Criminal Justice Realignment
Frequently Asked Questions[1]

(Revised April 2014)

This document provides responses to some the most frequently asked questions (FAQs) relating to criminal justice realignment. The materials are for informational purposes only, and are not to be construed as legal advice. They will be revised and re-posted as additional information is available. In addition, specialized training materials for judges and court administrators are available upon request.

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Unless otherwise indicated, all references are to the Penal Code.

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[1] The answers to the parole-related FAQs were originally prepared by J. Richard Couzens, Judge of the Superior Court of Placer County (Ret.); Morris D. Jacobson, Judge of the Superior Court of Alameda County; Phillip H. Pennypacker, Judge of the Superior Court of Santa Clara County; Dylan M. Sullivan, Commissioner of the Superior Court of El Dorado County; Arturo Castro, supervising attorney, Criminal Justice Court Services Office, Administrative Office of the Courts; and Rodger W. Meier, Chief, In-Prison Programs, Office of Offender Services, California Department of Corrections and Rehabilitation. Subsequent updates and other FAQs have been prepared by Judge Couzens and Arturo Castro. These materials are for informational purposes only and the responses are not to be construed as legal opinion or advice.

A. SENTENCING OF CRIMES UNDER SECTION 1170(h)

1. What is the basic objective of the changes in felony sentencing made by the realignment legislation?

The primary objective of the realignment legislation is to change the place where many felony sentences are served when the defendant is not granted probation. Instead of being sentenced to state prison, many defendants will be serving their "prison" term in county jail. Realignment does not change any law or procedure up to the point sentence is pronounced. The length of the possible custody terms remains unchanged. Rules regarding probation eligibility remain unchanged. Alternative sentencing programs remain unchanged. What changes have been made to sentencing procedures relate to the fact that defendants now may be sentenced to 58 different county custody facilities, rather than one state prison system.

2. What crimes are affected by realignment?

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

a. Felonies sentenced to county jail: Section 1170(h) requires that defendants charged with the following be sentenced to county jail if probation is denied:

- Crimes where the punishment is imprisonment in accordance with section 1170(h) without delineation of a specific term. In such cases the sentence is 16 months, two, or three years in county jail. (§ 1170(h)(1).)
- Crimes where the statute specifically requires punishment in the county jail for a designated term, 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. (§ 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 (§ 1170(h)(3)):

- Where the defendant has a prior or current serious or violent felony conviction under section 1192.7(c) or 667.5(c), including qualified out-of-state serious or violent felonies. The exclusion does not include juvenile strikes because the statute specifies strike "convictions," not "adjudications." The Legislature rejected an attempt to amend the realignment law to include an exclusion based on a juvenile adjudication.
- Where the defendant is required to register as a sex offender under section 290.
- Where the defendant has been 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 dozens of specific crimes where the sentence must be served in state prison. If neither state

prison nor section 1170(h) is designated in the statute, the crime is punishable in state prison. (§ 18(a).) 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. Reference Appendix A, "Table of Crimes Punishable in State Prison or County Jail Under Section 1170(h)."

3. **Some crimes specify punishment under section 1170(h), but at the same time are excluded under the statute. Which designation controls?**
   The exclusion controls. The new county jail punishment scheme is set out in section 1170(h)(1) and (2). Each of those provisions specifies that they will apply to designated crimes "except as provided in paragraph (3)." Paragraph (3), listing crimes and persons excluded from commitment to county jail, specifies that its provisions apply "notwithstanding paragraphs (1) and (2)." Accordingly, it is clear that the Legislature intended the exclusion provisions should control over the specific designation given to a particular crime.

4. **If a defendant is convicted of both state prison and section 1170(h) crimes, where is the sentence to be served?**
   State prison. If any crime is punishable in state prison, the defendant serves the sentence for all crimes in state prison, whether the sentences are concurrent or consecutive. (§§ 669(d) and 1170.1(a).) If the punishment for the base term is to be served in county jail under section 1170(h), but an enhancement specifies punishment in state prison, the entire sentence will be served in state prison. (*People v. Vega* (2014) 222 Cal.App.4th 1374.)

5. **When do the changes to sentencing laws apply?**
   The changes in felony sentencing apply to any person ***sentenced*** on or after October 1, 2011.

6. **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 realignment legislation limits the *length* of the county jail commitment. The only restrictions on the eligibility for a county jail commitment are based on the offense or the offender's record. See Answer 2(b), above.

7. **How does criminal justice realignment change awarding of custody credits?**
   Effective October 1, 2011, section 4019 has been amended to provide that most inmates committed to county jail are to receive a total of four days of credit for every two days of actual time served. The provisions apply to persons serving a sentence of four or more days, including misdemeanor sentences, a term in jail imposed as a condition of probation in a felony case, pre-sentence credit for most persons sentenced to state prison, persons serving jail custody for violation of state parole or postrelease community supervision, and persons serving a sentence imposed under section 1170(h).

8. **When do the changes to custody credits apply?**
   The changes to custody credits apply to ***offenses committed*** on or after October 1, 2011.

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

No. Persons sentenced under section 1170(h) to county jail are not released to parole or postrelease supervision (PRCS) upon serving their terms—unlike those who serve time in state prison. Once the sentence has been fully served, the defendant must be released without any restrictions or supervision. A form of supervision, however, can be created as part of the defendant's sentence under section 1170(h)(5)(B); see Answer 10, below.

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

Section 1170(h)(5) gives the sentencing judge discretion to impose two types of sentences to county jail. The court may commit the defendant to county jail for the straight term allowed by law. (§ 1170(h)(5)(A).) With this alternative, the defendant will serve the computed term in custody, less conduct credits, then be released without supervision. With the second alternative, the court may send the defendant to county jail for the computed term, but suspend a concluding portion of the term. (§ 1170(h)(5)(B).) During this 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. If the court chooses to impose the supervision period, the defendant's participation is mandatory. Like the straight sentence, once the custody and supervision term has been served, the defendant is free of any restrictions or supervision. These sentences are called "split" or "blended" sentences because they generally are composed of a mixture of custody and mandatory supervision time.

11. Is the supervision period of a split sentence imposed under section 1170(h)(5)(B) "probation?"

No. The original version of section 1170 has been amended to make it clear that the mandatory period of supervision imposed under the split sentence authorized under section 1170(h)(5)(B) is not probation. However, the statute specifies that the person will "be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation."

12. When does the period of mandatory supervision start?

Legislation pending enactment at the time of writing of this FAQ is designed to clarify that mandatory supervision starts when the defendant is "released from custody." It is not clear, however, if "custody" will include the constructive custody of electronic monitoring or home detention, or is limited to physical housing in a custody facility.

13. May the defendant placed on mandatory supervision be required to pay the supervision fee authorized by section 1203.1(a)?

No. Section 1203.1(a), which authorizes the court to pay the reasonable costs of probation supervision has no application to the mandatory supervision portion of a sentence imposed under section 1170(h)(5)(B). Section 1203.1(a) is limited to grants of probation or conditional sentences. (*People v. Fandinola* (2013) 221 Cal.App.4th 1415; *People v. Ghebretensae* (2013) 222 Cal.App.4th 741.)

14. If a person is committed under section 1170(h), is it presumed that he has no ability to pay attorney fees?

No. Section 987.8(g)(2)(B) establishes a presumption that a defendant sentenced to state prison has no ability to reimburse the county for attorney fees. *People v. Prescott* (2013) 213 Cal.App.4th 1473, held the presumption has no application to defendants sentenced to county jail under section 1170(h).

15. Do statutes that render certain offenses ineligible for probation—e.g., section 1203.07—prohibit courts from imposing "mandatory supervision" under section 1170(h)(5)?

No. Mandatory supervision under 1170(h)(5)(B) is not probation. Mandatory supervision may not be used until the judge denies probation and imposes a split sentence. The supervision is part of the sentence imposed by the court. Accordingly, existing probation ineligibility provisions should not hinder a judge from imposing a split sentence.

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

No. Unless an exclusion under section 1170(h)(3) applies, crimes punishable in county jail may not be punished by a commitment to state prison; the court must sentence the defendant to county jail if probation is denied. If a defendant is being sentenced for multiple felonies, only some of which require commitment to state prison, all of the sentence will be served in state prison, whether the sentences are run concurrently or consecutively. (§§ 669(d) and 1170.1(a).)

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

No. The "plead and prove" issue is addressed in *People v. Griffis* (2013) 212 Cal.App.4th 956. Relying heavily on two California Supreme Court cases, *In re Varnell* (2003) 30 Cal.4th 1132, and *People v. Lara* (2012) 54 Cal.4th 896, *Griffis* concludes the exclusions under section 1170(h)(3) are merely "sentencing factors" that do not require pleading and proving. The exclusions set forth in the realignment legislation do not change the *amount* of time to be served, only *where* it is to be served. Pleading requirements generally are implied only where additional time in jail is required. The court also determined that section 1170(f), concerning the inability to use section 1385 to strike a disqualifying factor, did not imply such a "plead and prove" requirement.

18. 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)?

Yes. A sentence imposed under section 1170(h) will be treated the same as a state prison sentence for the purposes of section 17(b). 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).

19. **Where will a defendant serve a sentence if prior to October 1, 2011, 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, 2011, does not reinstate the defendant on probation?**
It is unclear. Appellate courts are divided on the issue. Most courts have concluded that the defendant must serve the sentence in prison. However, the matter is under review by the Supreme Court.

It is important to note that the cases discussing this issue all concern a situation where the court has suspended *execution* of a state prison sentence; they have no application where the court has suspended *imposition* of sentence. In the latter circumstance, if the court does not reinstate the defendant on probation, the custody term imposed will be served in accordance with post-realignment law.

20. **Will the provisions of section 1170(d) [recall of a sentence] apply to commitments under section 1170(h)?**
It is unclear. Section 1170(d) refers to the recall of a sentence to state prison; section 1170(h) is not mentioned. Defendants committed under section 1170(h), however, may have access to these procedures as a matter of equal protection of the law. The Judicial Council's Criminal Law Advisory Committee has preliminarily developed a legislative proposal that would expressly apply the recall provisions of section 1170(d) to county jail sentences under 1170(h). The proposal may be viewed and commented on at the following link: http://www.courts.ca.gov/documents/LEG14-03.pdf

21. **Will the provisions of section 1170(e) [compassionate release] apply to commitments under section 1170(h)?**
Section 1170(e) only references commitments to state prison; the entire procedure outlined in the section is based on a state prison commitment. Accordingly, it is unlikely that the procedures under section 1170(e) will be available to persons committed under section 1170(h). In addition, in 2012, the Legislature enacted Government Code sections 26605.6 and 26605.7, which provide comparable release procedures for certain inmates sentenced to county jail, including those committed under section 1170(h).

22. **Can the court modify a sentence imposed under section 1170(h)?**
It likely will depend on whether the court is imposing a straight or split sentence. Unless the court is able to exercise its discretion to recall a sentence under section 1170(d), there is no mechanism for modifying a straight sentence imposed under section 1170(h)(5)(A).

If the court imposes a split sentence, however, the provisions of section 1203.2 and 1203.3 allow the modification of mandatory supervision in the manner traditionally used for the modification of the conditions of probation.

23. **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?**
No. Section 1170.1(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. Proposed legislation making the law

the same for both state prison and 1170(h) commitments has been rejected by the Legislature.

24. Are there any rules or procedures governing the situation where a defendant is sentenced by multiple jurisdictions?

For the most part, no. If the court in one jurisdiction imposes a sentence to be served in county jail under section 1170(h), but another court, whether or not in the same jurisdiction, sentences the defendant to state prison, all sentences will be served in state prison. In such circumstances, whenever any crime is sentenced to state prison, all sentences must be served in prison, whether the terms are consecutive or concurrent. (§§ 669(d), 1170.1(a).)

The realignment statutes, however, do not directly address the question of multiple-jurisdiction sentences under section 1170(h). In the absence of statutory authority to the contrary, likely the sentences would be served in proportion to the time ordered in each county. If County A ordered a custody term of two years and County B ordered a term of eight months consecutive, the defendant would serve two years in County A, then be transferred to County B for service of eight months. The service of any period of mandatory supervision would be handled in a like manner.

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

Section 17(b) has been amended to include in the definition of "felony" a crime punishable in the county jail under section 1170(h) and eliminates the requirement that the term exceed one year to constitute a felony.

26. Can the court terminate mandatory supervision before the end of the sentence?

It appears likely. First, section 1170(h)(5)(B)(i) provides that mandatory supervision "may not be earlier terminated *except by court order*." (Emphasis added). No specific guidance is given for the exercise of the court's discretion in this regard, but presumably it derives from Penal Code section 1203.2(b)(1): "Upon its own motion or upon the petition of the supervised person, the probation or parole officer, or the district attorney, the court may modify, revoke, or *terminate* supervision of the person pursuant to this subdivision." However, courts may not terminate parole (§ 1203.2(a)), persons on parole or PRCS may not petition the court for early release from supervision (§ 1203.2(b)), and parolees may not petition the court solely for the purpose of modifying parole. (§ 1203.2(b).) Courts are also authorized to revoke, modify, or change the terms of mandatory supervision under Penal Code section 1203.3; that section, however, only expressly authorizes courts to terminate *probation*, not mandatory supervision. (§ 1203.3(b).)

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

Generally, 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." Section 1170(f) does not prevent the court from striking a strike for the

purposes of the Three Strikes law; it only prevents the use of section 1385 to strike a strike or other disqualifier for the purpose of allowing local punishment under section 1170(h). The rule, however, is limited to adult convictions; it has no application to juvenile adjudications. See Answer 28, below.

28. How does the adjudication for a juvenile strike relate to an 1170(h) sentence?

The exclusions under section 1170(h)(3) only reference adult strike convictions; juvenile adjudications are not mentioned. Accordingly, if the defendant has a juvenile strike adjudication, he will remain eligible for commitment under section 1170(h) for the purposes of the realignment legislation. However, if the defendant is found to have suffered the adjudication and it remains as part of the sentencing, the defendant must be committed to CDCR, not because of the realignment law, but because of the Three Strikes law. Such a consequence can be avoided in appropriate circumstances by striking the adjudication. With the elimination of the strike, the defendant may receive a sentence under section 1170(h).

29. Does the realignment law affect the application of Vehicle Code section 41500?

No. The only reported case discussing the application of Vehicle Code section 41500 to persons committed to county jail under section 1170(h) is *People v. Lopez* (2013) 218 Cal.App.4th Supp. 6. Based on the plain language of section 41500, the court found that its provisions do not apply to persons committed under section 1170(h). The court also found no denial of equal protection because section 41500 was intended to apply to persons generally receiving longer terms in state prison, and who had more difficultly in reintegrating back into society upon release.

30. 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."

31. 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 the record to ensure the court ordered the correct facility (i.e., prison or jail)?

Nothing in the criminal justice realignment legislation appears to change any of these activities. CDCR will continue to review prison commitment papers for felons sentenced to state prison; the prison packets will remain the same. Courts should consult with their local sheriff to ascertain whether they will handle commitments to county jail any differently for defendants sentenced under section 1170(h).

32. Do felony sentences served in county jail under section 1170(h) constitute "prison priors" for purposes of sentence enhancements? When does the 5-year "washout" start?

Yes. Section 667.5(b) specifies sentences imposed under section 1170(h) will constitute a "prison prior," whether the sentence is a straight term under section 1170(h)(5)(A), or a split term under section 1170(h)(5)(B). The 5-year "washout" period for using a prior split

sentence imposed under section 1170(h) commences with the completion of the custody term and any period of mandatory supervision. (§ 667.5(d).)

33. If the sheriff releases the defendant early from the custody portion of a split sentence, does the period of mandatory supervision automatically start?

Likely, yes. Legislation pending enactment at the time of writing of this FAQ is designed to clarify that mandatory supervision starts when the defendant is "released from custody." It is not clear, however, if "custody" will include the constructive custody of electronic monitoring or home detention, or is limited to physical housing in a custody facility.

34. Can counties transfer mandatory supervision?

Yes. Mandatory supervision may be transferred to the defendant's county of residence under section 1203.9, the same transfer procedure for probation cases. (See also, Cal. Rules of Court, rule 4.530.)

35. How will violations of mandatory supervision be handled?

With the passage of legislation effective June 27, 2012, the traditional procedures under section 1203.2 used for violations of probation will now be applicable to violations of mandatory supervision. In addition, the procedures used to modify probation under section 1203.3 may now be used to modify mandatory supervision.

36. When a probation officer seeks an arrest warrant for a violation of mandatory supervision, must the request be supported by a petition and/or report?

No, but the request should include sufficient facts to support a finding of probable cause for issuance of the warrant. Section 1203.2, governing violations of mandatory supervision, does not require the probation officer to file a petition or report in connection with a request for an arrest warrant. Indeed, section 1203.2(a) expressly allows the arrest of a supervised person with or without a warrant. While no petition is required for the issuance of a warrant, the warrant process itself presumes a judicial officer will make at least a preliminary determination that there is probable cause for arrest. Accordingly, the request for a warrant should be accompanied by at least a minimal declaration of the nature of the violation.

Although the case concerns the issuance of a warrant for probation violations under section 1203.2, *People v. Woodall* (2013) 216 Cal.App.4th 1221, likely is fully applicable to warrants for violations of mandatory supervision under section 1203.2. "To effectuate the arrest of a probationer who has violated probation, section 1203.2 provides . . . [that] a court may issue a warrant for the arrest of a probationer. Typically, a court will issue a bench warrant for the probationer's arrest when the authorities report to the court that a probation violation has occurred. [Citations.] There is nothing in the express language of section 1203.2 requiring that the report to the court be made by oath or affirmation. [Citations.]" (*Woodall*, at pp. 1230-1231.) *Woodall* goes on to emphasize that probationer warrants are not scrutinized in the same manner as traditional arrest warrants because probationers have diminished liberty expectations in contrast to other citizens. Probation warrants, for example, need not be based on a probation report made under oath or affirmation because section 1203.2 does not expressly require it. (*Woodall*, at pp. 1231-1232.) Nor do federal due process requirements for warrants, including the "warrant clause," apply to the arrest of

probationers: "A probationer, by the very nature of the probation grant, is on notice that he or she is subject to the supervision of the government and that the liberty granted by the government is conditioned on compliance with probation conditions. To effectively supervise a probationer, the government needs to be able to expeditiously arrest the probationer in the event of noncompliance with probation conditions. Considering the government's need to act expeditiously while monitoring the probationer and the probationer's reduced expectation of liberty, we conclude a probationer falls outside the ambit of the warrant clause." (*Woodall*, at p. 1233.)

37. Must warrants for violation of mandatory supervision be in strict compliance with sections 813, et seq., applicable to arrest warrants?

No, at least not in the strict sense. Under current case law, warrants for probationers under section 1203.2 are not considered traditional "arrest warrants" governed by sections 813 to 829; instead, they are considered "bench warrants" and courts are vested with wide discretion to order bench warrants for probationers upon review of reports from probation officers. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 966.) As noted in the answer to question 36, much of the formality of securing an arrest warrant is not required for the issuance of a warrant on a supervision violation. The form of warrant traditionally used by a county for probation violations likely will be sufficient for warrants based on a violation of mandatory supervision. The warrant should properly identify the person to be arrested, and be supported by a declaration from the person seeking the warrant sufficient to establish probable cause for the arrest.

38. Must warrants based on a violation of supervision be issued on paper and signed by a judge?

No. Section 1203.2 does not expressly require that warrants for violations of supervision be signed by a judge, nor do any of the various statutes that prescribe the form and content of bench warrants generally. (See, e.g., §§ 981–2, 985–6, 1195–7.) In addition, the court in *People v. Stephens*, expressly rejected a probationer's contention that warrants under section 1203.2 must be signed by a judge, as opposed to simply issued by a clerk after being *ordered* by a judge. (*People v. Stephens* (1968) 266 Cal.App.2d 661, 664, fn. 1.)

In addition, unlike arrest warrants, which courts are required to print under certain circumstances (see, e.g., § 817(c)(2)(C)(i) [requiring electronically transmitted arrest warrants based on probable cause to be printed]), there appears to be no comparable statutory authority that requires bench warrants under section 1203.2 to be printed in paper form. Rather, courts are statutorily authorized to create, maintain, and preserve trial court records in electronic form (Gov. Code, § 68150(a)), including bench warrants. (Gov. Code, §§ 68151(a), 68152(j).)

Accordingly, in the absence of clear authority requiring otherwise, it appears that bench warrants under section 1203.2 need not be printed in paper form, particularly when (1) the underlying order for warrant is signed by a judge and filed in the court file, thereby formally preserving the court's findings as part of the record on the case, and (2) the electronic transmission of all necessary warrant information and activation of the warrant via the court's case management system obviates the need for the warrant in paper form.

39. Must the court prepare an abstract of judgment after a revocation of mandatory supervision?

Mandatory supervision is simply a part of the original sentence imposed by the court. The order of revocation and the imposition of a custody term simply is an order directing how the supervision period is to be served; it is not a new probation order or judgment as contemplated by section 1213.

40. If the defendant absconds from mandatory supervision or otherwise violates the terms of supervision, does the supervision period continue to run?

Not if tolled by the court under sections 1170(h)(5)(B)(i) and 1203.2(a), which provide for tolling of the period of supervision after summary revocation of mandatory supervision.

41. What options are available to the court when there is a violation of mandatory supervision?

Because the procedure for violations of mandatory supervision is the same as for violations of probation, the court will have sentencing options similar to violations of probation. The court could reinstate the defendant on mandatory supervision with or without additional jail time or a change in the conditions of supervision. The court could terminate supervision and remand the defendant to serve the balance of the term in custody. In no event, however, may the supervision and custody term exceed the original term imposed by the court.

If the court permanently revokes mandatory supervision and commits the defendant to county jail for any remaining term of the original sentence, the court should order into execution any mandatory supervision revocation fine ordered as part of the original sentence under section 1202.45(b).

42. May the defendant voluntarily accept what the probation department recommends as punishment and waive a court appearance?

Yes. If the supervised person agrees in writing to the terms of any modification or termination of supervision, personal appearance in court may be waived. The supervised person must be advised of the right to consult with counsel, including the right to appointed counsel. A written waiver is required if the supervised person waives the right to counsel. If the supervised person consults with counsel and subsequently agrees to the modification or termination, and waives his appearance, the agreement must be signed by counsel. (§ 1203.2(b)(2).)

43. Has there been a change to restitution fines?

Yes. Beginning January 1, 2013, when the court imposes a split sentence on the defendant under section 1170(h)(5)(B), the defendant must be assessed a mandatory supervision revocation restitution fine in the same amount as the restitution fine under section 1202.4(b). (§ 1202.45(b).)

If the court permanently revokes mandatory supervision and commits the defendant to county jail for any remaining term of the original sentence, the court should order into execution any mandatory supervision revocation fine ordered as part of the original sentence under section 1202.45(b).

44. Who collects victim restitution?

Effective January 1, 2013, the county board of supervisors may designate an agency within the county to collect victim restitution. If the sheriff is the designated agency, the sheriff must agree to the task. (§ 2085.5(d).)

45. Does section 1368 regarding competence to stand trial apply to mandatory supervision revocation proceedings?

Likely not. Section 1367(a) provides that "[a] person cannot be tried or adjudged to punishment while that person is mentally incompetent." Section 1368(a) sets the procedural stage: "If, during the pendency of an action *and prior to judgment*, a doubt arises in the mind of the judge as to the mental competence of the defendant," the court is to institute proceedings to determine the mental status of the defendant. (Emphasis added.) In *People v. Humphrey* (1975) 45 Cal.App.3d 32, 36-37, the appellate court applied section 1368 procedures to a defendant who was before the court on a probation violation. The court there observed that imposition of sentence had been suspended and the defendant had been placed on probation. Because sentence in the formal sense had not been imposed, the court was obligated to undertake a competency determination once a doubt had been declared. *(Id*.) Unquestionably, persons placed on mandatory supervision have been fully sentenced. Please note that the Legislature is currently considering statutory amendments that would apply competency proceedings to mandatory supervision revocation proceedings.

46. Is there a process for the dismissal of convictions sentenced under section 1170(h)?

Yes. Although the dismissal relief available under section 1203.4 applies only to persons who have been granted probation, section 1203.41 gives the court the discretion to dismiss a conviction by a procedure similar to section 1203.4. Subject to specified limitations, persons given a straight sentence under section 1170(h)(5)(A) are eligible after two years from the completion of the sentence; persons given a split sentence are eligible after one year.

B. POSTRELEASE COMMUNITY SUPERVISION (PRCS)

1. **Who will be supervised on PRCS?**
   PRCS provides a means for supervising inmates released from state prison after completion of their sentences. It applies to all inmates except those who were serving sentences for serious or violent felonies, a third strike sentence under the Three Strikes law, any crime where the inmate is classified as a "high risk sex offender," and any person who must receive treatment from the State Department of State Hospitals under section 2962 as a condition of parole.

2. **If a person is wrongfully placed under PRCS supervision, when the person should be supervised under parole, is there a way to correct the error?**
   Yes. If an inmate is released from prison, but wrongfully placed on PRCS instead of on parole, there is a 60-day window within which a correction must occur. “Any person released to [PRCS] pursuant to subdivision (a) shall, regardless of any subsequent determination that the person should have been released pursuant to Section 3000.08, remain subject to subdivision (a) after having served 60 days pursuant to subdivision (a).” (§ 3451(d).) A similar rule is provided by section 3000.08(l) for persons wrongfully released on parole.

3. **Who will supervise an inmate released on PRCS?**
   An inmate released from state prison who is eligible for PRCS 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,” except that “an inmate may be returned to another county if that would be in the best interests of the public.” (§ 3003(a) and (b).) The actual supervision will be done by the county’s probation department.

4. **How long is a person supervised on PRCS?**
   The period of supervision can be for up to three years. The limit is tolled during any time supervision has been revoked or the inmate is an absconder. The inmate may earn an early release from supervision by remaining violation free for designated intervals.

5. **What are the conditions of supervision?**
   The conditions of supervision are set at the time of inmate's release from custody. Many of the conditions are specified by statute, but the supervising agency may add additional conditions deemed necessary for public protection. The conditions, imposed without the need for the inmate's agreement, must include, but are not limited to:

   - Search and seizure of the inmate's residence and possessions
   - The imposition of up to 10 days of "flash incarceration" for a violation of PRCS without the need of a court hearing
   - Arrest with or without a warrant if there is probable cause to believe the inmate is in violation of PRCS

   The conditions may include continuous electronic monitoring and appropriate rehabilitative services.

6. **What is "flash incarceration?"**
   The supervising agency is authorized to impose from one to ten days of incarceration for a violation of the conditions of PRCS. The time is not subject to conduct credits under section 4019. The inmate is not entitled to a judicial hearing before the sanction may be imposed. The inmate may be subjected to successive flash incarcerations for multiple violations. "Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations." (§ 3454(c).)

7. **When do courts become involved in the violation process?**
   The supervising agency is required to address initial violations using evidence-based practices, including flash incarceration. If a violation is such that intermediate sanctions are "not appropriate," the supervising agency may petition the court to revoke, modify, or terminate PRCS.

8. **What is the procedure for handling the violation petitions?**
   The procedure will be governed by section 1203.2, the process traditionally used for violations of probation. The court is required to hold the hearing on the violation within a reasonable time.

9. **May the inmate be detained pending the hearing on the violation?**
   Yes, but the circumstances may vary depending on whether a petition to revoke PRCS has been filed with the court.

   Before *a petition for revocation has been filed with the court:*
   - *Arrests* – A peace officer who has probable cause to believe that a person subject to PRCS is violating any term or condition of release is authorized to arrest the person without a warrant and bring the person before the postrelease supervising county agency. (§ 3455(b)(1).)
   - *Warrants* – An officer employed by the supervising agency is authorized to seek a warrant from a court, and the court or its designated hearing officer is authorized to issue a warrant for the supervised person's arrest, regardless of whether a petition for revocation has been filed. (§ 3455(b)(1).)

   After *a petition for revocation has been filed with the court:*
   - *Warrants* – The court or its designated hearing officer is authorized to issue a warrant for any person who is the subject of a petition for revocation of supervision who has failed to appear for a hearing on the petition, or for any reason in the interests of justice. (Section 3455(b)(2).)
   - *Remand*– The court or its designated hearing officer is authorized to remand to custody a person who does appear at a hearing on a petition for revocation of supervision or for any reason in the interests of justice. (§ 3455(b)(2).)

- *Detention* – A hearing on the petition for revocation shall be held within a reasonable time after the filing of the petition. The supervising agency is authorized to determine that a person should remain in custody until the first court appearance on the petition to revoke, and may order the person confined, without court involvement, on a showing by a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, the person may not appear if released from custody, or for any reason in the interests of justice. (Section 3455(c).) As in the probation context, courts presumably have sole discretion to decide custody status after the first appearance.

10. When a probation officer seeks an arrest warrant for a violation of PRCS, must the request be supported by a petition and/or report?

No, but the request should include sufficient facts to support a finding of probable cause for issuance of the warrant. Section 1203.2, governing the initiation of violation proceedings, does not require the probation officer to file a petition or report in connection with a request for an arrest warrant. Indeed, section 1203.2(a) expressly allows the arrest of a supervised person with or without a warrant. While no petition is required for the issuance of a warrant, the warrant process itself presumes a judicial officer will make at least a preliminary determination that there is probable cause for arrest. Accordingly, the request for an arrest warrant should be accompanied by at least a minimal declaration of the nature of the violation. The Judicial Council has approved the optional use of Form CR-301 for requesting the issuance of warrants based on a violation of PRCS; a portion of the form addresses the matter of probable cause.

Although the case concerns the issuance of a warrant for probation violations under section 1203.2, *People v. Woodall* (2013) 216 Cal.App.4th 1221, likely is fully applicable to warrants for violations of PRCS. "To effectuate the arrest of a probationer who has violated probation, section 1203.2 provides . . . [that] a court may issue a warrant for the arrest of a probationer. Typically, a court will issue a bench warrant for the probationer's arrest when the authorities report to the court that a probation violation has occurred. [Citations.] There is nothing in the express language of section 1203.2 requiring that the report to the court be made by oath or affirmation. [Citations.]" (*Woodall*, at pp. 1230-1231.) *Woodall* goes on to emphasize that probationer warrants are not scrutinized in the same manner as traditional arrest warrants because probationers have diminished liberty expectations in contrast to other citizens. Probation warrants, for example, need not be based on a probation report made under oath or affirmation because section 1203.2 does not expressly require it. (*Woodall*, at pp. 1231-1232.) Nor do federal due process requirements for warrants, including the "warrant clause," apply to the arrest of probationers: "A probationer, by the very nature of the probation grant, is on notice that he or she is subject to the supervision of the government and that the liberty granted by the government is conditioned on compliance with probation conditions. To effectively supervise a probationer, the government needs to be able to expeditiously arrest the probationer in the event of noncompliance with probation conditions. Considering the government's need to act expeditiously while monitoring the probationer and the probationer's reduced expectation of liberty, we conclude a probationer falls outside the ambit of the warrant clause." (*Woodall*, at p. 1233.)

If the probation officer seeks an arrest warrant in connection with a violation that will be handled informally, the courts may be asked later to recall the warrant. The request should be handled administratively, without the need for a court hearing. The Judicial Council has approved the optional use of *Request and Order to Recall Warrant* (form CR-302) for requesting the recall of a PRCS or parole warrant.

11. Must warrants for PRCS violations be in strict compliance with sections 813, et seq., applicable to arrest warrants?

No, at least not in the strict sense. Under current case law, warrants for probationers under section 1203.2 are not considered traditional "arrest warrants" governed by sections 813 to 829; instead, they are considered "bench warrants" and courts are vested with wide discretion to order bench warrants for probationers upon review of reports from probation officers. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 966.) Much of the formality of securing an arrest warrant is not required for the issuance of a warrant on a supervision violation. The form of warrant traditionally used by a county for probation violations likely will be sufficient for warrants based on a violation of PRCS. The warrant should properly identify the person to be arrested, and be supported by a declaration from the person seeking the warrant sufficient to establish probable cause for the arrest.

12. Must warrants based on a violation of supervision be issued on paper and signed by a judge?

No. Section 1203.2 does not expressly require that warrants for violations of supervision be signed by a judge, nor do any of the various statutes that prescribe the form and content of bench warrants generally. (See, e.g., §§ 981–2, 985–6, 1195–7.) In addition, the court in *People v. Stephens*, expressly rejected a probationer's contention that warrants under section 1203.2 must be signed by a judge, as opposed to simply issued by a clerk after being *ordered* by a judge. (*People v. Stephens* (1968) 266 Cal.App.2d 661, 664, fn. 1.)

In addition, unlike arrest warrants, which courts are required to print under certain circumstances (see, e.g., § 817(c)(2)(C)(i) [requiring electronically transmitted arrest warrants based on probable cause to be printed]), there appears to be no comparable statutory authority that requires bench warrants under section 1203.2 to be printed in paper form. Rather, courts are statutorily authorized to create, maintain, and preserve trial court records in electronic form (Gov. Code, § 68150(a)), including bench warrants. (Gov. Code, §§ 68151(a), 68152(j).)

Accordingly, in the absence of clear authority requiring otherwise, it appears that bench warrants under section 1203.2 need not be printed in paper form, particularly when (1) the underlying order for warrant is signed by a judge and filed in the court file, thereby formally preserving the court's findings as part of the record on the case, and (2) the electronic transmission of all necessary warrant information and activation of the warrant via the court's case management system obviates the need for the warrant in paper form.

13. Must there be a probable cause hearing held at or near the time the person is taken into custody on a PRCS violation? If so, who makes the determination?

No. The right to a probable cause hearing is discussed in the seminal case of *Morrissey v. Brewer* (1972) 408 U.S. 471. There, the U.S. Supreme Court ruled a parolee is entitled to a preliminary review by an independent officer, at or near the time and place of the parolee's arrest, to determine if "reasonable ground exists for revocation of parole. . . ." (*Id.* at p. 485.) The court did not require the determination be made by a judicial officer. (*Id*. at p. 486.) At the probable cause hearing, the parolee must be given notice of the charges and an opportunity to speak or present evidence on his or her own behalf and cross-examine any accusers. (*Id*. at pp. 486-487.) The manner in which these due process requirements are implemented, however, was left to the discretion of each state. (*Id.* at pp. 488-489.)

Although *Morrissey* addressed the parole revocation process, the California Supreme Court applied *Morrissey's* due process requirements, including probable cause determinations, to our state's *probation* revocation process. (*People v. Vickers* (1972) 8 Cal.3d 451.) Shortly thereafter, our Supreme Court ruled that because of the due process usually afforded by California's judicial procedure, courts need not conduct formal probable cause hearings for probation violations. (*People v. Coleman* (1975) 13 Cal.3d 867, 894-895.) "Since 'the precise nature of the proceedings for [probation] revocation need not be identical' to the bifurcated *Morrissey* parole revocation procedures, so long as 'equivalent due process safeguards' assure that a probationer is not arbitrarily deprived of his conditional liberty for any significant period of time (*People v. Vickers*, *supra*, 8 Cal.3d at p. 458), a unitary hearing will usually suffice in probation revocation cases to serve the purposes of the separate preliminary and formal revocation hearings outlined in *Morrissey*." (*Coleman*, at pp. 894-895; footnote omitted.)

Following realignment, the Legislature amended sections 1203.2 to apply probation revocation procedures to violations of PRCS. The legislation was intended to promote uniform revocation procedures and "simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer* (1972) 408 U.S. 471, and *People v. Vickers* (1972) 8 Cal.3d 451, and their progeny." (2011 Realignment Legislation, SB 1023, Sec. 2(b), effective June 27, 2012.) Because courts need not conduct formal probable cause hearings for probation revocations, they need not conduct them for PRCS revocations.

It is important to observe the distinction between a probable cause "determination," and a probable cause "hearing." Probable cause "determinations" are made at a number of stages in the revocation process. To the extent courts issue arrest warrants, a probable cause determination is made similar to the requirements of section 813(a). Finally, although a probable cause determination is not expressly required by section 1203.2, prudent courts may wish to make such a finding at the time of the supervised person's arraignment on the violation, particularly when the arrest was not by warrant. The finding may be based on a petition to revoke PRCS or its supporting report.

People v. Woodall (2013) 216 Cal.App.4th 1221 addressed the matter of probable cause determinations in the context of probation violations. "Under the reasoning of [*People v. Amor* (1974) 12 Cal.3d 20], there is no basis to find section 1203.2 constitutionally invalid on its face based solely on the fact that it does not spell out the requirement of a preliminary

probable cause hearing. The courts have long recognized that a probationer is entitled to a probable cause hearing or its functional equivalent if he or she is to be detained for any significant period of time before a final revocation hearing. (*Coleman, supra*, 13 Cal.3d at pp. 894-895; *People v. Hawkins* [(1975) 44 Cal.App.3d 958,] 966; *People v. Gifford* (1974) 38 Cal.App.3d 89, 91; *People v. Andre* (1974) 37 Cal.App.3d 516, 521-522.) Given this well-established case authority, we construe section 1203.2 to impliedly require a probable cause hearing if there is any significant delay between the probationer's arrest and a final revocation hearing." (*Woodall*, pp. 1237-1238.)

A number of the procedural rights enunciated in *Morrissey* formed the basis of a federal class action lawsuit brought against the state on behalf of parolees, including the right to a probable cause determination and hearing. (*Valdivia, et al. v. Schwarzenegger.*, No CIV S-94-0671 (*Valdivia*); (stipulated order for permanent injunctive relief issued in 2003.) For reasons discussed below, *Valdivia* does not apply to the courts. (See discussion of *Valdivia* in Question 21, *infra*.)

14. What are the sanctions available to the court if the inmate is found in violation of PRCS?

If the inmate is found in violation of PRCS, the court has three basic options:

- The court may reinstate the inmate on PRCS, with a modification of his conditions of supervision, including incarceration up to 180 days. The court may impose successive 180-day terms of custody, so long as the total of the custodial and supervision time does not exceed the three-year limit on PRCS. During the custody period, the inmate will receive normal conduct credits under section 4019 of a total of four days for every two days served.
- The court may revoke and terminate PRCS and commit the inmate to jail for up to 180 days. The inmate will be entitled to conduct credits under section 4019. The total of the custodial and supervision time may not exceed three years. If the court permanently revokes PRCS and commits the defendant to county jail for any remaining term, the court should order into execution any PRCS revocation fine ordered as part of the original sentence under section 1202.4(b).
- The court may refer the inmate to a reentry court pursuant to section 3015, or other evidence-based program.

The court may not return the inmate to state prison. (§ 3458.)

15. Is there a new restitution fine for PRCS?

Yes. Under section 1202.45(b), the court must assesses a PRCS revocation restitution fine at the same time and in the same amount as the court assesses the restitution fine under section 1202.4(b). (§ 1202.45(b).) If the court permanently revokes PRCS and commits the defendant to county jail for any remaining term, the court should order into execution any PRCS revocation fine ordered as part of the original sentence under section 1202.45(b).

16. **Is there a process where the inmate may simply accept the sanctions recommended by the supervising agency without the need for a court hearing?**
Yes. At any stage of the process, the inmate may waive, in writing, his right to counsel and a court hearing, admit the violation, and accept the proposed sanction. (§ 3455(a).)

17. **Are the proceedings on the petitions for revocation open to the public?**
Yes. Court proceedings are presumptively open to the public unless expressly made confidential. Since the criminal justice realignment legislation is silent on this issue, these proceedings are presumed open.

18. **Will the court be involved in an inter-county transfer when a person subject to PRCS is determined to live in another county?**
No. Section 3460 establishes a process for the transfer by the supervising agency upon the agency's determination that the person no longer permanently resides in that agency's county. The court is not involved in this process.

19. **Has the Judicial Council adopted rules and forms to govern PRCS revocation procedures?**
Yes. Please note, however, that rule 4.450 has been repealed and several Judicial Council forms have been revised since originally adopted.

Rules: Effective October 28, 2011, the Judicial Council adopted rules 4.540 and 4.541 of the California Rules of Court to govern PRCS revocation hearings. Rule 4.540 prescribed specific procedural requirements for revocations, while rule 4.541 prescribed the minimum contents of supervising agency reports. After subsequent legislation applied longstanding probation procedures to revocations of PRCS, the distinct procedural requirements for PRCS revocations imposed by rule 4.540 became unnecessary, so that rule was later repealed. Rule 4.541, however, is still effective and has been expanded to also apply to probation, parole, and mandatory supervision reports. The full text of rule 4.541 can be viewed at this link: http://www.courts.ca.gov/cms/rules/index.cfm?title=four&linkid=rule4_541

Forms: The Judicial Council has also adopted three forms for use during revocation proceedings.

The *Petition for Revocation* (form CR-300) is designed for use by supervising agencies to initiate PRCS and parole revocation proceedings. The form is designed to provide courts with sufficient information to schedule and adjudicate revocation proceedings. Form CR-300 may be viewed and printed at this link: http://www.courts.ca.gov/documents/cr300.pdf

The *Warrant Request and Order* (form CR-301) is available for use by courts and supervising agencies to process requests and orders for warrants for persons supervised on PRCS and parole. The form includes data fields for tolling supervision, declarations by the supervising agency representative, and related orders by the court. Form CR-301 can be viewed and printed at this link: http://www.courts.ca.gov/documents/cr301.pdf

The *Request and Order to Recall Warrant* (form CR-301) is designed for use by courts and supervising agencies to request and order the recall of persons supervised on PRCS and

parole. The form includes data fields for reinstating supervision and related court orders. The form can be viewed and printed at this link: http://www.courts.ca.gov/documents/cr302.pdf

20. Do the procedural requirements of the federal Valdivia consent decree apply to the courts' revocation procedures?

No. In 1994 a federal class action lawsuit was filed in the U.S. District Court in the Eastern District of California, alleging that then-existing parole revocation procedures violated due process rights of California parolees. The name of the case is *Valdivia, et al. v. Schwarzenegger*, No CIV S-94-0671 (*Valdivia*). In 2004, the parties to the action entered into an agreement whereby the court entered a consent decree granting plaintiffs a permanent injunction, including various procedural protections for parolees. Among them are: 1) the right to appointed counsel beginning when the parolee is offered a stipulated disposition; 2) not later than 48 hours after a parole hold, the parole agent must confer with his or her supervisor regarding probable cause to continue the hold; 3) a probable cause hearing held within 10 business days after the parolee is served with the notice of charges (by the third day after the placement of the hold); and 4) a final revocation hearing within 35 calendar days of placement of the parole hold (in recognition of Marsy's Law, the time limit for the hearing subsequently was changed to 45 days).

Any questions regarding the application of *Valdivia* are now moot. By an order entered July 3, 2013, the federal court determined that with the enactment of the new parole revocation procedures under the realignment legislation, the lawsuit became moot as of July 1, 2013. On November 21, 2013, the court entered its order decertifying the class and dismissing the action.

Based on the action taken by the federal court, the injunction issued with the consent decree will no longer be enforced. The constitutionality of the new revocation procedures will now be measured against the standards set in *Morrissey v. Brewer* (1972) 408 U.S. 471. The rights "include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial." (*Morrissey* at p. 488.)

21. Does section 1368 regarding competence to stand trial apply to revocation proceedings?

Likely not. Section 1367(a) provides that "[a] person cannot be tried or adjudged to punishment while that person is mentally incompetent." Section 1368(a) sets the procedural stage: "If, during the pendency of an action *and prior to judgment*, a doubt arises in the mind of the judge as to the mental competence of the defendant," the court is to institute proceedings to determine the mental status of the defendant. (Emphasis added.) In *People v.*

Humphrey (1975) 45 Cal.App.3d 32, 36-37, the appellate court applied section 1368 procedures to a defendant who was before the court on a probation violation. The court there observed that imposition of sentence had been suspended and the defendant had been placed on probation. Because sentence in the formal sense had not been imposed, the court was obligated to undertake a competency determination once a doubt had been declared. *(Id*.)

It appears likely that the procedures under section 1368 do not apply to persons on mandatory supervision, PRCS, and parole supervision. All of these persons have been formally sentenced, yet unquestionably they face legal proceedings that may lead to further punishment. The issue appears to be a matter of first impression. Please note that several bills are pending in the Legislature that would address various competency procedures, including a bill to apply some form of competency procedure to proceedings to revoke mandatory supervision, PRCS, and parole. This FAQ will be updated when more information is available.

C. PAROLE REVOCATION (§§ 3000.08, 1203.2)

1. What is the effective date of the new parole revocation procedures?

On July 1, 2013, courts assumed responsibility for the adjudication of all parole violations, regardless of when the parolees committed the alleged violation, the date of the underlying crime, the nature of the underlying crime, or when they were sentenced to state prison. (§ 3000.08(a).) But see Question 6, which addresses revocation proceedings pending on July 1, 2013.

2. What is the role of the courts and the Department of Corrections and Rehabilitation (CDCR), Division of Adult Parole Operations (DAPO), with respect to persons on parole after July 1, 2013?

Parolees are "subject to parole supervision by [CDCR] and the jurisdiction of the court in the county where the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody. . . ." (§ 3000.08(a).) DAPO will continue to be responsible for supervision of persons placed on parole after July 1, 2013. Revocation proceedings, however, are no longer administrative proceedings conducted by the Board of Parole Hearings (BPH). Instead, parole revocation proceedings will be adversarial judicial proceedings conducted in the superior courts under section 1203.2.

3. Who is covered by the new procedures?

Parolees released from state prison after serving a term or whose current prison sentence was deemed served under section 2900.5 for the following crimes are under the jurisdiction of the courts for purposes of adjudicating parole violations (§ 3000.08(a)):

- Serious or violent felonies described in sections 1192.7(c) and 667.5(c).
- Crimes sentenced under sections 667(e)(2) or 1170.12(c)(2) – defendants sentenced as third strike offenders under the Three Strikes law.
- Any crime where the parolee is classified as a "high risk sex offender." (§ 3000.08(a)(4).) Although not specifically referenced in section 3000.08(a)(4), section 13885.4 defines "high risk sex offenders" as "those persons who are required to register as sex offenders pursuant to the Sex Offender Registration Act and who have been assessed with a score indicating a 'high risk' on the SARATSO identified for that person's specific population as set forth in Section 290.04, or who are identified as being at a high risk of reoffending by the Department of Justice, based on the person's SARATSO score when considered in combination with other, empirically based risk factors." The STATIC-99R is the approved assessment tool for adult males; a score of 6 points or more constitutes a "high risk" of reoffending.
- Any crime where the parolee is required as a condition of parole to undergo treatment with the State Department of State Hospitals. These are persons with a severe mental disorder not in remission as described in section 2962.

All other parolees are to be released from prison to PRCS. (§ 3000.08(b).)

4. **If a person is wrongfully placed under parole supervision, when the person should be supervised under PRCS, is there a way to correct the error?**
   Yes. If an inmate is released from prison, but wrongfully placed on parole instead of on PRCS, there is a 60-day window within which a correction must occur. "Any person released to parole supervision pursuant to subdivision (a) shall, regardless of any subsequent determination that the person should have been released [on PRCS] pursuant to subdivision (b), remain subject to subdivision (a) after having served 60 days under subdivision (a)." (§ 3000.08(l).) A similar rule is provided by section 3451(d) for persons wrongfully released on PRCS.

5. **What is the length of parole supervision?**
   For most parolees, the parole period is three years. (§ 3000(b).) Some parolees with life terms are subject to a parole period of five or ten years. (§§ 3000(b)(1) and (b)(3).) The following parolees, however, remain on parole for three years, or the prescribed term, whichever is greater (§ 3000.08(i)):

   - A person required to register as a sex offender who was subject to a period of parole longer than three years at the time the underlying offense was committed. (§ 3000(b)(4)(A).)
   - A person subject to parole for life under section 3000.1 at the time the underlying offense was committed.

   In addition to the basic parole term, the parolee also may be subjected to an extended term because of absconding or serving time in custody on a violation. When a parolee absconds, no time in that status until the parolee returns to custody will be credited against the term of parole. (§ 3064.) Furthermore, no time spent in custody on a parole violation is credited against the parole term. (§ 3000(b)(6).) In such circumstances, however, the overall parole period for persons serving a three-year term cannot exceed four years from the initial parole. (§ 3000(b)(6)(A).) For persons serving a five-year term, the period may not exceed seven years. (§ 3000(b)(6)(B).**)** For persons serving a ten-year term, the period may not exceed 15 years. (§ 3000(b)(6)(C).)

   Courts are required to adjudicate parole violations for the entire period of parole, regardless of length.

6. **Who adjudicates revocation proceedings that are pending on July 1, 2013?**
   The BPH must adjudicate revocation proceedings for parolees who have (1) a pending adjudication for a parole violation as of July 1, 2013, and (2) an earlier parole proceeding that is reopened after July 1, 2013. (§ 3000.08(j).)

7. **Who actually supervises parolees?**
   DAPO provides physical supervision of persons on parole. In contrast, county probation officers supervise persons on PRCS.

8. **If there is a suspected parole violation, who has the authority to arrest the parolee?**
   A parole agent or peace officer. If, during the parole period, a parole agent or peace officer has probable cause to believe the parolee violated a condition of parole, the parolee is

subject to arrest without a warrant or other process. Specifically, "at any time until the final disposition of the case, [the parole agent or peace officer may] arrest the person and bring him or her before the court, or the court may, in its discretion, issue a warrant for that person's arrest pursuant to Section 1203.2." (§ 3000.08(c).) Furthermore, section 1203.2(a) provides, in relevant part, that "[a]t any time during the period of supervision . . . , if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest." Section 1203.2(f) defines "court" to include a judge, magistrate, or revocation hearing officer as described in Government Code section 71622.5.

Normally DAPO will request an arrest warrant only when the parolee has absconded or committed a new serious crime.

9. Will courts be required to issue warrants for parole violations after normal court hours?

Likely, yes. While parole agents should endeavor to process requests for warrants during normal business hours, in the unusual circumstance where there is after-hours urgency, courts are likely obligated to process warrants in accordance with the on-call magistrate procedure provided in section 810. The courts, however, have flexibility in determining who may issue the warrants. The duty may be assigned to a sitting or assigned judge, magistrate, or revocation hearing officer as described in Government Code section 71622.5. (§§ 1203.2(a) and (f).)

10. Will parole holds be used after July 1, 2013?

Yes. Parole holds may be placed by the supervising parole agent pending resolution of an alleged parole violation pursuant to section 3056. Although there is no language in section 3056 expressly allowing "parole holds," the section provides that "[a] parolee awaiting a parole revocation hearing may be housed in a county jail awaiting revocation proceedings." CDCR and local jails have interpreted this provision as authorizing parole holds. Holds placed under these circumstances do not involve the courts. The authority to place a hold is in addition to the power of DAPO to arrest, discussed in Question 11, *infra*.

The parole hold will be lifted when DAPO imposes intermediate sanctions or upon the release of a person after completion of any custody time ordered after revocation of parole. Courts have the ability to override the parole hold by setting bail or releasing the parolee on his or her own recognizance, once the matter is before a court on a petition to revoke parole.

11. Who determines the custody status of parolees pending the filing of a petition on a parole violation?

Section 1203.2(a) provides, in relevant part, that "[a]t any time during the period of supervision . . . , if any probation officer, parole officer, or peace officer has probable cause to believe that the supervised person is violating any term or condition of his or her supervision, the officer may, without warrant or other process and at any time until the final disposition

of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for his or her rearrest."

Section 3056 provides, in relevant part: "A parolee awaiting a parole revocation hearing may be housed in a county jail while awaiting revocation proceedings." Section 3056 has commonly been understood to constitute a "parole hold" for persons arrested on an alleged parole violation. Prior to realignment, such holds were imposed by DAPO as a part of the administrative adjudication of parole violations and were considered to control an inmate's custody status apart from the court's ability to set bail. Section 3056 was not eliminated by the realignment legislation.

In this post-realignment era, the exact relationship between sections 1203.2, 3000.08 and 3056 is not entirely clear. With the enactment of section 3000.08, the adjudication of parole violations is no longer strictly an administrative proceeding conducted by the BPH, but now may include a judicial proceeding under section 1203.2. The shared responsibility to adjudicate parole violations may have altered the traditional status of the parole hold and may have established the ability of the court to address the custody status of persons being held in custody on parole violations.

The timeframe of uncertainty is the period between the parolee's initial arrest on a suspected violation and the filing of a petition to revoke or modify parole under section 1203.2. In that initial time period, it is unclear whether DAPO, the court, or both have jurisdiction to determine the parolee's custody status. DAPO has informally conceded, and no one seems to dispute, the court's jurisdiction once a violation petition has been filed.

Please note that the Judicial Council's Criminal Law Advisory Committee has preliminarily developed a legislative proposal that would, among other things, clarify these uncertainties by authorizing courts to determine a parolee's custody status regardless of whether a parole hold has been issued. The proposal, which is currently circulating for public comment, can be viewed and commented on at the following link:
http://www.courts.ca.gov/documents/LEG14-06.pdf

12. Are parolees entitled to bail?

No. Parolees have no right to bail on a pending violation. (*In re Law* (1973) 10 Cal.3d 21, 26.) However, once a court has jurisdiction over a petition to revoke parole, the court may set bail or release the parolee on his or her own recognizance, if deemed appropriate.

13. Who has the authority to issue arrest warrants on parole violations on and after July 1, 2013?

The courts. On and after July 1, 2013, the sole authority to issue warrants for the return to actual custody of any parolee released on parole rests with the courts pursuant to section 1203.2. The only exception is for an escaped parolee or a parolee released prior to his or her scheduled release date who should be returned to custody. (§ 3000(b)(9)(A).) However, any warrant issued by the BPH before July 1, 2013, must remain in full force and effect until the warrant is served or it is recalled by the BPH. All parolees arrested on a warrant issued by the BPH will be subject to review by the BPH before the filing of a petition with the courts to revoke parole. (§ 3000(b)(9)(B).)

Arrest warrants may be issued by a sitting or assigned judge, magistrate, or revocation hearing officer as described in Government Code section 71622.5. (§§ 1203.2(a) and (f).)

14. Should the courts summarily revoke parole when they issue a warrant?

Probably. Because parole revocation proceedings are governed by section 1203.2, most likely the courts should summarily revoke parole in the same manner as they summarily revoke probation or other forms of supervision. Summary revocation will have the effect of suspending the remaining supervision period. (§ 1203.2(a).)

15. When a parole agent seeks an arrest warrant for a parole violation, must the request be supported by a petition and/or report?

No, but the request should include sufficient facts to support a finding of probable cause for issuance of the warrant. Section 3000.08(d), governing intermediate sanctions for parole violations, does not require the parole agent to file a petition or report in connection with a request for an arrest warrant. Indeed, section 3000.08(c) expressly allows the arrest of a parolee with or without a warrant. While no petition is required for the issuance of a warrant, the warrant process itself presumes a judicial officer will make at least a preliminary determination that there is probable cause for arrest. Accordingly, the request for an arrest warrant should be accompanied by at least a minimal declaration of the nature of the violation. The Judicial Council has approved the optional use of *Warrant Request and Order* (form CR-301) for requesting the issuance of warrants based on a violation of PRCS or parole; a portion of the form addresses the matter of probable cause.

Although the case concerns the issuance of a warrant for probation violations under section 1203.2, *People v. Woodall* (2013) 216 Cal.App.4th 1221, likely is fully applicable to warrants for parole violations under section 1203.2. "To effectuate the arrest of a probationer who has violated probation, section 1203.2 provides . . . [that] a court may issue a warrant for the arrest of a probationer. Typically, a court will issue a bench warrant for the probationer's arrest when the authorities report to the court that a probation violation has occurred. [Citations.] There is nothing in the express language of section 1203.2 requiring that the report to the court be made by oath or affirmation. [Citations.]" (*Woodall*, at pp. 1230-1231.) *Woodall* goes on to emphasize that probationer warrants are not scrutinized in the same manner as traditional arrest warrants because probationers have diminished liberty expectations in contrast to other citizens. Probation warrants, for example, need not be based on a probation report made under oath or affirmation because section 1203.2 does not expressly require it. (*Woodall*, at pp. 1231-1232.) Nor do federal due process requirements for warrants, including the "warrant clause," apply to the arrest of probationers: "A probationer, by the very nature of the probation grant, is on notice that he or she is subject to the supervision of the government and that the liberty granted by the government is conditioned on compliance with probation conditions. To effectively supervise a probationer, the government needs to be able to expeditiously arrest the probationer in the event of noncompliance with probation conditions. Considering the government's need to act expeditiously while monitoring the probationer and the probationer's reduced expectation of liberty, we conclude a probationer falls outside the ambit of the warrant clause." (*Woodall*, at p. 1233.)

If DAPO seeks an arrest warrant in connection with a violation that will be handled informally, the courts may be asked later to recall the warrant. The request should be handled administratively, without the need for a court hearing. The Judicial Council has approved the optional use of *Request and Order to Recall Warrant* (form CR-302) for requesting the recall of a PRCS or parole warrant.

16. Must warrants for parolees be in strict compliance with sections 813, et seq., applicable to arrest warrants?

No, at least not in the strict sense. Under current case law, warrants for probationers under section 1203.2 are not considered traditional "arrest warrants" governed by sections 813 to 829; instead, they are considered "bench warrants" and courts are vested with wide discretion to order bench warrants for probationers upon review of reports from probation officers. (*People v. Hawkins* (1975) 44 Cal.App.3d 958, 966.) As noted in the answer to Question 15, much of the formality of securing an arrest warrant is not required for the issuance of a warrant on a supervision violation. The form of warrant traditionally used by a county for probation violations likely will be sufficient for warrants based on a parole violation. The warrant should properly identify the person to be arrested, and be supported by a declaration from the person seeking the warrant sufficient to establish probable cause for the arrest.

17. Must warrants based on a violation of supervision be issued on paper and signed by a judge?

No. Section 1203.2 does not expressly require that warrants for violations of supervision be signed by a judge, nor do any of the various statutes that prescribe the form and content of bench warrants generally. (See, e.g., §§ 981–2, 985–6, 1195–7.) In addition, the court in *People v. Stephens*, expressly rejected a probationer's contention that warrants under section 1203.2 must be signed by a judge, as opposed to simply issued by a clerk after being *ordered* by a judge. (*People v. Stephens* (1968) 266 Cal.App.2d 661, 664, fn. 1.)

In addition, unlike arrest warrants, which courts are required to print under certain circumstances (see, e.g., § 817(c)(2)(C)(i) [requiring electronically transmitted arrest warrants based on probable cause to be printed]), there appears to be no comparable statutory authority that requires bench warrants under section 1203.2 to be printed in paper form. Rather, courts are statutorily authorized to create, maintain, and preserve trial court records in electronic form (Gov. Code, § 68150(a)), including bench warrants. (Gov. Code, §§ 68151(a), 68152(j).)

Accordingly, in the absence of clear authority requiring otherwise, it appears that bench warrants under section 1203.2 need not be printed in paper form, particularly when (1) the underlying order for warrant is signed by a judge and filed in the court file, thereby formally preserving the court's findings as part of the record on the case, and (2) the electronic transmission of all necessary warrant information and activation of the warrant via the court's case management system obviates the need for the warrant in paper form.

18. Does DAPO have authority to arrest on a suspected parole violation?

Yes. DAPO's authority to supervise parolees is expressly provided by statute. (§ 3000.08(a)**)** [specifying that parolees "shall be subject to parole supervision by" DAPO].) Section 3000.08(c) gives the parole officer the authority to arrest the parolee if there is probable cause to believe the parolee is in violation of the terms of parole, "without a warrant or other process . . . and bring him or her before the court." The parole officer also may request a warrant pursuant to section 1203.2. Similarly, section 1203.2 provides that if a supervising officer has probable cause to believe that the supervised person is in violation of his or her conditions of supervision, the person may be arrested "without warrant or other process . . . and [brought] before the court."

19. Does the court have the authority to override parole holds placed under section 3056?

Likely, at least after the filing of a petition for revocation of parole. Although DAPO has independent statutory authority to detain parolees, the realignment legislation likely provides courts with sufficient jurisdiction to control the custody status of parolees, including overriding a parole hold, once a petition has been filed with the court.

Prior to the enactment of the realignment legislation, the adjudication of parole violations was solely an administrative proceeding conducted by DAPO – i.e., the court was not involved. (§ 3060 [DAPO has "full power to suspend or revoke any parole"; repealed effective July 1, 2013].) When the realignment legislation was enacted, however, the court became directly involved in the adjudication of parole violations under the provisions of sections 1203.2 and 3000.08. While section 3056 remains as authority for DAPO to detain parolees suspected of parole violations in the county jail pending a determination of whether to impose intermediate sanctions or pursue a formal revocation with the court, sections 1203.2 and 3000.08 govern the broader revocation *process* for bringing the matter before the court. Section 1203.2(a) provides that if the supervising officer has probable cause to believe the parolee has violated a condition of supervision, "the officer may, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person *and bring him or her before the court*. . . . " (Emphasis added.) Similarly, section 3000.08(c) provides that if the parole agent has probable cause to believe the parolee has violated a condition of supervision, "the [parole] agent . . . may, without warrant or other process and at any time until the final disposition of the case, arrest the person *and bring him or her before the court*. . . ." (Emphasis added.) Giving the emphasized language its most logical effect, it seems the reason for requiring the person to be brought before the court is to avoid the arrested person languishing in custody without any judicial involvement. Stated differently, the parolee "'. . . shall not be detained' pending 'the hearings mandated by *Morrissey* and *Vickers* for an 'undue time."'" (*People v. Hawkins* (1974) 44 Cal.App.3d 958, 966, quoting from *People v. Gifford* (1974) 38 Cal.App.3d 89, 91.)

It seems axiomatic that once the parolee has been "brought before the court," the court has the authority to control the parolee's custody status consistent with the court's authority over other pending revocation matters under the court's jurisdiction, including setting of bail and release conditions, and periodically reviewing the parolee's custody status. Given the new structure for adjudicating violations of supervision, and the shift of revocation responsibilities from CDCR to courts, it is likely the court's authority to control the custody

status of parolees during the pendency of court revocation proceedings would be superior to any hold established by section 3056.

Please note that the Judicial Council's Criminal Law Advisory Committee has preliminarily developed a legislative proposal that would, among other things, clarify these uncertainties by authorizing courts to determine a parolee's custody status regardless of whether a parole hold has been issued. The proposal, which is currently circulating for public comment, can be viewed and commented on at the following link:
http://www.courts.ca.gov/documents/LEG14-06.pdf

20. Is there a deadline for bringing the arrested parolee before the court?

There is no specified time limit. Neither sections 1203.2 nor 3000.08 specify when the parolee must be brought to court or when a petition to revoke supervision must be filed. Before realignment, section 825, which generally applies to arrests for new charges and requires that a person arrested on a warrant be brought before a magistrate within 48 hours, was held to apply to warrantless arrests of parolees, but only as to any new charges they may be facing. (*People v. Hughes* (1974) 38 Cal.App.3d 670, 673–4.) While *People v. Gordon* (1978) 84 Cal.App.3d 913, 922 agrees with *Hughes* as to the applicability of section 825 to warrantless arrests of parolees, it also observes that once the parolee is subject to a hold under section 3056, the parolee is no longer pending arraignment, but is in the actual custody of CDCR.

Although the deadline for arraignment under section 825 only applies to new charges faced by parolees , it is clear that the circumstances of the arraignment for a violation of a parolee after arrest, with or without a warrant, now become a court matter under sections 1203.2 and 3000.08. As noted in *People v. Woodall* (2013) 216 Cal.App.4th 1221, 1236: "When applying *Morrissey*'s principles to California's probation revocation proceedings, the courts have concluded that a trial court may summarily revoke probation to preserve jurisdiction and acquire physical custody of the offender, as long as the probationer is accorded a hearing or hearings that conform to *Morrissey* standards after being taken into custody. (*People v. Vickers* (1972) 8 Cal.3d 451, 460–461, 105 Cal.Rptr. 305, 503 P.2d 1313 (*Vickers*); *People v. Clark* (1996) 51 Cal.App.4th 575, 581, 59 Cal.Rptr.2d 234; *People v. Hawkins, supra,* 44 Cal.App.3d at pp. 965–966, 119 Cal.Rptr. 54.) Further, although a preliminary probable cause hearing distinct from a final revocation hearing may be required in some cases, two hearings are not necessarily required in all cases. (*People v. Coleman* (1975) 13 Cal.3d 867, 894–896, 120 Cal.Rptr. 384, 533 P.2d 1024.) The *Coleman* court explained that *Morrissey* does not mandate the precise procedures that a state must follow, so long as ' "equivalent due process safeguards" assure that a probationer is not arbitrarily deprived of his conditional liberty for any significant period of time....' (*Coleman, supra,* at p. 894, 120 Cal.Rptr. 384, 533 P.2d 1024.) For example, there is no need for a probable cause hearing if a final revocation hearing 'with its full panoply of *Morrissey* procedural rights occurs relatively soon after the probationer has been deprived of his conditional liberty,' or if a preliminary hearing held on new criminal charges committed by the probationer can serve as a preliminary revocation hearing as well. (*Id.* at pp. 894–895, 120 Cal.Rptr. 384, 533 P.2d 1024; *People v. Hawkins, supra,* 44 Cal.App.3d at pp. 966–967, 119 Cal.Rptr. 54.)" (See also *People v. Gifford* (1974) 38

Cal.App.3d 89, 91 [*Morrissey* compels an early determination of probable cause to avoid detention for an "undue time"].)

Given the uncertainties regarding the applicable time limit for arraignment on a parole violation and the extent of the court's authority under sections 1203.2 and 3000.08, a prudent court may wish to establish a policy of arraigning a custody parolee within 48 hours, whether or not the parolee was arrested on a warrant, whether or not new charges are involved, and whether or not DAPO places a section 3056 hold on the parolee. Conducting the arraignment within such a short period after arrest will promote due process and will afford the court an early opportunity to monitor a parolee's custody status.

Please note that the Judicial Council's Criminal Law Advisory Committee has preliminarily developed a legislative proposal that would, among other things, require supervising agencies to file a petition to revoke supervision within five court days of arrest. The proposal, which is currently circulating for public comment, can be viewed and commented on at the following link: http://www.courts.ca.gov/documents/LEG14-06.pdf

21. Does the 10-day period of "flash incarceration" have any relationship to the time the defendant must be brought before the court?

No. One of the intermediate sanctions available to DAPO when a condition of parole has been violated is "flash incarceration" - a period of one to ten days of straight custody time in jail. (§§ 3000.08(d) and (e).) The maximum of ten days relates to the extent of the sanction that may be imposed; it does not relate the any maximum period of detention prior to the filing of petition for revocation of parole. As observed above, DAPO may decide not to impose any custody sanction, but focus on the need to put the parolee into other rehabilitative programs. The determination of the appropriate period a person may be detained prior to the filing of a revocation petition proceeds independently of the maximum of ten days of "flash incarceration."

22. Must there be a probable cause hearing held at or near the time the parolee is taken into custody on a parole violation? If so, who makes the determination?

No. The right to a probable cause hearing is discussed in the seminal case of *Morrissey v. Brewer* (1972) 408 U.S. 471. There, the U.S. Supreme Court ruled the parolee is entitled to a preliminary review by an independent officer, at or near the time and place of the parolee's arrest, to determine if "reasonable ground exists for revocation of parole. . . ." (*Id.* at p. 485.) The court did not require the determination be made by a judicial officer. (*Id*. at p. 486.) At the probable cause hearing, the parolee must be given notice of the charges and an opportunity to speak or present evidence on his or her own behalf and cross-examine any accusers. (*Id*. at pp. 486-487.) The manner in which these due process requirements are implemented, however, was left to the discretion of each state. (*Id.* at pp. 488-489.)

Although *Morrissey* addressed the parole revocation process, the California Supreme Court applied *Morrissey's* due process requirements, including probable cause determinations, to our state's *probation* revocation process. (*People v. Vickers* (1972) 8 Cal.3d 451.) Shortly thereafter, our Supreme Court ruled that because of the due process usually afforded by California's judicial procedure, courts need not conduct formal probable cause hearings for probation violations. (*People v. Coleman* (1975) 13 Cal.3d 867, 894-895.) "Since 'the precise

nature of the proceedings for [probation] revocation need not be identical' to the bifurcated *Morrissey* parole revocation procedures, so long as 'equivalent due process safeguards' assure that a probationer is not arbitrarily deprived of his conditional liberty for any significant period of time (*People v. Vickers*, *supra*, 8 Cal.3d at p. 458), a unitary hearing will usually suffice in probation revocation cases to serve the purposes of the separate preliminary and formal revocation hearings outlined in *Morrissey*." (*Coleman*, at pp. 894-895; footnote omitted.)

Following realignment, the Legislature amended sections 1203.2 and 3000.08 to apply probation revocation procedures to parole revocations. The legislation was intended to promote uniform parole revocation procedures and "simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer* (1972) 408 U.S. 471, and *People v. Vickers* (1972) 8 Cal.3d 451, and their progeny." (2011 Realignment Legislation, SB 1023, Sec. 2(b), effective June 27, 2012.) Because courts need not conduct formal probable cause hearings for probation revocations, they need not conduct them for parole revocations.

It is important to observe the distinction between a probable cause "determination," and a probable cause "hearing." Probable cause "determinations" are made at a number of stages in the revocation process. Before taking action against a parolee, DAPO's internal procedures require a probable cause determination be made by a parole agent's supervisor. Intermediate sanctions may be imposed by DAPO "[u]pon review of the alleged violation and a finding of good cause that the parolee has committed a violation of law or violated his or her conditions of parole. . . ." (§ 3000.08(d).) To the extent courts issue arrest warrants, a probable cause determination is made similar to the requirements of section 813(a). Finally, although a probable cause determination is not expressly required by section 1203.2, prudent courts may wish to make such a finding at the time of the parolee's arraignment on the violation, particularly when the arrest was not by warrant. The finding may be based on a petition to revoke parole or its supporting report.

People v. Woodall (2013) 216 Cal.App.4th 1221, addressed the matter of probable cause determinations in the context of probation violations. "Under the reasoning of [*People v. Amor* (1974) 12 Cal.3d 20], there is no basis to find section 1203.2 constitutionally invalid on its face based solely on the fact that it does not spell out the requirement of a preliminary probable cause hearing. The courts have long recognized that a probationer is entitled to a probable cause hearing or its functional equivalent if he or she is to be detained for any significant period of time before a final revocation hearing. (*Coleman, supra*, 13 Cal.3d at pp. 894-895; *People v. Hawkins* [(1975) 44 Cal.App.3d 958,] 966; *People v. Gifford* (1974) 38 Cal.App.3d 89, 91; *People v. Andre* (1974) 37 Cal.App.3d 516, 521-522.) Given this well-established case authority, we construe section 1203.2 to impliedly require a probable cause hearing only if there is significant delay between the probationer's arrest and a final revocation hearing." (*Woodall*, pp. 1237-1238.)

A number of the procedural rights enunciated in *Morrissey* formed the basis of a federal class action lawsuit brought against the state on behalf of parolees, including the right to a probable cause determination and hearing. (*Valdivia, et al. v. Schwarzenegger.*, No CIV S-94-0671 (*Valdivia*); (stipulated order for permanent injunctive relief issued in 2003.) For reasons

discussed below, *Valdivia* does not apply to the courts. (See discussion of *Valdivia* in Question 48, *infra*.)

23. Must DAPO attempt to informally resolve parole violations before filing a formal petition in the courts?

Generally, yes. After finding good cause that the parolee has violated a condition of parole, DAPO may add additional conditions of parole, including treatment and rehabilitation services, incentives, and "immediate, structured, and intermediate sanctions. . . ." (§ 3000.08(d).) Furthermore, section 3000.08(f) requires DAPO to determine that intermediate sanctions are not appropriate before filing a formal petition to revoke parole. Sometimes, as where a new felony offense has been charged or where the parolee has absconded, DAPO may make such a determination without exhausting intermediate sanctions.

24. What is "flash incarceration?"

"Flash incarceration" is authorized by section 3000.08(d) as an intermediate sanction. Section 3000.08(e) defines it as "a period of detention in county jail due to a violation of a parolee's conditions of parole. The length of the detention period can range between one and 10 consecutive days. Shorter, but if necessary more frequent, periods of detention for violations of a parolee's conditions of parole shall appropriately punish a parolee while preventing the disruption in a work or home establishment that typically arises from longer periods of detention."

The parolee is not given "conduct" credits under section 4019. DAPO is authorized to impose "flash incarceration" without court involvement.

Note: Despite the statutory authority described above, on May 28, 2013, DAPO submitted a declaration in federal district court in the *Valdivia* lawsuit (*Valdivia v. Brown*, CIV S-94-671) stating: "Despite DAPO's authority to impose terms of flash incarceration upon parolees under its supervision on or after July 1, 2013, DAPO will not utilize flash incarceration pursuant to Penal Code sections 3000.08 and 1203.2(g)." On November 21, 2013, the court in *Valdivia* entered its order decertifying the class and dismissing the action. (See discussion of *Valdivia* in Question 48, *infra*.) It is not known whether DAPO will change its position in light of the dismissal. It is unclear whether DAPO's voluntary decision not to use flash incarceration will be relevant to its determination that intermediate sanctions are no longer appropriate. Updated information on DAPO's position regarding use of "flash incarceration" will be provided as it becomes available.

25. When do courts become involved with a parole violation?

With the filing of a petition to revoke parole. If DAPO determines that intermediate sanctions are "not appropriate," the agency may file a petition with the courts pursuant to section 1203.2 for revocation of parole. It is filed in the superior court where the parolee is being supervised, or where the alleged violation occurred. (§ 3000.08(f).)

26. Must the petition contain specified information? Is there a Judicial Council form?

Yes. "The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of parole, the circumstances of the alleged underlying violation, the history and background of the parolee, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports." (§ 3000.08(f).) In response to this legislative mandate, the Judicial Council has modified *Petition for Revocation* (form CR-300) to include parole revocation proceedings.

California Rules of Court, rule 4.541, which governs the contents of the report submitted in connection with a petition to revoke probation, mandatory supervision, and PRCS has been amended to include petitions to revoke parole.

27. What procedure must courts use to adjudicate alleged parole violations?

The procedure specified in section 1203.2. In July 2012 the Governor signed into law budget trailer bills that included various statutory amendments designed to promote uniform revocation procedures for probation, mandatory supervision, postrelease community supervision, and parole. The legislation also was designed to "simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under *Morrissey v. Brewer* (1972) 408 U.S. 471, and *People v. Vickers* (1972) 8 Cal.3d 451, and their progeny." (2011 Realignment Legislation, SB 1023, Sec. 2(b), effective June 27, 2012.) As a result, courts must apply longstanding probation revocation procedures under section 1203.2 to parole revocations.

28. Are parolees entitled to appointed counsel for a violation court hearing?

Yes. Because the violation proceedings are being conducted in accordance with section 1203.2, parolees are entitled to counsel, including, if necessary, appointed counsel. (See *People v. Vickers* (1972) 8 Cal.3d 451, 461.) See also section 3000.08(f), which references parolees' option of waiving the right to counsel.

29. If a court disagrees with the sufficiency of the use of intermediate sanctions by DAPO prior to the filing of a petition for revocation, may the court summarily reject the petition on that ground alone?

No. Other than the process of demurrer, there is no procedure in the Penal Code that permits courts to summarily "reject" a pleading, including a petition to revoke parole for insufficient use of intermediate sanctions, if the petition otherwise states a prima facie basis for revocation. If the court disagrees with the sufficiency of any facts about the use of intermediate sanctions stated by DAPO in the petition, the proper procedure would be to hear the petition on its merits, including any evidence or explanation offered by the supervising parole officer. If a court then concludes DAPO did not appropriately use intermediate sanctions, the proper course is to dismiss the petition and reinstate parole.

30. Who may conduct the revocation hearings?

The courts, through a judge, magistrate, or qualified revocation hearing officer. Section 3000.08 states that the "court" must conduct revocation proceedings pursuant to section

1203.2. Section 1203.2(f) clarifies that "court" means a "judge, magistrate, or revocation hearing officer described in Section 71622.5 of the Government Code." To be eligible to serve as a hearing officer under Government Code section 71622.5, the person must meet one of the following criteria: (a) he or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment, (b) he or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program, or (c) he or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years. Each court may prescribe additional minimum qualifications and mandatory training for revocation hearing officers. The superior courts of two or more counties may appoint the same person as a revocation hearing officer."

"[T]he superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law." (Gov. Code, § 71622.5(b).) The stipulation of the parties specified by Code of Civil Procedure section 259(d) is not required before a subordinate hearing officer may conduct a revocation-related hearing.

31. Is there any specific time limit within which the hearing on the parole violation must be held?

There is no definitive answer to this question. If the violation cannot be resolved informally, the matter should be set for a contested evidentiary hearing. It is not clear when the hearing must be held if time is not waived. According to the law applicable to the adjudication of probation violations under section 1203.2, the hearing must be held within a "reasonable time." (*In re Mehdizadeh* (2003) 105 Cal.App.4th 995, 999-1000.) The boundaries of a "reasonable time" are not well defined. (*Morrissey v. Brewer* (1972) 408 U.S. 471, 488 [a delay of two months is not unreasonable]; *People v. Buford* (1974) 42 Cal.App.3d 975 [21-day delay is not unreasonable]; *In re Williams* (1974) 36 Cal.App.3d 649 [a delay of two months and 25 days is not unreasonable]; *People v. Young* (1991) 228 Cal.App.3d 171, 180-181 [a 79-day delay is unreasonable].) In setting the hearing, the court is to balance all relevant factors, including whether there is a new crime and the custody status of the defendant. (*In re La Croix* (1974) 12 Cal.3d 146, 156.)

If the setting of the hearing were conducted in accordance with section 3044(a)(2), which was added by a voter-approved proposition known as "Marsy's Law," it would be held within 45 calendar days of the parolee's arrest. Section 3044 has been challenged in federal court. There the court enjoined many of the provisions of the statute except for the requirement that violation hearings be held within 45 days of the parole hold being placed. Although the issue was eventually appealed, it does not appear likely that section 3044 applies to court revocation proceedings. (See discussion of Marsy's Law, Question 41, *infra*.)

The Legislature has clearly brought the parole revocation process under the umbrella of section 1203.2 such that the standard should be a "reasonable time." Because it is not clear

whether Marsy's Law will establish the time limit, prudent courts may wish to hold violation hearings within 45 days of the parolee's arrest unless time is waived.

32. May a court use electronic recording equipment in lieu of a court reporter to create a record of a parole revocation hearing?

No. Under Government Code section 69957, courts may order an action or proceeding to be electronically recorded only in a limited civil case, or a misdemeanor or infraction case. Parole revocation hearings are neither misdemeanor nor infraction cases, and thus do not come within the definition of the types of proceedings for which electronic recording devices are permissible. In addition, although supervised persons are entitled to written findings that disclose the evidence relied on and reasons for the revocation (*Morrissey v. Brewer*, 408 U.S. 471, 489 (1972); *People v. Vickers* (1972) 8 Cal.3d 451, 457), a court reporter's transcript of the hearing that contains the court's oral statement of reasons may serve as a substitute for a written statement. (*People v Moss* (1989) 213 Cal.App.3d 532, 534.)

33. Which court adjudicates violations when a parolee is arrested on a parole violation in a different county than the one where the parolee is supervised? Who is responsible for transporting parolees in these circumstances?

Hearings on parole violations may be heard either in the county of supervision or the county where the alleged violation occurred. (§ 3000.08(a).) The option of holding the hearing in the county of the alleged violation meets the requirement in *Morrissey v. Brewer* (1972) 408 U.S. 471, 484, that the hearing should be held physically close to the alleged violation so that witnesses will be available. The full implications of the rule, however, are not clear. While it makes sense to conduct the contested hearing in the county of violation, it may not be appropriate that the county of adjudication also be the county of disposition, particularly if there will be custody time ordered or a modification of the conditions of supervision. The matter of punishment may best be handled in the county with the responsibility to supervise the parolee.

The statutes do not address which agency has the responsibility to transport the parolee to the proper county. It is unlikely that the burden will fall to the arresting county. Since physical supervision of the parolee is provided by DAPO, presumably the duty will fall to that agency to transport the offender to the county of supervision or county of violation if the agency chooses to pursue prosecution of the violation. Transportation issues may be subject to adjustment depending on whether the arresting county also is pursuing an independent criminal prosecution against the parolee.

34. If parolees are found in violation of parole, what sanctions may courts impose?

If parolees are found in violation of parole, the courts have authority to do any of the following:

- Return the parolee to parole supervision with a modification of conditions, if appropriate, including a period of incarceration in county jail of up to 180 days for each revocation. (§ 3000.08(f)(1).) For every two days of actual custody served, the parolee will receive a total of four days of credit under section 4019(a)(5).

- Revoke parole and order the person to confinement in the county jail for up to 180 days. (§ 3000.08(f)(2).) For every two days of actual custody served, the parolee will receive a total of four days of credit under section 4019(a)(5).
- Refer the parolee to a reentry court pursuant to section 3015 or other evidence-based program in the court's discretion. (§ 3000.08(f)(3).)
- Place the parolee on electronic monitoring as a condition of reinstatement on parole or as an intermediate sanction in lieu of returning the parolee to custody. (§ 3004(a).)

35. May the court require the parolee and parole officer to return to court for review hearings?

Likely, yes. Section 3000.08(f)(1) grants courts broad authority to modify the conditions of supervision. Likely such authority includes the ability to order periodic reviews of the parolee's progress under supervision. Such discretion is well within the limits of *People v. Lent* (1975) 15 Cal.3d 481, 486: "Generally [a] condition of probation will not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality.'" Although *Lent* concerns the validity of conditions of probation, with the consolidation of all supervision procedures under section 1203.2, it would apply equally to the validity of parole conditions. Some trial courts, however, believe that reviews are part of the actual supervision process, which they believe is the exclusive province of DAPO.

36. What fees or fines may be imposed as a result of a parole violation?

At the time the parolee was sentenced to state prison, the court should have imposed a parole revocation fine under the provisions of section 1202.45(a) in the same amount as imposed under section 1202.4(b). Section 1202.45(c) specifies the parole revocation fine "shall be suspended unless the person's parole . . . is revoked." The suspended fine should be ordered into execution if as a result of a violation of supervision, parole is permanently revoked. It is not clear when the fine should be ordered into execution when there is only a temporary revocation of parole. It had been the custom of CDCR to order the fine into execution whenever there was a significant custody term imposed after a revocation of parole by the Board of Prison Terms.

The court should not impose any new assessments under section 1465.8, the court operations assessment, or Government Code section 70373 criminal conviction fee. These assessments would have been imposed as part of the original sentence.

37. May the courts return parolees to state prison?

Generally, no; the courts may not return parolees to state prison. The only exception is section 3000.08(h), which allows only designated parolees to be returned to prison on a parole violation. If the parolee is subject to life parole under sections 3000(b)(4) and 3000.1 for murder or designated sex offenses, and the court finds the parolee has violated the law or a condition of parole, the parolee "shall be remanded to the custody of [CDCR] and the jurisdiction of the [BPH] for the purpose of future parole consideration." (§ 3000.08(h).) Thereafter the BPH will schedule a hearing within 12 months to determine parole eligibility. (§ 3000.1(d).)

38. May parole supervision be transferred to a different county?

Yes. Although there is no formal statutory procedure for the transfer of a parolee's parole to a different county, DAPO regularly transfers parole supervision on an informal basis when deemed appropriate. The transfer process is not performed under section 1203.9, which is limited to transfer of persons on probation or mandatory supervision, nor under section 3460, which applies to the transfer of PRCS. Courts are not involved in DAPO's transfer process.

39. May the courts terminate parole?

No. Unlike section 3455(a)(2) for PRCS, section 3000.08(f)(2) does not contain language suggesting the courts have power to "terminate" parole. Furthermore, section 1203.2(a) specifies that the courts shall have no authority under that section to terminate parole. Section 1202.3, which generally governs the modification and early termination of other forms of supervision, does not apply to persons on parole. Finally, section 1203.2(b)(1) provides that a "person supervised on parole . . . may not petition the court pursuant to this section for early release from supervision. . . ."

40. What happens to a parolee's parole status if a new crime is committed and a court imposes either a state prison or section 1170(h) sentence?

The response by DAPO will depend on the nature of the new crime. If the parolee is on parole and commits a new crime punishable under section 1170(h), whether a straight or split sentence, DAPO will likely terminate parole supervision so as not to duplicate supervision by county probation officers. Except for arrest on a suspected parole violation, "any person who is convicted of a felony that requires community supervision and who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision." (§ 3000.08(k).) Because of the nature of the criminal record of persons on parole after July 1, 2013, very few qualify for sentencing under section 1170(h)(5). Most of the persons who commit a crime while on parole will fit an exclusion under section 1170(h)(3). Under such circumstances, DAPO will continue to supervise the parolee, adjusted to meet any new prison term.

41. What parole services will be available to the courts and parolees after July 1, 2013?

Because DAPO will be responsible for the physical supervision of parolees, all supervision and treatment services will come through state parole. These services will vary from region to region. A summary of available parole resources may be found at:
http://www.cdcr.ca.gov/community_partnerships/resource_directory.aspx

Court-ordered treatment or supervision plans should be based on a validated risk assessment tool and the Parole Violation Decision Making Index (PVDMI).

42. May the parolee request modification of the conditions of parole?

Only on a limited basis. A "petition under [section 1203.2] shall not be filed solely for the purpose of modifying parole. Nothing in this section shall prohibit the court from modifying parole when acting on its own motion or a petition to revoke parole." (§ 1203.2(b)(1).)

43. May parolees accept proposed sanctions for violations without going through the court process?

Yes. At any time during the procedure on a violation, the parolee may choose to waive the right to counsel, admit the petition, waive the court hearing, and accept the recommended disposition. (§ 3000.08(f).)

DAPO has indicated its intent is not to use the settlement process, but leave the matter of resolution to the court and counsel. This position may have been related to the procedural complexities of *Valdivia v. Schwarzenegger*. It is not known whether DAPO will change its position in view of the dismissal of *Valdivia*. (See discussion of *Valdivia*, Question 48, infra.)

44. When the conditions of parole include the wearing of a GPS device, and if the parolee thereafter improperly removes the device, what is the remedy and who imposes it?

Section 3010.10 prohibits a parolee from improperly removing a GPS device. Subdivision (c) specifies that "[u]pon a violation of this section, the parole authority shall revoke the person's parole and require that he or she be incarcerated in the county jail for a period of 180 days." The Board of Parole Hearings is designated the "parole authority." (§ 3000(b)(8).) It is an open question whether section 3010.10 provides the exclusive remedy for improper removal of a GPS device, or whether DAPO could also petition the court to adjudicate the violation through a parole revocation petition under section 3000.08.

45. Are the courts required to assess and order into execution a parole revocation restitution fine?

Yes. Courts are required to assess a "parole revocation restitution fine" under section 1202.45(a). The fine is to be imposed in addition to, and in the same amount as, the restitution fine imposed under section 1202.4(b), and is to apply to all persons convicted of a crime sentenced to prison where the term will include a period of parole. (§ 1202.45(a).) The fine is suspended unless the person's parole is revoked. (§ 1202.45(c).)

Prior to realignment, parole revocation restitution fines were collected by CDCR prison officials. Currently, PRCS revocation restitution fines may be collected by the agency designated by each county's board of supervisors under Penal Code section 2085.5. (§ 1202.45(b).) No comparable provision governs the collection of parole revocation restitution fines.

Any remaining unpaid fines, including restitution fines ordered pursuant to 1202.4 and 1202.45, may be collected by the California Victim Compensation and Government Claims Board once the parolee is no longer on parole. (§ 1214(a).)

46. Does section 3044, enacted as part of Marsy's Law, apply to parole revocation proceedings?

The answer is not clear, but likely it does not apply to court revocation proceedings. Section 3044(a), enacted by Marsy's Law in 2008, designates the rights available to parolees subject to parole revocation proceedings. These rights include the following:

- The right to a probable cause hearing no later than 15 days following arrest for the parole violation.

• The right to an evidentiary revocation hearing within 45 days following arrest for the parole violation.

• The right to counsel on a limited basis.

• The violation must be proved by a preponderance of the evidence by testimony, documentary evidence, or "hearsay evidence offered by parole agents, peace officers, or a victim." (§ 3044(a)(5).)

A potential conflict arises between Marsy's Law and realignment legislation because a number of the rights and procedures outlined in section 3044 are not included in section 1203.2, the statute that now governs proceedings for revocation of parole. It is doubtful that the provisions of section 3044 apply to the courts. By its terms, the statute states "the [BPH] or its successor in interest shall be the state's parole authority and shall be responsible for protecting victims' rights in the parole process." Section 3044(b) specifies that the board, and presumably its successor in interest, "shall report to the Governor." First, the courts do not report to the Governor. Second, the courts cannot serve as the "state's parole authority."And, third, it is unlikely that the courts, as the judicial branch of government, can be a "successor in interest" to the BPH in the executive branch of government.

A federal district judge has invalidated as unconstitutional sections 3044(a), 3044(a)(1) – (3), 3044(a)(5), and 3044(b), except the court has ordered that violation hearings be held within 45 days of the hold being placed. (See *Valdivia v. Brown*, CIV S-94-671.) Although the order was appealed, the underlying action has been dismissed. (See Question # 47).

The Legislature has clearly brought the parole revocation process under the umbrella of section 1203.2 such that the hearing should be held within a "reasonable time." Because it is not clear whether Marsy's Law will establish the time limit, prudent courts may wish to hold the violation hearings within 45 days of the parolee's arrest unless time is waived.

47. Does the Valdivia consent decree apply to court proceedings adjudicating parole violations?

No. In 1994 a federal class action lawsuit was filed in the U.S. District Court in the Eastern District of California, alleging that then-existing parole revocation procedures violated due process rights of California parolees. The name of the case is *Valdivia, et al. v. Schwarzenegger*, No CIV S-94-0671 (*Valdivia*). In 2004, the parties to the action entered into an agreement whereby the court entered a consent decree granting plaintiffs a permanent injunction, including various procedural protections for parolees. Among them are: 1) the right to appointed counsel beginning when the parolee is offered a stipulated disposition; 2) not later than 48 hours after a parole hold, the parole agent must confer with his or her supervisor regarding probable cause to continue the hold; 3) a probable cause hearing held within 10 business days after the parolee is served with the notice of charges (by the third day after the placement of the hold); and 4) a final revocation hearing within 35 calendar days of placement of the parole hold (in recognition of Marsy's Law, the time limit for the hearing subsequently was changed to 45 days).

Any questions regarding the application of *Valdivia* are now moot. By an order entered July 3, 2013, the federal court determined that with the enactment of the new parole revocation procedures under the realignment legislation, the lawsuit became moot as of July 1, 2013. On

November 21, 2013, the court entered its order decertifying the class and dismissing the action.

The court acknowledged the declaration filed by CDCR indicating its intent not to utilize flash incarceration. The court was not concerned that CDCR could change its policy. "The court need not weigh Mr. Viera Rosa's declaration, as its decision herein does not rest on whether DAPO has permanently forsworn flash incarceration." (Order entered in CIV-S-94-671, July 3, 2013, page 13, fn. 10.)

Ultimately the court concluded that potential constitutional violations, at this point, would be entirely speculative, and must be left to future litigation to establish. "[R]egardless of whether DAPO is prevaricating in its claim that it will not use flash incarceration, it would be premature for the court to rule on the measure's constitutionality, both because it is a single element of a complex new system and because its use by DAPO 'may not occur at all.'" (Order entered in CIV-S-94-671, July 3, 2013, page 28.)

Based on the action taken by the federal court, the injunction issued with the consent decree will no longer be enforced. The constitutionality of the new parole procedures will now be measured against the standards set in *Morrissey v. Brewer* (1972) 408 U.S. 471. The rights "include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial." (*Morrissey* at p. 488.)

48. Does the Armstrong injunction apply to court parole revocation proceedings?

No. The Armstrong injunction was issued in connection with a federal class action brought on behalf of disabled parolees regarding the application of the Americans with Disabilities Act (ADA) to parole proceedings. (*Armstrong v. Davis*, C-94-2307-CW.) The action was brought against the Governor, the Secretary of the California Youth and Adult Corrections Agency, and the Chairman of the California Board of Prison Terms. A permanent injunction was issued in June 2002 that defines the relationship between the ADA requirements and parole revocation procedures for disabled parolees, including conditions of facilities where revocation hearings are held.

Armstrong does not apply to the courts principally because the courts are not a party to the action. (See *Local No. 93, Ass'n of Firefighters v. City of Cleveland* (1986) 478 U.S. 501, 529 ["And, of course, a court may not enter a consent decree that imposes obligations on a party that did not consent to the decree."].) The primary defendants in the action are the Governor, the secretary of the California Youth and Adult Correctional Agency, and the chairman of the Board of Prison Terms.

49. Is there a central contact or liaison between the courts and DAPO?

Yes. The state budget for FY 2013-2014 includes funding for CDCR to employ court agents to assist courts, prosecutors, and defense attorneys during parole revocation proceedings. CDCR has begun union negotiations regarding the specific duties of the court agents, which will generally include witness and evidence coordination and providing detailed information about parolees and rehabilitate services available in the county. CDCR representatives have informed AOC staff that some lower-volume courts will likely share a single court agent, while more than one court agent will be assigned to certain higher-volume courts.

50. What is the process for reviewing court decisions on petitions to revoke parole?

California case law on *probation* revocation is relevant. An order denying probation is reviewable on appeal. (*People v. Coleman* (1975) 13 Cal.3d 867, 871, fn. 1; *People v. Vickers* (1972) 8 Cal.3d 451, 453, fn. 2.) "An order granting probation and imposing sentence, the execution of which is suspended, is an appealable order. (§ 1237, subd. (a); cf. *People v. Preyer* (1985) 164 Cal.App.3d 568, 576; *People v. Chagolla* (1984) 151 Cal.App.3d 1045, 1049.) An order modifying the terms of probation is likewise appealable because it is an order following judgment that affects the substantial rights of the defendant. (§ 1237, subd. (b); see *People v. Douglas* (1999) 20 Cal.4th 85, 91; *In re Bine* (1957) 47 Cal.2d 814, 817.)" (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421.)

An order entered by the court concerning a parolee's parole status likely is appealable under section 1237(a) in the same manner, since it is an order entered after judgment and it affects the substantial rights of the parties.

51. Does section 1368 regarding competence to stand trial apply to revocation proceedings?

Likely not. Section 1367(a) provides that "[a] person cannot be tried or adjudged to punishment while that person is mentally incompetent." Section 1368(a) sets the procedural stage: "If, during the pendency of an action *and prior to judgment*, a doubt arises in the mind of the judge as to the mental competence of the defendant," the court is to institute proceedings to determine the mental status of the defendant. (Emphasis added.) In *People v. Humphrey* (1975) 45 Cal.App.3d 32, 36-37, the appellate court applied section 1368 procedures to a defendant who was before the court on a probation violation. The court there observed that imposition of sentence had been suspended and the defendant had been placed on probation. Because sentence in the formal sense had not been imposed, the court was obligated to undertake a competency determination once a doubt had been declared. *(Id*.)

It appears likely that the procedures under section 1368 do not apply to persons on mandatory supervision, PRCS, and parole supervision. All of these persons have been formally sentenced, yet unquestionably they face legal proceedings that may lead to further punishment. The issue appears to be a matter of first impression. Please note that several bills are pending in the Legislature that would address various competency procedures, including a bill to apply some form of competency procedure to proceedings to revoke mandatory supervision, PRCS, and parole. This FAQ will be updated when more information is available.

D. EDUCATION AND RESOURCES

1. **What training opportunities and materials are available for judges, commissioners, supervision revocation hearing officers, and court staff?**
   The AOC's Office of Education/CJER provides ongoing education through their various written materials, videos, webinars, and live programs regarding supervision revocation hearings, sentencing, and models of implementation. These are advertised in the weekly AOC Court News Update email. CJER's Criminal Law Toolkit for judges and commissioners on SERRANUS includes a link to CJER's live programs registration calendar and a link to their Criminal Justice Realignment Judicial Education Resources page. This Resource page is a comprehensive listing of all CJER's online judicial education products related to Realignment. A parallel resource page regarding court staff education is available on COMET. Please refer to those pages for more information.

2. **Where can I find educational material and other information on this topic?**
   Specialized training materials for judges and court administrators are available on the *Serranus* website. In addition, the AOC maintains an online Criminal Justice Realignment Resource Center at http://www.courts.ca.gov/partners/realignment.htm.

   The website contains information about criminal justice realignment funding, rules of court and forms, pending and enacted legislation affecting realignment, and other resources.

3. **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 is available to help with recruitments for courts.

E. CASE MANAGEMENT

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

   Yes. A petition for revocation of supervision of PRCS or parole 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.

2. **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.

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

   The Judicial Council's Court Executives Advisory Committee (CEAC) developed comprehensive amendments to Government Code section 68152, which governs retention of court records. The amendments were recently enacted by the Legislature and include specific requirements for records related to post-realignment revocation proceedings, including petitions to revoke PRCS and parole. (See Gov. Code, § 68152(c)(14), (15).)

4. **Reporting to other agencies: Do courts have to report these matters to other agencies like DOJ?**

   DOJ has requested that courts report all mandatory supervision, parole, and PRCS dispositions to DOJ for purposes of compliance with DOJ's statutory requirements to collect criminal history information. Courts should provide the disposition information in the same manner—either electronically or by form—as when reporting other case dispositions.

5. **Do courts have to prepare abstracts of judgments for county jail sentences under Penal Code sections 1170(h)(1) and (h)(2)?**

   Yes. The realignment legislation amended section 1213 to require courts to provide abstracts of judgments in all felony cases resulting in county jail commitments under section 1170(h). Specifically, section 1213(a) requires courts to send abstracts to "the officer whose duty it is to execute … the judgment." For jail commitments under sections 1170(h)(1) and (h)(2), the officer charged with executing the judgment is presumably the county sheriff. Courts should <u>not</u> send abstracts of judgments to the California Department of Corrections and Rehabilitation (CDCR) for commitments under sections 1170(h)(5)(A) or (B). Because

sentences under those sections do not result in state prison commitments, CDCR will not retain abstracts for those commitments. Courts must, however, continue to send abstracts of judgments to CDCR for commitments to state prison for persons excluded from county jail under section 1170(h)(3).

6. **Do courts have to use Judicial Council abstract of judgment forms for county jail commitments under Penal Code sections 1170(h)(1) and (h)(2)?**
   Yes. Generally, all felony abstracts of judgments must be "prescribed by the Judicial Council." (§ 1213.5.) If a court uses a minute order in lieu of an abstract, "the first page or pages shall be identical in form and content to that prescribed by the Judicial Council for an abstract of judgment, and other matters as appropriate may be added thereafter." (§ 1213(b).) On December 13, 2011, the Judicial Council approved revisions to the relevant abstract of judgment forms (CR-290, CR-290A, and CR-290.1) to include information regarding sentences under Penal Code section 1170(h), including county jail commitments and mandatory supervision.

TOPICS UNDER REVIEW

Many additional questions regarding criminal justice realignment have been raised but require further review. In the meantime, if courts have additional questions or concerns please feel free to submit them to crimjusticerealign@jud.ca.gov for review and possible inclusion in the next FAQ memorandum.

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TABLE OF CRIMES PUNISHABLE IN STATE PRISON OR COUNTY JAIL

Designations - Prison-eligible or 1170(h)
Prison-eligible crimes are underlined, crimes punishable under section 1170(h) are in normal font. When the proper designation is Unknown either because more information is required or because the law is unclear, it is designated in bold italics.

Subsections:
The table lists each code section identifying relevant subsections. If a code section includes several subsections, the section is listed first, followed by each applicable subsection separated by commas (e.g., 148(b),(c),(d)(all).) If a subsection has several sub-subsections, those sub-subsections appear in parentheses next to the subsection as reflected by "(all)" in the preceding example.

"(All)" means that all relevant subsections or sub-subsections are included. If a subsection or sub-subsection is treated differently, it is given a separate listing.

General Rules
Prison-eligible crimes are those felonies not punishable pursuant to 1170(h) (§ 18(a)), unless it is a Vehicle Code felony with no punishment specified; in such circumstances it is punishable by commitment to jail (VC § 42000.).

P.C. § 1170(h)(3) further provides that prison is to be imposed if any of the following apply:

1. Conviction of a current or prior serious or violent felony conviction listed in sections 667.5(c) or 1192.7(c),

2. When the defendant is required to register as a sex offender under section 290; or

3. When the defendant is convicted and sentenced for aggravated theft under the provisions of section 186.11.

A careful reading of sections 1170(h)(1), (2) and (3), makes it clear that when an exclusion applies to a crime, it will override language in the specific statute that makes the crime punishable in county jail.

Enhancements
Enhancements sometimes specify "prison" where the term for the enhancement is to be served. It is unclear whether the enhancement would change where the sentence is to be served when attached to an 1170(h) crime. 1170.1(a) provides that if either the principal or subordinate term is prison-eligible, the entire sentence is to be served in prison. It says nothing about enhancements.

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51014.6
51015
51015.05
51015.2
51015.4
51015.5
51017.1 (all)
51017.2
51018
51018.7(a)
81004
91002

Harbors & Navigation

264(all)
302
304
305
306
310
655(f)
656.2
656.3
668(c)(1),(g)
668(k)

Health & Safety

1349
1390
1522.01(c)
1621.5(a)
7051
7051.5
7150.75
8113.5(b)(2),(3)
8785
11100(f)(2)
11100.1(b)(2)
11104
11105(all)
11106(j)
11153(all)
11153.5(a-b)
11154(all)
11155
11156(all)
11162.5(a)
11173(all)
11174
11350(a),(b)
11351
11351.5
11352(all)
11353(all)
11353.1(all)
11353.4(all)
11353.5
11353.6(b)
11353.6(c)
11353.7
11354
11355
11356.5(all)
11357(a)
11358
11359
11360(a)
11361(all)
11363
11364.7(b)
11366
11366.5(all)
11366.6
11366.7(all)
11366.8(a),(b)
11368
11370.1(all)
11370.2(all)
11370.4(all)
11370.6(a)
11370.9(all)
11371
11371.1
11374.5(a)
11375(b)(1)
11377(a)
11378
11378.5
11379(all)
11379.2
11379.5(all)
11379.6(a),(c)
11379.7(all)
11379.8(all)
11379.9(a)
11380(a)
11380.1(a)(all)
11380.7(a)
11382
11383(all)

11383.5(all)
11383.6(all)
11383.7(all)
11390
11391
11550(e),(f)
12305
12401
12700(b)(3),(4)
12761
17061(b)
18124.5
25160(all)
25161(all)
25162(all)
25163(a)
25180.7(c)
25186.5(all)
25189.5(all)
25189.6(all)
25189.7(b),(c)
25190(b)
25191(all felonies)
25395.13(b)
25507
25515(a)
25541
42400.3(c)
44209
100895(all felonies)
103800
109335
109370
115215(b)(1-2),(c)(1-2)
116730(all felonies)
116750(all)
118340(c),(d)
120291(a)
131130(b)

Insurance

700(b)
750(b)
827
828
829
830
833(all)
844
845
853
900.9
1043
1215.10(d),(e)
1760.5
1761
1763
1764
1764.1
1764.2
1764.3
1764.4
1764.7
1765.1
1765.2
1767
1780
1800
1800.75
1802.1
1810.7
1814
1871.4(all)
10192.165(e)
11160
11161
11162(all)
11163
11760(all)
11880(all)
12660
12815
12830
12835
12845
14080
15053

Labor

227
1778
3215
3218
3219(all)
6425(a),(b)
6425(b)
6425(c)
7770
7771

Military & Vets

145
421
616
1318
1670
1671
1672(a)
1672(b)
1673(a)

Penal Code

32
33
37(a)
38
67
67.5(b)
68(all)
69
71(all)
72
72.5(all)
76(all)
85
86
92(all)
93(all)
95(all)
95.1

96
99
100
107
109
110
113
114
115(all)
115.1(all)
115.5(b)
116
117
118
118a
118.1
126
127
128
129
132
134
136.1(all)
136.2(d)(3)
136.5
136.7
137(a)
137(b)
138(all)
139(a)
139(b)
140(all)
141(b)
142(a)
146a(b)(all)
146e(b)
148(b),(c),(d)(all)
148.1(all)
148.3(b)
148.4(b)(all)
148.10(a)
149
151(a)(2)
153(1),(2)
154(b)
155(b)
155.5(b)
156
157
165
166(c)(4)
166(d)(1)
168(all)
171b(a)(all)
171c(a)(1)
171d(all)
181
182(all felonies)
182.5
186.10(all)
186.11(all)
186.22(all)
186.26(all)
186.28(all)
186.33(b)(all)
187(all)
189(all)
190(all)
191.5(a)
191.5(b)
191.5(c)(1)
191.5(c)(2)
191.5(d)
192(a)
192(b)
192(c)(1),(3)
192.5(a),(c)
192.5(b)
192.5(e)
193(a)
193(b)
193(c)(1),(3)
193.5(a),(c)
193.5(b)
203
204
205
206
206.1
207(all)
208(all)
209(all)
209.5(all)
210
210.5
211
212.5(all)
213(all)
214
215(all)
217.1(a)
217.1(b)
218
218.1
219
219.1
219.2
220(all)
222
236
236.1(a),(b),(c)
237(a),(b)
241.1
241.4
241.7
243(c)(all),(d)
243.1
243.3
243.4(a),(b),(c),(d),(j)
243.6
243.7
243.9(a)
244
244.5(all)
245(a)(all)
245(b)

245(c)
245(d)(all)
245.2
245.3
245.5(all)
245.6(d)
246
246.3(a)
247(a),(b)
247.5
261(a)(all)
261.5(c),(d)
262(all)
264(all)
264.1(all)
265
266
266a
266b
266c
266d
266e
266f
266g
266h(all)
266i(all)
266j
267
269(all)
270
271
271a
273(c),(d),(e)
273a(a)
273ab(all)
273d(all)
273.4(a)
273.5(all)
273.6(d),(e)
273.6(g)(1)
273.65(d),(e)
278
278.5(a)
280(b)
281(all)
283
284
285
286(all)
288(all)
288a(all)
288.2(all)
288.3(all)
288.4(a)(2),(b)
288.5(all)
288.7(all)
289(all)
289.5(d)
289.6(all felonies)
290.018(all felonies)
290.4(c)(1)
290.45(e)(1)
290.46(j)(2)
298.2(all)
299.5(all)
311.1(all)
311.2(a)
311.2(b),(c),(d)
311.3(all)
311.4(all)
311.5
311.7
311.9(all)
311.10(all)
311.11(all)
313.4
314(1)
327
332(a)
334(a)
337
337a(all)
337b
337c
337d
337e
337f(all)
337i
337j
337.3
337.4
337.7
347(all)
350(a)(2),(b),(c)
367f(all)
367g(all)
368(b)(all)
368(d),(e),(f)
374.2(all)
374.8(b)
375(d)
382.5
382.6
386(all)
387(all)
399(all)
399.5(a)
401
404.6(c)
405a
405b
417(b),(c)
417.3
417.6(a)
417.8
422(a)
422.7(all)
422.75(all)
424
425
432
451(all)
451.1(all)
451.5(all)
452(a),(b),(c)
452.1(all)

453(all)
454
455(a)
459 1st
459 2nd
461(a)
461(b)
463(a)
463(b)
463(b)[Gun]
464
470(all)
470a
470b
471
472
473
474
475
476
476a
477
478
479
480(all)
481
481.1(a)
483.5(a),(f)
484b
484c
484c(Public funds)
484e(a),(b),(d)
484f(all)
484g
484h(all)
484i(b),(c)
484.1(a)
485
487(all, except (d)(2))
487(d)(2)
487a(all)
487b
487d
487e
487g
487h(all)
487i
487j
489(a)
489(b)
496(all)
496a(all)
496c
496d(all)
497
497 (Public funds)
498(any felony)
499(all)
499c(c)
499d
500(a)(all),(b)(2)
502(c)(1),(2),(4),(5)
502(c)(3)
502(c)(6),(7)
502(c)(8)
502(d)(1),(2)(B),(3)(C),(4)(D)
502.5
502.7(a)(all),(b)(all),(d),(g)
502.8(c) thru (f)
503
504/514
504a
504b
505
505 (Public funds)
506
506 (Public funds)
506b
507
508
514(except "public funds")
514(Public funds)
520
522
523
524
528
529(all)
529a
530
530.5(a),(c)(2),(3),(d)(all)
532(all)
532a(4)
532f(all)
533
534
535
537(a)(2)
537e(a)(3)
538
538.5
548(all)
549
550(all felonies)
550(c)(1),(2)(A),(3)
551(c),(d)
560
560.4
566
570
571
577
578
580
581
587
587.1(b)
588a
591
592(b)
593
593a(all)
593c
593d(b),(d)(2)(A),(B)

594(b)(1)
594.3(all)
594.35(all)
594.4(a)(all)
594.7
597(all)
597b(c)
597.5(a)(all)
598c(all)
598d(c)
600(a),(c)
600(d)
601(all)
607
610
617
620
621
625b(b)
625c
626.9(f)(all),(h),(i)
626.95(all)
626.10(a)(1),(b)
629.84
631(all)
632(all)
632.5(all)
632.6(all)
632.7(all)
634
635
636(all)
637
637.1
639
639a
641
641.3(all)
642
646.9(all)
647f
647.6(b),(c)(d)
648
653f(a),(d),(e)
653f(b), (c)
653h(all felonies)
653j(all)
653s(all)
653t(all felonies)
653u(all felonies)
653w(b)(1),(3)
664(a)(all)
664(e),(f)
666(a)
666(b)(all)
666.5(all)
667(a)
667.5(a)
667.5(b)
667.51(all)
667.6(all)
667.61(all)
667.7(all)
667.71(all)
667.75
667.8(all)
667.85
667.9(all)
667.10(all)
667.15(all)
667.16(all)
667.17
670(all)
674(all)
675(all)
836.6(if GBI)
1320(b)
1320.5
1370.5(all)
2042
2772
2790
4011.7
4131.5
4133
4500
4501
4501.1(all)
4501.5
4502(all)
4503
4530(all)
4532(all)
4533
4534
4535
4536(all)
4550(all)
4571
4573(all)
4573.5
4573.6(all)
4573.8
4573.9(all)
4574(a),(b)
4600(all)
11411(c),(d)
11412
11413(all)
11418(a)(1),(2)
11418(b)(all),(c),(d)(all)
11418.1
11418.5(a)
11419(all)
12020(all)
12021(a)(all),(b),(g)(1)
12021.1(follows base term)
12021.5(a)
12021.5(b)
12022(a)(1),(2)
12022(b)(all)
12022(c),(d)
12022.1(all)
12022.2(all)
12022.3(all)

12022.4(all)
12022.5(all)
12022.53(all)
12022.55
12022.6(all)
12022.7(all)
12022.75(a)
12022.75(b)(all)
12022.8
12022.85(all)
12022.9
12022.95
12023(all)
12025(a)(all)
12025(b)(1),(2),(5),(6)(all)
12025(b)(3),(4)
12031(a)(all)
12034(b),(c),(d)
12035(b)(1),(d)(1)
12040
12051(c)(all)
12072(g)(2)(all),(3)(all)
12072(g)(4)(all)
12076(b)(1),(c)(1)
12090
12101(all felonies)
12220(all)
12280(a)(all),(b)
12281(all)
12303
12303.1(all)
12303.2
12303.3
12303.6
12304
12308
12309
12310(all)
12312
12316(b)(1)
12320
12321
12355(all)
12370(all)
12403.7(g)
12422
12520
14166(all)
18710(all)
18715(all)
18720
18725(all)
18730
18735(all)
18740
18745
18750
18755(all)
19100
19200
20110
20310
20410
20510
20610
20710
20910
21110
21310
21810
22010
22210
22410
22810(all)
22910(all)
23900
24310
24410
24510
24610
24710
25100(a)
25110(a)
25300(all)
25400(a)(all)
25400(c)(1),(2),(3),(4)
25400(c)(5),(6)
25800(all)
25850(a)(all)
25850(c)(1),(2),(3),(4)
25850(c)(5),(6)
26100(b),(c),(d)
26180(b)(all)
27500(a),(b)
27505(all felonies)
27510
27515(all)
27520(all)
27540(a),(c),(d),(e),(f)
27545
27550(all)
27590(b),(c),(d)
28250(b)
29610
29650
29700(a)(all)
29800(all)
29805
29815(all)
29820(all)
29825(a)
29900(all)
30210
30305(a)(all)
30315
30320
30600(all)
30605(a)
30615
30720
30725(b)
31360
31500
32310
32625(all)
32900

33215
33410
33600

Probate

2253

Public Contract

10280
10281
10282
10283
10422
10423
10522
10523
10870
10871
10872
10873

Public Resource

5097.99(b),(c)
5190
14591(b)(2)
25205(g)
48650.5(d)
48680(b)(1)

Public Utilities

827(all)
2114
7676
7679
7680
7724(all)
7903
8285(a)
21407.6(b)

Revenue & Tax

7093.6(j),(n)
7153.5
8103
9278(j),(n)
9354.5
14251
16910
18631.7(d)(2)
19542.3
19705(all)
19706
19708
19721(all)
30459.15(p)(all)
30473
30475
30480
32471.5(p)(all)
32552
32553
32555
38800(l)(all)
40187
40211.5(l)(all)
41143.4
41171.5(p)(all)
43522.5
43604
43606
45867.5(l)(all)
45953
45955
46628(p)(all)
46703
46705
50156.18(n)
55332.5(p)
55363
60106.3
60503.2
60637(p)
60707

Streets & Hwys

2101
2101.5
2101.6
2102
2103
2104
2105
2106
2107
2108
2109
2110
2110.3
2110.5
2110.7
2111
2112
2114
2115
2116(all)
2117.5
2118.5
2119
2120
2121
2122

Vehicle Code

1808.4(d)
2470
2472
2474
2476
2478(b)
2800.2(all)
2800.3(all)
2800.4
4463(a)(all)
10501(b)
10752(all)
10801
10802
10803(all)
10851(all)
20001(all)
21464(all felonies)

21651(c)
23104(b)
23105(all)
23109(f)(3)
23109.1(all)
23110(b)
23152(all)
23152(.per 23550.5)
23153(all)
23550(all)
23550.5(a),(b)
23554
23558
23560
23566(all)
38318(b)
38318.5(b)
42000

Water Code

13375
13376
13387(all)

Welfare & Institutions

871(b)
871.5(a)
871.5(b)
1001.5(a)
1001.5(b)
1152(b)
1768.7(all)w/o force
1768.7(all)with force
1768.8(b)
1768.85(a)
3002
6330
7326
8100(a),(b),(g)
8101(a),(b)
8103(i)
10980(all except (f))
10980(f)
11054
11482.5
11483
11483.5
14014
14025(all)
14107(a)
14107(all felonies)
14107.2(a)(2),(b)(2)
14107.3(all)
14107.4(all)
15656(a),(c)
17410

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

Criminal Justice Realignment
Allocations for FY 2012-2013 Funding

Court	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of $9.073 Million in FY 2012–2013 (Bx$9,073,000)
	A	B	C
Alameda	388	5.54%	$ 502,724
Alpine	1	0.01%	1,296
Amador	3	0.04%	3,239
Butte	58	0.83%	75,149
Calaveras	1	0.01%	1,296
Colusa	1	0.01%	1,296
Contra Costa	134	1.91%	172,973
Del Norte	3	0.04%	3,887
El Dorado	29	0.41%	37,575
Fresno	336	4.80%	435,349
Glenn	8	0.11%	9,718
Humboldt	60	0.86%	77,741
Imperial	31	0.44%	40,166
Inyo	3	0.04%	3,239
Kern	221	3.16%	286,345
Kings	28	0.39%	35,631
Lake	16	0.23%	20,731
Lassen	3	0.04%	3,887
Los Angeles	1,942	27.73%	2,515,563
Madera	40	0.56%	51,179
Marin	10	0.14%	12,957
Mariposa	-	0.00%	-
Mendocino	25	0.35%	31,744
Merced	66	0.94%	85,515
Modoc	1	0.01%	1,296
Mono	1	0.01%	1,296
Monterey	128	1.83%	165,847
Napa	11	0.16%	14,252
Nevada	4	0.06%	5,183
Orange	328	4.68%	424,335
Placer	41	0.59%	53,123
Plumas	2	0.02%	1,944
Riverside	266	3.80%	344,651

Criminal Justice Realignment
Allocations for FY 2012-2013 Funding

Court	Total Estimated Petitions to Revoke*	Percentage of Statewide Petitions to Revoke (A/7,003)	Allocation of $9.073 Million in FY 2012–2013 (Bx$9,073,000)
Sacramento	479	6.83%	619,983
San Benito	6	0.09%	7,774
San Bernardino	415	5.92%	537,059
San Diego	354	5.06%	458,671
San Francisco	201	2.87%	260,432
San Joaquin	180	2.56%	232,575
San Luis Obispo	47	0.67%	60,897
San Mateo	69	0.99%	89,402
Santa Barbara	62	0.89%	80,332
Santa Clara	245	3.49%	316,794
Santa Cruz	45	0.64%	58,306
Shasta	62	0.88%	79,684
Sierra	-	0.00%	-
Siskiyou	7	0.10%	9,070
Solano	145	2.06%	187,226
Sonoma	68	0.96%	87,458
Stanislaus	113	1.61%	146,412
Sutter	21	0.29%	26,561
Tehama	21	0.29%	26,561
Trinity	-	0.00%	-
Tulare	47	0.66%	60,249
Tuolumne	6	0.08%	7,126
Ventura	151	2.15%	195,000
Yolo	46	0.65%	58,953
Yuba	35	0.50%	45,349
Total:	**7,003**	**100.00%**	**$ 9,073,000**

** Source: California Department of Corrections and Rehabilitation 2010.*

Total Operations Funding	$	9,223,000
Reserve		(150,000)
Funding for Operations	$	9,073,000