



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 11, 2015

Title	Agenda Item Type
Judicial Council–Sponsored Legislation (Criminal Justice Realignment): Court Jurisdiction Over and Calculation of Time During Supervision Revocation	Action Required
Rules, Forms, Standards, or Statutes Affected Penal Code, §§ 1203.2(a), 1170(h)(5)(B), and 3456(b)	Effective Date December 11, 2015
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	Date of Report November 30, 2015
	Contact Eve Hershcopf, 415-865-7961 eve.hershcopf@jud.ca.gov Sharon Reilly, 916-323-3121 sharon.reilly@jud.ca.gov

Executive Summary

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b) to clarify that when supervision has been revoked, summarily or otherwise, the time that elapses during revocation shall not be credited toward any period of supervision. The proposal was developed at the request of criminal law judges to enhance judicial discretion by preserving court jurisdiction to adjudicate revocations of probation, mandatory supervision, and postrelease community supervision.

Recommendation

The Policy Coordination and Liaison Committee and the Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b), as follows:

1. Probation: Replace the current tolling provision in Penal Code section 1203.2(a), “The revocation, summary or otherwise, shall serve to toll the running of the period of supervision,” with the provision, “Time during revocation, summary or otherwise, shall not be credited toward any period of supervision.”
2. Mandatory Supervision: Replace the current tolling provision in Penal Code section 1170(h)(5)(B), “Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision,” with the provision, “Time during revocation, summary or otherwise, shall not be credited toward any period of supervision; however, the defendant shall not remain in custody for a period longer than the term of supervision imposed under this section.”
3. Postrelease Community Supervision: Replace the current tolling provision in Penal Code section 3456(b), “Time during which a person on postrelease supervision is suspended because the person has absconded shall not be credited toward any period of postrelease supervision,” with the provision, “Time during revocation, summary or otherwise, shall not be credited toward any period of supervision; however, the person subject to postrelease supervision shall not remain in custody for a period longer than the term of supervision authorized under this section.”

The text of the proposed amendments to Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b) is attached at pages 6–7.

Previous Council Action

Since the enactment of criminal justice realignment in 2011, the Judicial Council has sponsored and supported legislation seeking much needed clarification of that landmark legislation. Most recently, for example, in 2015 the Judicial Council sponsored Senate Bill 517 (Monning; Stats. 2015, ch. 61), which provides courts with discretion to order the release of supervised persons from custody, unless they are otherwise serving a period of flash incarceration, regardless of whether a petition has been filed or a parole hold has been issued. Although courts are generally authorized to determine the custody status of supervised persons during court revocation proceedings, without that legislation courts had no express statutory authority to order the release of persons supervised on postrelease community supervision or parole if detained by the supervising agency, particularly if detained on a parole hold. (Penal Code sections 1203.2, 3000.08, 3056, and 3455.)

Also in 2015, the Judicial Council supported Assembly Bill 1156 (Brown; Stats. 2015, ch. 378), which makes numerous clarifying changes to statutes governing criminal justice realignment, including (1) that in any case where the preimprisonment credit of a person sentenced to the county jail under the Public Safety Realignment Act of 2011 exceeds any sentence imposed, the entire sentence shall be deemed to have been served, except for the remaining portion of mandatory supervision, and the defendant shall not be delivered to the custody of the county correctional administrator; (2) that when a defendant is sentenced to the county jail under the

Public Safety Realignment Act of 2011, the court may, within 120 days of the date of commitment on its own motion or on the recommendation of the county correctional administrator, recall the sentence previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the original sentence; (3) that the Judicial Council adopt rules providing criteria regarding a court's decision related to the imposition of the lower, middle, or upper term; and (4) that a person is not subject to prosecution for a nonfelony offense arising out of a violation of the California Vehicle Code, with the exception of a driving under the influence violation that is pending against him or her at the time of his or her commitment to a county jail under the 2011 Realignment Act. (Pen. Code, §§ 1170, 1170.3, 4852.01, 4852.03, 4852.04, 4852.06, 4852.1, and 4852.21; Veh. Code, § 41500.) Although the council did not sponsor AB 1156, the council approved a proposal that also would have addressed the ambiguity in the law relating to recalling felony jail sentences.

Rationale for Recommendation

Under criminal justice realignment, courts are required to conduct revocation proceedings for four distinct categories of supervision—probation, mandatory supervision, postrelease community supervision, and parole.¹ Revocation proceedings for all categories are governed by the longstanding procedures in Penal Code section 1203.2. The tolling provision in Penal Code section 1203.2(a) currently states: “The revocation, summary or otherwise, shall serve to toll the running of the period of supervision.”

In *People v. Leiva* (2013) 56 Cal.4th 498, the California Supreme Court held that when probation has been summarily revoked, the tolling provision in Penal Code section 1203.2(a) preserves the court's jurisdiction to adjudicate only those violations that occurred within the original term of probation. (*Id.* at pp. 515–516.)² As a result, if no violation is later found to have occurred during the original probation period, supervision will be deemed to have terminated *even if* the defendant never complied with the terms of supervision or violated the terms while supervision was revoked but after the original probation period had expired. (*Ibid.*) The tolling provision in Penal Code section 1203.2(a) limits judicial discretion and, once physical custody over the probationer has been regained, restricts courts in determining the consequences that should flow from conduct the supervised person has committed after expiration of the original probation term. (*Id.* at p. 519.)

¹ Penal Code section 3000.08, the provision governing parole revocation, does not include a tolling provision.

² In *Leiva*, the defendant was deported immediately upon his release from custody. When he failed to report to the probation department, his probation was summarily revoked and a warrant issued. Seven years later the court regained physical custody when the defendant was arrested on the warrant. The trial court determined that, because of the defendant's deportation, there was no willful violation of the original term of probation but, based on subsequent violations, revoked probation and committed the defendant to state prison. On review, the Supreme Court concluded summary revocation of probation under Penal Code section 1203.2(a) preserves the trial court's authority solely to adjudicate a claim that the defendant violated a condition of probation during the probationary period.

Similar concerns regarding court jurisdiction and the effect of tolling provisions arise in two other statutes that address the calculation of time during a period of supervision revocation: Penal Code section 1170(h)(5)(B) (mandatory supervision) and Penal Code section 3456(b) (postrelease community supervision). The tolling provisions in both statutes lack clarity and suspend the running of the period of supervision only in cases where the supervised person has absconded; they are inapplicable to other types of cases, such as *Leiva*, where the defendant was deported.³

The recommended amendments for all three supervision provisions would clarify that elapsed time during revocation shall not be credited toward any period of supervision; that is, if a court summarily revokes supervision, the proposed revisions would preserve court authority to determine the consequences of all alleged supervision violations, both those that occurred during the original supervision term and those that occurred after expiration of the original term. This reformulation of the tolling provisions would enable the court, after regaining physical custody of the supervised person, to ensure compliance with court-imposed terms and conditions of supervised release.

The minor differences in the proposed language for the three provisions reflect the statutory distinctions between probation, mandatory supervision, and postrelease community supervision. The proposed revisions for mandatory supervision and postrelease community supervision are consistent with the structure of the controlling statutes, which prohibit holding the supervised person in custody for a period longer than the supervision term originally imposed by the sentencing court (for mandatory supervision) or authorized by statute (for postrelease community supervision).⁴

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment from April 17 to June 17, 2015. A total of seven comments were received; of those, three agreed with the proposed changes, two agreed if modified, and two opposed the proposed revisions.

A chart with all comments received and committee responses is attached at pages 8–16.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected.

³ For mandatory supervision, Penal Code section 1170(h)(5)(B): “Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.” For postrelease community supervision, Penal Code section 3456(b): “Time during which a person on postrelease supervision is suspended because the person has absconded shall not be credited toward any period of postrelease supervision.”

⁴ Pen. Code, § 1170(h)(5)(A)–(B) (mandatory supervision); Pen. Code, § 3451(a) (postrelease community supervision).

Attachments

1. Text of proposed Pen. Code, §§ 1203.2(a), 1170(h)(5), and 3456, at pages 6–7
2. Chart of comments, at pages 8–16

Penal Code sections 1203.2(a), 1170(h)(5)(B), and 34565(b) would be amended, effective January 1, 2017, to read:

1 **§ 1203.2(a)**

2 (a) At any time during the period of supervision of a person (1) released on probation under the
3 care of a probation officer pursuant to this chapter, (2) released on conditional sentence or
4 summary probation not under the care of a probation officer, (3) placed on mandatory
5 supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170,
6 (4) subject to revocation of postrelease community supervision pursuant to Section 3455, or
7 (5) subject to revocation of parole supervision pursuant to Section 3000.08, if any probation
8 officer, parole officer, or peace officer has probable cause to believe that the supervised person is
9 violating any term or condition of his or her supervision, the officer may, without warrant or
10 other process and at any time until the final disposition of the case, rearrest the supervised person
11 and bring him or her before the court or the court may, in its discretion, issue a warrant for his or
12 her rearrest. Upon such rearrest, or upon the issuance of a warrant for rearrest the court may
13 revoke and terminate the supervision of the person if the interests of justice so require and the
14 court, in its judgment, has reason to believe from the report of the probation or parole officer or
15 otherwise that the person has violated any of the conditions of his or her supervision, has become
16 abandoned to improper associates or a vicious life, or has subsequently committed other
17 offenses, regardless whether he or she has been prosecuted for such offenses. However, the court
18 shall not terminate parole pursuant to this section. Supervision shall not be revoked for failure of
19 a person to make restitution imposed as a condition of supervision unless the court determines
20 that the defendant has willfully failed to pay and has the ability to pay. Restitution shall be
21 consistent with a person's ability to pay. ~~The revocation, summary or otherwise, shall serve to~~
22 ~~toll the running of the period of supervision.~~ Time during revocation, summary or otherwise,
23 shall not be credited toward any period of supervision.

24
25 **§ 1170(h)**

26 (5) (A) Unless the court finds, in the interest of justice, that it is not appropriate in a particular
27 case, the court, when imposing a sentence pursuant to paragraph (1) or (2), shall suspend
28 execution of a concluding portion of the term for a period selected at the court's discretion.
29 (B) The portion of a defendant's sentenced term that is suspended pursuant to this paragraph
30 shall be known as mandatory supervision, and, unless otherwise ordered by the court, shall
31 commence upon release from physical custody or an alternative custody program, whichever is
32 later. During the period of mandatory supervision, the defendant shall be supervised by the
33 county probation officer in accordance with the terms, conditions, and procedures generally
34 applicable to persons placed on probation, for the remaining unserved portion of the sentence
35 imposed by the court. The period of supervision shall be mandatory, and may not be earlier
36 terminated except by court order. Any proceeding to revoke or modify mandatory supervision
37 under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section
38 1203.2 or Section 1203.3. During the period when the defendant is under such supervision,
39 unless in actual custody related to the sentence imposed by the court, the defendant shall be
40 entitled to only actual time credit against the term of imprisonment imposed by the court. ~~Any~~

1 ~~time period which is suspended because a person has absconded shall not be credited toward the~~
2 ~~period of supervision. Time during revocation, summary or otherwise, shall not be credited~~
3 ~~toward any period of supervision; however, the defendant shall not remain in custody for a period~~
4 ~~longer than the term of supervision imposed under this section.~~

5
6 **§ 3456**

7 (a) The county agency responsible for postrelease supervision, as established by the county board
8 of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease supervision
9 over a person under postrelease supervision pursuant to this title until one of the following events
10 occurs:

11 (1) The person has been subject to postrelease supervision pursuant to this title for three years at
12 which time the offender shall be immediately discharged from postrelease supervision.

13 (2) Any person on postrelease supervision for six consecutive months with no violations of his or
14 her conditions of postrelease supervision that result in a custodial sanction may be considered for
15 immediate discharge by the supervising county.

16 (3) The person who has been on postrelease supervision continuously for one year with no
17 violations of his or her conditions of postrelease supervision that result in a custodial sanction
18 shall be discharged from supervision within 30 days.

19 (4) Jurisdiction over the person has been terminated by operation of law.

20 (5) Jurisdiction is transferred to another supervising county agency.

21 (6) Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and
22 terminate supervision by the supervising county agency.

23
24 (b) ~~Time during which a person on postrelease supervision is suspended because the person has~~
25 ~~absconded shall not be credited toward any period of postrelease supervision. Time during~~
26 ~~revocation, summary or otherwise, shall not be credited toward any period of supervision;~~
27 ~~however, the person subject to postrelease supervision shall not remain in custody for a period~~
28 ~~longer than the term of supervision authorized under this section.~~

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Criminal Justice Realignment: Court Jurisdiction Over and Calculation of Time During Supervision Revocation

(Amend Penal Code sections 1203.2(a), 1170(h)(5)(B), 3456(b))

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

	Commentator	Position	Comment	Advisory Committee Response
1.	Azar Elihu Criminal Defense Attorney	AM	Court should retain jurisdiction during supervision; and supervision should not be extended when it's revoked and reinstated, as revoked probations are often reinstated with the same terms and conditions without extension.	Although courts have authority to reinstate probation with the same terms and conditions, if the probationer is not in custody during a period when supervision has been revoked, the probationer should not receive credit on the probation term for the time that the probationer is on revoked status.
2.	Orange County Bar Association Ashleigh Aitken, President	A	(no comments were provided)	No response required.
3.	Orange County Public Defender Mark S. Brown, Assistant Public Defender	N	<p>The Orange County Public Defender disagrees with the committee’s proposed amendments to sections 1203.2, 1170(h) and 3456 of the Penal Code. The stated goal of “harmonizing the statutory provisions to promote uniformity” is not appropriate because probationary supervision, mandatory supervision, and postrelease community supervision are not intended to be uniform – they are fundamentally different. In addition, the proposed amendments directly contravene the holdings in <i>People v. Leiva</i> (2013) 56 Cal.4th 498, are contrary to existing statutes, and raise serious constitutional concerns.</p> <p><u>Persons on Probation Supervision</u> It is unclear from the “Invitation to Comment” whether the committee intended to overrule the holdings in <i>Leiva</i>. However, the proposed amendments to section 1203.2 will directly overrule the holdings in <i>Leiva</i>.</p>	<ul style="list-style-type: none"> It is desirable to have the tolling provisions of Penal Code sections 1203.2, 1170(h) and 3456 consistent to the extent possible, while recognizing the differences between probation supervision, mandatory supervision, and postrelease community supervision. The committee has revised the proposed tolling provisions for mandatory supervision and postrelease community supervision to account for the statutory differences between these types of supervision. In <i>People v. Leiva</i> (2013) 56 Cal 4th 498, the California Supreme Court held that, when probation has been summarily revoked, the tolling provision in Penal Code section 1203.2(a) preserves the court’s jurisdiction to adjudicate only those violations that occurred within the original term of probation. (<i>Id.</i> at pp. 515–516.) As a result, if no violation is

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			<p>First, the <i>Leiva</i> court held the current tolling provision in section 1203.2 is intended “to preserve the trial court's jurisdiction to determine whether a defendant violated probation during the court-imposed period of probation.” (<i>Leiva</i> at page 518.) In reaching this holding, the <i>Leiva</i> court noted: “[I]t is reasonable to conclude that the Legislature intended to reemphasize the following objectives by enacting the tolling provision. First, the provision would ensure that, once probation was summarily revoked, the prosecution would have a fair opportunity to prove that a defendant violated probation during the probationary period even when a formal probation violation hearing could not be held before probation expired. Second, the provision would ensure a defendant’s due process right to a formal hearing in which to litigate the validity of an allegation that he violated the conditions of probation during the probationary period whenever such a formal hearing could be held.” (<i>Leiva</i> at page 515.)</p> <p>The <i>Leiva</i> court further held the current tolling provision in section 1203.2 was not intended to “[extend] indefinitely the terms and conditions of probation until a formal probation violation hearing could be held.” (<i>Leiva</i> at page 514.) Yet, the committee’s proposed amendment to section 1203.2 does just that.</p>	<p>found to have occurred during the original probation period, supervision will terminate even if the defendant never complied with the terms of supervision or violated those terms while supervision was revoked but after the original probation period had expired. (<i>Id.</i>) The tolling provision in Penal Code section 1203.2(a) limits the court’s jurisdiction and, once physical custody over the probationer has been regained, restricts courts in determining the consequences that should flow from conduct the supervised person has committed in the interim, following expiration of the original probation term. (<i>Id.</i> at p. 519.) The proposed revision to Penal Code section 1203.2 is designed to provide courts with jurisdiction and discretion to determine those consequences.</p>

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			<p>The example given on pages 516-517 by the <i>Leiva</i> court is illustrative of the unreasonable consequences that will flow as a result of the committee’s proposed amendment to section 1203.2: “Consider a defendant who is placed on three years’ probation, which is summarily revoked during this time period for an alleged but mistaken claim of violation. Twenty years later, the defendant is stopped for a traffic violation, and a warrant check reveals the bench warrant from the summary revocation. The basis of the summary revocation is not sound.” But if the proposed amendment to section 1203.2 is adopted, the defendant’s probationary period will never end until a formal revocation hearing takes place. Such a consequence “raises serious due process concerns because... a defendant’s probationary term [will be extended] indefinitely without notice or a hearing as to the propriety of such an increase.” (<i>Leiva</i> at page 509.) Furthermore, such a consequence “is contrary to our statutes that authorize the courts to grant probation for a period not to exceed a specified time (§§ 1203a, 1203.1) and contrary to language in section 1203.2 that gives the court authority, when an order setting aside the judgment or the revocation of probation, or both, is made after the expiration of the probationary period, to again place the person on probation for the same period of time ‘as it could have done</p>	

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			<p>immediately following conviction.’ (§ 1203.2, subd. (e).)” (<i>Leiva</i> at page 517.)</p> <p><u>Persons on Mandatory Supervision</u> Unlike a person on probation, a person on mandatory supervision had a sentence imposed. A portion of the sentence is served in county jail and the remaining portion is served on mandatory supervision. If the mandatory supervision is revoked, the person will serve the balance of his sentence whether or not his mandatory supervision has been revoked, summarily or otherwise. Therefore, the proposed amendments to sections 1203.2 and 1170(h) are unnecessary. In addition, the amendments raise serious constitutional concerns because a supervisee’s sentence will be extended.</p> <p>To illustrate that the committee’s proposed amendments to sections 1203.2 and 1170(h) are unnecessary, consider the following example: A defendant is sentenced to 2 years, one year in county jail and one year on mandatory supervision. Five days before the end of his mandatory supervision term, the defendant is arrested and his mandatory supervision is summarily revoked for a violation. Five days later¹ he is released because he has served his full 2 year sentence, including his full mandatory supervision term. As the example demonstrates, the proposed</p>	<ul style="list-style-type: none"> • A person serving the mandatory supervision portion of a Penal Code section 1170(h) sentence cannot be held in custody for a period longer than the term of supervision imposed by the sentencing court under Penal Code section 1170(h). To address this restriction, the committee has added a clarifying provision, to read: <u>“Time during revocation, summary or otherwise, shall not be credited toward any period of supervision; however, the defendant shall not remain in custody for a period longer than the term of supervision imposed under this section.”</u>

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	Commentator	Position	Comment	Advisory Committee Response
			<p>amendments to sections 1203.2 and 1170(h) are unnecessary because the defendant served his full sentence.</p> <p>To illustrate the unreasonable consequences that will flow as a result of the committee’s proposed amendments to sections 1203.2 and 1170(h), consider the following example: A defendant is sentenced to 2 years, one year in county jail and one year on mandatory supervision. Five days before the end of his mandatory supervision term, the defendant is arrested and his mandatory supervision revoked for an alleged but mistaken claim of violation. Instead of being released 5 days after his arrest, the defendant will not be released until after his formal revocation hearing, which takes place on day 45. Thus, the defendant’s sentence was unlawfully increased by 40 days.² Such a consequence “raises serious due process concerns.” (See, for example, <i>Leiva</i> at page 509.)</p> <p><u><i>Persons on Postrelease Community Supervision</i></u> Unlike a person on probation or mandatory supervision, a person on postrelease community supervision (PCS) had a sentence imposed, served his full sentence in prison, and was released on PCS. If the PCS is revoked, the person will serve his full PCS sentence whether or not his PCS has been revoked, summarily or otherwise. Therefore, the</p>	<ul style="list-style-type: none"> • A person serving a period of postrelease community supervision cannot be held in custody for a period longer than the mandated term of supervision as set forth in Penal Code section 3456. To address this restriction, the committee has added a clarifying provision, to read: <u>“Time during revocation, summary or otherwise, shall not be credited toward any period of supervision; however, the person subject to postrelease supervision shall not remain in custody for a period longer than the</u>

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			<p>proposed amendments to sections 1203.2 and 3456 are unnecessary. In addition, the proposed amendments are contrary to existing statutes and raise serious constitutional concerns.</p> <p>To illustrate that the committee’s proposed amendments to sections 1203.2 and 3456 are unnecessary, consider the following example: A defendant is released from prison and placed on PCS for 3 years. Five days before the end of his PCS term, the defendant is arrested and his PCS revoked for a violation. Five days later he is released because he has served his full PCS term of 3 years. As the example demonstrates, the proposed amendments to sections 1203.2 and 3456 are unnecessary because the defendant served his full PCS term of 3 years.</p> <p>To illustrate the unreasonable consequences that will flow as a result of the committee’s proposed amendments to sections 1203.2 and 3456, consider the following example: A defendant is released from prison and placed on PCS for 3 years. Five days before the end of his PCS term, the defendant is arrested and his PCS revoked for an alleged but mistaken claim of violation. Instead of being released 5 days after his arrest, the defendant will not be released until after his formal revocation hearing, which takes place on day 45. Thus, the defendant’s</p>	<p><u>term of supervision authorized under this section.</u>”</p>

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			<p>PCS term was unlawfully extended by 40 days.³ Such a consequence “raises serious due process concerns.” (See, for example, <i>Leiva</i> at page 509.) Furthermore, such a consequence is contrary to section 3456, subsection (a)(1), which mandates that PCS immediately end after the defendant has been on PCS for three years.</p> <hr/> <p>¹ The defendant may actually be released after 4 days if he is awarded conduct credits pursuant to section 4019.</p> <p>² Of course the defendant can mitigate the due process violation by waiving his right to a revocation hearing and admitting a violation he did not commit. This resolution of course raises different serious due process concerns. (See, for example, <i>Leiva</i> at page 509.)</p> <p>³ Of course the defendant can mitigate the due process violation by waiving his right to a revocation hearing and admitting a violation he did not commit. This resolution of course raises different serious due process concerns. (See, for example, <i>Leiva</i> at page 509.)</p>	
4.	Santa Barbara County Probation Department Kimberly Shean, Manager	AM	As the Post Release Community Supervision population offers jurisdictional issues for the court when compared to standard probation, the term ‘Revocation’ requires further definition.	<ul style="list-style-type: none"> • Postrelease community supervision involves greater complexity than probation because of the ability of the supervising agency to impose “flash incarceration” as an

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			<p>One option would be to define as the date on which the Court authorizes a warrant or finds probable cause pursuant to 3455 (b)(1) PC.</p> <p>‘Reinstatement’ also requires distinction and definition for the following two events-</p> <ul style="list-style-type: none"> • In the event a warrant has been issued “reinstatement” is defined as the date the offender is arrested on the warrant if the matter is handled pursuant to 3454(c) PC (flash) or when the Court reinstates supervision under 3455(a)(1) PC (revo). • ‘Reinstatement’ in the event a revocation has been filed is defined as the date the Court reinstates supervision under 3455(a)(1) PC or the date the offender waives his/her right to a hearing and agrees to the recommended disposition. 	<p>intermediate sanction. Nevertheless, only a court can revoke supervision. When the court summarily revokes postrelease community supervision in response to the filing of a petition for revocation, the person under supervision may or may not be in custody; if in custody, the court can award custody credits when making a final determination whether to revoke supervision. If the supervised person has absconded or is otherwise not in custody, the time between the summary revocation by the court and the court’s final determination on the revocation petition should not count toward the person’s period of supervision, whether or not the court ultimately “reinstates” the person on supervision.</p> <ul style="list-style-type: none"> • Also see related response to commentator #3, above.
5.	Superior Court of Los Angeles County	A	(no comments were provided)	No response required.
6.	Superior Court of San Diego County by Mike Roddy Court Executive Officer	A	(no comments were provided)	No response required.
7.	Paul Wellencamp Attorney	N	In Alameda County, it's the Court's uniform policy to grant probation for the maximum term possible and to maintain a defendant on probation as long as possible. This enables law enforcement and the courts to search, incarcerate, and try defendants, and to manage a crowded court calendar, without the	See related response to commentator #3, above.

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			<p>inefficiencies posed by certain constitutional rights. As a consequence, prior to the Supreme Court's decision, defendants often remained on probation for very long terms. This was compounded by the tendency of some judges to leave probation in revoked status for extended periods of time -- even though the revocation had been resolved, the defendant released from custody and progress reports ongoing.</p> <p>Because probation revocations, especially in misdemeanors, are frequent, it was very difficult to determine when probation expired. Doing so required careful examination of the court file. Frequently inaccurate clerks minutes and data entry made determining whether a defendant was on probation even more complicated. Consequently, many defendants were brought to court and held in custody in cases where probation had, in fact, expired.</p> <p>Here in Alameda County, where probation is used to eliminate constitutional protections for as long a term as possible, the Court's decision introduced much-needed certainty and fairness into being on probation -- and still authorized probation terms of many years. This proposal permits our Court to return to the abuses of the past. It should not be adopted.</p>	