



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-037

For business meeting on September 20, 2024

Title

Criminal Law: Parole Period Advisement

Agenda Item Type

Action Required

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 4.433

Effective Date

January 1, 2025

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Date of Report

August 20, 2024

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends amending rule 4.433 of the California Rules of Court to add a reference to the parole periods described in Penal Code section 3000.01. The recommended addition to the rules is to the provision on the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence. The proposed amendment reflects a legislative change and is intended to guide sentencing judges in accurately informing defendants of relevant parole periods.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2025, amend California Rules of Court, rule 4.433 to add a reference to the parole periods described in Penal Code section 3000.01 to the provision on the sentencing judge's advisement to the defendant about the parole period to be served after expiration of the sentence.

The proposed rule is attached at page 4.

Relevant Previous Council Action

Rule 4.433, Matters to be considered at time set for sentencing, was adopted by the Judicial Council effective July 1, 1977, as rule 433 and renumbered as rule 4.433 effective January 1, 2001. It was last revised to incorporate relevant provisions of the 2011 Realignment Legislation,¹ effective January 1, 2017, and to require enhancements be considered at sentencing by the judge, effective January 1, 2018.

Analysis/Rationale

Rule 4.433 outlines matters for the court to consider at sentencing, including a requirement for the sentencing judge to inform a defendant “[u]nder section 1170(c) of the parole period provided by section 3000 to be served after expiration of the sentence, in addition to any period of incarceration for parole violation.” (Cal. Rules of Court, rule 4.433(e)(1); see Pen. Code, § 1170(c).²)

Penal Code section 3000³ sets a three-year parole period for persons who served a determinate prison sentence for a serious or violent felony committed on or after July 1, 2013, with specified exceptions. (§ 3000(b)(2)(B).) Beginning August 6, 2020, section 3000.01 limits the parole period to two years for persons sentenced to a determinate term in state prison and released on or after July 1, 2020, with specified exceptions.⁴ *People v. Tilley* (2023) 92 Cal.App.5th 772, 779–780 described how this legislative change has created some ambiguity and inconsistency:

[D]espite adding section 3000.01 limiting the parole term for those released from prison on or after July 1, 2020, the Legislature did not amend the relevant provisions of sections 3000 and 3000.08, which still provide the inmate shall be released on parole for a period of three years. (§ 3000, subd. (b)(2)(B).) Section 1170 and California Rules of Court, rule 4.433 still require the court to advise as to the period delineated in section 3000, and section 3000 makes no reference to section 3000.01. The Judicial Council forms similarly indicate the parole term is three years under section 3000, subdivision (b). These statutory inconsistencies put trial courts in a bit of a conundrum when advising of the parole term, but as noted above, it is up to the Legislature to amend all the relevant statutes to reflect the correct parole terms.

As noted, rule 4.433(e) currently only refers to the parole period under section 3000. To address the issue identified in *Tilley* and guide trial courts in providing accurate information to

¹ Assem. Bill 109 (Stats. 2011, ch. 15).

² Under section 1170(c), “[t]he court shall also inform the defendant that as part of the sentence after expiration of the term[, the defendant] may be on parole for a period as provided in section 3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.”

³ All further statutory references are to the Penal Code unless otherwise specified.

⁴ Sen. Bill 118 (Stats. 2020, ch. 29). SB 118 was a public safety budget trailer bill that took effect immediately upon the Governor’s signature.

defendants about parole periods to be served after expiration of a sentence, the committee recommends amending the rule to add a reference to parole periods under section 3000.01.

Policy implications

This proposal has no major policy implications because the recommendation is to make an existing rule more accurate.

Comments

The committee received two comments in agreement with the proposal from the Superior Court of Orange County and the Orange County Bar Association and one comment in agreement, if modified, by the Superior Court of Los Angeles County.

In developing the proposal, the committee discussed whether to amend the language to be more general by requiring courts to inform the defendant “of the parole period to be served after expiration of the sentence,” without reference to specific statutes. However, most committee members supported referencing specific statutes to better aid sentencing courts in accurately informing defendants of relevant parole periods. The committee requested specific comments on whether the general or specific language was preferred. The Superior Court of Los Angeles County preferred the general language, while the Superior Court of Orange County preferred referencing specific statutes for a clear and concise record. The committee agrees with the Superior Court of Orange County and recommends referencing the specific statutes.

Alternatives considered

The committee did not consider the alternative of taking no action, determining that it was important to amend the rule for accuracy.

Fiscal and Operational Impacts

The committee anticipates no fiscal or operational impacts because of this proposal.

Attachments and Links

1. Cal. Rules of Court, rule 4.433, at page 4
2. Chart of comments, at pages 5–6
3. Link A: Pen. Code, § 3000.01,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3000.01.&lawCode=PEN

Rule 4.433 of the California Rules of Court is amended, effective January 1, 2025, to read:

1 **Rule 4.433. Matters to be considered at time set for sentencing**

2
3 **(a)–(b)** * * *

4
5 **(c)** If a sentence of imprisonment is to be imposed, or if the execution of a sentence of
6 imprisonment is to be suspended during a period of probation, the sentencing judge
7 must:

- 8
9 (1) Determine, under section 1170(b), whether to impose one of the three
10 authorized terms of imprisonment referred to in section 1170(b), or any
11 enhancement, and state on the record the reasons for imposing that term;
12
13 (2) Determine whether any additional term of imprisonment provided for an
14 enhancement charged and found will be stricken;
15
16 (3) Determine whether the sentences will be consecutive or concurrent if the
17 defendant has been convicted of multiple crimes;
18
19 (4) Determine any issues raised by statutory prohibitions on the dual use of facts
20 and statutory limitations on enhancements, as required in rules 4.420(c) and
21 4.447; and
22
23 (5) Pronounce the court’s judgment and sentence, stating the terms thereof and
24 giving reasons for those matters for which reasons are required by law.

25
26 **(d)** * * *

27
28 **(e)** When a sentence of imprisonment is imposed under (c) or under rule 4.435, the
29 sentencing judge must inform the defendant:

- 30
31 (1) ~~Under section 1170(e)~~ Of the parole period provided by section 3000 under
32 section 1170(c), or the parole period provided by section 3000.01, to be
33 served after expiration of the sentence, in addition to any period of
34 incarceration for parole violation;
35
36 (2) Of the period of postrelease community supervision provided by section 3456
37 to be served after expiration of the sentence, in addition to any period of
38 incarceration for a violation of postrelease community supervision; or
39
40 (3) Of any period of mandatory supervision imposed under section
41 1170(h)(5)(A) and (B), in addition to any period of imprisonment for a
42 violation of mandatory supervision.

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

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Christina Zabat-Fran, President	A	Appropriately adds PC 3000.01 to advisement of defendant on period of parole.	The committee appreciates the comment.
2.	Superior Court of Los Angeles County by Bryan Borys, Director of Research and Data Management	AM	The following comments are representative of the Superior Court of California, County of Los Angeles (Court), and do not represent or promote the viewpoint of any particular judicial officer or employee. <i>Should the advisal on parole periods to be served after expiration of a sentence be more general and not refer to specific statutes?</i> The Court suggests that the advisal be more general and not refer to specific statutes.	The committee appreciates the comment. The committee will keep the references to specific statutes on parole periods to better aid sentencing courts in accurately informing defendants of relevant parole periods.
3.	Superior Court of Orange County by Elizabeth Flores, Operations Analyst	A	<i>Does the proposal appropriately address the stated purpose?</i> Yes, the proposal appropriately addresses the stated purpose. <i>Should the advisal on parole periods to be served after expiration of a sentence be more general and not refer to specific statutes?</i> For a clear and concise record, it is best to give specific statutes. The defendant may not know or understand the specific statutes, but they will have some understanding as to why the judge is advising them as to their parole term. <i>Would the proposal provide cost savings? If so, please quantify.</i> No.	The committee appreciates the comment. No response required. The committee agrees with the comment. No response required.

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	Commenter	Position	Comment	Committee Response
			<p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i></p> <p>Our current docket code for advisement of parole can be modified to conform to the statutory changes. Courtroom clerks would be advised of the new language and how to properly select which advisement statute is contained in the docket code. The presiding judge would ensure some type of training to all judicial officers, including assigned judicial officers. I believe a 30-minute presentation would suffice for their training.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i></p> <p>Yes</p> <p><i>How well would this proposal work in courts of different sizes?</i></p> <p>The impact is not affected by the size of the court.</p>	<p>No response required.</p> <p>No response required.</p> <p>No response required.</p>