



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 26, 2013

Title	Agenda Item Type
Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 4.541	July 1, 2013
Recommended by	Date of Report
Criminal Law Advisory Committee Hon. Tricia Ann Bigelow, Chair	February 21, 2013
	Contact
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Executive Summary

The Criminal Law Advisory Committee recommends amendments to rule 4.541 of the California Rules of Court to apply its minimum content requirements to parole revocation reports as required by Penal Code section 3000.08(f).

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective July 1, 2013, amend:

1. Rule 4.541(a) to establish that the rule applies to parole revocation proceedings;
2. Rule 4.541(b)(1) to explain that the phrase “supervised person” as used in the rule includes persons subject to parole supervision;
3. Rule 4.541(e) to require that parole revocation reports include information about intermediate sanctions as required by Penal Code section 3000.08(f); and

4. The advisory committee comment on rule 4.541(e) to explain the specific statutory provisions that govern requirements for intermediate sanctions in the parole revocation context.

The text of amended rule 4.541 is attached at pages 4–6.

Previous Council Action

The Judicial Council adopted rule 4.541, effective October 28, 2011, to facilitate court implementation of postrelease community supervision revocation procedures. The Judicial Council amended rule 4.541, effective November 1, 2012, to extend its minimum content requirements to reports filed in conjunction with petitions to revoke probation and mandatory supervision under Penal Code section 1170(h)(5)(B).

Rationale for Recommendation

Criminal justice realignment legislation implemented broad changes to felony sentencing laws and parole procedures, including eliminating prison as a sentence option for certain defendants, authorizing courts to impose a period of “mandatory supervision” after release from county jail, and requiring courts to conduct revocation proceedings for a new category of supervision called “postrelease community supervision” (PRCS).

The legislation will also requires courts to conduct parole revocation proceedings beginning July 1, 2013. Penal Code section 3000.08(f) requires the Judicial Council to adopt rules of court to implement the new parole revocation proceedings, including rules that prescribe the minimum contents of parole revocation reports.

Rule 4.541 currently prescribes the minimum contents of supervising agency reports filed with petitions to revoke probation, mandatory supervision, and PRCS. The rule is designed to ensure that supervising agencies provide courts with sufficient information to conduct revocation proceedings. By extending the rule’s minimum content requirements to parole revocation reports, the proposal is designed to promote uniform minimum contents across all four categories of supervision reports, while providing courts and supervising agencies with flexibility to decide the format and additional content of the reports.

The recommended effective date—July 1, 2013—coincides with the effective date of the new parole revocation procedures.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from December 10, 2012, to January 25, 2013. A total of five comments were received—two that agreed with the proposal and three that agreed if modified. No commentators opposed the proposal. A chart with all comments received and the

committee's responses is attached at pages 7–19. Notable comments and alternatives considered include the following:

- **Flash incarceration and mandatory supervision.** The committee declined a suggestion from the Orange County Public Defender to apply the rule's report requirements to mandatory supervision cases in which flash incarceration is imposed. The committee declined the suggestion because the criminal justice realignment legislation authorizes supervising agencies to impose flash incarceration without court involvement and only in parole and postrelease community supervision cases. (Pen. Code, §§ 3000.08(d)–(e), 3454(b)–(c).)
- **Federal court injunctions.** The committee declined a suggestion to modify the rule to reflect the terms of two federal court injunctions issued in parolee class action lawsuits because the specific terms of the injunctions represent settlement negotiations between other parties regarding revocation procedures implemented by the California Department of Corrections and Rehabilitation under a previous statutory scheme. In addition, the Legislature recently amended Penal Code section 1203.2 to apply longstanding probation revocation procedures to parole revocations, which do not expressly require many of the various terms of the federal court injunctions.

Implementation Requirements, Costs, and Operational Impacts

No significant costs or implementation requirements are expected.

Attachments

1. Cal. Rules of Court, rule 4.541, at pages 4–6
2. Comment chart, at pages 7–19
3. Attachment A: *Stipulation and Order on Revised Injunction* (“Armstrong Injunction”), attached as an exhibit to the comments from Rosen, Bien, Galvan & Grunfeld LLP, in item 2 of the attached comment chart
4. Attachment B: *Stipulated Order for Permanent Injunctive Relief* (“Valdivia Injunction”), attached as an exhibit to the comments from Rosen, Bien, Galvan & Grunfeld LLP, in item 2 of the attached comment chart

Rule 4.541 of the California Rules of Court is amended, effective July 1, 2013, to read:

1 **Rule 4.541. Minimum contents of supervising agency reports**

2
3 **(a) Application**

4
5 This rule applies to supervising agency petitions for revocation of formal probation,
6 parole, mandatory supervision under Penal Code section 1170(h)(5)(B), and
7 postrelease community supervision under Penal Code section 3455.
8

9 **(b) Definitions**

10 As used in this rule:

11
12
13 (1) “Supervised person” means any person subject to formal probation, parole,
14 mandatory supervision under Penal Code section 1170(h)(5)(B), or
15 community supervision under Penal Code section 3451.
16

17 (2)–(4) ***
18

19 **(c) Minimum contents**

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21 Except as provided in (d), a petition for revocation of supervision must include a
22 written report that contains at least the following information:
23

24 (1) Information about the supervised person, including:

25
26 (A) Personal identifying information, including name and date of birth;

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28 (B) Custody status and the date and circumstances of arrest;

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30 (C) Any pending cases and case numbers;

31
32 (D) The history and background of the supervised person, including a
33 summary of the supervised person’s record of prior criminal conduct;
34 and

35
36 (E) Any available information requested by the court regarding the
37 supervised person’s risk of recidivism, including any validated risk-
38 needs assessments;
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40 (2) All relevant terms and conditions of supervision and the circumstances of the
41 alleged violations, including a summary of any statement made by the
42 supervised person, and any victim information, including statements and type
43 and amount of loss;

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- (3) A summary of any previous violations and sanctions; and
- (4) Any recommended sanctions.

(d) Subsequent reports

If a written report was submitted as part of the original sentencing proceeding or with an earlier revocation petition, a subsequent report need only update the information required by (c). A subsequent report must include a copy of the original report if the original report is not contained in the court file.

(e) Parole and Postrelease Community Supervision Reports

In addition to the minimum contents described in (c), a report filed by the supervising agency in conjunction with a petition to revoke parole or postrelease community supervision under Penal Code section 3455 must include the reasons for that agency’s determination that intermediate sanctions without court intervention as authorized by Penal Code sections 3000.08(f) or 3454(b) are inappropriate responses to the alleged violations.

Advisory Committee Comment

Subdivision (c). This subdivision prescribes minimum contents for supervising agency reports. Courts may require additional contents in light of local customs and needs.

Subdivision (c)(1)(D). The history and background of the supervised person may include the supervised person’s social history, including family, education, employment, income, military, medical, psychological, and substance abuse information.

Subdivision (c)(1)(E). Penal Code section 3451(a) requires postrelease community supervision to be consistent with evidence-based practices, including supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among supervised persons. “Evidence-based practices” refers to “supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.” (Pen. Code, § 3450(b)(9).)

Subdivision (e). Penal Code sections 3000.08(d) and 3454(b) ~~authorizes~~ authorize supervising agencies to impose appropriate responses to alleged violations of parole and postrelease community supervision under Penal Code section 3455 without court intervention, including referral to a reentry court under Penal Code section 3015 or flash incarceration in a county jail. Penal Code sections 3000.08(f) and 3455(a) ~~requires~~ require the supervising agency to determine that the intermediate sanctions authorized by sections 3000.08(d) and 3454(b) are inappropriate

- 1 responses to the alleged violation *before* filing a petition to revoke parole or postrelease
- 2 community supervision ~~under Penal Code section 3455.~~

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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

	Commentator	Position	Comment	Committee Response
1.	Orange County Public Defender Mark S. Brown Assistant Public Defender	AM	<p>The Orange County Public Defender (OCPD) supports the Committee’s goal to promote consistency for the supervision of individuals on probation, mandatory supervision, postrelease community supervision, and parole. Although the OCPD generally agrees with the proposed rule changes, some modifications to the Committee’s proposed changes are necessary.</p> <p>First, supervised persons subject to mandatory supervision under section 1170, subdivision (h)(5)(B), are subject to flash incarceration pursuant to [Penal Code] section 17.5. See, for example, footnote 4 in the Attorney General’s [“Answer to Petition for Review”] filed in <i>Vanstane (Adam) on H.C.</i> (S201150) in which the Attorney General stated: “Moreover, offenders subject to mandatory supervision under Penal Code section 1170, subdivision (h)(5)(B), are subject to flash incarceration pursuant to Penal Code section 17.5.”</p> <p>Second, the “flash incarceration” of supervised persons on parole, mandatory supervision or postrelease community supervision requires judicial intervention (and a report from the supervising agency) to prevent a denial of procedural due process and to be constitutional. A more complete discussion of this issue is included in the “Authority” section below.</p> <p>Accordingly, the following modifications should be made to the Committee’s proposed changes:</p>	<p>The committee declines the suggestions because criminal justice realignment legislation authorizes supervising agencies to impose flash incarceration without court involvement and only in parole and postrelease community supervision cases. (Pen. Code, §§ 3000.08(d)–(e), 3454(b)–(c).)</p>

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			<p>Subsection (a): This rule applies to supervising agency petitions for revocation of formal probation, parole, mandatory supervision under Penal Code section 1170(h)(5)(B), and postrelease community supervision under Penal Code section 3455. <u>In addition, this rule applies anytime a supervising agency seeks a “flash incarceration” of a supervised person on parole, mandatory supervision or postrelease community supervision in accordance with sections 3000.08(f), 17.5 and 3454(b).</u></p> <p>Subsection (e): In addition to the minimum contents described in (c), a report filed by the supervising agency in conjunction with a petition to revoke parole, <u>mandatory supervision</u> or postrelease community supervision under Penal Code section 3455 must include the reasons for that agency’s determination that intermediate sanctions without court intervention as authorized by Penal Code sections 3000.08(f), 17.5 or 3454(b) are inappropriate responses to the alleged violations.</p> <p><u>Authority</u> The United States Supreme Court has emphatically held that the state may not retain the right to re-incarcerate released inmates at its whim. Liberty, once granted, is a substantial right that cannot be revoked without some level</p>	

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			<p>of due process under the law. <i>Morrissey v. Brewer</i> (1972) 408 U.S. ... is the seminal case on the procedural due process rights of a supervised individual facing an alleged violation. <i>Morrissey</i> confirmed that a parolee’s liberty, although restricted, is a significant interest such that its termination requires certain minimum due process protections. (<i>Id.</i> at p. 482.) The high court noted the necessity of a hearing structured to assure that “the finding of a parole violation will be based on verified facts and the exercise of discretion will be informed by an accurate knowledge of the parolee’s behavior.” (<i>Id.</i> at p. 484.)</p> <p>With that standard in mind, <i>Morrissey</i> analyzed the two basic steps in a parole violation. First, as soon as is reasonably possible after a parolee’s arrest, there should be an initial hearing “in the nature of a ‘preliminary hearing’” to determine whether there is probable cause to believe the parolee has committed a violation. (<i>Morrissey, supra</i>, 408 U.S. at p. 485.) Due process requires that this determination be made by somebody “not directly involved in the case,” because “[t]he officer directly involved in making recommendations cannot always have complete objectivity in evaluating them.” (<i>Id.</i> at pp. 485-486.) The parolee must be given notice that this hearing is going to occur, be informed of its purpose, and be told what violations have been alleged. (<i>Id.</i> at pp. 486-487.) The parolee may appear and speak in his own behalf, presenting witnesses or documentary evidence, and persons</p>	

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			<p>providing adverse information must be made available for cross-examination unless doing so would subject them to a risk of harm. (<i>Id.</i> at p. 487.) Although this hearing does not lead to a final determination, a summary of the hearing should be created and the decision-maker should state the reasons for the decision and indicate the evidence relied upon. (<i>Ibid.</i>) <i>Morrissey</i> held that this revocation hearing must occur within a reasonable time of a parolee’s arrest. (<i>Id.</i> at p. 488.)</p> <p>Second, <i>Morrissey</i> addressed what procedural due process protections are required at the final revocation hearing. The Supreme Court held that due process requires written notice of the claimed violation, disclosure to the parolee of the evidence against him, the opportunity to be heard and present witnesses and documentary evidence, the right to cross-examine adverse witnesses, a neutral and detached hearing body, and a written statement by the fact-finder as to the evidence relied on and the reasons for the decision. (<i>Morrissey, supra</i>, 408 U.S. at p. 489.)</p> <p>In <i>People v. Vickers</i> (1972) 8 Cal.3d 451, the California Supreme Court analyzed <i>Morrissey</i> and held that for purposes of procedural due process there was no distinction between parole revocation and probation revocation. (<i>Id.</i> at p. 458.) <i>Vickers</i> added that “the efficient administration of justice requires that the defendant be assisted by retained or appointed counsel at all revocation proceedings other than</p>	

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			<p>at summary proceedings had while the probationer remains at liberty after absconding.” (<i>Id.</i> at p. 461.)</p> <p>The “Realignment” legislation recognized that procedural due process protections are constitutionally required before freed prisoners can be re-incarcerated, and took steps to ensure that individuals subject to new forms of supervision would enjoy such protections. On June 27, 2012, the Governor signed Senate Bill 1023, which required that violations of all four existing forms of supervision (parole, probation, [postrelease community supervision] and mandatory supervision) be processed by the courts in the same fashion. Various statutes were amended to bring all forms of supervision under the procedural umbrella of [Penal Code]sections 1203.2 and/or 1203.3, which have long governed the procedures for probation revocations, modifications, and terminations. (See Penal Code sections 1170, subd. (h)(B)(5); 1203.2; 3000.08, subd. (f); 3455, subdivision (a) [collectively requiring that violations of mandatory supervision, parole, and postrelease supervision be controlled by the procedure that has long been established for probation violations, and expanding section 1203.2 to include not just those on probation but all “supervised persons”].)</p> <p>The Legislature acknowledged that the amendments bringing all forms of supervision under the procedural umbrella that had</p>	

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			<p>previously covered probation was constitutionally required. “By amending [Penal Code sections 1170, 3000.08, 3455, and 1203.2], it is the intent of the Legislature that these amendments simultaneously incorporate the procedural due process protections held to apply to probation revocation procedures under <i>Morrissey v. Brewer</i> (1972) 408 U.S. 471, and <i>People v. Vickers</i> (1972) 8 Cal.3d 451, and their progeny.” (Senate Bill 1023, § 2, subd. (b).)</p> <p>Nothing in <i>Morrissey, Brewer</i>, or their progeny suggests that there is a “flash incarceration” exception to the due process required before a freed person can be re-imprisoned. Accordingly, the “flash incarceration” of supervised persons on parole or postrelease community supervision in accordance with sections 3000.08(f) and 3454(b) requires judicial intervention to prevent a denial of procedural due process and to be constitutional.</p>	
2.	Rosen Bien Galvan & Grunfeld LLP Mr. Ernest Galvan		<p>This letter provides the comments of Rosen Bien Galvan & Grunfeld LLP to the Administrative Office of the Court (“AOC”)’s Invitation to Comment regarding Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports, W13-06. We agree with the proposed changes, but write to request that the AOC consider incorporating additional amendments to California Rule of Court 4.541, as described below.</p> <p>This firm represents the class of all California</p>	<p>The committee declines the suggestions to modify the rule to reflect the terms of the <i>Valdivia</i> and <i>Armstrong</i> injunctions. First, the specific terms of the injunctions and related orders in the federal class actions represent settlement negotiations between other parties regarding revocation procedures implemented by the California Department of Corrections and Rehabilitation (CDCR) under a previous statutory scheme. Second, the Legislature recently amended Penal Code section 1203.2 to apply longstanding probation revocation procedures to parole</p>

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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			<p>state parolees in <i>Valdivia et al. v. Brown, et al.</i>, No. CIV S-94-671 in the United States District Court for the Eastern District of California, as well as all California state prisoners and parolees with certain disabilities in <i>Armstrong et al. v. Brown et al.</i>, No. 4:94-cv-02307-CW in the United States District Court for the Northern District of California.</p> <p>The permanent injunctions in place in both cases impose certain requirements when the California Department of Corrections and Rehabilitation (“CDCR”) seeks to revoke an individual’s parole. In order to comply with the <i>Valdivia</i> and <i>Armstrong</i> court orders, it is necessary that written reports in conjunction with petitions to revoke parole, in addition to containing the minimum content requirements set forth in California Rule of Court 4.541(c) and (e), also include the following additional information:</p> <ol style="list-style-type: none"> Information identifying any disabilities or communication difficulties of the parolee. The <i>Armstrong</i> Revised Permanent Injunction [Attachment A], entered by the court on February 11, 2002, requires that CDCR identify whether a parolee has any disabilities and review information in the parolee’s files about those disabilities before revoking parole. <i>Armstrong</i> Revised Permanent Injunction at ¶ 16(a); 16(b). It further requires that CDCR inform attorneys appointed to represent parolees with 	<p>revocations. Probation revocation procedures under section 1203.2 do not expressly require many of the various terms of the federal court injunctions, including formal probable cause determinations, yet probation procedures have long withstood constitutional scrutiny.</p> <p>The committee also declines as unnecessary to require that parole reports include specific disability information. The committee believes that subdivision (c)(1)(D) ensures that courts and parties are provided with sufficient information about the supervised person. As noted in the advisory committee comment regarding subdivision (c)(1)(D): “The history and background of the supervised person may include the supervised person’s social history, including family, education, employment, income, military, medical, psychological, and substance abuse information.” The committee also declines to require specific disability information due to privacy concerns because supervision reports are presumptively public in nature.</p> <p>In addition, the committee declines to amend the rule to require additional information about intermediate sanctions because information about previous sanctions is already required by subdivision (c)(3): “A summary of any previous violations and sanctions.”</p>

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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			<p>disabilities at revocation proceedings of their clients' disabilities. <i>Id.</i> at ¶¶ 27; 30...</p> <p>The <i>Valdivia Stipulated Order</i> for Permanent Injunctive Relief, entered by the court on March 8, 2004 [Attachment B], requires that information identifying a parolee's communication difficulties, including but not limited to mental illness, other cognitive or communication impairments, illiteracy, limited English-language proficiency, and the need for a foreign language interpreter be provided to a parolee's attorney at the time of appointment. <i>Valdivia Stipulated Order for Permanent Injunctive Relief</i> at ¶ 13.... Such information must therefore be included in the written report supporting a petition for revocation of parole, so that the parolee's appointed attorney is aware of the parolee's needs at the time of appointment.</p> <p>2. Information regarding the probable cause determination supporting revocation. The <i>Valdivia</i> Permanent Injunction requires that no later than forty-eight (48) hours after a parole hold has been placed, a determination be made as to whether probable cause exists to continue the parole hold. <i>Id.</i> at ¶ 11(b)(ii). Furthermore, no later than thirteen (13) business days after the parole hold, a parolee must be provided with a probable cause hearing. <i>Id.</i> at ¶ 11(d). Therefore,</p>	

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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			<p>written reports supporting a petition for revocation of parole must at a minimum contain information sufficient to inform the court whether, and under what circumstances, a probable cause determination has been made, and what the result of the determination was.</p> <p>Furthermore, given the requirement in <i>Morrissey v. Brewer</i> that an independent officer determine if there is probable cause to believe the parolee has committed a violation, <i>Morrissey v. Brewer</i>, 408 U.S. 471, 486-87 (1972), we urge that this information be required among the minimum contents of written reports supporting petitions for revocation of all forms of supervision covered by Rule 4.541.</p> <p>In addition, the proposed amended Rule 4.541(e) omits crucial information necessary to allow a court to assess a petition for parole and Postrelease Community Supervision. Beyond informing a court of “the reasons for [the supervising agency’s] determination that intermediate sanctions without court intervention. . .are inappropriate responses to the alleged violations,” as required by the proposed rule, it is necessary that a written report also inform the court whether any intermediate sanctions authorized by Penal Code sections 3000.08 or 3454 have already been implemented for the current alleged violation, the terms of any intermediate</p>	

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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			<p>sanctions used, and the results of such sanctions. Including such information in reports in conjunction with petitions for revocation of parole and Postrelease Community Supervision will allow courts to analyze fully the circumstances supporting the petition for revocation and prevent unnecessary overuse of intermediate sanctions such as flash incarceration.</p> <p>We therefore request that the following additional language be added to the proposed amended Rule 4.541:</p> <p><u>in subsection (c):</u></p> <p>(1)(F) In addition to the information in (A) – (E), written reports supporting petitions for revocation of parole must include information regarding any disabilities and communication difficulties of the supervised person, including but not limited to mental illness, impairments of vision and hearing, illiteracy, or the need for a sign language or foreign language interpreter.</p> <p>(5) A description of the determination of probable cause supporting revocation of supervision, including the date and time of such determination, the names and titles of all individuals present for the determination, and the result of the determination.</p> <p><u>in subsection (e), after “alleged violations”:</u></p>	

W13-06**Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports** (*amend Cal. Rules of Court, rule 4.541*)

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

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			<p>, or if intermediate sanctions were previously imposed for the alleged violation(s), the type of sanction used, the reasons the sanction was chosen, dates and the length of time the sanction was imposed, and the result of the sanction.</p> <p>Thank you for your consideration. Please do not hesitate to contact me if you have any questions regarding our comments.</p>	
3.	Superior Court of Los Angeles County	A	The existing rule (CRC 4.541) already specifies the minimum contents of probation, mandatory supervision and post-release community supervision violation reports. The proposed amendment would add parole violation reports to the rule. The effect of the amendment is to provide uniform minimum contents for all supervision violation reports, regardless of the mode of supervision.	No response required.
4.	Superior Court of Orange County Ms. Anabel Romero Manager	AM	The proposals for modifications to [rule 4.541], on the whole, are accepted by [the Superior Court of] Orange County. However, there is no proposal to modify subsection (b)(4) which defines “supervising agency.” Since the other updates being considered are related to parole, Orange County suggests that the text for (b)(4) be expanded to include the supervising agency for parole, e.g. the Department of Corrections and Rehabilitation. Such language, when incorporated into the current text might read as follows:	The committee declines the suggestion as unnecessary because subdivision (b)(4) is not exhaustive. Rather, subdivision (b)(4) is designed to clarify that the rule applies to any agency that a county board of supervisors may employ to provide supervision services.

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Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports (*amend Cal. Rules of Court, rule 4.541*)

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			<p>(b) Definitions (1) "Supervised person" means any person subject to formal probation, parole, mandatory supervision under Penal Code section 1170(h)(5)(B), or community supervision under Penal Code section 3451. (2)-(3) *** (4) "Supervising agency" includes the county agency designated by the board of supervisors under Penal Code section 3451 or the Department of Corrections and Rehabilitation under [authority section].</p> <p><u>Request for Specific Comments</u> Would the proposal provide cost savings? No, the proposal is cost-neutral.</p> <p>What are the implementation requirements for courts? As to Orange County, there will be minimal impact in adding a designation of "parole revocation report" as a type of filed document into our case management system. Since new processes and procedures will be created as part of the parole revocation phase of Criminal Realignment anyway, incorporating references to this report does not impose a significant requirement in terms of court resources.</p> <p>Would a July 1, 2013 effective date provide sufficient time for implementation? Yes</p>	

W13-06**Criminal Justice Realignment: Minimum Contents of Parole Revocation Reports** (*amend Cal. Rules of Court, rule 4.541*)

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	Commentator	Position	Comment	Committee Response
5.	Superior Court of San Diego County Mr. Michael Roddy Court Executive Officer	A	No additional comments.	No response required.

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**RECEIVED
JUN 28 2002
ROSEN BIEN & ASARO**

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GRAY DAVIS, et al.,

Defendants.

No. C-94-2307-CW

**STIPULATION AND ORDER ON
REVISED INJUNCTION**


Pursuant to the Court's Order of January 29, 2002, the parties have met and conferred regarding a revision of the Permanent Injunction issued in this case in order to meet the requirements stated by the Ninth Circuit in *Armstrong v. Davis*, 275 F.3d 849 (9th Cir. 2001).

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The parties stipulate that the attached Revised Permanent Injunction meets the Ninth Circuit's requirements.

IT IS SO STIPULATED.

Dated: February 5, 2002


SARA NORMAN
Attorney for plaintiffs

Dated: February 6, 2002


FRANCES GRUNDER
Attorney for defendants

IT IS SO ORDERED.

Dated: _____

CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5

6 JOHN ARMSTRONG, et al.,
7 Plaintiffs,
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9 v.

10 GRAY DAVIS, et al.,
11 Defendants.

No. C 94-02307 CW

REVISED
PERMANENT
INJUNCTION

12
13 Based on the Findings of Fact and Conclusions of Law filed
14 herewith, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

15 Defendants Gray Davis, as Governor of the State of California,
16 Robert Presley, as Secretary to the California Youth and Adult
17 Corrections Agency, James Nielsen, as Chairman of the California
18 Board of Prison Terms (BPT), and the BPT, and their agents,
19 employees, successors in office and all persons acting in their aid
20 or in participation with them are advised, enjoined and ordered as
21 follows:

22 A. Introduction

23 1. Terms not expressly defined in this injunction shall have
24 the meaning given to them by Title II of the Americans with
25 Disabilities Act (ADA), 42 U.S.C. § 12131 et seq., and its
26 implementing regulations, or if no meaning is provided therein, the
27 meaning given to them by Section 504 of the Rehabilitation Act of
28 1973 (Section 504), 29 U.S.C. § 794, and its implementing

1 regulations. Where no definition is provided by the ADA, Section
2 504 or their implementing regulations, terms shall be construed in
3 accordance with ordinary principles of law, and particularly with
4 reference to the record in this case.

5 2. "Prisoners and parolees with disabilities" refers to all
6 current and future California State prisoners and parolees with
7 mobility, hearing or sight impairments, or with developmental or
8 learning disabilities, that substantially limit a major life
9 activity.

10 3. "Parole proceedings" shall mean all hearings conducted by
11 the BPT to determine whether and/or when a prisoner or parolee
12 should be released on parole or involuntarily confined, including
13 parole revocation and revocation extension hearings, life prisoner
14 hearings (documentation hearings, progress hearings, parole
15 consideration hearings, parole date rescission hearings and parole
16 board rules hearings), mentally disordered offender hearings and
17 sexually violent predator hearings. Parole proceedings also
18 include any events related to the hearings that occur prior to or
19 after the hearings, including, but not limited to, screening
20 offers, psychological evaluations, central file reviews and
21 administrative appeals.

22 B. Self-Evaluation and Transition Plan

23 4. Within ninety days of the date of this injunction, the
24 BPT shall evaluate, pursuant to 28 C.F.R. § 35.105, all of the
25 facilities in which parole proceedings are conducted to determine
26 whether each facility complies with the ADA and its implementing
27 regulations. The analysis shall not be limited to facilities owned
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1 and operated by the BPT, but shall include all facilities in which
2 parole proceedings are conducted. The evaluation shall include:

3 a. An accessibility survey of all parole facilities for
4 which a complete accessibility survey has not been conducted. The
5 accessibility survey need not duplicate the surveys of other
6 governmental entities as long as the BPT takes reasonable steps to
7 ensure that such surveys are accurate and reliable.

8 b. An analysis of the accessibility of each parole
9 facility.

10 5. Immediately following its analysis of these facilities,
11 the BPT shall provide to all relevant BPT and California Department
12 of Corrections (CDC) personnel a list of the facilities that are
13 not fully accessible. The list shall describe those parts of the
14 facility that are not accessible and the disabilities that the
15 facility cannot accommodate. Updated lists shall be distributed as
16 changes occur.

17 6. The BPT shall thereafter draft a Transition Plan pursuant
18 to 28 C.F.R. § 35.150(d). The Transition Plan must include the
19 following:

20 a. For each facility in which parole proceedings are
21 conducted, a description of any structural modifications that will
22 be completed to make the parole proceedings conducted at that
23 facility accessible or another accessible location in which the
24 proceedings will be held.

25 b. A schedule for providing accessible proceedings for
26 prisoners and parolees with disabilities at each facility, or at
27 another, accessible location, as expeditiously as possible, but no
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1 later than sixty days after the Transition Plan is submitted.
2 These provisions require only that the BPT request that the CDC
3 transport mobility impaired prisoners to accessible locations if
4 the facilities at which they are housed are inadequate. The CDC
5 may, for valid security or other penological reasons, decline to do
6 so.

7 7. Parole revocation hearings shall be conducted at a
8 location within fifty miles of the alleged violation that is
9 readily accessible to and usable by parolees with disabilities.

10 8. Postponement of a parole proceeding due to the
11 inaccessibility of a facility is not an acceptable alternative,
12 except in extraordinary circumstances.

13 9. Within 150 days of the date of this injunction,
14 Defendants shall submit their Transition Plan to Plaintiffs'
15 counsel. Plaintiffs shall thereafter have thirty days to submit
16 written comments and the parties shall negotiate in good faith to
17 resolve any disagreements. If any disputes remain, Plaintiffs
18 shall file a regularly noticed motion regarding the disputed issues
19 within 210 days of the date of this injunction.

20 C. Policies and Procedures.

21 10. The BPT shall develop and implement sufficiently specific
22 policies and procedures that will ensure continuous compliance with
23 all of the requirements of this injunction. Among other things,
24 the policies and procedures will ensure that prisoners and parolees
25 with disabilities are able to participate, to the best of their
26 abilities, in any parole proceedings.

27 11. The policies shall include detailed procedures for
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1 identifying prisoners and parolees with disabilities prior to or at
2 the initiation of any parole proceeding.

3 12. The policies shall include detailed procedures for
4 accommodating and effectively communicating with prisoners and
5 parolees with disabilities at all parole proceedings.

6 13. A draft of the policies and procedures required by the
7 preceding paragraph shall be submitted to Plaintiffs' counsel
8 within sixty days of the date of this injunction. Plaintiffs shall
9 thereafter have thirty days to submit written comments on the
10 policies and procedures, and the parties shall negotiate in good
11 faith to resolve any differences. If any disputes remain,
12 Plaintiffs shall file a regularly noticed motion regarding the
13 disputed issues within 150 days of the date of this injunction.
14 The briefing of any such motion shall be consolidated with the
15 briefing of any motions filed pursuant to paragraphs 21 and 23.

16 D. Training

17 14. Within 120 days of the date of this injunction, all BPT
18 Commissioners, BPT Deputy Commissioners, BPT executive officers,
19 BPT ADA coordinators, BPT appeals analysts, CDC District Hearing
20 Agents, CDC correctional counselors and other BPT and CDC personnel
21 who have direct or supervisory responsibility for communicating
22 with or making decisions affecting prisoners and parolees in
23 connection with parole proceedings shall receive adequate training
24 in the general requirements of Title II of the ADA, disability
25 awareness, the appropriate method of determining whether a prisoner
26 with a disability adequately understands written and verbal
27 communications, the circumstances that gave rise to this

1 injunction, its requirements and the BPT's policies and procedures
2 developed pursuant to this injunction that are relevant to the
3 individual's responsibilities.

4 The BPT shall provide training for all persons under its
5 jurisdiction to the extent set forth in this paragraph; it shall
6 also offer training to CDC staff involved in the parole and
7 revocation process; should any CDC personnel decline such training,
8 the BPT shall use its own personnel in their stead, except when the
9 CDC requires that CDC employees perform the services involved.

10 E. Identification and Accommodation

11 15. The BPT shall create and maintain a system for tracking
12 prisoners and parolees that the BPT identifies as having
13 disabilities. However, to the extent that tracking is conducted by
14 the CDC, it is not necessary for the BPT to duplicate that system,
15 and the BPT may make use of the CDC's tracking system as a
16 permissible means of complying with the injunction.

17 16. Prior to meeting with a prisoner or parolee about a
18 screening offer, and prior to parole revocation, parole revocation
19 extension, life prisoner parole date rescission, life prisoner
20 parole consideration, serious offender, mentally disordered
21 prisoner or sexually violent predator probable cause hearings, the
22 BPT shall take reasonable steps to identify prisoners and parolees
23 with disabilities. Such steps shall include, but not be limited
24 to:

25 a. Checking the system described in paragraph 15 to
26 determine whether the BPT has previously identified the prisoner or
27 parolee as having a disability.

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1 b. Reviewing all relevant and reasonably available
2 information in the prisoner or parolee's central and medical files.

3 c. Verifying the disability when the BPT disputes the
4 extent or existence of the disability. The prisoner or parolee
5 shall be expected to cooperate with all verification efforts, but
6 the BPT shall be responsible for verifying the disability.

7 17. The BPT shall provide accommodations to prisoners and
8 parolees with disabilities at all parole proceedings. The prisoner
9 or parolee's request for a particular type of accommodation shall
10 be given primary consideration and shall be granted unless the
11 request is unreasonable for specific, articulated reasons allowable
12 under the ADA, or unless other effective accommodations are
13 available.

14 18. The BPT shall hire at least one full-time ADA coordinator
15 with expertise in Title II of the ADA, the identification of people
16 with disabilities and the needs of people with disabilities, and
17 shall ensure that this person is generally available during normal
18 business hours to answer questions from and provide advice to
19 District Hearing Agents and other BPT and CDC personnel. This
20 person shall not be given duties that are not related to ADA
21 compliance. If the BPT determines that employing a full-time ADA
22 coordinator is unnecessary, it may seek relief from the Court by
23 way of a regularly noticed motion, but in no event shall it file
24 such a motion until the newly hired ADA coordinator has been
25 employed for at least one year. The BPT shall bear the burden of
26 demonstrating that other staffing methods are sufficient to ensure
27 compliance with this injunction.

1 F. Forms

2 19. All BPT forms used by prisoners and parolees shall be
3 revised so that they are written in simple English. Whenever
4 prisoners or parolees with disabilities are given BPT forms that
5 they cannot understand due to their disabilities, they shall be
6 provided an accommodation to enable them to understand the forms to
7 the best of their abilities.

8 20. All BPT forms provided to prisoners and parolees shall be
9 readily available in alternative formats, including, but not
10 limited to, large print, Braille and audio tape.

11 21. All revisions to forms required by this injunction shall
12 be submitted to Plaintiffs' counsel within sixty days of the date
13 of this injunction. Plaintiffs shall thereafter have thirty days
14 to submit written comments and the parties shall negotiate in good
15 faith to resolve any disagreements. If any disputes remain,
16 Plaintiffs shall file a regularly noticed motion regarding the
17 disputed issues within 150 days of the date of this injunction.
18 The briefing of any such motion shall be consolidated with the
19 briefing of any motions filed pursuant to paragraphs 13 and 23.

20 G. Equipment

21 22. The BPT shall ensure that appropriate equipment is
22 available to prisoners and parolees who need such equipment to
23 communicate effectively at parole proceedings. Such equipment
24 shall include, but not be limited to, assistive listening devices,
25 computer readers and magnification devices.

26 23. The BPT shall provide Plaintiffs' counsel with a list of
27 the available equipment and the places it is available within sixty

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1 days of the date of this injunction. Plaintiffs shall have thirty
2 days to submit written comments and the parties shall negotiate in
3 good faith to resolve any disagreements. If any disputes remain,
4 Plaintiffs shall file a regularly noticed motion regarding the
5 disputed issues within 150 days of the date of this injunction.
6 The briefing of any such motion shall be consolidated with the
7 briefing of any motions filed pursuant to paragraphs 13 and 21.

8 H. Screening Process

9 24. The screening offer, and all relevant BPT forms, police
10 reports and other written documents, shall be effectively
11 communicated to prisoners or parolees with disabilities at least
12 seventy-two hours in advance of the time at which they must decide
13 whether to exercise any of their rights, including the right to
14 request an attorney, and to accept or reject the screening offer.

15 25. Prisoners and parolees with disabilities shall be
16 provided an accommodation at the screening process when that is
17 necessary to ensure that the prisoner or parolee understands to the
18 best of his or her ability all of his or her rights, the nature of
19 the charges and the consequences of waiving any rights. Before a
20 prisoner or parolee with a disability may waive a parole hearing or
21 the right to an attorney, the BPT must determine that the waiver is
22 knowing and intelligent.

23 26. When necessary to achieve effective communication,
24 appropriate auxiliary aids or assistance must be provided to
25 prisoners and parolees during the screening process. Such aids and
26 assistance shall include, but not be limited to, sign language
27 interpreters, assistive listening devices, readers and persons

1 trained to provide assistance to individuals with cognitive
2 disabilities.

3 27. At its discretion, the BPT may appoint attorneys as an
4 accommodation. In order to suffice as an accommodation, the
5 attorneys must be adequately trained to provide accommodations to
6 persons with disabilities and must receive adequate additional time
7 for providing those services. Attorneys appointed to represent
8 individuals with disabilities shall be informed of their clients'
9 disabilities. If the BPT is aware that a prisoner or parolee
10 requires certain specific accommodations, the BPT shall either
11 instruct an attorney appointed to represent that prisoner or
12 parolee to provide those specific accommodations, or shall provide
13 the prisoner or parolee with those specific accommodations by some
14 other means.

15 28. In lieu of providing assistance at the screening process,
16 the BPT may refer the prisoner or parolee for a hearing with the
17 necessary aids or assistance, provided that, absent any additional
18 charges, the hearing is within thirty days of the parole hold and
19 that any term of imprisonment imposed at a hearing does not exceed
20 a typical screening offer for a similar violation.

21 I. Hearings

22 29. At its hearings, the BPT shall make accommodations for
23 prisoners and parolees with disabilities and provide appropriate
24 auxiliary aids and services necessary for effective communication.
25 Such accommodations and auxiliary aids and services shall include,
26 but not be limited to, sign language interpreters, assistive
27 listening devices, readers and individuals trained to provide

1 assistance to persons with disabilities.

2 30. At its discretion, the BPT may appoint attorneys as an
3 accommodation. In order to suffice as an accommodation, the
4 attorneys must be adequately trained to provide accommodations to
5 persons with disabilities and must receive adequate additional time
6 for providing those services. Attorneys appointed to represent
7 individuals with disabilities shall be informed of their clients'
8 disabilities. If the BPT is aware that a prisoner or parolee
9 requires certain specific accommodations, the BPT shall either
10 instruct an attorney appointed to represent that prisoner or
11 parolee to provide those specific accommodations, or shall provide
12 the prisoner or parolee with those specific accommodations by some
13 other means.

14 31. Hearing impaired prisoners and parolees who need sign
15 language interpreters shall not have their hands and arms
16 restrained in any way during the hearing, unless a written
17 determination is made on an individualized basis that the prisoner
18 or parolee would pose a direct threat if unrestrained and that
19 there are no other reasonable alternatives available to protect
20 against the threat. The Chairman of the BPT or his delegate shall
21 personally approve the use of restraints in each such instance
22 prior to their use.

23 32. The BPT shall make accommodations for prisoners and
24 parolees with disabilities in order to assist them in preparing for
25 parole proceedings. For example, if a prisoner or parolee is
26 entitled to review his or her central file prior to a parole
27 proceeding, and if that prisoner or parolee is unable, due to a

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1 disability, adequately to review his or her central file without an
2 accommodation, the BPT shall make such an accommodation. Where
3 other preparation, including but not limited to participating in
4 psychological interviews, obtaining letters of support and
5 developing parole plans, is necessary prior to a parole proceeding,
6 the BPT shall provide reasonable accommodations to prisoners or
7 parolees with disabilities who require such accommodations
8 adequately to complete such preparation.

9 J. Appeals

10 33. Prisoners and parolees with disabilities who cannot use
11 or understand the appeal process or prepare an appeal themselves by
12 reason of their disability shall be provided with effective
13 assistance in preparing a BPT appeal.

14 K. Grievances

15 34. The BPT shall develop and implement a grievance
16 procedure, separate from its current appeal procedure, for
17 processing any complaints of denials of requests for
18 accommodations. All grievances requesting reasonable
19 accommodations at a scheduled hearing shall be decided before the
20 hearing.

21 35. All administrative appeals alleging in substance
22 violations of the ADA or its implementing regulations shall be
23 treated as ADA grievances, and any successive appeal on the non-ADA
24 merits of a decision shall not be deemed barred due to the filing
25 of the ADA-related grievance or grievances. Except as otherwise
26 provided in the immediately preceding paragraph, all such ADA-
27 related appeals shall be decided within thirty days of the BPT's

1 receipt of the appeal form.

2 L. Programs

3 36. The BPT shall provide to all Commissioners and Deputy
4 Commissioners who participate in life prisoner parole consideration
5 hearings a list of CDC programs in which prisoners with
6 disabilities can meaningfully participate, either without
7 accommodation or with appropriate and readily available
8 accommodation. This list shall specify the types of programs
9 available, the particular disabilities the programs can accommodate
10 and the prisons in which they are offered. This list shall be
11 updated every six months.

12 37. At life prisoner parole consideration hearings, the BPT
13 shall not recommend that prisoners participate in programs that are
14 unavailable to them by reason of their disabilities and shall not
15 rely on the failure of prisoners to participate in programs not
16 available to them by reason of their disabilities as a factor
17 supporting denial of a parole date or a multi-year denial.

18 38. Nothing in this section shall require the BPT to release
19 a prisoner on parole who is otherwise unsuitable for release under
20 California law.

21 M. Monitoring

22 39. The parties shall attempt negotiate a plan to monitor
23 Defendants' compliance with this injunction. If such negotiations
24 are unsuccessful, the Court shall consider the appointment of a
25 Special Master. Within forty-five days of the date of this
26 injunction, the parties shall file a joint and mutually acceptable
27 plan for monitoring this injunction or separate briefs describing
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1 each party's position on the need for a Special Master and the
2 Court's authority to appoint one.

3 N. Enforcement

4 40. The Court shall retain jurisdiction to enforce the terms
5 of this injunction.

6 41. No person who has notice of this injunction shall fail to
7 comply with it, nor shall any person subvert the injunction by any
8 sham, indirection or other artifice.

9
10 IT IS SO ORDERED.

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12 Dated: FEB 11 2002

CLAUDIA WILKEN

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CLAUDIA WILKEN
United States District Judge

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16 Copies mailed to counsel
as noted on the following page

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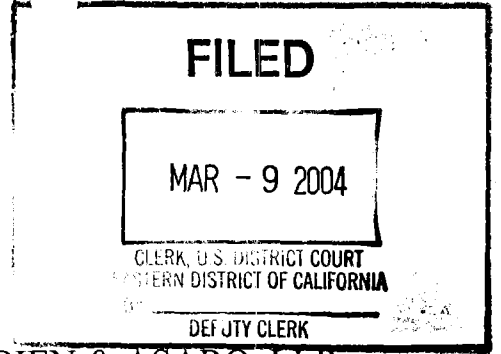
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15 CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

16
17 JERRY VALDIVIA, et al.,

18 Plaintiffs,

19 v.

20 ARNOLD SCHWARZENEGGER, et al.,

21 Defendants.
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No. Civ. S-94-0671 LKK/GGH

**STIPULATED ORDER FOR
PERMANENT INJUNCTIVE RELIEF**

ORIGINAL

1034

1 **I. INTRODUCTION**

2 1. This action was filed on May 2, 1994. Plaintiffs, on behalf of themselves
3 and the class they represent, challenged the constitutionality of parole revocation
4 procedures conducted by the California Board of Prison Terms (“BPT”) and the
5 California Department of Corrections (“CDC”).

6 2. The Court certified this case as a class action by order dated December 1,
7 1994. The Plaintiff class consists of the following persons: (1) California parolees who
8 are at large; (2) California parolees in custody as alleged parole violators, and who are
9 awaiting revocation of their state parole; and (3) California parolees who are in custody,
10 having been found in violation of parole and sentenced to prison custody.

11 3. The Defendants are state officials responsible for the policies and
12 procedures by which California conducts parole revocation proceedings.

13 4. On June 13, 2002, this Court granted partial summary judgment in favor of
14 Plaintiffs, holding that California’s unitary parole revocation system violates the due
15 process rights of the Plaintiff class under Morrissey v. Brewer, 408 U.S. 481 (1972),
16 Gagnon v. Scarpelli, 411 U.S. 778 (1973), and related authority. The Court held that
17 California’s parole revocation system violated the due process clause of the Fourteenth
18 Amendment by “allowing a delay of up to forty-five days or more before providing the
19 parolee an opportunity to be heard regarding the reliability of the probable cause
20 determination.” Valdivia v. Davis, 206 F. Supp. 2d 1068, 1078 (E.D. Cal. 2002).

21 5. The parties stipulate that this is not a “civil case with respect to prison
22 conditions,” as those terms are defined and applied in the Prison Litigation Reform Act
23 (“PLRA”), 18 U.S.C. § 3626, and that therefore this Order is not governed by the
24 PLRA.

25 6. The parties hereby stipulate that the Court shall ADJUDGE, DECLARE,
26 AND DECREE as follows:
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1 **II. PARTIES**

2 7. The Plaintiff class consists of the following persons: (1) California
3 parolees who are at large; (2) California parolees in custody as alleged parole violators,
4 and who are awaiting revocation of their state parole; and (3) California parolees who
5 are in custody, having been found in violation of parole and sentenced to prison
6 custody.

7 8. The Defendants are state officials responsible for the policies and
8 procedures by which California conducts parole revocation proceedings. Defendant
9 Arnold Schwarzenegger is Governor of the State of California and Chief Executive of
10 the state government. Defendant Roderick Q. Hickman is the Secretary of the
11 California Youth and Adult Correctional Agency. Defendant Edward S. Alameida, Jr.,
12 is Director of the California Department of Corrections. Defendant Richard Rimmer is
13 Deputy Director of the California Department of Corrections, Parole and Community
14 Services Division ("P&CSD"). Defendant Carol A. Daly is a Commissioner and Chair
15 of the Board of Prison Terms ("BPT"). Defendants Alfred R. Angele, Sharon Lawin,
16 Booker T. Welch, Jones M. Moore, and Kenneth L. Risen are Commissioners of the
17 BPT. Defendant Kenneth E. Cater is Chief Deputy Commissioner of the BPT.

18
19 **III. DEFINITIONS**

20 9. The following terms when used in this Order shall have the meanings
21 specified below:

22 (a) "Parolee(s)" shall mean any member of the Plaintiff class.

23 (b) "Day(s)" shall mean calendar days, unless otherwise specified.

24 (c) "Revocation process" or "revocation proceedings" shall mean all stages of the
25 process by which parole may be revoked, including placement of a parole hold, notice,
26 waivers, service of Return to Custody Assessments, and hearings.

27 (d) "Return to Custody Assessments" ("RTCAs") shall mean the practice by
28 which Defendants offer a parolee a specific disposition in return for a waiver of the

1 parolee's right to a preliminary or final revocation hearing, or both.

2 (e) "Parole hold" shall mean any invocation by Defendants of their authority to
3 involuntarily detain a parolee for revocation proceedings under Section 3056 of the
4 California Penal Code. This term shall not apply to the detention of a parolee who has
5 absconded from the State of California until he or she is physically returned to the State
6 of California and is in its custody.

7
8 **IV. POLICIES, PROCEDURES, FORMS, AND PLANS**

9 10. For all policies, procedures, forms, and plans developed under this Order,
10 the parties shall use the following process: Defendants shall meet periodically with
11 Plaintiffs' counsel to discuss their development of policies, procedures, forms, and
12 plans. In preparation for such meetings, Defendants will provide Plaintiffs' counsel
13 with copies of the proposed policies, procedures, forms, and plans in draft form no later
14 than 7 days before the meeting. If the parties reach an impasse on any particular issues,
15 they may bring the disputed issues to the Court in a motion to be heard on shortened
16 time.

17 11. Using the procedure set forth above in Paragraph 10, Defendants shall do
18 the following:

19 (a) Defendants shall develop and implement sufficiently specific Policies and
20 Procedures that will ensure continuous compliance with all of the requirements of this
21 Order. The Policies and Procedures will provide for implementation of the August 21,
22 2003 Remedial Plan Outline (attached hereto as Exhibit A), as well as the requirements
23 set forth below in Paragraphs 12-24. Defendants shall submit the completed Policies
24 and Procedures to the Court no later than July 1, 2004.

25 (b) By July 1, 2004, Defendants shall begin implementing the following steps
26 in the parole revocation process, which shall be completely implemented by January 1,
27 2005:

28 (i) Defendants shall appoint counsel for all parolees beginning at the

1 RTCA stage of the revocation proceeding. Defendants shall provide an expedited
2 probable cause hearing upon a sufficient offer of proof by appointed counsel that there
3 is a complete defense to all parole violation charges that are the basis of the parole hold.

4 (ii) No later than 48 hours after the parole hold, or no later than the next
5 business day if the hold is placed on a weekend or holiday, the parole agent and unit
6 supervisor will confer to determine whether probable cause exists to continue the parole
7 hold, and will document their determination.

8 (iii) If the parole hold is continued thereafter, no later than 3 business days
9 after the placement of the hold, the parolee will be served with actual notice of the
10 alleged parole violation, including a short factual summary of the charged conduct and
11 written notice of the parolee's rights regarding the revocation process and timeframes.

12 (iv) For all parolees who do not waive or seek a continuance of a final
13 revocation hearing, Defendants shall provide a final revocation hearing on or before the
14 35th calendar day after the placement of the parole hold.

15 (c) By July 1, 2004, Defendants shall serve on counsel for Plaintiffs an
16 assessment of the availability of facilities and a plan to provide hearing space for
17 separate probable cause hearings.

18 (d) By July 1, 2005, in addition to the steps listed above, for all parolees who
19 do not waive or seek a continuance of a probable cause hearing, Defendants shall
20 provide a hearing to determine probable cause no later than 10 business days after the
21 parolee has been served with notice of the charges and rights (at the 3rd business day
22 after the placement of the hold).

23 (e) Defendants shall complete implementation of the Policies and Procedures
24 by July 1, 2005.

25 12. In addition to the provisions of the August 21, 2003 Remedial Plan Outline,
26 the Policies and Procedures shall ensure that the following requirements are met:

27 13. At the time of appointment, counsel appointed to represent parolees who
28 have difficulty in communicating or participating in revocation proceedings, shall be

1 informed of the nature of the difficulty, including but not limited to: mental illness,
2 other cognitive or communication impairments, illiteracy, limited English-language
3 proficiency, and the need for a foreign language interpreter. The appointment shall
4 allow counsel adequate time to represent the parolee properly at each stage of the
5 proceeding.

6 14. At the time of appointment, counsel shall be provided with all non-
7 confidential reports and any other documents that the state intends to rely upon at the
8 probable cause or final revocation hearing. After appointment, if the state learns of
9 additional evidence or documents, and intends to rely on such additional evidence or
10 documents, it shall produce them to counsel as soon as practicable before the hearing.

11 15. Defendants shall develop and implement policies and procedures for the
12 designation of information as confidential that are consistent with the requirements of
13 due process.

14 16. Non-confidential portions of parolees' field files shall be available to
15 parolees' counsel unless good cause exists for failure to provide access to such files.
16 Field file information shall be withheld from counsel as confidential only in accordance
17 with the policies and procedures referenced in Paragraph 15.

18 17. Defendants shall develop standards, guidelines, and training for effective
19 assistance of state appointed counsel in the parole revocation process.

20 18. Defendants will ensure that parolees receive effective communication
21 throughout the entire revocation process.

22 19. Defendants will ensure that all BPT and CDC forms provided to parolees
23 are reviewed for accuracy and are simplified to the extent possible through a procedure
24 similar to that used to revise forms in Armstrong v. Davis, C94-2307 CW (N.D. Cal.).
25 This process will include translation of forms to Spanish. Revised forms will be
26 submitted to Plaintiffs' counsel for review prior to finalization, dissemination, or
27 modification.

28 20. Upon written request, parolees shall be provided access to tapes of parole

1 revocation hearings.

2 21. Parolees' counsel shall have the ability to subpoena and present witnesses
3 and evidence to the same extent and under the same terms as the state.

4 22. At probable cause hearings, parolees shall be allowed to present evidence
5 to defend or mitigate against the charges and proposed disposition. Such evidence shall
6 be presented through documentary evidence or the charged parolee's testimony, either
7 or both of which may include hearsay testimony.

8 23. Final revocation hearings shall occur within 35 calendar days of the parole
9 hold.

10 24. The use of hearsay evidence shall be limited by the parolees' confrontation
11 rights in the manner set forth under controlling law as currently stated in United States
12 v. Comito, 177 F.3d 1166 (9th Cir. 1999). The Policies and Procedures shall include
13 guidelines and standards derived from such law.

14
15 **V. STAFFING LEVELS**

16 Defendants shall maintain sufficient staffing levels in the CDC and BPT to meet
17 all of the obligations of this Order.

18
19 **VI. MONITORING**

20 25. The parties shall cooperate so that Plaintiffs' counsel has access to the
21 information reasonably necessary to monitor Defendants' compliance with this Order
22 and the Policies and Procedures adopted in response thereto. Such information shall
23 include but not be limited to: access to documents, tours, observation of parole
24 revocation proceedings, observation of training sessions, interviews of staff, and
25 interviews with parolees. Plaintiffs' counsel may notice depositions under the Federal
26 Rules of Civil Procedure either: (1) if Plaintiffs' counsel are unable to obtain relevant
27 information through interviews and informal document requests, or (2) after notifying
28 Defendants of non-compliance with this Order under Section VII, below. Before

1 noticing a deposition, Plaintiffs' counsel must consult with opposing counsel about the
2 deposition schedule so that the convenience of counsel, witnesses, and parties may be
3 accommodated, if possible.

4 26. The parties shall meet regularly, and at least once every 90 days, to discuss
5 implementation issues. At least once every 90 days, Defendants shall provide Plaintiffs'
6 counsel with a report on hold-to-hearing time in substantially the same form, and with
7 the same content as that currently used in Defendants' weekly "RSTS" meetings.

8 27. The parties shall agree on a mechanism for promptly addressing concerns
9 raised by Plaintiffs' counsel regarding individual class members and emergencies.
10

11 **VII. ENFORCEMENT**

12 28. The Court shall retain jurisdiction to enforce the terms of this Order. The
13 Court shall have the power to enforce the terms of this Order through specific
14 performance and all other remedies permitted by law or equity.

15 29. If Plaintiffs' counsel believe that Defendants are not complying with any of
16 the acts required by this Order, the Remedial Plans, or Policies and Procedures produced
17 pursuant to it, they shall notify Defendants in writing of the facts supporting their belief.
18 Defendants shall investigate the allegations and respond in writing within 30 days. If
19 Plaintiffs' counsel are not satisfied with Defendants' response, the parties shall conduct
20 negotiations to resolve the issue(s). If the parties are unable to resolve the issue(s)
21 satisfactorily, Plaintiffs may move the Court for any relief permitted by law or equity.
22

23 **VIII. ATTORNEY'S FEES AND COSTS**

24 30. Plaintiffs are the prevailing party in this action. Plaintiffs' counsel may
25 move for an award of reasonable attorney's fees and costs for obtaining relief for the
26 Plaintiff class pursuant to 42 U.S.C. § 1988 or any other applicable law. Defendants
27 shall pay Plaintiffs' counsel reasonable attorney's fees for work performed in
28 connection with monitoring and enforcing this Order. The parties reserve the right to

1 address at a future date whether 42 U.S.C. § 1997e(d) applies to an award of attorney's
2 fees in this suit.

3 **IX. RESOLUTION OF CLAIMS**

4 31. This stipulated order resolves all the claims in this case, except the
5 following, to the extent that they are alleged in the Fifth Amended Complaint, if at all:

6 (a) Appeals. Plaintiffs assert that Defendants' administrative-appeals system
7 for parole-revocation and revocation-extension decisions violates the Due Process and
8 Equal Protection Clauses of the Fourteenth Amendment.

9 (b) Revocation-Extension Proceedings. Plaintiffs assert that Defendants'
10 policies, procedures, and practices for extending parole revocations based on alleged
11 rules violations while in custody violate the Due Process Clause.

12 32. The parties anticipate that these issues will be resolved informally, without
13 need for the Court's intervention. The parties will inform the Court if this does not
14 occur.

15
16 **IT IS SO STIPULATED.**

17
18 Dated: November 12, 2003

ROSEN, BIEN & ASARO

19
20 By Michael W. Bien
21 MICHAEL BIEN

22
23 Dated: November 12, 2003

PRISON LAW OFFICE

24
25 By Donald Specter
26 DONALD SPECTER

27 Attorneys for Plaintiffs
28

1
2 Dated: November 17, 2003

BILL LOCKYER, Attorney General
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ROBERT R. ANDERSON, Chief
Assistant Attorney General,
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General

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10 By Thomas S. Patterson
THOMAS S. PATTERSON,
Deputy Attorney General
Attorneys for Defendants

11
12
13 Dated: November 17, 2003

14 By Roderick O. Hickman
RODERICK O. HICKMAN
Secretary, Youth and Adult
Correctional Agency

15
16
17
18 Dated: November 17, 2003

19 By Edward S. Almeida, Jr.
EDWARD S. ALAMEIDA, JR.
Director, California Department of
Corrections

20
21
22 Dated: November 17th, 2003

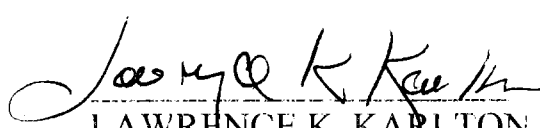
23 By Carol A. Daly
CAROL A. DALY
Chair, California Board of Prison
Terms

ORDER

The Court finds that this is not a "civil case with respect to prison conditions," as those terms are defined and applied in the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, and that therefore this Order is not governed by the PLRA. Defendants, their agents, employees, and successors in office are ordered to comply with all the terms stated above.

IT IS SO ORDERED

Dated: 3/8, 200~~4~~⁴


LAWRENCE K. KARLTON
Chief Judge, Emeritus

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