proceedings;
- Amend section 3000(b)(9) to authorize courts to issue warrants for the arrest of parolees; and

- Delete conflicting and duplicative provisions from section 3455 regarding postrelease community supervision revocations, including provisions regarding waivers, tolling, and authority to detain.

Rationale

By applying longstanding probation revocation procedures to the three new categories of revocations, the proposal is designed reduce confusion and promote uniformity, while preserving court discretion to implement revocation procedures according to local needs and customs.

Because California's probation revocation procedures are well-established—including arraignment, notice, reporting, formal hearing, and standard of proof requirements—the Criminal Law Advisory Committee believes that applying existing probation procedures would promote due process, achieve sufficient uniformity, simplify training needs, insulate the proceedings from legal challenge, and eliminate the various costs and burdens associated with training and implementation of the four distinct procedures.

Proposed amendments to establish uniform procedures for all types of court revocation of supervision.

1 Amendment #1: Amend Penal Code section 1170 [all versions] to read:

2 1170. (a) – (h)(1) – (4) ***

3 (5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision,
4 may commit the defendant to county jail as follows:

5 (A) For a full term in custody as determined in accordance with the applicable sentencing
6 law.

7 (B) For a term as determined in accordance with the applicable sentencing law, but suspend
8 execution of a concluding portion of the term selected in the court's discretion, during which
9 time the defendant shall be supervised by the county probation officer in accordance with the
10 terms, conditions, and procedures generally applicable to persons placed on probation, for the
11 remaining unserved portion of the sentence imposed by the court. Proceedings to revoke, modify,
12 or terminate mandatory supervision shall be conducted under Section 1203.2. The period of
13 supervision shall be mandatory, and may not be earlier terminated except by court order. During
14 the period when the defendant is under such supervision, unless in actual custody related to the
15 sentence imposed by the court, the defendant shall be entitled to only actual time credit against
16 the term of imprisonment imposed by the court.

17 (i)***

18

19 Amendment #2: Amend Penal Code section 1203.2 to read:

20 1203.2. (a) At any time during the ~~probationary~~ period of supervision of a person released on
21 probation under the care of a probation officer pursuant to this chapter, or ~~of a person~~ released on
22 conditional sentence or summary probation not under the care of a probation officer, or
23 mandatory supervision under subdivision (h)(5)(B) of Section 1170, or subject to revocation of
24 postrelease community supervision under Section 3455, or subject to revocation of parole
25 supervision under Section 3000.08, if any probation, ~~parole,~~ ~~officer~~ or peace officer has probable
26 cause to believe that the supervised person is violating any term or condition of his or her
27 supervision ~~probation or conditional sentence~~, the officer may, without warrant or other process
28 and at any time until the final disposition of the case, rearrest the supervised person and bring
29 him or her before the court or the court may, in its discretion, issue a warrant for his or her
30 rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may revoke
31 and terminate such ~~probation~~ supervision if the interests of justice so require and the court, in its
32 judgment, has reason to believe from the report of the probation or parole officer or otherwise
33 that the person has violated any of the conditions of his or her ~~probation~~ supervision, has become
34 abandoned to improper associates or a vicious life, or has subsequently committed other
35 offenses, regardless whether he or she has been prosecuted for such offenses. However,
36 ~~probation~~ supervision shall not be revoked for failure of a person to make restitution pursuant to
37 Section 1203.04 as a condition of ~~probation~~ supervision unless the court determines that the
38 defendant has willfully failed to pay and has the ability to pay. Restitution shall be consistent

1 with a person's ability to pay. The revocation, summary or otherwise, shall serve to toll the
2 running of the ~~probationary~~ supervision period.

3
4 (b) Upon its own motion or upon the petition of the ~~probationer~~ supervised person, probation or
5 parole officer, or the district attorney of the county in which the ~~person~~ probationer is supervised,
6 the court may modify, revoke, or terminate ~~the supervision of the probationer~~ pursuant to this
7 subdivision. The court shall give notice of its motion, and the probation or parole officer or the
8 district attorney shall give notice of his or her petition to the ~~probationer~~ supervised person, his
9 or her attorney of record, and the district attorney or the probation or parole officer, as the case
10 may be. The ~~probationer~~ supervised person shall give notice of his or her petition to the
11 probation or parole officer and notice of any motion or petition shall be given to the district
12 attorney in all cases. The court shall refer its motion or the petition to the probation or parole
13 officer. After the receipt of a written report from the probation or parole officer, the court shall
14 read and consider the report and either its motion or the petition and may modify, revoke, or
15 terminate ~~the probation or supervision of the probationer~~ upon the grounds set forth in
16 subdivision (a) if the interests of justice so require. The notice required by this subdivision may
17 be given to the ~~probationer~~ supervised person upon his or her first court appearance in the
18 proceeding. If the supervised person is detained solely on a petition or motion to modify, revoke,
19 or terminate supervision, the first court appearance must occur no later than five court days after
20 arrest. Upon the agreement by the ~~probationer~~ supervised person in writing to the specific terms
21 of a modification or termination of a specific term of ~~probation~~ supervision, any requirement that
22 the ~~probationer~~ supervised person make a personal appearance in court for the purpose of a
23 modification or termination shall be waived. Prior to the modification or termination and waiver
24 of appearance, the ~~probationer~~ supervised person shall be informed of his or her right to consult
25 with counsel, and if indigent the right to secure court appointed counsel. If the ~~probationer~~
26 supervised person waives his or her right to counsel a written waiver shall be required. If
27 ~~probationer~~ the supervised person consults with counsel and thereafter agrees to a modification
28 or termination of the term of ~~probation~~ supervision and waiver of personal appearance, the
29 agreement shall be signed by counsel showing approval for the modification or termination and
30 waiver.

31
32 (c) Upon any revocation and termination of probation or mandatory supervision under
33 subdivision (h)(5)(B) of Section 1170 the court may, if the sentence has been suspended,
34 pronounce judgment for any time within the longest period for which the person might have been
35 sentenced. However, if the judgment has been pronounced and the execution thereof has been
36 suspended, the court may revoke the suspension and order that the judgment shall be in full force
37 and effect. In either case, the person shall be delivered over to the proper officer to serve his or
38 her sentence, less any credits herein provided for.

39
40 (d) In any case of revocation and termination of probation or mandatory supervision under
41 subdivision (h)(5)(B) of Section 1170, including, but not limited to, cases in which the judgment
42 has been pronounced and the execution thereof has been suspended, upon the revocation and

1 termination, the court may, in lieu of any other sentence, commit the person to the Department of
2 the Youth Authority if he or she is otherwise eligible for such commitment.

3
4 (e) If probation or mandatory supervision under subdivision (h)(5)(B) of Section 1170 has been
5 revoked before the judgment has been pronounced, the order revoking probation or mandatory
6 supervision may be set aside for good cause upon motion made before pronouncement of
7 judgment. If probation or mandatory supervision has been revoked after the judgment has been
8 pronounced, the judgment and the order which revoked the probation or mandatory supervision
9 may be set aside for good cause within 30 days after the court has notice that the execution of the
10 sentence has commenced. If an order setting aside the judgment, or the revocation of probation
11 or mandatory supervision, or both, is made after the expiration of the probationary or mandatory
12 supervision period, the court may again place the person on probation or mandatory supervision
13 for that period and with those terms and conditions as it could have done immediately following
14 conviction.

15
16 (f) As used in this section:

17 (1) "Court" includes revocation hearing officers under Section 71622.5 of the Government Code.

18 (2) "Probation officer" includes officers of the agency designated by each county's board of
19 supervisors to implement postrelease community supervision under Penal Code section 3451.

20
21 Amendment #3: Amend Penal Code section 3000 to read:

22 3000. (a) - (b)(1) – (8) ***

23 (9) The sole authority to issue warrants for the return to actual custody of any state prisoner
24 released on parole rests with the board or the court under Section 3000.08, except for any
25 escaped state prisoner or any state prisoner released prior to his or her scheduled release date
26 who should be returned to custody, and Section 3060 shall apply.

27 (10)***

28
29 Amendment #4: Amend Penal Code section 3000.08 [Section operative July 1, 2013] to read:

30 3000.08. (a) Persons released from state prison prior to or on or after July 1, 2013, after serving a
31 prison term or, whose sentence has been deemed served pursuant to Section 2900.5, for any of
32 the following crimes shall be subject to parole supervision by the Department of Corrections and
33 Rehabilitation and the jurisdiction of the court in the county where the parolee is released or
34 resides for the purpose of hearing petitions to revoke parole and impose a term of custody:

35 (1) A serious felony as described in subdivision (c) of Section 1192.7.

36 (2) A violent felony as described in subdivision (c) of Section 667.5.

37 (3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of
38 Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

39 (4) Any crime where the person eligible for release from prison is classified as a High Risk Sex
40 Offender.

41 (5) Any crime where the person is required, as a condition of parole, to undergo treatment by the
42 Department of Mental Health pursuant to Section 2962.

1
2 (b) Notwithstanding any other provision of law, all other offenders released from prison shall be
3 placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).
4

5 (c) At any time during the period of parole of a person subject to this section, if any parole agent
6 or peace officer has probable cause to believe that the parolee is violating any term or condition
7 of his or her parole, the agent or officer may, without warrant or other process and at any time
8 until the final disposition of the case, arrest the person and bring him or her before the parole
9 authority, or the parole authority may, in its discretion, issue a warrant for that person's arrest.
10

11 (d) Upon review of the alleged violation and a finding of good cause that the parolee has
12 committed a violation of law or violated his or her conditions of parole, the parole authority may
13 impose additional and appropriate conditions of supervision, including rehabilitation and
14 treatment services and appropriate incentives for compliance, and impose immediate, structured,
15 and intermediate sanctions for parole violations, including flash incarceration in a county jail.
16 Periods of "flash incarceration," as defined in subdivision (e) are encouraged as one method of
17 punishment for violations of a parolee's conditions of parole. Nothing in this section is intended
18 to preclude referrals to a reentry court pursuant to Section 3015.
19

20 (e) "Flash incarceration" is a period of detention in county jail due to a violation of a parolee's
21 conditions of parole. The length of the detention period can range between one and 10
22 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of a
23 parolee's conditions of parole shall appropriately punish a parolee while preventing the
24 disruption in a work or home establishment that typically arises from longer periods of detention.
25

26 (f) If the supervising parole agency has determined, following application of its assessment
27 processes, that intermediate sanctions up to and including flash incarceration are not appropriate,
28 the supervising agency shall petition the revocation hearing officer appointed pursuant to Section
29 71622.5 of the Government Code in the county in which the parolee is being supervised to
30 revoke or modify parole. Proceedings to revoke or modify parole supervision shall be conducted
31 under Section 1203.2. ~~At any point during the process initiated pursuant to this section, a parolee~~
32 ~~may waive, in writing, his or her right to counsel, admit the parole violation, waive a court~~
33 ~~hearing, and accept the proposed parole modification.~~ The petition shall include a written report
34 that contains additional information regarding the petition, including the relevant terms and
35 conditions of parole, the circumstances of the alleged underlying violation, the history and
36 background of the parolee, and any recommendations. The Judicial Council shall adopt forms
37 and rules of court to establish uniform statewide procedures to implement this subdivision,
38 including the minimum contents of supervision agency reports. Upon a finding that the person
39 has violated the conditions of parole, the revocation hearing officer shall have authority to do any
40 of the following:
41

42 (1) Return the person to parole supervision with modifications of conditions, if appropriate,
43 including a period of incarceration in county jail.

1
2 (2) Revoke parole and order the person to confinement in the county jail.

3
4 (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program
5 in the court's discretion.

6
7 (g) Confinement pursuant to paragraphs (1) and (2) of subdivision (f) shall not exceed a period of
8 180 days in the county jail.

9
10 (h) Notwithstanding any other provision of law, in any case where Section 3000.1 applies to a
11 person who is on parole and there is good cause to believe that the person has committed a
12 violation of law or violated his or her conditions of parole, and there is imposed a period of
13 imprisonment of longer than 30 days, that person shall be remanded to the custody of the
14 Department of Corrections and Rehabilitation and the jurisdiction of the Board of Parole
15 Hearings for the purpose of future parole consideration.

16
17 (i) Notwithstanding subdivision (a), any of the following persons released from state prison shall
18 be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and
19 Rehabilitation for a period of parole up to three years or the parole term the person was subject to
20 at the time of the commission of the offense, whichever is greater:

21
22 (1) The person is required to register as a sex offender pursuant to Chapter 5.5 (commencing
23 with Section 290) of Title 9 of Part 1, and was subject to a period of parole exceeding three years
24 at the time he or she committed a felony for which they were convicted and subsequently
25 sentenced to state prison.

26
27 (2) The person was subject to parole for life pursuant to Section 3000.1 at the time of the
28 commission of the offense that resulted in a conviction and state prison sentence.

29
30 (j) Parolees subject to this section who are being held for a parole violation in a county jail on
31 July 1, 2013, shall be subject to the jurisdiction of the Board of Parole Hearings.

32
33 (k) Except as described in subdivision (c), any person who is convicted of a felony that requires
34 community supervision and who still has a period of state parole to serve shall discharge from
35 state parole at the time of release to community supervision.

36
37 (l) This section shall become operative on July 1, 2013.

38
39
40
41 Amendment #5: Amend Penal Code section 3455 to read:

42 3455. (a) If the supervising county agency has determined, following application of its
43 assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section

1 3454 are not appropriate, the supervising county agency shall petition the revocation hearing
2 officer appointed pursuant to Section 71622.5 of the Government Code to revoke, modify, or ~~and~~
3 terminate postrelease supervision. Proceedings to revoke, modify, or terminate postrelease
4 community supervision shall be conducted under Section 1203.2. ~~At any point during the process~~
5 ~~initiated pursuant to this section, a person may waive, in writing, his or her right to counsel,~~
6 ~~admit the violation of his or her postrelease supervision, waive a court hearing, and accept the~~
7 ~~proposed modification of his or her postrelease supervision.~~ The petition shall include a written
8 report that contains additional information regarding the petition, including the relevant terms
9 and conditions of postrelease supervision, the circumstances of the alleged underlying violation,
10 the history and background of the violator, and any recommendations. The Judicial Council shall
11 adopt forms and rules of court to establish uniform statewide procedures to implement this
12 subdivision, including the minimum contents of supervision agency reports. Upon a finding that
13 the person has violated the conditions of postrelease supervision, the revocation hearing officer
14 shall have authority to do all of the following:

- 15 (1) Return the person to postrelease supervision with modifications of conditions, if appropriate,
16 including a period of incarceration in county jail.
17 (2) Revoke and terminate postrelease supervision and order the person to confinement in the
18 county jail.
19 (3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program
20 in the court's discretion.

21
22 ~~(b)(1)(4)~~ At any time during the period of postrelease supervision, if any peace officer has
23 probable cause to believe a person subject to postrelease community supervision is violating any
24 term or condition of his or her release, the officer may, without a warrant or other process, arrest
25 the person and bring him or her before the supervising county agency established by the county
26 board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer
27 employed by the supervising county agency may seek a warrant and a court or its designated
28 hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the
29 authority to issue a warrant for that person's arrest.

30 ~~(5)~~ The court or its designated hearing officer shall have the authority to issue a warrant for any
31 person who is the subject of a petition filed under this section who has failed to appear for a
32 hearing on the petition or for any reason in the interests of justice, or to remand to custody a
33 person who does appear at a hearing on the petition for any reason in the interests of justice.
34

35 ~~(b)~~ The revocation hearing shall be held within a reasonable time after the filing of the
36 revocation petition. ~~Based upon a showing of a preponderance of the evidence that a person~~
37 ~~under supervision poses an unreasonable risk to public safety, or the person may not appear if~~
38 ~~released from custody, or for any reason in the interests of justice, the supervising county agency~~
39 ~~shall have the authority to make a determination whether the person should remain in custody~~
40 ~~pending a revocation hearing, and upon that determination, may order the person confined~~
41 ~~pending a revocation hearing.~~
42

1 (ed) Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period
2 of 180 days in the county jail.

3
4 (de) A person shall not remain under supervision or in custody pursuant to this title on or after
5 three years from the date of the person's initial entry onto postrelease supervision, except when
6 ~~supervision is tolled under Section 1203.2, a bench or arrest warrant has been issued by a court or~~
7 ~~its designated hearing officer and the person has not appeared. During the time the warrant is~~
8 ~~outstanding the supervision period shall be tolled and when the person appears before the court~~
9 ~~or its designated hearing officer the supervision period may be extended for a period equivalent~~
10 ~~to the time tolled.~~

11
12 Amendment #6: Amend Penal Code section 3456 to read:

13 3456. (a) The county agency responsible for postrelease supervision, as established by the county
14 board of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease
15 supervision over a person under postrelease supervision pursuant to this title until one of the
16 following events occurs:

17 (1) The person has been subject to postrelease supervision pursuant to this title for three years at
18 which time the offender shall be immediately discharged from postrelease supervision.

19 (2) Any person on postrelease supervision for six consecutive months with no violations of his or
20 her conditions of postrelease supervision that result in a custodial sanction may be considered for
21 immediate discharge by the supervising county.

22 (3) The person who has been on postrelease supervision continuously for one year with no
23 violations of his or her conditions of postrelease supervision that result in a custodial sanction
24 shall be discharged from supervision within 30 days.

25 (4) Jurisdiction over the person has been terminated by operation of law.

26 (5) Jurisdiction is transferred to another supervising county agency.

27 (6) Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and
28 terminate supervision by the supervising county agency.

29
30 ~~(b) Time during which a person on postrelease supervision is suspended because the person has~~
31 ~~absconded shall not be credited toward any period of postrelease supervision.~~

Item LEG12-01 Response Form

Title: Criminal Justice Realignment: Supervision Revocation Procedure

- 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.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm (go back to the Invitations page and access the online form directly below the proposal)

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, April 10, 2012

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