



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 12, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation (Criminal Justice Realignment): Parole Holds	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Pen. Code, §§ 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c)	December 12, 2014
Recommended by	Date of Report
Policy Coordination and Liaison Committee	October 29, 2014
Hon. Kenneth K. So, Chair	Contact
Criminal Law Advisory Committee	Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov
Hon. Tricia A. Bigelow, Chair	Sharon Reilly, 916-323-3121 sharon.reilly@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c) to provide courts with discretion to order the release of supervised persons from custody, unless otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued. This proposal was developed at the request of criminal law judges to enhance judicial discretion to decide the custody status of supervised persons.

Recommendation

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c):

1. To provide courts with discretion to order the release of supervised persons from custody, unless otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued; and
2. To empower courts to fashion any terms and conditions of release deemed appropriate, in order to enhance public safety.

The text of the proposed amendment to sections 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c) is attached at pages 4–6.

Previous Council Action

The council has taken no previous action related to this proposal.

Rationale for Recommendation

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

Although courts are generally authorized to determine the custody status of supervised persons during court revocation proceedings, courts have no express statutory authority to order the release of persons supervised on post-release community supervision or parole if detained by the supervising agency for purposes of imposing a period of flash incarceration, particularly if detained on a parole hold.

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

On October 16, 2014, the Joint Legislation Working Group of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee voted unanimously to support sponsorship of this proposal.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of six comments. Of those, three courts agreed with the proposal, including the Superior Courts of Glenn, Los Angeles, and San Diego Counties; one agreed with the proposal if modified; and one did not take a formal position.

At the time of circulation for public comment, the proposal also included amendments to Penal Code section 1203.2(b)(1) to require supervising agencies to file petitions to revoke supervision within five court days of the arrest of the supervised person. After the comment period, however, the committee decided to table those amendments for further consideration following the appellate court’s decision in *Williams v. Superior Court* (Court of Appeal, Fourth District, Division 3, October 14, 2014, 230 Cal.App.4th 636; 178 Cal.Rptr.3d 685; G050280). A chart with all comments received and committee responses is attached at pages 7–12.

As originally circulated, the proposal would have limited court discretion to lift a parole hold “upon a finding of good cause.” The California Office of the Attorney General raised concerns regarding the costs and operational impacts on the courts if required to hold a “good cause” hearing before lifting a parole hold. Because the proposal was not intended to require courts to conduct formal hearings before lifting parole holds, the committee decided to delete the good cause requirement to eliminate confusion and avoid inadvertently imposing burdens on courts. In addition, deleting the good cause requirement enhances judicial discretion consistent with other custody and release decisions made by courts without formal good cause findings.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are likely.

Attachments

1. Proposed amendments to Pen. Code, §§ 1203.2(a), 3000.08(c), 3056(a), and 3455(b) and (c), at pages 4–6
2. Chart of comments, at pages 7–12

Penal Code sections 1203.2(a) and (b)(1), 3000.08(c), 3056(a), and 3455(b) and (c) would be amended to read:

1 **§ 1203.2**

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

27
28 (b)-(g) * * *

29
30 **§ 3000.08**

31 (a)-(b) * * *

32
33 (c) At any time during the period of parole of a person subject to this section, if any parole agent
34 or peace officer has probable cause to believe that the parolee is violating any term or condition
35 of his or her parole, the agent or officer may, without warrant or other process and at any time
36 until the final disposition of the case, arrest the person and bring him or her before the court, or
37 the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section
38 1203.2. **Notwithstanding section 3056, and unless the supervised person is otherwise serving**
39 **a period of flash incarceration, whenever a supervised person subject to this section is**
40 **arrested, with or without a warrant or the filing of a petition for revocation as described in**

1 **subdivision (f), the court may order the release of the supervised person from custody**
2 **under any terms and conditions the court deems appropriate.**

3
4 (d)–(m) * * *

5
6 **§ 3056**

7 (a) Prisoners on parole shall remain under the supervision of the department but shall not be
8 returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of
9 Section 3000.09. A parolee awaiting a parole revocation hearing may be housed in a county jail
10 while awaiting revocation proceedings. If a parolee is housed in a county jail, he or she shall be
11 housed in the county in which he or she was arrested or the county in which a petition to revoke
12 parole has been filed or, if there is no county jail in that county, in the housing facility with
13 which that county has contracted to house jail inmates. Additionally, except as provided by
14 subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a
15 county jail for a maximum of 180 days per revocation. When housed in county facilities,
16 parolees shall be under the sole legal custody and jurisdiction of local county facilities. A parolee
17 shall remain under the sole legal custody and jurisdiction of the local county or local correctional
18 administrator, even if placed in an alternative custody program in lieu of incarceration, including,
19 but not limited to, work furlough and electronic home detention. When a parolee is under the
20 legal custody and jurisdiction of a county facility awaiting parole revocation proceedings or upon
21 revocation, he or she shall not be under the parole supervision or jurisdiction of the department.

22 **Unless otherwise serving a period of flash incarceration, whenever a parolee subject to this**
23 **section has been arrested, with or without a warrant or the filing of a petition for**
24 **revocation with the court, the court may order the release of the parolee from custody**
25 **under any terms and conditions the court deems appropriate.** When released from the county
26 facility or county alternative custody program following a period of custody for revocation of
27 parole or because no violation of parole is found, the parolee shall be returned to the parole
28 supervision of the department for the duration of parole.

29
30 (b)–(c) * * *

31
32 **§ 3455**

33 (a) * * *

34
35 (b)(1) At any time during the period of postrelease community supervision, if any peace officer
36 has probable cause to believe a person subject to postrelease community supervision is violating
37 any term or condition of his or her release, the officer may, without a warrant or other process,
38 arrest the person and bring him or her before the supervising county agency established by the
39 county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer
40 employed by the supervising county agency may seek a warrant and a court or its designated
41 hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the
42 authority to issue a warrant for that person's arrest.

1 (2) The court or its designated hearing officer shall have the authority to issue a warrant for any
2 person who is the subject of a petition filed under this section who has failed to appear for a
3 hearing on the petition or for any reason in the interests of justice, or to remand to custody a
4 person who does appear at a hearing on the petition for any reason in the interests of justice.

5 **Unless the supervised person is otherwise serving a period of flash incarceration, whenever**
6 **a supervised person subject to this section is arrested, with or without a warrant or the**
7 **filing of a petition for revocation, the court may order the release of the supervised person**
8 **from custody under any terms and conditions the court deems appropriate.**

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

18
19 (d)-(e) * * *

LEG14-06**Proposed Legislation: Criminal Justice Realignment: Parole Holds and Deadline to File Petitions to Revoke Supervision (amend Penal Code sections 1203.2, 3000.08, 3056, and 3455)**

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

	Commentator	Position	Comment	Committee Response
1.	California Department of Justice, Office of the Attorney General by Melissa Whitaker, Legislative Coordinator	NI	The legislative proposal states, “No significant implementation requirements, costs, or operational impacts for courts are expected.” However, the proposed legislation potentially requires the superior courts to hold a new good cause hearing for release in every case in addition to the probable cause hearings that are already held. A good cause hearing would require the presence of all parties and could potentially involve the presentation of witness testimony and other evidence relevant to the good cause determination. If such a hearing was held during every revocation proceeding, it seems that the costs and operational impacts for courts would not be insignificant.	The committee appreciates the concerns raised by the commentator. Because the proposal was not intended to require courts to conduct formal hearings before lifting parole holds, the committee has decided to delete the good cause requirement to eliminate confusion and avoid inadvertently imposing burdens on courts. In addition, deleting the good cause requirement enhances judicial discretion consistent with other custody and release decisions made by courts without formal good cause findings.
2.	Los Angeles County Offices of the Public Defender and Alternate Public Defender by Ronald L. Brown, Public Defender, and Janice Y. Fukai, Alternate Public Defender	AM	<i>The two Public Defender agencies within the County of Los Angeles have collaborated in reviewing Proposed Legislations 14-06 and 14-03 and respectfully submit our comments. Our effort has been coordinated by Mr. Albert Menaster, the Head Deputy of the Appellate Branch of the Public Defender. If you have any questions regarding our comments, please contact him at 213-974-3058.</i> The Los Angeles County Offices of the Public Defender and Alternate Public Defender agree with Proposed Legislation 14-06, which suggests 1) amending Penal Code section 1203.2, subdivision (b)(1), to require all supervising agencies to file petitions to revoke supervision within five court days of the arrest	

LEG14-06

Proposed Legislation: Criminal Justice Realignment: Parole Holds and Deadline to File Petitions to Revoke Supervision (amend Penal Code sections 1203.2, 3000.08, 3056, and 3455)

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	Commentator	Position	Comment	Committee Response
			<p>of the supervised person; and 2) amending Penal Code sections 1203.2, subdivision (a), 3000.08, subdivision (c), 3056, subdivision (a), and 3455, subdivisions (b) and (c), to give the courts discretion to release supervised persons from custody upon a showing of good cause, regardless of whether a petition to revoke has been filed or whether a parole hold has been issued, so long as the supervised person is not serving a period of flash incarceration.</p> <p><u>Proposed Amendment to Penal Code section 1203.2(b)(1):</u></p> <p>Currently, courts are required to conduct revocation hearings for persons being supervised under four different supervisory schemes: formal probation, post-release community supervision (“PRCS”), parole, and mandatory supervision (pursuant to Penal Code section 1170, subdivision (h)(5)). The procedures for litigating alleged violations of all four supervisory schemes are codified at Penal Code section 1203.2. Parole and PRCS have an additional procedure that allows the supervising agency to impose a period of “flash incarceration” of up to 10 days without any judicial involvement or review.</p> <p>At present, supervising agencies are authorized to arrest supervised persons for alleged violations with or without a warrant, and those agencies can then initiate a court revocation</p>	

LEG14-06**Proposed Legislation: Criminal Justice Realignment: Parole Holds and Deadline to File Petitions to Revoke Supervision (amend Penal Code sections 1203.2, 3000.08, 3056, and 3455)**

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	Commentator	Position	Comment	Committee Response
			<p>proceeding by filing a petition to revoke with the court. (Pen. Code § 1203.2, subs. (a) and (b).)</p> <p>Unfortunately for supervised persons, Penal Code section 1203.2 does not currently include a deadline for when petitions to revoke supervision must be filed for a supervised person in custody, and every agency has its own internal procedures and timelines for filing petitions. In Los Angeles County, it is not uncommon for supervised persons on PRCS and parole to be in custody for 10 days or more before a petition is filed, and remain in custody for several more days until they are seen in court for the first time. This is a serious violation of due process that has heretofore gone unchecked.</p> <p>The proposed legislation will go a long way towards eliminating unnecessary delays in the filing of revocation petitions and will get supervised persons to court faster and more efficiently, allowing courts to handle the matters more expeditiously. Our Offices support this legislation for that reason. However, while the proposed legislation creates a five-court-day deadline for the filing of the petition to revoke, the proposed legislation is silent about what happens when this time limit is violated. This lack of sanction creates a right without a remedy, and it is axiomatic that a right without a remedy is no right at all.</p>	<ul style="list-style-type: none"> The committee appreciates the concerns raised by the commentator. The committee has decided to table the proposed amendment addressed by this comment for further consideration.

LEG14-06

Proposed Legislation: Criminal Justice Realignment: Parole Holds and Deadline to File Petitions to Revoke Supervision (amend Penal Code sections 1203.2, 3000.08, 3056, and 3455)

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	Commentator	Position	Comment	Committee Response
			<p>Therefore, while our Offices agree with the proposed legislation, our Offices do so with the following proposed modification: that Penal Code section 1203.2, subdivision (b)(1), be modified to state that “Petitions filed by the supervising agency shall be filed within five court days of the arrest of the supervised person; in the event that the petition is not filed in the time specified, the court shall order the immediate release of the supervised person on that matter only.” Giving the court the authority to release a supervised person when the supervising agency fails to file the revocation petition in a timely manner creates a powerful incentive for the supervising agency to not delay decisions on which matters will be filed in court and which matters will be handled internally with intermediate sanctions. This sanction will further ensure that matters are brought to court quickly and efficiently.</p> <p><u>Proposed Amendments to Penal Code sections 1203.2(a), 3000.08(c), 3056(a), 3455(b)&(c)</u></p> <p>Prior to realignment, the California Department of Corrections and Rehabilitation (“CDCR”) had been authorized to issue parole holds pursuant to Penal Code section 3056 and order warrants for the arrest of parolees without any court involvement. Although realignment gave courts the sole authority to issue and recall warrants, the legislation did not give the courts</p>	<ul style="list-style-type: none">• No response required.

LEG14-06

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			<p>authority to override a parole hold pursuant to Penal Code section 3056. This leads to situations where supervised persons are in custody pursuant to a parole hold for several days before a petition is filed, which means that these parolees waiting in custody while parole agents decide what to do can exceed the flash incarceration period of 10 days in custody without ever seeing a courtroom</p> <p>The proposed legislation will give the courts authority to lift parole holds and keep parolees from languishing in jail awaiting the potential filing of a petition to revoke. By allowing the courts to lift parole holds, parolees are placed on par with other supervised person in that the courts would have the ultimate authority to release them in the interests of justice regardless of whether a petition has been or will be filed. Therefore, our Offices agree with the proposed changes.</p> <p><u>Conclusion</u></p> <p>In order to further promote uniform and effective procedures for handling alleged violations of all four types of supervision, and to give courts the discretion and authority to authorize the release of any supervised person, including parolees, the Los Angeles County Offices of the Public Defender and Alternate Public Defender support the proposed legislation and agree with the proposed changes,</p>	

LEG14-06

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	Commentator	Position	Comment	Committee Response
			subject to the suggested modification of Penal Code section 1203.2, subdivision (b)(1).	
3.	Superior Court of Los Angeles County	A		No response required.
4.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	NI	No comment.	No response required.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response required.
6.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	No response required.