

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SP11-14

Title	Action Requested
Criminal Justice Realignment: Postrelease Supervision Revocation Procedure	Review and submit comments by August 17, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt rules 4.540 and 4.541 and form CR-300	October 1, 2011
Proposed by	Contact
Criminal Law Advisory Committee Hon. Steven Z. Perren, Chair	Arturo Castro, 415-865-7702 arturo.castro@jud.ca.gov

Summary

The Criminal Law Advisory Committee proposes adoption of rules 4.540 and 4.541 of the California Rules of Court and *Petition for Revocation of Community Supervision* (form CR-300) to implement recent criminal justice realignment legislation that requires courts to conduct certain supervision revocation proceedings under Penal Code section 3455(a).

Discussion

Recent criminal justice realignment legislation (Assem. Bill 109; Stats. 2011, ch. 15, § 1, p. 7; Assem. Bill 117; Stats. 2011, ch. 39) will implement broad changes to current parole procedures, including shifting parole supervision over certain parolees to local supervising agencies and requiring courts to conduct supervision revocation proceedings beginning October 1, 2011.¹ The legislation also requires the Judicial Council to adopt forms and rules of court to establish uniform statewide procedures to implement the new revocation proceedings, including prescribing minimum contents of supervising agency reports. (Pen. Code, § 3455(a).) Because of the short timeline, the proposed rules and form are being circulated for public comment for two and a half weeks to allow for as much comment as possible within that timeframe.

¹ The legislation will also require courts to conduct revocation proceedings for parolees that remain under the supervision of the California Department of Corrections and Rehabilitation (CDCR) beginning July 1, 2013. Although the proposed rules and form would not be applicable to CDCR revocation proceedings, the rules and form could be amended to apply expressly to CDCR revocation proceedings before the July 1, 2013, effective date.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The proposed rules and form are designed to prescribe basic procedural requirements to ensure uniform statewide revocation procedures while providing courts with sufficient flexibility to implement the new proceedings according to local needs and customs.

Specifically, proposed rule 4.540 would:

- Specify that petitions for revocation must be filed in the superior court in the county in which the person is supervised;
- Require the supervising agency, before the petition is filed, to (a) establish probable cause for the violation, (b) determine that intermediate sanctions without court intervention are not appropriate, (c) refer the matter to the public defender or other county agency responsible for representing supervised persons, and (d) propose a sanction in response to the alleged violation to avoid unnecessary court appearances;
- Prescribe specific notice and deadline requirements, including a requirement that a formal hearing occur no later than 45 days after the petition is filed unless the deadline is waived or the court finds good cause to continue;
- Require the court to make a probable cause determination within five court days of the filing of the petition;
- Prescribe a standard of proof and basic evidentiary requirements, including the admissibility of hearsay;
- Specify the court's authority to impose sanctions; and
- Include an advisory committee comment to suggest that petitioners consult local rules and court staff before scheduling hearings.

Proposed rule 4.541 would require that all revocation petitions include declarations signed under penalty of perjury and written reports from the supervising agency that include specified minimum contents. The rule is designed to provide courts and supervising agencies with flexibility to decide the format and content of local supervising agency reports while ensuring that all reports provide courts with sufficient information to conduct the revocation proceedings and fashion appropriate sanctions, if necessary.

The *Petition for Revocation of Community Supervision* (form CR-300) is proposed for use by all supervising agencies to initiate the revocation procedure and by courts when determining whether probable cause exists to support the revocation. The committee proposes the form for mandatory use to promote uniformity, provide courts with the information necessary to make the requisite probable cause determinations, provide detailed instructions to all petitioners, and summarize all relevant petition information on one page for ease of reference by courts.

The Criminal Law Advisory Committee welcomes comments on this proposal. In addition, the advisory committee seeks comments on the applicability, if any, of the Victims' Bill of Rights Act of 2008: Marsy's Law (Cal. Const., art. I, § 28), to these proceedings.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Rule 4.540 of the California Rules of Court would be adopted effective October 1, 2011, to read:

1 **Division 6**

2
3 **Postconviction, Postrelease, and Writs**

4
5 ***

6
7 **Chapter 2**
8 **~~Habeas Corpus~~**
9 **Postrelease**

10
11 **Rule 4.540. Revocation of Postrelease Community Supervision**

12
13 **(a) Application**

14
15 This rule applies to petitions for revocation of postrelease community supervision
16 under Penal Code section 3455.

17
18 **(b) Definitions**

19
20 As used in this rule:

- 21
22 (1) “Supervised person” means any person subject to community supervision
23 under Penal Code section 3451.
24
25 (2) “Court” includes any hearing officer appointed by a superior court and
26 authorized to conduct revocation proceedings under Government Code
27 section 71622.5.
28
29 (3) “Supervising agency” means the county agency designated as the supervising
30 agency by the board of supervisors under Penal Code section 3451.

31
32 **(c) Petition for revocation**

- 33
34 (1) Petitions for revocation must be filed by the supervising agency at the
35 location designated by the superior court in the county in which the person is
36 supervised.
37
38 (2) The supervising agency may only file a petition for revocation after all of the
39 following have occurred:
40

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;

9
10 (C) The supervising agency has informed the supervised person that he or she
11 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 matter
13 to the public defender or other person or agency designated by the county
14 to represent supervised persons; and

15
16 (D) The supervising agency has proposed a sanction in response to the
17 alleged violation but the supervised person has denied the violation and
18 declined to accept the proposed sanction and waive a court hearing as
19 authorized by Penal Code section 3455(a).

20
21 (3) Petitions for revocation must be made on *Petition for Revocation of*
22 *Community Supervision* (form CR-300) and must include a written report
23 from the supervising agency that includes the declaration and information
24 required under rule 4.541.

25
26 (4) Upon filing the petition, the supervising agency must provide copies of the
27 petition and written report to the prosecutor and supervised person or the
28 supervised person's counsel, if any.

29
30 **(d) Probable Cause Review**

31
32 (1) The court must review whether probable cause exists to support a revocation
33 within five court days of the filing of the petition. To conduct the review, the
34 court may rely on any information contained in the petition and written report
35 of the supervising agency. If the court determines that probable cause exists
36 to support a revocation, the court must indicate the determination on
37 *Petition for Revocation of Community Supervision* (form CR-300) and
38 preliminarily revoke supervision.

39
40 (2) If the court determines that no probable cause exists to support the
41 revocation, the court must dismiss the petition, vacate any scheduled
42 hearings, and return the person to community supervision on the same terms
43 and conditions. If the court dismisses the petition, the supervising agency

1 must notify the prosecutor, supervised person, and supervised person's
2 counsel, if any, of the dismissal.

3
4 **(e) Notice of Hearing**

5
6 The supervising agency must provide notice of the date, time, and place of any
7 hearing related to the petition to revoke to the supervised person, the supervised
8 person's counsel, if any, the prosecutor, and any victims.

9
10 **(f) Waiver**

11
12 At any time before a formal hearing on the petition, the supervised person may
13 waive a hearing and admit a violation.

14
15 **(g) Formal Hearing**

16
17 (1) The hearing on the petition for revocation must occur no later than 45 days
18 after the date the petition is filed unless the supervised person waives this
19 deadline or the court finds good cause to continue.

20
21 (2) Revocation determinations must be based on a preponderance of the
22 evidence admitted at the hearing, which may include documentary evidence,
23 direct testimony, and hearsay. Admission of the recorded or hearsay
24 statement of a witness must not be construed to create a right to
25 confront the witness at the hearing.

26
27 **(h) Revocation**

28
29 (1) If the court finds that the supervised person has not violated a term or
30 condition of supervision, the court must dismiss the petition and return the
31 supervised person to community supervision on the same terms and
32 conditions.

33
34 (2) If the court finds that the supervised person has violated a term or condition
35 of supervision, the court may:

36
37 (A) Return the supervised person to community supervision with
38 modifications of conditions, if appropriate, including a period of
39 incarceration in county jail;

40
41 (B) Revoke supervision and order the supervised person to confinement in
42 county jail;

43

1 (C) Refer the supervised person to a reentry court pursuant to Penal Code
2 section 3015 or any other evidence-based program in the court's
3 discretion.

4
5 (3) Any confinement ordered by the court under subdivision (g)(2)(A) and (B)
6 must not exceed a period of 180 days in county jail.

7
8
9 **Advisory Committee Comment**

10
11 The committee acknowledges that the practices related to the scheduling of court appearances
12 vary from county to county. Nothing in this rule is intended to prohibit local courts from
13 scheduling court appearances according to local needs and customs, including requiring court
14 appearances before formal evidentiary hearings on the petition to revoke. When filing a petition,
15 petitioners should consult local rules and court staff regarding specific requirements for
16 scheduling court appearances related to revocation petitions.

17
18
19
20
21 **Chapter 3**
22 **Habeas Corpus**

23 ***
24

Rule 4.541 of the California Rules of Court would be adopted effective October 1, 2011, to read:

1 **Rule 4.541. Supervising Agency Reports**

2
3 **(a) Declaration**

4
5 A petition for revocation of community supervision under Penal Code section 3455
6 must include a declaration signed under penalty of perjury that confirms that the
7 requirements prescribed by rule 4.540(c)(2)(A) have been satisfied.
8

9 **(b) Minimum Contents**

10
11 A petition for revocation of community supervision under Penal Code section 3455
12 must include a written report that contains at least the following information:
13

14 (1) Information about the supervised person, including (a) personal identifying
15 information, including name and date of birth; (b) custody status and the date
16 and circumstances of arrest; (c) any pending cases and case numbers; (d) the
17 history and background of the supervised person, including a summary of the
18 supervised person's record of prior criminal conduct; and (e) all relevant
19 information concerning the defendant's social history, including family,
20 education, employment, income, military, medical, psychological, and
21 substance abuse information;
22

23 (2) All terms and conditions of supervision and the facts and circumstances of
24 the alleged underlying violation(s), including a summary of any statement
25 made by the supervised person, and any victim information, including
26 statements and amount of loss;
27

28 (3) A summary of all previous violations and sanctions, including flash
29 incarceration, and the reasons that the supervising agency has determined that
30 intermediate sanctions without court intervention as authorized by Penal
31 Code section 3454(b) are not appropriate responses to the alleged
32 violation; and
33

34 (4) Any recommended sanctions and a summary of sanctions proposed by the
35 supervising agency in response to the alleged violation before the filing of the
36 petition but rejected by the supervised person.

SUPERVISING AGENCY <i>(Name and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____	FOR COURT USE ONLY <h2 style="margin: 0;">DRAFT ONLY</h2> <h3 style="margin: 0;">Not approved by Judicial Council</h3>
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 OF COMMUNITY SUPERVISION	CDCR NUMBER, IF ANY: COURT NUMBER:

INSTRUCTIONS

- Before filing this form, petitioner should consult local rules and court staff to schedule the hearing in item 1.
- Petitioner must provide notice of the date, time, and place for the hearing in item 1 to the supervised person, the supervised person's counsel, if any, the prosecutor, and any victims. (Cal. Rules of Court, rule 4.540(e).)
- Petitioner must attach a written report that contains the declaration and information required under rule 4.541.
- Upon filing the petition, petitioner must provide copies of the petition and written report to the prosecutor and the supervised person or the supervised person's counsel, if any. (Cal. Rules of Court, rule 4.540(c)(4).)

1. **HEARING INFORMATION:** A hearing on this petition for revocation has been scheduled in the above-entitled court on:

Date:	Time:	Dept:
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2. **CUSTODY STATUS:** *(Select one):* not in custody in custody *(specify date of arrest):*

3. **CONVICTION INFORMATION:**
 The supervised person was originally convicted of the following offenses:
 on *(specify date):* _____ in case number(s) *(specify):* _____
 and sentenced to *(specify sentence):* _____

4. **SUPERVISION INFORMATION:**
 The supervised person was originally released on parole or community supervision on *(specify date):* _____
 Name of current supervising agent or officer: _____
 Supervision is scheduled to expire on *(specify date):* _____

5. **SPECIFIC TERMS AND CONDITIONS:** Petitioner alleges that the supervised person has violated the following terms and conditions of parole or community supervision:

6. **SUMMARY:** The alleged circumstances of the violation(s) are:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____ Name: _____ By: _____
TYPE OR PRINT NAME SIGNATURE OF PETITIONER

COURT'S FINDINGS AND ORDER

The court *(select one):*
 finds probable cause to support a revocation and preliminarily revokes supervision.
 does not find probable cause to support a revocation, vacates any hearing dates, and returns the supervised person to community supervision on the same terms and conditions. The supervising agency must notify the prosecutor, supervised person, and supervised person's counsel (if any) of the dismissal.

FOR COURT USE ONLY

DATE _____
HEARING OFFICER SIGNATURE _____

Item SP11-14 Response Form

Title: Criminal Justice Realignment: Postrelease Supervision Revocation

Procedure: (adopt rules 4.540 and 4.541 and form CR-300)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, August 17, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.