

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

LEG14-06

Title	Action Requested
Proposed Legislation (Criminal Justice Realignment): Parole Holds and Deadline to File Petitions to Revoke Supervision	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code sections 1203.2, 3000.08, 3056, and 3455	January 1, 2016
Proposed by	Contact
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Executive Summary and Origin

The Criminal Law Advisory Committee proposes several statutory amendments that would prescribe a five-court-day deadline for supervising agencies to file petitions to revoke supervision and authorize courts, upon a finding good cause, to order the release of supervised persons from custody unless serving a period of flash incarceration, regardless of any parole holds or whether a supervising agency has filed a petition to revoke supervision. This proposal was developed at the request of judges to enhance court discretion to decide the custody status of supervised persons and eliminate undue delays by supervising agencies in filing petitions to revoke after the arrest of supervised persons.

Background

Under criminal justice realignment, courts are required to conduct revocation proceedings for four distinct categories of supervision—probation, parole, postrelease community supervision (PRCS), and mandatory supervision under Penal Code section 1170(h)(5)(B). Revocation procedures for all four categories are governed by the longstanding revocation procedures under Penal Code section 1203.2. For parole and PRCS violations, however, supervising agencies are authorized to impose periods of “flash incarceration” for up to 10 days in county jail without any court involvement. (Pen. Code, §§ 3000.08(d), 3454.)

Petitions to revoke

Supervising agencies are generally authorized to arrest supervised persons for alleged violations of supervision with or without warrants. (Pen. Code, § 1203.2(a).) To initiate a court revocation

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 These proposals are circulated for comment purposes only.

proceeding, a supervising agency must file a petition to revoke with the court. (Pen. Code, § 1203.2(b).) Penal Code section 1203.2, however, does not prescribe a deadline for the filing of petitions by the supervising agency. As a result, undue delays may occur between the arrest of the supervised person and initiation of formal revocation proceedings by the supervising agency.

Parole holds

Before realignment, the California Department of Corrections and Rehabilitation (CDCR) was authorized to issue parole holds under Penal Code section 3056 and order warrants for the arrest of parolees without court involvement. Although the realignment legislation vested courts with sole authority to order and recall warrants for all supervised persons (Pen. Code, §§ 1203.2, 3455(b)(1), 3000(b)(9)(A)), the legislation did *not* authorize courts to recall parole holds under Penal Code section 3056.¹

Although courts are generally authorized to determine the custody status of supervised persons during court revocation proceedings, courts have no express statutory authority to order the release of persons supervised on PRCS or parole if detained by the supervising agency for purposes of imposing a period of flash incarceration, particularly if detained on a parole hold. As a result, supervised persons occasionally remain in custody without initiation of court revocation proceedings for periods of time that *exceed* any jail term that the supervising agency may impose as flash incarceration without court involvement.

The Proposal

To enhance court discretion to determine the custody status of supervised persons and reduce undue delays by supervising agencies in filing petitions to revoke after the arrest of supervised persons, the Criminal Law Advisory Committee proposes the following statutory changes:

- Amend Penal Code section 1203.2(b)(1) to require supervising agencies to file petitions to revoke supervision within five court days of the arrest of the supervised person; and
- Amend Penal Code sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c) to vest courts with discretion, upon a finding of good cause, to order the release of supervised persons from custody, unless otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued.

By requiring supervising agencies to file petitions within five court days of the arrest of the supervised person, this proposal would promote uniformity, enhance due process, and reduce undue delays between the arrest of the supervised person and the initiation of formal revocation proceedings. This proposal, notably, would *not* also impose a deadline on prosecutors, supervised persons, or the court, all of which require sufficient discretion to initiate revocation proceedings throughout the pendency of separately filed criminal cases. As such, this proposal

¹ There is one exception—courts that conduct parolee reentry courts under Penal Code section 3015 are statutorily authorized to lift parole holds. (Pen. Code, § 3015(d)(2).)

would not infringe on court or prosecutorial discretion to charge and adjudicate “in lieu of” revocations when otherwise appropriate.

In addition, by authorizing courts to determine the custody status of all supervised persons not serving a period of flash incarceration, this proposal would enhance judicial discretion and eliminate uncertainties about court authority to lift parole holds and order the release of supervised persons, particularly in the absence of warrants and the filing of petitions to revoke supervision. To enhance public safety, this proposal would also empower courts to fashion any terms and conditions of release deemed appropriate.

Alternatives Considered

No alternatives were considered.

Implementation Requirements, Costs, and Operational Impacts

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. If not, what changes might be made that would provide savings, or greater savings?
- 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.
- Would 2 months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

Attachment

1. The text of proposed legislation is attached at pages 4–7.

Section 1203.2, section 3000.08, section 3056, and section 3455 of the Penal Code would be amended, effective January 1, 2016, to read as follows:

1 **§ 1203.2**

2 (a) At any time during the period of supervision of a person (1) released on probation under the
3 care of a probation officer pursuant to this chapter, (2) released on conditional sentence or
4 summary probation not under the care of a probation officer, (3) placed on mandatory
5 supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170, (4)
6 subject to revocation of postrelease community supervision pursuant to Section 3455, or (5)
7 subject to revocation of parole supervision pursuant to Section 3000.08, if any probation officer,
8 parole officer, or peace officer has probable cause to believe that the supervised person is
9 violating any term or condition of his or her supervision, the officer may, without warrant or
10 other process and at any time until the final disposition of the case, rearrest the supervised person
11 and bring him or her before the court or the court may, in its discretion, issue a warrant for his or
12 her rearrest. **Notwithstanding section 3056, and unless the supervised person is otherwise**
13 **serving a period of flash incarceration, whenever a supervised person subject to this section**
14 **is arrested, with or without a warrant or the filing of a petition for revocation as described**
15 **in subdivision (b), the court may, upon a finding of good cause, order the release of the**
16 **supervised person from custody under any terms and conditions as the court deems**
17 **appropriate.** Upon such rearrest, or upon the issuance of a warrant for rearrest the court may
18 revoke and terminate the supervision of the person if the interests of justice so require and the
19 court, in its judgment, has reason to believe from the report of the probation or parole officer or
20 otherwise that the person has violated any of the conditions of his or her supervision, has become
21 abandoned to improper associates or a vicious life, or has subsequently committed other
22 offenses, regardless whether he or she has been prosecuted for such offenses. However, the court
23 shall not terminate parole pursuant to this section. Supervision shall not be revoked for failure of
24 a person to make restitution imposed as a condition of supervision unless the court determines
25 that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be
26 consistent with a person's ability to pay. The revocation, summary or otherwise, shall serve to
27 toll the running of the period of supervision.

28
29 (b)(1) Upon its own motion or upon the petition of the supervised person, the probation or parole
30 officer, or the district attorney, the court may modify, revoke, or terminate supervision of the
31 person pursuant to this subdivision, except that the court shall not terminate parole pursuant to
32 this section. **Petitions filed by the supervising agency shall be filed within five court days of**
33 **the arrest of the supervised person.** The court in the county in which the person is supervised
34 has jurisdiction to hear the motion or petition, or for those on parole, either the court in the
35 county of supervision or the court in the county in which the alleged violation of supervision
36 occurred. A person supervised on parole or postrelease community supervision pursuant to
37 Section 3455 may not petition the court pursuant to this section for early release from
38 supervision, and a petition under this section shall not be filed solely for the purpose of

1 modifying parole. Nothing in this section shall prohibit the court in the county in which the
2 person is supervised or in which the alleged violation of supervision occurred from modifying a
3 person's parole when acting on the court's own motion or a petition to revoke parole. The court
4 shall give notice of its motion, and the probation or parole officer or the district attorney shall
5 give notice of his or her petition to the supervised person, his or her attorney of record, and the
6 district attorney or the probation or parole officer, as the case may be. The supervised person
7 shall give notice of his or her petition to the probation or parole officer and notice of any motion
8 or petition shall be given to the district attorney in all cases. The court shall refer its motion or
9 the petition to the probation or parole officer. After the receipt of a written report from the
10 probation or parole officer, the court shall read and consider the report and either its motion or
11 the petition and may modify, revoke, or terminate the supervision of the supervised person upon
12 the grounds set forth in subdivision (a) if the interests of justice so require.

13
14 (b)(2) *** (g).

15
16
17 **§ 3000.08.**

18 (a) *** (b).

19
20 (c) At any time during the period of parole of a person subject to this section, if any parole agent
21 or peace officer has probable cause to believe that the parolee is violating any term or condition
22 of his or her parole, the agent or officer may, without warrant or other process and at any time
23 until the final disposition of the case, arrest the person and bring him or her before the court, or
24 the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section
25 1203.2. Notwithstanding section 3056, and unless the supervised person is otherwise serving
26 a period of flash incarceration, whenever a supervised person subject to this section is
27 arrested, with or without a warrant or the filing of a petition for revocation as described in
28 subdivision (f), the court may, upon a finding of good cause, order the release of the
29 supervised person from custody under any terms and conditions as the court deems
30 appropriate.

31
32 (d) *** (m).

33
34
35 **§ 3056.**

36 (a) Prisoners on parole shall remain under the supervision of the department but shall not be
37 returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of
38 Section 3000.09. A parolee awaiting a parole revocation hearing may be housed in a county jail
39 while awaiting revocation proceedings. If a parolee is housed in a county jail, he or she shall be
40 housed in the county in which he or she was arrested or the county in which a petition to revoke

1 parole has been filed or, if there is no county jail in that county, in the housing facility with
2 which that county has contracted to house jail inmates. Additionally, except as provided by
3 subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a
4 county jail for a maximum of 180 days per revocation. When housed in county facilities,
5 parolees shall be under the sole legal custody and jurisdiction of local county facilities. A parolee
6 shall remain under the sole legal custody and jurisdiction of the local county or local correctional
7 administrator, even if placed in an alternative custody program in lieu of incarceration, including,
8 but not limited to, work furlough and electronic home detention. When a parolee is under the
9 legal custody and jurisdiction of a county facility awaiting parole revocation proceedings or upon
10 revocation, he or she shall not be under the parole supervision or jurisdiction of the department.
11 **Unless otherwise serving a period of flash incarceration, whenever a parolee subject to this**
12 **section has been arrested, with or without a warrant or the filing of a petition for**
13 **revocation with the court, the court may, upon a finding of good cause, order the release of**
14 **the parolee from custody under any terms and conditions as the court deems appropriate.**
15 When released from the county facility or county alternative custody program following a period
16 of custody for revocation of parole or because no violation of parole is found, the parolee shall
17 be returned to the parole supervision of the department for the duration of parole.

18
19 (b) *** (c).

20
21
22 **§ 3455.**

23 (a) ***

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

33
34 (2) The court or its designated hearing officer shall have the authority to issue a warrant for any
35 person who is the subject of a petition filed under this section who has failed to appear for a
36 hearing on the petition or for any reason in the interests of justice, or to remand to custody a
37 person who does appear at a hearing on the petition for any reason in the interests of justice.
38 **Unless the supervised person is otherwise serving a period of flash incarceration, whenever**
39 **a supervised person subject to this section is arrested, with or without a warrant or the**
40 **filing of a petition for revocation, the court may, upon a finding of good cause, order the**
41 **release of the supervised person from custody under any terms and conditions as the court**
42 **deems appropriate.**

1
2 (c) The revocation hearing shall be held within a reasonable time after the filing of the revocation
3 petition. **Except as provided in paragraph 2 of subdivision b, based** Based upon a showing of
4 a preponderance of the evidence that a person under supervision poses an unreasonable risk to
5 public safety, or the person may not appear if released from custody, or for any reason in the
6 interests of justice, the supervising county agency shall have the authority to make a
7 determination whether the person should remain in custody pending the first court appearance on
8 a petition to revoke postrelease community supervision, and upon that determination, may order
9 the person confined pending his or her first court appearance.

10
11 (d) *** (e).