

Judicial Council of California • Administrative Office of the Courts

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

INVITATION TO COMMENT LEG14-07

Title	Action Requested
Proposed Legislation (Criminal Justice Realignment): Sentencing Report Deadlines	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 1203	January 1, 2016
Proposed by	Contact
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov Kimberly DaSilva, 415-865-4534 kimberly.dasilva@jud.ca.gov

Executive Summary and Origin

The Criminal Law Advisory Committee proposes an amendment to Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report at least five days before the hearing. This proposal was developed at the request of criminal law judges to vest courts with discretion to decide on a case-by-case basis whether continuances due to noncompliance with the report deadline are justified, as opposed to the automatic continuances required by current law.

Background

Probation sentencing reports must be provided to the parties at least five days before the sentencing hearing unless the deadline is waived by the parties either in writing or by oral stipulation in open court. (Pen. Code, § 1203(b)(2)(E).) The purpose of the deadline is to afford defendants a “proper opportunity to comprehend, analyze, investigate and evaluate the report.” (*People v. Bohannon* (2000) 82 Cal.App.4th 798, 808-809.) If the probation department does not provide the report by the deadline and the defendant objects and requests a continuance, failure by the court to grant the continuance constitutes a denial of due process, entitling the defendant to a remand for sentencing. (*Id.* at 808-809.) Defendants need not show actual prejudice. (*Id.* at 809.)

As such, current law entitles defendants to automatic continuances whenever the deadline is missed, regardless of whether the missed deadline had any impact on the defendant’s ability to

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 These proposals are circulated for comment purposes only.

review and investigate the probation report. As a result, courts are automatically required to conduct additional sentencing proceedings, even when the proceedings may be unnecessary.

The Proposal

The Criminal Law Advisory Committee proposes amending Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadline.

By requiring good cause for continuances, as opposed to the presumptive right to a continuance under current law, this proposal would vest courts with the discretion to decide whether the circumstances of a particular case warrant a continuance. Even if the deadline is missed, for example, a defendant may still have adequate time to review the report and raise concerns about the report content, obviating the need for an automatic continuance. As such, this proposal would eliminate extraneous sentencing proceedings and ease the administrative burdens associated with unnecessary remands for sentencing, without compromising the defendant's right to sufficient opportunity to evaluate the probation report.

Alternatives Considered

No alternatives were considered.

Implementation Requirements, Costs, and Operational Impacts

Aside from minimal judicial education, no significant implementation requirements, costs, or operational impacts for courts are expected.

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 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), and revising processes and procedures (please describe).
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How would this proposal differ in courts of different sizes?

Attachment

1. The text of the proposed legislation is attached at page 4.

Section 1203 of the Penal Code would be amended, effective January 1, 2016, to read as follows:

1 **§ 1203.**

2

3 (a) ***

4

5 (b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible
6 for probation, before judgment is pronounced, the court shall immediately refer the matter to a
7 probation officer to investigate and report to the court, at a specified time, upon the
8 circumstances surrounding the crime and the prior history and record of the person, which may
9 be considered either in aggravation or mitigation of the punishment.

10

11 (2) (A) The probation officer shall immediately investigate and make a written report to the court
12 of his or her findings and recommendations, including his or her recommendations as to the
13 granting or denying of probation and the conditions of probation, if granted.

14

15 (B) *** (D)

16

17 (E) The report shall be made available to the court and the prosecuting and defense attorneys at
18 least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the
19 time fixed by the court for the hearing and determination of the report, and shall be filed with the
20 clerk of the court as a record in the case at the time of the hearing. The time within which the
21 report shall be made available and filed may be waived by written stipulation of the prosecuting
22 and defense attorneys that is filed with the court or an oral stipulation in open court that is made
23 and entered upon the minutes of the court. **Any request for a continuance of the hearing**
24 **based upon a failure to make the report available to the parties within the deadlines**
25 **specified above may only be granted by the court upon a finding of good cause.**

26

27 ***