



Judicial Council of California

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Title

Criminal Law: Criminal Realignment and Military Service (Action Required)

Summary

The Criminal Law Advisory Committee proposes amendments to specified criminal sentencing rules of the California Rules of Court to (1) reflect statutory amendments enacted as part of the Criminal Justice Realignment Act, which made significant changes to the sentencing and supervision of persons convicted of felony offenses; (2) facilitate the court's determinations under Penal Code section 1170.9 for defendants with military service; and (3) make nonsubstantive technical amendments. The proposed amendments respond, in part, to recent legislation directing the Judicial Council to amend the rules to promote uniformity in sentencing under the Realignment Act.

Recommendation

The Criminal Law Advisory Committee (CLAC) recommends that the Judicial Council, effective January 1, 2017:

1. Amend rules 4.403, 4.405, 4.406, 4.410, 4.412, 4.414, 4.420, 4.421, 4.423, 4.425, 4.427, 4.433, 4.435, 4.452, and 4.480 and/or the corresponding advisory committee comments to reflect the Criminal Justice Realignment Act by incorporating references to imprisonment in county jail under Penal Code section 1170(h)1, mandatory supervision under section 1170(h)(5), postrelease community supervision under sections 3450-3465, parole under section 3000.08, and/or local county correctional administrator or sheriff, where appropriate.
2. Further amend rule 4.405 and the advisory committee comment to incorporate terms relevant to the Criminal Justice Realignment Act: mandatory supervision; postrelease community supervision; evidence-based practices; community-based corrections program; local supervision; and county jail; and make other specified nonsubstantive amendments.
3. Further amend rule 4.406 by adding paragraph (b)(11): "(11) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A)."
4. Further amend rule 4.410 and the corresponding advisory committee comment to add references to the policies underlying the Criminal Justice Realignment Act.
5. Amend rule 4.411.5 to reflect the statutory requirement that the court consider as a factor in granting

probation include those relevant to whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service.

6. Amend rule 4.415 and the corresponding advisory committee comment to reflect the decision in *People v. Borynack* (2015) 238 Cal.App.4th 958, that courts may not impose mandatory supervision when the defendant is statutorily ineligible for a suspension of part of the sentence.
7. Further amend rule 4.433 to incorporate relevant provisions of the Criminal Justice Realignment Act: mandatory supervision, postrelease community supervision, parole.
8. Amend rule 4.472 by adding “4019” after “2933.2(c), and” in the first sentence.
9. Further amend rules 4.403, 4.405, 4.409, 4.414, 4.421, 4.427, 4.431, and 4.433 and/or relevant portions of advisory committee comments to add references to relevant statutory provisions and make nonsubstantive changes.