

IN THE SUPREME COURT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,	)	Supreme Court
	)	No.: S192176
Plaintiff and Respondent,	)	
	)	Court of Appeal
v.	)	No.: B214397
	)	
JOSE LEIVA,	)	
	)	
Defendant and Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

Honorable Barbara M. Scheper, Judge Presiding

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**DEFENDANT'S MOTION TO TAKE JUDICIAL NOTICE  
OF LEGISLATIVE MATERIALS; [PROPOSED] ORDER**

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SUPREME COURT  
**FILED**

OCT 24 2011

Frederick K. Ohlrich Clerk

Deputy

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Appellant Jose Leiva

By Appointment of The  
Supreme Court Of California

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Pursuant to California Rules of Court, rules 8.252, subdivision (a), and 8.520, subdivision (g), and Evidence Code sections 452, 453, and 459, defendant and appellant Jose Leiva hereby respectfully moves this Court to take judicial notice of the legislative materials underlying the 1977 amendment of Penal Code section 1203.2, subdivision (a), copies of which are attached hereto as Appendix A.<sup>1</sup>

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<sup>1</sup> The original version of the legislative materials in Appendix A contains a Certification from the California Secretary of State on the back of the materials.

Pursuant to California Rules of Court, rule 8.252, subdivision (a)(2):

(A) The matter to be noticed is relevant to the appeal because it contains pertinent legislative history underlying the 1977 amendment of Penal Code section 1203.2, subdivision (a), and the tolling provision therein, the proper interpretation of which is at issue on appeal and was addressed in Argument I of Appellant's Brief on the Merits.

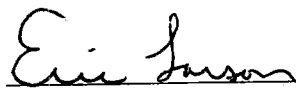
(B) The matter to be noticed was not presented to the trial court, but was judicially noticed by the Court of Appeal and discussed in both the majority and dissenting Opinions in the Court of Appeal. (Slip Opn. p. 8, fn. 3; Dis. Slip Opn. pp. 4-5.)

(C) The matter to be noticed does not relate to proceedings occurring after the order or judgment that is the subject of the appeal.

For the foregoing reasons, and in the interests of justice, defendant hereby requests his Motion to Take Judicial Notice of Legislative Materials be granted.

Respectfully submitted,

Dated: October 20, 2011



Eric R. Larson, #185750  
Attorney for Defendant  
and Appellant Jose Leiva

## **APPENDIX A**

**ASSEMBLY COMMITTEE ON CRIMINAL JUSTICE**  
Kenneth Meddy, Chairman

State Capitol - Room 2108  
446-3288

**BILL ANALYSIS**

Staff Member MSU  
Ways & Means NO  
Rev. & Tax. NO

FILE COPY

HEARING DATE: June 13, 1977

**BILL:** S.B. 426 (As Amended May 19, 1977)  
**AUTHOR:** HOLMDAHL  
**SUBJECT:** PROBATION VIOLATIONS

**BILL DESCRIPTION:**

Under current law, when the court has reason to believe that a probationer has violated the conditions of his probation, the court may revoke or terminate the probation. Such revocation must occur upon the rearrest of the probationer.

S.B. 426 would allow for the probation to be revoked or terminated upon such rearrest or upon the issuance of a warrant for rearrest. In addition, S.B. 426 would provide that the probationary period is tolled upon such revocation of probation.

**COMMENTS:**

1. The principles of Morrissey and Vickers (U.S. Supreme Court) apply to revocation of probation hearings. The probationer must be afforded the opportunity to confront adverse witnesses and to present testimony. However, there may be a "summary" revocation by the court with later allowance for the full hearing. Section 1203.2 deals with the revocation of probation procedure. However, it does not provide for the "summary" revocation as is required in decisional law. Should this section be amended to provide more detail?
2. The purpose of this bill is to allow the court to revoke probation after the court has probable cause to believe that the probationer has violated probation and has not appeared at the hearing on the violation.
3. Should the probationary period be tolled upon revocation of probation? What does this mean? Upon revocation, the period is terminated. The proponents of this bill indicate that this "tolling" language is necessary in cases where the revocation proceedings were conducted in an illegal manner and the decision is reversed upon appeal. Without the tolling language, the period may have expired and the court would be powerless to act in conducting a new probation revocation hearing. Should this tolling language be limited to cases in which the revocation decision is appealed?

**SOURCE:** Attorney General  
**SUPPORT:** Unknown  
**OPPOSITION:** Unknown

ENROLLED BILL MEMORANDUM TO GOVERNOR	DATE August 18, 1977
BILL NO. SB 426	AUTHOR Holmdahl

Vote—Senate      \_\_\_\_\_ Unanimous  
 Ayes—      39  
 Noes—      0

Vote—Assembly      \_\_\_\_\_ Unanimous  
 Ayes—      75  
 Noes—      0

SB 426 - Holmdahl

Existing law provides for the rearrest, or issuance of a warrant therefor, of a probationer, and revocation of probation upon such rearrest.

This bill provides for revocation of probation upon the issuance of a warrant for rearrest.

The bill would also toll the probationary period upon such revocation.

SPONSOR

Attorney General

SUPPORT

Legal Affairs Unit

OPPOSITION

No known opposition

FISCAL IMPACT

None

Recommendation <b>APPROVE</b>	Legislative Secretary
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ENROLLED IN HOUSE

AGENCY <b>GOVERNOR'S OFFICE</b>	BILL NUMBER <b>SB 426</b>
DEPARTMENT, BOARD OR COMMISSION <b>LEGAL AFFAIRS</b>	AUTHOR <b>Holmdahl</b>

Under existing law if a probationer is thought to have violated the conditions of his probation, he may be rearrested and taken into custody. At this time probation is temporarily revoked until a full revocation hearing occurs, as required by the United States Supreme Court in Morrissey and Vickers.

This bill would provide that the temporary revocation will occur when the warrant itself is issued for rearrest, rather than at the actual time of rearrest. The bill would also toll the probationary period upon such revocation.

This bill is sponsored by the Attorney General's Office and is basically a cleanup measure. The State Public Defender has no objection.

RECOMMENDATION:			
SIGN			
ANALYST <b>Gary Knell</b>	DATE <b>8/16/77</b>	LEGAL AFFAIRS SECRETARY <i>J. Anthony Kline</i> <b>J. Anthony Kline</b>	DATE

Eric R. Larson, #185750  
330 J Street, # 609  
San Diego, CA 92101

Supreme Court No.: S192176  
Court of Appeal No.: B214397

**DECLARATION OF SERVICE BY MAIL**

I, Eric R. Larson, declare as follows:

I am over the age of eighteen (18), a citizen of the United States, am employed in the County of San Diego, and not a party to the within action. My business address is 330 J Street, # 609, San Diego, California, 92101. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On this 20th day of October, 2011, I caused to be served the following document(s):

**MOTION TO TAKE JUDICIAL NOTICE OF LEGISLATIVE MATERIALS;  
[PROPOSED] ORDER**

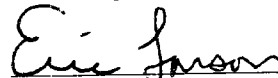
of which a true and correct copy of the document(s) filed in the cause is affixed, by placing a copy thereof in a separate sealed envelope, with postage fully prepaid, for each addressee named hereafter, addressed to each such addressee respectively as follows:

California Appellate Project  
520 S. Grand Ave., 4th Floor  
Los Angeles, CA 90071

Office of the Attorney General  
300 South Spring Street  
Los Angeles, CA 90013

Mr. Jose Leiva  
Leiva\_001@yahoo.com.mx  
(served via email as defendant resides in Mexico)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 20, 2011, at San Diego, California.

  
Eric Larson