



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 12, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Sentencing Report Deadlines	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, § 1203	December 12, 2014
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 29, 2014
Hon. Kenneth K. So, Chair	Contact
Criminal Law Advisory Committee	Kimberly DaSilva, 415-865-4534
Hon. Tricia Ann Bigelow, Chair	kimberly.dasilva@jud.ca.gov
	Sharon Reilly, 916-323-3121
	sharon.reilly@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend 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 deadlines.

Recommendation

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend 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 deadlines.

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

Previous Council Action

This issue has seen no previous council action.

Rationale for Recommendation

Under current law, 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; *People v. Leffel* (1987) 196 Cal.App.3d 1310, 1318.) 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. (*People v. Bohannon, supra*, 82 Cal.App.4th at pp. 808–809.) Defendants need not show actual prejudice. (*Id.* at p. 809.)

Thus, defendants are entitled to automatic continuances whenever the deadline is missed, regardless of whether the missed deadline had any impact on the defendant’s ability to review and investigate the probation report. As a result, courts are automatically required to conduct additional sentencing proceedings upon request, even when the proceedings may be unnecessary.

This proposal was developed at the request of criminal law judges to vest courts with discretion to decide case by case whether continuances due to noncompliance with the report deadline are justified, rather than maintaining the automatic continuances required by current law.

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’s contents, obviating the need for an automatic continuance. 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 have sufficient opportunity to evaluate the probation report.

Comments, Alternatives Considered, and Policy Implications

The proposed amendment circulated for public comment in spring 2014. The comment period ended on June 18. A total of six comments were received. Of those, three commentators agreed with the proposal. Two commentators did not agree with the proposal, and one commentator indicated neither agreement nor disagreement. A chart providing all of the comments received and committee recommendations is attached at pages 5–6.

Notably, one commentator stated that defense counsel often waive the statutory time for sentencing, yet probation reports are still filed late. Thus, he argues that courts should look to probation to ameliorate the problem rather than penalizing the defense with this new burden to argue for good cause. The committee declined this suggestion because under the proposed

amendment courts would have discretion to consider the burdens placed on the defendant by the tardiness of the report during their good cause determinations. In their discretion, courts will continue to grant these continuances when they are necessary on a case-by-case basis. A time waiver would become a factor in the court's ultimate determination of whether the particular case merits a continuance.

On October 2, 2014, the Joint Legislation Working Group of the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee voted to recommend sponsorship of this proposal.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are likely at the trial level.

Attachments

1. Proposed amendment to Penal Code section 1203, at page 4
2. Comments chart, at pages 5–6

Penal Code section 1203 would be amended, effective January 1, 2016, to read:

1 1203. (a) * * *

2

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

8

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

12

13 (B)–(D) * * *

14

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

24

25 (3)–(4) * * *

26

27 (c)–(k) * * *

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LEG14-07**Proposed Legislation: Criminal Justice Realignment: Sentencing Report Deadlines (amend Penal Code sections 1203)**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District	A	<p>The probation report must be made available five days (or nine if requested) prior to the hearing. This proposal would allow the trial court to continue the hearing on a showing of good cause. Currently, hearings must be automatically continued if the time limit cannot be met, even if the missed deadline has no effect on the defendant's ability to participate in the sentencing hearing.</p> <p>Comments</p> <p>1. We support this proposal, although it will lead to arguments on appeal that the trial court abused its discretion in ruling on the continuance motion. Efficiencies gained at the trial level will be paid for in the reviewing courts.</p> <p>2. We agree with the Committee that, apart from minimal judicial education, no significant implementation requirements or costs may be anticipated.</p>	No response required.
2.	Orange County Bar Association by Thomas Bienert, Jr., President	N	In some counties, the P&S report only becomes available to the defense on the actual date of the sentencing due to the understaffing of probation departments. Defense counsel regularly waives the statutory time for sentencing so the probation department can prepare an appropriate P&S report yet the report is still not timely. The contents of the P&S report are often critical not only to defendant's sentence but to defendant's ultimate prison housing if sentenced to state	The committee declines this suggestion because under the proposed amendment courts consider the burdens placed on the defendant by the tardiness of the report during their good cause determination. In their discretion, courts will continue to grant these continuances when they are necessary on a case by case basis. A time waiver would become a factor in the court's ultimate determination of whether the particular case merits a continuance.

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	Commentator	Position	Comment	Committee Response
			prison. Defense counsel is presently free to waive any defects in time in open court should the defense deem it appropriate to do so. There is no need to require a showing of good cause in this instance. Given what is at stake, the court need not substitute its judgment for that of defense counsel or the defendant when it is not counsel who has caused the delay. If there is a problem here, the court should take it up with the probation department – not the litigants.	
3.	Superior Court of Los Angeles County	A		No response required.
4.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	NI	No comment.	No response required.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	N	What specific “abuse” problems is this legislation trying to cure? It seems to impose an unnecessary extra step on the court (to make a finding of “good cause”) because, in the majority of cases, good cause is going to exist (presuming the defense is only going to object and request a continuance if it is really necessary).	This proposal is designed to eliminate unnecessary continuances. Rather than placing an extra burden on courts, this proposal would lessen the burden on court resources required by automatic continuances, which require courts to expend additional resources.
6.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	No response required.