



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For meeting on October 26, 2012

Title	Agenda Item Type
Criminal Justice Realignment: Procedures to Revoke Parole and Postrelease Community Supervision	Action Required
	Effective Date
	November 1, 2012
Rules, Forms, Standards, or Statutes Affected	Date of Report
Repeal Cal. Rules of Court, rule 4.540; amend rule 4.541; and revise form CR-300	October 11, 2012
Recommended by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee recommends the repeal of rule 4.540 as obsolete in light of recent realignment-related legislation that applies longstanding probation revocation procedures to revocations of postrelease community supervision. The committee recommends amending rule 4.541 to extend its reporting requirements to petitions to revoke probation and mandatory supervision and to delete cross-references to rule 4.540, assuming its repeal. In addition, the committee recommends modifying *Petition for Revocation of Community Supervision* (form CR-300) from mandatory to optional and revising the instructions so that the form applies to parole revocations, effective July 1, 2013.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective November 1, 2012:

1. Repeal rule 4.540;
2. Amend the title of rule 4.541 to “Minimum contents of supervising agency reports”;

3. Amend rule 4.541(a) to delete references to rule 4.540 and form CR-300;
4. Amend rule 4.541(a) to clarify that the rule applies to probation, mandatory supervision, and postrelease community supervision (PRCS) cases;
5. Amend rule 4.541(b) to define “supervised person,” “formal probation,” “court,” and “supervising agency”;
6. Amend rule 4.541(c)(3) by moving a statutory PRCS reporting requirement currently in rule 4.541(c)(3) and placing it in new subdivision (e) under a heading applicable only to PRCS cases;
7. Amend rule 4.541(d) to authorize supervising agencies to submit updates of any available original sentencing reports;
8. Amend rule 4.541 to correct typographical errors in subdivisions (d) and (e);
9. Add an additional advisory committee comment to rule 4.541 to explain the separate PRCS reporting requirement under subdivision (e); and
10. Revise form CR-300 to be optional rather than mandatory;
11. Delete the “Court’s Probable Cause Finding and Orders” section from form CR-300;
12. Delete cross-references to rule 4.540 from the instructions to form CR-300;
13. Add check boxes to the header of form CR-300 for petitioners to note whether the petition applies to a parole or PRCS case;
14. Add an instruction to form CR-300 advising petitioners to use the check boxes in the header of the form to indicate whether the petition applies to a parole or PRCS case;
15. Revise item 4 on form CR-300 to add the phrase “the controlling discharge date is”; and
16. Add item 7 to form CR-300 for petitioners to notify courts that the supervised person is eligible for remand to the California Department of Corrections and Rehabilitation (CDCR) on a finding that the person violated parole.

The text of the amended rules is attached at pages 6–13. The revised form is attached at page 14.

Previous Council Action

To facilitate courts’ implementation of postrelease community supervision (PRCS) revocation procedures in response to criminal justice realignment legislation that became effective October 1, 2011, the Judicial Council adopted rules 4.540 and 4.541 of the California Rules of Court and *Petition for Revocation of Community Supervision* (form CR-300), effective October 28, 2011.

Rationale for Recommendation

Criminal justice realignment

Criminal justice realignment legislation introduced sweeping changes to felony sentencing laws and parole procedures, including eliminating prison as a sentencing option for certain defendants, authorizing courts to impose a period of “mandatory supervision” under new Penal Code section 1170(h)(5)(B) after a defendant’s release from county jail, and requiring courts to conduct revocation proceedings for parole and a new category of supervision called “postrelease community supervision” (PRCS) under Penal Code section 3455. The new PRCS and mandatory supervision schemes became effective October 1, 2011; beginning July 1, 2013, courts will be required to conduct parole revocation proceedings.

The legislation also required the Judicial Council to adopt forms and rules of court to establish uniform statewide procedures for proceedings to revoke PRCS, including the minimum contents of supervision agency reports. (Pen. Code, § 3455(a).) The council responded by adopting rules 4.540 and 4.541 and *Petition for Revocation of Community Supervision* (form CR-300), all effective October 28, 2011. Rule 4.540 prescribes various procedural requirements for PRCS revocations, including notice, waivers, and probable cause determinations; rule 4.541 prescribes the minimum contents of supervising agency reports; and form CR-300 is a petition for use by supervising agencies to initiate the PRCS revocation process.

Uniform revocation procedures

Senate Bill 1023 (Comm. on Budget & Review; Stats. 2012, ch. 43) recently amended Penal Code sections 1170, 1203.2, 3455, and 3000.08 to apply the longstanding probation revocation procedures of Penal Code section 1203.2 to court revocations of PRCS, mandatory supervision, and, beginning July 1, 2013, parole. The bill was designed to promote uniformity and facilitate implementation of criminal justice realignment by applying well-established practices for probation revocation to the three other categories of supervision. As a result, court proceedings for revocations of parole and PRCS are now expressly governed by the same procedures as probation revocations.

Rationale

In light of this recent legislation, the Criminal Law Advisory Committee recommends the repeal of rule 4.540 as obsolete, because distinct PRCS revocation procedures are unnecessary now that courts conduct such revocations under established probation revocation procedures.¹

In addition, no rules or statutes currently prescribe the minimum contents of reports filed in support of petitions to revoke probation or mandatory supervision. To ensure that supervising agencies provide courts with sufficient information to conduct revocation proceedings, the

¹ The committee also initially proposed the revocation of *Petition For Revocation of Community Supervision* (form CR-300) as unnecessary in light of the recent application of probation revocation procedures to PRCS revocations. As explained in the section below, however, the committee decided not to recommend the revocation of the form.

committee also recommends amending rule 4.541 to apply its requirements for the minimum contents of supervising agency reports to probation and mandatory supervision cases.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for public comment from September 13 to September 27, 2012. A total of six comments were received—two that agreed with the proposed changes and four that agreed if the recommendations were modified. No commentators opposed the proposal. A chart with all comments received and the committee’s responses is attached at pages 15–24.

Notable comments and alternatives considered

Notable comments and alternatives considered include the following:

- ***Form CR-300.*** The committee initially proposed the revocation of form CR-300 as unnecessary now that probation revocation procedures also apply to PRCS revocations. In response to a suggestion from the Superior Court of Orange County, which prefers to continue using the form, the committee instead recommends modifying the form from mandatory to optional to allow courts discretion to continue its use and to avoid the costs and burdens associated with discontinuing an existing form. If the council repeals rule 4.540 as proposed, the committee also recommends deleting the section at the bottom of the form entitled “Court’s Probable Cause Finding and Orders,” which corresponds to a procedural requirement under rule 4.540, and deleting references to rule 4.540 from the instructions at the top of the form.
- ***Delayed effective date.*** The Superior Court of Orange County asked to delay the effective date of this proposal by three months to allow courts more time to implement the revocation of form CR-300. While acknowledging the burdens associated with form changes, the committee declined the request for two reasons. First, the committee no longer recommends the revocation of the form. Second, because the recent amendments to Penal Code section 1203.2 rendered certain aspects of the form immediately obsolete, an expedited effective date is necessary to avoid confusion.
- ***Valdivia v. Brown requirements.*** The committee also considered but declined a suggestion to prescribe specific parole revocation requirements in accordance with an injunction in the federal court case *Valdivia v. Brown*, a longstanding class action involving parole revocation procedures implemented by CDCR. The committee declined the suggestion because the terms of the federal court injunction and its related orders represent a settlement negotiation between other parties regarding revocation procedures implemented by CDCR under a previous statutory scheme.

Additional changes to form CR-300

To facilitate the implementation of parole revocation proceedings beginning July 1, 2013, the committee, on its own review, also revised form CR-300 to apply the form to parole revocations. Specifically, the committee added:

- Check boxes to the header of the form for petitioners to note whether the petition applies to a parole or PRCS case, as well as a corresponding instruction just below the header;
- The phrase “the controlling discharge date” to item 4, to clarify the meaning of “supervision is scheduled to expire on” as applied in the parole context; and
- New item 7 for petitioners to notify courts that the parolee must be remanded to CDCR if found to have violated the terms of parole supervision.

Applying form CR-300 to parole revocations will promote uniformity and ensure that CDCR provides courts with sufficient information to adjudicate parole revocation petitions. In the absence of a standardized petition form, CDCR—a statewide agency—will be required to customize petitions to meet the preferences of particular superior courts. In addition, because parole revocations do not transition to courts until July 1, 2013, implementing the proposed form revisions this far in advance should provide CDCR and the courts with ample time to prepare to use the form and obviate another round of form revisions next year.

Implementation Requirements, Costs, and Operational Impacts

The expected costs and implementation requirements of this proposal include training, case management system updates, and production of the revised form.

Attachments

1. Rules 4.540 and 4.541, as proposed, at pages 6–13;
2. *Petition for Revocation of Community Supervision* (form CR-300), as proposed, at page 14; and
3. Comment chart, at pages 15–24.

1 **Rule 4.540. Revocation of postrelease community supervision**

2
3 **(a) Application**

4
5 This rule applies to petitions for revocation of postrelease community supervision
6 under Penal Code section 3455.

7
8 **(b) Definitions**

9
10 As used in this chapter:

11
12 (1) “Supervised person” means any person subject to community supervision
13 under Penal Code section 3451.

14
15 (2) “Court” includes any hearing officer appointed by a superior court and
16 authorized to conduct revocation proceedings under Government Code
17 section 71622.5.

18
19 (3) “Supervising agency” means the county agency designated as the supervising
20 agency by the board of supervisors under Penal Code section 3451.

21
22 **(c) Petition for revocation**

23
24 (1) Petitions for revocation must be filed by the supervising agency at the
25 location designated by the superior court in the county in which the person is
26 supervised.

27
28 (2) The supervising agency may file a petition for revocation only after all of the
29 following have occurred:

30
31 (A) The supervising agency has established probable cause to believe the
32 supervised person has violated a term or condition of community
33 supervision;

34
35 (B) The supervising agency has determined, following application of its
36 assessment processes, that intermediate sanctions without court
37 intervention as authorized by Penal Code section 3454(b) are not
38 appropriate responses to the alleged violation; and

39
40 (C) The supervising agency has informed the supervised person that he or
41 she is entitled to the assistance of counsel and, if he or she desires but is
42 unable to employ counsel, the supervising agency has referred the

1 matter to the public defender or other person or agency designated by
2 the county to represent supervised persons.

3
4 ~~(3) — Petitions for revocation must be made on *Petition for Revocation of*
5 *Community Supervision* (form CR 300) and must include a written report
6 from the supervising agency that includes the declaration and information
7 required under rule 4.541.~~

8
9 ~~(4) — Upon filing the petition, the supervising agency must provide copies of the~~
10 ~~petition and written report to the prosecutor and the supervised person's~~
11 ~~counsel or, if unrepresented, to the supervised person.~~

12
13 **~~(d) — Probable cause review~~**

14
15 ~~(1) — The court must review whether probable cause exists to support a revocation~~
16 ~~within five court days of the filing of the petition. To conduct the review, the~~
17 ~~minimum information the court may rely upon is the information contained in~~
18 ~~the petition and written report of the supervising agency. If the court~~
19 ~~determines that probable cause exists to support a revocation, the court must~~
20 ~~indicate the determination on *Petition for Revocation of Community*~~
21 ~~*Supervision* (form CR 300) and preliminarily revoke supervision.~~

22
23 ~~(2) — If the court determines that no probable cause exists to support the~~
24 ~~revocation, the court must dismiss the petition, vacate any scheduled~~
25 ~~hearings, and return the person to community supervision on the same terms~~
26 ~~and conditions. If the court dismisses the petition, the supervising agency~~
27 ~~must notify the prosecutor, supervised person, and supervised person's~~
28 ~~counsel, if any, of the dismissal.~~

29
30 **~~(e) — Notice of hearing~~**

31
32 ~~The supervising agency must provide notice of the date, time, and place of any~~
33 ~~hearing related to the petition to revoke to the supervised person, the supervised~~
34 ~~person's counsel, if any, the prosecutor, and any victims.~~

35
36 **~~(f) — Waiver~~**

37
38 ~~At any time before a formal hearing on the petition, the supervised person may~~
39 ~~waive, in writing, his or her right to counsel, admit a violation, waive a hearing,~~
40 ~~and accept a proposed modification of supervision.~~

41
42 **~~(g) — Formal hearing~~**

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

3
4 (2) ~~Revocation determinations must be based on a preponderance of the evidence~~
5 ~~admitted at the hearing. The statutory and decisional law that governs the~~
6 ~~admissibility of evidence at probation violation proceedings applies.~~

7
8 **~~(h) Orders After Hearing~~**

9
10 (1) ~~If the court finds that the supervised person has not violated a term or~~
11 ~~condition of supervision, the court must dismiss the petition and return the~~
12 ~~supervised person to community supervision on the same terms and~~
13 ~~conditions.~~

14
15 (2) ~~If the court finds that the supervised person has violated a term or condition~~
16 ~~of supervision, the court may:~~

17
18 (A) ~~Return the supervised person to supervision with modifications of~~
19 ~~conditions, if appropriate, including a period of incarceration in county~~
20 ~~jail;~~

21
22 (B) ~~Revoke supervision and order the supervised person to confinement in~~
23 ~~county jail; or~~

24
25 (C) ~~Refer the supervised person to a reentry court under Penal Code section~~
26 ~~3015 or any other evidence based program in the court's discretion.~~

27
28 (3) ~~Any confinement ordered by the court under (h)(2)(A) or (B) must not~~
29 ~~exceed a period of 180 days in county jail.~~

30
31 **~~(i) Findings~~**

32
33 ~~If the court revokes community supervision, the court must summarize in writing~~
34 ~~the evidence relied on and the reasons for the revocation. A transcript of the~~
35 ~~hearing that contains the court's oral statement of the reasons and evidence relied~~
36 ~~on may serve as a substitute for written findings.~~

37
38 **~~Advisory Committee Comment~~**

39
40 ~~Before the enactment of criminal justice realignment legislation (Assem. Bill 109 (Committee on~~
41 ~~Budget), Stats. 2011, ch. 15; AB 117 (Committee on Budget), Stats. 2011, ch. 39; ABX1 17~~
42 ~~(Blumenfeld), Stats. 2011, ch. 12), parole revocation procedures conducted by the California~~
43 ~~Department of Corrections and Rehabilitation were subject to federal court injunction. (See~~

1 *Valdivia v. Schwarzenegger* (E.D.Cal., Dec. 2, 2010, Civ. No. S 94 0671 LLK/GGH.) The terms
2 and procedures required by the injunction represent a negotiated settlement between the parties
3 and are not “necessary or required by the constitution.” (*Valdivia v. Schwarzenegger* (9th Cir.
4 2010) 599 F.3d 984, 995, *cert. denied sub nom. Brown v. Valdivia* (2011) 131 S.Ct. 1626
5 [vacating a district court order denying the state’s motion to modify the injunction to conform to
6 recently enacted Penal Code section 3044 because “[t]here is no indication anywhere in the
7 record that these particular procedures are necessary for the assurance of the due process rights of
8 parolees”].) The due process standards applicable to postrelease community supervision
9 revocation proceedings have been established by constitutional case law (see, e.g., *Morrissey v.*
10 *Brewer* (1972) 408 U.S. 471, 489; *People v. Vickers* (1972) 8 Cal.3d 451, 457–458), not the terms
11 and procedures negotiated by the parties to the federal injunction and related orders.

12
13 The Criminal Law Advisory Committee acknowledges that the practices related to the scheduling
14 of court appearances vary from county to county. Nothing in this rule is intended to prohibit
15 courts from scheduling court appearances according to local needs and customs, including
16 requiring court appearances before formal evidentiary hearings on the petition to revoke. When
17 filing a petition, petitioners should consult local rules and court staff regarding specific
18 requirements for scheduling court appearances related to revocation petitions.

19
20 **Subdivision (c).** Penal Code section 3455 does not prescribe a deadline for filing the petition. It is
21 incumbent on courts and supervising agencies to ensure timely filing of petitions, particularly
22 when the supervised person is detained solely for a violation.

23
24 **Subdivision (c)(2)(A).** Detained supervised persons are generally entitled to certain due process
25 rights during revocation proceedings, including a preliminary probable cause determination. (See,
26 e.g., *Morrissey, supra*, 408 U.S. at 489; *Vickers, supra*, 8 Cal.3d at 457–458.) Under the criminal
27 justice realignment legislation, supervising agencies are authorized to conduct certain violation
28 proceedings *without* court involvement. (Pen. Code, § 3454(b) [authorizing supervising agencies
29 “to determine and order appropriate responses to alleged violations,” including flash
30 incarceration].) A supervising agency may only file a petition to revoke supervision with the
31 court after it has determined, following application of its “assessment processes,” that
32 intermediate sanctions are not appropriate responses to a violation. (Pen. Code, § 3455(a).)
33 Supervising agencies are also authorized to determine whether the supervised person should
34 remain in custody pending a revocation hearing and may order the person confined pending a
35 hearing. (Pen. Code, § 3455(b).) To promote supervising agency compliance with the due process
36 rights of supervised persons during any proceedings conducted before the filing of the petition,
37 this subdivision requires the supervising agency to conduct a preliminary probable cause
38 determination before the petition is filed with the court. Courts must independently review the
39 supervising agency’s probable cause determination under subdivision (d).

40
41 **Subdivision (c)(2)(C).** This subdivision is designed to ensure that indigent supervised persons
42 who desire counsel are represented as early in the revocation proceedings as possible. Nothing in

1 this subdivision is intended to infringe on court authority to appoint counsel or allow a supervised
2 person to waive the right to counsel.

3
4 **Subdivision (d).** This subdivision requires courts to review the supervising agency's probable
5 cause determination required under subdivision (c)(2)(A). Courts may determine the most
6 appropriate manner to review the supervising agency's probable cause determination. Nothing in
7 this subdivision is intended to prevent courts from conducting formal hearings to review probable
8 cause.

9
10 **Subdivision (e).** Victims are separately entitled to notice as required under article I, section 28 of
11 the California Constitution.

12
13 **Subdivision (f).** This subdivision is based on Penal Code section 3455(a): "At any point during
14 the process initiated pursuant to this section, a person may waive, in writing, his or her right to
15 counsel, admit the violation of his or her postrelease supervision, waive a court hearing, and
16 accept the proposed modification of his or her postrelease supervision."

17
18 **Subdivision (g).** This subdivision is based on Penal Code section 3455(b): "The revocation
19 hearing shall be held within a reasonable time after the filing of the revocation petition." When
20 deciding a reasonable time for hearing, courts should consider whether the supervised person is
21 detained. (See, e.g., *Morrissey, supra*, 408 U.S. at 488 [a hearing within two months of arrest may
22 be appropriate under certain circumstances].)

23 24 **Rule 4.541. Minimum contents of Ssupervising agency reports**

25 26 **(a) DeclarationApplication**

27
28 A petition for revocation of community supervision under Penal Code section 3455
29 must include a declaration signed under penalty of perjury that confirms that the
30 requirements prescribed by rule 4.540(c)(2) have been satisfied. This rule applies to
31 supervising agency petitions for revocation of formal probation, mandatory
32 supervision under Penal Code section 1170(h)(5)(B), and postrelease community
33 supervision under Penal Code section 3455.

34 35 **(b) Minimum contents Definitions**

36
37 As used in this rule:

- 38
39 (1) "Supervised person" means any person subject to formal probation,
40 mandatory supervision under Penal Code section 1170(h)(5)(B), or
41 community supervision under Penal Code section 3451.
42

1 (2) “Formal probation” means the suspension of the imposition or execution of a
2 sentence and the order of conditional and revocable release in the community
3 under the supervision of a probation officer.
4

5 (3) “Court” includes any hearing officer appointed by a superior court and
6 authorized to conduct revocation proceedings under Government Code
7 section 71622.5.
8

9 (4) “Supervising agency” includes the county agency designated by the board of
10 supervisors under Penal Code section 3451.
11

12 **(c) Minimum contents**
13

14 Except as provided in ~~(e)(d)~~, a petition for revocation of ~~community~~ supervision
15 ~~under Penal Code section 3455~~ must include a written report that contains at least
16 the following information:
17

18 (1) Information about the supervised person, including:
19

20 (A) Personal identifying information, including name and date of birth;
21

22 (B) Custody status and the date and circumstances of arrest;
23

24 (C) Any pending cases and case numbers;
25

26 (D) The history and background of the supervised person, including a
27 summary of the supervised person’s record of prior criminal conduct;
28 and
29

30 (E) Any available information requested by the court regarding the
31 supervised person’s risk of recidivism, including any validated risk-
32 needs assessments;
33

34 (2) All relevant terms and conditions of supervision and the circumstances of the
35 alleged violations, including a summary of any statement made by the
36 supervised person, and any victim information, including statements and type
37 and amount of loss;
38

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

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(4) Any recommended sanctions.

(e)(d) Subsequent reports

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

(e) 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 postrelease community supervision under Penal Code section 3455 must include the reasons for that agency’s determination that intermediate sanctions without court intervention as authorized by Penal Code section 3454(b) are inappropriate responses to the alleged violations.

Advisory Committee Comment

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

Subdivision ~~(b)(c)(1)(d)(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 ~~(b)(c)(1)(e)(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 section 3454(b) authorizes supervising agencies to impose appropriate responses to alleged violations of postrelease community supervision under Penal Code section 3455 without court intervention, including referral to a reentry court under Penal Code section 3015 or flash incarceration in a county jail. Penal Code section 3455(a) requires the supervising agency to determine that the intermediate sanctions authorized by section 3454(b) are

- 1 inappropriate responses to the alleged violation *before* filing a petition to revoke postrelease
- 2 community supervision under Penal Code section 3455.

SUPERVISING AGENCY <i>(Name and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY <div style="border: 2px solid black; padding: 10px; background-color: #f0f0f0; text-align: center;"> DRAFT ONLY <i>Not approved by</i> Judicial Council </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN THE MATTER OF <i>(name of supervised person):</i> <div style="text-align: right;">Date of birth: _____</div>	
PETITION FOR REVOCATION <input type="checkbox"/> PAROLE (Pen. Code, § 3000.08) <input type="checkbox"/> PRCS (Pen. Code, § 3455)	CDCR NUMBER, IF ANY: COURT/CASE NUMBER:
<div style="text-align: center;">INSTRUCTIONS</div> <ul style="list-style-type: none"> Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1. Petitioner must note whether the petition applies to a parole (beginning July 1, 2013) or postrelease community supervision matter by marking the appropriate check box above. 	

1. **HEARING INFORMATION:** A hearing on this petition for revocation has been scheduled as follows:

Date: _____	Time: _____	Dept.: _____
Location <i>(if different than court address above):</i> _____		

If an interpreter is needed, please specify the language:

2. **CUSTODY STATUS** *(Select one):* not in custody in custody *(specify location):*
Booking number *(if any):* _____

3. **CONVICTION INFORMATION:**
The supervised person was originally convicted of the following offenses:

on *(date):* _____ in case numbers *(specify):* _____
in county of *(specify):* _____ and sentenced to *(specify):* _____

4. **SUPERVISION INFORMATION:** The supervised person was released on supervision on *(specify date):*
Name of current supervising agent or officer: _____
Supervision is scheduled to expire on *(i.e., the controlling discharge date is)* *(date):* _____

5. **SPECIFIC TERMS AND CONDITIONS:** Petitioner alleges that the supervised person has violated the following terms and conditions of supervision *(if more space is needed, please use Attachment to Judicial Council Form (MC-025)):*

6. **SUMMARY:** The supervising agency established probable cause for the alleged violation on *(date):*
The circumstances of the alleged violation are *(if more space is needed, please use Attachment to Judicial Council Form (MC-025)):*

7. **SPECIAL PAROLE STATUS** *(check this box only if the supervised person is subject to parole under Penal Code section 3000.1):*
 The supervised person is on parole under Penal Code section 3000.1. If the court determines that the person has violated parole, the court is required to remand the person to the custody of CDCR for future parole consideration. (Pen. Code, § 3000.08(h).)

I declare under penalty of perjury and to the best of my information and belief that the foregoing is true and correct.

Date: _____ By _____
NAME AND TITLE OF PETITIONER SIGNATURE OF PETITIONER

SP12-07**Criminal Justice Realignment: Procedure to Revoke Postrelease Community Supervision** (amend Cal. Rules of Court, rule 4.541; and repeal rule 4.540 and form CR-300)

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

	Commentator	Position	Comment	Committee Response
1	Hon. Helios Joe Hernandez Riverside County Superior Court	A	I have reviewed both [proposals circulated for public comment by the Criminal Law Advisory Committee] and recommend that both be approved. Each of the proposals is designed to conform [the] Rules of Court and forms to the new Realignment procedures. I have informally [polled] the judges on the [California Judges Association] Criminal Law Committee and they are all in favor. Since we have not had time to have an official committee meeting or to run this through our Executive Committee it is not the official position of the California Judges Association.	No committee response required.
2	Humboldt County Probation Department Mr. Shaun Brenneman Adult Services Division Director	AM	<p>The proposed rules of court include a requirement for a written report to be submitted with a petition to revoke supervision. Our historic practice with probation violations has been to file a petition; have the court make a finding of fact as to the violation either by admission or revocation hearing; have the court then refer for a written report; and upon receipt of report impose a sentence. This allows for collection of victim and defendant statements as well as considering what a person has been actually found in violation for before the supervising agency makes a recommendation.</p> <p>By placing the report at the onset of the proceedings, the depth and quality of the information is decreased. I would suggest it be added later in the process.</p>	The committee declines the suggestion. Rule 4.541 is designed to ensure that courts receive all the information necessary to adjudicate the petition to revoke at the <i>commencement</i> of the proceedings. The committee notes, however, that the rule also provides discretion to courts and supervising agencies to decide on the level of detail contained in the report. The following advisory committee comment, for example, clarifies that much of the information related to the supervised person's background is optional: "The history and background of the supervised person <i>may</i> include the supervised person's social history, including family, education, employment, income, military, medical, psychological, and substance abuse information." (Emphasis added.) In addition, subdivision (d) authorizes supervising agencies to provide updates of previous reports instead of preparing a new report for each

SP12-07**Criminal Justice Realignment: Procedure to Revoke Postrelease Community Supervision** (amend Cal. Rules of Court, rule 4.541; and repeal rule 4.540 and form CR-300)

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

	Commentator	Position	Comment	Committee Response
				violation: "If a written report was submitted as part of the original proceeding or with an earlier revocation petition, a subsequent report need only update the information ..."
3	Los Angeles County District Attorney Mr. Kraig St. Pierre Deputy-in-Charge of the Parole Revocation Section	A	<p>The Los Angeles County District Attorney's Office is in agreement with the suggested modifications of the revocation process in light of the statutory changes made to Penal Code Section 1203.2 et seq. Longstanding existing processes for the revocation of probation, with attendant documentation with which the courts of this county are already familiar, will suffice to initiate and process the myriad violations of postrelease community supervision and, later, parole.</p> <p>It should be noted that the Department of Adult Parole Operations (DAPO) has no history of supplying violation reports to the local courts but, rather, to the Board of Parole Hearings. That said, it makes sense to minimize the amount of additional new forms and information required. The court's adjustment to DAPO's paperwork, and DAPO's adjustment to the demands of the court, will be a significant enough challenge without creating more of a burden for both sides.</p> <p>Second, because many external violations of postrelease community supervision, i.e. arrests for new criminal activity, may now be initiated by the District Attorney, the initial violation</p>	No committee response required.

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			<p>petition will not come from the supervising agency i.e. the Department of Probation (Probation). The courts will likely request Probation supply a supplemental report flushing out any other basis for revocation beyond the new arrest as these are usually legion. That report from Probation need not be as exhaustive given that the court already will have any documentation about the new arrest, hence it is a good idea to minimize the required contents of the report.</p> <p>Thank you for your consideration. Again, we are in full support of the changes and are happy to give additional testimony to that effect.</p>	
4	Rosen, Bien, Galvan & Grunfeld, LLP Mr. Ernest Galvan	AM	<p>This firm represents the class of all California state parolees in <i>Valdivia, et al. v. Brown, et al.</i>, No. CIV. S-94-671 in the United States District Court for the Eastern District of California. The <i>Valdivia</i> lawsuit was filed in 1994 against the Governor and state officials in charge of the Board of Prison Terms (now called the Board of Parole Hearings, “BPH”) and the California Department of Corrections (now called the California Department of Corrections and Rehabilitation, “CDCR”), challenging violations of parolees’ due process rights in the parole revocation process. The <i>Valdivia</i> Summary Judgment Order and <i>Valdivia</i> Injunction establish parolees’ due process rights, including providing for a two-tiered revocation hearing process and timeframes for probable cause and</p>	<p>The committee declines the suggestion to prescribe specific parole revocation procedural requirements in accordance with the <i>Valdivia</i> injunction. The specific terms of the federal court injunction and related orders in the <i>Valdivia</i> class action represent a settlement negotiation between other parties regarding revocation procedures implemented by the California Department of Corrections and Rehabilitation (CDCR) under a <i>previous</i> statutory scheme. As noted in the report, the Legislature recently amended section 1203.2 to apply longstanding probation revocation procedures to parole and PRCS revocations. Accordingly, parole revocations are now governed by probation revocation procedure revocation procedures, which have long withstood constitutional scrutiny.</p>

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			<p>revocation hearings.</p> <p>As currently drafted, the AOC’s amendments propose the repeal of Rule 4.540 and <i>Petition for Revocation of Community Supervision</i> (form CR-300) because both of these have been rendered obsolete with the passage of Senate Bill 1023 and the application of procedures in Penal Code section 1203.2 in court revocations of [postrelease community supervision] (PRCS), mandatory supervision and, beginning July 1, 2013, parole. An uncodified section 2 of SB 1023 refers to the incorporation of “the procedural due process protections held to apply to probation revocation procedures under <i>Morrissey v. Brewer</i>, 408 U.S. 471 (1972), and <i>People v. Vickers</i>, 8 Cal. 3d 451 (1972), and their progeny.” This precatory statement of legislative intent will have little meaning, however, if the rules of court omit the central due process protections.</p> <p>At minimum the rules of court should include the following procedures:</p> <ol style="list-style-type: none">1. A timeframe for the provision of written notice of the preliminary hearing and the alleged violation far enough in advance of the hearing to both inform the Supervised Person of the violations and allow the Supervised Person enough time to prepare for the hearing. <i>See</i>	

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			<p><i>Morrissey</i>, 408 U.S. at 488-89.</p> <p>2. The Supervised Person must be provided with counsel prior to the preliminary hearing. <i>Gagnon v. Scarpelli</i>, 411 U.S. 778 (1973); <i>People v. Vickers</i>, 8 Cal. 3d 451, 461 (Cal. 1972); <i>People v. Coleman</i>, 13 Cal. 3d 867, 888 (1975). As currently drafted, Penal Code Section 1203.2(b)(2) fails to set a deadline or timeframe for the appointment of counsel and only requires that the Supervised Person “be informed of his or her right to consult with counsel, and if indigent the right to secure court appointed counsel.”</p> <p>3. A prompt preliminary hearing that must occur after the Supervised Person has been arrested and detained. <i>Morrissey</i>, 408 U.S. at 485. The preliminary hearing must include notice of the alleged violations against the Supervised Person, an opportunity for the Supervised Person to present evidence and appear at the hearing in person, a conditional right to confront witnesses, a decision maker not directly involved in the case, and a written report of the hearing. <i>Id.</i> at 486-87; <i>Gagnon v. Scarpelli</i>, 411 U.S. 778, 786 (1973). Finally, at the hearing, there must be a determination of whether</p>	

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			<p>there is probable cause that a violation of the terms of supervision has occurred. <i>Morrissey</i>, 408 U.S. at 486-87; <i>Gagnon</i>, 411 U.S. at 781-82.</p> <p>4. A timeframe for the final revocation hearing should be set no later than the 45th calendar day after arrest. In <i>Valdivia</i>, Judge Karlton recently ruled that parole revocation hearings shall be provided “no later than the 45th calendar day after the placement of the parole hold.” Order, Docket 1738 at 26. This should be the minimum standard for revocations of all Supervised Persons statewide.</p> <p><u>Rule 4.541</u></p> <p>Finally, there appear to be two typographical errors in the text of Rule 4.541. Sections (d) and (e) of Rule 4.541 should be modified to refer to the “information required by (c)” and “the minimum contents described in (c),” respectively. Both sections, as currently drafted, refer to subsection (b) which is the “Definitions” section.</p>	<p>The committee agrees to correct the typographical error as suggested.</p>
5	Superior Court of Fresno County Hon. Jonathon B. Conklin Supervising Judge of the Criminal Division	AM	Rule 4.541 (d), as proposed, states: “If a written report was submitted as part of the original sentencing proceeding or with an earlier revocation petition, as subsequent report need only update the information required by (b). A	The committee agrees to correct the typographical error as suggested.

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			<p>subsequent report must include a copy of the original report if the original report is not contained in the court file.” I believe the correct reference is “information required by (c)” as (b) is the definition of terms being used, and (c) is the “information” required for a petition for revocation.</p> <p>In addition to comments on the proposal as a whole, the advisory committee is interested in whether the proposal appropriately addresses the stated purpose. It appears the proposed rule change does address the stated purpose.</p> <p>The advisory committee also seeks comments from courts on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings?</p> <p>No.</p> <p>What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in a case management system, or modifying a case management system?</p> <p>It will require revisions to existing paperwork for revocation petitions. Our Court staff is</p>	

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			<p>otherwise prepared to proceed if the rule is adopted.</p> <p>Would an effective date immediately after Judicial Council approval provide sufficient time for implementation?</p> <p>A period of at least one week would be necessary to implement the changes.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>Unknown.</p>	<p>The committee notes that the proposed effective date of November 1, 2013, would provide courts with approximately one week to implement necessary changes.</p>
6	<p>Superior Court of Orange County Ms. Cherie Garofalo Criminal Operations Director</p>	AM	<p>Orange County agrees with the repeal of [rule] 4.540, and offers no comments in this regard.</p> <ul style="list-style-type: none"> • Although the introduction discusses uniform revocation procedures, including parole - rule 4.541 [minimum contents of supervising agency reports] makes no reference to parole. It is assumed this will be covered elsewhere. • We do request the committee reconsider the repealing of [form] CR-300, <i>Petition for Revocation of Community Supervision</i> ..., and offer the following alternative suggestion: Remove the “Court’s Probable Cause Finding and 	<ul style="list-style-type: none"> • To provide courts ample time to prepare for receiving parole revocation petitions beginning July 1, 2013, the committee decided to revise CR-300 to apply to parole revocations. The committee will also consider amending rule 4.541 to apply the rule to parole reports at a future meeting. • To provide courts with discretion to continue to use form CR-300 to avoid the burdens associated with discontinuing the use of an existing form, the committee agrees to change the form from “mandatory” to “optional” in nature. As

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			<p>Orders” section and make the form 'Adopted for Optional Use' rather than Mandatory. This will provide Courts and Supervising Agencies with flexibility to continue to use this form, which is a process that is working well. Additionally, Court's and Supervising Agencies would avoid expenditure associated to system reprogramming, procedures updating, case management system changes, staff training, etc.</p> <p>Responses to request for specific comments by the advisory committee:</p> <p>Would the proposal provide cost savings? What would the implementation requirements be for the courts?</p> <p>The proposed changes would not net a cost savings for the court. Part of the proposal is that the PRCS Revocation form CR-300 be repealed. Although the proposal states that “existing local probation petitions may require slight modification,” our processes are currently set with the CR-300 in effect. A change to that existing probation petition would require significant procedural, case management system changes, creation and modification of docket codes, and training efforts of approximately 150+ staff, all which are time consuming and costly.</p>	<p>such, courts retain discretion to continue using form CR-300 or promote the use of other existing revocation petitions. The committee also agrees to delete the “Court’s Probable Cause Finding and Orders” section of the form as obsolete.</p>

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			<p>Would an effective date immediately after Judicial Council approval provide sufficient time for implementation?</p> <p>No. We would recommend 3 months post approval.</p>	<p>Although the committee acknowledges the burdens associated with implementation of form changes, the committee declined delaying the proposed effective date as suggested. The rules and form are obsolete in light of the recent statutory amendments to Penal Code section 1203.2, which apply longstanding probation revocation procedures to mandatory supervision, parole, and postrelease community supervision revocations. The proposed effective date is necessary to eliminate confusion and conform the rules and form to statute.</p>