



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date

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Action Requested

For Your Information

To

Presiding Judges of the Superior Courts
Executive Officers of the Superior Courts

Deadline

N/A

From

Ad Hoc Criminal Justice Realignment Steering
Committee

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Subject

Frequently Asked Questions About Criminal Justice
Realignment

The 2011 Criminal Justice Realignment Act becomes operative on October 1, 2011. As you know, the act makes significant changes to felony sentencing laws, and assigns courts a new and significant role in the revocation process for offenders who violate their terms or conditions of postrelease supervision or parole.

In the AOC's July 1, 2011, email correspondence to all presiding judges and court executives, questions were solicited about the act and its implementation. In response, AOC staff has received numerous questions about several aspects of these coming changes.

This memorandum provides the Ad Hoc Criminal Justice Realignment Steering Committee's responses to the most frequently asked questions (FAQ). The memorandum will also be posted on the AOC's newly-launched online Criminal Justice Realignment Resource Center at <http://www.courts.ca.gov/partners/realignment.htm>, and will be revised and re-posted as additional information is available. In addition, specialized training materials are available on Serranus.

SENTENCING

1. How does criminal justice realignment change sentencing?

Criminal justice realignment divides felonies for the purpose of sentencing into three primary groups.

a. Felonies sentenced to county jail: Penal Code¹ section 1170, subdivision (h), provides that the following defendants must be sentenced to county jail if probation is denied:

- Crimes where a penal statute does not specify a term of punishment. In such circumstances, the crime is punished by 16 months, two, or three years in county jail (section 1170(h)(1)).
- Crimes where the statute now specifically requires punishment in the county jail, either as a straight felony commitment or as an alternative sentence as a wobbler. The length of the term is not limited to 16 months, two, or three years, but will be whatever triad or punishment is specified by the statute (section 1170(h)(2)).

b. Felonies excluded from county jail: Notwithstanding that a crime usually is punished by commitment to the county jail, the following crimes and/or defendants, if denied probation, must be sentenced to state prison: (section 1170(h)(3))

¹ All references are to Penal Code unless otherwise specified.

- Where the defendant has a prior or current serious or violent felony conviction under section 1192.7(c) or 667.5(c);
- Where the defendant is required to register as a sex offender under section 290; or
- Where the defendant is convicted of a felony with an enhancement for aggravated theft under section 186.11.

c. Felonies specifying punishment in state prison: The Legislature carved out over 70 specific crimes where the sentence must be served in state prison. It will be incumbent on courts and counsel to verify the correct punishment for all crimes sentenced after the effective date of the realignment legislation.

2. When do the changes to sentencing laws apply?

The changes in felony sentencing apply to any person sentenced on or after October 1.

3. Is there a limit to the length of time a court may sentence a person to county jail under section 1170(h)?

No. Nothing in the criminal justice realignment act limits the *length* of the county jail commitment. The only restrictions on eligibility for county jail commitment are based on the offense or the offender's record. See Answer 1(b), above.

4. How does criminal justice realignment change awarding of custody credits?

Effective October 1, 2011, section 4019 has been amended to provide that most inmates confined in a county jail are to receive four days of conduct credit for every four days served. The provisions apply to persons serving a misdemeanor sentence, a term in jail imposed as a condition of probation in a felony case, pre-sentence credit for some persons sentenced to state prison, and persons serving jail custody for violation of state parole or community supervised parole. It is not clear, however, which credit formula will apply to persons serving a sentence imposed under section 1170(h); this matter is being reviewed for possible cleanup legislation.

5. When do the changes to custody credits apply?

The changes to custody credits apply to *offenses committed* on or after October 1, 2011.

6. Is there any period of parole for an inmate upon release from county jail on a felony conviction sentenced under section 1170(h)(1) and (2)?

No. Under the criminal justice realignment act, persons sentenced under section 1170(h)(1) and (2) to county jail are not released to parole supervision upon serving their term – unlike those who serve time in state prison. A form of post-release supervision can be required under section 1170(h)(5); see Question 7.

7. What is the meaning of section 1170(h)(5)?

Section 1170(h)(5) was added by AB 117² to give the sentencing judge discretion regarding how individuals convicted of felonies who are sentenced to county jail serve their term. The intent behind section 1170(h)(5) is to provide that, for any county jail-eligible felony conviction, the court may commit the defendant to county jail for the straight term allowed by law, or may suspend execution of a concluding portion of that term, during which time the defendant will be supervised by the county probation officer in accordance with the terms, conditions and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. This portion of supervision, if imposed by the court, will be mandatory.

8. How is the sentencing discretion authorized in section 1107(h)(5) impacted by such sections as section 1203.07, which provide that certain offenses are ineligible for probation?

The intent of the criminal justice realignment act is that the probation ineligibility provisions should not hinder a judge from imposing the “split sentence” authorized under section 1107(h)(5).

9. If a statute specifies that the crime is punishable in county jail under section 1170(h), is it still possible to send the defendant to state prison?

Generally, crimes punishable in county jail may not be punished by a commitment to state prison; the court must sentence to county jail if probation is denied. If a defendant is sentenced to state prison for a qualified felony, however, other charges normally punished in county jail also will be punished in state prison (section 1170.1(a)).

² Assem. Bill 117 (Committee on Budget), Stats. 2011, ch. 39.

10. Is there a requirement that the People “plead and prove” any factor that disqualifies a defendant from a county jail commitment?

Although a portion of the current language of section 1170(f) suggests there may be an obligation to “plead and prove” a disqualifying allegation, clarifying legislation is being considered that likely will delete the reference. A similar issue has been raised in connection with factors that disqualify a defendant from receiving enhanced conduct credits under sections 2933 and 4019. The issue is before the California Supreme Court.

11. Will a sentence imposed under section 1170(h) affect the ability of the court to grant a motion to specify a crime as a misdemeanor under section 17(b)?

A sentence imposed under section 1170(h) will be treated the same as a state prison sentence. Accordingly, if the court imposes a sentence under section 1170(h) and either orders it into execution, or suspends its execution pending satisfactory completion of probation, the court will no longer have the ability to specify the offense as a misdemeanor under section 17(b).

12. Where will a defendant serve a sentence if prior to October 1, the court imposed and suspended execution of a sentence to state prison for a crime now punishable under section 1170(h), and after October 1 does not reinstate the defendant on probation?

There is no clear answer. Likely the defendant will serve the term in county jail. The traditional rule is that once imposed, a suspended sentence may not later be modified. (*People v. Howard* (1997) 16 Cal.4th 1081, 1095.) The realignment legislation, however, applies to all sentencing *proceedings* occurring on or after October 1, 2011. Certainly the decision not to reinstate a defendant on probation and order into execution a suspended state prison sentence is a “sentencing proceeding.” Furthermore, if the change from a state prison commitment to a county jail commitment is perceived as a less onerous sanction, a defendant may be entitled to the benefits of the change as a matter of equal protection.

13. Will the provisions of section 1170(d) [recall of a sentence], and 1170(e) [compassionate release] apply to commitments under section 1170(h)?

Neither subdivision (d) nor (e) of section 1170 mentions section 1170(h) commitments. Likely, however, defendants committed under section 1170(h) would have access to these procedures as a matter of equal protection of the law.

14. When crimes are committed in county jail following a commitment under section 1170(h), must those crimes be run fully consecutive to the original commitment?

Section 1170.1, subdivision (c), requires a full consecutive term for crimes committed in state prison, not simply a subordinate consecutive term limited to one-third the mid-base term. Commitments under section 1170(h) are not mentioned.

15. What effect will section 17(b) have on “attempts” when committed to county jail under section 1170(h)?

The current statutory language creates an ambiguity regarding the treatment of “attempts” under section 664. Section 664 specifies that for most attempted crimes, the defendant is to receive half of the punishment normally imposed. A defendant convicted of a 16 month, two year, or three year crime as an attempt would receive punishment of 8 months, one year or one year, six months. If the defendant is committed to county jail under section 1170(h)(1) or (2), for either the low or middle-base terms, the crime likely would become a misdemeanor as a matter of law.

16. Can section 1385 be used to dismiss the disqualifying factors so as to permit the use of section 1170(h) to commit a defendant to county jail?

No. Section 1170(f) provides: “Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.”

17. Does the realignment legislation affect the court’s ability to consider probation or other alternative forms of punishment?

No. Section 1170(h)(4) specifically provides that “[n]othing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.”

18. Currently, the California Department of Corrections and Rehabilitation (CDCR) reviews felony sentences for accuracy. Will sheriffs do this for jail-only sentences? How? Will sheriffs review to ensure that court ordered the correct facility (i.e., prison or jail)?

Nothing in the criminal justice realignment act appears to change any of these activities. CDCR will continue to review prison commitment papers for felons sentenced to state

prison, and the prison packet remains the same. Courts should consult with their local sheriff to ascertain whether they will handle commitments to county jail any differently than prior to criminal justice realignment.

19. Do felony sentences served in county jail under section 1170(h) constitute “prison priors” for purposes of sentence enhancements?

Felony sentences served in county jail under section 1170(h) are intended to be “prison priors” for purposes of sentence enhancements.

REVOCATION OF SUPERVISION

20. Where will an inmate who is released from state prison to postrelease community supervision be supervised?

An inmate released from state prison who is eligible for postrelease community supervision will be returned, like those released on parole, “to the county that was the last legal residence of the inmate prior to his or her incarceration,” under subdivision (a) of section 3003, except that under subdivision (b), “an inmate may be returned to another county if that would be in the best interests of the public.”

21. When does the criminal justice realignment act require courts to begin hearing petitions for revocation of postrelease and parole supervision?

Postrelease community supervision: Beginning **October 1, 2011**, petitions for revocation of postrelease community supervision may be filed in the superior court in the jurisdiction in which the violator is being supervised. These petitions will be filed by the local supervising agency, likely to be the probation department in most counties.

Parole agency supervision: Beginning **July 1, 2013**, petitions for revocation of parole supervision may be filed in the superior court in the county in which the violator is being supervised. These petitions will be filed by the state parole agency.

22. When are courts likely to begin receiving petitions for revocation of postrelease supervision?

With the exception of the largest counties, probably not right away. The criminal justice realignment act applies to eligible inmates released from state prison on or after October 1, 2011. (Persons currently supervised by the state parole system will not be transferred to county supervision.) The act gives the supervising county agency (probation, in most counties) significant authority to respond to violations of supervision with a variety of

intermediate sanctions, including but not limited to “flash incarceration” in a county jail for up to 10 days, without court involvement.

Before a petition for revocation of postrelease supervision may be filed with the court, section 3455(a) requires the supervising county agency to “determine, following application of its assessment processes, that intermediate sanctions are not appropriate...” Therefore, it is likely that many courts will not receive a petition for revocation for several weeks, or even months, following the October 1st effective date.

23. Will any state parole revocation petitions be filed with the courts between October 1, 2011, and July 1, 2013?

No. Until July 1, 2013, all state parole revocation proceedings will be carried out as they are under current law, under the jurisdiction of the Board of Parole Hearings. Petitions for parole revocation will not be eligible to be filed with a court until July 1, 2013.

24. How many petitions for revocation of postrelease supervision is my court expected to receive?

Because the criminal justice realignment act transfers an Executive Branch function to the Judicial Branch, and because it provides a great deal of implementation flexibility to counties, it is very difficult to predict petition caseload with precision. However, the state Department of Finance used CDCR’s caseload experience during 2010, broken down county-by-county, to provide a rough estimate of the number of petitions for revocation of supervision each court may receive. This information is available in Appendix A.

Courts should note that, while a variety of factors and local cultures will influence each court’s experience, only seven courts are estimated to have more than 300 final petitions for revocation of supervision in a 12-month period. Under these estimates, most courts will receive fewer than six petitions for revocation each week.

25. When do courts become involved in the proceedings when a person is alleged to have violated terms or conditions of postrelease community supervision?

Under the criminal justice realignment act, the court has no jurisdiction or required role until a petition for revocation of postrelease supervision has been filed by the supervising county agency. Prior to filing a petition, the supervising county agency has authority – and in fact has an affirmative duty under the act – to assess and determine whether an intermediate sanction not requiring court involvement is appropriate.

26. Are the proceedings on the petitions for revocation open to the public?

Yes. Court proceedings are presumptively open to the public unless expressly held to be confidential. The criminal justice realignment act is silent on this issue, and therefore these proceedings are presumed open.

27. When will training opportunities and materials be available for hearing officers and court staff?

The AOC's CJER/Education Division is currently developing various written materials, broadcasts, webinars, and live programs regarding revocation hearing procedure, sentencing updates, and models of implementation. These are advertised in the weekly AOC Court News Update email. The soon to be launched 2011 Criminal Justice Realignment Education and Resource page on SERRANUS will provide a comprehensive list of all upcoming judicial education products and programs and a parallel resource page regarding court staff education will be available on COMET in the very near future. Please refer to those pages for more information.

28. Where can I find educational material and other information on this topic?

Specialized training materials are available on Serranus. In addition, the AOC has launched an online Criminal Justice Realignment Resource Center at <http://www.courts.ca.gov/partners/realignment.htm>. The Web site contains information about criminal justice realignment funding, proposed rules of court and forms, pending and enacted legislation affecting realignment, and other resources.

29. Can the Administrative Office of the Courts provide assistance to courts who wish to recruit and hire individuals to serve as revocation hearing officers?

Yes. The AOC Human Resources Division and Regional Office HR staff are available to help in recruitments for courts.

30. Will the Judicial Council develop rules and forms for revocation procedures?

Yes. The criminal justice realignment act 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. Proposed rules and a form have been developed by the Criminal Law Advisory Committee and were recently circulated for public comment. They are designed to prescribe basic procedural requirements to promote statewide uniformity while providing courts with sufficient flexibility to implement the new proceedings according to local needs and customs.

31. When will the rules and form be adopted by the Judicial Council?

Due to the volume and complexity of the comments received, review by the Criminal Law Advisory Committee is ongoing. Although the committee hopes to present its recommendations to the Judicial Council at the earliest possible time, the precise date of adoption is unclear.

CASE MANAGEMENT

32. Should courts create a new case file for petitions for revocation of supervision, even if the case that resulted in the underlying conviction originated in the same superior court?

Yes. A petition for revocation of supervision will be a new case type and should be given a new file, regardless of where the commitment offense occurred. The petition is not associated with a previous case, and should be treated as a separate action. In addition, courts will be required to track this new caseload for budget purposes, so creating a new case file will facilitate this process.

33. Will courts be required to count these matters as “new filings” for statistical purposes, particularly in light of the fact that the matters may not have originated in the same court? A new category for JBSIS?

The Judicial Council adopted the Trial Court Budget Working Group’s budget allocation recommendations on August 26, 2011. Included was a recommendation that future allocation of funding for court revocation proceedings be based on actual court-specific caseload information, rather than the estimates used for Fiscal Year 2011-2012. Therefore, the number of petitions for revocation filed will need to be tracked by the court and reported to the Administrative Office of the Courts. Additional information regarding expenditure of these funds may be requested as well.

34. What category will the related court records fit under for record retention purposes?

The Judicial Council’s Court Executives Advisory Committee (CEAC) is currently conducting a comprehensive review of Government Code section 68152, which governs retention of court records, and is developing recommendations for council-sponsored legislation in 2012 to update these provisions. CEAC will incorporate into this process recommendations regarding retention of records associated with petitions for revocation of supervision.

35. Reporting to other agencies: Do courts have to report these matters to other agencies like DOJ? For L.E.A.D.S. purposes? C.L.E.T.S.?

The Governor and the Legislature are reviewing these issues to determine whether clarifying legislation is necessary.

36. Do the abstract of judgment forms need to be changed?

The Criminal Law Advisory Committee will be reviewing the abstract of judgment forms to determine whether changes are necessary.

TOPICS UNDER REVIEW

Many additional questions regarding criminal justice realignment have been raised but require further review. Please note that the Steering Committee will provide additional information as soon as possible regarding several different topics, including appeals, role of defense counsel, court records, discovery, evidence, warrant authority, and the applicability of previous federal litigation affecting current parole proceedings. Updates to this memorandum will be posted at <http://www.courts.ca.gov/partners/realignment.htm>.

In the meantime, if courts have additional questions or concerns please feel free to submit them to the Steering Committee or to crimjusticerealign@jud.ca.gov for review and possible inclusion in the next FAQ memorandum.

Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
Allocations for FY 2011-2012 Funding

	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx\$17.689M)	Allocation of Security Funding (Bx\$1.149M)
	A	B	C	D
Alameda	388	5.54%	\$ 980,126	\$ 63,665
Alpine	1	0.01%	2,526	164
Amador	3	0.04%	6,315	410
Butte	58	0.83%	146,514	9,517
Calaveras	1	0.01%	2,526	164
Colusa	1	0.01%	2,526	164
Contra Costa	134	1.91%	337,234	21,905
Del Norte	3	0.04%	7,578	492
El Dorado	29	0.41%	73,257	4,758
Fresno	336	4.80%	848,769	55,132
Glenn	8	0.11%	18,946	1,231
Humboldt	60	0.86%	151,566	9,845
Imperial	31	0.44%	78,309	5,087
Inyo	3	0.04%	6,315	410
Kern	221	3.16%	558,268	36,263
Kings	28	0.39%	69,468	4,512
Lake	16	0.23%	40,418	2,625
Lassen	3	0.04%	7,578	492
Los Angeles	1,942	27.73%	4,904,419	318,570
Madera	40	0.56%	99,781	6,481
Marin	10	0.14%	25,261	1,641
Mariposa	-	0.00%	-	-
Mendocino	25	0.35%	61,889	4,020
Merced	66	0.94%	166,722	10,830
Modoc	1	0.01%	2,526	164
Mono	1	0.01%	2,526	164
Monterey	128	1.83%	323,341	21,003
Napa	11	0.16%	27,787	1,805
Nevada	4	0.06%	10,104	656
Orange	328	4.68%	827,297	53,738
Placer	41	0.59%	103,570	6,727
Plumas	2	0.02%	3,789	246

Postrelease Community Supervision Revocation Hearing Caseload
Criminal Justice Realignment Act of 2011
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	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of Operations Funding (Bx\$17.689M)	Allocation of Security Funding (Bx\$1.149M)
Riverside	266	3.80%	671,942	43,646
Sacramento	479	6.83%	1,208,738	78,514
San Benito	6	0.09%	15,157	985
San Bernardino	415	5.92%	1,047,068	68,013
San Diego	354	5.06%	894,239	58,086
San Francisco	201	2.87%	507,746	32,981
San Joaquin	180	2.56%	453,435	29,453
San Luis Obispo	47	0.67%	118,727	7,712
San Mateo	69	0.99%	174,301	11,322
Santa Barbara	62	0.89%	156,618	10,173
Santa Clara	245	3.49%	617,631	40,119
Santa Cruz	45	0.64%	113,674	7,384
Shasta	62	0.88%	155,355	10,091
Sierra	-	0.00%	-	-
Siskiyou	7	0.10%	17,683	1,149
Solano	145	2.06%	365,021	23,710
Sonoma	68	0.96%	170,512	11,076
Stanislaus	113	1.61%	285,449	18,542
Sutter	21	0.29%	51,785	3,364
Tehama	21	0.29%	51,785	3,364
Trinity	-	0.00%	-	-
Tulare	47	0.66%	117,464	7,630
Tuolumne	6	0.08%	13,894	902
Ventura	151	2.15%	380,178	24,695
Yolo	46	0.65%	114,937	7,466
Yuba	35	0.50%	88,413	5,743
TOTAL	7,003	100.00%	\$ 17,689,000	\$ 1,149,000
Total Operations Funding:	\$ 17,689,000			
Total Security Funding:	\$ 1,149,000			

* Source: California Department of Corrections and Rehabilitation