



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

Title	Agenda Item Type
Criminal Justice Realignment: Imposition of Mandatory Supervision	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 4.411 and 4.411.5; adopt rule 4.415	January 1, 2015
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	November 21, 2014
	Contact
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Executive Summary

The Criminal Law Advisory Committee recommends amendments to rules 4.411 and 4.411.5 of the California Rules of Court and adoption of a new rule to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5), including criteria for court consideration and the contents and requirements for related probation reports, as required by recent legislation that mandates adoption of these rules by January 1, 2015.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2015:

1. Adopt rule 4.415 of the California Rules of Court to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5), including criteria for court consideration when determining the length and conditions of supervision and whether to deny supervision in the interests of justice;

2. Amend rule 4.411 of the California Rules of Court to apply existing requirements for presentence probation reports to cases in which the defendant is eligible for a term of imprisonment in county jail under Penal Code section 1170(h); and
3. Amend rule 4.411.5 of the California Rules of Court to require presentence probation reports to include recommendations regarding the appropriate term of imprisonment in county jail under Penal Code section 1170(h), the denial of mandatory supervision in the interests of justice, and the length and conditions of mandatory supervision.

The text of the new and amended rules is attached at pages 7–12.

Previous Council Action

Rule 4.411 was originally adopted as rule 418, effective July 1, 1977, and rule 4.411.5 was originally adopted as rule 419, effective July 1, 1981. Both rules were most recently amended effective January 1, 2007. This is the first time they are being amended to reflect the advent of criminal justice realignment.

Rationale for Recommendation

Criminal justice realignment implemented broad changes to felony sentencing laws, including replacing prison sentences with county jail sentences for certain felonies and authorizing courts to impose a period of mandatory supervision upon release from county jail. Recent realignment-related legislation¹ amended several statutory provisions that govern the imposition of mandatory supervision and require the Judicial Council to adopt rules of court.

New rule 4.415

Penal Code section 1170(h)(5)(A) was amended, effective January 1, 2015, to require courts to impose mandatory supervision for all felony terms of imprisonment in county jail unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Penal Code section 1170.3(a) was also amended to require the Judicial Council, effective January 1, 2015, to adopt rules of court to prescribe criteria for the court to consider when deciding whether to deny a period of mandatory supervision “in the interests of justice” under Penal Code section 1170(h)(5)(A) and when determining the appropriate period and conditions of mandatory supervision.

In response, the committee recommends adoption of rule 4.415. The new rule is designed to emphasize the new statutory presumption in favor of the imposition of mandatory supervision, prescribe the requisite criteria for court consideration, and require courts to state reasons for a denial of a period of mandatory supervision in the interests of justice. An advisory committee comment is included to explain the statutory bases for specific provisions.

¹ Assem. Bill 1468 (Comm. on Budget); Stats. 2014, ch. 26.

Content of presentence probation reports

Two existing rules govern the use and contents of presentence probation reports. Rule 4.411 prescribes the purpose and requirements for use and rule 4.411.5 establishes the requisite content and sequential presentation of the information contained in the reports. Penal Code section 1170.3(b) was amended to require the Judicial Council to adopt rules of court to standardize the content and sequential presentation of information regarding the imposition of mandatory supervision in presentence probation reports submitted to the court.

In response, the committee recommends several amendments to rule 4.411 that are designed to apply existing report requirements to cases in which the defendant is eligible for a term of imprisonment under Penal Code section 1170(h). The committee also recommends amendments to rule 4.411.5 to ensure that the reports include recommendations regarding the appropriate term of imprisonment, denials of mandatory supervision in the interests of justice, and the length and conditions of mandatory supervision. To enhance the information and recommendations contained in the reports, the amendments also require reports to include information from any available risk/needs assessments² conducted by the probation department.

Comments, Alternatives Considered, and Policy Implications

This proposal circulated for public comment on an expedited basis from August 22, 2014, to September 19, 2014, yielding a total of 14 comments. Of those, 2 agreed with the proposal, including the Superior Court of Los Angeles County; 11 agreed with the proposal if modified, including the American Civil Liberties Union, the California District Attorneys Association, California Public Defenders Association, Chief Probation Officers of California, California Department of Justice (DOJ), and the Superior Courts of Orange and San Diego Counties; and 1 disagreed with the proposal. A chart with all comments received and committee responses is attached at pages 13–58. Attachments to specific comments made by DOJ are also provided after the comment chart.

In addition, the Trial Court Presiding Judges and Court Executives Joint Rule Working Group (JRWG) provided additional feedback on the proposal after the comment period. A discussion of these comments is included in the two sections that immediately follow.

Notable changes in response to comments

The committee revised the proposal in response to the following notable comments:

- ***Order of considerations.*** As originally circulated, the proposal listed factors related to the length and conditions of supervision before the factors related to denials of supervision in the interests of justice. To more accurately reflect the typical order of considerations during sentencing, the committee switched the order of subdivisions (a)(9)(C) and (a)(9)(D) of rule 4.411.5 (related to the content of probation reports) and subdivisions (b)

² The Criminal Law Advisory Committee is separately developing rules of court and standards of judicial administration to provide guidance regarding the use of risk/needs assessments by courts at sentencing.

and (c) of rule 4.415 (related to the factors for courts to consider during sentencing) so that the factors related to the denial of supervision appear *before* those related to the length and conditions of supervision.

- ***Factors for denying supervision were overly broad.*** As originally circulated, the factors related to decisions to deny a period of mandatory supervision in the interests of justice included several broad considerations, including any factor “reasonably related to the court’s determination.” To address concerns that the factors were overly broad and would frustrate the intent of the statutory presumption *against* denials of supervision, the committee amended rule 4.415 to:
 - Emphasize the limited scope of the statutory authority to deny supervision by adding the following sentence to subdivision (a): “Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited”³;
 - Narrow the list of criteria in subdivision (b) for denying supervision in the interests of justice by deleting the following two factors: “The likelihood that the defendant will be a danger to others if not imprisoned” and “Any other factor reasonably related to the court’s determination that mandatory supervision is not appropriate in the interests of justice”; and
 - Replace factors related to the nature of the case and the defendant’s suitability for supervision with the following factor under subdivision (b)(4): “Whether the nature, seriousness, or circumstances of the case or the defendant’s past performance on supervision substantially outweigh the benefits of supervision in promoting public safety and the defendant’s successful reentry into the community upon release from custody.” The new factor is designed to underscore the importance of supervision in the successful reintegration of defendants into the community upon release from custody by encouraging courts to limit denials of supervision only to circumstances that substantially outweigh the benefits of supervision.

³ The committee initially proposed the following amendment: “Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, courts should limit the exercise of discretion to deny a period of mandatory supervision.” The JRWG, however, raised concerns that the proposed language could be read to limit the exercise of judicial discretion: “A judge should not limit exercising discretion, but should proceed with caution. The proposed language seems to take away the judge’s power to decide. Instead, the proposed language should make clear that denials should not be routine.” In response, the committee revised the provision as explained above to clarify that the rule is intended to emphasize the limited nature of *denials* of supervision, *not* to limit the exercise of discretion.

- **Additional factors.** In recognition that some defendants may *lack* the need for supervision upon release from custody, the committee added the following factor under rule 4.415(b)(3) for courts to consider when deciding whether to deny supervision: “Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody.” To encourage courts to consider the full impacts of incarceration when deciding the length and conditions of supervision, the committee also added the following factor to rule 4.415(c)(9): “The likely effect of extended imprisonment on the defendant and any dependents.”

The committee also made several nonsubstantive changes, including amendments to more accurately track the statutory language of Penal Code section 1170(h)(5), add cross-references to other rule provisions, and clarify the purpose of factors related to restitution and custody credits.

Notable alternatives declined

The committee declined to revise the proposal in response to the following notable comments:

- **Waivers of reports.** Current rule 4.411(a) discourages waivers of presentence reports. Although the committee did not originally propose any changes to this provision, some commentators raised concerns about the burdens associated with requiring reports in all cases eligible for terms of imprisonment in county jail under section 1170(h). In response, the committee initially decided to amend rule 4.411(a) as follows to emphasize that court authority to allow waivers would remain unchanged: “~~Waivers of~~ Although courts may waive the presentence report, waivers should not be accepted except in unusual circumstances.”

The JRWG later raised concerns that the proposed amendment would imply that waivers are made by courts, as opposed to the parties, and suggested that the rule should allow waivers in “appropriate circumstances” instead of “unusual circumstances,” as stated in the current rule. Upon reflection, the committee decided *not* to recommend the proposed amendment in favor of preserving the waiver provision as currently stated in the rule. Because the proposal is designed to apply *existing* requirements for presentence probation reports, including longstanding waiver requirements, the committee decided that the proposed amendment is unnecessary and would inadvertently cause confusion.

- **Statement of Reasons.** Although rule 4.412 generally exempts courts from stating reasons for sentencing decisions when the parties have negotiated a plea agreement,⁴ rule 4.415(d) would require courts to state reasons for denying mandatory supervision “[n]otwithstanding rule 4.412(a).” A few commentators raised concerns that the

⁴ Rule 4.412(a) states: “It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting has not expressed an objection to it. The agreement and lack of objection must be recited on the record. This section does not authorize a sentence that is not otherwise authorized by law.”

requirement to state reasons even though the parties have negotiated a plea agreement may result in improper judicial plea bargaining and inadvertently frustrate the plea bargaining process.

The committee considered but declined to delete the requirement. Plea agreements do not divest courts of inherent sentencing discretion. Courts must ensure that all sentences are lawful and all plea agreements are subject to court approval before imposition. Under Penal Code section 1170(h)(5)(A), denials of mandatory supervision are prohibited unless “the court finds that, in the interests of justice, it is not appropriate *in a particular case*.” (Emphasis added.) Accordingly, lawful denials of mandatory supervision require the exercise of judicial discretion on a case-by-case basis, even when the parties have agreed to the sentence. A statement of reasons is necessary to demonstrate the lawfulness of the sentence, memorialize the basis for the exercise of judicial discretion, and aid appellate review.

Implementation Requirements, Costs, and Operational Impacts

No significant costs or operational impacts are expected. Notably, the JRWG raised concerns that the new report requirements, including discussions of additional factors for courts to consider, may cause delays in the preparation of probation reports, resulting in an increase of continuances of sentencing hearings. The new report requirements, however, are required by statute. The committee expects that probation reports will include as much relevant information about the new factors as the probation officer can gather in the allotted time, consistent with reporting practices for the *numerous* existing factors under current law. In addition, as noted above, courts will retain authority to waive probation reports when appropriate. The proposal is designed to enable courts to fold the new requirements into existing report practices, including waiver protocols. As such, court implementation requirements are expected to be limited to judicial and court staff training.

Attachments

1. Cal. Rules of Court, rules 4.411, 4.411.5, and 4.415, at pages 7–12
2. Comment chart, at pages 13–58
3. Attachment A: *Attachment A to Comments on SP14-08*, attached as an exhibit to the comments from DOJ
4. Attachment B: *Attachment B to Comments on SP14-08*, attached as an exhibit to the comments from DOJ

1 Rules 4.411 and 4.411.5 of the California Rules of Court are amended, and rule 4.415 is
2 adopted, effective January 1, 2015, to read:

3
4
5 **Rule 4.411. Presentence investigations and reports**

6
7 **(a) Eligible defendant**

8
9 If the defendant is eligible for probation or a term of imprisonment in county jail
10 under section 1170(h), the court must refer the matter to the probation officer for a
11 presentence investigation and report. Waivers of the presentence report should not
12 be accepted except in unusual circumstances.

13
14 **(b) Ineligible defendant**

15
16 Even if the defendant is not eligible for probation or a term of imprisonment in
17 county jail under section 1170(h), the court should refer the matter to the probation
18 officer for a presentence investigation and report.

19
20 **(c) Supplemental reports**

21
22 The court must order a supplemental probation officer's report in preparation for
23 sentencing proceedings that occur a significant period of time after the original
24 report was prepared.

25
26 **(d) Purpose of presentence investigation report**

27
28 Probation officers' reports are used by judges in determining the appropriate term
29 of imprisonment in length of a prison or county jail sentence under section 1170(h)
30 and by the Department of Corrections and Rehabilitation, Division of Adult
31 Operations in deciding on the type of facility and program in which to place a
32 defendant. ~~The reports are~~ also used by courts in deciding whether probation
33 is appropriate, whether a period of mandatory supervision should be denied in the
34 interests of justice under section 1170(h)(5)(A), and the appropriate length and
35 conditions of probation and mandatory supervision. Section 1203c requires a
36 probation officer's report on every person sentenced to prison; ordering the report
37 before sentencing in probation-ineligible cases will help ensure a well-prepared
38 report.

39
40 **Advisory Committee Comment**

41
42 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
43 for probation. Subdivision (a) requires a presentence report in every felony case in which the

1 defendant is eligible for a term of imprisonment in county jail under section 1170(h). Because
2 such a probation investigation and report are valuable to the judge and to the jail and prison
3 authorities, waivers of the report and requests for immediate sentencing are discouraged, even
4 when the defendant and counsel have agreed to a prison sentence or a term of imprisonment in
5 county jail under section 1170(h).
6

7 Notwithstanding a defendant's statutory ineligibility for probation or term of imprisonment in
8 county jail under section 1170(h), a presentence investigation and report should be ordered to
9 assist the court in deciding the appropriate sentence and to facilitate compliance with section
10 1203c.

11
12 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.

13
14 Subdivision (c) is based on case law that generally requires a supplemental report if the defendant
15 is to be resentenced a significant time after the original sentencing, as, for example, after a
16 remand by an appellate court, or after the apprehension of a defendant who failed to appear at
17 sentencing. The rule is not intended to expand on the requirements of those cases.

18
19 The rule does not require a new investigation and report if a recent report is available and can be
20 incorporated by reference and there is no indication of changed circumstances. This is particularly
21 true if a report is needed only for the Department of Corrections and Rehabilitation because the
22 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
23 another case in the same or another jurisdiction within the ~~preceeding~~preceding six months,
24 during which time the defendant was in custody, and that report is available to the Department of
25 Corrections and Rehabilitation, it is unlikely that a new investigation is needed.

26
27
28 **Rule 4.411.5. Probation officer's presentence investigation report**

29
30 **(a) Contents**

31
32 A probation officer's presentence investigation report in a felony case must include
33 at least the following:

34
35 (1)–(7) * * *

36
37 (8) Any available, reliable risk/needs assessment information.

38
39 ~~(8)~~(9) An evaluation of factors relating to disposition. This section must include:

40
41 (A) A reasoned discussion of the defendant's suitability and eligibility for
42 probation, and, if probation is recommended, a proposed plan including

1 recommendations for the conditions of probation and any special need
2 for supervision;

3
4 (B) If a prison sentence or term of imprisonment in county jail under
5 section 1170(h) is recommended or is likely to be imposed, a reasoned
6 discussion of aggravating and mitigating factors affecting the sentence
7 length; ~~and~~

8
9 (C) If denial of a period of mandatory supervision in the interests of justice
10 is recommended, a reasoned discussion of the factors prescribed by rule
11 4.415(b);

12
13 (D) If a term of imprisonment in county jail under section 1170(h) is
14 recommended, a reasoned discussion of the defendant's suitability for
15 specific terms and length of period of mandatory supervision, including
16 the factors prescribed by rule 4.415(c); and

17
18 ~~(C)~~(E) A reasoned discussion of the defendant's ability to make restitution,
19 pay any fine or penalty that may be recommended, or satisfy any
20 special conditions of probation that are proposed.

21
22 Discussions of factors ~~(A) through (D) affecting suitability for probation and~~
23 ~~affecting the sentence length~~ must refer to any sentencing rule directly
24 relevant to the facts of the case, but no rule may be cited without a reasoned
25 discussion of its relevance and relative importance.

26
27 ~~(9)~~(10) The probation officer's recommendation. When requested by the
28 sentencing judge or by standing instructions to the probation department, the
29 report must include recommendations concerning the length of any prison or
30 county jail term under section 1170(h) that may be imposed, including the
31 base term, the imposition of concurrent or consecutive sentences, and the
32 imposition or striking of the additional terms for enhancements charged and
33 found.

34
35 ~~(10)~~(11) Detailed information on presentence time spent by the defendant in
36 custody, including the beginning and ending dates of the period or periods of
37 custody; the existence of any other sentences imposed on the defendant
38 during the period of custody; the amount of good behavior, work, or
39 participation credit to which the defendant is entitled; and whether the sheriff
40 or other officer holding custody, the prosecution, or the defense wishes that a
41 hearing be held for the purposes of denying good behavior, work, or
42 participation credit.

1 ~~(11)~~(12) A statement of mandatory and recommended restitution, restitution
2 fines, other fines, and costs to be assessed against the defendant, including
3 chargeable probation services and attorney fees under section 987.8 when
4 appropriate, findings concerning the defendant's ability to pay, and a
5 recommendation whether any restitution order should become a judgment
6 under section 1203(j) if unpaid.

7
8 **(b)–(c)** * * *

9
10
11 **Rule 4.415. Criteria affecting the imposition of mandatory supervision**

12
13 **(a) Presumption**

14
15 When imposing a term of imprisonment in county jail under section 1170(h), the
16 court must suspend execution of a concluding portion of the term to be served as a
17 period of mandatory supervision unless the court finds, in the interests of justice,
18 that mandatory supervision is not appropriate in a particular case. Because section
19 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a
20 period of mandatory supervision in all applicable cases, denials of a period of
21 mandatory supervision should be limited.

22
23 **(b) Criteria for denying mandatory supervision in the interests of justice**

24
25 In determining that mandatory supervision is not appropriate in the interests of
26 justice under section 1170(h)(5)(A), the court's determination must be based on
27 factors that are specific to a particular case or defendant. Factors the court may
28 consider include:

- 29
30 (1) Consideration of the balance of custody exposure available after imposition
31 of presentence custody credits;
32
33 (2) The defendant's present status on probation, mandatory supervision,
34 postrelease community supervision, or parole;
35
36 (3) Specific factors related to the defendant that indicate a lack of need for
37 treatment or supervision upon release from custody; and
38
39 (4) Whether the nature, seriousness, or circumstances of the case or the
40 defendant's past performance on supervision substantially outweigh the
41 benefits of supervision in promoting public safety and the defendant's
42 successful reentry into the community upon release from custody.

1
2 **(c) Criteria affecting conditions and length of mandatory supervision**

3
4 In exercising discretion to select the appropriate period and conditions of
5 mandatory supervision, factors the court may consider include:

- 6
7 (1) Availability of appropriate community corrections programs;
8
9 (2) Victim restitution, including any conditions or period of supervision
10 necessary to promote the collection of any court-ordered restitution;
11
12 (3) Consideration of length and conditions of supervision to promote the
13 successful reintegration of the defendant into the community upon release
14 from custody;
15
16 (4) Public safety, including protection of any victims and witnesses;
17
18 (5) Past performance and present status on probation, mandatory supervision,
19 postrelease community supervision, and parole;
20
21 (6) The balance of custody exposure after imposition of presentence custody
22 credits;
23
24 (7) Consideration of the statutory accrual of post-sentence custody credits for
25 mandatory supervision under section 1170(h)(5)(B) and sentences served in
26 county jail under section 4019(a)(6);
27
28 (8) The defendant's specific needs and risk factors identified by a validated
29 risk/needs assessment, if available; and
30
31 (9) The likely effect of extended imprisonment on the defendant and any
32 dependents.
33

34 **(d) Statement of reasons for denial of mandatory supervision**

35
36 Notwithstanding rule 4.412(a), when a court denies a period of mandatory
37 supervision in the interests of justice, the court must state the reasons for the denial
38 on the record.
39

40 **Advisory Committee Comment**

41
42 Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe
43 criteria for the consideration of the court at the time of sentencing regarding the court's decision

1 to “[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of
2 subdivision (h) of Section 1170 or determine the appropriate period of and conditions of
3 mandatory supervision.”

4
5 **Subdivision (a).** Penal Code section 1170(h)(5)(A): “Unless the court finds, in the interests of
6 justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant
7 to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the
8 term for a period selected at the court’s discretion.”

9
10 **Subdivisions (b)(3), (b)(4), and (c)(3).** The Legislature has declared that “[s]trategies supporting
11 reentering offenders through practices and programs, such as standardized risk and needs
12 assessments, transitional community housing, treatment, medical and mental health services, and
13 employment, have been demonstrated to significantly reduce recidivism among offenders in other
14 states.” (Pen. Code, § 17.7(a).)

15
16 **Subdivision (c)(7).** Under Penal Code section 1170(h)(5)(B), defendants serving a period of
17 mandatory supervision are entitled to day-for-day credits: “During the period when the defendant
18 is under such supervision, unless in actual custody related to the sentence imposed by the court,
19 the defendant shall be entitled to only actual time credit against the term of imprisonment
20 imposed by the court.” In contrast, defendants serving terms of imprisonment in county jails
21 under Penal Code section 1170(h) are entitled to conduct credits under Penal Code section
22 4019(a)(6).

23

SP14-08

Criminal Justice Realignment: Imposition of Mandatory Supervision (*amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415*)

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

	Commentator	Position	Comment	Committee Response
1.	American Civil Liberties Union by Micaela Davis, Criminal Justice and Drug Policy Attorney	AM	<p>The ACLU of California submits the below comments on the proposed rules of court to govern the imposition of mandatory supervision under Penal Code section 1170(h)(5). In particular, we offer comment that the proposed criteria for denying and granting mandatory supervision are overly broad in contravention of the legislative intent that a split sentence is presumed in all but the narrowest of circumstances. We urge the Judicial Council to narrow the criteria a court may consider when making split sentencing determinations so that a grant of mandatory supervision is truly the rule rather than the exception.</p> <p>Background</p> <p>Realignment legislation added the option of “split sentencing” for non-violent, non-serious felony offenders sentenced at the county level. Under Penal Code section 1170(h)(5), the court may order that a concluding portion of an eligible offender’s sentence be served under the supervision of the probation department in a period of “mandatory supervision,” instead of serving the entire sentence in jail.</p> <p>Despite split sentencing’s dual benefits of reducing lengthy jail stays and creating a more structured reentry into society following incarceration, during the first few years of Realignment the use of split sentencing has varied widely around the state and remained at a statewide low of 28% as of the end of 2013.</p>	

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	Commentator	Position	Comment	Committee Response
			<p>Counties such as Contra Costa and Riverside have been using split sentencing at rates of 90% and 75% respectively, while counties such as Los Angeles have remained at a low of about 6%.</p> <p>Recognizing that split sentencing was being underutilized to the detriment of public safety and recidivism reduction, the legislature added a provision to the Penal Code through the 2014-15 Budget providing that “[u]nless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of [Penal Code 1170(h)], shall suspend execution of a concluding portion of the term for a period selected at the court’s discretion.” Penal Code § 1170(h)(5)(A). A summary of the legislation explained that “[i]ncreased split sentences will result in additional offenders placed under probation supervision upon release from jail, which helps to improve successful reintegration into the community through access to rehabilitative programming and supportive services.” (Summary of the public safety changes in the 2014-15 California State Budget, <i>available at</i> http://www.ebudget.ca.gov/2014-15/pdf/Enacted/BudgetSummary/PublicSafety.pdf, p. 34.)</p> <ul style="list-style-type: none"> • The Proposed Criteria for Denying Mandatory Supervision in the ‘Interests in of Justice’ are Overbroad and Contrary to 	<ul style="list-style-type: none"> • To more accurately reflect the typical order of considerations during sentencing, the committee switched the order of subdivisions (a)(9)(C) and (a)(9)(D) of

SP14-08

Criminal Justice Realignment: Imposition of Mandatory Supervision (*amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415*)

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	Commentator	Position	Comment	Committee Response
			<p style="text-align: center;">Legislative Intent</p> <p>Every person sentenced to jail leaves jail at some point. The question is not whether that person returns to the community, but how they return. In many cases, the structured reentry provided by a period of mandatory supervision can help provide formerly-incarcerated persons the programming and services necessary to make a successful transition back to the community. This successful transition is important not only with respect to the individual, but is also important to improve public health and safety outcomes.</p> <p>The legislature’s intent was to increase the use of mandatory supervision as a way to aid successful reintegration in the community and reduce recidivism. The legislation therefore created a presumption that an 1170(h) defendant would receive a split sentence unless the “interests of justice” demanded a denial of that sentence.</p> <p>The proposed rules outlining the criteria for denying supervision in the interests of justice deviate widely from this legislative intent and mandate. The rules set out such a broad array of factors for the court to consider in denying mandatory supervision that the exceptions threaten to swallow the rule. We urge the Judicial Council to revise and narrow these criteria to honor the presumption set forth in the legislation.</p>	<p>rule 4.411.5 (related to the content of probation reports) and subdivisions (b) and (c) of rule 4.415 (related to the factors for courts to consider during sentencing) so that the factors related to the denial of supervision appear <i>before</i> those related to the length and conditions of supervision.</p> <p>In addition, although the committee declined to modify the proposal precisely as suggested, to address concerns that the factors related to the court’s decision to deny a period of mandatory supervision in the interests of justice are too broad and would frustrate the intent of the statutory presumption <i>against</i> denials of supervision, the committee modified proposed rule 4.415 in several ways.</p> <p>First, to emphasize the limited scope of the statutory authority to deny mandatory supervision, the committee added the following sentence to subdivision (a): “Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.”</p> <p>Second, to narrow the list of criteria for denying supervision under subdivision (b), the committee deleted the following two broad factors: “The likelihood that</p>

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	Commentator	Position	Comment	Committee Response
			<p>Proposed criteria (1) sets forth that the court may consider the “nature, seriousness, and circumstances of the crime” in denying mandatory supervision in the interests of justice. Proposed criteria (2) states that the court may consider the “likelihood that the defendant will be a danger to others if not imprisoned.” These criteria overlook the precise point of mandatory supervision. The bottom line is that a defendant who has committed a crime the court deems serious due to its nature or circumstances, or who the court considers a danger, will get out of jail at some point. The question is whether the defendant will be released into the supervision of the probation department or released straight out of jail. Although the structured transition and monitoring provided by mandatory supervision can be a more sound way to mitigate potential danger, criteria (1) and (2) send the contrary message that if a defendant is deemed dangerous it is safer to release that person with no supervision at all. These criteria should be stricken from the list of permissible considerations for denial.</p> <p>Proposed criteria (3) permits the court to consider the “defendant’s lack of suitability and amenability to treatment or supervision.” This criteria is vague and appears counter to the point of the legislation. Importantly, it is not clear upon what evidence or by what standard the court is to base this determination. Would this judgment be made on the basis of whether the</p>	<p>the defendant will be a danger to others if not imprisoned” and “Any other factor reasonably related to the court’s determination that mandatory supervision is not appropriate in the interests of justice.”</p> <p>Third, to underscore the importance of supervision in the successful reintegration of defendants into the community upon release from custody, the committee replaced the factors related to the nature of the case and the defendant’s suitability for supervision with the following under subdivision (b)(4), which encourages courts to consider whether those factors substantially outweigh the benefits of supervision: “Whether the nature, seriousness, or circumstances of the case or the defendant’s past performance on supervision substantially outweigh the benefits of supervision in promoting public safety and the defendant’s successful reentry into the community upon release from custody.”</p> <p>Lastly, in recognition that some defendants may <i>lack</i> the need for supervision upon release from custody, the committee added the following factor under subdivision (b)(3): “Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody.”</p>

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			<p>defendant had failed on probation supervision in the past? If so, in what circumstances would a past failure rise to the level of not being suitable or amendable to treatment or supervision at all? Finally, what is it that would make a defendant not suitable for treatment or supervision, but instead suitable for release with no supervision? It is, of course, the case that not every defendant needs supervision and treatment. But that is a distinct consideration from a “lack of suitability or amenability” as proposed here. Criteria (3) should also be stricken from the list of permissible considerations for denial.</p> <p>Proposed criteria (4) permits the court to consider “the balance of custody exposure available after imposition of custody credit.” Although it is expected that a court will take potential lengths of custody time into account in its ultimate determination of the sentence, this is not an appropriate criteria for denying supervision in the interests of justice. At the time the legislature mandated the presumption of the split sentence, it was fully aware both that an 1170(h) defendant receives a default 16-month, two-year or three-year base term and that a locally sentenced defendant receives half time custody credit. The legislature did not set forth any sort of exemption where, for instance, a defendant sentenced to the lower end of the triad would be ineligible for mandatory supervision due to having a shorter length of time in custody. Instead it mandated the presumption that every defendant sentenced</p>	<p>The committee declined to delete the factor related to consideration of the balance of custody exposure available after imposition of presentence custody credits. The committee believes that it would be prudent for courts to consider whether sufficient custody time remains to effectively suspend and impose supervision terms, including, for example, cases in which the defendant’s presentence custody credits nearly satisfy the full term of imprisonment in county jail.</p>

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			<p>under this provision would be given a split except in narrow circumstances. Therefore, although it is expected that the court will take custody time into account in determining the ultimate sentence, it is inappropriate as a criteria for denial in the interests of justice.</p> <p>The Proposed Criteria for Determining Length and Conditions of Mandatory Supervision Are Overbroad</p> <ul style="list-style-type: none"> Proposed criteria (1) for the court’s consideration in determining length and conditions of supervision is the “availability of appropriate community corrections programs.” Although it is important that the court be informed about types of programming if it is to be engaged in determining mandatory supervision sentences, it is equally important that all county policy-makers and criminal justice officials are involved in ensuring proper resources are made available for such programs and services. Counties need to plan appropriately and redirect resources from incarceration to supervision. In addition, it is important to note that there is a time lag between time of sentencing and release onto mandatory supervision, which could result in inaccurate determinations of availability. Therefore a defendant’s risks and needs should be the ultimate 	<ul style="list-style-type: none"> The committee declined to delete this factor because the availability of treatment and supervision services at the time of sentencing is an important practical consideration when determining the terms and length of supervision. In addition, risk/needs assessment information is not readily available to courts in all counties.

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			<p>determinant of length and conditions of supervision.</p> <ul style="list-style-type: none"> • Proposed criteria (2) for determining length and conditions of supervision states simply “victim restitution.” First, this criteria is vague. What is it about restitution that is to be considered? Does a certain amount of restitution trigger either a shorter or longer period of supervision? Are there certain conditions of supervision more appropriate than others for a defendant who owes restitution? Second, even were the criteria more descriptive, just as the court can’t condition probation on a defendant’s ability to pay, it is similarly inappropriate to condition mandatory supervision on a certain amount of money owed or a defendant’s ability to pay. This criteria should therefore be stricken. • Proposed criteria (6) states that the court may take into consideration the “defendant’s suitability for treatment and supervision,” when determining length and conditions of supervision. As stated previously, the concept of “suitability” is vague. The guidelines do not list what evidence the court is to consider in determining suitability nor what standard by which it is to make the determination. Nor is it clear how this 	<ul style="list-style-type: none"> • The committee declined to delete this factor because the collection of victim restitution is an important consideration when deciding the length and terms of supervision. To clarify the purpose of the factor, however, the committee revised rule 4.415(c)(2) as follows: “Victim restitution, <u>including any conditions or period of supervision necessary to promote the collection of any court-ordered restitution.</u>” • The committee deleted this criteria as unnecessary and duplicative of the factor under subdivision (c)(5): “Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole.”

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			<p>would influence length or conditions. It makes more sense for the court to take the risks and needs of the defendant into account in determining length and conditions of supervision, which is itself a separate proposed criteria. The criteria of suitability is vague and unnecessary given the separate criteria focusing on risk and needs, and should therefore be stricken.</p> <ul style="list-style-type: none"> Proposed criteria (7) and (8) concern consideration of the balance of custody exposure after credits and consideration of the difference between statutory accrual of custody credits for mandatory supervision and those for jail time. Although it is expected that a court will take into account the lengths of sentences under various options when making an ultimate sentencing determination, as discussed previously, it is important the court and the guidelines take into account that the legislature was aware of base sentences and custody credits for 1170(h) defendants at the time it mandated presumption of a split sentence. <p style="text-align: center;">* * *</p> <p>A focus on community supervision rather than incarceration will help improve successful reintegration for the formerly-incarcerated and</p>	<ul style="list-style-type: none"> Consideration of the balance of custody time available to suspend and the accrual of post-sentence custody credits are appropriate considerations when deciding the length and terms of mandatory supervision.

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			<p>increase positive public health and safety outcomes. We urge the Judicial Council to revise the proposed rules concerning mandatory supervision so that the exceptions do not swallow the rule. Instead the criteria should honor the legislative intent that a split sentence with some term of supervision is presumed absent narrow circumstances.</p>	
2.	<p>California District Attorneys Association by Mark Zahner, CEO</p>	AM	<p>The proposed rules of court go a long way in addressing the issue of presumptive mandatory supervision as required by newly amended Penal Code 1170.3; however, there a few modifications that could make them stronger as a whole.</p> <ul style="list-style-type: none"> • First, replace all references to “a sentence in county jail” with the language used in Penal Code section 1170(h), “a term of imprisonment in county jail.” This makes it clearer that a sentence imposed pursuant to Penal Code section 1170(h) is indeed a prison term, including any portion of mandatory supervision. This will ensure there is no confusion for anyone interpreting and applying these rules, as a sentence in county jail can also be ordered when a defendant is not granted probation on a misdemeanor and instead is ordered to complete a term of custody in county jail. Additionally, the proposed rules use multiple descriptors of a term in county jail, and only one 	<ul style="list-style-type: none"> • To more accurately track the language of Penal Code section 1170(h), the committee replaced references to a county jail sentence with the phrase “a term of imprisonment in county jail under section 1170(h).”

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			<p>should be applied throughout the rules in order to achieve the highest degree of consistency.</p> <ul style="list-style-type: none"> Secondly, the issue of whether to deny or grant mandatory supervision should be addressed prior to a discussion of the terms, length and conditions of mandatory supervision. As noted in Penal Code section 1170.3(b), the Judicial Council was directed to adopt rules “standardizing the minimum content and sequential presentation of material in probation officer reports. . .” Thus, in order to sequentially address the issues of the imposition of a period of mandatory supervision, before there is a discussion of what the terms and conditions of mandatory supervision will be, it should be determined whether a defendant will be granted mandatory supervision. Once the Court has decided to grant a period of mandatory supervision, only then should the terms, length and conditions be addressed. Therefore, please consider switching the order of Proposed Rule of Court 4.411.5 Subsection (a)(9)(C) and (a)(9)(D), as well as modifying the order of Proposed Rule of Court 4.415 subsection (b) and subsection (c). Finally, there is some concern about the chilling effect of 4.415(d) on the plea 	<ul style="list-style-type: none"> To more accurately reflect the typical order of considerations during sentencing, the committee switched the order of subdivisions (a)(9)(C) and (a)(9)(D) of rule 4.411.5 (related to the content of probation reports) and subdivisions (b) and (c) of rule 4.415 (related to the factors for courts to consider during sentencing) so that the factors related to the denial of supervision appear <i>before</i> those related to the length and conditions of supervision. The committee considered but declined to delete subdivision (d) from rule 4.415.

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			<p>bargaining process. This proposed rule would require the court to state a reason for denying mandatory supervision even when the district attorney and defendant have stipulated to a sentence. The implication may be that even if there is a stipulated sentence, the court may decide to overrule the agreed upon terms. This may violate the holding in <i>People v. Clancey</i>, (2013) 56 Cal4th 562, by inserting the Court into the plea bargaining process, and possibly even modifying the agreed upon contract post-plea between the parties, in violation of <i>People v. Segura</i>, (2014) [2008] 44 Cal.4th 921, and <i>People v Superior Court, Sanchez</i> (2014) 223 Cal.App.4th 567. We would respectfully request that this section be deleted from the proposed rules of court.</p>	<p>Requiring a statement of reasons for a denial of mandatory supervision, even when the parties have negotiated a plea agreement, would not unduly insert the court into the plea bargaining process.</p> <p>Plea agreements do not divest courts of inherent sentencing discretion. Courts must ensure that all sentences are lawful and all plea agreements are subject to court approval before imposition. Under Penal Code section 1170(h)(5)(A), denials of supervision are prohibited unless “the court finds that, in the interests of justice, it is not appropriate <i>in a particular case.</i>” (Emphasis added.) Accordingly, lawful sentences under that section require the exercise of judicial discretion on a case-by-case basis, even when the parties have negotiated a plea agreement. A statement of reasons is necessary to demonstrate the lawfulness of the sentence, memorialize the basis for the exercise of judicial discretion, and aid appellate review.</p>
3.	California Public Defenders Association by Garrick Byers, President	AM	<p>The California Public Defenders Association (CPDA), composed of almost 4,000 public defenders, private attorneys, and investigators, the largest such association in California, respectfully submits the following comments.</p> <p>Overall. The Committee requested an overall comment on whether the proposal adequately addresses the stated purpose. CPDA believes</p>	

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			<p>that it does, but our comments suggest ways that the proposal can be improved and thus be more adequate.</p> <ul style="list-style-type: none"> Rule 4.411. subd. (d): Proposed sentence: “The reports are also used by courts in deciding whether probation is appropriate and whether a period of mandatory supervision should be denied in the interests of justice under section 1170(h).” <p>Change to read: “The reports are also used by court in deciding whether probation is appropriate, and if so, the length of any county jail term that is made a condition of probation. The reports are also used by the court in deciding the length of any period of mandatory supervision under section 1170(h), or if mandatory supervision should be denied in the interests of justice.”</p> <p><i>The reason for this comment:</i> Penal Code section 1170.3, subdivision (a)(5), as amended by AB 1468, effective January 1,2015, requires the Judicial Council to adopt rule that, inter alia, “... determine the appropriate period and conditions of mandatory supervision.”</p>	<ul style="list-style-type: none"> To ensure that rule 4.411(d) more accurately reflects all purposes of the presentence probation report, the committee added the following phrase: “The reports are also used by courts in deciding ... <u>the appropriate length and conditions of probation and mandatory supervision.</u>”

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			<p><u>Rule 4.111.5</u></p> <ul style="list-style-type: none"> Proposed renumbered Subdivision (a)(9)(E), currently begins “A discussion of the defendant’s ability to make restitution, pay any fine” <p>Add, after “A” and before “discussion,” the word “reasoned”.</p> <p><i>The reason for this comment:</i> Insertion of the word “reasoned” brings this rule in line with the many other rules that require not just a “discussion,” but a “reasoned discussion.”</p> <ul style="list-style-type: none"> The unnumbered paragraph two of that same subdivision, (a)(9)(E), currently begins “Discussion of factors affecting suitability for probation and affecting the sentence length must refer to any sentencing rule....” <p>Add, after the phrase “sentence length”, and before the phrase “must refer to any sentencing rule”, the phrase “or the length of mandatory supervision, or the denial of mandatory supervision in the interests of justice....”</p> <p>The beginning of that sentence would then read, “Discussion of factors affecting suitability for probation and affecting the sentence length, or the length of mandatory supervision, must</p>	<ul style="list-style-type: none"> For consistency as suggested, the committee added the word “reasoned” to rule 4.411.5(a)(9)(E). To ensure that probation report discussions of the newly added factors related to mandatory supervision include references to other sentencing rules as currently required for factors related to probation, the committee amended rule 4.411.5(a)(9) to expressly cross-reference the new subdivisions: “Discussions of factors (A) through (D) <u>affecting suitability for probation and affecting the sentence length</u> must refer to any sentencing rule directly relevant to the facts of the case...”

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			<p>refer to any sentencing rule”</p> <p><i>The reason for this comment:</i> Penal Code section 1170.3, subdivision (a)(5), as amended by AB 1468, effective January 1, 2015, requires the Judicial Council to adopt rule that, inter alia, “... determine the appropriate period and conditions of mandatory supervision.”</p> <ul style="list-style-type: none"> <p>Proposed new Rule 4.415 Add to Subdivision (b), new criteria, (11) and (12), and re-number presently proposed (11) to be (13). The new criteria would be:</p> <p>(11) The likely effect of extended imprisonment in the county jail on the defendant and his or her dependents.</p> <p>(12) The likely effect of extended imprisonment on the defendant's life.</p> <p><i>Reason for this comment</i> [:] These proposed new criteria parallel those of the Rule 4.414(b)(5) and (6), criteria affecting probation. Some sentence[s] under section 1170(h) can stretch to many years. In those cases, these are just as important as they are in considering probation instead of prison.</p> <p>Please feel free to contact me if you require further details regarding these comments.</p> 	<ul style="list-style-type: none"> <p>To include factors related to the effects of imprisonment on the defendant and any dependents, the committee added the following factors under rule 4.415(c)(9): “The likely effect of extended imprisonment on the defendant and any dependents.”</p>

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4.	Kenneth R. Carver Senior Research Attorney, Superior Court of Fresno County	AM	<p>In order to have sufficient information to make an intelligent sentencing decision as to what portion of a Penal Code section 1170, subdivision (h) sentence should be served on mandatory supervision, there must be some information provided by the probation department as to the minimal amount of time they require in order to provide the evidenced-based practices to those whom probation is tasked with supervising. This means some actual information to show that the time spent under probation’s supervision will have the greatest opportunity for success in achieving the stated goal of AB 109 to reduce recidivism as to that particular defendant. (Pen. Code, § 17.5.)</p> <p>For example, the Court has determined that a 16 month mitigated term for a county jail felony is the appropriate sentence. Defendant has time credits equaling two months, in effect reducing the sentence from 16 months to 14 months. Will probation be able to effectively deliver those evidenced-based practices if the court were simply to split this remaining balance at seven months each? Does probation need at least a 12 month period of mandatory supervision time in order to have some measure of success in, not only delivering those evidenced-based practices, but also having an impact on this particular defendant so as to reduce his or her risk of recidivism? Does probation need more time than 12 months? Without some definitive time period provided by probation, will the Court simply be wasting valuable resources on</p>	<p>To ensure that probation reports include information about the length and conditions of supervision that are necessary to promote successful reentry into the community upon release from custody, the committee amended rule 4.411.5(a)(9)(D) to require reports to include the factors under rule 4.415(c), which include: “Consideration of length and conditions of supervision to promote the successful reintegration of the defendant into the community upon release from custody.”</p>

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			splitting sentences, such as the foregoing example, where the mandatory supervision period is too short to have any chance of success with that particular defendant?	
5.	Chief Probation Officers of California by Chief Michael Daly, President	AM	<p>CPOC prepares this letter in response to the request for public comment on the proposed amendment to California Rules of Court 4.411, 4.411.5 and the adoption of rule 4.415. Both the proposed amended rules and the new rule arise out of AB 1468 (Chapter 26, Statutes of 2014) which was statutory action introduced by the Governor and supported by the CPOC for the purposes of increasing public safety in our communities and providing a platform for a more successful transition back after a period of incarceration in a county jail.</p> <p>Governor Brown stated in the release of the January Budget which contained the statutory change: "...Research shows that when a person is released from incarceration, a reentry plan with structured supervision and programs provides the best opportunity to lower recidivism rates... The use of split sentences is important for public safety and recidivism reduction so offenders have access to appropriate treatment services. Increased use of split sentences will also help relieve jail overcrowding..."</p> <p>We would urge the Council to adopt the rules to carry out the intent of the legislation which clearly sets forth the presumption that a term of</p>	

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			<p>mandatory supervision be made in Penal Code 1170(h) sentences. CPOC contends that the proposed rule should lay out guidance to courts as to when there are appropriate exceptions to that rule. When developing those exceptions, it is imperative that the exceptions are not so broad that they circumvent the purpose of putting a mandatory supervision term in place.</p> <ul style="list-style-type: none"> • <u>Proposed new rule 4.415</u> The proposal lays out criteria for the court to consider when determining the length and conditions of the mandatory supervision and criteria for when a court should deny mandatory supervision. Again, we stress it is important that the rule reinforce that the criteria for either of these decisions are separate and that it is not confused or used as criteria to decide if a mandatory supervision term should be imposed. The statute settles the question that mandatory supervision should be imposed, therefore the rules of court should be written to support that base concept and the criteria to avoid a mandatory supervision term should be limited in scope. • <u>4.415 (a) Presumption</u> We respectfully suggest that the following language be adopted. This version modifies the language in the current proposal. This is not a 	<ul style="list-style-type: none"> • Rule 4.415 sufficiently distinguishes between the factor related to denials of supervision and the factors related to the length and conditions of supervision. • Although the committee declined to modify the proposal precisely as suggested, to emphasize the limited scope of the statutory authority to deny supervision, the committee added the

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			<p>significant departure from the proposal but the suggested change provides clearer direction in light of our comments above.</p> <p><u>When imposing a county jail sentence under section 1170(h)(5), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision. There may be some circumstances where the court finds in the interest of justice, that mandatory supervision is not appropriate in a particular case. The circumstances are intended to be limited in application.</u></p> <p>This wording supports the legislative intent to put into place a presumption of mandatory supervision. A presumption by definition presumes the cases where it will not be used would be limited. CPOC supports the above language as it is aligned with the legislative intent behind the statutory change.</p> <p><u>4.415 (b) Criteria affecting conditions and length of mandatory supervision</u> The foundation of decisions made by a court in this section is based on two guiding factors, albeit not mutually exclusive, public safety and assisting the offender in their re-entry into the community. Supervision by probation affords the justice system public safety in the immediate</p>	<p>following sentence to rule 4.415(a): “Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.”</p>

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			<p>term by laying conditions to the offender. Supervision by probation also addresses public safety in the long term by crafting conditions to attempt to modify behavior to reduce recidivism. These principles guide our comments in this section. This section is critical as it outlines the pivotal role the courts play in shaping the eventual re-entry of the offenders back into communities. We suggest the following section be modified as follows:</p> <p><u>In selecting the appropriate period and conditions of mandatory supervision, factors that the court may consider include:</u></p> <ol style="list-style-type: none"> (1) <u>Appropriate community corrections programs for the specific offender;</u> (2) <u>Victim restitution;</u> (3) <u>Promotion of the successful reintegration of the defendant into the community;</u> (4) <u>Protection orders of any victims and witnesses;</u> (5) <u>Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole;</u> (6) <u>The balance of custody exposure after imposition of custody credits;</u> (7) <u>Consideration of the difference between accrual of custody credits for mandatory supervision under section 1170(h)(5)(B) and straight county jail terms under section 4019(a)(6);</u> (8) <u>The defendant's specific risk and needs</u> 	

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			<p><u>factors identified by any validated risk/needs assessments, if available;</u> (9) <u>Any other factors reasonably related to a sentencing decision</u></p> <p><i>Description of the changes to the proposed rule</i></p> <ul style="list-style-type: none"> • 1. We suggest eliminating the word “availability” in proposed criteria (1). The availability of programs is not the pertinent question; the identification of the appropriate type of programming for a specific offender is key. At the time of sentencing, not all information relating to the types of programs will be available upon release. When the offender is released from the incarcerated portion of the sentence, programming availability could be different from the time of sentencing. In addition, the availability of programs is often a funding question which is within the purview and responsibility of the Board of Supervisors and the Community Corrections Partnership. • 2. We suggest eliminating all of proposed criteria (6) relating to the defendant's suitability for treatment and supervision. First, it is duplicative of other criteria (past performance on supervision and the risk/needs assessment). Second, mandatory supervision is different from felony 	<ul style="list-style-type: none"> • The committee declined to amend this factor as suggested because the availability of treatment and supervision services at the time of sentencing is an important practical consideration when determining the terms and length of supervision. • The committee deleted this criteria as unnecessary and duplicative of the factor under rule 4.415(c)(5): “Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole.”

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			<p>probation. The statute presumes a period of mandatory supervision so the suitability of the defendant is irrelevant. Suitability is more a question about the appropriateness of a supervision term, such as the type of consideration made when making a felony probation grant. This section only speaks to setting the length of the term and the conditions.</p> <ul style="list-style-type: none"> • 3. We support proposed criteria (7) and (8) (or 6 and 7 in our changed proposal) above because it is important that the amount of time that the court has to maximize the principles of mandatory supervision, public safety and re-entry programming, is paramount in the decision on length and conditions. • 4. We suggest eliminating proposed criteria (9) as it is repetitive of other criteria. “Risk of re-offense” is part of the risk/needs assessment and by listing two similar criteria it could lead to confusion in its application. We also suggest adding if a risk/needs assessment <i>is available</i>. While most probation departments have moved to the use of these assessment tools, not all currently prepare these assessments at the time of sentencing or provide them to the courts. We suggest current practice be respected and add “availability” into this criteria. 	<ul style="list-style-type: none"> • No response required. • The committee deleted the factor related to the defendant’s level of risk of reoffense as duplicative of the factor related to risk/needs assessments. In addition, because risk/needs assessment information is not readily available to all courts, the committee revised that factor to reflect availability: “The defendant’s specific needs and risk factors identified by any a validated risk/needs assessments, <u>if available</u>.”

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			<ul style="list-style-type: none"> • <u>4.415 (c) Criteria for denying mandatory supervision in the interest of justice</u> CPOC strongly urges the Council to take the comments on this particular section into account when drafting the final rules. As previously stated, the legislative intent and reasonable contextual interpretation, supports presumption of mandatory supervision being the rule and the denial based on the interest of justice should be a limited exception to the rule. Exceptions to the rule should not be so numerous or broad so as to swallow the rule, thereby rendering the statute irrelevant. We suggest the following section be modified as follows: <u>In determining that mandatory supervision is not appropriate in the interests of justice, the court's determination must be based on factors that are specific to a particular case or defendant. Factors the court may consider include:</u> <ol style="list-style-type: none"> (1) <u>Consideration of the balance of custody exposure available after the imposition of custody credits;</u> (2) <u>The defendant's specific risk and needs factors identified by any validated risk/needs assessment, if available,</u> 	<ul style="list-style-type: none"> • To more accurately reflect the typical order of considerations during sentencing, the committee switched the order of subdivisions (a)(9)(C) and (a)(9)(D) of rule 4.411.5 (related to the content of probation reports) and subdivisions (b) and (c) of rule 4.415 (related to the factors for courts to consider during sentencing) so that the factors related to the denial of supervision appear <i>before</i> those related to the length and conditions of supervision. In addition, although the committee declined to modify the proposal precisely as suggested, to address concerns that the factors related to the court's decision to deny a period of mandatory supervision in the interests of justice are too broad and would frustrate the intent of the statutory presumption <i>against</i> denials of supervision, the committee modified proposed rule 4.415 in several ways. First, to emphasize the limited scope of the statutory authority to deny mandatory supervision, the committee added the following sentence to subdivision (a): "Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited."

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			<p><u>indicates the defendant's risk level is low and therefore will not benefit from supervision.</u></p> <p>Based on the contention that the denial of the presumption should be limited, we suggest eliminating many of the criteria currently proposed. The cases consistent with denying the presumption should be when the imposition of mandatory supervision cannot accomplish the goal of the presumption. Therefore, appropriate reasons to deny a mandatory supervision term could be found when there is insufficient time within the sentence to accomplish a supervision term (time served) to facilitate re-entry and protect the community; or the risk assessment would suggest supervision would be counter-productive. If we take the question in the inverse, would a straight jail term accomplish the goals better, it brings into focus the public safety concern. A straight jail term for a defendant that is higher risk does little to add to the long term public safety of the community if not coupled with a supervision term. A straight jail term simply means: 1) less jurisdictional exposure to the system because of custody credits; and 2) release directly into the community after potentially years of incarceration – without any</p>	<p>Second, to narrow the list of criteria for denying supervision under subdivision (b), the committee deleted the following two broad factors: “The likelihood that the defendant will be a danger to others if not imprisoned” and “Any other factor reasonably related to the court’s determination that mandatory supervision is not appropriate in the interests of justice.”</p> <p>Third, to underscore the importance of supervision in the successful reintegration of defendants into the community upon release from custody, the committee replaced the factors related to the nature of the case and the defendant’s suitability for supervision with the following under subdivision (b)(4), which encourages courts to consider whether those factors substantially outweigh the benefits of supervision: “Whether the nature, seriousness, or circumstances of the case or the defendant’s past performance on supervision substantially outweigh the benefits of supervision in promoting public safety and the defendant’s successful reentry into the community upon release from custody.”</p> <p>Lastly, in recognition that some defendants may <i>lack</i> the need for supervision upon release from custody,</p>

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			<p>supervision. It is for these reasons that run counter to public safety that the Governor proposed the presumption for mandatory supervision, the Legislature passed it, and CPOC supported it.</p> <ul style="list-style-type: none"> • <u>4.415 (d) Statement of reasons for denial of mandatory supervision</u> We support section (d) as drafted. CPOC agrees this addition is consistent with the enforcement of a presumption and further supports the intent to have the court weigh in on the composition of the mandatory supervision term. • <u>Proposed Amendments to Rule 4.411 and 4.411.5</u> CPOC asks the Council to consider making two changes to the proposed amendments. Current law allows for the waiver of presentence reports (Penal Code 1203(b)(4)). Many courts have established their own local procedures. CPOC urges recognition that nothing in this amendment changes those local procedures. If the Council incorporates this requested change, it will help alleviate the fiscal concerns raised by several counties. Without that clarification, the fiscal burden on many of the probation departments are currently unquantified but identified as significant. 	<p>the committee added the following factor under subdivision (b)(3): “Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody.”</p> <ul style="list-style-type: none"> • No response required. • The committee considered but declined as unnecessary any additional amendments to address waivers of reports. Courts have long retained statutory authority to allow waivers of probation reports. This recommendation is designed to apply existing requirements for probation reports, including longstanding waiver authority, to reports related to terms of imprisonment under section 1170(h). NOTE: The “unusual circumstances” limitation on court waivers of reports is a longstanding component of the current rule and <i>not</i> being added by this proposal. Accordingly, the committee believes that the proposal will not impair courts from continuing appropriate waiver practices.

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			<p>CPOC would also point out that the new amendments call for any available risk/needs assessment information to be included in the presentence report. As stated earlier, most probation departments currently use risk/needs assessments but at different stages of our interaction with an offender. However, it is important to note that while a risk assessment may be available at the time a presentence report is prepared, there may be many cases where a needs assessment has not yet been administered.</p> <p>This could be for a variety of reasons, but many times it is due to the fact that the court officer is not the one preparing the needs assessment that helps build the case plan for supervision. When possible, the probation officer supervising the offender will administer the needs assessment which then helps him or her establish protocols/objectives for the offender’s supervision. The inclusion of the term “any available” may be broad enough to take this situation into account, but we felt it was important to point this out in case there were clarifying advisory notes needed.</p> <p>We appreciate the opportunity to offer</p>	<p>In addition, because risk/needs assessment information is not readily available in all courts, rule 4.411.5(a)(8) only requires that information when “available.”</p>

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			comments and request your consideration of our feedback and suggested revisions.	
6.	Michael C. McMahon Chief Deputy Public Defender County of Ventura	A	The proposal is fine. California has self-inflicted much damage by incarcerating too many people for too long for non-violent, non-serious offenses. However, we must also realize that we have also self-inflicted very similar damage by maintaining too many people for too long on formal supervision. As we transition to an era of more split-sentences and more people on mandatory supervision, it is important to remind ourselves that not everyone benefits from formal supervision, nor does formal supervision always promote public safety. The evidence strongly suggests that low-risk offenders often fare better when they get into and out of the criminal justice system more quickly. Replacing prolonged incarcerations with prolonged supervision may prove to be a false economy and an unsustainable and inefficient means of promoting reintegration and reducing recidivism. If a low risk offender has stable community ties, prospects for employment, and dependents to support, California would be better served by imposing a brief, but appropriate punishment and letting that person’s life get back to normal rather than mandating lengthy supervision programs (formal probation or mandatory supervision) crowded with other criminals. If we don’t become more selective about who we supervise and for how long, we will soon regret it.	In recognition that some defendants may <i>lack</i> the need for supervision upon release from custody, the committee added the following factor under rule 4.415(b)(3) for courts to consider when deciding whether to deny supervision: “Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody.”

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7.	Office of the Primary Public Defender of San Diego County by Marian Gaston	AM	<p>The Office of the Primary Public Defender of San Diego County respectfully joins in the suggested text modifications proposed by the Office of the San Diego District Attorney.</p> <p>We emphasize the concern articulated regarding the chilling effect of 4.415(d) on the plea bargaining process. This proposed rule would require the court to state a reason for denying mandatory supervision even when the district attorney and defendant have stipulated to a sentence. The implication may be that even if there is a stipulated sentence, the court may decide to overrule the agreed upon terms. This may violate the holding in <i>People v. Clancey</i>, (2013) 56 Cal4th 562, by inserting the Court into the plea bargaining process, and possibly even modifying the agreed upon contract post-plea between the parties, in violation of <i>People v. Segura</i>, (2014) 44 Cal.4th 921, and <i>People v Superior Court, Sanchez</i> (2014) 223 Cal.App.4th 567. We would respectfully request that this section be deleted from the proposed rules of court.</p>	<p>The committee considered but declined to delete subdivision (d) from rule 4.415. Requiring a statement of reasons for a denial of mandatory supervision, even when the parties have negotiated a plea agreement, would not unduly insert the court into the plea bargaining process.</p> <p>Plea agreements do not divest courts of inherent sentencing discretion. Courts must ensure that all sentences are lawful and all plea agreements are subject to court approval before imposition. Under Penal Code section 1170(h)(5)(A), denials of supervision are prohibited unless “the court finds that, in the interests of justice, it is not appropriate <i>in a particular case.</i>” (Emphasis added.) Accordingly, lawful sentences under that section require the exercise of judicial discretion on a case-by-case basis, even when the parties have negotiated a plea agreement. A statement of reasons is necessary to demonstrate the lawfulness of the sentence, memorialize the basis for the exercise of judicial discretion, and aid appellate review.</p>
8.	San Diego District Attorney’s Office by David Greenberg, Chief Deputy District Attorney	AM	<p>The proposed rules of court go a long way in addressing the issue of presumptive mandatory supervision as required by newly amended Penal Code 1170.3; however, there a few modifications that could make them stronger as a whole.</p> <ul style="list-style-type: none"> • First, replace all references to “a sentence in county jail” with the 	<ul style="list-style-type: none"> • To more accurately track the language of Penal Code section 1170(h), the

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			<p>language used in Penal Code section 1170(h), “a term of imprisonment in county jail.” This makes it clearer that a sentence imposed pursuant to Penal Code section 1170(h) is indeed a prison term, including any portion of mandatory supervision. This will ensure there is no confusion for anyone interpreting and applying these rules, as a sentence in county jail can also be ordered when a defendant is not granted probation on a misdemeanor and instead is ordered to complete a term of custody in county jail. Additionally, the proposed rules use multiple descriptors of a term in county jail, and only one should be applied throughout the rules in order to achieve the highest degree of consistency.</p> <ul style="list-style-type: none"> Secondly, the issue of whether to deny or grant mandatory supervision should be addressed <i>prior</i> to a discussion of the terms, length and conditions of mandatory supervision. As noted in Penal Code section 1170.3(b), the Judicial Council was directed to adopt rules “standardizing the minimum content and <i>sequential</i> presentation of material in probation officer reports. . .” Thus, in order to sequentially address the issues of the imposition of a period of mandatory supervision, before there is a discussion of what the terms and 	<p>committee agreed to revise references to a county jail sentence under that section as “a term of imprisonment in county jail under section 1170(h).”</p> <ul style="list-style-type: none"> To more accurately reflect the typical order of considerations during sentencing, the committee switched the order of subdivisions (a)(9)(C) and (a)(9)(D) of rule 4.411.5 (related to the content of probation reports) and subdivisions (b) and (c) of rule 4.415 (related to the factors for courts to consider during sentencing) so that the factors related to the denial of supervision appear <i>before</i> those related to the length and conditions of supervision.

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			<p>conditions of mandatory supervision will be, it should be determined whether a defendant will be granted mandatory supervision. Once the Court has decided to grant a period of mandatory supervision, only then should the terms, length and conditions be addressed. Therefore, please consider switching the order of Proposed Rule of Court 411.5 Subsection (a)(9)(C) and (a)(9)(D), as well as modifying the order of Proposed Rule of Court 4.415 subsection (b) and subsection (c).</p> <p>The criteria affecting the conditions and length of mandatory supervision provide the court with a good measure of guidance to weigh a variety of factors. However, please consider adding the following items to give the court and parties more guidance.</p> <ul style="list-style-type: none"> • Defendant will benefit from a time of transition. • Prior intervention services. Did Defendant receive any intervention services, and if so, were they sufficient to address the risk and needs? 	<ul style="list-style-type: none"> • The committee declined the suggestion because the following factors in rule 4.415(c)(3) and (c)(5) sufficiently encompass the underlying considerations: <ul style="list-style-type: none"> ○ “Consideration of length and conditions of supervision to promote the successful reintegration of the defendant into the community upon release from custody” (Rule 4.415(c)(3)); and ○ “Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole. (Rule 4.415(c)(5).)”

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9.	Barton Sheela San Diego, CA	N	I am a public defender. My clients are indigent. When a probation report is ordered in a felony case, the Court charges my client over \$1000.00 for the report, and my clients are already responsible for paying fines and other fees. To REQUIRE a probation report in all cases, even when none is needed, will saddle my clients with horrendous fiscal responsibilities and serve no one.	The committee considered but declined as unnecessary any additional amendments to address waivers of reports. Courts have long retained statutory authority to allow waivers of probation reports. This recommendation is designed to apply existing requirements for probation reports, including longstanding waiver authority, to reports related to terms of imprisonment under section 1170(h).
10.	State of California, Department of Justice by Julie L. Garland, Acting Chief Assistant Attorney General, Division of Criminal Law	AM	<p>In response to the Invitation to Comment SP14-08, the Office of the Attorney General offers the following five changes to the proposed amended new rules of court, Rules 4.411, 4.411.5, and 4.415.</p> <p>I. The Need For Consistent Terminology Accurately Reflecting Sentencing Under Realignment</p> <p>The proposed rules use the following terminology to describe sentences and terms of imprisonment when an offender is sentenced to a Penal Code section 1170(h)(5) commitment:</p> <ul style="list-style-type: none"> - a county jail sentence under section 1170(h) - term of imprisonment in a county jail under section 1170(h) - a sentence in county jail under section 1170(h) - a county jail term under section 1170(h) 	<ul style="list-style-type: none"> • To more accurately track the language of Penal Code section 1170(h), the committee replaced references to a county jail sentence with the phrase “a term of imprisonment in county jail under section 1170(h)” and specified references to subdivision (h)(5) as appropriate.

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			<ul style="list-style-type: none"> - a county jail sentence under section 1170(h)(5) - straight county jail terms - term of imprisonment imposed by the court - county jail terms under Penal Code section 1170(h)(5)(B) <p>(See attachment A [highlighting instances of the use of differing terminology in the proposed rules].)</p> <p>Using these terms interchangeably is confusing and potentially inaccurate. The terms, as used, could be misunderstood in certain contexts. To promote the use of consistent and accurate terminology throughout the Rules and Comments, it would be helpful to have a definition of terms.</p> <p>Existing provisions offer guidance in identifying terminology that can be used consistently through these Rules. Section 1170(h)(1) provides:</p> <p>(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by <u>a term of imprisonment</u> in a county jail for 16 months, or two or three years.</p> <p>Similarly, section 1170(h)(2) provides:</p>	

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			<p>(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by <u>imprisonment in a county jail</u> for the <u>term</u> described in the underlying offense.</p> <p>This means that an offender is sentenced to <u>imprisonment in a county jail</u> for the <u>term</u> prescribed under the Determinate Sentencing Act. Thus, whenever the Rules are referring to imprisonment in the context of determinate sentencing—i.e., selecting a term from the applicable triad—an appropriate reference would be “<u>imprisonment in a county jail under section 1170(h).</u>”</p> <p>Different terminology is required for consideration of section 1170(h)(5) custody. Once an aggregate term is calculated, the defendant will be ordered to serve that sentence as either a straight term or a split term with an initial portion of the defendant’s sentenced term to be served in jail custody. Discretionary decisions as to how a term is to be apportioned pertain to “<u>a sentence to be served in a county jail under section 1170(h)(5).</u>” They do not affect determinate sentencing choices.</p> <p>This distinction is important to differentiate the existing directive to the courts to exercise discretion in selecting the term of “imprisonment in a county jail under section</p>	

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			<p>1170(h)” and the new directive to exercise discretion in determining how that term is to be divided between custody to be served in county jail and mandatory supervision. To illustrate this point, Attachment B utilizes the suggested new consistent terminology.</p> <ul style="list-style-type: none"> • Additionally, a definition of terms in the Advisory Committee Comment and, perhaps, in Rule 4.405 would assure that the correct terminology is being used and understood. (Note that Rule 4.405(8) defining “imprisonment” as confinement in a state prison appears to be inaccurate in light of Realignment.) <p>II. Rule 4.415(d) Is Inconsistent with Existing Case Authority</p> <p>To the extent that proposed Rule 4.415(d) provides, “Notwithstanding rule 4.412(a),” it is contrary to controlling case law.</p> <p>California Rules of Court, rule 4.412(a) provides:</p> <p>It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting attorney has not expressed an objection to it. The agreement and lack of objection must be recited on the record. This section</p>	<ul style="list-style-type: none"> • The committee is separately developing an omnibus rule proposal to update all criminal law rules of court, including new definitions for key aspects of criminal justice realignment. • The committee considered but declined to delete subdivision (d) from rule 4.415. The premise that courts need not state reasons for certain sentencing decisions when agreed upon by the parties derives from rule 4.412 and its predecessor, rule 440. Accordingly, the phrase “notwithstanding rule 4.412(a)” adequately exempts rule 4.415(d) from the exception for stating reasons under rule 4.412(a)

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			<p>does not authorize a sentence that is not otherwise authorized by law.</p> <p>Rule 4.412(a) is consistent with well-established case law that a trial court need not state reasons for imposing a sentence pursuant to a negotiated plea. (<i>People v. Slaughter</i> (1987) 194 Cal.App.3d 95, 97-98 [“Under these circumstances, the court need not give any other reason than to state that the disposition is pursuant to the negotiated agreement.”]; <i>People v. Quijada</i> (1984) 156 Cal.App.3d 789, 791 [A court may recite the plea bargain as its reason for the imposition of sentence.]; <i>People v. Witherow</i> (1983) 142 Cal.App.3d 485, 488 [“In sentencing a defendant to an upper term pursuant to a plea bargain ‘the court, in stating its reasons for that sentence choice, need only give the bargain as its reason and need not give any other reason.’”].) By requiring that a court give reasons for denying mandatory supervision in the interests of justice when the sentence is imposed pursuant to a plea agreement, i.e., “notwithstanding Rule 4.412(a),” the proposed rule 4.415(d) is contrary to controlling authority.</p> <p>III. Rule 4.415(c)(5) is Inconsistent with Rule 4.415(b)(5)</p> <p>Proposed Rule 4.415(b)(5) identifies as a consideration for deciding the length of mandatory supervision the defendant’s “<i>past performance and present status</i> on probation,</p>	<ul style="list-style-type: none"> The committee amended rule 4.415(b)(4) to add “past performance on supervision” as a factor for courts to consider when deciding whether to deny supervision. In addition, to underscore the importance of supervision in the successful reintegration of defendants into the community upon

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			<p>mandatory supervision, postrelease community supervision, and parole.” The parallel provision under proposed Rule 4.415(c)(5), identifying criteria for denying mandatory supervision in the interest of justice, provides that the court may consider “The defendant’s <i>present status</i> on probation, mandatory supervision, postrelease community supervision, and parole.” The inadvertent omission of “past performance” from the parallel provision in (c)(5) suggests that courts should not consider the defendant’s past performance n supervision even if relevant to determining whether to deny mandatory supervision. Consequently, to maintain proper consistency between the two provisions, Rule 4.415(c)(5) should be amended to provide:</p> <p>(5) The defendant’s <i>past performance and present status</i> on probation, mandatory supervision, postrelease community supervision, and parole.</p> <p>IV. Rule 4.415(b) Criteria Should be Revised to Clarify Paragraphs 7 and 8</p> <p>Paragraph 7 applies to presentence custody credit, and paragraph 8 applies to post-sentence time credits. Paragraph 8 need not include a reference to the “difference between the statutory accrual of credits” because those credits are calculated using static formulae and they apply to all offenders serving a sentence in county jail under section</p>	<p>release from custody, that factor also encourages courts to consider whether past performance substantially outweighs the benefits of supervision: “Whether the nature, seriousness, or circumstances of the case or the defendant’s past performance on supervision substantially outweigh the benefits of supervision in promoting public safety and successful reentry into the community upon release from custody.”</p> <ul style="list-style-type: none"> To more accurately reflect the typical order of considerations during sentencing, the committee switched the factors listed in subdivisions (b) and (c) of rule 4.415 so that the factors related to the denial of supervision appear <i>before</i> the factors related to the length and conditions of supervision. In addition, to clarify the distinction between presentence and post-sentence custody credits, the committee amended subdivisions (c)(6) and (c)(7) as

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			<p>1170(h)(5). The following modifications would provide clarification:</p> <p>(7) The balance of custody exposure after imposition of <i>presentence</i> custody credits</p> <p>(8) Consideration of the statutory accrual of <i>post-sentence</i> custody credits for mandatory supervision under section 1170(h)(5)(B) and a sentence to be served in a county jail under section 4019(a)(6)</p> <p>V. Proposed Minor Revision - Page 1, Lines 40-42</p> <p>The first Advisory Comment provides:</p> <p>Section 1203 requires a presentence report in every felony case in which the defendant is eligible for probation. Subdivision (a) also requires a presentence report in every felony case in which the defendant is <i>eligible for</i> a county jail sentence under section 1170(h).</p> <p>The term “eligible for” should be replaced with “subject to.” “Eligible” implies that this is a beneficial option. It is not: it is a term of imprisonment mandated under Realignment. Whereas probation is a grant of leniency and an offender would be considered “eligible” for</p>	<p>suggested.</p> <ul style="list-style-type: none"> The committee declined the suggestion as unnecessary.

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			<p>a grant of probation, the same is not true for section 1170(h)(5) offenders. Section 1170(h)(5) offenders receive a county jail sentence by operation of law.</p> <p>Thank you for your consideration. If you have any questions about this matter or would like to discuss it, please feel free to contact me at (619) 645-2604 or Deputy Attorney General Doris Calandra at (916) 324-5250.</p>	
11.	Superior Court of Los Angeles County by Janet Garcia, Court Manager	A	No comments submitted.	No response required.
12.	Superior Court of Orange County by Anabel Romero, Unit Manager, Criminal Operations	AM	<p>Would the proposal provide cost savings?</p> <p>No.</p> <p>What would the implementation requirements be for courts?</p> <p>The implementation efforts would include staff educational training. In Orange County bench officers would receive legislative updates to PC 1170(h)(5) regarding the supervisory period, and informed of the updated Rules of Court related to this process. An informational component will be disseminated for courtroom staff regarding requirements for minutes where the supervisory period is denied. Some Case Management System changes may be required for purposes of minute entries.</p>	<ul style="list-style-type: none"> • No response required. • No response required.

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			<p>How well would this proposal work in courts of different sizes?</p> <p>The proposal should generally work well in all courts. However, courts could experience an increase in hearings as a result of the emphasized requirement for courts to order probation reports whenever a defendant is eligible for county jail sentence under 1170(h)(5). Depending on the ability of each county’s probation department to expeditiously produce such reports, this could cause additional hearings and increase in workloads.</p> <p>The historical culture in Orange County has been to routinely waive pre-sentence reports, particularly with a negotiated plea, adding this piece would increase work substantially for Probation and the Court, with an unknown value.</p> <p>The proposed amendment to CRC 4.411(a), which mandates a pre-sentence report in all 1170(h) cases with no waiver “except in unusual circumstances,” could cause;</p> <ol style="list-style-type: none"> 1.substantial delays in the resolution of cases, 2.substantial increase in jury trials, and 3.substantial increase in already sparse judicial resources <p>“(The) reality that criminal justice today is for the most part a system of pleas, not a system of</p>	<ul style="list-style-type: none"> • The committee considered but declined as unnecessary any additional amendments to address waivers of reports. Courts have long retained statutory authority to allow waivers of probation reports. This recommendation is designed to apply existing requirements for probation reports, including longstanding waiver authority, to reports related to terms of imprisonment under section 1170(h). NOTE: The “unusual circumstances” limitation on court waivers of reports is a longstanding component of the current rule and <i>not</i> being added by this proposal. Accordingly, the committee believes that the proposal will not impair courts from continuing appropriate waiver practices.

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			<p>trials. Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas...the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences". Lafler v. Cooper (2012) 132 S. Ct. 1376, 1388</p> <p>In 2013, our Court received felony filings of about 17,500 defendants. About 350 of these cases were resolved by a jury trial. An extremely small number were dismissed. The rest, over 95%, were resolved by plea. Many of these were the felonies per 1170(h) and many are resolved by an agreement by the DA and the defendant on the day of trial. Most of these pleas are accepted by the Court and the defendants are sentenced immediately. The above quote from Justice Stevens most definitely applies to Orange County.</p> <p>A pre-sentence report generally takes 2-4 weeks to prepare. What is the cost/benefit of such a report? The approximate cost to the taxpayer is about \$1000. What is the benefit? To give the judge more information to modify the sentence agreed upon? If this were to happen, the defendant has the right to withdraw his or her plea per section 1192.5 of the Penal Code if he or she does not accept the modification and the case is set for trial. This benefit is not worth the cost nor the risk of unraveling a negotiated plea. Without these negotiated pleas, substantially</p>	

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Criminal Justice Realignment: Imposition of Mandatory Supervision (*amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415*)

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

	Commentator	Position	Comment	Committee Response
			<p>more cases will go to trial without more courtrooms to try them.</p> <p>It is highly recommended that the proposed modification to CRC 4.411 requiring a presentence report on all 1170(h) cases were the parties have waived such a report should be withdrawn.</p> <p>Rule 4.411 Presentence investigation and reports</p> <ul style="list-style-type: none"> • (a)Eligible defendants – we recommend the following language be added to the existing language: <p style="margin-left: 40px;">Waivers of the presentence report should not be accepted except in unusual circumstances and the reason should be noted on the court record</p> • We also recommend 1170(h) as referenced in this rule be further clarified by adding delineating words such as “terminal sentence” and “mandatory supervision” sentence • (b)Ineligible defendants Same as in section (a) – we recommend 1170(h) as referenced in this rule be further clarified by adding "terminal sentence" and "mandatory supervision" 	<ul style="list-style-type: none"> • Please see above related response. • The committee declines the suggestion as unnecessary. • The committee declines the suggestion as unnecessary.

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Criminal Justice Realignment: Imposition of Mandatory Supervision (*amend Cal. Rules of Court, rules 4.411, 4.411.5; adopt rule 4.415*)

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

	Commentator	Position	Comment	Committee Response
			<p>Rule 4.411.5. Probation officer’s presentence investigation report</p> <ul style="list-style-type: none"> • (b) Format - we recommend the following be added to this section: <p>The report may be filed as eDelivery or eFiling and must include the digital signature or e-signature of person preparing the report.</p>	<ul style="list-style-type: none"> • The committee declines the suggestion as beyond the scope of the proposal but will consider ways to promote electronic filing during future meetings.
13.	Superior Court of San Diego County by Michael M. Roddy, Court Executive Officer	AM	1) Our court is confused by Rule 4.415(b)(7) and (8): what do these sections mean? Our court would like a little more guidance on what it is intended for the court to consider and why?	<ul style="list-style-type: none"> • The committee switched the order of subdivisions (b) and (c) of rule 4.415 as noted above. The committee also amended the factors related to custody credits in subdivisions (c)(6) and (c)(7) to distinguish between <i>presentence</i> and <i>post-sentence</i> custody credits. In addition, the advisory committee comment includes the following additional information: <p>“Under Penal Code section 1170(h)(5)(B), defendants serving a period of mandatory supervision are entitled to day-for-day credits: ‘During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.’ In contrast, defendants serving terms of imprisonment in county jails under Penal Code section 1170(h)(5)(B) are entitled to</p>

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

	Commentator	Position	Comment	Committee Response
			<p>2) Can the court consider that a defendant does not want mandatory supervision?</p> <p>3) With regard to Rule 4.415, switch the order of paragraphs (b) and (c) because current (c) would come first in the process. (Same for rule 4.411.5(a)(9)(C) and (D).)</p> <p>4) Our court’s final comment relates to CRC 4.415(b)(2). We do not understand what the court is supposed to be considering with regard to victim restitution in deciding how long and under what conditions the defendant should be released on mandatory supervision. Is it that the defendant is better able to pay if on mandatory supervision, so if there is victim restitution owed, the mandatory supervision period should be longer? Is it that the court should make payment of victim restitution a condition of mandatory supervision? (This is confusing for a couple of reasons: (1) it was already ordered as part of the sentence, so that order would continue thru the period of mandatory supervision, and (2) why would payment of that differ from the orders to pay all the other fines and fees?) Clarification would be helpful.</p>	<p>enhanced conduct credits under Penal Code section 4019(a)(6).”</p> <ul style="list-style-type: none"> • The lists of criteria in rule 4.415 are not exhaustive. • As noted above, the committee switched these two subdivisions as suggested. • Distribution of victim restitution has the highest prioritization under the California Constitution. The committee believes that the collection of victim restitution is an important consideration when deciding the length and terms of supervision. To clarify the underlying purpose of the factor, the committee amended rule 4.415(c)(2) as follows: “Victim restitution, <u>including any conditions or period of supervision necessary to promote the collection of any court-ordered restitution.</u>”

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

	Commentator	Position	Comment	Committee Response
14.	Sutter County Probation Department by Donna Garcia, Deputy Chief Probation Officer	AM	<ul style="list-style-type: none"> “Advisory Committee Comment Section 1203 requires a presentence report in every felony case in which the defendant is eligible for probation. Subdivision (a) also requires a presentence report in every felony case in which the defendant is eligible for a county jail sentence under section 1170(h). Because such a probation investigation and report are valuable to the judge and to the jail and prison authorities, waivers of the report and requests for immediate sentencing are discouraged, even when the defendant and counsel have agreed to a prison or county jail sentence under section 1170(h). Notwithstanding a defendant's statutory ineligibility for probation or county jail sentence under section 1170(h), a presentence investigation and report should be ordered to assist the court in deciding the appropriate sentence and to facilitate compliance with section 1203c.” <p>Comments with regard to the Advisory Committee Comment above are as follows:</p> <p>It would seem appropriate to include 1170(h) sentencing criteria (Rule 4.415) in the presentence report, however, if the defendant is eligible for, or found to be an unusual case for, probation and is</p>	<p>Rule 4.411(c) requires courts to order supplemental reports for sentencing proceedings that occur a “significant period of time after the original report was prepared.” The committee considered but declined as unnecessary any additional amendments to address waivers of reports. Courts have long retained statutory authority to allow waivers of probation reports. This recommendation is designed to apply existing requirements for probation reports, including longstanding waiver authority, to reports related to terms of imprisonment under section 1170(h). NOTE: The “unusual circumstances” limitation on court waivers of reports is a longstanding component of the current rule and <i>not</i> being added by this proposal. Accordingly, the committee believes that the proposal will not impair courts from continuing appropriate waiver practices.</p>

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

	Commentator	Position	Comment	Committee Response
			<p>granted such, if a substantial period of time passes before a violation of probation occurs, and the defendant is then pending a possible sentence under 1170(h), his or her entire situation could be dramatically different than it was at the time the original presentence investigation and report were prepared. It would then seem logical for the Court to request a supplemental report. This would most assuredly increase the number of referrals to the probation department for supplemental reports, especially for my department. In most cases, when an offender violates probation, a supplemental report is waived and the defendant is sentenced outright.</p> <p>Also, the requirement for Rule 4.415 to be included in presentence reports would likely result in an increased number of referrals to probation for reports as a good number of reports are waived if the defendant takes a plea to a stipulated prison or 1170(h) sentence in my county.</p> <ul style="list-style-type: none"> Another question to consider if Rule 4.415 is included in the presentence report relates to the discussion of suitability for mandatory supervision and the length of the term prescribed. If the defendant is eligible for probation 	<ul style="list-style-type: none"> The committee amended rule 4.411.5(a)(9)(D) as follows to require discussions of the factors in rule 4.415(c) whenever a term of imprisonment in county jail under section 1170(h) is recommended: “If a term of imprisonment

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

	Commentator	Position	Comment	Committee Response
			<p>and such is being recommended by the probation department, would the presentence report still then need to include a discussion of the split sentence. It would seem that the criteria discussed in Rule 4.415 would not apply in the event that probation is the appropriate disposition. This would seem to be simply answered by indicating that if the defendant is believed to be ineligible for probation that the rule be included, but many times defendants enter conditional pleas or are found to be “unusual cases” and are granted probation. Conversely, at times during the pretrial process a defendant is believed to be eligible for probation and is discovered later to be presumptively or mandatorily ineligible. Thus, with so many variables, it would be difficult to know when to include Rule 4.415 in the report.</p> <ul style="list-style-type: none"> On another note, currently only the static risk score is included in our presentence reports. The investigators in this unit do not conduct the needs assessment presentence. That assessment is done by supervision officers. The interview, and subsequent reporting of that information into the assessment tool, takes a considerable amount of time that the investigations unit does not have due to workload 	<p>in county jail under section 1170(h) is recommended, a reasoned discussion of the defendant’s suitability for specific terms and length of period of mandatory supervision, <u>including the factors prescribed by rule 4.415(c).</u>”</p> <ul style="list-style-type: none"> Because risk/needs assessment information is not readily available to all courts, that factor has been revised to reflect availability: “The defendant’s specific needs and risk factors identified by <u>a validated risk/needs assessment, if available.</u>”

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

	Commentator	Position	Comment	Committee Response
			<p>issues.</p> <ul style="list-style-type: none">As far as the content and language of Rule 4.415, I have no comments other than both appear to be appropriate and address the issues raised by my staff concerning criteria they would like to have available to them when making recommendations for mandatory supervision. <p>Thank you for opportunity to comment.</p>	<ul style="list-style-type: none">No response required.

ATTACHMENT A

1 Rules 4.411 and 4.411.5 of the California Rules of Court would be amended, and rule
2 4.415 would be adopted, effective January 1, 2015, to read:

3
4
5 **Rule 4.411. Presentence investigations and reports**

6
7 **(a) Eligible defendant**

8
9 If the defendant is eligible for probation or county jail sentence under section
10 1170(h), the court must refer the matter to the probation officer for a presentence
11 investigation and report. Waivers of the presentence report should not be accepted
12 except in unusual circumstances.

13
14 **(b) Ineligible defendant**

15
16 Even if the defendant is not eligible for probation or county jail sentence under
17 section 1170(h), the court should refer the matter to the probation officer for a
18 presentence investigation and report.

19
20 **(c) Supplemental reports**

21
22 The court must order a supplemental probation officer's report in preparation for
23 sentencing proceedings that occur a significant period of time after the original
24 report was prepared.

25
26 **(d) Purpose of presentence investigation report**

27
28 Probation officers' reports are used by judges in determining the appropriate term
29 of imprisonment in length of a prison or county jail sentence under section 1170(h)
30 and by the Department of Corrections and Rehabilitation, Division of Adult
31 Operations in deciding on the type of facility and program in which to place a
32 defendant. The reports are also used by courts in deciding whether probation
33 is appropriate and whether a period of mandatory supervision should be denied in
34 the interests of justice under section 1170(h). Section 1203c requires a probation
35 officer's report on every person sentenced to prison; ordering the report before
36 sentencing in probation-ineligible cases will help ensure a well-prepared report.

37
38 **Advisory Committee Comment**

39
40 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
41 for probation. Subdivision (a) also requires a presentence report in every felony case in which the
42 defendant is eligible for a county jail sentence under section 1170(h). Because such a probation
43 investigation and report are valuable to the judge and to the jail and prison authorities, waivers of

1 the report and requests for immediate sentencing are discouraged, even when the defendant and
2 counsel have agreed to a prison or county jail sentence under section 1170(h).

3 Notwithstanding a defendant's statutory ineligibility for probation or county jail sentence under
4 section 1170(h), a presentence investigation and report should be ordered to assist the court in
5 deciding the appropriate sentence and to facilitate compliance with section 1203c.
6

7 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.
8

9 Subdivision (c) is based on case law that generally requires a supplemental report if the defendant
10 is to be resentenced a significant time after the original sentencing, as, for example, after a
11 remand by an appellate court, or after the apprehension of a defendant who failed to appear at
12 sentencing. The rule is not intended to expand on the requirements of those cases.
13

14 The rule does not require a new investigation and report if a recent report is available and can be
15 incorporated by reference and there is no indication of changed circumstances. This is particularly
16 true if a report is needed only for the Department of Corrections and Rehabilitation because the
17 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
18 another case in the same or another jurisdiction within the preceeding [sic] six months, during
19 which time the defendant was in custody, and that report is available to the Department of
20 Corrections and Rehabilitation, it is unlikely that a new investigation is needed.
21

22

23 **Rule 4.411.5. Probation officer's presentence investigation report**

24

25 **(a) Contents**

26

27 A probation officer's presentence investigation report in a felony case must include
28 at least the following:

29

30 (1) A face sheet showing at least:

31

32 (A) The defendant's name and other identifying data;

33

34 (B) The case number;

35

36 (C) The crime of which the defendant was convicted;

37

38 (D) The date of commission of the crime, the date of conviction, and any
39 other dates relevant to sentencing;

40

41 (E) The defendant's custody status; and

42

43 (F) The terms of any agreement on which a plea of guilty was based.

- 1 (2) The facts and circumstances of the crime and the defendant's arrest, including
2 information concerning any co-defendants and the status or disposition of
3 their cases. The source of all such information must be stated.
4
- 5 (3) A summary of the defendant's record of prior criminal conduct, including
6 convictions as an adult and sustained petitions in juvenile delinquency
7 proceedings. Records of an arrest or charge not leading to a conviction or the
8 sustaining of a petition may not be included unless supported by facts
9 concerning the arrest or charge.
10
- 11 (4) Any statement made by the defendant to the probation officer, or a summary
12 thereof, including the defendant's account of the circumstances of the crime.
13
- 14 (5) Information concerning the victim of the crime, including:
15
16 (A) The victim's statement or a summary thereof, if available;
17
18 (B) The amount of the victim's loss, and whether or not it is covered by
19 insurance; and
20
21 (C) Any information required by law.
22
- 23 (6) Any relevant facts concerning the defendant's social history, including those
24 categories enumerated in section 1203.10, organized under appropriate
25 subheadings, including, whenever applicable, "Family," "Education,"
26 "Employment and income," "Military," "Medical/psychological," "Record of
27 substance abuse or lack thereof," and any other relevant subheadings.
28
- 29 (7) Collateral information, including written statements from:
30
31 (A) Official sources such as defense and prosecuting attorneys, police
32 (subsequent to any police reports used to summarize the crime),
33 probation and parole officers who have had prior experience with the
34 defendant, and correctional personnel who observed the defendant's
35 behavior during any period of presentence incarceration; and
36
37 (B) Interested persons, including family members and others who have
38 written letters concerning the defendant.
39
- 40 (8) Any available, reliable risk/needs assessment information.
41
- 42 ~~(8)~~ (9) An evaluation of factors relating to disposition. This section must include:
43

1 (A) A reasoned discussion of the defendant's suitability and eligibility for
2 probation, and, if probation is recommended, a proposed plan including
3 recommendation for the conditions of probation and any special need
4 for supervision;

5
6 (B) If a sentence in prison sentence or county jail under section 1170(h) is
7 recommended or is likely to be imposed, a reasoned discussion of
8 aggravating and mitigating factors affecting the sentence length; ~~and~~

9
10 (C) If a sentence in county jail under section 1170(h) is recommended, a
11 reasoned discussion of the defendant's suitability for specific terms and
12 length of period of mandatory supervision;

13
14 (D) If denial of a period of mandatory supervision in the interests of justice
15 is recommended, a reasoned discussion of the factors prescribed by rule
16 4.415; and

17
18 (E) A discussion of the defendant's ability to make restitution, pay any
19 fine or penalty that may be recommended, or satisfy any special
20 conditions of probation that are proposed.

21
22 Discussions of factors affecting suitability for probation and affecting
23 the sentence length must refer to any sentencing rule directly relevant
24 to the facts of the case, but no rule may be cited without a reasoned
25 discussion of its relevance and relative importance.

26
27 ~~(9)~~(10) The probation officer's recommendation. When requested by the
28 sentencing judge or by standing instructions to the probation department, the
29 report must include recommendations concerning the length of any prison or
30 county jail term under section 1170(h) that may be imposed, including the
31 base term, the imposition of concurrent or consecutive sentences, and the
32 imposition or striking of the additional terms for enhancements charged and
33 found.

34
35 ~~(10)~~(11) Detailed information on presentence time spent by the defendant in
36 custody, including the beginning and ending dates of the period or periods of
37 custody; the existence of any other sentences imposed on the defendant
38 during the period of custody; the amount of good behavior, work, or
39 participation credit to which the defendant is entitled; and whether the sheriff
40 or other officer holding custody, the prosecution, or the defense wishes that a
41 hearing be held for the purposes of denying good behavior, work, or
42 participation credit.
43

1 (11)(12) A statement of mandatory and recommended restitution, restitution
2 fines, other fines, and costs to be assessed against the defendant, including
3 chargeable probation services and attorney fees under section 987.8 when
4 appropriate, findings concerning the defendant's ability to pay, and a
5 recommendation whether any restitution order should become a judgment
6 under section 1203(j) if unpaid.

7
8 **(b) Format**

9
10 The report must be on paper 8- 1/2 by 11 inches in size and must follow the
11 sequence set out in (a) to the extent possible.

12
13 **(c) Sources**

14
15 The source of all information must be stated. Any person who has furnished
16 information included in the report must be identified by name or official capacity
17 unless a reason is given for not disclosing the person's identity.

18
19
20 **Rule 4.415. Criteria Affecting the Imposition of Mandatory Supervision**

21
22 **(a) Presumption**

23
24 ~~When imposing a county jail sentence under section 1170(h)(5), the court must~~
25 ~~suspend execution of a concluding portion of the term to be served as a period of~~
26 ~~mandatory supervision unless the court finds, in the interests of justice, that~~
27 ~~mandatory supervision is not appropriate in a particular case.~~

28
29 **(b) Criteria affecting conditions and length of mandatory supervision**

30
31 In exercising discretion to select the appropriate period and conditions of
32 mandatory supervision, factors the court may consider include:

- 33
34 (1) Availability of appropriate community corrections programs;
35
36 (2) Victim restitution;
37
38 (3) Promotion of the successful reintegration of the defendant into the
39 community;
40
41 (4) Public safety, including protection of any victims and witnesses;
42

- 1 (5) Past performance and present status on probation, mandatory supervision,
2 postrelease community supervision, and parole;
- 3
- 4 (6) Defendant's suitability for treatment and supervision;
- 5
- 6 (7) The balance of custody exposure after imposition of custody credits;
- 7
- 8 (8) Consideration of the difference between statutory accrual of custody credits
9 for mandatory supervision under section 1170(h)(5)(B) and straight county
10 jail terms under section 4019(a)(6);
- 11
- 12 (9) Consideration of length and conditions of supervision commensurate with the
13 defendant's level of risk of reoffense;
- 14
- 15 (10) The defendant's specific needs and risk factors identified by any validated
16 risk/needs assessments;
- 17
- 18 (11) Any other factor reasonably related to the sentencing decision.

19

20 **(c) Criteria for denying mandatory supervision in the interest of justice**

21

22 In determining that mandatory supervision is not appropriate in the interests of
23 justice, the court's determination must be based on factors that are specific to a
24 particular case or defendant. Factors the court may consider include:

25

- 26 (1) The nature, seriousness, and circumstances of the crime;
- 27
- 28 (2) The likelihood that the defendant will be a danger to others if not imprisoned;
- 29
- 30 (3) The defendant's lack of suitability and amenability to treatment or
31 supervision;
- 32
- 33 (4) Consideration of the balance of custody exposure available after imposition
34 of custody credits;
- 35
- 36 (5) The defendant's present status on probation, mandatory supervision,
37 postrelease community supervision, or parole; and
- 38
- 39 (6) Any other factor reasonably related to the court's determination that
40 mandatory supervision is not appropriate in the interests of justice.

41

42 **(d) Statement of reasons for denial of mandatory supervision**

43

1 Notwithstanding rule 4.412(a), when a court denies a period of mandatory
2 supervision in the interests of justice, the court must state the reasons for the denial
3 on the record.

4
5 **Advisory Committee Comment**

6
7 Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe
8 criteria for the consideration of the court at the time of sentencing regarding the court’s decision
9 to “[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of
10 subdivision (h) of Section 1170 or determine the appropriate period of and conditions of
11 mandatory supervision.”

12
13 **Subdivision (a):** Penal Code section 1170(h)(5)(A): “Unless the court finds, in the interest of
14 justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant
15 to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the
16 term for a period selected at the court’s discretion.”

17
18 **Subdivision (b)(3):** The Legislature has declared “[t]hat strategies supporting reentering
19 offenders through practices and programs, such as standardized risk and needs assessments,
20 transitional community housing, treatment, medical and mental health services, and employment,
21 have been demonstrated to significantly reduce recidivism among offenders in other states.” (Pen.
22 Code, § 17.7.)

23
24 **Subdivision (b)(8):** Under Penal Code section 1170(h)(5)(B), defendants serving a period of
25 mandatory supervision are entitled to day-for-day credits: “During the period when the defendant
26 is under such supervision, unless in actual custody related to the sentence imposed by the court,
27 the defendant shall be entitled to only actual time credit against the term of imprisonment
28 imposed by the court.” In contrast, defendants serving county jail terms under Penal Code section
29 1170(h)(5)(B) are entitled to enhanced conduct credits under Penal Code section 4019(a)(6).

30
31
32

ATTACHMENT B

1 Rules 4.411 and 4.411.5 of the California Rules of Court would be amended, and rule
2 4.415 would be adopted, effective January 1, 2015, to read:

3
4
5 **Rule 4.411. Presentence investigations and reports**

6
7 **(a) Eligible defendant**

8
9 If the defendant is eligible for probation or IMPRISONMENT IN A COUNTY
10 JAIL UNDER SECTION 1170(h), the court must refer the matter to the probation
11 officer for a presentence investigation and report. Waivers of the presentence
12 report should not be accepted except in unusual circumstances.

13
14 **(b) Ineligible defendant**

15
16 Even if the defendant is not eligible for probation or IMPRISONMENT IN A
17 COUNTY JAIL UNDER SECTION 1170(h), the court should refer the matter
18 to the probation officer for a presentence investigation and report.

19
20 **(c) Supplemental reports**

21
22 The court must order a supplemental probation officer's report in preparation for
23 sentencing proceedings that occur a significant period of time after the original
24 report was prepared.

25
26 **(d) Purpose of presentence investigation report**

27 Probation officers' reports are used by judges in determining the appropriate term of
28 IMPRISONMENT IN STATE PRISON OR
29 IMPRISONMENT IN A COUNTY JAIL UNDER SECTION 1170(h)
30 and by the Department of Corrections and Rehabilitation, Division of Adult
31 Operations in deciding on the type of facility and program in which to place a
32 defendant. The reports and are also used by courts in deciding whether probation is
33 appropriate and whether a period of mandatory supervision should be denied in the
34 interests of justice under section 1170(h). Section 1203c requires a probation officer's
35 report on every person sentenced to prison; ordering the report before sentencing in
36 probation-ineligible cases will help ensure a well-prepared report.

37
38 **Advisory Committee Comment**

39
40 Section 1203 requires a presentence report in every felony case in which the defendant is eligible
41 for probation. Subdivision (a) also requires a presentence report in every felony case in which the
42 defendant is eligible for a county jail sentence under section 1170(h). Because such a probation
43 investigation and report are valuable to the judge and to the jail and prison authorities, waivers of

1 the report and requests for immediate sentencing are discouraged, even when the defendant and
2 counsel have agreed to a prison or county jail sentence under section 1170(h).
3 Notwithstanding a defendant's statutory ineligibility for probation or county jail sentence under
4 section 1170(h), a presentence investigation and report should be ordered to assist the court in
5 deciding the appropriate sentence and to facilitate compliance with section 1203c.

6
7 This rule does not prohibit pre-conviction, pre-plea reports as authorized by section 1203.7.

8
9 Subdivision (c) is based on case law that generally requires a supplemental report if the defendant
10 is to be resentenced a significant time after the original sentencing, as, for example, after a
11 remand by an appellate court, or after the apprehension of a defendant who failed to appear at
12 sentencing. The rule is not intended to expand on the requirements of those cases.

13
14 The rule does not require a new investigation and report if a recent report is available and can be
15 incorporated by reference and there is no indication of changed circumstances. This is particularly
16 true if a report is needed only for the Department of Corrections and Rehabilitation because the
17 defendant has waived a report and agreed to a prison sentence. If a full report was prepared in
18 another case in the same or another jurisdiction within the preceeding [sic] six months, during
19 which time the defendant was in custody, and that report is available to the Department of
20 Corrections and Rehabilitation, it is unlikely that a new investigation is needed.

21
22
23 **Rule 4.411.5. Probation officer's presentence investigation report**

24
25 **(a) Contents**

26
27 A probation officer's presentence investigation report in a felony case must include
28 at least the following:

- 29
30 (1) A face sheet showing at least:
- 31 (A) The defendant's name and other identifying data;
 - 32 (B) The case number;
 - 33 (C) The crime of which the defendant was convicted;
 - 34 (D) The date of commission of the crime, the date of conviction, and any
35 other dates relevant to sentencing;
 - 36 (E) The defendant's custody status; and
 - 37 (F) The terms of any agreement on which a plea of guilty was based.
- 38
39
40
41
42
43

- 1 (2) The facts and circumstances of the crime and the defendant's arrest, including
2 information concerning any co-defendants and the status or disposition of
3 their cases. The source of all such information must be stated.
4
- 5 (3) A summary of the defendant's record of prior criminal conduct, including
6 convictions as an adult and sustained petitions in juvenile delinquency
7 proceedings. Records of an arrest or charge not leading to a conviction or the
8 sustaining of a petition may not be included unless supported by facts
9 concerning the arrest or charge.
10
- 11 (4) Any statement made by the defendant to the probation officer, or a summary
12 thereof, including the defendant's account of the circumstances of the crime.
13
- 14 (5) Information concerning the victim of the crime, including:
15
16 (A) The victim's statement or a summary thereof, if available;
17
18 (B) The amount of the victim's loss, and whether or not it is covered by
19 insurance; and
20
21 (C) Any information required by law.
22
- 23 (6) Any relevant facts concerning the defendant's social history, including those
24 categories enumerated in section 1203.10, organized under appropriate
25 subheadings, including, whenever applicable, "Family," "Education,"
26 "Employment and income," "Military," "Medical/psychological," "Record of
27 substance abuse or lack thereof," and any other relevant subheadings.
28
- 29 (7) Collateral information, including written statements from:
30
31 (A) Official sources such as defense and prosecuting attorneys, police
32 (subsequent to any police reports used to summarize the crime),
33 probation and parole officers who have had prior experience with the
34 defendant, and correctional personnel who observed the defendant's
35 behavior during any period of presentence incarceration; and
36
37 (B) Interested persons, including family members and others who have
38 written letters concerning the defendant.
39
- 40 (8) Any available, reliable risk/needs assessment information.
41
- 42 ~~(8)~~ (9) An evaluation of factors relating to disposition. This section must include:
43

1 (A) A reasoned discussion of the defendant's suitability and eligibility for
2 probation, and, if probation is recommended, a proposed plan including
3 recommendation for the conditions of probation and any special need
4 for supervision;

5
6 (B) If a ~~TERM OF IMPRISONMENT IN STATE~~ prison sentence or
7 ~~IMPRISONMENT IN A COUNTY JAIL UNDER SECTION 1170(h)~~ is
8 recommended or is likely to be imposed, a reasoned discussion of—
9 aggravating and mitigating factors affecting the sentence length; and (C) If
10 IMPRISONMENT IN A COUNTY JAIL UNDER SECTION 1170(h)
11 is recommended, a
12 reasoned discussion of the defendant's suitability for specific terms and
13 length of period of mandatory supervision;

14 (D) If denial of a period of mandatory supervision in the interests of justice
15 is recommended, a reasoned discussion of the factors prescribed by rule
16 4.415; and

17
18 ~~(E)~~ (E) A discussion of the defendant's ability to make restitution, pay any
19 fine or penalty that may be recommended, or satisfy any special
20 conditions of probation that are proposed.

21
22 Discussions of factors affecting suitability for probation and affecting
23 the sentence length must refer to any sentencing rule directly relevant
24 to the facts of the case, but no rule may be cited without a reasoned
25 discussion of its relevance and relative importance.

26
27 ~~(9)~~(10) The probation officer's recommendation. When requested by the
28 sentencing judge or by standing instructions to the probation department, the
29 report must include recommendations concerning the length of any ~~TERM~~
30 ~~OF IMPRISONMENT IN STATE~~ prison or ~~term OF IMPRISONMENT IN~~
31 ~~A COUNTY JAIL UNDER SECTION 1170(h)~~ that may be imposed,
32 including the base term, the imposition of concurrent or consecutive
33 sentences, and the imposition or striking of the additional terms for
34 enhancements charged and found.

35 ~~(10)~~(11) Detailed information on presentence time spent by the defendant in
36 custody, including the beginning and ending dates of the period or periods of
37 custody; the existence of any other sentences imposed on the defendant
38 during the period of custody; the amount of good behavior, work, or
39 participation credit to which the defendant is entitled; and whether the sheriff
40 or other officer holding custody, the prosecution, or the defense wishes that a
41 hearing be held for the purposes of denying good behavior, work, or
42 participation credit.
43

1 ~~(11)~~(12) A statement of mandatory and recommended restitution, restitution
2 fines, other fines, and costs to be assessed against the defendant, including
3 chargeable probation services and attorney fees under section 987.8 when
4 appropriate, findings concerning the defendant's ability to pay, and a
5 recommendation whether any restitution order should become a judgment
6 under section 1203(j) if unpaid.

7
8 **(b) Format**

9
10 The report must be on paper 8- 1/2 by 11 inches in size and must follow the
11 sequence set out in (a) to the extent possible.

12
13 **(c) Sources**

14
15 The source of all information must be stated. Any person who has furnished
16 information included in the report must be identified by name or official capacity
17 unless a reason is given for not disclosing the person's identity.

18
19
20 **Rule 4.415. Criteria Affecting the Imposition of Mandatory Supervision**

21
22 **(a) Presumption**

23
24 ~~When imposing A SENTENCE TO BE SERVED IN COUNTY JAIL UNDER~~
25 ~~section 1170(h)(5), the court must suspend execution of a concluding portion of~~
26 ~~the term to be served as a period of mandatory supervision unless the court~~
27 ~~finds, in the interests of justice, that mandatory supervision is not appropriate in~~
28 ~~a particular case.~~

29 **(b) Criteria affecting conditions and length of mandatory supervision**

30
31 In exercising discretion to select the appropriate period and conditions of
32 mandatory supervision, factors the court may consider include:

- 33
34 (1) Availability of appropriate community corrections programs;
35
36 (2) Victim restitution;
37
38 (3) Promotion of the successful reintegration of the defendant into the
39 community;
40
41 (4) Public safety, including protection of any victims and witnesses;
42

- 1 (5) Past performance and present status on probation, mandatory supervision,
2 postrelease community supervision, and parole;
- 3
- 4 (6) Defendant's suitability for treatment and supervision;
- 5
- 6 (7) The balance of custody exposure after imposition of custody credits;
- 7
- 8 (8) Consideration of the difference between statutory accrual of custody credits
9 for mandatory supervision under section 1170(h)(5)(B) and A
10 SENTENCE TO BE SERVED IN county jail under section 4019(a)
11 (6);
- 12 (9) Consideration of length and conditions of supervision commensurate with the
13 defendant's level of risk of reoffense;
- 14
- 15 (10) The defendant's specific needs and risk factors identified by any validated
16 risk/needs assessments;
- 17
- 18 (11) Any other factor reasonably related to the sentencing decision.

19

20 **(c) Criteria for denying mandatory supervision in the interest of justice**

21

22 In determining that mandatory supervision is not appropriate in the interests of
23 justice, the court's determination must be based on factors that are specific to a
24 particular case or defendant. Factors the court may consider include:

25

- 26 (1) The nature, seriousness, and circumstances of the crime;
- 27
- 28 (2) The likelihood that the defendant will be a danger to others if not imprisoned;
- 29
- 30 (3) The defendant's lack of suitability and amenability to treatment or
31 supervision;
- 32
- 33 (4) Consideration of the balance of custody exposure available after imposition
34 of custody credits;
- 35
- 36 (5) The defendant's present status on probation, mandatory supervision,
37 postrelease community supervision, or parole; and
- 38
- 39 (6) Any other factor reasonably related to the court's determination that
40 mandatory supervision is not appropriate in the interests of justice.

41

42 **(d) Statement of reasons for denial of mandatory supervision**

43

1 Notwithstanding rule 4.412(a), when a court denies a period of mandatory
2 supervision in the interests of justice, the court must state the reasons for the denial
3 on the record.
4

5 **Advisory Committee Comment**
6

7 Penal Code section 1170.3 requires the Judicial Council to adopt rules of court that prescribe
8 criteria for the consideration of the court at the time of sentencing regarding the court's decision
9 to "[d]eny a period of mandatory supervision in the interests of justice under paragraph (5) of
10 subdivision (h) of Section 1170 or determine the appropriate period of and conditions of
11 mandatory supervision."
12

13 **Subdivision (a):** Penal Code section 1170(h)(5)(A): "Unless the court finds, in the interest of
14 justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant
15 to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the
16 term for a period selected at the court's discretion."
17

18 **Subdivision (b)(3):** The Legislature has declared "[t]hat strategies supporting reentering
19 offenders through practices and programs, such as standardized risk and needs assessments,
20 transitional community housing, treatment, medical and mental health services, and employment,
21 have been demonstrated to significantly reduce recidivism among offenders in other states." (Pen.
22 Code, § 17.7.)
23

24 **Subdivision (b)(8):** Under Penal Code section 1170(h)(5)(B), defendants serving a period of
25 mandatory supervision are entitled to day-for-day credits: "During the period when the defendant
26 is under such supervision, unless in actual custody related to the sentence imposed by the
27 court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the
28 court." In contrast, defendants serving county jail terms under Penal Code section
29

1170(h)(5)(B) are entitled to enhanced conduct credits under Penal Code section 4019(a)(6).