

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on October 26, 2012;

and effective November 1, 2012

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1 **Rule 4.530. Intercounty ~~probation case transfer~~ of probation and mandatory**  
2 **supervision cases**

3  
4 **(a) Application**

5  
6 This rule applies to intercounty transfers of probation and mandatory supervision  
7 cases ~~transfers~~ under Penal Code section 1203.9. It does not apply to transfers of  
8 cases in which probation has been granted under Penal Code section 1210.1.

9  
10 *(Subd (a) amended effective November 1, 2012.)*

11  
12 **(b) Definitions**

13  
14 As used in this rule:

15  
16 (1) “Transferring court” means the superior court of the county in which the  
17 supervised person ~~probationer~~ is supervised on probation or mandatory  
18 supervision.

19  
20 (2) “Receiving court” means the superior court of the county to which transfer of  
21 the case and probation or mandatory supervision is proposed.

22  
23 *(Subd (b) amended effective November 1, 2012.)*

24  
25 **(c) \* \* \***

26  
27 **(d) Notice**

28  
29 (1) If transfer is requested by the probation officer of the transferring county, the  
30 probation officer must provide written notice of the date, time, and place set  
31 for hearing on the motion to:

32  
33 (A)–(D) \* \* \*

34  
35 (E) The ~~probationer~~ supervised person; and

36  
37 (F) The ~~probationer’s~~ supervised person’s last counsel of record (if any).

38  
39 (2) \* \* \*

40  
41 (3) If the party makes the motion, the motion must include a declaration that the  
42 probation officer has refused to bring the motion, and the party must provide  
43 written notice of the date, time, and place set for hearing on the motion to:

1  
2 (A)–(C) \* \* \*

3  
4 (D) The ~~probationer~~ supervised person; and

5  
6 (E) The ~~probationer's~~ supervised person's last counsel of record (if any).

7  
8 Upon receipt of notice of a motion for transfer by a party, the probation  
9 officer of the transferring county must provide notice to the victim, if any.

10  
11 (4)–(5) \* \* \*

12  
13 *(Subd (d) amended effective November 1, 2012.)*

14  
15 (e) \* \* \*

16  
17 **(f) Factors**

18  
19 The transferring court must consider at least the following factors when  
20 determining whether transfer is appropriate:

21  
22 (1) The permanency of the ~~probationer's~~ supervised person's residence. As used  
23 in this subdivision, “residence” means the place where the ~~probationer~~  
24 supervised person customarily lives exclusive of employment, school, or  
25 other special or temporary purpose. A ~~probationer~~ supervised person may  
26 have only one residence. The fact that the ~~probationer~~ supervised person  
27 intends to change residence to the receiving county, without further evidence  
28 of how, when, and why this is to be accomplished, is insufficient to transfer  
29 ~~probation~~ supervision;

30  
31 (2) The availability of appropriate programs for the ~~offender~~ supervised person,  
32 including substance abuse, domestic violence, sex offender, and collaborative  
33 court programs;

34  
35 (3)–(4) \* \* \*

36  
37 *(Subd (f) amended effective November 1, 2012.)*

38  
39 **(g) Transfer**

40  
41 (1) If the transferring court determines that the permanent residence of the  
42 ~~probationer~~ supervised person is in the county of the receiving court, the

1 transferring court must transfer the case unless it determines that transfer  
2 would be inappropriate and states its reasons on the record.

3  
4 (2) To the extent possible, the transferring court must establish any amount of  
5 restitution owed by the ~~probationer~~ supervised person before it orders the  
6 transfer.

7  
8 (3) \* \* \*

9  
10 (4) The orders for transfer must include an order committing the ~~probationer~~  
11 supervised person to the care and custody of the probation officer of the  
12 receiving county and an order for reimbursement of reasonable costs for  
13 processing the transfer to be paid to the county of the transferring court in  
14 accordance with Penal Code section 1203.1b.

15  
16 (5) \* \* \*

17  
18 (6) The probation officer of the transferring county must transmit, at a minimum,  
19 any court orders, probation or mandatory supervision reports, case plans, and  
20 all records of payments to the probation officer of the receiving county within  
21 two weeks of the transfer order.

22  
23 (7) Upon transfer of the case, the probation officer of the transferring county  
24 must notify the ~~probationer~~ supervised person of the transfer order. The  
25 ~~probationer~~ supervised person must report to the probation officer of the  
26 receiving county no later than 30 days after transfer unless the transferring  
27 court orders the ~~probationer~~ supervised person to report sooner. If the  
28 ~~probationer~~ supervised person is in custody at the time of transfer, the  
29 ~~probationer~~ supervised person must report to the probation officer of the  
30 receiving county no later than 30 days after being released from custody  
31 unless the transferring court orders the ~~probationer~~ supervised person to  
32 report sooner. Any jail sentence imposed as a condition of probation or  
33 mandatory supervision prior to transfer must be served in the transferring  
34 county unless otherwise authorized by law.

35  
36 *(Subd (g) amended effective November 1, 2012.)*

37  
38 *Rule 4.530 amended effective November 1, 2012; adopted effective July 1, 2010.*

39  
40 **Advisory Committee Comment**

41

1 Subdivision (g)(5) requires the transferring court to transmit the entire court file, except exhibits,  
2 to the court of the receiving county. Before transmitting the court file, transferring courts should  
3 consider retaining copies of the court file in the event of an appeal or a writ.

4  
5 Subdivision (g)(7) clarifies that any jail sentence imposed as a condition of probation or  
6 mandatory supervision before transfer must be served in the transferring county unless otherwise  
7 authorized by law. For example, Penal Code section 1208.5 authorizes the boards of supervisors  
8 of two or more counties with work furlough programs to enter into agreements to allow work-  
9 furlough-eligible persons sentenced to or imprisoned in one county jail to transfer to another  
10 county jail.

11  
12 **~~Rule 4.540. Revocation of postrelease community supervision~~**

13  
14 **~~(a) Application~~**

15  
16 This rule applies to ~~petitions for revocation of postrelease community supervision~~  
17 ~~under Penal Code section 3455.~~

18  
19 **~~(b) Definitions~~**

20  
21 ~~As used in this chapter:~~

22  
23 ~~(1) “Supervised person” means any person subject to community supervision~~  
24 ~~under Penal Code section 3451.~~

25  
26 ~~(2) “Court” includes any hearing officer appointed by a superior court and~~  
27 ~~authorized to conduct revocation proceedings under Government Code~~  
28 ~~section 71622.5.~~

29  
30 ~~(3) “Supervising agency” means the county agency designated as the supervising~~  
31 ~~agency by the board of supervisors under Penal Code section 3451.~~

32  
33 **~~(c) Petition for revocation~~**

34  
35 ~~(1) Petitions for revocation must be filed by the supervising agency at the~~  
36 ~~location designated by the superior court in the county in which the person is~~  
37 ~~supervised.~~

38  
39 ~~(2) The supervising agency may file a petition for revocation only after all of the~~  
40 ~~following have occurred:~~

41

1           (A) ~~The supervising agency has established probable cause to believe the~~  
2           ~~supervised person has violated a term or condition of community~~  
3           ~~supervision;~~

4  
5           (B) ~~The supervising agency has determined, following application of its~~  
6           ~~assessment processes, that intermediate sanctions without court~~  
7           ~~intervention as authorized by Penal Code section 3454(b) are not~~  
8           ~~appropriate responses to the alleged violation; and~~

9  
10          (C) ~~The supervising agency has informed the supervised person that he or~~  
11          ~~she is entitled to the assistance of counsel and, if he or she desires but is~~  
12          ~~unable to employ counsel, the supervising agency has referred the~~  
13          ~~matter to the public defender or other person or agency designated by~~  
14          ~~the county to represent supervised persons.~~

15  
16          (3) ~~Petitions for revocation must be made on *Petition for Revocation of*~~  
17          ~~*Community Supervision* (form CR 300) and must include a written report~~  
18          ~~from the supervising agency that includes the declaration and information~~  
19          ~~required under rule 4.541.~~

20  
21          (4) ~~Upon filing the petition, the supervising agency must provide copies of the~~  
22          ~~petition and written report to the prosecutor and the supervised person's~~  
23          ~~counsel or, if unrepresented, to the supervised person.~~

24  
25        **(d) — Probable cause review**

26  
27          (1) ~~The court must review whether probable cause exists to support a revocation~~  
28          ~~within five court days of the filing of the petition. To conduct the review, the~~  
29          ~~minimum information the court may rely upon is the information contained in~~  
30          ~~the petition and written report of the supervising agency. If the court~~  
31          ~~determines that probable cause exists to support a revocation, the court must~~  
32          ~~indicate the determination on *Petition for Revocation of Community*~~  
33          ~~*Supervision* (form CR 300) and preliminarily revoke supervision.~~

34  
35          (2) ~~If the court determines that no probable cause exists to support the~~  
36          ~~revocation, the court must dismiss the petition, vacate any scheduled~~  
37          ~~hearings, and return the person to community supervision on the same terms~~  
38          ~~and conditions. If the court dismisses the petition, the supervising agency~~  
39          ~~must notify the prosecutor, supervised person, and supervised person's~~  
40          ~~counsel, if any, of the dismissal.~~

41  
42        **(e) — Notice of hearing**

43

1           The supervising agency must provide notice of the date, time, and place of any  
2           hearing related to the petition to revoke to the supervised person, the supervised  
3           person's counsel, if any, the prosecutor, and any victims.  
4

5           **~~(f) — Waiver~~**

6  
7           ~~At any time before a formal hearing on the petition, the supervised person may~~  
8           ~~waive, in writing, his or her right to counsel, admit a violation, waive a hearing,~~  
9           ~~and accept a proposed modification of supervision.~~  
10

11           **~~(g) — Formal hearing~~**

12  
13           ~~(1) — The hearing on the petition for revocation must occur within a reasonable~~  
14           ~~time after the filing of the petition.~~

15  
16           ~~(2) — Revocation determinations must be based on a preponderance of the evidence~~  
17           ~~admitted at the hearing. The statutory and decisional law that governs the~~  
18           ~~admissibility of evidence at probation violation proceedings applies.~~  
19

20           **~~(h) — Orders After Hearing~~**

21  
22           ~~(1) — If the court finds that the supervised person has not violated a term or~~  
23           ~~condition of supervision, the court must dismiss the petition and return the~~  
24           ~~supervised person to community supervision on the same terms and~~  
25           ~~conditions.~~  
26

27           ~~(2) — If the court finds that the supervised person has violated a term or condition~~  
28           ~~of supervision, the court may:~~

29  
30           ~~(A) — Return the supervised person to supervision with modifications of~~  
31           ~~conditions, if appropriate, including a period of incarceration in county~~  
32           ~~jail;~~  
33

34           ~~(B) — Revoke supervision and order the supervised person to confinement in~~  
35           ~~county jail; or~~  
36

37           ~~(C) — Refer the supervised person to a reentry court under Penal Code section~~  
38           ~~3015 or any other evidence based program in the court's discretion.~~  
39

40           ~~(3) — Any confinement ordered by the court under (h)(2)(A) or (B) must not~~  
41           ~~exceed a period of 180 days in county jail.~~  
42

1 **(i) Findings**

2  
3 If the court revokes community supervision, the court must summarize in writing  
4 the evidence relied on and the reasons for the revocation. A transcript of the  
5 hearing that contains the court’s oral statement of the reasons and evidence relied  
6 on may serve as a substitute for written findings.

7  
8 *Rule 4.540 repealed effective November 1, 2012; adopted effective October 28, 2011.*

9  
10 **Advisory Committee Comment**

11  
12 Before the enactment of criminal justice realignment legislation (Assem. Bill 109 (Committee on  
13 Budget), Stats. 2011, ch. 15; AB 117 (Committee on Budget), Stats. 2011, ch. 39; ABX117  
14 (Blumenfeld), Stats. 2011, ch. 12), parole revocation procedures conducted by the California  
15 Department of Corrections and Rehabilitation were subject to federal court injunction. (See  
16 *Valdivia v. Schwarzenegger* (E.D.Cal., Dec. 2, 2010, Civ. No. S 94 0671 LLK/GGH).) The terms  
17 and procedures required by the injunction represent a negotiated settlement between the parties  
18 and are not “necessary or required by the constitution.” (*Valdivia v. Schwarzenegger* (9th Cir.  
19 2010) 599 F.3d 984, 995, cert. denied sub nom. *Brown v. Valdivia* (2011) 131 S.Ct. 1626  
20 [vacating a district court order denying the state’s motion to modify the injunction to conform to  
21 recently enacted Penal Code section 3044 because “[t]here is no indication anywhere in the  
22 record that these particular procedures are necessary for the assurance of the due process rights of  
23 parolees”].) The due process standards applicable to postrelease community supervision  
24 revocation proceedings have been established by constitutional case law (see, e.g., *Morrissey v.*  
25 *Brewer* (1972) 408 U.S. 471, 489; *People v. Vickers* (1972) 8 Cal.3d 451, 457–458), not the terms  
26 and procedures negotiated by the parties to the federal injunction and related orders.

27  
28 The Criminal Law Advisory Committee acknowledges that the practices related to the scheduling  
29 of court appearances vary from county to county. Nothing in this rule is intended to prohibit  
30 courts from scheduling court appearances according to local needs and customs, including  
31 requiring court appearances before formal evidentiary hearings on the petition to revoke. When  
32 filing a petition, petitioners should consult local rules and court staff regarding specific  
33 requirements for scheduling court appearances related to revocation petitions.

34  
35 **Subdivision (c).** Penal Code section 3455 does not prescribe a deadline for filing the petition. It is  
36 incumbent on courts and supervising agencies to ensure timely filing of petitions, particularly  
37 when the supervised person is detained solely for a violation.

38  
39 **Subdivision (c)(2)(A).** Detained supervised persons are generally entitled to certain due process  
40 rights during revocation proceedings, including a preliminary probable cause determination. (See,  
41 e.g., *Morrissey, supra*, 408 U.S. at 489; *Vickers, supra*, 8 Cal.3d at 457–458.) Under the criminal  
42 justice realignment legislation, supervising agencies are authorized to conduct certain violation  
43 proceedings *without* court involvement. (Pen. Code, § 3454(b) [authorizing supervising agencies

1 “to determine and order appropriate responses to alleged violations,” including flash  
2 incarceration].) A supervising agency may only file a petition to revoke supervision with the  
3 court after it has determined, following application of its “assessment processes,” that  
4 intermediate sanctions are not appropriate responses to a violation. (Pen. Code, § 3455(a).)  
5 Supervising agencies are also authorized to determine whether the supervised person should  
6 remain in custody pending a revocation hearing and may order the person confined pending a  
7 hearing. (Pen. Code, § 3455(b).) To promote supervising agency compliance with the due process  
8 rights of supervised persons during any proceedings conducted before the filing of the petition,  
9 this subdivision requires the supervising agency to conduct a preliminary probable cause  
10 determination before the petition is filed with the court. Courts must independently review the  
11 supervising agency’s probable cause determination under subdivision (d).  
12

13 ~~**Subdivision (c)(2)(C).** This subdivision is designed to ensure that indigent supervised persons  
14 who desire counsel are represented as early in the revocation proceedings as possible. Nothing in  
15 this subdivision is intended to infringe on court authority to appoint counsel or allow a supervised  
16 person to waive the right to counsel.~~

17  
18 ~~**Subdivision (d).** This subdivision requires courts to review the supervising agency’s probable  
19 cause determination required under subdivision (c)(2)(A). Courts may determine the most  
20 appropriate manner to review the supervising agency’s probable cause determination. Nothing in  
21 this subdivision is intended to prevent courts from conducting formal hearings to review probable  
22 cause.~~

23  
24 ~~**Subdivision (e).** Victims are separately entitled to notice as required under article I, section 28 of  
25 the California Constitution.~~

26  
27 ~~**Subdivision (f).** This subdivision is based on Penal Code section 3455(a): “At any point during  
28 the process initiated pursuant to this section, a person may waive, in writing, his or her right to  
29 counsel, admit the violation of his or her postrelease supervision, waive a court hearing, and  
30 accept the proposed modification of his or her postrelease supervision.”~~

31  
32 ~~**Subdivision (g).** This subdivision is based on Penal Code section 3455(b): “The revocation  
33 hearing shall be held within a reasonable time after the filing of the revocation petition.” When  
34 deciding a reasonable time for hearing, courts should consider whether the supervised person is  
35 detained. (See, e.g., *Morrissey, supra*, 408 U.S. at 488 [a hearing within two months of arrest may  
36 be appropriate under certain circumstances].)~~

37  
38 **Rule 4.541. Minimum contents of Ssupervising agency reports**

39  
40 **(a) DeclarationApplication**

41  
42 A petition for revocation of community supervision under Penal Code section 3455  
43 must include a declaration signed under penalty of perjury that confirms that the

1 ~~requirements prescribed by rule 4.540(c)(2) have been satisfied. This rule applies to~~  
2 ~~supervising agency petitions for revocation of formal probation, mandatory~~  
3 ~~supervision under Penal Code section 1170(h)(5)(B), and postrelease community~~  
4 ~~supervision under Penal Code section 3455.~~

5  
6 *(Subd (a) amended effective November 1, 2012.)*

7  
8 **(b) Minimum contents Definitions**

9  
10 As used in this rule:

- 11  
12 (1) “Supervised person” means any person subject to formal probation,  
13 mandatory supervision under Penal Code section 1170(h)(5)(B), or  
14 community supervision under Penal Code section 3451.
- 15  
16 (2) “Formal probation” means the suspension of the imposition or execution of a  
17 sentence and the order of conditional and revocable release in the community  
18 under the supervision of a probation officer.
- 19  
20 (3) “Court” includes any hearing officer appointed by a superior court and  
21 authorized to conduct revocation proceedings under Government Code  
22 section 71622.5.
- 23  
24 (4) “Supervising agency” includes the county agency designated by the board of  
25 supervisors under Penal Code section 3451.

26  
27 *(Subd (b) amended effective November 1, 2012.)*

28  
29 **(c) Minimum contents**

30  
31 Except as provided in ~~(e)~~(d), a petition for revocation of ~~community~~ supervision  
32 ~~under Penal Code section 3455~~ must include a written report that contains at least  
33 the following information:

- 34  
35 (1) Information about the supervised person, including:
- 36  
37 (A) Personal identifying information, including name and date of birth;
- 38  
39 (B) Custody status and the date and circumstances of arrest;
- 40  
41 (C) Any pending cases and case numbers;
- 42

1 (D) The history and background of the supervised person, including a  
2 summary of the supervised person's record of prior criminal conduct;  
3 and  
4

5 (E) Any available information requested by the court regarding the  
6 supervised person's risk of recidivism, including any validated risk-  
7 needs assessments;  
8

9 (2) All relevant terms and conditions of supervision and the circumstances of the  
10 alleged violations, including a summary of any statement made by the  
11 supervised person, and any victim information, including statements and type  
12 and amount of loss;  
13

14 (3) A summary of ~~all any~~ previous violations and sanctions, ~~including flash~~  
15 ~~incarceration. and the reasons that the supervising agency has determined that~~  
16 ~~intermediate sanctions without court intervention as authorized by Penal~~  
17 ~~Code section 3454(b) are not appropriate responses to the alleged violations;~~  
18 and  
19

20 (4) Any recommended sanctions.  
21

22 *(Subd (c) adopted effective November 1, 2012; based on previous subd (b).)*  
23

24 **(e)(d) Subsequent reports**  
25

26 If ~~the supervising agency submitted~~ a written report was submitted as part of the  
27 original sentencing proceeding or with an earlier revocation petition, a written  
28 report attached to a subsequent petition report need only update the information  
29 required by ~~(b)(c)~~. A subsequent report must include a copy of the original report if  
30 the original report is not contained in the court file.  
31

32 *(Subd (d) relettered and amended effective November 1, 2012; adopted as subd (c).)*  
33

34 **(e) Postrelease Community Supervision Reports**  
35

36 In addition to the minimum contents described in (c), a report filed by the  
37 supervising agency in conjunction with a petition to revoke postrelease community  
38 supervision under Penal Code section 3455 must include the reasons for that  
39 agency's determination that intermediate sanctions without court intervention as  
40 authorized by Penal Code section 3454(b) are inappropriate responses to the  
41 alleged violations.  
42

43 *(Subd (e) adopted effective November 1, 2012.)*

1  
2 *Rule 4.541 amended effective November 1, 2012; adopted effective October 28, 2011.*

3  
4 **Advisory Committee Comment**

5  
6 **Subdivision ~~(b)~~(c).** This subdivision prescribes minimum contents for supervising agency  
7 reports. Courts may require additional contents in light of local customs and needs.

8  
9 **Subdivision ~~(b)~~(c)(1)~~(d)~~(D).** The history and background of the supervised person may include  
10 the supervised person’s social history, including family, education, employment, income,  
11 military, medical, psychological, and substance abuse information.

12  
13 **Subdivision ~~(b)~~(c)(1)~~(e)~~(E).** Penal Code section 3451(a) requires postrelease community  
14 supervision to be consistent with evidence-based practices, including supervision policies,  
15 procedures, programs, and practices demonstrated by scientific research to reduce recidivism  
16 among supervised persons. “Evidence-based practices” refers to “supervision policies,  
17 procedures, programs, and practices demonstrated by scientific research to reduce recidivism  
18 among individuals under probation, parole, or postrelease supervision.” (Pen. Code,  
19 § 3450(b)(9).)

20  
21 **Subdivision (e).** Penal Code section 3454(b) authorizes supervising agencies to impose  
22 appropriate responses to alleged violations of postrelease community supervision under Penal  
23 Code section 3455 without court intervention, including referral to a reentry court under Penal  
24 Code section 3015 or flash incarceration in a county jail. Penal Code section 3455(a) requires the  
25 supervising agency to determine that the intermediate sanctions authorized by section 3454(b) are  
26 inappropriate responses to the alleged violation *before* filing a petition to revoke postrelease  
27 community supervision under Penal Code section 3455.