Title 4. Criminal Rules

Division 1. General Provisions

Rule 4.1. Title

The rules in this title may be referred to as the Criminal Rules.

Rule 4.1 adopted effective January 1, 2007.

Rule 4.2. Application

The Criminal Rules apply to all criminal cases in the superior courts unless otherwise provided by a statute or rule in the California Rules of Court.

Rule 4.2 adopted effective January 1, 2007.

Rule 4.3. Reference to Penal Code

All statutory references are to the Penal Code unless stated otherwise.

Rule 4.3 adopted effective January 1, 2007.

Division 2. Pretrial

Chapter 1. Pretrial Proceedings

Rule 4.100. Arraignments

At the arraignment on the information or indictment, unless otherwise ordered for good cause, and on a plea of not guilty, including a plea of not guilty by reason of insanity;

(1) The court must set dates for:

(A) Trial, giving priority to a case entitled to it under law; and

(B) Filing and service of motions and responses and hearing thereon;

(2) A plea of not guilty must be entered if a defendant represented by counsel fails to plead or demur; and

(3) An attorney may not appear specially.

Rule 4.100 amended effective January 1, 2007; adopted as rule 227.4 effective January 1, 1985; previously amended effective June 6, 1990; previously renumbered and amended effective January 1, 2001.

Advisory Committee Comment

Cross reference: Penal Code section 987.1.

Rule 4.101. Bail in criminal cases

The fact that a defendant in a criminal case has or has not asked for a jury trial must not be taken into consideration in fixing the amount of bail and, once set, bail may not be increased or reduced by reason of such fact.

Rule 4.101 amended effective January 1, 2007; adopted as rule 801 effective July 1, 1964; previously renumbered effective January 1, 2001.

Rule 4.102. Uniform bail and penalty schedules—traffic, boating, fish and game, forestry, public utilities, parks and recreation, business licensing

The Judicial Council of California has established the policy of promulgating uniform bail and penalty schedules for certain offenses in order to achieve a standard of uniformity in the handling of these offenses.

In general, bail is used to ensure the presence of the defendant before the court. Under Vehicle Code sections 40512 and 13103, bail may also be forfeited and forfeiture may be ordered without the necessity of any further court proceedings and be treated as a conviction for specified Vehicle Code offenses. A penalty in the form of a monetary sum is a fine imposed as all or a portion of a sentence imposed.

To achieve substantial uniformity of bail and penalties throughout the state in traffic, boating, fish and game, forestry, public utilities, parks and recreation, and business licensing cases, the trial court judges, in performing their duty under Penal Code section 1269b to annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions, must give consideration to the Uniform Bail and Penalty Schedules approved by the Judicial Council. The Uniform Bail and Penalty Schedule for infraction violations of the Vehicle Code will be established by the Judicial Council in accordance with Vehicle Code section 40310. Judges must give consideration to requiring additional bail for aggravating or enhancing factors.

After a court adopts a countywide bail and penalty schedule, under Penal Code section 1269b, the court must, as soon as practicable, mail or e-mail a copy of the schedule to the Judicial Council with a report stating how the revised schedule differs from the council's uniform traffic bail and penalty schedule, uniform boating bail and penalty schedule, uniform fish and game bail and penalty schedule, uniform forestry bail and penalty schedule, uniform public utilities bail and penalty schedule, uniform parks and recreation bail and penalty schedule, or uniform business licensing bail and penalty schedule.

The purpose of this uniform bail and penalty schedule is to:

(1) Show the standard amount for bail, which for Vehicle Code offenses may also be the amount used for a bail forfeiture instead of further proceedings; and

(2) Serve as a guideline for the imposition of a fine as all or a portion of the penalty for a first conviction of a listed offense where a fine is used as all or a portion of the penalty for such offense. The amounts shown for the misdemeanors on the boating, fish and game, forestry, public utilities, parks and recreation, and business licensing bail and penalty schedules have been set with this dual purpose in mind.

Unless otherwise shown, the maximum penalties for the listed offenses are six months in the county jail or a fine of $1,000, or both. The penalty amounts are intended to be used to provide standard fine amounts for a first offense conviction of a violation shown where a fine is used as all or a portion of the sentence imposed.

Note:
Courts may obtain copies of the Uniform Bail and Penalty Schedules by contacting:
Criminal Justice Services
Judicial Council of California
455 Golden Gate Avenue

San Francisco, CA 94102-3688
or
www.courts.ca.gov/7532.htm

Rule 4.102 amended effective January 1, 2018; adopted as rule 850 effective January 1, 1965; previously renumbered as rule 4.102 and amended effective January 1, 2001; previously amended effective January 1, 1970, January 1, 1971, July 1, 1972, January 1, 1973, January 1, 1974, July 1, 1975, July 1, 1979, July 1, 1980, July 1, 1981, January 1, 1983, July 1, 1984, July 1, 1986, January 1, 1989, January 1, 1990, January 1, 1993, January 1, 1995, January 1, 1997, July 1, 2004, January 1, 2007, July 1, 2013, and January 1, 2016.

Rule 4.103. Notice to appear forms

(a) Traffic offenses

A printed or electronic notice to appear that is issued for any violation of the Vehicle Code other than a felony or for a violation of an ordinance of a city or county relating to traffic offenses must be prepared and filed with the court on *Automated Traffic Enforcement System Notice to Appear* (form TR-115), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145), and must comply with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST).

(b) Nontraffic offenses

A notice to appear issued for a nontraffic infraction or misdemeanor offense that is prepared on *Nontraffic Notice to Appear* (form TR-120), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145), and that complies with the requirements in the current version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST), may be filed with the court and serve as a complaint as provided in Penal Code section 853.9 or 959.1.

(c) Corrections

Corrections to citations previously issued on *Continuation of Notice to Appear* (form TR-106), *Continuation of Citation* (form TR-108), *Automated Traffic Enforcement System Notice to Appear* (form TR-115), *Nontraffic Notice to Appear* (form TR-120), *Traffic/Nontraffic Notice to Appear* (form TR-130), *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135), or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) must be made on a *Notice of Correction and Proof of Service* (form TR-100).

(d) Electronic citation forms

A law enforcement agency that uses an electronic citation device to issue notice to appear citations on the Judicial Council's *Electronic Traffic/Nontraffic Notice to Appear* (4-inch format) (form TR-135) or *Electronic Traffic/Nontraffic Notice to Appear* (3-inch format) (form TR-145) must submit to the Judicial Council an exact printed copy of the agency's current citation form that complies with the requirements in the most recent version of the Judicial Council's instructions, *Notice to Appear and Related Forms* (form TR-INST).

Rule 4.103 amended effective June 26, 2015; adopted effective January 1, 2004; previously amended effective January 1, 2007.

Rule 4.104. Procedures and eligibility criteria for attending traffic violator school

(a) Purpose

The purpose of this rule is to establish uniform statewide procedures and criteria for eligibility to attend traffic violator school.

(Subd (a) amended effective January 1, 2003; previously amended effective July 1, 2001.)

(b) Authority of a court clerk to grant a request to attend traffic violator school

(1) *Eligible offenses*

Except as provided in (2), a court clerk is authorized to grant a request to attend traffic violator school when a defendant with a valid driver's license requests to attend an 8-hour traffic violator school under Vehicle Code sections 41501(a) and 42005 for any infraction under divisions 11 and 12 (rules of the road and equipment violations) of the Vehicle Code if the violation is reportable to the Department of Motor Vehicles.

(2) *Ineligible offenses*

A court clerk is not authorized to grant a request to attend traffic violator school for a misdemeanor or any of the following infractions:

(A) A violation that carries a negligent operator point count of more than one point under Vehicle Code section 12810 or one and one-half points or more under Vehicle Code section 12810.5(b)(2);

(B) A violation that occurs within 18 months after the date of a previous violation and the defendant either attended or elected to attend a traffic violator school for the previous violation (Veh. Code, §§ 1808.7 and 1808.10);

(C) A violation of Vehicle Code section 22406.5 (tank vehicles);

(D) A violation related to alcohol use or possession or drug use or possession;

(E) A violation on which the defendant failed to appear under Vehicle Code section 40508(a) unless the failure-to-appear charge has been adjudicated and any fine imposed has been paid;

(F) A violation on which the defendant has failed to appear under Penal Code section 1214.1 unless the civil monetary assessment has been paid;

(G) A speeding violation in which the speed alleged is more than 25 miles over a speed limit as stated in Chapter 7 (commencing with section 22348) of Division 11 of the Vehicle Code; and

(H) A violation that occurs in a commercial vehicle as defined in Vehicle Code section 15210(b).

(Subd (b) amended effective January 1, 2013; previously amended effective January 1, 2003, September 20, 2005, January 1, 2007; January 1, 2007, and July 1, 2011.)

(c) Judicial discretion

(1) A judicial officer may in his or her discretion order attendance at a traffic violator school in an individual case as permitted under Vehicle Code section 41501(a) or 42005 or for any other purpose permitted by law. A defendant having a class A, class B, or commercial class C driver's license may request to attend traffic violator school if the defendant was operating a vehicle requiring only a noncommercial class C or class M license. The record of conviction after completion of traffic violator school by a driver who holds a class A, class B, or commercial class C license must not be reported as confidential. A defendant charged with a violation that occurs in a commercial vehicle, as defined in Vehicle Code section 15210(b), is not eligible to attend traffic violator school under Vehicle Code sections 41501 or 42005 in lieu of adjudicating an offense, to receive a confidential conviction, or to avoid violator point counts.

(2) A defendant who is otherwise eligible for traffic violator school is not made ineligible by entering a plea other than guilty or by exercising his or her right to trial. A traffic violator school request must be considered based on the individual circumstances of the specific case. The court is not required to state on the record a reason for granting or denying a traffic violator school request.

(Subd (c) amended effective January 1, 2013; amended and relettered as part of subd (b) effective January 1, 2003; previously amended effective January 1, 1998, September 20, 2005, January 1, 2007, January 1, 2007, and July 1, 201.)

Rule 4.104 amended effective January 1, 2013; adopted as rule 851 effective January 1, 1997; previously amended and renumbered effective January 1, 2007; previously amended effective January 1, 1998, July 1, 2001, January 1, 2003, September 20, 2005, January 1, 2007 and July 1, 2011.

Advisory Committee Comment

Subdivision (c)(1). Rule 4.104(c)(1) reflects that under Vehicle Code sections 1808.10, 41501, and 42005, the record of a driver with a class A, class B, or commercial class C license who completes a traffic violator school program is not confidential and must be reported to and disclosed by the Department of Motor Vehicles for purposes of Title 49 of the Federal Code of Regulations and to insurers for underwriting and rating purposes.

Subdivision (c)(2). Rule 4.104(c)(2) reflects court rulings in cases where defendants wished to plead not guilty and have the court order attendance of traffic violator school if found guilty after trial. A court has discretion to grant or not grant traffic violator school. (*People v. Schindler* (1993) 20 Cal.App.4th 431, 433; *People v. Levinson* (1984) 155 Cal.App.3d Supp. 13, 21.) However, the court may not arbitrarily refuse to consider a request for traffic violator school because a defendant pleads not guilty. (*Schindler, supra,* at p. 433; *People v. Wozniak* (1987) 197 Cal.App.3d Supp. 43, 44; *People v. Enochs* (1976) 62 Cal.App.3d Supp. 42, 44.) If a judicial officer believes that a defendant's circumstances indicate that a defendant would benefit from attending school, such attendance should be authorized and should not be affected by the order in which the plea, explanation, and request for traffic violator school are presented. (*Enochs, supra,* at p. 44.) A court is not required to state its reasons for granting or denying traffic violator school following a defendant's conviction for a traffic violation. (*Schindler, supra,* at p. 433.)

Rule 4.105. Appearance without deposit of bail in infraction cases

(a) Application

This rule applies to any infraction for which the defendant has received a written notice to appear.

(Subd (a) amended effective December 1, 2015.)

(b) Appearance without deposit of bail

Except as provided in (c), courts must allow a defendant to appear for arraignment and trial without deposit of bail.

(c) Deposit of bail

(1) Courts must require the deposit of bail when the defendant elects a statutory procedure that requires the deposit of bail.

(2) Courts may require the deposit of bail when the defendant does not sign a written promise to appear as required by the court.

(3) Courts may require a deposit of bail before trial if the court determines that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding.

(4) In determining the amount of bail set under (2) and (3), courts must consider the totality of the circumstances.

(Subd (c) amended effective January 1, 2017; previously amended effective December 1, 2015.)

(d) Notice

Courts must inform defendants of the option to appear in court without the deposit of bail in any instructions or other materials courts provide for the public that relate to bail for infractions, including any website information, written instructions, courtesy notices, and forms.

(Subd (d) amended effective December 1, 2015.)

(e) Local Website Information

The website for each trial court must include a link to the traffic self-help information posted at: *http://www.courts.ca.gov/selfhelp-traffic.htm*.

(Subd (e) adopted effective January 1, 2017.)

Rule 4.105 amended effective January 1, 2017; adopted effective June 8, 2015; previously amended December 1, 2015.

Advisory Committee Comment

Subdivision (a). The rule is intended to apply only to an infraction violation for which the defendant has received a written notice to appear and has appeared by the appearance date or an approved extension of that date. The rule does not apply to postconviction matters or cases in which the defendant seeks an appearance in court after a failure to appear or pay.

Subdivision (c). This subdivision takes into account the distinct statutory purposes and functions that bail and related considerations serve in infraction cases, including, for example, the posting and forfeiting of bail in uncontested cases and the use of bail to satisfy later judgments, as distinguished from felony and most misdemeanor cases.

Subdivision (c)(1). Various statutory provisions authorize infraction defendants who have received a written notice to appear to elect to deposit bail in lieu of appearing in court or in advance of the notice to appear date. (See, e.g., Veh. Code, §§ 40510 [authorizing defendants to

deposit bail before the notice to appear date]; 40519(a) [authorizing defendants who have received a written notice to appear to declare the intention to plead not guilty and deposit bail before the notice to appear date for purposes of electing to schedule an arraignment and trial on the same date or on separate dates]; 40519(b) [authorizing defendants who have received a written notice to appear to deposit bail and plead not guilty in writing in lieu of appearing in person]; and 40902 [authorizing trial by written declaration].)

This rule is not intended to modify or contravene any statutorily authorized alternatives to appearing in court. (See, e.g., Pen. Code, §§ 853.5, 853.6; Veh. Code, §§ 40510, 40512, and 40512.5 [authorizing defendants to post and forfeit bail in lieu of appearing for arraignment].) The purpose of this rule is to clarify that if the defendant declines to use a statutorily authorized alternative, courts must allow the defendant to appear *without* prior deposit of bail as provided above.

Subdivision (c)(2). As used in this subdivision, the phrase "written promise to appear as required by the court" refers to a signed promise, made by a defendant who has appeared in court, to return to court on a future date and time as ordered by the court.

Subdivision (c)(3). In exercising discretion to require deposit of bail on a particular case, courts should consider, among other factors, whether previous failures to pay or appear were willful or involved adequate notice.

Subdivision (c)(4). In considering the "totality of the circumstances" under this subdivision, courts may consider whether the bail amount would impose an undue hardship on the defendant.

Rule 4.106. Failure to appear or failure to pay for a *Notice to Appear* issued for an infraction offense

(a) Application

This rule applies to infraction offenses for which the defendant has received a written notice to appear and has failed to appear or failed to pay.

(b) Definitions

As used in this rule, "failure to appear" and "failure to pay" mean failure to appear and failure to pay as defined in section 1214.1(a).

(c) Procedure for consideration of good cause for failure to appear or pay

(1) A notice of a civil assessment under section 1214.1(b) must inform the defendant of his or her right to petition that the civil assessment be vacated for good cause and must include information about the process for vacating or reducing the assessment.

(2) When a notice of civil assessment is given, a defendant may, within the time specified in the notice, move by written petition to vacate or reduce the assessment.

(3) When a court imposes a civil assessment for failure to appear or pay, the defendant may petition that the court vacate or reduce the civil assessment without paying any bail, fines, penalties, fees, or assessments.

(4) A petition to vacate an assessment does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessment unless specifically ordered by the court.

(5) The court must vacate the assessment upon a showing of good cause under section 1214.1(b)(1) for failure to appear or failure to pay.

(6) If the defendant does not establish good cause, the court may still exercise its discretion under section 1214.1(a) to reconsider:

(A) Whether a civil assessment should be imposed; and

(B) If so, the amount of the assessment.

(7) In exercising its discretion, the court may consider such factors as a defendant's due diligence in appearing or paying after notice of the assessment has been given under section 1214.1(b)(1) and the defendant's financial circumstances.

(d) Procedure for unpaid bail referred to collection as delinquent debt in unadjudicated cases

(1) When a case has not been adjudicated and a court refers it to a comprehensive collection program as provided in section 1463.007(b)(1) as delinquent debt, the defendant may schedule a hearing for adjudication of the underlying charge(s) without payment of the bail amount.

(2) The defendant may request an appearance date to adjudicate the underlying charges by written petition or alternative method provided by the court. Alternatively, the defendant may request or the court may direct a court appearance.

(3) A court may require a deposit of bail before adjudication of the underlying charges if the court finds that the defendant is unlikely to appear as ordered without a deposit of bail and the court expressly states the reasons for the finding. The court must not require payment of the civil assessment before adjudication.

(e) Procedure for failure to pay or make a payment under an installment payment plan

(1) When a defendant fails to pay a fine or make a payment under an installment plan as provided in section 1205 or Vehicle Code sections 40510.5, 42003, or 42007, the court must permit the defendant to appear by written petition to modify the payment terms. Alternatively, the defendant may request or the court may direct a court appearance.

(2) The court must not require payment of bail, fines, penalties, fees, or assessments to consider the petition.

(3) The petition to modify the payment terms does not stay the operation of any order requiring the payment of bail, fines, penalties, fees, or assessments unless specifically ordered by the court.

(4) If the defendant petitions to modify the payment terms based on an inability to pay, the procedures stated in rule 4.335 apply.

(5) If the petition to modify the payment terms is not based on an inability to pay, the court may deny the defendant's request to modify the payment terms and order no further proceedings if the court determines that:

(A) An unreasonable amount of time has passed; or

(B) The defendant has made an unreasonable number of requests to modify the payment terms.

(f) Procedure after a trial by written declaration in absentia for a traffic infraction

When the court issues a judgment under Vehicle Code section 40903 and a defendant requests a trial de novo within the time permitted, courts may require the defendant to deposit bail.

(g) Procedure for referring a defendant to the Department of Motor Vehicles (DMV) for license suspension for failure to pay a fine

Before a court may notify the DMV under Vehicle Code sections 40509(b) or 40509.5(b) that a defendant has failed to pay a fine or an installment of bail, the court must provide the defendant with notice of and an opportunity to be heard on the inability to pay. This notice may be provided on the notice required in rule 4.107, the civil assessment notice, or any other notice provided to the defendant.

Rule 4.106 adopted effective January 1, 2017

Advisory Committee Comment

Subdivision (a). The rule is intended to apply only to an infraction offense for which the defendant (1) has received a written notice to appear and (2) has failed to appear by the appearance date or an approved extension of that date or has failed to pay as required.

Subdivision (c)(3). Circumstances that indicate good cause may include, but are not limited to, the defendant's hospitalization, incapacitation, or incarceration; military duty required of the defendant; death or hospitalization of the defendant's dependent or immediate family member; caregiver responsibility for a sick or disabled dependent or immediate family member of the defendant; or an extraordinary reason, beyond the defendant's control, that prevented the defendant from making an appearance or payment on or before the date listed on the notice to appear.

Subdivision (e)(1). A court may exercise its discretion to deny a defendant's request to modify the payment terms. If the court chooses to grant the defendant's request, the court may modify the payment terms by reducing or suspending the base fine, lowering the payments, converting the remaining balance to community service, or otherwise modifying the payment terms as the court sees fit.

Subdivision (g). A hearing is not required unless requested by the defendant or directed by the court.

Rule 4.107. Mandatory reminder notice—traffic procedures

(a) Mandatory reminder notice

(1) Each court must send a reminder notice to the address shown on the *Notice to Appear*, unless the defendant otherwise notifies the court of a different address.

(2) The court may satisfy the requirement in paragraph (1) by sending the notice electronically, including by e-mail or text message, to the defendant. By providing an electronic address or number to the court or to a law enforcement officer at the time of signing the promise to appear, a defendant consents to receiving the reminder notice electronically at that electronic address or number.

(3) The failure to receive a reminder notice does not relieve the defendant of the obligation to appear by the date stated in the *Notice to Appear*.

(b) Minimum information in reminder notice

In addition to information obtained from the *Notice to Appear*, the reminder notice must contain at least the following information:

(1) An appearance date and location;

(2) Whether a court appearance is mandatory or optional;

(3) The total bail amount and payment options;

(4) The notice about traffic school required under Vehicle Code section 42007, if applicable;

(5) Notice that a traffic violator school will charge a fee in addition to the administrative fee charged by the court;

(6) The potential consequences for failure to appear, including a driver's license hold or suspension, a civil assessment of up to $300, a new charge for failure to appear, a warrant of arrest, or some combination of these consequences, if applicable;

(7) The potential consequences for failure to pay a fine, including a driver's license hold or suspension, a civil assessment of up to $300, a new charge for failure to pay a fine, a warrant of arrest, or some combination of these consequences, if applicable;

(8) The right to request an ability-to-pay determination;

(9) Notice of the option to pay bail through community service (if available) and installment plans (if available);

(10) Contact information for the court, including the court's website;

(11) Information regarding trial by declaration, informal trial (if available), and telephone or website scheduling options (if available); and

(12) Correction requirements and procedures for correctable violations.

Rule 4.107 adopted effective January 1, 2017

Advisory Committee Comment

Subdivision (a)(2). The court may provide a means for obtaining the defendant's consent and designated electronic address or number on its local website. Because notices to appear state the website address for the superior court in each county, this location may increase the number of defendants who become aware and take advantage of this option. To obtain the defendant's electronic address or number at the time of signing the promise to appear, the court may need to collaborate with local law enforcement agencies.

Subdivision (b). While not required, some local court websites may provide information about local court processes and local forms related to the information on the reminder notice. If in electronic form, the reminder notice should include direct links to any information and forms on the local court website. If in paper form, the reminder notice may include the website addresses for any information and forms on the local court website.

Rule 4.108. Installment Payment Agreements

(a) Online interface for installment payment agreements

(1) A court may use an online interface to enter into installment payment agreements with traffic infraction defendants under Vehicle Code sections 40510.5 and 42007.

(2) Before entering into an installment payment agreement, an online interface must provide defendants with the Advisement of Rights stated in Attachment 1 of *Online Agreement to Pay and Forfeit Bail in Installments* (form TR-300 (online)), and *Online Agreement to Pay Traffic Violator School Fees in Installments* (form TR-310 (online)).

(b) Alternative mandatory forms

(1) The Judicial Council has adopted the following alternative mandatory forms for use in entering into installment payment agreements under Vehicle Code sections 40510.5 and 42007:

(A) Agreement to Pay and Forfeit Bail in Installments (form TR-300); and Online Agreement to Pay and Forfeit Bail in Installments (form TR-300 (online)); and

(B) *Agreement to Pay Traffic Violator School Fees in Installments* (form TR-310); and *Online Agreement to Pay Traffic Violator School Fees in Installments* (form TR-310 (online)).

(2) Forms TR-300 (online) and TR-310 (online) may be used only in online interfaces for installment payment agreements as provided in subdivision (a).

Rule 4.108 adopted effective January 1, 2017

Rule 4.110. Time limits for criminal proceedings on information or indictment

Time limits for criminal proceedings on information or indictment are as follows:

(1) The information must be filed within 15 days after a person has been held to answer for a public offense;

(2) The arraignment of a defendant must be held on the date the information is filed or as soon thereafter as the court directs; and

(3) A plea or notice of intent to demur on behalf of a party represented by counsel at the arraignment must be entered or made no later than seven days after the initial arraignment, unless the court lengthens time for good cause.

Rule 4.110 amended effective January 1, 2007; adopted as rule 227.3 effective January 1, 1985; previously amended effective June 6, 1990; previously renumbered and amended effective January 1, 2001.

Rule 4.111. Pretrial motions in criminal cases

(a) Time for filing papers and proof of service

Unless otherwise ordered or specifically provided by law, all pretrial motions, accompanied by a memorandum, must be served and filed at least 10 court days, all papers opposing the motion at least 5 court days, and all reply papers at least 2 court days before the time appointed for hearing. Proof of service of the moving papers must be filed no later than 5 court days before the time appointed for hearing.

(Subd (a) amended effective January 1, 2010; previously amended effective January 1, 2007.)

(b) Failure to serve and file timely points and authorities

The court may consider the failure without good cause of the moving party to serve and file a memorandum within the time permitted as an admission that the motion is without merit.

(Subd (b) amended effective January 1, 2007.)

Rule 4.111 amended effective January 1, 2010; adopted as rule 227.5 effective January 1, 1985; previously renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Rule 4.112. Readiness conference

(a) Date and appearances

The court may hold a readiness conference in felony cases within 1 to 14 days before the date set for trial. At the readiness conference:

(1) All trial counsel must appear and be prepared to discuss the case and determine whether the case can be disposed of without trial;

(2) The prosecuting attorney must have authority to dispose of the case; and

(3) The defendant must be present in court.

(Subd (a) amended effective January 1, 2007; adopted as rule 227.6 effective January 1, 1985; previously amended and relettered effective January 1, 2001; previously amended effective January 1, 2005.)

(b) Motions

Except for good cause, the court should hear and decide any pretrial motion in a criminal case before or at the readiness conference.

(Subd (b) adopted effective January 1, 2001.)

Rule 4.112 amended effective January 1, 2007; subd (a) adopted as rule 227.6 effective January 1, 1985; subd (b) adopted as section 10.1 of the Standards of Judicial Administration effective January 1, 1985; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2005.

Rule 4.113. Motions and grounds for continuance of criminal case set for trial

Motions to continue the trial of a criminal case are disfavored and will be denied unless the moving party, under Penal Code section 1050, presents affirmative proof in open court that the ends of justice require a continuance.

Rule 4.113 amended effective January 1, 2007; adopted as rule 227.7 effective January 1, 1985 previously renumbered effective January 1, 2001.

Rule 4.114. Certification under Penal Code section 859a

When a plea of guilty or no contest is entered under Penal Code section 859a, the magistrate must:

(1) Set a date for imposing sentence; and

(2) Refer the case to the probation officer for action as provided in Penal Code sections 1191 and 1203.

Rule 4.114 amended effective January 1, 2007; adopted as rule 227.9 effective January 1, 1985; previously amended and renumbered effective January 1, 2001.

Rule 4.115. Criminal case assignment

(a) Master calendar departments

To ensure that the court's policy on continuances is firm and uniformly applied, that pretrial proceedings and trial assignments are handled consistently, and that cases are tried on a date certain, each court not operating on a direct calendaring system must assign all criminal matters to one or more master calendar departments. The presiding judge of a master calendar department must conduct or supervise the conduct of all arraignments and pretrial hearings and conferences and assign to a trial department any case requiring a trial or dispositional hearing.

(Subd (a) lettered effective January 1, 2008; adopted as unlettered subd effective January 1, 1985.)

(b) Trial calendaring and continuances

Any request for a continuance, including a request to trail the trial date, must comply with rule 4.113 and the requirement in section 1050 to show good cause to continue a hearing in a criminal proceeding. Active management of trial calendars is necessary to minimize the number of statutory dismissals. Accordingly, courts should avoid calendaring or trailing criminal cases for trial to the last day permitted for trial under section 1382. Courts must implement calendar management procedures, in accordance with local conditions and needs, to ensure that criminal cases are assigned to trial departments before the last day permitted for trial under section 1382.

(Subd (b) adopted effective January 1, 2008.)

Rule 4.115 amended effective January 1, 2008; adopted as section 10 of the Standards of Judicial Administration effective January 1, 1985; amended and renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Advisory Committee Comment

Subdivision (b) clarifies that the "good cause" showing for a continuance under section 1050 applies in all criminal cases, whether or not the case is in the 10-day grace period provided for in section 1382. The Trial Court Presiding Judges Advisory Committee and Criminal Law Advisory Committee observe that the "good cause" requirement for a continuance is separate and distinct from the "good cause" requirement to avoid dismissals under section 1382. There is case law stating that the prosecution is not required to show good cause to avoid a dismissal under section 1382 during the 10-day grace period because a case may not be dismissed for delay during that 10-day period. (See, e.g., *Bryant v. Superior Court* (1986) 186 Cal.App.3d 483, 488.) Yet, both the plain language of section 1050 and case law show that there must be good cause for a continuance under section 1050 during the 10-day grace period. (See, e.g., section 1050 and *People v. Henderson* (2004) 115 Cal.App.4th 922, 939–940.) Thus, a court may not dismiss a case during the 10-day grace period under section 1382, but the committees believe that the court must deny a request for a continuance during the 10-day grace period that does not comply with the good cause requirement under section 1050.

The decision in *Henderson* states that when the prosecutor seeks a continuance but fails to show good cause under section 1050, the trial court "must nevertheless postpone the hearing to another date within the statutory period." (115 Cal.App.4th at p. 940.) That conclusion, however, may be contrary to the plain language of section 1050, which requires a court to deny a continuance if the moving party fails to show good cause. The conclusion also appears to be dicta, as it was not a contested issue on appeal. Given this uncertainty, the rule is silent as to the remedy for failure to show good cause for a requested continuance during the 10-day grace period. The committees note that the remedies under section 1050.5 are available and, but for the *Henderson* dicta, a court would appear to be allowed to deny the continuance request and commence the trial on the scheduled trial date.

Rule 4.116. Certification to juvenile court

(a) Application

This rule applies to all cases not filed in juvenile court in which the person charged by an accusatory pleading appears to be under the age of 18, except when jurisdiction over the child has been transferred from the juvenile court under Welfare and Institutions Code section 707.

(Subd (a) amended effective May 22, 2017; adopted effective January 1, 2001; previously amended effective January 1, 2007.)

(b) Procedure to determine whether certification is appropriate

If an accusatory pleading is pending, and it is suggested or it appears to the court that the person charged was under the age of 18 on the date the offense is alleged to have been committed, the court must immediately suspend proceedings and conduct a hearing to determine the true age of the person charged. The burden of proof of establishing the age of the accused person is on the moving party. If, after examination, the court is satisfied by a preponderance of the evidence that the person was under the age of 18 on the date the alleged offense was committed, the court must immediately certify the matter to the juvenile court and state on the certification order:

(1) The crime with which the person named is charged;

(2) That the person was under the age of 18 on the date of the alleged offense;

(3) The date of birth of the person;

(4) The date of suspension of criminal proceedings; and

(5) The date and time of certification to juvenile court.

(Subd (b) amended effective January 1, 2007; adopted as untitled subd effective January 1, 1991; previously amended and lettered effective January 1, 2001.)

(c) Procedure on certification

If the court determines that certification to the juvenile court is appropriate under (b), copies of the certification, the accusatory pleading, and any police reports must immediately be transmitted to the clerk of the juvenile court. On receipt of the documents, the clerk of the juvenile court must immediately notify the probation officer, who must immediately investigate the matter to determine whether to commence proceedings in juvenile court.

(Subd (c) amended effective January 1, 2007; adopted as untitled subd effective January 1, 1991; previously amended and lettered effective January 1, 2001.)

(d) Procedure if child is in custody

If the person is under the age of 18 and is in custody, the person must immediately be transported to the juvenile detention facility.

(Subd (d) amended effective January 1, 2007; adopted as untitled subd effective January 1, 1991; previously amended and lettered effective January 1, 2001.)

Rule 4.116 amended effective May 22, 2017; adopted as rule 241.2 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended July 1, 1991, and January 1, 2007.

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a) Purpose

This rule defines minimum qualifications for attorneys appointed to represent persons charged with capital offenses in the superior courts. These minimum qualifications are designed to promote adequate representation in death penalty cases and to avoid unnecessary delay and expense by assisting the trial court in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether the defendant received effective assistance of counsel.

(b) General qualifications

In cases in which a person is charged with a capital offense, the court must assign qualified trial counsel to represent the defendant unless the district attorney has made an affirmative statement on the record that the prosecution will not be seeking the death penalty. The attorney may be appointed only if the court, after reviewing the attorney's background, experience, and training, determines that the attorney has demonstrated the skill, knowledge, and proficiency to diligently and competently represent the defendant. An attorney is not entitled to appointment simply because he or she meets the minimum qualifications.

(Subd (b) amended effective January 1, 2024.)

(c) Designation of counsel

(1) If the court appoints more than one attorney, one must be designated lead counsel and meet the qualifications stated in (d) or (f), and at least one other must be designated associate counsel and meet the qualifications stated in (e) or (f).

(2) If the court appoints only one attorney, that attorney must meet the qualifications stated in (d) or (f).

(Subd (c) amended effective January 1, 2007.)

(d) Qualifications of lead counsel

To be eligible to serve as lead counsel, an attorney must:

(1) Be an active member of the State Bar of California;

(2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;

(3) Have prior experience as lead counsel in either:

(A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or

(B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;

(4) Be familiar with the practices and procedures of the California criminal courts;

(5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;

(6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and

(7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(Subd (d) amended effective January 1, 2007.)

(e) Qualifications of associate counsel

To be eligible to serve as associate counsel, an attorney must:

(1) Be an active member of the State Bar of California;

(2) Be an active trial practitioner with at least three years' litigation experience in the field of criminal law;

(3) Have prior experience as:

(A) Lead counsel in at least 10 felony jury trials tried to verdict, including 3 serious or violent felony jury trials tried to argument, verdict, or final judgment; or

(B) Lead or associate counsel in at least 5 serious or violent felony jury trials, including at least 1 murder case, tried to argument, verdict, or final judgment;

(4) Be familiar with the practices and procedures of the California criminal courts;

(5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;

(6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and

(7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

(Subd (e) amended effective January 1, 2007.)

(f) Alternative qualifications

The court may appoint an attorney even if he or she does not meet all of the qualifications stated in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

(1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* under rule 9.40;

(2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;

(3) The attorney has had extensive criminal or civil trial experience;

(4) Although not meeting the qualifications stated in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;

(5) The attorney is familiar with the practices and procedures of the California criminal courts;

(6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;

(7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;

(8) The attorney has ongoing consultation support from experienced death penalty counsel;

(9) The attorney has completed within the past two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and

(10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

(Subd (f) amended effective January 1, 2007.)

(g) Public defender appointments

When the court appoints the Public Defender under Penal Code section 987.2, the Public Defender should assign an attorney from that office or agency as lead counsel who meets the qualifications described in (d) or assign an attorney that he or she determines would qualify under (f). If associate counsel is designated, the Public Defender should assign an attorney from that office or agency who meets the qualifications described in (e) or assign an attorney he or she determines would qualify under (f).

(Subd (g) amended effective January 1, 2007.)

(h) Standby or advisory counsel

When the court appoints standby or advisory counsel to assist a self-represented defendant, the attorney must qualify under (d) or (f).

(Subd (h) amended effective January 1, 2007.)

(i) Order appointing counsel

When the court appoints counsel to a capital case, the court must complete *Order Appointing Counsel in Capital Case* (form CR-190), and counsel must complete *Declaration of Counsel for Appointment in Capital Case* (form CR-191).

(Subd (i) amended effective January 1, 2007; adopted effective January 1, 2004.)

Rule 4.117 amended effective January 1, 2024; adopted effective January 1, 2003; previously amended effective January 1, 2004, and January 1, 2007.

Rule 4.119. Additional requirements in pretrial proceedings in capital cases

(a) Application

This rule applies only in pretrial proceedings in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed *Capital Case Attorney Pretrial Checklist* (form CR-600) by signing and submitting this form to the court. Counsel are encouraged to keep a copy of this checklist.

(c) Lists of appearances, exhibits, and motions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(C):

(A) A list of all appearances made by that party during the pretrial proceedings. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances; the date of each appearance; the department in which it was made; the name of counsel making the appearance; and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant.

(B) A list of all exhibits offered by that party during the pretrial proceedings. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party during the pretrial proceedings, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose. The list must indicate if a motion is awaiting resolution.

(2) In the event of any substitution of attorney during the pretrial proceedings, the relieved attorney must provide the lists of all appearances, exhibits, and motions to substituting counsel within five days of being relieved.

(3) No later than 21 days after the clerk notifies trial counsel that it must submit the lists to the court, counsel must submit the lists to the court and serve on all parties a copy of all the lists except the list of Penal Code section 987.9 appearances. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(d) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are part of a digital or electronic presentation.

Rule 4.119 adopted effective April 25, 2019.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney Pretrial Checklist* (form CR-600) is designed to be a tool to assist pretrial counsel in identifying and fulfilling all their record preparation responsibilities. Counsel are therefore encouraged to keep a copy of this form and to use it to monitor their own progress.

Subdivision (c)(1). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made or exhibits offered.

Subdivision (c)(3). Rule 8.613(d) requires the clerk to notify counsel to submit the lists of appearances, exhibits, and motions.

Rule 4.130. Mental competency proceedings

(a) Application

(1) This rule applies to proceedings in the superior court under Penal Code section 1367 et seq. to determine the mental competency of a criminal defendant.

(2) The requirements of subdivision (d)(2) apply only to a formal competency evaluation ordered by the court under Penal Code section 1369(a).

(3) The requirements of subdivision (d)(2) do not apply to a brief preliminary evaluation of the defendant's competency if:

(A) The parties stipulate to a brief preliminary evaluation; and

(B) The court orders the evaluation in accordance with a local rule of court that specifies the content of the evaluation and the procedure for its preparation and submission to the court.

(Subd (a) amended effective January 1, 2018.)

(b) Initiation of mental competency proceedings

(1) The court must initiate mental competency proceedings if the judge has a reasonable doubt, based on substantial evidence, about the defendant's competence to stand trial.

(2) The opinion of counsel, without a statement of specific reasons supporting that opinion, does not constitute substantial evidence. The court may allow defense counsel to present his or her opinion regarding the defendant's mental competency in camera if the court finds there is reason to believe that attorney-client privileged information will be inappropriately revealed if the hearing is conducted in open court.

(3) In a felony case, if the judge initiates mental competency proceedings prior to the preliminary examination, counsel for the defendant may request a preliminary examination as provided in Penal Code section 1368.1(a)(1), or counsel for the People may request a determination of probable cause as provided in Penal Code section 1368.1(a)(2) and rule 4.131.

(Subd (b) amended effective January 1, 2020.)

(c) Effect of initiating mental competency proceedings

(1) If mental competency proceedings are initiated, criminal proceedings are suspended and may not be reinstated until a trial on the competency of the defendant has been concluded and the defendant is found mentally competent at a trial conducted under Penal Code section 1369, at a hearing conducted under Penal Code section 1370(a)(1)(G), or at a hearing following a certification of restoration under Penal Code section 1372.

(2) In misdemeanor cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and trial. If criminal proceedings are later reinstated and time is not waived, the trial must be commenced within 30 days after the reinstatement of the criminal proceedings, as provided by Penal Code section 1382(a)(3).

(3) In felony cases, speedy trial requirements are tolled during the suspension of criminal proceedings for mental competency evaluation and trial. If criminal proceedings are reinstated, unless time is waived, time periods to commence the preliminary examination or trial are as follows:

(A) If criminal proceedings were suspended before the preliminary hearing had been conducted, the preliminary hearing must be commenced within 10 days of the reinstatement of the criminal proceedings, as provided in Penal Code section 859b.

(B) If criminal proceedings were suspended after the preliminary hearing had been conducted, the trial must be commenced within 60 days of the reinstatement of the criminal proceedings, as provided in Penal Code section 1382(a)(2).

(Subd (c) amended effective January 1, 2020.)

(d) Examination of defendant after initiation of mental competency proceedings

(1) On initiation of mental competency proceedings, the court must inquire whether the defendant, or defendant's counsel, seeks a finding of mental incompetence.

(2) Any court-appointed experts must examine the defendant and advise the court on the defendant's competency to stand trial. Experts' reports are to be submitted to the court, counsel for the defendant, and the prosecution. The report must include the following:

(A) A brief statement of the examiner's training and previous experience as it relates to examining the competence of a criminal defendant to stand trial and preparing a resulting report;

(B) A summary of the examination conducted by the examiner on the defendant, including a summary of the defendant's mental status, a diagnosis under the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders*, if possible, of the defendant's current mental health disorder or disorders, and a statement as to whether symptoms of the mental health disorder or disorders which motivated the defendant's behavior would respond to mental health treatment;

(C) A detailed analysis of the competence of the defendant to stand trial using California's current legal standard, including the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental health disorder;

(D) A summary of an assessment—conducted for malingering or feigning symptoms, if clinically indicated—which may include, but need not be limited to, psychological testing;

(E) Under Penal Code section 1369, a statement on whether treatment with antipsychotic or other medication is medically appropriate for the defendant and whether the defendant has capacity to make decisions regarding antipsychotic or other medication as outlined in Penal Code section 1370. If a licensed psychologist examines the defendant and opines that treatment with antipsychotic medication may be appropriate, the psychologist's opinion must be based on whether the defendant has a mental disorder that is typically known to benefit from that treatment. A licensed psychologist's opinion must not exceed the scope of their license. If a psychiatrist examines the defendant and opines that treatment with antipsychotic medication is appropriate, the psychiatrist must inform the court of their opinion as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments, as outlined in Penal Code section 1370;

(F) A list of all sources of information considered by the examiner, including legal, medical, school, military, regional center, employment, hospital, and psychiatric records; the evaluations of other experts; the results of psychological testing; police reports; criminal history; statement of the defendant; statements of any witnesses to the alleged crime; booking information, mental health screenings, and mental health records following the alleged crime; consultation with the prosecutor and defendant's attorney; and any other collateral sources considered by the examiner in reaching a conclusion;

(G) If the defendant is charged with a felony offense, a recommendation, if possible, for a placement or type of placement or treatment program that is most appropriate for restoring the defendant to competency; and

(H) If the defendant is charged only with a misdemeanor offense, an opinion based on present clinical impressions and available historical data as to whether the defendant, regardless of custody status, appears to be gravely disabled, as defined in Welfare and Institutions Code section 5008(h)(1)(A).

(3) Statements made by the defendant during the examination to experts appointed under this rule, and products of any such statements, may not be used in a trial on the issue of the defendant's guilt or in a sanity trial should defendant enter a plea of not guilty by reason of insanity.

(Subd (d) amended effective May 15, 2023; previously amended effective January 1, 2018, January 1, 2020, September 1, 2020, and May 13, 2022.)

(e) Trial on mental competency

(1) Regardless of the conclusions or findings of the court-appointed expert, the court must conduct a trial on the mental competency of the defendant if the court has initiated mental competency proceedings under (b).

(2) At the trial, the defendant is presumed to be mentally competent, and it is the burden of the party contending that the defendant is not mentally competent to prove the defendant's mental incompetence by a preponderance of the evidence.

(3) In addition to the testimony of the experts appointed by the court under (d), either party may call additional experts or other relevant witnesses.

(4) After the presentation of the evidence and closing argument, the trier of fact is to determine whether the defendant is mentally competent or mentally incompetent.

(A) If the matter is tried by a jury, the verdict must be unanimous.

(B) If the parties have waived the right to a jury trial, the court's findings must be made in writing or placed orally in the record.

(f) Posttrial procedure

(1) If the defendant is found mentally competent, the court must reinstate the criminal proceedings.

(2) If the defendant in a felony case is found to be mentally incompetent under section 1370 or the defendant in any criminal action is found to be mentally incompetent under section 1370.1 due to a developmental disability, the criminal proceedings remain suspended and the court either:

(A) Must issue an order committing the person for restoration treatment under the provisions of the governing statute; or

(B) In the case of a person eligible for commitment under sections 1370, if the person is found incompetent due to a mental disorder, may consider placing the person on a program of diversion under section 1001.36 in lieu of commitment.

(3) If the defendant is found to be mentally incompetent in a misdemeanor case under section 1370.01, the criminal proceedings remain suspended, and the court may dismiss the case under section 1385 or conduct a hearing to consider placing the person on a program of diversion under section 1001.36

(Subd (f) amended effective May 13, 2022; previously amended effective January 1, 2020.)

(g) Reinstatement of felony proceedings under section 1001.36(g)

If a defendant eligible for commitment under section 1370 is granted diversion under section 1001.36, and during the period of diversion~~,~~ the court determines that criminal proceedings should be reinstated under section 1001.36(g), the court must, under section 1369, appoint a psychiatrist, licensed psychologist, or any other expert the court may deem appropriate, to examine the defendant and return a report opining on the defendant's competence to stand trial. The expert's report must be provided to counsel for the People and to the defendant's counsel.

(1) On receipt of the evaluation report, the court must conduct an inquiry into the defendant's current competency, under the procedures set forth in (h)(2) of this rule.

(2) If the court finds by a preponderance of the evidence that the defendant is mentally competent, the court must hold a hearing as set forth in Penal Code section 1001.36(g).

(3) If the court finds by a preponderance of the evidence that the defendant is mentally incompetent, criminal proceedings must remain suspended, and the court must order that the defendant be committed and placed for restoration treatment.

(4) If the court concludes, based on substantial evidence, that the defendant is mentally incompetent and is not likely to attain competency within the time remaining before the defendant's maximum date for returning to court, and has reason to believe the defendant may be gravely disabled, within the meaning of Welfare and Institutions Code section 5008(h)(1), the court may, instead of issuing a commitment order under section 1370, refer the matter to the conservatorship investigator of the county of commitment to initiate conservatorship proceedings for the defendant under Welfare and Institutions Code section 5350 et seq.

(Subd (g) amended effective May 15, 2023; adopted effective January 1, 2020; previously amended effective September 1, 2020, and May 13, 2022.)

(h) Posttrial hearings on competence under section 1370

(1) If, at any time after the court has declared a defendant incompetent to stand trial, and counsel for the defendant, or a jail medical or mental health staff provider, provides the court with substantial evidence that the defendant's psychiatric symptoms have changed to such a degree as to create a doubt in the mind of the judge as to the defendant's current mental incompetence, the court may appoint a psychiatrist or a licensed psychologist to examine the defendant and, in an examination with the court, opine as to whether the defendant has regained competence.

(2) On receipt of an evaluation report under (h)(1) or an evaluation by the State Department of State Hospitals under Welfare and Institutions Code section 4335.2, the court must direct the clerk to serve a copy on counsel for the People and counsel for the defendant. If, in the opinion of the appointed expert or the department's expert, the defendant has regained competence, the court must conduct a hearing~~,~~ as if a certificate of restoration of competence had been filed under section 1372(a)(1). At the hearing, the court may consider any evidence, presented by any party, that is relevant to the question of the defendant's current mental competency.

(A) At the conclusion of the hearing, if the court finds that it has been established by a preponderance of the evidence that the defendant is mentally competent, the court must reinstate criminal proceedings.

(B) At the conclusion of the hearing, if the court finds that it has not been established by a preponderance of the evidence that the defendant is mentally competent, criminal proceedings must remain suspended.

(C) The court's findings on the defendant's mental competency must be stated on the record and recorded in the minutes.

(Subd (h) amended effective May 15, 2023; adopted effective January 1, 2020; previously amended effective May 13, 2022.)

Rule 4.130 amended effective May 15, 2023; adopted effective January 1, 2007; previously amended effective January 1, 2018, January 1, 2020, September 1, 2020, and May 13, 2022.

Advisory Committee Comment

The case law interpreting Penal Code section 1367 et seq. established a procedure for judges to follow in cases where there is a concern whether the defendant is legally competent to stand trial, but the concern does not necessarily rise to the level of a reasonable doubt based on substantial evidence. Before finding a reasonable doubt as to the defendant's competency to stand trial and initiating competency proceedings under Penal Code section 1368 et seq., the court may appoint an expert to assist the court in determining whether such a reasonable doubt exists. As noted in *People v. Visciotti* (1992) 2 Cal.4th 1, 34–36, the court may appoint an expert when it is concerned about the mental competency of the defendant, but the concern does not rise to the level of a reasonable doubt, based on substantial evidence, required by Penal Code section 1367 et seq. Should the results of this examination present substantial evidence of mental incompetency, the court must initiate competency proceedings under (b).

Once mental competency proceedings under Penal Code section 1367 et seq. have been initiated, the court is to appoint at least one expert to examine the defendant under (d). Under no circumstances is the court obligated to appoint more than two experts. (Pen. Code, § 1369(a).) The costs of the experts appointed under (d) are to be paid for by the court as the expert examinations and reports are for the benefit or use of the court in determining whether the defendant is mentally incompetent. (See Cal. Rules of Court, rule 10.810, function 10.)

Subdivision (d)(3), which provides that the defendant's statements made during the examination cannot be used in a trial on the defendant's guilt or a sanity trial in a not guilty by reason of sanity trial, is based on the California Supreme Court holdings in *People v. Arcega* (1982) 32 Cal.3d 504 and *People v. Weaver* (2001) 26 Cal.4th 876.

Although the court is not obligated to appoint additional experts, counsel may nonetheless retain their own experts to testify at a trial on the defendant's competency. (See *People v. Mayes* (1988) 202 Cal.App.4th 908, 917–918.) These experts are not for the benefit or use of the court, and their costs are not to be paid by the court. (See Cal. Rules of Court, rule 10.810, function 10.)

Both the prosecution and the defense have the right to a jury trial. (See *People v. Superior Court (McPeters)* (1995) 169 Cal.App.3d 796.) Defense counsel may waive this right, even over the objection of the defendant. (*People v. Masterson* (1994) 8 Cal.4th 965, 970.)

Either defense counsel or the prosecution (or both) may argue that the defendant is not competent to stand trial. (*People v. Stanley* (1995) 10 Cal.4th 764, 804 [defense counsel may advocate that defendant is not competent to stand trial and may present evidence of defendant's mental incompetency regardless of defendant's desire to be found competent].) If the defense declines to present evidence of the defendant's mental incompetency, the prosecution may do so. (Pen. Code, § 1369(b)(2).) If the prosecution elects to present evidence of the defendant's mental incompetency, it is the prosecution's burden to prove the incompetency by a preponderance of the evidence. (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1484, fn. 12.)

Should both parties decline to present evidence of defendant's mental incompetency, the court may do so. In those cases, the court is not to instruct the jury that a party has the burden of proof. "Rather, the proper approach would be to instruct the jury on the legal standard they are to apply to the evidence before them without allocating the burden of proof to one party or the other." (*People v. Sherik* (1991) 229 Cal.App.3d 444, 459–460.)

Rule 4.131. Probable cause determinations under section 1368.1(a)(2)

(a) Notice of a request for a determination of probable cause

The prosecuting attorney must serve and file notice of a request for a determination of probable cause on the defense at least 10 court days before the time appointed for the proceeding.

(b) Judge requirement

A judge must hear the determination of probable cause unless there is a stipulation by both parties to having the matter heard by a subordinate judicial officer.

(c) Defendant need not be present

A defendant need not be present for a determination of probable cause to proceed.

(d) Application of section 861

The one-session requirement of section 861 does not apply.

(e) Transcript

A transcript of the determination of probable cause must be provided to the prosecuting attorney and counsel for the defendant consistent with the manner in which a transcript is provided in a preliminary examination.

Rule 4.131 adopted effective January 1, 2019.

Chapter 2. Change of Venue

Rule 4.150. Change of venue: application and general provisions

(a) Application

Rules 4.150 to 4.155 govern the change of venue in criminal cases under Penal Code section 1033.

(Subd (a) adopted effective January 1, 2006.)

(b) General provisions

When a change of venue has been ordered, the case remains a case of the transferring court. Except on good cause to the contrary, the court must follow the provisions below:

(1) Proceedings before trial must be heard in the transferring court.

(2) Proceedings that are not to be heard by the trial judge must be heard in the transferring court.

(3) Postverdict proceedings, including sentencing, if any, must be heard in the transferring court.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2006.)

(c) Appellate review

Review by the Court of Appeal, either by an original proceeding or by appeal, must be heard in the appellate district in which the transferring court is located.

(Subd (c) adopted effective January 1, 2006.)

Rule 4.150 amended effective January 1, 2007; adopted as rule 840 effective March 4, 1972; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2006.

Advisory Committee Comment

Subdivision (b)(1). This subdivision is based on Penal Code section 1033(a), which provides that all proceedings before trial are to be heard in the transferring court, except when a particular proceeding must be heard by the trial judge.

Subdivision (b)(2). This subdivision addresses motions heard by a judge other than the trial judge, such as requests for funds under Penal Code section 987.9 or a challenge or disqualification under Code of Civil Procedure section 170 et seq.

Subdivision (b)(3). Reflecting the local community interest in the case, (b)(3) clarifies that after trial the case is to return to the transferring court for any posttrial proceedings. There may be situations where the local interest is outweighed, warranting the receiving court to conduct posttrial hearings. Such hearings may include motions for new trial where juror testimony is necessary and the convenience to the jurors outweighs the desire to conduct the hearings in the transferring court.

Subdivision (c). This subdivision ensures that posttrial appeals and writs are heard in the same appellate district as any writs that may have been heard before or during trial.

Rule 4.151. Motion for change of venue

(a) Motion procedure

A motion for change of venue in a criminal case under Penal Code section 1033 must be supported by a declaration stating the facts supporting the application. Except for good cause shown, the motion must be filed at least 10 days before the date set for trial, with a copy served on the adverse party at least 10 days before the hearing. At the hearing counterdeclarations may be filed.

(Subd (a) amended effective January 1, 2007; adopted effective January 1, 2006; formerly part of an unlettered subd.)

(b) Policy considerations in ruling on motion

Before ordering a change of venue in a criminal case, the transferring court should consider impaneling a jury that would give the defendant a fair and impartial trial.

(Subd (b) adopted effective January 1, 2006.)

Rule 4.151 amended effective January 1, 2007; adopted as rule 841 effective March 4, 1972; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2006.

Advisory Committee Comment

Rule 4.151(b) is not intended to imply that the court should attempt to impanel a jury in every case before granting a change of venue.

Rule 4.152. Selection of court and trial judge

When a judge grants a motion for change of venue, he or she must inform the presiding judge of the transferring court. The presiding judge, or his or her designee, must:

(1) Notify the Administrative Director of the change of venue. After receiving the transferring court's notification, the Administrative Director, in order to expedite judicial business and equalize the work of the judges, must advise the transferring court which courts would not be unduly burdened by the trial of the case.

(2) Select the judge to try the case, as follows:

(A) The presiding judge, or his or her designee, must select a judge from the transferring court, unless he or she concludes that the transferring court does not have adequate judicial resources to try the case.

(B) If the presiding judge, or his or her designee, concludes that the transferring court does not have adequate judicial resources to try the case, he or she must request that the Chief Justice of California determine whether to assign a judge to the transferring court. If the Chief Justice determines not to assign a judge to the transferring court, the presiding judge, or his or her designee, must select a judge from the transferring court to try the case.

Rule 4.152 amended effective January 1, 2016; adopted as rule 842 effective March 4, 1972; previously amended and renumbered as rule 4.152 effective January 1, 2001; previously amended effective January 1, 2006.

Rule 4.153. Order on change of venue

After receiving the list of courts from the Administrative Director, the presiding judge, or his or her designee, must:

(1) Determine the court in which the case is to be tried. In making that determination, the court must consider, under Penal Code section 1036.7, whether to move the

jury rather than to move the pending action. In so doing, the court should give particular consideration to the convenience of the jurors.

(2) Transmit to the receiving court a certified copy of the order of transfer and any pleadings, documents, or other papers or exhibits necessary for trying the case.

(3) Enter the order for change of venue in the minutes of the transferring court. The order must include the determinations in (1).

Rule 4.153 amended effective January 1, 2016; adopted as rule 843 effective March 4, 1972; previously amended and renumbered as rule 4.153 effective January 1, 2001; previously amended effective January 1, 2006.

Advisory Committee Comment

Rules 4.152 and 4.153 recognize that, although the determination of whether to grant a motion for change of venue is judicial in nature, the selection of the receiving court and the decision whether the case should be tried by a judge of the transferring court are more administrative in nature. Thus, the rules provide that the presiding judge of the transferring court is to make the latter decisions. He or she may delegate those decisions to the trial judge, the supervising judge of the criminal division, or any other judge the presiding judge deems appropriate. If, under the particular facts of the case, the latter decisions are both judicial and administrative, those decisions may be more properly made by the judge who heard the motion for change of venue.

Rule 4.154. Proceedings in the receiving court

The receiving court must conduct the trial as if the case had been commenced in the receiving court. If it is necessary to have any of the original pleadings or other papers before the receiving court, the transferring court must transmit such papers or pleadings. If, during the trial, any original papers or pleadings are submitted to the receiving court, the receiving court is to file the original. After sentencing, all original papers and pleadings are to be retained by the transferring court.

Rule 4.154 amended effective January 1, 2006; adopted as rule 844 effective March 4, 1972; previously amended and renumbered effective January 1, 2001.

Rule 4.155. Guidelines for reimbursement of costs in change of venue cases—criminal cases

(a) General

Consistent with Penal Code section 1037, the court in which an action originated must reimburse the court receiving a case after an order for change of venue for any ordinary expenditure and any extraordinary but reasonable and necessary expenditure that would not have been incurred by the receiving court but for the change of venue.

(Subd (a) amended effective September 1, 2017; previously amended effective January 1, 2001, and January 1, 2006.)

(b) Reimbursable ordinary expenditures—court related

Court-related reimbursable ordinary expenses include:

(1) For prospective jurors on the panel from which the jury is selected and for the trial jurors and alternates seated:

(A) Normal juror per diem and mileage at the rates of the receiving court. The cost of the juror should only be charged to a change of venue case if the juror was not used in any other case on the day that juror was excused from the change of venue case.

(B) If jurors are sequestered, actual lodging, meals, mileage, and parking expenses up to state Board of Control limits.

(C) If jurors are transported to a different courthouse or county, actual mileage and parking expenses.

(2) For court reporters:

(A) The cost of pro tem reporters, even if not used on the change of venue trial, but not the salaries of regular official reporters who would have been paid in any event. The rate of compensation for pro tem reporters should be that of the receiving court.

(B) The cost of transcripts requested during trial and for any new trial or appeal, using the folio rate of the receiving court.

(C) The cost of additional reporters necessary to allow production of a daily or expedited transcript.

(3) For assigned judges: The assigned judge's per diem, travel, and other expenses, up to state Board of Control limits, if the judge is assigned to the receiving court because of the change of venue case, regardless of whether the assigned judge is hearing the change of venue case.

(4) For interpreters and translators:

(A) The cost of the services of interpreters and translators, not on the court staff, if those services are required under Evidence Code sections 750 through 754. Using the receiving court's fee schedule, this cost should be paid whether the services are used in a change of venue trial or to cover staff interpreters and translators assigned to the change of venue trial.

(B) Interpreters' and translators' actual mileage, per diem, and lodging expenses, if any, that were incurred in connection with the trial, up to state Board of Control limits.

(5) For maintenance of evidence: The cost of handling, storing, or maintaining evidence beyond the expenses normally incurred by the receiving court.

(6) For services and supplies: The cost of services and supplies incurred only because of the change of venue trial, for example, copying and printing charges (such as for juror questionnaires), long-distance telephone calls, and postage. A pro rata share of the costs of routine services and supplies should not be reimbursable.

(7) For court or county employees:

(A) Overtime expenditures and compensatory time for staff incurred because of the change of venue case.

(B) Salaries and benefit costs of extra help or temporary help incurred either because of the change of venue case or to replace staff assigned to the change of venue case.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1998, and January 1, 2006.)

(c) Reimbursable ordinary expenses—defendant related

Defendant-related reimbursable ordinary expenses include the actual costs incurred for guarding, keeping, and transporting the defendant, including:

(1) Expenses related to health care: Costs incurred by or on behalf of the defendant such as doctors, hospital expenses, medicines, therapists, and counseling for diagnosis, evaluation, and treatment.

(2) Cost of food and special clothing for an in-custody defendant.

(3) Transportation: Nonroutine expenses, such as transporting an in-custody defendant from the transferring court to the receiving court. Routine transportation expenses if defendant is transported by usual means used for other receiving court prisoners should not be reimbursable.

(Subd (c) amended effective January 1, 2006.)

(d) Reimbursable ordinary expenditures—defense expenses

Reimbursable ordinary expenses related to providing defense for the defendant include:

(1) Matters covered by Penal Code section 987.9 as determined by the transferring court or by a judge designated under that section.

(2) Payment of other defense costs in accordance with policies of the court in which the action originated, unless good cause to the contrary is shown to the trial court.

(3) Unless Penal Code section 987.9 applies, the receiving court may, in its sound discretion, approve all trial-related expenses including:

(A) Attorney fees for defense counsel and, if any, co-counsel and actual travel-related expenses, up to state Board of Control limits, for staying in the county of the receiving court during trial and hearings.

(B) Paralegal and extraordinary secretarial or office expenditures of defense counsel.

(C) Expert witness costs and expenses.

(D) The cost of experts assisting in preparation before trial or during trial, for example, persons preparing demonstrative evidence.

(E) Investigator expenses.

(F) Defense witness expenses, including reasonable-and-necessary witness fees and travel expenses.

(Subd (d) amended effective January 1, 2006; previously amended effective January 1, 1998.)

(e) Extraordinary but reasonable-and-necessary expenses

Except in emergencies or unless it is impracticable to do so, a receiving court should give notice before incurring any extraordinary expenditures to the transferring court, in accordance with Penal Code section 1037(d). Extraordinary but reasonable-and-necessary expenditures include:

(1) Security-related expenditures: The cost of extra security precautions taken because of the risk of escape or suicide or threats of, or the potential for, violence during the trial. These precautions might include, for example, extra bailiffs or correctional officers, special transportation to the courthouse for trial, television monitoring, and security checks of those entering the courtroom.

(2) Facility remodeling or modification: Alterations to buildings or courtrooms to accommodate the change of venue case.

(3) Renting or leasing of space or equipment: Renting or leasing of space for courtrooms, offices, and other facilities, or equipment to accommodate the change of venue case.

(Subd (e) amended effective January 1, 2006; previously amended effective January 1, 1998.)

(f) Nonreimbursable expenses

Nonreimbursable expenses include:

(1) Normal operating expenses including the overhead of the receiving court, for example:

(A) Salary and benefits of existing court staff that would have been paid even if there were no change of venue case.

(B) The cost of operating the jail, for example, detention staff costs, normal inmate clothing, utility costs, overhead costs, and jail construction costs. These expenditures would have been incurred whether or not the case was transferred to the receiving court. It is, therefore, inappropriate to seek reimbursement from the transferring court.

(2) Equipment that is purchased and then kept by the receiving court and that can be used for other purposes or cases.

(Subd (f) amended effective January 1, 2006.)

(g) Miscellaneous

(1) Documentation of costs: No expense should be submitted for reimbursement without supporting documentation, such as a claim, invoice, bill, statement, or time sheet. In unusual circumstances, a declaration under penalty of perjury may be necessary. The declaration should describe the cost and state that it was incurred because of the change of venue case. Any required court order or approval of costs also should be sent to the transferring court.

(2) Timing of reimbursement: Unless both courts agree to other terms, reimbursement of all expenses that are not questioned by the transferring court should be made within 60 days of receipt of the claim for reimbursement. Payment of disputed amounts should be made within 60 days of the resolution of the dispute.

(Subd (g) amended effective January 1, 2007; previously amended effective January 1, 2006.)

Rule 4.155 amended effective September 1, 2017; adopted as section 4.2 of the Standards of Judicial Administration effective July 1, 1989; amended and renumbered as rule 4.162 effective January 1, 2001; previously amended effective January 1, 1998, January 1, 2006, and January 1, 2007.

Division 3. Trials

Rule 4.200. Pre–voir dire conference in criminal cases

(a) The conference

Before jury selection begins in criminal cases, the court must conduct a conference with counsel to determine:

(1) A brief outline of the nature of the case, including a summary of the criminal charges;

(2) The names of persons counsel intend to call as witnesses at trial;

(3) The People's theory of culpability and the defendant's theories;

(4) The procedures for deciding requests for excuse for hardship and challenges for cause;

(5) The areas of inquiry and specific questions to be asked by the court and by counsel and any time limits on counsel's examination;

(6) The schedule for the trial and the predicted length of the trial;

(7) The number of alternate jurors to be selected and the procedure for selecting them; and

(8) The procedure for making objections pursuant to Code of Civil Procedure 231.7(b).

The judge must, if requested, excuse the defendant from then disclosing any defense theory.

(Subd (a) amended effective March 14, 2022; previously amended effective January 1, 2006, and January 1, 2007.)

(b) Written questions

The court may require counsel to submit in writing, and before the conference, all questions that counsel requests the court to ask of prospective jurors. This rule applies to questions to be asked either orally or by written questionnaire. The *Juror Questionnaire for Criminal Cases* (form MC-002) may be used.

(Subd (b) amended effective January 1, 2006.)

Rule 4.200 amended effective March 14, 2022; adopted as rule 228.1 effective June 6, 1990; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2006, and January 1, 2007.

Advisory Committee Comment

This rule is to be used in conjunction with standard 4.30.

Rule 4.201. Voir dire in criminal cases

To select a fair and impartial jury, the judge must conduct an initial examination of the prospective jurors orally, or by written questionnaire, or by both methods. The Juror Questionnaire for Criminal Cases (form MC-002) may be used. After completion of the initial examination, the court must permit counsel to conduct supplemental questioning as provided in Code of Civil Procedure section 223.

Rule 4.201 amended effective January 1, 2006; adopted as rule 228.2 effective June 6, 1990; previously amended and renumbered effective January 1, 2001.

Advisory Committee Comment

Although Code of Civil Procedure section 223 creates a preference for nonsequestered voir dire (*People v. Roldan* (2005) 35 Cal.4th 646, 691), a judge may conduct sequestered voir dire on questions concerning media reports of the case and on any other issue deemed advisable. (See, e.g., Cal. Stds. Jud. Admin., std. 4.30(a)(3).) To determine whether such issues are present, a judge may consider factors including the charges, the nature of the evidence that is anticipated to be presented, and any other relevant factors. To that end, a judge should always inform jurors of the possibility of sequestered voir dire if the voir dire is likely to elicit answers that the juror may believe are sensitive in nature. It should also be noted that when written questionnaires are used, jurors must be advised of the right to request a hearing in chambers on sensitive questions rather than answering them on the questionnaire. (*Copley Press Inc. v. Superior Court* (1991) 228 Cal.App.3d 77, 87.)

Rule 4.202. Statements to the jury panel

Prior to the examination of prospective jurors, the trial judge may, in his or her discretion, permit brief opening statements by counsel to the panel.

Rule 4.202 adopted effective January 1, 2013.

Comment

This statement is not a substitute for opening statements. Its purpose is to place voir dire questions in context and to generate interest in the case so that prospective jurors will be less inclined to claim marginal hardships.

Rule 4.210. Traffic court—trial by written declaration

(a) Applicability

This rule establishes the minimum procedural requirements for trials by written declaration under Vehicle Code section 40902. The procedures established by this rule must be followed in all trials by written declaration under that section.

(Subd (a) amended effective January 1, 2007.)

(b) Procedure

(1) *Definition of due date*

As used in this subdivision, "due date" means the last date on which the defendant's appearance is timely.

(2) *Extending due date*

If the clerk receives the defendant's written request for a trial by written declaration by the appearance date indicated on the *Notice to Appear,* the clerk must, within 15 calendar days after receiving the defendant's written request, extend the appearance date 25 calendar days and must give or mail notice to the defendant of the extended due date on the *Request for Trial by Written Declaration* (form TR-205) with a copy of the *Instructions to Defendant* (form TR-200) and any other required forms.

(3) *Election*

The defendant must file a *Request for Trial by Written Declaration* (form TR-205) with the clerk by the appearance date indicated on the *Notice to Appear* or the extended due date as provided in (2). The *Request for Trial by Written Declaration* (form TR-205) must be filed in addition to the defendant's written request for a trial by written declaration, unless the defendant's request was made on the election form.

(4) *Bail*

The defendant must deposit bail with the clerk by the appearance date indicated on the *Notice to Appear* or the extended due date as provided in (2).

(5) *Instructions to arresting officer*

If the clerk receives the defendant's *Request for Trial by Written Declaration* (form TR-205) and bail by the due date, the clerk must deliver or mail to the arresting officer's agency *Notice and Instructions to Arresting Officer* (form TR-210) and *Officer's Declaration* (form TR-235) with a copy of the *Notice to Appear* and a specified return date for receiving the officer's declaration. After receipt of the officer's declaration, or at the close of the officer's return date if no officer's declaration is filed, the clerk must submit the case file with all declarations and other evidence received to the court for decision.

(6) *Court decision*

After the court decides the case and returns the file and decision, the clerk must immediately deliver or mail the *Decision and Notice of Decision* (form TR-215) to the defendant and the arresting agency.

(7) *Trial de novo*

If the defendant files a *Request for New Trial (Trial de Novo)* (form TR-220) within 20 calendar days after the date of delivery or mailing of the Decision and Notice of Decision (form TR-215), the clerk must set a trial date within 45 calendar days of receipt of the defendant's written request for a new trial. The clerk must deliver or mail to the defendant and to the arresting officer's agency the *Order and Notice to Defendant of New Trial (Trial de Novo)* (form TR-225). If the defendant's request is not timely received, no new trial may be held and the case must be closed.

(8) *Case and time standard*

The clerk must deliver or mail the *Decision and Notice of Decision* (form TR-215) within 90 calendar days after the due date. Acts for which no specific time is stated in this rule must be performed promptly so that the *Decision and Notice of Decision* can be timely delivered or mailed by the clerk. Failure of the clerk or the court to comply with any time limit does not void or invalidate the decision of the court, unless prejudice to the defendant is shown.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 2000, and July 1, 2000.)

(c) Due dates and time limits

Due dates and time limits must be as stated in this rule, unless changed or extended by the court. The court may extend any date, but the court need not state the reasons for granting or denying an extension on the record or in the minutes.

(Subd (c) amended effective January 1, 2007.)

(d) Ineligible defendants

If the defendant requests a trial by written declaration and the clerk or the court determines that the defendant is not eligible for a trial by written declaration, the clerk must extend the due date 25 calendar days and notify the defendant by mail of the determination and due date.
(Subd (d) amended effective January 1, 2007.)

(e) Noncompliance

If the defendant does not comply with this rule (including submitting the required bail amount, signing and filing all required forms, and complying with all time limits and due dates), the court may deny a trial by written declaration and may proceed as otherwise provided by statute and court rules.

(Subd (e) amended effective January 1, 2007.)

(f) Evidence

Testimony and other relevant evidence may be introduced in the form of a *Notice to Appear* issued under Vehicle Code section 40500; a business record or receipt; a sworn declaration of the arresting officer; and, on behalf of the defendant, a sworn declaration of the defendant.

(Subd (f) amended effective January 1, 2007.)

(g) Fines, assessments, or penalties

The statute and the rules do not prevent or preclude the court from imposing on a defendant who is found guilty any lawful fine, assessment, or other penalty, and the court is not limited to imposing money penalties in the bail amount, unless the bail amount is the maximum and the only lawful penalty.

(Subd (g) amended effective January 1, 2007.)

(h) Additional forms and procedures

The clerk may approve and prescribe forms, time limits, and procedures that are not in conflict with or not inconsistent with the statute or this rule.

(i) Forms

The following forms are to be used to implement the procedures under this rule:

(1) *Instructions to Defendant* (form TR-200)

(2) *Request for Trial by Written Declaration* (form TR-205)

(3) *Notice and Instructions to Arresting Officer* (form TR-210)

(4) *Officer's Declaration* (form TR-235)

(5) *Decision and Notice of Decision* (form TR-215)

(6) *Request for New Trial (Trial de Novo)* (form TR-220)

(7) *Order and Notice to Defendant of New Trial (Trial de Novo)* (form TR-225)

(Subd (i) amended effective January 1, 2007; previously amended effective January 1, 2000.)

(j) Local forms

A court may adopt additional forms as may be required to implement this rule and the court's local procedures not inconsistent with this rule.

(Subd (j) amended effective January 1, 2007.)

Rule 4.210 amended and renumbered effective January 1, 2007; adopted as rule 828 effective January 1, 1999; previously amended effective January 1, 2000, and July 1, 2000.

Rule 4.220. Remote video proceedings in traffic infraction cases [Repealed]
Rule 4.220 repealed effective May 13, 2022; adopted effective February 1, 2013; previously amended effective September 1, 2015.

Rule 4.230. Additional requirements in capital cases

(a) Application

This rule applies only in trials in cases in which the death penalty may be imposed.

(b) Checklist

Within 10 days of counsel's first appearance in court, primary counsel for each defendant and the prosecution must each acknowledge that they have reviewed

Capital Case Attorney Trial Checklist (form CR-605) by signing and submitting this form to the court. Counsel is encouraged to keep a copy of this checklist.

(c) Review of daily transcripts by counsel during trial

During trial, counsel must call the court's attention to any errors or omissions they may find in the daily transcripts. The court must periodically ask counsel for lists of any such errors or omissions and may hold hearings to verify them. Immaterial typographical errors that cannot conceivably cause confusion are not required to be brought to the court's attention.

(d) Lists of appearances, exhibits, motions, and jury instructions

(1) Primary counsel for each defendant and the prosecution must each prepare the lists identified in (A)–(D).

(A) A list of all appearances made by that party. *Capital Case Attorney List of Appearances* (form CR-601) must be used for this purpose. The list must include all appearances, including ex parte appearances, the date of each appearance, the department in which it was made, the name of counsel making the appearance, and a brief description of the nature of the appearance. A separate list of Penal Code section 987.9 appearances must be maintained under seal for each defendant. In the event of any substitution of attorney at any stage of the case, the relieved attorney must provide the list of all appearances to substituting counsel within five days of being relieved.

(B) A list of all exhibits offered by that party. *Capital Case Attorney List of Exhibits* (form CR-602) must be used for this purpose. The list must indicate whether the exhibit was admitted in evidence, refused, lodged, or withdrawn.

(C) A list of all motions made by that party, including ex parte motions. *Capital Case Attorney List of Motions* (form CR-603) must be used for this purpose.

(D) A list of all jury instructions submitted in writing by that party. *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used for this purpose. The list must indicate whether the instruction was given, given as modified, refused, or withdrawn.

(2) No later than 21 days after the imposition of a sentence of death, counsel must submit the lists to the court and serve on all parties a copy of all the lists except the list of Penal Code section 987.9 appearances. Unless otherwise provided by local rule, the lists must be submitted to the court in electronic form.

(e) Electronic recordings presented or offered into evidence

Counsel must comply with the requirements of rule 2.1040 regarding electronic recordings presented or offered into evidence, including any such recordings that are part of a digital or electronic presentation.

(f) Copies of audio and visual aids

Primary counsel must provide the clerk with copies of any audio or visual aids not otherwise subject to the requirements of (e) that are used during jury selection or in presentations to the jury, including digital or electronic presentations. If a visual aid is oversized, a photograph of that visual aid must be provided in place of the original. For digital or electronic presentations, counsel must supply both a copy of the presentation in its native format and printouts showing the full text of each slide or image. Photographs and printouts provided under this subdivision must be on 8-1/2 by 11 inch paper.

Rule 4.230 adopted effective April 25, 2019.

Advisory Committee Comment

Subdivision (b). *Capital Case Attorney List of Appearances* (form CR-601), *Capital Case Attorney List of Exhibits* (form CR-602), *Capital Case Attorney List of Motions* (form CR-603), and *Capital Case Attorney List of Jury Instructions* (form CR-604) must be used to comply with the requirements in this subdivision.

Subdivision (d). To facilitate preparation of complete and accurate lists, counsel are encouraged to add items to the lists at the time appearances or motions are made, exhibits are offered, or jury instructions are submitted.

Division 4. Sentencing

Rule 4.300. Commitments to nonpenal institutions [Repealed]

Rule 4.300 repealed effective March 14, 2022; adopted as rule 453 effective July 1, 1977; previously amended and renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 2006, and January 1, 2007.

Rule 4.305. Notification of appeal rights in felony cases

After imposing sentence or making an order deemed to be a final judgment in a criminal case on conviction after trial, or after imposing sentence following a revocation of probation, except where the revocation is after the defendant's admission of violation of probation, the court must advise the defendant of his or her right to appeal, of the necessary steps and time for taking an appeal, and of the right of an indigent defendant to have counsel appointed by the reviewing court.

Rule 4.305 amended effective January 1, 2013; adopted as rule 250 effective January 1, 1972; previously amended and renumbered as rule 470 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 1972, January 1, 1977, and January 1, 2007.

Rule 4.306. Notification of appeal rights in misdemeanor and infraction cases

After imposing sentence or making an order deemed to be a final judgment in a misdemeanor case on conviction after trial or following a revocation of probation, the court must orally or in writing advise a defendant not represented by counsel of the right to appeal, the time for filing a notice of appeal, and the right of an indigent defendant to have counsel appointed on appeal. This rule does not apply to infractions or when a revocation of probation is ordered after the defendant's admission of a violation of probation.

Rule 4.306 amended effective January 1, 2007; adopted as rule 535 effective July 1, 1981; previously renumbered effective January 1, 2001.

Rule 4.310. Determination of presentence custody time credit

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under Penal Code sections 2900.5, 2933.1(c), and 2933.2(c). On referral of the defendant to the probation officer for an investigation and report under Penal Code section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

Rule 4.310 amended effective January 1, 2007; adopted as rule 252 effective January 1, 1977; previously amended and renumbered as rule 472 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended effective July 1, 2004.

Rule 4.315. Setting date for execution of death sentence

(a) Open session of court; notice required

A date for execution of a judgment of death under Penal Code section 1193 or 1227 must be set at a public session of the court at which the defendant and the People may be represented.

At least 10 days before the session of court at which the date will be set, the court must mail notice of the time and place of the proceeding by first-class mail, postage prepaid, to the Attorney General, the district attorney, the defendant at the prison address, the defendant's counsel or, if none is known, counsel who most recently represented the defendant on appeal or in postappeal legal proceedings, and the executive director of the California Appellate Project in San Francisco. The clerk must file a certificate of mailing copies of the notice. The court may not hold the proceeding or set an execution date unless the record contains a clerk's certificate showing that the notices required by this subdivision were timely mailed.

Unless otherwise provided by statute, the defendant does not have a right to be present in person.

(Subd (a) amended effective January 1, 2007; previously amended effective July 1, 1990.)

(b) Selection of date; notice

If, at the announced session of court, the court sets a date for execution of the judgment of death, the court must mail certified copies of the order setting the date to the warden of the state prison and to the Governor, as required by statute; and must also, within five days of the making of the order, mail by first-class mail, postage prepaid, certified copies of the order setting the date to each of the persons required to be given notice by (a). The clerk must file a certificate of mailing copies of the order.

(Subd (b) amended effective January 1, 2007.)

Rule 4.315 amended effective January 1, 2007; adopted as rule 490 effective July 1, 1989; previously amended effective July 1, 1990; previously renumbered effective January 1, 2001.

Rule 4.320. Records of criminal convictions (Gov. Code, §§ 69844.5, 71280.5)

(a) Information to be submitted

In addition to the information that the Department of Justice requires from courts under Penal Code section 13151, each trial court must also report, electronically or manually, the following information, in the form and manner specified by the Department of Justice:

(1) Whether the defendant was represented by counsel or waived the right to counsel; and

(2) In the case of a guilty or nolo contendere plea, whether:

(A) The defendant was advised of and understood the charges;

(B) The defendant was advised of, understood, and waived the right to a jury trial, the right to confront witnesses, and the privilege against self-incrimination; and

(C) The court found the plea was voluntary and intelligently made.

For purposes of this rule, a change of plea form signed by the defendant, defense counsel if the defendant was represented by counsel, and the judge, and filed with the court is a sufficient basis for the clerk or deputy clerk to report that the requirements of (2) have been met.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001.)

(b) Certification required

The reporting clerk or a deputy clerk must certify that the report submitted to the Department of Justice under Penal Code section 13151 and this rule is a correct abstract of the information contained in the court's records in the case.

(Subd (b) amended effective January 1, 2007.)

Rule 4.320 amended effective January 1, 2007; adopted as rule 895 effective July 1, 1998; previously amended and renumbered effective January 1, 2001.

Rule 4.325. Ignition interlock installation orders: "interest of justice" exceptions

If the court finds that the interest of justice requires an exception to the Vehicle Code sections 14601(e), 14601.1(d), 14601.4(c), or 14601.5(g) requirements for installation of an ignition interlock device under Vehicle Code section 23575, the reasons for the finding must be stated on the record.

Rule 4.325 amended and renumbered effective January 1, 2001; adopted as rule 530 effective January 1, 1995.

Rule 4.330. Misdemeanor hate crimes

(a) Application

This rule applies to misdemeanor cases where the defendant is convicted of either (1) a substantive hate crime under section 422.6 or (2) a misdemeanor violation and the facts of the crime constitute a hate crime under section 422.55.

(b) Sentencing consideration

In sentencing a defendant under (a), the court must consider the goals for hate crime sentencing stated in rule 4.427(e).

Rule 4.330 adopted effective January 1, 2007.

Rule 4.335. Ability-to-pay determinations for infraction offenses

(a) Application

This rule applies to any infraction offense for which the defendant has received a written *Notice to Appear*.

(b) Required notice regarding an ability-to-pay determination

Courts must provide defendants with notice of their right to request an ability-to-pay determination and make available instructions or other materials for requesting an ability-to-pay determination.

(c) Procedure for determining ability to pay

(1) The court, on request of a defendant, must consider the defendant's ability to pay.

(2) A defendant may request an ability-to-pay determination at adjudication, or while the judgment remains unpaid, including when a case is delinquent or has been referred to a comprehensive collection program.

(3) The court must permit a defendant to make this request by written petition unless the court directs a court appearance. The request must include any information or documentation the defendant wishes the court to consider in connection with the determination. The judicial officer has the discretion to conduct the review on the written record or to order a hearing.

(4) Based on the ability-to-pay determination, the court may exercise its discretion to:

(A) Provide for payment on an installment plan (if available);

(B) Allow the defendant to complete community service in lieu of paying the total fine (if available);

(C) Suspend the fine in whole or in part;

(D) Offer an alternative disposition.

(5) A defendant ordered to pay on an installment plan or to complete community service may request to have an ability-to-pay determination at any time during the pendency of the judgment.

(6) If a defendant has already had an ability-to-pay determination in the case, a defendant may request a subsequent ability-to-pay determination only based on changed circumstances.

Rule 4.335 adopted effective January 1, 2017

Advisory Committee Comment

Subdivision (b). This notice may be provided on the notice required by rule 4.107, the notice of any civil assessment under section 1214.1, a court's website, or any other notice provided to the defendant.

Subdivision(c)(1). In determining the defendant's ability to pay, the court should take into account factors including: (1) receipt of public benefits under Supplemental Security Income (SSI), State Supplementary Payment (SSP), California Work Opportunity and Responsibility to Kids (CalWORKS), Federal Tribal Temporary Assistance for Needy Families (Tribal TANF), Supplemental Nutrition Assistance Program, California Food Assistance Program, County Relief, General Relief (GR), General Assistance (GA), Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants (CAPI), In Home Supportive Services (IHSS), or Medi-Cal; and (2) a monthly income of 125 percent or less of the current poverty guidelines, updated periodically in the Federal Register by the U.S. Department of Health and Human Services under 42 U.S.C. § 9902(2).

Subdivision (c)(4). The amount and manner of paying the total fine must be reasonable and compatible with the defendant's financial ability. Even if the defendant has not demonstrated an inability to pay, the court may still exercise discretion. Regardless of whether the defendant has demonstrated an inability to pay, the court in exercising its discretion under this subdivision may consider the severity of the offense, among other factors. While the base fine may be suspended in whole or in part in the court's discretion, this subdivision is not intended to affect the imposition of any mandatory fees.

Rule 4.336. Confidential Can't Afford to Pay Fine Forms

(a) Use of request and order forms

(1) A court uses the information on *Can't Afford to Pay Fine: Traffic and Other Infractions* (form TR-320/CR-320) to determine an infraction defendant's ability to pay under rule 4.335.

(2) A court may use *Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)* (form TR-321/CR-321) to issue an order in response to an infraction defendant's request for an ability-to-pay determination under rule 4.335.

(b) Confidential request form

Can't Afford to Pay Fine: Traffic and Other Infractions (form TR-320/CR-320), the information it contains, and any supporting documentation are confidential. The clerk's office must maintain the form and supporting documentation in a manner that will protect and preserve their confidentiality. Only the parties and the court may access the form and supporting documentation.

(c) Optional request and order forms

Can't Afford to Pay Fine: Traffic and Other Infractions (form TR-320/CR-320) and *Can't Afford to Pay Fine: Traffic and Other Infractions (Court Order)* (form TR-321/CR-321) are optional forms under rule 1.35.

Rule 4.336 adopted effective April 1, 2018.

Division 5. Felony Sentencing Law

Rule 4.401. Authority

The rules in this division are adopted under Penal Code section 1170.3 and under the authority granted to the Judicial Council by the Constitution, article VI, section 6, to adopt rules for court administration, practice, and procedure.

Rule 4.401 amended effective January 1, 2007; adopted as rule 401 effective July 1, 1977; previously renumbered effective January 1, 2001.

Rule 4.403. Application

These rules apply to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by (1) a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170) and (2) an indeterminate sentence imposed under section 1168(b) only if it is imposed relative to other offenses with determinate terms or enhancements.

Rule 4.403 amended effective January 1, 2018; adopted as rule 403 effective July 1, 1977; previously amended and renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2007, and January 1, 2017.

Advisory Committee Comment

The operative portions of section 1170 deal exclusively with prison sentences; and the mandate to the Judicial Council in section 1170.3 is limited to criteria affecting the length of prison sentences, sentences in county jail under section 1170(h), and the grant or denial of probation.

Rule 4.405. Definitions

As used in this division, unless the context otherwise requires:

(1) “These rules” means the rules in this division.

(2) “Base term” is the determinate or indeterminate sentence imposed for the commission of a crime, not including any enhancements that carry an additional term of imprisonment.

(3) When a person is convicted of two or more felonies, the “principal term” is the greatest determinate term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable count-specific enhancements.

(4) When a person is convicted of two or more felonies, the “subordinate term” is the determinate term imposed for an offense, plus any count-specific enhancements applicable to the offense ordered to run consecutively to the principal term.

(5) “Enhancement” means an additional term of imprisonment added to the base term.

(6) “Offense” means the offense of conviction unless a different meaning is specified or is otherwise clear from the context. The term “instant” or “current” is used in connection with “offense” or “offense of conviction” to distinguish the violation for which the defendant is being sentenced from an enhancement, prior or subsequent offense, or from an offense before another court.

(7) “Aggravation,” or “circumstances in aggravation means factors that justify the imposition of the upper prison term referred to in section 1170(b) and 1170.1, or factors that the court may consider in exercising discretion authorized by statute and under these rules including imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to section 1385(c).

(8) “Mitigation” or “circumstances in mitigation” means factors that the court may consider in its broad sentencing discretion authorized by statute and under these rules.

(9) “Sentence choice” means the selection of any disposition of the case that does not amount to a dismissal, acquittal, or grant of a new trial.

(10) “Section” means a section of the Penal Code.

(11) “Imprisonment” means confinement in a state prison or county jail under section 1170(h).

(12) “Charged” means charged in the indictment or information.

(13) “Found” means admitted by the defendant or found to be true by the trier of fact upon trial.

(14) "Mandatory supervision" means the period of supervision defined in section 1170(h)(5)(A), (B).

(15) "Postrelease community supervision" means the period of supervision governed by section 3451 et seq.

(16) "Risk/needs assessment" means a standardized, validated evaluation tool designed to measure an offender's actuarial risk factors and specific needs that, if successfully addressed, may reduce the likelihood of future criminal activity.

(17) "Evidence-based practices" means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision

(18) "Community-based corrections program" means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)–(5).

(19) "Local supervision" means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.

(20) "County jail" means local county correctional facility.

Rule 4.405 amended effective March 14, 2022; adopted as rule 405 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1991, July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2017, and January 1, 2018.

Advisory Committee Comment

The Legislature amended the determinate sentencing law to require courts to order imposition of a sentence or enhancement not to exceed the middle term unless factors in aggravation justify imposition of the upper term and are stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (See Sen. Bill 567; Stats. 2021, ch. 731.) However, in determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified records of conviction. This exception may not be used to select the upper term of an enhancement.

The court may exercise its judicial discretion in imposing the middle term or low term and must state the facts and reasons on the record for choosing the sentence imposed. In exercising this discretion between the middle term and the low term, the court may rely on aggravating factors that have not been stipulated to by the defendant or proven beyond a reasonable doubt. (*People v. Black* (2007) 41 Cal.4th 799.)

The Legislature also amended the determinate sentencing law to require courts to order imposition of the low term when the court finds that certain factors contributed to the commission

of the crime unless the court finds that it would not be in the interests of justice to do so because the aggravating factors outweigh the mitigating factors. (Pen. Code, § 1170(b)(6).)

Rule 4.406. Reasons

(a) How given

If the sentencing judge is required to give reasons for a sentence choice, the judge must state in simple language the primary factor or factors that support the exercise of discretion. The statement need not be in the language of the statute or these rules. It must be delivered orally on the record. The court may give a single statement explaining the reason or reasons for imposing a particular sentence or the exercise of judicial discretion, if the statement identifies the sentencing choices where discretion is exercised and there is no impermissible dual use of facts.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 2007.)

(b) When reasons required

Sentence choices that generally require a statement of a reason include, but are not limited to:

(1) Granting probation when the defendant is presumptively ineligible for probation;

(2) Denying probation when the defendant is presumptively eligible for probation;

(3) Selecting a term for either an offense or an enhancement;

(4) Imposing consecutive sentences;

(5) Imposing full consecutive sentences under section 667.6(c) rather than consecutive terms under section 1170.1(a), when the court has that choice;

(6) Waiving a restitution fine;

(7) Granting relief under section 1385; and

(8) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

(Subd (b) amended and renumbered effective March 14, 2022; previously amended effective January 1, 2001, July 1, 2003, January 1, 2006, January 1, 2007, May 23,

2007, and January 1, 2017; previously amended and renumbered effective January 1, 2018.)

Rule 4.406 amended effective March 14, 2022; adopted as rule 406 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2006, January 1, 2007, May 23, 2007, January 1, 2017, and January 1, 2018.

Advisory Committee Comment

This rule is not intended to expand the statutory requirements for giving reasons, and is not an independent interpretation of the statutory requirements.

The court is not required to separately state the reasons for making each sentencing choice so long as the record reflects the court understood it had discretion on a particular issue and its reasons for making the particular choice. For example, if the court decides to deny probation and impose the upper term of punishment, the court may simply state: "I am denying probation and imposing the upper term because of the extensive losses to the victim and because the defendant's record is increasing in seriousness." It is not necessary to state a reason after exercising each decision.

The court must be mindful of impermissible dual use of facts in stating reasons for sentencing choices. For example, the court is not permitted to use a reason to impose a greater term if that reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The court should not use the same reason to impose a consecutive sentence and to impose an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

Whenever relief is granted under section 1385, the court's reasons for exercising that discretion must be stated orally on the record and entered in the minutes if requested by a party or if the proceedings are not recorded electronically or reported by a court reporter. (Pen. Code, § 1385(a).) Although no legal authority requires the court to state reasons for denying relief, such a statement may be helpful in the appellate review of the exercise of the court's discretion.

Rule 4.408. Listing of factors not exclusive; sequence not significant

(a) The listing of factors in these rules for making discretionary sentencing decisions is not exhaustive and does not prohibit a trial judge from using additional criteria reasonably related to the decision being made. Any such additional criteria must be stated on the record by the sentencing judge.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 2007.)

(b) The order in which criteria are listed does not indicate their relative weight or importance.

Rule 4.408 amended effective January 1, 2018; adopted as rule 408 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Advisory Committee Comment

The variety of circumstances presented in felony cases is so great that no listing of criteria could claim to be all-inclusive. (Cf., Evid. Code, § 351.)

The court may impose a sentence or enhancement exceeding the middle term only if the facts underlying the aggravating factor were stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, § 1170(b)(2).)

However, in determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified records of conviction. This exception may not be used to select the upper term of an enhancement. (Pen. Code, § 1170(b)(3).)

The Legislature also amended the determinate sentencing law to require courts to order imposition of the low term when the court finds that certain factors contributed to the commission of the crime unless the court finds that it would not be in the interests of justice to do so because the aggravating factors outweigh the mitigating factors. (Pen. Code, § 1170(b)(6).)

Rule 4.409. Consideration of relevant factors

Relevant factors enumerated in these rules must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise.

Rule 4.409 amended effective January 1, 2018; adopted as rule 409 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Advisory Committee Comment

Relevant factors are those applicable to the facts in the record of the case; not all factors will be relevant to each case. The judge's duty is similar to the duty to consider the probation officer's report. Section 1203.

In deeming the sentencing judge to have considered relevant factors, the rule applies the presumption of Evidence Code section 664 that official duty has been regularly performed. (See *People v. Moran* (1970) 1 Cal.3d 755, 762 [trial court presumed to have considered referring eligible defendant to California Youth Authority in absence of any showing to the contrary, citing Evidence Code section 664].)

Rule 4.410. General objectives in sentencing

(a) General objectives of sentencing include:

(1) Protecting society;

(2) Punishing the defendant;

(3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;

(4) Deterring others from criminal conduct by demonstrating its consequences;

(5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;

(6) Securing restitution for the victims of crime;

(7) Achieving uniformity in sentencing; and

(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.

(Subd (a) amended effective January 1, 2017; previously amended effective July 1, 2003, ad January 1, 2007.)

(b) Because in some instances these objectives may suggest inconsistent dispositions, the sentencing judge must consider which objectives are of primary importance in the particular case. The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and any other facts and circumstances relevant to the case.

(Subd (b) amended effective January 1, 2018; previously lettered effective July 1, 2003; adopted as part of unlettered subd effective July 1, 1977; former subd (b) amended and relettered as part of subd (a) effective July 1, 2003.)

Rule 4.410 amended effective January 1, 2018; adopted as rule 410 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2007, and January 1, 2017.

Advisory Committee Comment

Statutory expressions of policy include:

Section 1170(a)(1), which expresses the policies of uniformity, proportionality of terms of imprisonment to the seriousness of the offense, and the use of imprisonment as punishment. It also states that "the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice."

Sections 17.5, 1228, and 3450, which express the policies promoting reinvestment of criminal justice resources to support community-based corrections programs and evidence-based practices to improve public safety through a reduction in recidivism.

Rule 4.411. Presentence investigations and reports

(a) When required

As provided in subdivision (b), the court must refer the case to the probation officer for:

(1) A presentence investigation and report if the defendant:

(A) Is statutorily eligible for probation or a term of imprisonment in county jail under section 1170(h); or

(B) Is not eligible for probation but a report is needed to assist the court with other sentencing issues, including the determination of the proper amount of restitution fine;

(2) A supplemental report if a significant period of time has passed since the original report was prepared.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 2007, and January 15, 2015.)

(b) Waiver of the investigation and report

The parties may stipulate to the waiver of the probation officer's investigation and report in writing or in open court and entered in the minutes, and with the consent of the court. In deciding whether to consent to the waiver, the court should consider whether the information in the report would assist in the resolution of any current or future sentencing issues, or would assist in the effective supervision of the person. A waiver under this section does not affect the requirement under section 1203c that a probation report be created when the court commits a person to state prison.

(Subd (b) amended effective January 1, 2018; previously amended effective January 1, 2015.)

Rule 4.411 amended effective January 1, 2018; adopted as rule 418 effective July 1, 1977; previously amended and renumbered as rule 411 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective January 1, 2006, January 1, 2007, and January 1, 2015.

Advisory Committee Comment

Section 1203 requires a presentence report in every felony case in which the defendant is eligible for probation. Subdivision (a) requires a presentence report in every felony case in which the defendant is eligible for a term of imprisonment in county jail under section 1170(h).

When considering whether to waive a presentence investigation and report, courts should consider that probation officers' reports are used by (1) courts in determining the appropriate term of imprisonment in prison or county jail under section 1170(h); (2) courts in deciding whether probation is appropriate, whether a period of mandatory supervision should be denied in the interests of justice under section 1170(h)(5)(A), and the appropriate length and conditions of probation and mandatory supervision; (3) the probation department in supervising the defendant; and (4) the Department of Corrections and Rehabilitation, Division of Adult Operations, in deciding on the type of facility and program in which to place a defendant.

Subdivision (a)(2) is based on case law that generally requires a supplemental report if the defendant is to be resentenced a significant time after the original sentencing, as, for example, after a remand by an appellate court, or after the apprehension of a defendant who failed to appear at sentencing. The rule is not intended to expand on the requirements of those cases.

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

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

Rule 4.411.5. Probation officer's presentence investigation report

(a) Contents

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

(1) A face sheet showing at least:

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

(B) The case number;

(C) The crime of which the defendant was convicted, and any enhancements which were admitted or found true;

(D) Any factors in aggravation including whether the factors were stipulated to by the defendant, found true beyond a reasonable doubt at

trial by a jury, or found true beyond a reasonable doubt by a judge in a court trial;

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

(F) The defendant's custody status; and

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

(2) The facts and circumstances of the crime and the defendant's arrest, including information concerning any co-defendants and the status or disposition of their cases. The source of all such information must be stated.

(3) A summary of the defendant's record of prior criminal conduct, including convictions as an adult and sustained petitions in juvenile delinquency proceedings. Records of an arrest or charge not leading to a conviction or the sustaining of a petition may not be included unless supported by facts concerning the arrest or charge.

(4) Any statement made by the defendant to the probation officer, or a summary thereof, including the defendant's account of the circumstances of the crime.

(5) Information concerning the victim of the crime, including:

(A) The victim's statement or a summary thereof, if available;

(B) Any physical or psychological injuries suffered by the victim;

(C) The amount of the victim's monetary loss, and whether or not it is covered by insurance; and

(D) Any information required by law.

(6) Any relevant facts concerning the defendant's social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings. This includes:

(A) Facts relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service; and

(B) Factors listed in section 1170(b)(6) and whether the current offense is connected to those factors.

(7) Collateral information, including written statements from:

(A) Official sources such as defense and prosecuting attorneys, police (subsequent to any police reports used to summarize the crime), probation and parole officers who have had prior experience with the defendant, and correctional personnel who observed the defendant's behavior during any period of presentence incarceration; and

(B) Interested persons, including family members and others who have written letters concerning the defendant.

(8) The defendant's relevant risk factors and needs as identified by a risk/needs assessment, if such an assessment is performed, and such other information from the assessment as may be requested by the court.

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

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

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

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

(D) If a term of imprisonment 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, including the factors prescribed by rule 4.415(c); and

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

Discussions of factors (A) through (D) must refer to any sentencing rule directly relevant to the facts of the case, but no rule may be cited without a reasoned discussion of its relevance and relative importance.

(10) Any mitigating factors pursuant to section 1385(c).

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

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

(13) A statement of mandatory and recommended restitution, restitution fines, and other fines, fees, assessments, penalties, and costs to be assessed against the defendant; a recommendation whether any restitution order should become a judgment under section 1203(j) if unpaid; and, when appropriate, any finding concerning the defendant's ability to pay.

(14) Information pursuant to section 29810(c):

(A) Whether the defendant has properly complied with Penal Code section 29810 by relinquishing firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and

(B) Whether the defendant has timely submitted a completed Prohibited Persons Relinquishment Form.

(Subd (a) amended effective March 14, 2022; previously amended effective January 1, 1991, July 1, 2003, January 1, 2007, January 1, 2015, January 1, 2017, and January 1, 2018.)

(b) Format

The report must be on paper 8-½ by 11 inches in size and must follow the sequence set out in (a) to the extent possible.

(Subd (b) amended effective January 1, 2007; previously amended effective January 1, 1991.)

(c) Sources

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

(Subd (c) amended effective January 1, 2007; previously amended effective January 1, 1991.)

Rule 4.411.5 amended effective March 14, 2022; adopted as rule 419 effective July 1, 1981; previously amended and renumbered as rule 411.5 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2007, January 1, 2015, January 1, 2017, and January 1, 2018.

Rule 4.412. Reasons—agreement to punishment as an adequate reason and as abandonment of certain claims

(a) Defendant's agreement as reason

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 does not authorize a sentence that is not otherwise authorized by law.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 2001.)

(b) Agreement to sentence abandons section 654 claim

By agreeing to a specified term in prison or county jail under section 1170(h) personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 2007.)

Rule 4.412 amended effective January 1, 2017; adopted as rule 412 effective January 1, 1991; previously amended and renumbered effective January 1, 2001; previously amended effective January 1, 2007.

Advisory Committee Comment

Subdivision (a). This subdivision is intended to relieve the court of an obligation to give reasons if the sentence or other disposition is one that the defendant has accepted and to which the prosecutor expresses no objection. The judge may choose to give reasons for the sentence even though not obligated to do so.

Judges should also be aware that there may be statutory limitations on "plea bargaining" or on the entry of a guilty plea on the condition that no more than a particular sentence will be imposed. Such limitations appear, for example, in sections 1192.5 and 1192.7.

Subdivision (b). This subdivision is based on the fact that a defendant who, with the advice of counsel, expresses agreement to a specified term of imprisonment normally is acknowledging that the term is appropriate for his or her total course of conduct. This subdivision applies to both determinate and indeterminate terms.

Rule 4.413. Grant of probation when defendant is presumptively ineligible for probation

(a) Consideration of eligibility

The court must determine whether the defendant is eligible for probation. In most cases, the defendant is presumptively eligible for probation; in some cases, the defendant is presumptively ineligible; and in some cases, probation is not allowed.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 2007.)

(b) Probation in cases when defendant is presumptively ineligible

If the defendant comes under a statutory provision prohibiting probation "except in unusual cases where the interests of justice would best be served," or a substantially equivalent provision, the court should apply the criteria in (c) to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation.

(Subd (b) amended effective January 1, 2018; previously amended effective July 1, 2003, and January 1, 2007.)

(c) Factors overcoming the presumption of ineligibility

The following factors may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate:

Factors relating to basis for limitation on probation:

(1) A factor or circumstance indicating that the basis for the statutory limitation on probation, although technically present, is not fully applicable to the case, including:

(A) The factor or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and

(B) The current offense is less serious than a prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial time before the current offense.

(2) *Factors limiting defendant's culpability*

A factor or circumstance not amounting to a defense, but reducing the defendant's culpability for the offense, including:

(A) The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence;

(B) The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation; and

(C) The defendant is youthful or aged, and has no significant record of prior criminal offenses.

(3) *Results of risk/needs assessment*

Along with all other relevant information in the case, the court may consider the results of a risk/needs assessment of the defendant, if one was performed. The weight of a risk/needs assessment is for the court to consider in its sentencing discretion.

(Subd (c) amended effective January 1, 2018; previously amended effective January 1, 2007.)

Rule 4.413 amended effective January 1, 2018; adopted as rule 413 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, and January 1, 2007.

Advisory Committee Comment

Subdivision (c)(3). Standard 4.35 of the California Standards of Judicial Administration provides courts with additional guidance on using the results of a risk/needs assessment at sentencing.

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include facts relating to the crime and facts relating to the defendant.

(a) Facts relating to the crime

Facts relating to the crime include:

(1) The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime;

(2) Whether the defendant was armed with or used a weapon;

(3) The vulnerability of the victim;

(4) Whether the defendant inflicted physical or emotional injury;

(5) The degree of monetary loss to the victim;

(6) Whether the defendant was an active or a passive participant;

(7) Whether the crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur;

(8) Whether the manner in which the crime was carried out demonstrated criminal sophistication or professionalism on the part of the defendant; and

(9) Whether the defendant took advantage of a position of trust or confidence to commit the crime.

(Subd (a) amended effective January 1, 2007; previously amended effective January 1, 1991.)

(b) Facts relating to the defendant

Facts relating to the defendant include:

(1) Prior record of criminal conduct, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct;

(2) Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole;

(3) Willingness to comply with the terms of probation;

(4) Ability to comply with reasonable terms of probation as indicated by the defendant's age, education, health, mental faculties, history of alcohol or other substance abuse, family background and ties, employment and military service history, and other relevant factors;

(5) The likely effect of imprisonment on the defendant and his or her dependents;

(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction;

(7) Whether the defendant is remorseful; and

(8) The likelihood that if not imprisoned the defendant will be a danger to others.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, July 1, 2003, and January 1, 2007.)

(c) Suitability for probation

In determining the suitability of the defendant for probation, the court may consider factors in aggravation and mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial.

(Subd (c) adopted effective March 14, 2022.)

Rule 4.414 amended effective March 14, 2022; adopted as rule 414 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 2003, January 1, 2007, and January 1, 2017

Advisory Committee Comment

The sentencing judge's discretion to grant probation is unaffected by the Uniform Determinate Sentencing Act (section 1170(a)(3)).

The decision whether to grant probation is normally based on an overall evaluation of the likelihood that the defendant will live successfully in the general community. Each criterion points to evidence that the likelihood of success is great or small. A single criterion will rarely be determinative; in most cases, the sentencing judge will have to balance favorable and unfavorable facts.

Under criteria (b)(3) and (b)(4), it is appropriate to consider the defendant's expressions of willingness to comply and his or her apparent sincerity, and whether the defendant's home and

work environment and primary associates will be supportive of the defendant's efforts to comply with the terms of probation, among other factors.

Rule 4.415. Criteria affecting the imposition of mandatory supervision

(a) Presumption

Except where the defendant is statutorily ineligible for suspension of any part of the sentence, when imposing a term of imprisonment in county jail under section 1170(h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. 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.

(Subd (a) amended effective January 1, 2017.)

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

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

(1) Consideration of the balance of custody exposure available after imposition of presentence custody credits;

(2) The defendant's present status on probation, mandatory supervision, postrelease community supervision, or parole;

(3) Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody; and

(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.

(c) Criteria affecting conditions and length of mandatory supervision

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

(1) Availability of appropriate community corrections programs;

(2) Victim restitution, including any conditions or period of supervision necessary to promote the collection of any court-ordered restitution;

(3) Consideration of length and conditions of supervision to promote the successful reintegration of the defendant into the community upon release from custody;

(4) Public safety, including protection of any victims and witnesses;

(5) Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole;

(6) The balance of custody exposure after imposition of presentence custody credits;

(7) Consideration of the statutory accrual of post-sentence custody credits for mandatory supervision under section 1170(h)(5)(B) and sentences served in county jail under section 4019(a)(6);

(8) The defendant's specific needs and risk factors identified by a risk/needs assessment, if available; and

(9) The likely effect of extended imprisonment on the defendant and any dependents.

(Subd (c) amended effective January 1, 2018.)

(d) Statement of reasons for denial of mandatory supervision

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

Rule 4.415 amended effective January 1, 2018; adopted effective January 1, 2015; previously amended effective January 1, 2017.

Advisory Committee Comment

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

Subdivision (a). Penal Code section 1170(h)(5)(A): "Unless the court finds, in the interests of justice, that it is not appropriate in a particular case, the court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion." Under *People v. Borynack* (2015) 238

Cal.App.4th 958, review denied, courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.

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

Subdivision (c)(7). 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) are entitled to conduct credits under Penal Code section 4019(a)(6).

Subdivision (c)(8). Standard 4.35 of the California Standards of Judicial Administration provides courts with additional guidance on using the results of a risk/needs assessment at sentencing.

Rule 4.420. Selection of term of imprisonment

(a) When a judgment of imprisonment is imposed, or the execution of a judgment of imprisonment is ordered suspended, the sentencing judge must, in their sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph (b).

(Subd (a) amended effective March 14, 2022; previously amended effective July 28, 1977, January 1, 1991, January 1, 2007, and May 23, 2007.)

(b) The court may only choose an upper term when (1) there are circumstances in aggravation of the crime that justify the imposition of an upper term, and (2) the facts underlying those circumstances have been (i) stipulated to by the defendant, (ii) found true beyond a reasonable doubt at trial by a jury, or (iii) found true beyond a reasonable doubt by the judge in a court trial.

(Subd (b) adopted effective March 14, 2022.)

(c) Notwithstanding paragraphs (a) and (b), the court may consider the fact of the defendant's prior convictions based on a certified record of conviction without it having been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial. This exception does not apply to the use of the record of a prior conviction in selecting the upper term of an enhancement.

(Subd (c) adopted effective March 14, 2022.)

(d) In selecting between the middle and lower terms of imprisonment, the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The court may consider factors in aggravation and mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.

(Subd (d) relettered and amended effective March 14, 2022; adopted as Subd (b); previously amended effective July 28, 1977, January 1, 1991, January 1, 2007, May 23, 2007, January 1, 2008, and January 1, 2017.)

(e) Notwithstanding section 1170(b)(1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances such that imposition of the lower term would be contrary to the interests of justice, the court must order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(1) The defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence;

(2) The defendant is a youth, or was a youth as defined under section 1016.7(b) at the time of the commission of the offense; or

(3) Prior to the instant offense, or at the time of the commission of the offense, the defendant is or was a victim of intimate partner violence or human trafficking.

(Subd (e) adopted effective March 14, 2022.)

(f) Paragraph (e) does not preclude the court from imposing the lower term even if there is no evidence of the circumstances listed in paragraph (e).

(Subd (f) adopted effective March 14, 2022.)

(g) To comply with section 1170(b)(5), a fact charged and found as an enhancement may be used as a reason for imposing a particular term only if the court has discretion to strike the punishment for the enhancement and does so. The use of a fact of an enhancement to impose the upper term of imprisonment is an adequate reason for striking the additional term of imprisonment, regardless of the effect on the total term.

(Subd (g) relettered and amended effective March 14, 2022; adopted as Subd (c) effective January 1, 1991; previously amended effective January 1, 2018.

(h) A fact that is an element of the crime on which punishment is being imposed may not be used to impose a particular term.

(Subd (h) relettered effective March 14, 2022; adopted as Subd (d) effective January 1, 1991; previously amended effective January 1, 2007, May 23, 2007, and January 1, 2018.)

(i) The reasons for selecting one of the three authorized terms of imprisonment referred to in section 1170(b) must be stated orally on the record.

(Subd (i) relettered effective March 14, 2022; previously amended and relettered effective January 1, 1991; previously amended effective July 28, 1977, January 1, 2007, May 23, 2007, and January 1, 2017.)

Rule 4.420 amended effective March 14, 2022; adopted as rule 439 effective July 1, 1977; previously amended and renumbered as rule 420 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 2007, May 23, 2007, January 1, 2008, January 1, 2017, and January 1, 2018.

Advisory Committee Comment

It is not clear whether the reasons stated by the judge for selecting a particular term qualify as "facts" for the purposes of the rule prohibition on dual use of facts. Until the issue is clarified, judges should avoid the use of reasons that may constitute an impermissible dual use of facts. For example, the court is not permitted to use a reason to impose a greater term if that reason also is either (1) the same as an enhancement that will be imposed, or (2) an element of the crime. The court should not use the same reason to impose a consecutive sentence as to impose an upper term of imprisonment. (*People v. Avalos* (1984) 37 Cal.3d 216, 233.) It is not improper to use the same reason to deny probation and to impose the upper term. (*People v. Bowen* (1992) 11 Cal.App.4th 102, 106.)

The rule makes it clear that a fact charged and found as an enhancement may, in the alternative, be used as a factor in aggravation.

People v. Riolo (1983) 33 Cal.3d 223, 227 (and note 5 on 227) held that section 1170.1(a) does not require the judgment to state the base term (upper, middle, or lower) and enhancements, computed independently, on counts that are subject to automatic reduction under the one-third formula of section 1170.1(a).

Even when sentencing is under section 1170.1, however, it is essential to determine the base term and specific enhancements for each count independently, in order to know which is the principal term count. The principal term count must be determined before any calculation is made using the one-third formula for subordinate terms.

In addition, the base term (upper, middle, or lower) for each count must be determined to arrive at an informed decision whether to make terms consecutive or concurrent; and the base term for

each count must be stated in the judgment when sentences are concurrent or are fully consecutive (i.e., not subject to the one-third rule of section 1170.1(a)).

Case law suggests that in determining the "interests of justice" the court should consider the constitutional rights of the defendant and the interests of society represented by the people; the defendant's background and prospects, including the presence or absence of a record; the nature and circumstances of the crime and the defendant's level of involvement; the factors in aggravation and mitigation including the specific factors in mitigation of Penal Code section 1170(b)(6); and the factors that would motivate a "reasonable judge" in the exercise of their discretion. The court should not consider whether the defendant has simply pled guilty, factors related to controlling the court's calendar, or antipathy toward the statutory scheme. (See *People v. Romero* (1996) 13 Cal.4th 947; *People v. Dent* (1995) 38 Cal.App.4th 1726; *People v. Kessel* (1976) 61 Cal.App.3d 322; *People v. Orin* (1975) 13 Cal.3d 937.)

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime, whether or not charged or chargeable as enhancements include that:

(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness;

(2) The defendant was armed with or used a weapon at the time of the commission of the crime;

(3) The victim was particularly vulnerable;

(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission;

(5) The defendant induced a minor to commit or assist in the commission of the crime;

(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process;

(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed;

(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism;

(9) The crime involved an attempted or actual taking or damage of great monetary value;

(10) The crime involved a large quantity of contraband; and

(11) The defendant took advantage of a position of trust or confidence to commit the offense.

(12) The crime constitutes a hate crime under section 422.55 and:

(A) No hate crime enhancements under section 422.75 are imposed; and

(B) The crime is not subject to sentencing under section 1170.8.

(Subd (a) amended effective May 23, 2007; previously amended effective January 1, 1991, and January 1, 2007.)

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1) The defendant has engaged in violent conduct that indicates a serious danger to society;

(2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness;

(3) The defendant has served a prior term in prison or county jail under section 1170(h);

(4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and

(5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

(Subd (b) amended effective January 1, 2017; previously amended effective January 1, 1991, January 1, 2007, and May 23, 2007.)

(c) Other factors

Any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

(Subd (c) amended effective January 1, 2018; adopted effective January 1, 1991; previously amended effective January 1, 2007, and May 23, 2007.)

Rule 4.421 amended effective January 1, 2018; adopted as rule 421 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, January 1, 2007, May 23, 2007, and January 1, 2017.

Advisory Committee Comment

Courts may not impose a sentence greater than the middle term except when aggravating factors justifying the imposition of the upper term have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial. These requirements do not apply to consideration of aggravating factors for the lower or middle term. If the court finds that any of the factors listed in section 1170(b)(6)(A–C) were a contributing factor to the commission of the offense, the court must impose the lower term (see rule 4.420(e)) unless the court finds that the aggravating factors outweigh the mitigating factors to such a degree that imposing the lower term would be contrary to the interests of justice. In this instance, since the court is not addressing the imposition of the upper term, the court may consider factors in aggravation that have not been stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial.

In determining whether to impose the upper term for a criminal offense, the court may consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on a certified record of conviction. This exception may not be used to select the upper term of an enhancement.

This rule does not deal with the dual use of the facts; the statutory prohibition against dual use is included, in part, in the comment to rule 4.420.

Refusal to consider the personal characteristics of the defendant in imposing sentence may raise serious constitutional questions. The California Supreme Court has held that sentencing decisions must take into account "the nature of the offense and/or the offender, with particular regard to the degree of danger both present to society." (In re Rodriguez (1975) 14 Cal.3d 639, 654, quoting In *re Lynch* (1972) 8 Cal.3d 410, 425.) In *Rodriguez* the court released petitioner from further incarceration because "it appears that neither the circumstances of his offense *nor his personal characteristics* establish a danger to society sufficient to justify such a prolonged period of imprisonment." (*Id*. at p. 655, fn. omitted, italics added.) "For the determination of sentences, justice generally requires . . . that there be taken into account the circumstances of the offense together with the character and propensities of the offender." (*Pennsylvania ex rel. Sullivan v. Ashe* (1937) 302 U.S. 51, 55, quoted with approval in *Gregg v. Georgia* (1976) 428 U.S. 153, 189.)

Other statutory factors in aggravation are listed, for example, in sections 422.76, 1170.7, 1170.71, 1170.8, and 1170.85, and may be considered to impose the upper term if stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime include that:

(1) The defendant was a passive participant or played a minor role in the crime;

(2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;

(3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;

(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;

(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;

(7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;

(8) The defendant was motivated by a desire to provide necessities for his or her family or self; and

(9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the abuse does not amount to a defense.

(10) If a firearm was used in the commission of the offense, it was unloaded or inoperable.

(Subd (a) amended effective March 14, 2022; previously amended effective January 1, 1991, July 1, 1993, January 1, 2007, and May 23, 2007.)

(b) Factors relating to the defendant

Factors relating to the defendant include that:

(1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;

(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;

(3) The defendant experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence and it was a factor in the commission of the crime;

(4) The commission of the current offense is connected to the defendant's prior victimization or childhood trauma, or mental illness as defined by section 1385(c);

(5) The defendant is or was a victim of intimate partner violence or human trafficking at the time of the commission of the offense, and it was a factor in the commission of the offense;

(6) The defendant is under 26 years of age, or was under 26 years of age at the time of the commission of the offense;

(7) The defendant was a juvenile when they committed the current offense;

(8) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;

(9) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;

(10) Application of an enhancement could result in a sentence over 20 years;

(11) Multiple enhancements are alleged in a single case;

(12) Application of an enhancement could result in a discriminatory racial impact;

(13) An enhancement is based on a prior conviction that is over five years old;

(14) The defendant made restitution to the victim; and

(15) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(Subd (b) renumbered and amended effective March 14, 2022; previously amended effective January 1, 1991, January 1, 2007, May 23, 2007, and January 1, 2017.)

(c) Other factors

Any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

(Subd (c) adopted effective January 1, 2018.)

Rule 4.423 amended effective March 14, 2022; adopted as rule 423 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 1993, January 1, 2007, May 23, 2007, January 1, 2017, and January 1, 2018.

Advisory Committee Comment

See comment to rule 4.421.

This rule applies both to mitigation for purposes of section 1170(b) and to circumstances in mitigation justifying the court in striking the additional punishment provided for an enhancement.

Some listed circumstances can never apply to certain enhancements; for example, "the amounts taken were deliberately small" can never apply to an excessive taking under section 12022.6, and "no harm was done" can never apply to infliction of great bodily injury under section 12022.7. In any case, only the facts present may be considered for their possible effect in mitigation.

See also rule 4.409; only relevant criteria need be considered.

Since only the fact of restitution is considered relevant to mitigation, no reference to the defendant's financial ability is needed. The omission of a comparable factor from rule 4.421 as a circumstance in aggravation is deliberate.

Rule 4.424. Consideration of applicability of section 654

Before determining whether to impose either concurrent or consecutive sentences on all counts on which the defendant was convicted, the court must determine whether the proscription in section 654 against multiple punishments for the same act or omission requires a stay of execution of the sentence imposed on some of the counts. If a stay of execution is required due to the prohibition against multiple punishments for the same act, the court has discretion to choose which act or omission will be punished and which will be stayed.

Rule 4.424 amended effective March 14, 2022; adopted as rule 424 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective January 1, 2007, and January 1, 2011.

Rule 4.425. Factors affecting concurrent or consecutive sentences

Factors affecting the decision to impose consecutive rather than concurrent sentences include:

(a) Facts relating to crimes

Facts relating to the crimes, including whether or not:

(1) The crimes and their objectives were predominantly independent of each other;

(2) The crimes involved separate acts of violence or threats of violence; or

(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 1991, and January 1, 2007.)

(b) Other facts and limitations

Any circumstances in aggravation or mitigation, whether or not the factors have been stipulated to by the defendant or found true beyond a reasonable doubt at trial by a jury or the judge in a court trial, may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

(1) A fact used to impose the upper term;

(2) A fact used to otherwise enhance the defendant's sentence in prison or county jail under section 1170(h); and

(3) A fact that is an element of the crime.

Subd (b) amended effective March 14, 2022; previously amended effective January 1, 1991, January 1, 2007, January 1, 2017, and January 1, 2018.)

Rule 4.425 amended effective March 14, 2022; adopted as rule 425 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, January 1, 2007, January 1, 2017 and January 1, 2018.

Advisory Committee Comment

The sentencing judge should be aware that there are some cases in which the law mandates consecutive sentences.

Rule 4.426. Violent sex crimes

(a) Multiple violent sex crimes

When a defendant has been convicted of multiple violent sex offenses as defined in section 667.6, the sentencing judge must determine whether the crimes involved separate victims or the same victim on separate occasions.

(1) *Different victims*

If the crimes were committed against different victims, a full, separate, and consecutive term must be imposed for a violent sex crime as to each victim, under section 667.6(d).

(2) *Same victim, separate occasions*

If the crimes were committed against a single victim, the sentencing judge must determine whether the crimes were committed on separate occasions. In determining whether there were separate occasions, the sentencing judge must consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect on his or her actions and nevertheless resumed sexually assaultive behavior. A full, separate, and consecutive term must be imposed for each violent sex offense committed on a separate occasion under section 667.6(d).

(Subd (a) amended effective January 1, 2007.)

(b) Same victim, same occasion; other crimes

If the defendant has been convicted of multiple crimes, including at least one violent sex crime, as defined in section 667.6, or if there have been multiple violent sex crimes against a single victim on the same occasion and the sentencing court has decided to impose consecutive sentences, the sentencing judge must then determine whether to impose a full, separate, and consecutive sentence under section 667.6(c) for the violent sex crime or crimes instead of including the violent sex crimes in the computation of the principal and subordinate terms under section 1170.1(a). A decision to impose a fully consecutive sentence under section 667.6(c) is an additional sentence choice that requires a statement of reasons separate from those given for consecutive sentences, but which may repeat the same reasons. The sentencing judge is to be guided by the criteria listed in rule 4.425, which incorporates rules 4.421 and 4.423, as well as any other reasonably related criteria as provided in rule 4.408.

(Subd (b) amended effective January 1, 2007; previously amended effective July 1, 2003.)

Rule 4.426 amended effective January 1, 2007; adopted as rule 426 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003.

Advisory Committee Comment

Section 667.6(d) requires a full, separate, and consecutive term for each of the enumerated violent sex crimes that involve separate victims, or the same victim on separate occasions. Therefore, if there were separate victims or the court found that there were separate occasions, no other reasons are required.

If there have been multiple convictions involving at least one of the enumerated violent sex crimes, the court may impose a full, separate, and consecutive term for each violent sex crime under section 667.6(c). (See *People v. Coleman* (1989) 48 Cal.3d 112, 161.) A fully consecutive sentence under section 667.6(c) is a sentence choice, which requires a statement of reasons. The court may not use the same fact to impose a sentence under section 667.6(c) that was used to impose an upper term. (See rule 4.425(b).) If the court selects the upper term, imposes consecutive sentences, and uses section 667.6(c), the record must reflect three sentencing choices with three separate statements of reasons, but the same reason may be used for sentencing under section 667.6(c) and to impose consecutive sentences. (See *People v. Belmontes* (1983) 34 Cal.3d 335, 347–349.)

Rule 4.427. Hate crimes

(a) Application

This rule is intended to assist judges in sentencing in felony hate crime cases. It applies to:

(1) Felony sentencing under section 422.7;

(2) Convictions of felonies with a hate crime enhancement under section 422.75; and

(3) Convictions of felonies that qualify as hate crimes under section 422.55.

(b) Felony sentencing under section 422.7

If one of the three factors listed in section 422.7 is pled and proved, a misdemeanor conviction that constitutes a hate crime under section 422.55 may be sentenced as a felony. The punishment is imprisonment in state prison or county jail under section 1170(h) as provided by section 422.7.

(Subd (b) amended effective January 1, 2017.)

(c) Hate crime enhancement

If a hate crime enhancement is pled and proved, the punishment for a felony conviction must be enhanced under section 422.75 unless the conviction is sentenced as a felony under section 422.7.

(1) The following enhancements apply:

(A) An enhancement of a term in state prison as provided in section 422.75(a). Personal use of a firearm in the commission of the offense is an aggravating factor that must be considered in determining the enhancement term.

(B) An additional enhancement of one year in state prison for each prior felony conviction that constitutes a hate crime as defined in section 422.55.

(2) The court may strike enhancements under (c) if it finds mitigating circumstances under rule 4.423, or pursuant to section 1385(c) and states those mitigating circumstances on the record.

(3) The punishment for any enhancement under (c) is in addition to any other punishment provided by law.

(Subd (c) amended effective March 14, 2022.

(d) Hate crime as aggravating factor

If the defendant is convicted of a felony, and the facts of the crime constitute a hate crime under section 422.55, that fact must be considered a circumstance in aggravation in determining the appropriate punishment under rule 4.421 unless:

(1) The court imposed a hate crime enhancement under section 422.75; or

(2) The defendant has been convicted of an offense subject to sentencing under section 1170.8.

(e) Hate crime sentencing goals

When sentencing a defendant under this rule, the judge must consider the principal goals for hate crime sentencing.

(1) The principal goals for hate crime sentencing, as stated in section 422.86, are:

(A) Punishment for the hate crime committed;

(B) Crime and violence prevention, including prevention of recidivism and prevention of crimes and violence in prisons and jails; and

(C) Restorative justice for the immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes.

(2) Crime and violence prevention considerations should include educational or other appropriate programs available in the community, jail, prison, and

juvenile detention facilities. The programs should address sensitivity or similar training or counseling intended to reduce violent and antisocial behavior based on one or more of the following actual or perceived characteristics of the victim:

(A) Disability;

(B) Gender;

(C) Nationality;

(D) Race or ethnicity;

(E) Religion;

(F) Sexual orientation; or

(G) Association with a person or group with one or more of these actual or perceived characteristics.

(3) Restorative justice considerations should include community service and other programs focused on hate crime prevention or diversity sensitivity. Additionally, the court should consider ordering payment or other compensation to programs that provide services to violent crime victims and reimbursement to the victim for reasonable costs of counseling and other reasonable expenses that the court finds are a direct result of the defendant's actions.

Rule 4.427 amended effective March 14, 2022; adopted effective January 1, 2007: previously amended effective January 1, 2017.

Advisory Committee Comment

Multiple enhancements for prior convictions under subdivision (c)(1)(B) may be imposed if the prior convictions have been brought and tried separately. (Pen. Code, § 422.75(d).

In order to impose the upper term based on section 422.75, the fact of the enhancement pursuant to sections 422.55 or 422.6 must be stipulated to by the defendant or found true beyond a reasonable doubt at trial by the jury or the judge in a court trial.

Any enhancement alleged pursuant to this section may be dismissed pursuant to section 1385(c).

Rule 4.428. Factors affecting imposition of enhancements

(a) Enhancements punishable by one of three terms

If an enhancement is punishable by one of three terms, the court must, in its sound discretion, order imposition of a sentence not to exceed the middle term, unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(Subd (a) amended effective March 14, 2022; adopted effective January 1, 2018.)

(b) Striking or dismissing enhancements under section 1385

If the court has discretion under section 1385(a) to strike an enhancement in the interests of justice, the court also has the authority to strike the punishment for the enhancement under section 1385(b). In determining whether to strike the entire enhancement or only the punishment for the enhancement, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant's criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration.

(Subd (b) amended effective March 14, 2022; adopted effective January 1, 2018.)

(c) Dismissing enhancements under section 1385(c)

(1) The court shall exercise the discretion to dismiss an enhancement if it is in the furtherance of justice to do so, unless the dismissal is prohibited by initiative statute.

(2) In exercising its discretion under section 1385(c), the court must consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances in section 1385(c) are present.

(A) Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety.

(B) The circumstances listed in 1385(c) are not exclusive.

(C) "Endanger public safety" means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.

(3) If the court dismisses the enhancement pursuant to 1385(c), then both the enhancement and its punishment must be dismissed.

(Subd (c) adopted effective March 14, 2022.)

Rule 4.428 amended effective March 14, 2022; adopted as rule 428 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective January 1, 1998, July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2008, January 1, 2011, and January 18, 2022.

Advisory Committee Comment

Case law suggests that in determining the "furtherance of justice" the court should consider the constitutional rights of the defendant and the interests of society represented by the people; the defendant's background and prospects, including the presence or absence of a record; the nature and circumstances of the crime and the defendant's level of involvement; the factors in aggravation and mitigation including the specific factors in mitigation of section 1385(c); and the factors that would motivate a "reasonable judge" in the exercise of their discretion. The court should not consider whether the defendant has simply pled guilty, factors related to controlling the court's calendar, or antipathy toward the statutory scheme. (See *People v. Romero* (1996) 13 Cal.4th 947; *People v. Dent* (1995) 38 Cal.App.4th 1726; *People v. Kessel* (1976) 61 Cal.App.3d 322; *People v. Orin* (1975) 13 Cal.3d 937.)

How to afford great weight to a mitigating circumstance is not further explained in section 1385. The court is not directed to give conclusive weight to the mitigating factors, and must still engage in a weighing of both mitigating and aggravating factors. A review of case law suggests that the court can find great weight when there is an absence of "substantial evidence of countervailing considerations of sufficient weight to overcome" the presumption of dismissal when the mitigating factors are present. (*People v. Martin* (1996) 42 Cal.3d 437.) In exercising this discretion, the court may rely on aggravating factors that have not been stipulated to by the defendant or proven beyond a reasonable doubt at trial by a jury or a judge in a court trial. (*People v. Black* (2007) 41 Cal.4th 799.)

Rule 4.431. Proceedings at sentencing to be reported

All proceedings at the time of sentencing must be reported.

Rule 4.431 amended effective January 1, 2007; adopted as rule 431 effective July 1, 1977; previously renumbered effective January 1, 2001.

Advisory Committee Comment

Reporters' transcripts of the sentencing proceedings are required on appeal (rule 8.320, except in certain cases under subdivision (d) of that rule), and when the defendant is sentenced to prison (section 1203.01).

Rule 4.433. Matters to be considered at time set for sentencing

(a) In every case, at the time set for sentencing under section 1191, the sentencing judge must hold a hearing at which the judge must:

(1) Hear and determine any matters raised by the defendant under section 1201;

(2) Determine whether a defendant who is eligible for probation should be granted or denied probation, unless consideration of probation is expressly waived by the defendant personally and by counsel; and

(3) Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).

(Subd (a) amended effective January 1, 2017; previously amended effective January 1, 2007.)

(b) If the imposition of a sentence is to be suspended during a period of probation after a conviction by trial, the trial judge must identify and state circumstances that would justify imposition of one of the three authorized terms of imprisonment referred to in section 1170(b), or any enhancement, if probation is later revoked. The circumstances identified and stated by the judge must be based on evidence admitted at the trial or other circumstances properly considered under rule 4.420(b).

(Subd (b) amended effective January 1, 2018; previously amended effective July 28, 1977, January 1, 2007, May 23, 2007, January 1, 2008, and January 1, 2017.)

(c) If a sentence of imprisonment is to be imposed, or if the execution of a sentence of imprisonment is to be suspended during a period of probation, the sentencing judge must:

(1) Determine, under section 1170(b), whether to impose one of the three authorized terms of imprisonment referred to in section 1170(b), or any enhancement, and state on the record the reasons for imposing that term;

(2) Determine whether any additional term of imprisonment provided for an enhancement charged and found will be stricken;

(3) Determine whether the sentences will be consecutive or concurrent if the defendant has been convicted of multiple crimes;

(4) Determine any issues raised by statutory prohibitions on the dual use of facts and statutory limitations on enhancements, as required in rules 4.420(c) and 4.447; and

(5) Pronounce the court's judgment and sentence, stating the terms thereof and giving reasons for those matters for which reasons are required by law.

(Subd (c) amended effective January 1, 2018; previously amended effective July 28, 1977, July 1, 2003, January 1, 2007, May 23, 2007, and January 1, 2017.)

(d) All these matters must be heard and determined at a single hearing unless the sentencing judge otherwise orders in the interests of justice.

(Subd (d) amended effective January 1, 2007.)

(e) When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant:

(1) Under section 1170(c) of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation;

(2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or

(3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A) and (B), in addition to any period of imprisonment for a violation of mandatory supervision.

(Subd (e) amended effective January 1, 2018; previously amended effective July 28, 1977, January 1, 1979, July 1, 2003, January 1, 2007, and January 1, 2017.)

Rule 4.433 amended effective January 1, 2018; adopted as rule 433 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1979, July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2008, and January 1, 2017.

Advisory Committee Comment

This rule summarizes the questions that the court is required to consider at the time of sentencing, in their logical order.

Subdivision (a)(2) makes it clear that probation should be considered in every case, without the necessity of any application, unless the defendant is statutorily ineligible for probation.

Under subdivision (b), when imposition of sentence is to be suspended, the sentencing judge is not to make any determinations as to possible length of a term of imprisonment on violation of probation (section 1170(b)). If there was a trial, however, the judge must state on the record the circumstances that would justify imposition of one of the three authorized terms of imprisonment based on the trial evidence.

Subdivision (d) makes it clear that all sentencing matters should be disposed of at a single hearing unless strong reasons exist for a continuance.

Rule 4.435. Sentencing on revocation of probation, mandatory supervision, and postrelease community supervision

(a) When the defendant violates the terms of probation, mandatory supervision, or postrelease community supervision or is otherwise subject to revocation of supervision, the sentencing judge may make any disposition of the case authorized

by statute. In deciding whether to permanently revoke supervision, the judge may consider the nature of the violation and the defendant's past performance on supervision.

(Subd (a) amended effective January 1, 2018; previously amended effective January 1, 1991.)

(b) On revocation and termination of supervision under section 1203.2, when the sentencing judge determines that the defendant will be committed to prison or county jail under section 1170(h):

(1) If the imposition of sentence was previously suspended, the judge must impose judgment and sentence after considering any findings previously made and hearing and determining the matters enumerated in rule 4.433(c). The length of the sentence must be based on circumstances existing at the time supervision was granted, and subsequent events may not be considered in selecting the base term or in deciding whether to strike the additional punishment for enhancements charged and found.

(2) If the execution of sentence was previously suspended, the judge must order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or local county correctional administrator or sheriff for the term prescribed in that judgment.

(Subd (b) amended effective January 1, 2018; previously amended effective July 1, 2003, January 1, 2006, January 1, 2007, and January 1, 2017.)

Rule 4.435 amended effective January 1, 2018; adopted as rule 435 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1991, July 1, 2003, January 1, 2006, January 1, 2007, and January 1, 2017.

Advisory Committee Comment

Subdivision (a) makes it clear that there is no change in the court's power, on finding cause to revoke and terminate supervision under section 1203.2(a), to continue the defendant on supervision.

The restriction of subdivision (b)(1) is based on *In re Rodriguez* (1975) 14 Cal.3d 639, 652: "[T]he primary term must reflect the circumstances existing at the time of the offense."

A judge imposing imprisonment on revocation of probation will have the power granted by section 1170(d) to recall the commitment on his or her own motion within 120 days after the date of commitment, and the power under section 1203.2(e) to set aside the revocation of probation, for good cause, within 30 days after the court has notice that execution of the sentence has commenced.

Consideration of conduct occurring after the granting of probation should be distinguished from consideration of preprobation conduct that is discovered after the granting of an order of probation and before sentencing following a revocation and termination of probation. If the preprobation conduct affects or nullifies a determination made at the time probation was granted, the preprobation conduct may properly be considered at sentencing following revocation and termination of probation. (See *People v. Griffith* (1984) 153 Cal.App.3d 796, 801.) While *People v. Griffith* refers only to probation, this rule likely will apply to any form of supervision.

Rule 4.437. Statements in aggravation and mitigation

(a) Time for filing and service

Statements in aggravation and mitigation referred to in section 1170(b) must be filed and served at least four days before the time set for sentencing under section 1191 or the time set for pronouncing judgment on revocation of probation under section 1203.2(c) if imposition of sentence was previously suspended.

(Subd (a) amended effective January 1, 2007.)

(b) Combined statement

A party seeking consideration of circumstances in aggravation or mitigation may file and serve a statement under section 1170(b) and this rule.

(Subd (b) amended effective January 1, 2007.)

(c) Contents of statement

A statement in aggravation or mitigation must include:

(1) A summary of evidence that the party relies on as circumstances justifying the imposition of a particular term; and

(2) Notice of intention to dispute facts or offer evidence in aggravation or mitigation at the sentencing hearing. The statement must generally describe the evidence to be offered, including a description of any documents and the names and expected substance of the testimony of any witnesses. No evidence in aggravation or mitigation may be introduced at the sentencing hearing unless it was described in the statement, or unless its admission is permitted by the sentencing judge in the interests of justice.

(Subd (c) amended effective May 23, 2007; previously amended effective January 1, 2007.)

(d) Support required for assertions of fact

Assertions of fact in a statement in aggravation or mitigation must be disregarded unless they are supported by the record in the case, the probation officer's report or other reports properly filed in the case, or other competent evidence.

(Subd (d) amended effective January 1, 2007.)

(e) Disputed facts

In the event the parties dispute the facts on which the conviction rested, the court must conduct a presentence hearing and make appropriate corrections, additions, or deletions in the presentence probation report or order a revised report.

(Subd (e) amended effective January 1, 2007; adopted effective January 1, 1991.)

Rule 4.437 amended effective May 23, 2007; adopted as rule 437 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1991, and January 1, 2007.

Advisory Committee Comment

Section 1170(b)(4) states in part:

"At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts."

This provision means that the statement is a document giving notice of intention to dispute evidence in the record or the probation officer's report, or to present additional facts.

The statement itself cannot be the medium for presenting new evidence, or for rebutting competent evidence already presented, because the statement is a unilateral presentation by one party or counsel that will not necessarily have any indicia of reliability. To allow its factual assertions to be considered in the absence of corroborating evidence would, therefore, constitute a denial of due process of law in violation of the United States (14th Amend.) and California (art. I, § 7) Constitutions.

The requirement that the statement include notice of intention to rely on new evidence will enhance fairness to both sides by avoiding surprise and helping to ensure that the time limit on pronouncing sentence is met. This notice may include either party's intention to provide evidence to prove or contest the existence of a factor in mitigation that would require imposition of the low term for the underlying offense or dismissal of an enhancement.

Rule 4.447. Sentencing of enhancements

(a) Enhancements resulting in unlawful sentences

Except pursuant to section 1385(c), a court may not strike or dismiss an enhancement solely because imposition of the term is prohibited by law or exceeds limitations on the imposition of multiple enhancements. Instead, the court must:

(1) Impose a sentence for the aggregate term of imprisonment computed without reference to those prohibitions or limitations; and

(2) Stay execution of the part of the term that is prohibited or exceeds the applicable limitation. The stay will become permanent once the defendant finishes serving the part of the sentence that has not been stayed.

(Subd (a) amended effective March 14, 2022; adopted effective January 1, 2018.)

(b) Multiple enhancements

Notwithstanding section 1385(c), if a defendant is convicted of multiple enhancements of the same type, the court must either sentence each enhancement or, if authorized, strike the enhancement or its punishment. While the court may strike an enhancement, the court may not stay an enhancement except as provided in (a) or as authorized by section 654.

(Subd (b) amended effective March 14, 2022; adopted effective January 1, 2018.)

Rule 4.447 amended effective March 14, 2022; adopted as rule 447 effective July 1, 1977; previously amended and renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 1991, July 1, 2003, January 1, 2007, and January 1, 2018.

Advisory Committee Comment

Subdivision (a). Statutory restrictions may prohibit or limit the imposition of an enhancement in certain situations. (See, for example, sections 186.22(b)(1), 667(a)(2), 667.61(f), 1170.1(f) and (g), 12022.53(e)(2) and (f), and Vehicle Code section 23558.)

Section 1385(c) requires that in the furtherance of justice certain enhancements be dismissed unless dismissal is prohibited by any initiative statute.

Present practice of staying execution is followed to avoid violating a statutory prohibition or exceeding a statutory limitation, while preserving the possibility of imposition of the stayed portion should a reversal on appeal reduce the unstayed portion of the sentence. (See *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1129–1130; *People v. Niles* (1964) 227 Cal.App.2d 749, 756.)

Only the portion of a sentence or component thereof that exceeds a limitation is prohibited, and this rule provides a procedure for that situation. This rule applies to both determinate and indeterminate terms.

Subdivision (b). A court may stay an enhancement if section 654 applies. (See *People v. Bradley* (1998) 64 Cal.App.4th 386; *People v. Haykel* (2002) 96 Cal.App.4th 146, 152.)

Rule 4.451. Sentence consecutive to or concurrent with indeterminate term or term in other jurisdiction

(a) When a defendant is sentenced under section 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed under section 1168(b) in the same or another proceeding, the judgment must specify the determinate term imposed under section 1170 computed without reference to the indeterminate sentence, must order that the determinate term be served consecutively to or concurrently with the sentence under section 1168(b), and must identify the proceedings in which the indeterminate sentence was imposed. The term under section 1168(b), and the date of its completion or date of parole or postrelease community supervision, and the sequence in which the sentences are deemed or served, will be determined by correctional authorities as provided by law.

Subd (a) amended effective January 1, 2018; previously amended effective January 1, 1979, July 1, 2003, and January 1. 2007.)

(b) When a defendant is sentenced under sections 1168 or 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed by a court of the United States or of another state or territory, the judgment must specify the term imposed under sections 1168(b) or 1170 computed without reference to the sentence imposed by the other jurisdiction, must identify the other jurisdiction and the proceedings in which the other sentence was imposed, and must indicate whether the sentences are imposed concurrently or consecutively. If the term imposed is to be served consecutively to the term imposed by the other jurisdiction, the court must order that the California term be served commencing on the completion of the sentence imposed by the other jurisdiction.

(Subd (b) amended effective January 1, 2018; previously amended January 1, 2007.)

Rule 4.451 amended effective January 1, 2018; adopted as rule 451 effective July 1, 1977; previously renumbered effective January 1, 2001; previously amended effective January 1, 1979, July 1, 2003, and January 1, 2007.

Advisory Committee Comment

Subdivision (a). The provisions of section 1170.1(a), which use a one-third formula to calculate subordinate consecutive terms, can logically be applied only when all the sentences are imposed under section 1170. Indeterminate sentences are imposed under section 1168(b). Since the duration of the indeterminate term cannot be known to the court, subdivision (a) states the only feasible mode of sentencing. (See *People v. Felix* (2000) 22 Cal.4th 651, 654–657; *People v. McGahuey* (1981) 121 Cal.App.3d 524, 530–532.)

Subdivision (b). On the authority to sentence consecutively to the sentence of another jurisdiction and the effect of such a sentence, see *In re Helpman* (1968) 267 Cal.App.2d 307 and cases cited at page 310, footnote 3. The mode of sentencing required by subdivision (b) is

necessary to avoid the illogical conclusion that the total of the consecutive sentences will depend on whether the other jurisdiction or California is the first to pronounce judgment.

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

(a) If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

(1) The sentences on all determinately sentenced counts in all the cases on which a sentence was or is being imposed must be combined as though they were all counts in the current case.

(2) The court in the current case must make a new determination of which count, in the combined cases, represents the principal term, as defined in section 1170.1(a). The principal term is the term with the greatest punishment imposed including conduct enhancements. If two terms of imprisonment have the same punishment, either term may be selected as the principal term.

(3) Discretionary decisions of courts in previous cases may not be changed by the court in the current case. Such decisions include the decision to impose one of the three authorized terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement. However, if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).

(4) If all previously imposed sentences and the current sentence being imposed by the second or subsequent court are under section 1170(h), the second or subsequent court has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision and the terms of such supervision, but may not, without express consent of the defendant, modify the sentence on the earlier sentenced charges in any manner that will (i) increase the total length of the sentence imposed by the previous court; (ii) increase the total length of the custody portion of the sentence imposed by the previous court; (iii) increase the total length of the mandatory supervision portion of the sentence imposed by the previous court; or (iv) impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.

(5) If the second or subsequent court imposes a sentence to state prison because the defendant is ineligible for sentencing under section 1170(h), the

jurisdiction of the second or subsequent court to impose a prison sentence applies solely to the current case. The defendant must be returned to the original sentencing court for potential resentencing on any previous case or cases sentenced under section 1170(h). The original sentencing court must convert all remaining custody and mandatory supervision time imposed in the previous case to state prison custody time and must determine whether its sentence is concurrent with or consecutive to the state prison term imposed by the second or subsequent court and incorporate that sentence into a single aggregate term as required by this rule. (A)(4) does not apply—and the consent of the defendant is not required—for this conversion and resentencing.

(6) In cases in which a sentence is imposed under the provisions of section 1170(h) and the sentence has been imposed by courts in two or more counties, the second or subsequent court must determine the county or counties of incarceration or supervision, including the order of service of such incarceration or supervision. To the extent reasonably possible, the period of mandatory supervision must be served in one county and after completion of any period of incarceration. In accordance with rule 4.472, the second or subsequent court must calculate the defendant's remaining custody and supervision time.

(7) In making the determination under (a)(6), the court must exercise its discretion after consideration of the following factors:

(A) The relative length of custody or supervision required for each case;

(B) Whether the cases in each county are to be served concurrently or consecutively;

(C) The nature and quality of treatment programs available in each county, if known;

(D) The nature and extent of the defendant’s current enrollment and participation in any treatment program;

(E) The nature and extent of the defendant’s ties to the community, including employment, duration of residence, family attachments, and property holdings;

(F) The nature and extent of supervision available in each county, if known;

(G) The factors listed in rule 4.530(f); and

(H) Any other factor relevant to such determination.

(8) If after the court's determination in accordance with (a)(6) the defendant is ordered to serve only a custody term without supervision in another county, the defendant must be transported at such time and under such circumstances as the court directs to the county where the custody term is to be served. The defendant must be transported with an abstract of the court's judgment as required by section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence. The court may order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530.

(9) If after the court's determination in accordance with (a)(6) the defendant is ordered to serve a period of supervision in another county, whether with or without a term of custody, the matter must be transferred for the period of supervision in accordance with provisions of rule 4.530(f), (g), and (h).

(Subd (a) amended effectively January 1, 2021; previously adopted as an unlettered subdivision; relettered and amended as subdivision (a) July 1, 2019)

Rule 4.452 amended effective January 1, 2021; adopted as rule 452 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 2003, January 1, 2007, May 23, 2007, January 1, 2017 January 1, 2018, and July 1, 2019.

Advisory Committee Comment

The restrictions of (a)(3) do not apply to circumstances where a previously imposed base term is made a consecutive term on resentencing. If the court selects a consecutive sentence structure, and since there can be only one principal term in the final aggregate sentence, if a previously imposed full base term becomes a subordinate consecutive term, the new consecutive term normally will become one-third the middle term by operation of law (section 1170.1(a)).

Rule 4.453. Commitments to nonpenal institutions [Repealed]

Rule 4.453 repealed effective March 14, 2022; adopted as rule 453 effective July 1, 1977; previously amended and renumbered effective January 1, 2001; previously amended effective July 28, 1977, January 1, 2006, and January 1, 2007.

Rule 4.470. Notification of appeal rights in felony cases [Repealed]

Rule 4.470 repealed effective January 1, 2013; adopted as rule 250 effective January 1, 1972; previously amended and renumbered as rule 470 effective January 1, 1991; previously renumbered effective January 1, 2001; previously amended effective July 1, 1972, January 1, 1977, and January 1, 2007.

Rule 4.472. Determination of presentence custody time credit

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under sections 2900.5, 2933.1(c), 2933.2(c), and 4019. On referral of the defendant to the probation

officer for an investigation and report under section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

Rule 4.472 amended effective January 1, 2017; adopted as rule 252 effective January 1, 1977; previously amended and renumbered as rule 472 effective January 1, 1991, and as rule 4.472 effective January 1, 2001; previously amended effective July 1, 2003, and January 1, 2007.

Rule 4.480. Judge's statement under section 1203.01

A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records.

The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports.

If a section 1203.01 statement is prepared, it should be submitted no later than two weeks after sentencing so that it may be included in the official Department of Corrections and Rehabilitation, Division of Adult Operations case summary that is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections and Rehabilitation, Division of Adult Operations.

Rule 4.480 amended effective January 1, 2017; adopted as section 12 of the Standards of Judicial Administration effective January 1, 1973; previously amended and renumbered as rule 4.480 effective January 1, 2001; previously amended effective July 1, 1978, July 1, 2003, January 1, 2006, and January 1, 2007.

Division 6. Postconviction, Postrelease, and Writs

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs; amended effective October 28, 2011.

Chapter 1. Postconviction

Rule 4.510. Reverse remand

(a) Minor prosecuted under Welfare and Institutions Code section 602(b) or 707(d) and convicted of offense listed in Welfare and Institutions Code section 602(b) or 707(d) (Penal Code, § 1170.17)

If the prosecuting attorney lawfully initiated the prosecution as a criminal case under Welfare and Institutions Code section 602(b) or 707(d), and the minor is convicted of a criminal offense listed in those sections, the minor must be sentenced as an adult.

(Subd (a) amended effective January 1, 2007.)

(b) Minor convicted of an offense not listed in Welfare and Institutions Code section 602(b) or 707(d) (Penal Code, § 1170.17)

(1) If the prosecuting attorney lawfully initiated the prosecution as a criminal case and the minor is convicted of an offense not listed in Welfare and Institutions Code section 602(b) or 707(d), but one that would have raised the presumption of unfitness under juvenile court law, the minor may move the court to conduct a postconviction fitness hearing.

(A) On the motion by the minor, the court must order the probation department to prepare a report as required in rule 5.768.

(B) The court may conduct a fitness hearing or remand the matter to the juvenile court for a determination of fitness.

(C) The minor may receive a disposition hearing under the juvenile court law only if he or she is found to be fit under rule 5.772. However, if the court and parties agree, the minor may be sentenced in adult court.

(D) If the minor is found unfit, the minor must be sentenced as an adult, unless all parties, including the court, agree that the disposition be conducted under juvenile court law.

(2) If the minor is convicted of an offense not listed in Welfare and Institutions Code section 602(b) or 707(d), but one for which the minor would have been presumed fit under the juvenile court law, the minor must have a disposition hearing under juvenile court law, and consistent with the provisions of Penal Code section 1170.19, either in the trial court or on remand to the juvenile court.

(A) If the prosecuting attorney objects to the treatment of the minor as within the juvenile court law and moves for a fitness hearing to be conducted, the court must order the probation department to prepare a report as required by rule 5.768.

(B) The court may conduct a fitness hearing or remand the matter to the juvenile court for a determination of fitness.

(C) If found to be fit under rule 5.770, the minor will be subject to a disposition hearing under juvenile court law and Penal Code section 1170.19.

(D) If the minor is found unfit, the minor must be sentenced as an adult, unless all parties, including the court, agree that the disposition be conducted under juvenile court law.

(3) If the minor is convicted of an offense that would not have permitted a fitness determination, the court must remand the matter to juvenile court for disposition, unless the minor requests sentencing in adult court and all parties, including the court, agree.

(4) Fitness hearings held under this rule must be conducted as provided in title 5, division 3, chapter 14, article 2.

(Subd (b) amended effective January 1, 2007.)

Rule 4.510 amended effective January 1, 2007; adopted effective January 1, 2001.

Rule 4.530. Intercounty transfer of probation and mandatory supervision cases

(a) Application

This rule applies to intercounty transfers of probation and mandatory supervision cases under Penal Code section 1203.9.

(Subd (a) amended effective February 20, 2014; previously amended effective November 1, 2012.)

(b) Definitions

As used in this rule:

(1) "Transferring court" means the superior court of the county in which the supervised person is supervised on probation or mandatory supervision.

(2) "Receiving court" means the superior court of the county to which transfer of the case and probation or mandatory supervision is proposed.

(Subd (b) amended effective November 1, 2012.)

(c) Motion

Transfers may be made only after noticed motion in the transferring court.

(d) Notice

(1) If transfer is requested by the probation officer of the transferring county, the probation officer must provide written notice of the date, time, and place set for hearing on the motion to:

(A) The presiding judge of the receiving court or his or her designee;

(B) The probation officer of the receiving county or his or her designee;

(C) The prosecutor of the transferring county;

(D) The victim (if any);

(E) The supervised person; and

(F) The supervised person's last counsel of record (if any).

(2) If transfer is requested by any other party, the party must first request in writing that the probation officer of the transferring county notice the motion. The party may make the motion to the transferring court only if the probation officer refuses to do so. The probation officer must notify the party of his or her decision within 30 days of the party's request. Failure by the probation officer to notify the party of his or her decision within 30 days is deemed a refusal to make the motion.

(3) If the party makes the motion, the motion must include a declaration that the probation officer has refused to bring the motion, and the party must provide written notice of the date, time, and place set for hearing on the motion to:

(A) The presiding judge of the receiving court or his or her designee;

(B) The probation officers of the transferring and receiving counties or their designees;

(C) The prosecutor of the transferring county;

(D) The supervised person; and

(E) The supervised person's last counsel of record (if any).

Upon receipt of notice of a motion for transfer by a party, the probation officer of the transferring county must provide notice to the victim, if any.

(4) Notice of a transfer motion must be given at least 60 days before the date set for hearing on the motion.

(5) Before deciding a transfer motion, the transferring court must confirm that notice was given to the receiving court as required by (1) and (3).

(Subd (d) amended effective November 1, 2012.)

(e) Comment

(1) No later than 10 days before the date set for hearing on the motion, the receiving court may provide comments to the transferring court regarding the proposed transfer.

(2) Any comments provided by the receiving court must be in writing and signed by a judge and must state why transfer is or is not appropriate.

(3) Before deciding a transfer motion, the transferring court must state on the record that it has received and considered any comments provided by the receiving court.

(f) Factors

The transferring court must consider at least the following factors when determining whether transfer is appropriate:

(1) The permanency of the supervised person's residence. As used in this subdivision, "residence" means the place where the supervised person customarily lives exclusive of employment, school, or other special or temporary purpose. A supervised person may have only one residence. The fact that the supervised person intends to change residence to the receiving county, without further evidence of how, when, and why this is to be accomplished, is insufficient to transfer supervision;

(2) The availability of appropriate programs for the supervised person, including substance abuse, domestic violence, sex offender, and collaborative court programs;

(3) Restitution orders, including whether transfer would impair the ability of the receiving court to determine a restitution amount or impair the ability of the victim to collect court-ordered restitution; and

(4) Victim issues, including:

(A) The residence and places frequented by the victim, including school and workplace; and

(B) Whether transfer would impair the ability of the court, law enforcement, or the probation officer of the transferring county to properly enforce protective orders.

(Subd (f) amended effective November 1, 2012.)

(g) Transfer

(1) If the transferring court determines that the permanent residence of the supervised person is in the county of the receiving court, the transferring court must transfer the case unless it determines that transfer would be inappropriate and states its reasons on the record.

(2) To the extent possible, the transferring court must establish any amount of restitution owed by the supervised person before it orders the transfer.

(3) Transfer is effective the date the transferring court orders the transfer. Upon transfer of the case, the receiving court must accept the entire jurisdiction over the case.

(4) The orders for transfer must include an order committing the supervised person to the care and custody of the probation officer of the receiving county.

(5) Upon transfer of the case, the transferring court must transmit the entire original court file to the receiving court in all cases in which the supervisee is the sole defendant, except the transferring court shall not transfer (A) exhibits or (B) any records of payments. If transfer is ordered in a case involving more than one defendant, the transferring court must transmit certified copies of the entire original court file, except exhibits and any records of payments, to the receiving court upon transfer of the case.

(6) A certified copy of the entire court file may be electronically transmitted if an original paper court file does not exist. Upon receipt of an electronically

transmitted certified copy of the entire court file from the transferring court, the receiving court must deem it an original file.

(7) Upon transfer the probation officer of the transferring county must transmit, at a minimum, any court orders, probation or mandatory supervision reports, and case plans to the probation officer of the receiving county.

(8) Upon transfer of the case, the probation officer of the transferring county must notify the supervised person of the transfer order. The supervised person must report to the probation officer of the receiving county no later than 30 days after transfer unless the transferring court orders the supervised person to report sooner. If the supervised person is in custody at the time of transfer, the supervised person must report to the probation officer of the receiving county no later than 30 days after being released from custody unless the transferring court orders the supervised person to report sooner. Any jail sentence imposed as a condition of probation or mandatory supervision prior to transfer must be served in the transferring county unless otherwise authorized by law.

(9) Upon transfer of the case, only the receiving court may certify copies from the case file.

(Subd (g) amended effective March 14, 2022; previously amended effective November 1, 201, January 1, 2017, and January 1, 2021.)

(h) Court-ordered debt

(1) In accordance with Penal Code section 1203.9(d) and (e):

(A) If the transferring court has ordered the defendant to pay fines, fees, forfeitures, penalties, assessments, or restitution, the transfer order must require that those and any other amounts ordered by the transferring court that are still unpaid at the time of transfer be paid by the defendant to the collection program for the transferring court for proper distribution and accounting once collected.

(B) The receiving court and receiving county probation department may not impose additional local fees and costs.

(C) Upon approval of a transferring court, a receiving court may elect to collect all of the court-ordered payments from a defendant attributable to the case under which the defendant is being supervised.

(2) Policies and procedures for implementation of the collection, accounting, and disbursement of court-ordered debt under this rule must be consistent with Judicial Council fiscal procedures available at *www.courts.ca.gov*.

(Subd (h) amended effective March 14, 2022; adopted effective January 1, 2017.)

Rule 4.530 amended effective March 14, 2022; adopted effective July 1, 2010; previously amended effective November 1, 2012, February 20, 2014, January 1, 2017, and January 1, 2021.

Advisory Committee Comment

Subdivision (g)(5) requires the transferring court to transmit the entire original court file, except exhibits and any records of payments, to the court of the receiving county in all cases in which the supervisee is the sole defendant. Before transmitting the entire original court file, transferring courts should consider retaining copies of the court file in the event of an appeal or a writ. In cases involving more than one defendant, subdivision (g)(5) requires the transferring court to transmit certified copies of the entire original court file to ensure that transferring courts are able to properly adjudicate any pending or future codefendant proceedings. Only documents related to the transferring defendant must be transmitted to the receiving court.

Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or mandatory supervision before transfer must be served in the transferring county unless otherwise authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors of two or more counties with work furlough programs to enter into agreements to allow work-furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another county jail.

Subdivision (h) requires defendants still owing fines, fees, forfeitures, penalties, assessments, or restitution to pay the transferring court's collection program. In counties where the county probation department collects this court-ordered debt, the term "collection program" is intended to include the county probation department.

Chapter 2. Postrelease

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs —Chapter 2, Postrelease; adopted effective October 28, 2011.

Rule 4.540. Revocation of postrelease community supervision [Repealed]

Rule 4.540 repealed effective November 1, 2012; adopted effective October 28, 2011.

Rule 4.541. Minimum contents of supervising agency reports

(a) Application

This rule applies to supervising agency petitions for revocation of formal probation, parole, mandatory supervision under Penal Code section 1170(h)(5)(B), and postrelease community supervision under Penal Code section 3455.

(Subd (a) amended effective July 1, 2013; previously amended effective November 1, 2012.)

(b) Definitions

As used in this rule:

(1) "Supervised person" means any person subject to formal probation, parole, mandatory supervision under Penal Code section 1170(h)(5)(B), or community supervision under Penal Code section 3451.

(2) "Formal probation" means the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.

(3) "Court" includes any hearing officer appointed by a superior court and authorized to conduct revocation proceedings under Government Code section 71622.5.

(4) "Supervising agency" includes the county agency designated by the board of supervisors under Penal Code section 3451.

(Subd (b) amended effective July 1, 2013; previously amended effective November 1, 2012.)

(c) Minimum contents

Except as provided in (d), a petition for revocation of supervision must include a written report that contains at least the following information:

(1) Information about the supervised person, including:

(A) Personal identifying information, including name and date of birth;

(B) Custody status and the date and circumstances of arrest;

(C) Any pending cases and case numbers;

(D) The history and background of the supervised person, including a summary of the supervised person's record of prior criminal conduct; and

(E) Any available information requested by the court regarding the supervised person's risk of recidivism, including any validated risk-needs assessments;

(2) All relevant terms and conditions of supervision and the circumstances of the alleged violations, including a summary of any statement made by the supervised person, and any victim information, including statements and type and amount of loss;

(3) A summary of any previous violations and sanctions; and

(4) Any recommended sanctions.

(Subd (c) adopted effective November 1, 2012; based on previous subd (b).)

(d) Subsequent reports

If a written report was submitted as part of the original sentencing proceeding or with an earlier revocation petition, a subsequent report need only update the information required by (c). A subsequent report must include a copy of the original report if the original report is not contained in the court file.

(Subd (d) relettered and amended effective November 1, 2012; adopted as subd (c).)

(e) Parole and Postrelease Community Supervision Reports

In addition to the minimum contents described in (c), a report filed by the supervising agency in conjunction with a petition to revoke parole or postrelease community supervision must include the reasons for that agency's determination that intermediate sanctions without court intervention as authorized by Penal Code sections 3000.08(f) or 3454(b) are inappropriate responses to the alleged violations.

(Subd (e) amended effective July 1, 2013; adopted effective November 1, 2012.)

Rule 4.541 amended effective July 1, 2013; adopted effective October 28, 2011; previously amended effective November 1, 2012.

Advisory Committee Comment

Subdivision (c). This subdivision prescribes minimum contents for supervising agency reports. Courts may require additional contents in light of local customs and needs.

Subdivision (c)(1)(D). The history and background of the supervised person may include the supervised person's social history, including family, education, employment, income, military, medical, psychological, and substance abuse information.

Subdivision (c)(1)(E). Penal Code section 3451(a) requires postrelease community supervision to be consistent with evidence-based practices, including supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among supervised persons. "Evidence-based practices" refers to "supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision." (Pen. Code, § 3450(b)(9).)

Subdivision (e). Penal Code sections 3000.08(d) and 3454(b) authorize supervising agencies to impose appropriate responses to alleged violations of parole and postrelease community supervision without court intervention, including referral to a reentry court under Penal Code section 3015 or flash incarceration in a county jail. Penal Code sections 3000.08(f) and 3455(a) require the supervising agency to determine that the intermediate sanctions authorized by sections 3000.08(d) and 3454(b) are inappropriate responses to the alleged violation *before* filing a petition to revoke parole or postrelease community supervision.

Chapter 3. Habeas Corpus

Title 4, Criminal Rules—Division 6, Postconviction, Postrelease, and Writs—Chapter 3, Habeas Corpus; renumbered effective October 28, 2011; adopted as Chapter 2.

Article 1. General Provisions

Rule 4.545. Definitions

In this chapter, the following definitions apply:

(1) A "petition for writ of habeas corpus" is the petitioner's initial filing that commences a proceeding.

(2) An "order to show cause" is an order directing the respondent to file a return. The order to show cause is issued if the petitioner has made a prima facie showing that he or she is entitled to relief; it does not grant the relief requested. An order to show cause may also be referred to as "granting the writ."

(3) The "return" is the respondent's statement of reasons that the court should not grant the relief requested by the petitioner.

(4) The "denial" is the petitioner's pleading in response to the return. The denial may be also referred to as the "traverse."

(5) An "evidentiary hearing" is a hearing held by the trial court to resolve contested factual issues.

(6) An "order on writ of habeas corpus" is the court's order granting or denying the relief sought by the petitioner.

(7) The definitions in rule 8.601 also apply to this chapter.

Rule 4.545 adopted effective April 25, 2019.

Article 2. Noncapital Habeas Corpus Proceedings in the Superior Court

Rule 4.550. Habeas corpus application

This article applies to habeas corpus proceedings in the superior court under Penal Code section 1473 et seq. or any other provision of law authorizing relief from unlawful confinement or unlawful conditions of confinement, except for death penalty–related habeas corpus proceedings, which are governed by rule 4.560 et seq.

Rule 4.550 amended effective April 25, 2019; adopted effective January 1, 2002; previously amended effective January 1, 2007.

Rule 4.551. Habeas corpus proceedings

(a) Petition; form and court ruling

(1) Except as provided in (2), the petition must be on the *Petition for Writ of Habeas Corpus* (form HC-001).

(2) For good cause, a court may also accept for filing a petition that does not comply with (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in the *Petition for Writ of Habeas Corpus* (form HC-001), including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.

(3)

(A) On filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within 60 days after the petition is filed.

(B) If the court fails to rule on the petition within 60 days of its filing, the petitioner may file a notice and request for ruling.

(i) The petitioner's notice and request for ruling must include a declaration stating the date the petition was filed and the date of the notice and request for ruling, and indicating that the petitioner has not received a ruling on the petition. A copy of the original petition must be attached to the notice and request for ruling.

(ii) If the presiding judge or his or her designee determines that the notice is complete and the court has failed to rule, the presiding judge or his or her designee must assign the petition to a judge and calendar the matter for a decision without appearances within 30 days of the filing of the notice and request for ruling. If the judge assigned by the presiding judge rules on the petition before the date the petition is calendared for decision, the matter may be taken off calendar.

(4) For the purposes of (a)(3), the court rules on the petition by:

(A) Issuing an order to show cause under (c);

(B) Denying the petition for writ of habeas corpus; or

(C) Requesting an informal response to the petition for writ of habeas corpus under (b).

(5) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under (b).

(Subd (a) amended effective January 22, 2019; previously amended effective January 1, 2002, January 1, 2004, January 1, 2007, and January 1, 2009.)

(b) Informal response

(1) Before passing on the petition, the court may request an informal response from:

(A) The respondent or real party in interest; or

(B) The custodian of any record pertaining to the petitioner's case, directing the custodian to produce the record or a certified copy to be filed with the clerk of the court.

(2) A copy of the request must be sent to the petitioner. The informal response, if any, must be served on the petitioner by the party of whom the request is made. The informal response must be in writing and must be served and filed within 15 days. If any informal response is filed, the court must notify the petitioner that he or she may reply to the informal response within 15 days from the date of service of the response on the petitioner. If the informal response consists of records or copies of records, a copy of every record and document furnished to the court must be furnished to the petitioner.

(3) After receiving an informal response, the court may not deny the petition until the petitioner has filed a timely reply to the informal response or the 15-day period provided for a reply under (b)(2) has expired.

(Subd (b) amended effective January 1, 2007; adopted effective January 1, 2002.)

(c) Order to show cause

(1) The court must issue an order to show cause if the petitioner has made a prima facie showing that he or she is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved. If so, the court must issue an order to show cause.

(2) On issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.

(3) An order to show cause is a determination that the petitioner has made a showing that he or she may be entitled to relief. It does not grant the relief sought in the petition.

(Subd (c) amended effective January 1, 2007; adopted effective January 1, 2002.)

(d) Return

If an order to show cause is issued as provided in (c), the respondent may, within 30 days thereafter, file a return. Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding. The return must comply with Penal Code section 1480 and must be served on the petitioner.

(Subd (d) amended effective January 1, 2007; repealed and adopted effective January 1, 2002; previously amended effective January 1, 2004.)

(e) Denial

Within 30 days after service and filing of a return, the petitioner may file a denial. Any material allegation of the return not denied is deemed admitted for purposes of the proceeding. Any denial must comply with Penal Code section 1484 and must be served on the respondent.

(Subd (e) amended and relettered effective January 1, 2002; adopted as subd (b) effective January 1, 1982.)

(f) Evidentiary hearing; when required

Within 30 days after the filing of any denial or, if none is filed, after the expiration of the time for filing a denial, the court must either grant or deny the relief sought by the petition or order an evidentiary hearing. An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact. The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.

(Subd (f) amended and relettered effective January 1, 2002; adopted as subd (c) effective January 1, 1982.)

(g) Reasons for denial of petition

Any order denying a petition for writ of habeas corpus must contain a brief statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient.

(Subd (g) amended and relettered effective January 1, 2002; adopted as subd (e) effective January 1, 1982.)

(h) Extending or shortening time

On motion of any party or on the court's own motion, for good cause stated in the order, the court may shorten or extend the time for doing any act under this rule. A copy of the order must be mailed to each party.

(Subd (h) amended and relettered effective January 1, 2002; adopted as subd (f) effective January 1, 1982.)

Rule 4.551 amended effective January 22, 2019; adopted as rule 260 effective January 1, 1982; previously renumbered as rule 4.500 effective January 1, 2001; previously amended and renumbered effective January 1, 2002; previously amended effective January 1, 2004, January 1, 2007, and January 1, 2009.

Advisory Committee Comment

The court must appoint counsel on the issuance of an order to show cause. (*In re Clark* (1993) 5 Cal.4th 750, 780 and *People v. Shipman* (1965) 62 Cal.2d 226, 231–232.) The Court of Appeal has held that under Penal Code section 987.2, counties bear the expense of appointed counsel in a habeas corpus proceeding challenging the underlying conviction. (*Charlton v. Superior Court* (1979) 93 Cal.App.3d 858, 862.) Penal Code section 987.2 authorizes appointment of the public defender, or private counsel if there is no public defender available, for indigents in criminal proceedings.

Rule 4.552. Habeas corpus jurisdiction

(a) Proper court to hear petition

Except as stated in (b), the petition should be heard and resolved in the court in which it is filed.

(Subd (a) amended effective January 1, 2012; previously amended effective January 1, 2006, and January 1, 2007.)

(b) Transfer of petition

(1) The superior court in which the petition is filed must determine, based on the allegations of the petition, whether the matter should be heard by it or in the superior court of another county.

(2) If the superior court in which the petition is filed determines that the matter may be more properly heard by the superior court of another county, it may nonetheless retain jurisdiction in the matter or, without first determining whether a prima facie case for relief exists, order the matter transferred to the other county. Transfer may be ordered in the following circumstances:

(A) If the petition challenges the terms of a judgment, the matter may be transferred to the county in which judgment was rendered.

(B) If the petition challenges the conditions of an inmate's confinement, it may be transferred to the county in which the petitioner is confined. A change in the institution of confinement that effects a change in the conditions of confinement may constitute good cause to deny the petition.

(C) If the petition challenges the denial of parole or the petitioner's suitability for parole and is filed in a superior court other than the court that rendered the underlying judgment, the court in which the petition is filed should transfer the petition to the superior court in which the underlying judgment was rendered.

(3) The transferring court must specify in the order of transfer the reason for the transfer.

(4) If the receiving court determines that the reason for transfer is inapplicable, the receiving court must, within 30 days of receipt of the case, order the case returned to the transferring court. The transferring court must retain and resolve the matter as provided by these rules.

(Subd (b) amended effective January 1, 2012; previously amended effective January 1, 2006.)

(c) Single judge must decide petition

A petition for writ of habeas corpus filed in the superior court must be decided by a single judge; it must not be considered by the appellate division of the superior court.

(Subd (c) relettered effective January 1, 2012; adopted as subd (c) effective January 1, 2002; previously relettered as subd. (d) effective January 1, 2006.)

Rule 4.552 amended effective January 1, 2012; adopted effective January 1, 2002; previously amended effective January 1, 2006, and January 1, 2007.

Advisory Committee Comment

Subdivision (b)(2)(C). This subdivision is based on the California Supreme Court decision in *In re Roberts* (2005) 36 Cal.4th 575, which provides that petitions for writ of habeas corpus challenging denial or suitability for parole should first be adjudicated in the trial court that rendered the underlying judgment.

Article 3. Death Penalty–Related Habeas Corpus Proceedings in the Superior Court

Rule 4.560. Application of article

This article governs procedures for death penalty–related habeas corpus proceedings in the superior courts.

Rule 4.560 adopted effective April 25, 2019.

Rule 4.561. Superior court appointment of counsel in death penalty–related habeas corpus proceedings

(a) Purpose

This rule, in conjunction with rule 4.562, establishes a mechanism for superior courts to appoint qualified counsel to represent indigent persons in death penalty–related habeas corpus proceedings. This rule governs the appointment of counsel by superior courts only, including when the Supreme Court or a Court of Appeal has transferred a habeas corpus petition without having appointed counsel for the petitioner. It does not govern the appointment of counsel by the Supreme Court or a Court of Appeal.

(b) Prioritization of oldest judgments

In the interest of equity, both to the families of victims and to persons sentenced to death, California courts, whenever possible, should appoint death penalty–related habeas corpus counsel first for those persons subject to the oldest judgments of death.

(c) List of persons subject to a judgment of death

The Habeas Corpus Resource Center must maintain a list of persons subject to a judgment of death, organized by the date the judgment was entered by the sentencing court. The list must indicate whether death penalty–related habeas corpus counsel has been appointed for each person and, if so, the date of the appointment. The list must also indicate for each person whether a petition is pending in the Supreme Court.

(d) Notice of oldest judgments without counsel

(1) Within 30 days of the effective date of this rule, the Habeas Corpus Resource Center must identify the persons on the list required by (c) with the 25 oldest judgments of death for whom death penalty–related habeas corpus counsel have not been appointed.

(2) The Habeas Corpus Resource Center must notify the presiding judges of the superior courts in which these 25 judgments of death were entered that these are the oldest cases in which habeas corpus counsel have not been appointed. The Habeas Corpus Resource Center will send a copy of the notice to the administrative presiding justice of the appellate district in which the superior court is located.

(3) The presiding judge must identify the appropriate judge within the court to make an appointment and notify the judge that the case is among the oldest cases in which habeas corpus appointments are to be made.

(4) If qualified counsel is available for appointment to a case for which a petition is pending in the Supreme Court, the judge must provide written notice to the Supreme Court that counsel is available for appointment.

(5) On entry of an order appointing death penalty–related habeas corpus counsel, the appointing court must promptly send a copy of the appointment order to the Habeas Corpus Resource Center, which must update the list to reflect that counsel was appointed, and to the clerk/executive officer of the Supreme Court, the Attorney General, and the district attorney. The court must also send notice to the Habeas Corpus Resource Center, clerk/executive officer of the Supreme Court, Attorney General, and district attorney if, for any reason, the court determines that it does not need to make an appointment.

(6) When a copy of an appointment order, or information indicating that an appointment is for any reason not required, has been received by the Habeas Corpus Resource Center for 20 judgments, the center will identify the next 20 oldest judgments of death in cases in which death penalty–related habeas corpus counsel have not been appointed and send out a notice identifying these 20 judgments, and the procedures required by paragraphs (3) through (6) of this subdivision must be repeated.

(7) The presiding judge of a superior court may designate another judge within the court to carry out his or her duties in this subdivision.

(e) Appointment of counsel

(1) After the court receives a notice under (d)(2) and has made the findings required by Government Code section 68662, the appropriate judge must appoint a qualified attorney or attorneys to represent the person in death penalty–related habeas corpus proceedings.

(2) The superior court must appoint an attorney or attorneys from the statewide panel of counsel compiled under rule 4.562(d)(4); an entity that employs qualified attorneys, including the Habeas Corpus Resource Center, the local public defender's office, or alternate public defender's office; or if the court has adopted a local rule under 4.562(g), an attorney determined to be qualified under that court's local rules. The court must at this time also designate an assisting entity or counsel, unless the appointed counsel is employed by the Habeas Corpus Resource Center.

(3) When the court appoints counsel to represent a person in a death penalty–related habeas corpus proceeding under this subdivision, the court must complete and enter an *Order Appointing Counsel in Death Penalty–Related Habeas Corpus Proceeding* (form HC-101).

Rule 4.561 adopted effective April 25, 2019.

Rule 4.562. Recruitment and determination of qualifications of attorneys for appointment in death penalty–related habeas corpus proceedings

(a) Purpose

This rule provides for a panel of attorneys from which superior courts may appoint counsel in death penalty–related habeas corpus proceedings.

(b) Regional habeas corpus panel committees

Each Court of Appeal must establish a death penalty–related habeas corpus panel committee as provided in this rule.

(c) Composition of regional habeas corpus panel committees

(1) The administrative presiding justice of the Court of Appeal appoints the members of each committee. Each committee must be composed of:

(A) One justice of the Court of Appeal to serve as the chair of the committee;

(B) A total of three judges from among those nominated by the presiding judges of the superior courts located within the appellate district; and

(C) A total of three attorneys from among those nominated by the entities in the six categories below. At least two of those appointed must have experience representing a petitioner in a death penalty–related habeas corpus proceeding.

(i) An attorney nominated by the Habeas Corpus Resource Center;

(ii) An attorney nominated by the California Appellate Project–San Francisco;

(iii) An attorney nominated by the appellate project with which the Court of Appeal contracts;

(iv) An attorney nominated by any of the federal public defenders' offices of the federal districts in which the participating courts are located;

(v) An attorney nominated by any of the public defenders' offices in a county where the participating courts are located; and

(vi) An attorney nominated by any entity not listed in this subparagraph, if the administrative presiding justice requests such a nomination.

(2) Each committee may also include advisory members, as authorized by the administrative presiding justice.

(3) The term of the chair and committee members is three years. Terms are staggered so that an approximately equal number of each committee's members changes annually. The administrative presiding justice has the discretion to remove or replace a chair or committee member for any reason.

(4) Except as otherwise provided in this rule, each committee is authorized to establish the procedures under which it is governed.

(d) Regional habeas corpus panel committee responsibilities

The committee has the following responsibilities:

(1) *Support superior court efforts to recruit applicants*

Each committee must assist the participating superior courts in their efforts to recruit attorneys to represent indigent petitioners in death penalty–related habeas corpus proceedings in the superior courts.

(2) *Accept applications*

Each committee must accept applications from attorneys who seek to be included on the panel of attorneys qualified for appointment in death penalty–related habeas corpus proceedings in the superior courts.

(A) The application must be on a *Declaration of Counsel re Minimum Qualifications for Appointment in Death Penalty–Related Habeas Corpus Proceedings* (form HC-100).

(B) Except as provided in (C), each committee must accept applications from attorneys whose principal place of business is within the appellate district and from only those attorneys.

(C) In addition to accepting applications from attorneys whose principal place of business is in its district, the First Appellate District committee must also accept applications from attorneys whose principal place of business is outside the state.

(3) *Review qualifications*

Each committee must review the applications it receives and determine whether the applicant meets the minimum qualifications stated in this division to represent persons in death penalty–related habeas corpus proceedings in the superior courts.

(4) *Provide names of qualified counsel for statewide panel*

(A) If a committee determines by a majority vote that an attorney is qualified to represent persons in death penalty–related habeas corpus proceedings in the superior court, it must include the name of the attorney on a statewide panel of qualified attorneys.

(B) Committees will provide to the Habeas Corpus Resource Center the names of attorneys who the committees determine meet the minimum qualifications. The Habeas Corpus Resource Center must consolidate the names into a single statewide panel, update the names on the panel at least quarterly, and make the most current panel available to superior courts on its website.

(C) Unless removed from the panel under (d)(6), an attorney included on the panel may remain on the panel for up to six years without submitting a renewed application.

(D) Inclusion on the statewide panel does not entitle an attorney to appointment by a superior court, nor does it compel an attorney to accept an appointment.

(5) *Match qualified attorneys to cases*

Each committee must assist a participating superior court in matching one or more qualified attorneys from the statewide panel to a person for whom counsel must be appointed under Government Code section 68662, if the court requests such assistance.

(6) *Remove attorneys from panel*

Suspension or disbarment of an attorney will result in removal of the attorney from the panel. Other disciplinary action, or a finding that counsel has provided ineffective assistance of counsel, may result in a reevaluation of the attorney's inclusion on the panel by the committee that initially determined the attorney to have met minimum qualifications.

(e) Consolidated habeas corpus panel committees

The administrative presiding justices of two or more Courts of Appeal may elect, following consultation with the presiding judges of the superior courts within their respective appellate districts, to operate a single committee to collectively fulfill the committee responsibilities for the superior courts in their appellate districts.

(f) Recruitment of qualified attorneys

The superior courts in which a judgment of death has been entered against an indigent person for whom habeas corpus counsel has not been appointed must develop and implement a plan to identify and recruit qualified counsel who may apply to be appointed.

(g) Local rule

A superior court may, by adopting a local rule, authorize appointment of qualified attorneys who are not members of the statewide panel. The local rule must establish procedures for submission and review of a *Declaration of Counsel re Minimum Qualifications for Appointment in Death Penalty–Related Habeas Corpus Proceedings* (form HC-100) and require attorneys to meet the minimum qualifications under rule 8.652(c).

Rule 4.562 adopted effective April 25, 2019.

Advisory Committee Comment

Subdivisions (d) and (f). In addition to the responsibilities identified in subdivisions (d) and (f), courts and regional committees are encouraged to support activities to expand the pool of attorneys that are qualified to represent petitioners in death penalty–related habeas corpus proceedings. Examples of such activities include providing mentoring and training programs and encouraging the use of supervised counsel.

Rule 4.571. Filing of petition in the superior court

(a) Petition

(1) A petition and supporting memorandum must comply with this rule and, except as otherwise provided in this rule, with rules 2.100–2.117 relating to the form of papers.

(2) A memorandum supporting a petition must comply with rule 3.1113(b), (c), (f), (h), (i), and (*l*).

(3) The petition and supporting memorandum must support any reference to a matter in the supporting documents or declarations, or other supporting materials, by a citation to its index number or letter and page and, if applicable, the paragraph or line number.

(b) Supporting documents

(1) The record prepared for the automatic appeal, including any exhibits admitted in evidence, refused, or lodged, and all briefs, rulings, and other documents

filed in the automatic appeal are deemed part of the supporting documents for the petition.

(2) The petition must be accompanied by a copy of any petition, excluding exhibits, pertaining to the same judgment and petitioner that was previously filed in any state court or any federal court, along with any order in a proceeding on such a petition that disposes of any claim or portion of a claim.

(3) If the petition asserts a claim that was the subject of a hearing, the petition must be accompanied by a certified transcript of that hearing.

(4) If any supporting documents have previously been filed in the same superior court in which the petition is filed and the petition so states and identifies the documents by case number, filing date and title of the document, copies of these documents need not be included in the supporting documents.

(5) Rule 8.486(c)(1) governs the form of any supporting documents accompanying the petition.

(6) If any supporting documents accompanying the petition or any subsequently filed paper are sealed, rules 2.550 and 2.551 govern. Notwithstanding rule 8.45(a), if any supporting documents accompanying the petition or any subsequently filed papers are confidential records, rules 8.45(b), (c), and 8.47 govern, except that rules 2.550 and 2.551 govern the procedures for making a motion or application to seal such records.

(7) When other laws establish specific requirements for particular types of sealed or confidential records that differ from the requirements in this subdivision, those specific requirements supersede the requirements in this subdivision.

(c) Filing and service

(1) If the petition is filed in paper form, an original and one copy must be filed, along with an original and one copy of the supporting documents.

(2) A court that permits electronic filing must specify any requirements regarding electronically filed petitions as authorized under rules 2.250 et seq.

(3) Petitioner must serve one copy of the petition and supporting documents on the district attorney, the Attorney General, and on any assisting entity or counsel.

(d) Noncomplying filings

The clerk must file an attorney's petition not complying with this rule if it otherwise complies with the rules of court, but the court may notify the attorney

that it may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a stated reasonable time of not less than five court days.

(e) Ruling on the petition

(1) The court must rule on the petition within 60 days after the petition is filed with the court or transferred to the court from another superior court.

(2) For purposes of this subdivision, the court rules on a petition by:

(A) Requesting an informal response to the petition;

(B) Issuing an order to show cause; or

(C) Denying the petition.

(3) If the court requests an informal response, it must issue an order to show cause or deny the petition within 30 days after the filing of the reply, or if none is filed, after the expiration of the time for filing the reply under rule 4.573(a)(3).

Rule 4.571 adopted effective April 24, 2019.

Rule 4.572. Transfer of petitions

Unless the court finds good cause for it to consider the petition, a petition subject to this article that is filed in a superior court other than the court that imposed the sentence must be transferred to the court that imposed the sentence within 21 days of filing. The court in which the petition was filed must enter an order with the basis for its transfer or its finding of good cause for retaining the petition.

Rule 4.572 adopted effective April 25, 2019.

Rule 4.573. Proceedings after the petition is filed

(a) Informal response and reply

(1) If the court requests an informal written response, it must serve a copy of the request on the district attorney, the Attorney General, the petitioner and on any assisting entity or counsel.

(2) The response must be served and filed within 45 days of the filing of the request, or a later date if the court so orders. One copy of the informal response and any supporting documents must be served on the petitioner and

on any assisting entity or counsel. If the response and supporting documents are served in paper form, two copies must be served on the petitioner.

(3) If a response is filed, the court must notify the petitioner that a reply may be served and filed within 30 days of the filing of the response, or a later date if the court so orders. The court may not deny the petition until that time has expired.

(4) If a reply is filed, the petitioner must serve one copy of the reply and any supporting documents on the district attorney, the Attorney General, and on any assisting entity or counsel.

(5) The formatting of the response, reply, and any supporting documents must comply with the applicable requirements for petitions in rule 4.571(a) and (b). The filing of the response, reply, and any supporting documents must comply with the requirements for petitions in rule 4.571(c)(1) and (2).

(6) On motion of any party or on the court's own motion, for good cause stated in the order, the court may extend the time for a party to perform any act under this subdivision. If a party requests extension of a deadline in this subdivision, the party must explain the additional work required to meet the deadline.

(b) Order to show cause

If the petitioner has made the required prima facie showing that petitioner is entitled to relief, the court must issue an order to show cause. An order to show cause does not grant the relief sought in the petition.

Rule 4.573 adopted effective April 24, 2019.

Rule 4.574. Proceedings following an order to show cause

(a) Return

(1) Any return must be served and filed within 45 days after the court issues the order to show cause, or a later date if the court so orders.

(2) The formatting of the return and any supporting documents must comply with the applicable requirements for petitions in rule 4.571(a) and (b). The filing of the return and any supporting documents must comply with the requirements for petitions in rule 4.571(c)(1) and (2).

(3) A copy of the return and any supporting documents must be served on the petitioner and on any assisting entity or counsel. If the return is served in paper form, two copies must be served on the petitioner.

(4) Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding.

(b) Denial

(1) Unless the court orders otherwise, within 30 days after the return is filed, or a later date if the court so orders, the petitioner may serve and file a denial.

(2) The formatting of the denial and any supporting documents must comply with the applicable requirements for petitions in rule 4.571(a) and (b). The filing of the denial and any supporting documents must comply with the requirements for petitions in rule 4.571(c)(1) and (2).

(3) A copy of the denial and any supporting documents must be served on the district attorney, the Attorney General, and on any assisting entity or counsel.

(4) Any material allegation of the return not controverted in the denial is deemed admitted for purposes of the proceeding.

(Subd (b) amended effective September 1, 2021.)

(c) Ruling on the petition

Within 60 days after filing of the denial, or if none is filed, after the expiration of the deadline for filing the denial under (b)(1), the court must either grant or deny the relief sought by the petition or set an evidentiary hearing.

(d) Evidentiary hearing

(1) An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, exhibits, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact.

(2) The court must assign a court reporter who uses computer-aided transcription equipment to report all proceedings under this subdivision.

(A) All proceedings under this subdivision, whether in open court, in conference in the courtroom, or in chambers, must be conducted on the record with a court reporter present. The court reporter must prepare and certify a daily transcript of all proceedings.

(B) Any computer-readable transcript produced by court reporters under this subdivision must conform to the requirements of Code of Civil Procedure section 271.

(3) Rule 3.1306(c) governs judicial notice.

(e) Additional briefing

The court may order additional briefing during or following the evidentiary hearing.

(f) Submission of cause

For purposes of article VI, section 19, of the California Constitution, a death penalty–related habeas corpus proceeding is submitted for decision at the conclusion of the evidentiary hearing, if one is held. If there is supplemental briefing after the conclusion of the evidentiary hearing, the matter is submitted when all supplemental briefing is filed with the court.

(g) Extension of deadlines

On motion of any party or on the court's own motion, for good cause stated in the order, the court may extend the time for a party to perform any act under this rule. If a party requests extension of a deadline in this rule, the party must explain the additional work required to meet the deadline.

Rule 4.574 amended effective September 1, 2021; adopted effective April 25, 2019.

Rule 4.575. Decision on death penalty–related habeas corpus petition

On decision of the initial petition, the court must prepare and file a statement of decision specifying its order and explaining the factual and legal basis for its decision. The clerk of the court must serve a copy of the decision on the petitioner, the district attorney, the Attorney General, the clerk/executive officer of the Supreme Court, the clerk/executive officer of the Court of Appeal, and on any assisting entity or counsel.

Rule 4.575 adopted effective April 25, 2019.

Rule 4.576. Successive petitions

(a) Notice of intent to dismiss

Before dismissing a successive petition under Penal Code section 1509(d), a superior court must provide notice to the petitioner and an opportunity to respond.

(b) Certificate of appealability

The superior court must grant or deny a certificate of appealability concurrently with the issuance of its decision denying relief on a successive death penalty–related habeas corpus petition. Before issuing its decision, the superior court may order the parties to submit arguments on whether a certificate of appealability should be granted. If the superior court grants a certificate of appealability, the certificate must identify the substantial claim or claims for relief shown by the petitioner and the substantial claim that the requirements of Penal Code section 1509(d) have been met. The superior court clerk must send a copy of the certificate to the petitioner, the Attorney General, the district attorney, the clerk/executive officer of the Court of Appeal and the district appellate project for the appellate district in which the superior court is located, the assisting counsel or entity, and the clerk/executive officer of the Supreme Court. The superior court clerk must send the certificate of appealability to the Court of Appeal when it sends the notice of appeal under rule 8.392(c).

Rule 4.576 adopted effective April 25, 2019.

Rule 4.577. Transfer of files

Counsel for the petitioner must deliver all files counsel maintained related to the proceeding to the attorney representing petitioner in any appeal taken from the proceeding.

Rule 4.577 adopted effective April 25, 2019.

Division 7. Miscellaneous

Rule 4.601. Judicial determination of factual innocence form

(a) Form to be confidential

Any *Certificate of Identity Theft: Judicial Finding of Factual Innocence* (form CR-150) that is filed with the court is confidential. The clerk's office must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (a) amended effective January 1, 2007.)

(b) Access to the form

Notwithstanding (a), the court, the identity theft victim, the prosecution, and law enforcement agencies may have access to the *Certificate of Identity Theft: Judicial*

Finding of Factual Innocence (form CR-150). The court may allow access to any other person on a showing of good cause.

(Subd (b) amended effective January 1, 2007.)

Rule 4.601 amended effective January 1, 2007; adopted effective January 1, 2002.

Rule 4.700. Firearm relinquishment procedures for criminal protective orders

(a) Application of rule

This rule applies when a court issues a criminal protective order under Penal Code section 136.2 during a criminal case or as a condition of probation under Penal Code section 1203.097(a)(2) against a defendant charged with a crime of domestic violence as defined in Penal Code section 13700 and Family Code section 6211.

(Subd (a) amended effective January 22, 2019.)

(b) Purpose

This rule is intended to:

(1) Assist courts issuing criminal protective orders to determine whether a defendant subject to such an order owns, possesses, or controls any firearms; and

(2) Assist courts that have issued criminal protective orders to determine whether a defendant has complied with the court's order to relinquish or sell the firearms under Code of Civil Procedure section 527.9.

(c) Setting review hearing

(1) At any hearing where the court issues a criminal protective order, the court must consider all credible information, including information provided on behalf of the defendant, to determine if there is good cause to believe that the defendant has a firearm within his or her immediate possession or control.

(2) If the court finds good cause to believe that the defendant has a firearm within his or her immediate possession or control, the court must set a review hearing to ascertain whether the defendant has complied with the requirement to relinquish the firearm as specified in Code of Civil Procedure section 527.9. Unless the defendant is in custody at the time, the review hearing should occur within two court days after issuance of the criminal protective order. If circumstances warrant, the court may extend the review hearing to occur within 5 court days after issuance of the criminal protective order. The court must give the defendant an opportunity to present information at the review hearing to refute the allegation that he or she owns any firearms. If the

defendant is in custody at the time the criminal protective order is issued, the court should order the defendant to appear for a review hearing within two court days after the defendant's release from custody.

(3) If the proceeding is held under Penal Code section 136.2, the court may, under Penal Code section 977(a)(2), order the defendant to personally appear at the review hearing. If the proceeding is held under Penal Code section 1203.097, the court should order the defendant to personally appear.

(d) Review hearing

(1) If the court has issued a criminal protective order under Penal Code section 136.2, at the review hearing:

(A) If the court finds that the defendant has a firearm in or subject to his or her immediate possession or control, the court must consider whether bail, as set, or defendant's release on own recognizance is appropriate.

(B) If the defendant does not appear at the hearing and the court orders that bail be revoked, the court should issue a bench warrant.

(2) If the criminal protective order is issued as a condition of probation under Penal Code section 1203.097, and the court finds at the review hearing that the defendant has a firearm in or subject to his or her immediate possession or control, the court must proceed under Penal Code section 1203.097(a)(12).

(3) In any review hearing to determine whether a defendant has complied with the requirement to relinquish firearms as specified in Code of Civil Procedure section 527.9, the burden of proof is on the prosecution.

Rule 4.700 amended effective January 22, 2019; adopted effective July 1, 2010.

Advisory Committee Comment

When issuing a criminal protective order under Penal Code section 136.2 or 1203.097(a)(2), the court is required to order a defendant "to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control . . . ." (Code Civ. Proc., § 527.9(b).) Mandatory Judicial Council form CR-160, *Criminal Protective Order—Domestic Violence,* includes a mandatory order in bold type that the defendant "must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order."

Courts are encouraged to develop local procedures to calendar review hearings for defendants in custody beyond the two-court-day time frame to file proof of firearms relinquishment with the court under Code of Civil Procedure section 527.9.