JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT
LEG15-01

Title

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

Proposed Rules, Forms, Standards, or Statutes
Amend Penal Code sections 1203.2(a),
1170(h)(5)(B), 3456(b)

Proposed by
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Action Requested
Review and submit comments by June 17,
2015

Proposed Effective Date
January 1, 2017

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Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code sections 1203.2(a),
1170(h)(5)(B), and 3456(b) to enhance court jurisdiction over all forms of supervision
revocations by clarifying that when supervision has been revoked, summarily or otherwise, the
time that elapses during revocation shall not be credited toward any period of supervision. This
proposal, developed at the request of judges, would preserve court jurisdiction to reinstate
supervision and harmonize the statutory provisions that address tolling of supervision time
during a period of revocation.

Background

Under criminal justice realignment, courts are required to conduct revocation proceedings for
four distinct categories of supervision—probation, mandatory supervision, postrelease
community supervision (PRCS), and parole. Revocation proceedings for all categories are
governed by the longstanding procedures in Penal Code section 1203.2,[1] which includes a
"tolling" provision: "The revocation, summary or otherwise, shall serve to toll the running of the
period of supervision." Comparable provisions are included in section 1170(h)(5)(B) (mandatory
supervision) and section 3456(b) (PRCS).[2]

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[1] All further statutory references are to the Penal Code.

[2] Section 3000.08, the provision governing parole revocation, does not include a tolling provision.

*The proposals have not been approved by the Judicial Council and are not intended to represent the
views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee.
These proposals are circulated for comment purposes only.*

In *People v. Leiva* (2013) 56 Cal 4th 498, the California Supreme Court interpreted the tolling provision in section 1203.2(a) and reviewed the court's jurisdiction to adjudicate an alleged violation of probation that occurred while the defendant's supervision had been summarily revoked, but *after* the original probation term had expired. The Supreme Court determined that the language in section 1203.2(a) preserved the court's jurisdiction to adjudicate only those violations that occurred within the original term of probation. (*Id.* at pp. 515–516.) As a result, following *Leiva*, if no violation is found to have occurred during the original period, supervision will be deemed completed even if the defendant never complied with the terms of supervision or violated the terms after the original supervision period expired. As noted in *Leiva*, section 1203.2(a) as currently constructed limits the exercise of 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. (*Id.* at pp. 519–520.)

These issues arise in two other statutes that address court jurisdiction and the calculation of time during a period of supervision revocation: section 1170(h)(5)(B) (mandatory supervision) and section 3456(b) (PRCS). To promote uniformity and eliminate ambiguity, the tolling provisions in all three statutes should be harmonized.

The Proposal

To preserve court jurisdiction over defendants when supervision has been revoked and to authorize courts to reinstate supervision following a violation, whenever the violation occurs, the Criminal Law Advisory Committee proposes amending Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b) to replace their current tolling provisions[3] with the following sentence: "Time during revocation, summary or otherwise, shall not be credited toward any period of supervision."

The proposed language would harmonize the statutory provisions that address calculation of supervision time during a period of revocation and would clarify that time that elapses during revocation shall not be credited toward any period of supervision. Courts would have continuing authority to determine the consequences of supervision violations, whether or not the violation occurred during the original period of supervision. This reformulation would enable courts to ensure that defendants receive the benefit of serving the full term of supervised release.

Alternatives Considered

The committee considered amending solely Penal Code section 1203.2(a) but determined that harmonizing the statutory provisions to promote uniformity and avoid ambiguity would be beneficial.

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[3] Section 1203.2(a): "The revocation, summary or otherwise, shall serve to toll the running of the period of supervision." 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." 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."

Implementation Requirements, Costs, and Operational Impacts
No significant implementation requirements, costs, or operational impacts for courts are likely.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links
1. Proposed Penal Code sections 1203.2(a), 1170(h)(5)(B), and 3456(b), at pages 4–5

Sections 1203.2(a), 1170(h)(5)(B), and 3456(b) of the Penal Code would be amended, effective January 1, 2017, to read:

§ 1203.2(a)

1
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~~

41 ~~time period which is suspended because a person has absconded shall not be credited toward the~~
42 ~~period of supervision.~~ Time during revocation, summary or otherwise, shall not be credited
43 toward any period of supervision.
44
45 **§ 3456**
46 (a) The county agency responsible for postrelease supervision, as established by the county board
47 of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease supervision
48 over a person under postrelease supervision pursuant to this title until one of the following events
49 occurs:
50 (1) The person has been subject to postrelease supervision pursuant to this title for three years at
51 which time the offender shall be immediately discharged from postrelease supervision.
52 (2) Any person on postrelease supervision for six consecutive months with no violations of his or
53 her conditions of postrelease supervision that result in a custodial sanction may be considered for
54 immediate discharge by the supervising county.
55 (3) The person who has been on postrelease supervision continuously for one year with no
56 violations of his or her conditions of postrelease supervision that result in a custodial sanction
57 shall be discharged from supervision within 30 days.
58 (4) Jurisdiction over the person has been terminated by operation of law.
59 (5) Jurisdiction is transferred to another supervising county agency.
60 (6) Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and
61 terminate supervision by the supervising county agency.
62
63 (b) ~~Time during which a person on postrelease supervision is suspended because the person has~~
64 ~~absconded shall not be credited toward any period of postrelease supervision.~~ Time during
65 revocation, summary or otherwise, shall not be credited toward any period of supervision.