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INVITATION TO COMMENT

SP12-07

Title	Action Requested
Criminal Justice Realignment: Procedure to Revoke Postrelease Community Supervision	Review and submit comments by September 27, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 4.541; and repeal rule 4.540 and form CR-300	November 1, 2012
Proposed by	Contact
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Executive Summary and Origin

The Criminal Law Advisory Committee proposes the repeal of rule 4.540 and *Petition for Revocation of Community Supervision* (form CR-300), both rendered obsolete by recent realignment-related legislation that applies longstanding procedures for revocation of probation to revocations of postrelease community supervision. The committee also proposes amending rule 4.541 to delete cross-references to the repealed rule and form and to apply the rule's reporting requirements to petitions to revoke probation and mandatory supervision under Penal Code section 1170(h)(5)(B).

Background

Criminal justice realignment

Criminal justice realignment legislation introduced sweeping changes to felony sentencing laws and parole procedures, including eliminating prison as a sentencing option for certain defendants, authorizing courts to impose a period of "mandatory supervision" under new Penal Code section 1170(h)(5)(B) after a defendant's release from county jail, and requiring courts to conduct revocation proceedings for a new category of supervision called "postrelease community supervision" (PRCS) under Penal Code section 3455. The new PRCS and mandatory supervision schemes became effective October 1, 2011.

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 These proposals are circulated for comment purposes only.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 legislation also required the Judicial Council to adopt forms and rules of court to establish uniform statewide procedures for proceedings to revoke PRCS, including the minimum contents of supervision agency reports. (Pen. Code, § 3455(a).) In response, the Judicial Council adopted rules 4.540 and 4.541 and *Petition for Revocation of Community Supervision* (form CR-300), effective October 28, 2011. Rule 4.540 prescribes various revocation procedural requirements, including notice, waivers, and probable cause determinations; rule 4.541 prescribes the minimum contents of supervising agency reports; and form CR-300 is a petition for use by supervising agencies to initiate the revocation process.

Uniform revocation procedures

Senate Bill 1023 (Comm. on Budget & Review; Stats. 2012, ch. 43) amended Penal Code sections 1170, 1203.2, 3455, and 3000.08 to apply the longstanding probation revocation procedures of Penal Code section 1203.2 also in court revocations of PRCS, mandatory supervision, and, beginning July 1, 2013, parole.¹ The bill was designed to promote uniformity and facilitate implementation of criminal justice realignment by applying well-established revocation practices to the three new categories of supervision. As a result, court revocations of PRCS are now expressly governed by existing probation revocation procedures.

The Proposal

In light of this recent legislation, the Criminal Law Advisory Committee concluded that form CR-300 and rule 4.540 have become obsolete and unnecessary. Rule 4.540 is obsolete because distinct PRCS revocation procedures are unnecessary now that courts must conduct such revocations under the procedures set forth in Penal Code section 1203.2. A distinct petition form to revoke PRCS is likewise obviated by the use of established probation revocation petitions to initiate PRCS revocations. Although existing local probation petitions may require slight modification to also accommodate PRCS revocations, the proposal preserves a court's discretion to fashion petitions according to local needs and preferences.

In addition, no rules or statutes currently prescribe the minimum contents of reports filed in support of petitions to revoke probation and mandatory supervision. To ensure that supervising agencies provide courts with sufficient information to conduct probation and mandatory supervision revocation proceedings, the committee proposes amending rule 4.541 so its requirements for minimum contents of supervising agencies' reports apply also to probation and mandatory supervision cases.

The proposal is designed to promote uniform requirements for minimum content among all these types of reports, while providing courts and supervising agencies with flexibility to decide the format and content of the reports.

¹ SB 1023 also amended Penal Code section 1203.3 so that certain procedures for modification of probation cases now apply to mandatory supervision cases as well.

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In summary, the proposal will:

- Repeal rule 4.540 of the California Rules of Court;
- Repeal form CR-300;
- Amend the title of rule 4.541 to “Minimum contents of supervising agency reports”;
- Amend rule 4.541(a) to delete references to rule 4.540 and form CR-300;
- Amend rule 4.541(a) to clarify that the rule applies to probation, mandatory supervision, and PRCS cases;
- Amend rule 4.541(b) to define “supervised person,” “formal probation,” “court,” and “supervising agency”;
- Amend rule 4.541(c)(3) by moving a statutory PRCS reporting requirement currently in rule 4.541(c)(3) and placing it in new subdivision (e) under a heading applicable only to PRCS cases;
- Amend rule 4.541(d) to authorize supervising agencies to submit updates of any available original sentencing reports; and
- Add an additional advisory committee comment to rule 4.541 to explain the separate PRCS reporting requirement under subdivision (e).

Alternatives Considered

The committee considered not prescribing minimum contents for probation and mandatory supervision reports because, unlike PRCS cases, complete probation and mandatory supervision information should be readily available to courts in existing case files. In light of the uniform procedures recently prescribed by the Legislature, however, the committee decided that prescribing the minimum contents of *all* revocation reports will ensure that supervising agencies provide courts with sufficient information to adjudicate petitions, while preserving court discretion to fashion format and content requirements according to local needs.

Implementation Requirements, Costs, and Operational Impacts

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

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Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in 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 a case management system, or modifying a case management system?
- Would an effective date immediately after Judicial Council approval provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rule 4.540"cpf "60763, at pages 5–13
2. Judicial Council form CR-300, *Petition for Revocation of Community Supervision*, at page 12

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Rule 4.540 of the California Rules of Court would be repealed, and rule 4.541 would be amended effective November 1, 2012, to read:

1 **Rule 4.540. Revocation of postrelease community supervision**

2
3 **(a) Application**

4
5 This rule applies to petitions for revocation of postrelease community supervision
6 under Penal Code section 3455.

7
8 **(b) Definitions**

9
10 As used in this chapter:

11
12 (1) “Supervised person” means any person subject to community supervision
13 under Penal Code section 3451.

14
15 (2) “Court” includes any hearing officer appointed by a superior court and
16 authorized to conduct revocation proceedings under Government Code
17 section 71622.5.

18
19 (3) “Supervising agency” means the county agency designated as the supervising
20 agency by the board of supervisors under Penal Code section 3451.

21
22 **(c) Petition for revocation**

23
24 (1) Petitions for revocation must be filed by the supervising agency at the
25 location designated by the superior court in the county in which the person is
26 supervised.

27
28 (2) The supervising agency may file a petition for revocation only after all of the
29 following have occurred:

30
31 (A) The supervising agency has established probable cause to believe the
32 supervised person has violated a term or condition of community
33 supervision;

34
35 (B) The supervising agency has determined, following application of its
36 assessment processes, that intermediate sanctions without court
37 intervention as authorized by Penal Code section 3454(b) are not
38 appropriate responses to the alleged violation; and

39
40 (C) The supervising agency has informed the supervised person that he or
41 she is entitled to the assistance of counsel and, if he or she desires but is
42 unable to employ counsel, the supervising agency has referred the

1 matter to the public defender or other person or agency designated by
2 the county to represent supervised persons.

3
4 ~~(3) — Petitions for revocation must be made on *Petition for Revocation of*
5 *Community Supervision* (form CR 300) and must include a written report
6 from the supervising agency that includes the declaration and information
7 required under rule 4.541.~~

8
9 ~~(4) — Upon filing the petition, the supervising agency must provide copies of the~~
10 ~~petition and written report to the prosecutor and the supervised person's~~
11 ~~counsel or, if unrepresented, to the supervised person.~~

12
13 **~~(d) — Probable cause review~~**

14
15 ~~(1) — The court must review whether probable cause exists to support a revocation~~
16 ~~within five court days of the filing of the petition. To conduct the review, the~~
17 ~~minimum information the court may rely upon is the information contained in~~
18 ~~the petition and written report of the supervising agency. If the court~~
19 ~~determines that probable cause exists to support a revocation, the court must~~
20 ~~indicate the determination on *Petition for Revocation of Community*~~
21 ~~*Supervision* (form CR 300) and preliminarily revoke supervision.~~

22
23 ~~(2) — If the court determines that no probable cause exists to support the~~
24 ~~revocation, the court must dismiss the petition, vacate any scheduled~~
25 ~~hearings, and return the person to community supervision on the same terms~~
26 ~~and conditions. If the court dismisses the petition, the supervising agency~~
27 ~~must notify the prosecutor, supervised person, and supervised person's~~
28 ~~counsel, if any, of the dismissal.~~

29
30 **~~(e) — Notice of hearing~~**

31
32 ~~The supervising agency must provide notice of the date, time, and place of any~~
33 ~~hearing related to the petition to revoke to the supervised person, the supervised~~
34 ~~person's counsel, if any, the prosecutor, and any victims.~~

35
36 **~~(f) — Waiver~~**

37
38 ~~At any time before a formal hearing on the petition, the supervised person may~~
39 ~~waive, in writing, his or her right to counsel, admit a violation, waive a hearing,~~
40 ~~and accept a proposed modification of supervision.~~

41
42 **~~(g) — Formal hearing~~**

1 *Valdivia v. Schwarzenegger* (E.D.Cal., Dec. 2, 2010, Civ. No. S 94 0671 LLK/GGH.) The terms
2 and procedures required by the injunction represent a negotiated settlement between the parties
3 and are not “necessary or required by the constitution.” (*Valdivia v. Schwarzenegger* (9th Cir.
4 2010) 599 F.3d 984, 995, *cert. denied sub nom. Brown v. Valdivia* (2011) 131 S.Ct. 1626
5 [vacating a district court order denying the state’s motion to modify the injunction to conform to
6 recently enacted Penal Code section 3044 because “[t]here is no indication anywhere in the
7 record that these particular procedures are necessary for the assurance of the due process rights of
8 parolees”].) The due process standards applicable to postrelease community supervision
9 revocation proceedings have been established by constitutional case law (see, e.g., *Morrissey v.*
10 *Brewer* (1972) 408 U.S. 471, 489; *People v. Vickers* (1972) 8 Cal.3d 451, 457–458), not the terms
11 and procedures negotiated by the parties to the federal injunction and related orders.
12

13 The Criminal Law Advisory Committee acknowledges that the practices related to the scheduling
14 of court appearances vary from county to county. Nothing in this rule is intended to prohibit
15 courts from scheduling court appearances according to local needs and customs, including
16 requiring court appearances before formal evidentiary hearings on the petition to revoke. When
17 filing a petition, petitioners should consult local rules and court staff regarding specific
18 requirements for scheduling court appearances related to revocation petitions.
19

20 **Subdivision (c).** Penal Code section 3455 does not prescribe a deadline for filing the petition. It is
21 incumbent on courts and supervising agencies to ensure timely filing of petitions, particularly
22 when the supervised person is detained solely for a violation.
23

24 **Subdivision (c)(2)(A).** Detained supervised persons are generally entitled to certain due process
25 rights during revocation proceedings, including a preliminary probable cause determination. (See,
26 e.g., *Morrissey, supra*, 408 U.S. at 489; *Vickers, supra*, 8 Cal.3d at 457–458.) Under the criminal
27 justice realignment legislation, supervising agencies are authorized to conduct certain violation
28 proceedings *without* court involvement. (Pen. Code, § 3454(b) [authorizing supervising agencies
29 “to determine and order appropriate responses to alleged violations,” including flash
30 incarceration].) A supervising agency may only file a petition to revoke supervision with the
31 court after it has determined, following application of its “assessment processes,” that
32 intermediate sanctions are not appropriate responses to a violation. (Pen. Code, § 3455(a).)
33 Supervising agencies are also authorized to determine whether the supervised person should
34 remain in custody pending a revocation hearing and may order the person confined pending a
35 hearing. (Pen. Code, § 3455(b).) To promote supervising agency compliance with the due process
36 rights of supervised persons during any proceedings conducted before the filing of the petition,
37 this subdivision requires the supervising agency to conduct a preliminary probable cause
38 determination before the petition is filed with the court. Courts must independently review the
39 supervising agency’s probable cause determination under subdivision (d).
40

41 **Subdivision (c)(2)(C).** This subdivision is designed to ensure that indigent supervised persons
42 who desire counsel are represented as early in the revocation proceedings as possible. Nothing in

1 this subdivision is intended to infringe on court authority to appoint counsel or allow a supervised
2 person to waive the right to counsel.

3
4 **Subdivision (d).** This subdivision requires courts to review the supervising agency's probable
5 cause determination required under subdivision (c)(2)(A). Courts may determine the most
6 appropriate manner to review the supervising agency's probable cause determination. Nothing in
7 this subdivision is intended to prevent courts from conducting formal hearings to review probable
8 cause.

9
10 **Subdivision (e).** Victims are separately entitled to notice as required under article I, section 28 of
11 the California Constitution.

12
13 **Subdivision (f).** This subdivision is based on Penal Code section 3455(a): "At any point during
14 the process initiated pursuant to this section, a person may waive, in writing, his or her right to
15 counsel, admit the violation of his or her postrelease supervision, waive a court hearing, and
16 accept the proposed modification of his or her postrelease supervision."

17
18 **Subdivision (g).** This subdivision is based on Penal Code section 3455(b): "The revocation
19 hearing shall be held within a reasonable time after the filing of the revocation petition." When
20 deciding a reasonable time for hearing, courts should consider whether the supervised person is
21 detained. (See, e.g., *Morrissey, supra*, 408 U.S. at 488 [a hearing within two months of arrest may
22 be appropriate under certain circumstances].)

23 24 **Rule 4.541. Minimum contents of Ssupervising agency reports**

25 26 **(a) DeclarationApplication**

27
28 A petition for revocation of community supervision under Penal Code section 3455
29 must include a declaration signed under penalty of perjury that confirms that the
30 requirements prescribed by rule 4.540(c)(2) have been satisfied. This rule applies to
31 supervising agency petitions for revocation of formal probation, mandatory
32 supervision under Penal Code section 1170(h)(5)(B), and postrelease community
33 supervision under Penal Code section 3455.

34 35 **(b) Minimum contents Definitions**

36
37 As used in this rule:

- 38
39 (1) "Supervised person" means any person subject to formal probation,
40 mandatory supervision under Penal Code section 1170(h)(5)(B), and
41 community supervision under Penal Code section 3451.
42

1 (2) “Formal probation” means the suspension of the imposition or execution of a
2 sentence and the order of conditional and revocable release in the community
3 under the supervision of a probation officer.
4

5 (3) “Court” includes any hearing officer appointed by a superior court and
6 authorized to conduct revocation proceedings under Government Code
7 section 71622.5.
8

9 (4) “Supervising agency” includes the county agency designated by the board of
10 supervisors under Penal Code section 3451.
11

12 **(bc) Minimum contents**

13
14 Except as provided in (ed), a petition for revocation of ~~community~~ supervision
15 ~~under Penal Code section 3455~~ must include a written report that contains at least
16 the following information:
17

18 (1) Information about the supervised person, including (a) personal identifying
19 information, including name and date of birth; (b) custody status and the date
20 and circumstances of arrest; (c) any pending cases and case numbers; (d) the
21 history and background of the supervised person, including a summary of the
22 supervised person’s record of prior criminal conduct; and (e) any available
23 information requested by the court regarding the supervised person’s risk of
24 recidivism, including any validated risk-needs assessments;
25

26 (2) All relevant terms and conditions of supervision and the circumstances of the
27 alleged violations, including a summary of any statement made by the
28 supervised person, and any victim information, including statements and
29 amount of loss;
30

31 (3) A summary of ~~all any~~ previous violations and sanctions, ~~including flash~~
32 ~~incarceration. and the reasons that the supervising agency has determined that~~
33 ~~intermediate sanctions without court intervention as authorized by Penal~~
34 ~~Code section 3454(b) are not appropriate responses to the alleged violations;~~
35 and
36

37 (4) Any recommended sanctions.
38

39 **(ed) Subsequent reports**

40
41 If a written report was submitted as part of the original sentencing proceeding or
42 with an earlier revocation petition, a subsequent report need only update the

1 information required by (b). A subsequent report must include a copy of the
2 original report if the original report is not contained in the court file.

3
4 **(e) Postrelease Community Supervision Reports**

5
6 In addition to the minimum contents described in (b), the report filed by the
7 supervising agency in conjunction with a petition to revoke postrelease community
8 supervision under Penal Code section 3455 must include the reasons for that
9 agency’s determination that intermediate sanctions without court intervention as
10 authorized by Penal Code section 3454(b) are not appropriate responses to the
11 alleged violations.

12
13 **Advisory Committee Comment**

14
15 **Subdivision (bc).** This subdivision prescribes minimum contents for supervising agency reports.
16 Courts may require additional contents in light of local customs and needs.

17
18 **Subdivision (bc)(1)(d).** The history and background of the supervised person may include the
19 supervised person’s social history, including family, education, employment, income, military,
20 medical, psychological, and substance abuse information.

21
22 **Subdivision (bc)(1)(e).** Penal Code section 3451(a) requires postrelease community supervision
23 to be consistent with evidence-based practices, including supervision policies, procedures,
24 programs, and practices demonstrated by scientific research to reduce recidivism among
25 supervised persons. “Evidence-based practices” refers to “supervision policies, procedures,
26 programs, and practices demonstrated by scientific research to reduce recidivism among
27 individuals under probation, parole, or postrelease supervision.” (Pen. Code, § 3450(b)(9).)

28
29 **Subdivision (e).** Penal Code section 3454(b) authorizes supervising agencies to impose
30 appropriate responses to alleged violations of postrelease community supervision under Penal
31 Code section 3455 without court intervention, including referral to a reentry court under Penal
32 Code section 3015 or flash incarceration in a county jail. Penal Code section 3455(a) requires the
33 supervising agency to determine that the intermediate sanctions authorized by section 3454(b) are
34 not appropriate responses to the alleged violation *before* filing a petition to revoke postrelease
35 community supervision under Penal Code section 3455.

SUPERVISING AGENCY <i>(Name and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN THE MATTER OF <i>(name of supervised person):</i> <div style="text-align: right;">Date of birth: _____</div>	
PETITION FOR REVOCATION OF COMMUNITY SUPERVISION	CDCR NUMBER, IF ANY: COURT/CASE NUMBER:
<p style="text-align: center;">INSTRUCTIONS</p> <ul style="list-style-type: none"> • <i>Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.</i> • <i>Petitioner must provide notice of the date, time, and place for the hearing in item 1 to the supervised person, the supervised person's counsel, if any, the prosecutor, and any victims. (Cal. Rules of Court, rule 4.540(e).)</i> • <i>Petitioner must attach a written report that contains the declaration and information required under rule 4.541.</i> • <i>Upon filing the petition, petitioner must provide copies of the petition and written report to the prosecutor and the supervised person's counsel or, if unrepresented, the supervised person. (Cal. Rules of Court, rule 4.540(c)(4).)</i> 	

1. **HEARING INFORMATION:** A hearing on this petition for revocation has been scheduled as follows:

Date: _____	Time: _____	Location <i>(if different than court address above):</i> _____
-------------	-------------	--

If an interpreter is needed, please specify the language:

2. **CUSTODY STATUS:** *(Select one):* not in custody in custody *(specify location):*
Booking number *(if any):* _____

3. **CONVICTION INFORMATION:**
The supervised person was originally convicted of the following offenses:
on *(specify date):* _____ in case numbers *(specify):* _____
in county of *(specify):* _____ and sentenced to *(specify sentence):* _____

4. **SUPERVISION INFORMATION:** The supervised person was released on community supervision on *(specify date):* _____
Name of current supervising agent or officer: _____
Supervision is scheduled to expire on *(specify date):* _____

5. **SPECIFIC TERMS AND CONDITIONS:** Petitioner alleges that the supervised person has violated the following terms and conditions of community supervision *(if more space is needed, please use Attachment to Judicial Council Form (MC-025)):*

6. **SUMMARY:** The supervising agency established probable cause for the alleged violation on *(specify date):* _____
The circumstances of the alleged violation are *(if more space is needed, please use Attachment to Judicial Council Form (MC-025)):*

I declare under penalty of perjury and to the best of my information and belief that the foregoing is true and correct.

Date: _____ By _____
NAME AND TITLE OF PETITIONER SIGNATURE OF PETITIONER

COURT'S PROBABLE CAUSE FINDING AND ORDERS

The court *(select one):*
 finds probable cause to support a revocation and preliminarily revokes supervision.
 does not find probable cause to support a revocation, vacates any hearing dates, and returns the supervised person to community supervision on the same terms and conditions. The supervising agency must notify the prosecutor, supervised person, and supervised person's counsel (if any) of the dismissal.

FOR COURT USE ONLY

Date: _____
JUDICIAL OFFICER