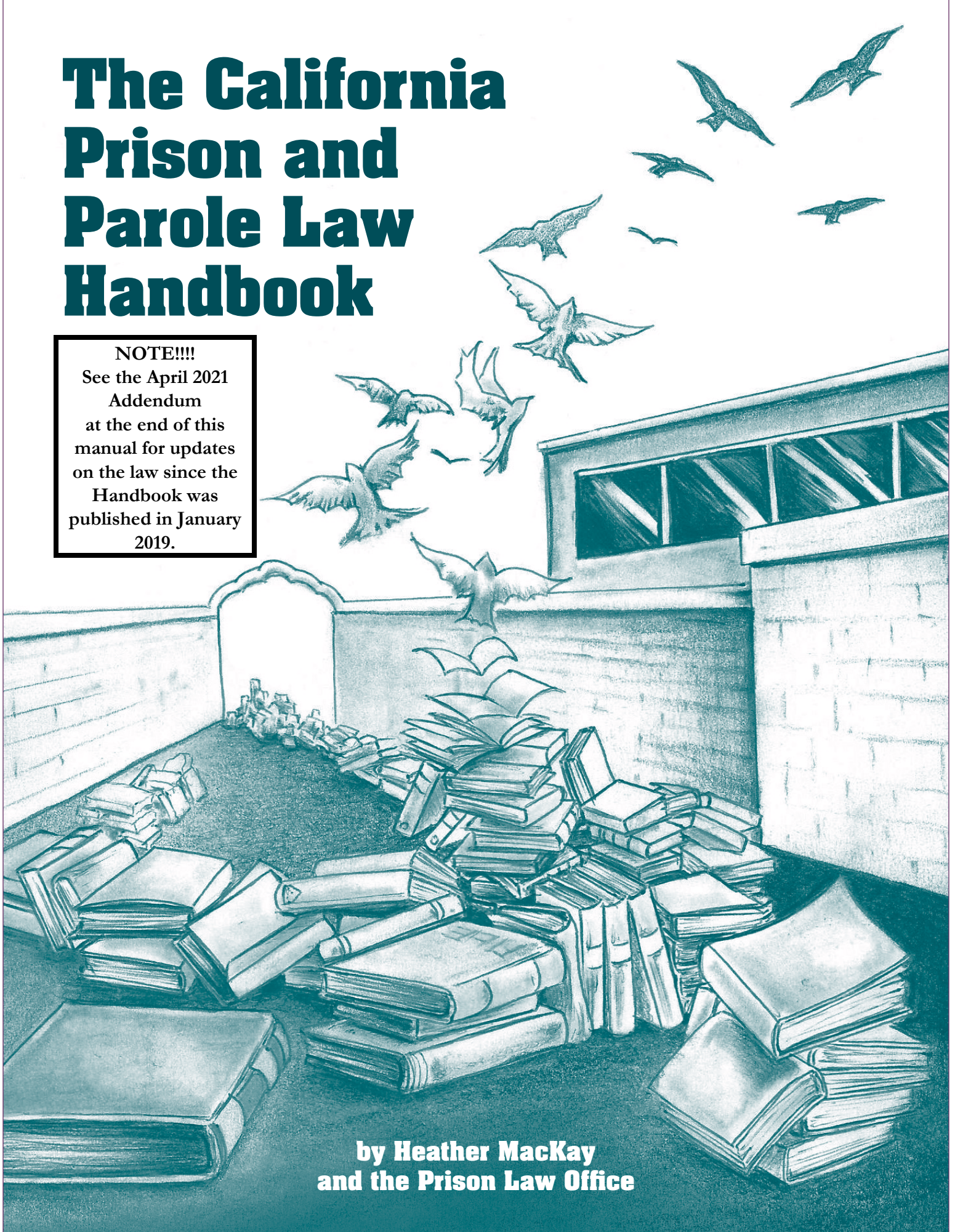


# The California Prison and Parole Law Handbook

**NOTE!!!!**

See the April 2021  
Addendum  
at the end of this  
manual for updates  
on the law since the  
Handbook was  
published in January  
2019.



by Heather MacKay  
and the Prison Law Office

# THE CALIFORNIA PRISON & PAROLE LAW HANDBOOK

BY HEATHER MACKAY  
&  
THE PRISON LAW OFFICE

**NOTE!!!!**

See the April 2021 Addendum  
at the end of this manual for  
updates on the law.

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## **YOUR RESPONSIBILITY WHEN USING THIS HANDBOOK**

When we wrote *The California Prison and Parole Law Handbook*, we did our best to provide useful and accurate information because we know that people in prison and on parole often have difficulty obtaining legal information and we cannot provide specific advice to everyone who requests it. However, the laws are complex change frequently, and can be subject to differing interpretations. Although we hope to publish periodic supplements updating the materials in the Handbook, we do not always have the resources to make changes to this material every time the law changes. If you use the Handbook, it is your responsibility to make sure that the law has not changed and is applicable to your situation. Most of the materials you need should be available in a prison law library or in a public county law library.

**NOTE!!**

See the April 2021 Addendum  
attached at the end of this manual  
for updates on the law.

# CHAPTER 11

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## 11.1 Introduction

Except in very unusual circumstances, people must be placed under some sort of supervision after they are released from prison.<sup>1</sup> In the past decade, California’s parole system has been extensively overhauled. Among the changes, some people who formerly would have had to serve parole terms under CDCR supervision are instead placed on post-release community supervision (PRCS) under supervision of local authorities. Other major changes include the transfer of authority to conduct parole revocation hearings from the Board of Parole Hearings (BPH) to the courts, incarceration of people charged with parole violations in county jails rather than state prisons, and shorter maximum parole revocation terms.

This chapter focuses on parole, with brief discussion discussing some of the particular rules for PRCS. However, some of the general rules about what sorts of conditions can be imposed and about rights during revocation hearings may apply to PRCS as well.

This book does not address the public benefits available to people on parole, other resources for integrating back into the community, or the process for obtaining a certificate of rehabilitation. If you are interested in this information, please contact Root and Rebound to obtain a free copy of *Roadmap to Reentry: A California Legal Guide* (Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612 or at [www.rootandrebound.org](http://www.rootandrebound.org)).

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<sup>1</sup> Penal Code § 3000(a)(1). In a rare case, a court might order a parole-free or PRCS-free release because of failure to advise a person of the supervision requirement upon entry of a guilty plea (see § 11.2). A person who is kept in prison past their lawful release date should receive credits against the parole or PRCS period for the excess custody time (see §§ 8.41-8.42), and could potentially earn enough credits to cover the entire parole or PRCS term. Some people may be subject to civil commitment to a state hospital rather than being released to the community; these Sexually Violent Predator (SVP) and Mentally Disordered Offender (MDO) commitments are discussed in Chapter 12. Also note that for people who are sentenced to county jail terms for felonies, courts must “suspend” part of the sentence and require the person to serve that time on “mandatory supervision” or impose a “split sentence” by ordering a defendant to serve part of the felony sentence in jail and part on probation. Penal Code § 1170(h)(5).

Another useful resource is a *Child Custody and Visiting Rights Manual for Recently Released Parents*, available from Legal Services for Prisoners with Children Legal Services for Prisoners with Children, 1540 Market St., Suite 490, San Francisco, CA 94102 or [www.prisonerswithchildren.org](http://www.prisonerswithchildren.org).

## PAROLE TERMS AND DISCHARGE DATES

### 11.2 Advisement of the Parole Term During Plea Bargaining and Sentencing

A court will usually inform a person about the required parole term when they enter a plea bargain and when they are sentenced.

Even if the court fails to tell a person about the parole requirement or gives the defendant wrong information about the parole period, the person will still usually have to serve the statutorily required parole time. To show that the plea was invalid, a person must prove that:

- ◆ the court failed to advise the defendant about the parole requirement before it accepted the defendant's plea; and
- ◆ the defendant did not actually know about the parole requirement *and* would not have pled guilty or no contest if they had known they would have to serve time on parole. This will be hard to show if the defendant has a history in the criminal system, if the defendant got a good plea deal, and/or if the defendant did not object if the court later discussed the parole period at the sentencing hearing.<sup>2</sup>

Even if a person can show the plea was invalid, they may not be able to avoid serving a parole term. The usual remedy for failure to advise a person of the parole period at the time of the plea is to allow the defendant an opportunity to withdraw the plea; withdrawal of the plea is usually not beneficial to the person because the criminal proceedings, including any charges dismissed as a result of the plea bargain, can be re-filed. However, courts have occasionally ordered parole-free release in rare cases where the person had already served more time than was bargained for or had already served most of the parole period.<sup>3</sup>

Failure to inform a person of the parole period at the time of sentencing does not entitle the person to a parole-free release.<sup>4</sup>

### 11.3 Who Must Serve a Parole Term

A person will be placed on parole at the end of the prison term in the following circumstances:

- ◆ the prison term was for a serious felony listed in Penal Code § 1192.7(c);

<sup>2</sup> *In re Moser* (1993) 6 Cal.4th 342, 351-352 [24 Cal.Rptr. 723, 728-729]; *Berman v. Cate* (2010) 187 Cal.App.4th 885 [114 Cal.Rptr.3d 49]; *People v. Avila* (1994) 24 Cal.App.4th 1455 [30 Cal.Rptr.2d 138]; *People v. McMillon* (1992) 2 Cal.App.4th 1363 [3 Cal.Rptr.2d 821]; *Carter v. McCarthy* (9th Cir. 1986) 806 F.2d 1373, 1376-1377.

<sup>3</sup> *Allen v. Bunnell* (9th Cir. 1989) 891 F.2d 736, 737-738 (no due process violation if total actual time in prison plus parole is less than bargained sentence); *Carter v. McCarthy* (9th Cir. 1986) 806 F.2d 1373, 1374-1376 (parole free release).

<sup>4</sup> *People v. Witherow* (1983) 142 Cal.App.3d 485 [190 Cal.Rptr. 899]; *In re Chambliss* (1981) 119 Cal.App.3d 199, 200 [173 Cal.Rptr. 712].

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- ◆ the prison term was for a violent felony listed in Penal Code § 667.5(c);
- ◆ the person was sentenced as a three-striker under Penal Code §§ 667(b)-(i)/ 1170.12(c)(2);
- ◆ the person is classified by the CDCR as a High-Risk Sex Offender; or
- ◆ the person is found to be a Mentally Disordered Offender (MDO) under Penal Code § 2962.<sup>5</sup>

A person on parole remains in the legal custody of the California Department of Corrections and Rehabilitation (CDCR).<sup>6</sup> During the parole period, a person on parole is supervised by a parole agent and must follow the required conditions of parole. If a person violates the conditions of parole, the parole agent can place a parole “hold” and recommend sanctions including returning the person to custody to serve a parole revocation term. Parole violation hearings are held by the superior court for the county in which the person is on parole. (§§ 11.22-11.32).

Newly-released people who are not required to serve parole are instead placed on PRCS.<sup>7</sup> People on PRCS are supervised by county probation officers and some different laws apply to them (see § 11.33).

### 11.4 Length of the Parole Term

The length of a person’s parole period is set by statute and depends on the type and date of the commitment offenses; the longer terms are for some types of sex offenses and life-term crimes.<sup>8</sup> The base parole period can be increased, up to a specified maximum, for parole violations resulting in revocation terms (see § 11.27).<sup>9</sup> Also, any time during which a person absconds (meaning they are not available for parole supervision) “stops the clock” and does not count toward the parole period.<sup>10</sup> Note that the state cannot retroactively apply new laws that would increase the length of time on

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<sup>5</sup> Penal Code § 3000.08(a); see also 15 CCR § 3079.1; *People v. Toussain* (2015) 240 Cal.App.4th 974 [193 Cal.Rptr.3d 48] (classification as a person with high risk sex offenses requires parole even if most recent offense not a sex-related crime). Also, people who have had their felony terms resentenced as misdemeanors under Proposition 47 are subject to parole for up to one year unless the court uses its discretion not to impose a parole term. Penal Code § 1170.18(d). Custody credits for excess time served cannot be applied to reduce this term; moreover, the parole period applies even if the person might otherwise qualify for PRCS or have already served some time on PRCS. *People v. Morales* (2016) 63 Cal.4th 399 [203 Cal.Rptr.3d 130]. However, the parole period cannot exceed the remaining time on the person’s PRCS term. *People v. Pinon* (2016) 6 Cal.App.5th 956 [211 Cal.Rptr.3d 787].

<sup>6</sup> Penal Code § 3056.

<sup>7</sup> Penal Code § 3451.

<sup>8</sup> The parole statutes have changed over time, and the length of the parole term is governed by the law in effect at the time of the commitment offense. *In re Thomson* (1980) 104 Cal.App.3d 950 [164 Cal.Rptr. 99]; *In re Harper* (1979) 96 Cal.App.3d 138 [157 Cal.Rptr. 759].

<sup>9</sup> Penal Code § 3000; Penal Code §§ 3000.1-3001; 15 CCR § 2515.

<sup>10</sup> Penal Code § 3000(b)(6); Penal Code § 3064. Also, when a person on parole undergoes Sexually Violent Predator (SVP) proceedings the parole term is “tolled” (paused) until the proceedings are dismissed or the person is discharged from the Department of State Hospitals (DSH). Penal Code § 3000(a)(4).

parole or the length of parole revocation terms because the U.S. Constitution, Article I, § 9, prohibits “ex post facto” laws that retroactively increase punishment.<sup>11</sup>

Following is a summary of parole lengths (from shortest to longest). If a person fits into more than one category, the longest period applies.

**Three-year base period, maximum period of four years:<sup>12</sup>**

- ◆ People who served determinate (fixed-length) prison terms.<sup>13</sup>
- ◆ People who served terms of life with the possibility of parole for offenses committed before January 1, 1979.<sup>14</sup>

**Five-year base period, maximum period of seven years:<sup>15</sup>**

- ◆ People sentenced to life with the possibility of parole who committed their offenses on or after January 1, 1979.<sup>16</sup>
- ◆ People with violent felony sex-related crimes committed at certain times in the past. This applies to crimes listed in Penal Code § 667.5(c)(3)-(6), (16), or (18) that were committed between July 19, 2000 and September 19, 2006, or between November 7, 2006 and September 9, 2010.<sup>17</sup> This also applies to crimes listed in Penal Code § 667.5(c)(11) that were committed between January 1, 2003 and September 19, 2006, or between November 7, 2006 and September 9, 2010.<sup>18</sup>
- ◆ People sentenced to life with the possibility of parole for some sex-related crimes in the past. This covers Penal Code § 661.61 (the “one strike” law) sentences for crimes committed between July 19, 2000 and September 19, 2006 (the base term can be extended for an additional five years if the person is deemed to pose a danger to society; as of January 1, 2002, either the original or extended parole period can be increased to a maximum of seven years.)<sup>19</sup> This also applies to life with the possibility of parole sentences under Penal Code § 667.71 (people with repeated sex-related offenses) for crimes committed from January 1, 2003 through September 19, 2006.<sup>20</sup>

<sup>11</sup> See, e.g., *Himes v. Thompson* (9th Cir. 2003) 336 F.3d 848.

<sup>12</sup> Penal Code § 3000(b)(6)(A).

<sup>13</sup> Penal Code § 3000(b)(1); 15 CCR § 2515(b).

<sup>14</sup> 15 CCR § 2515(e); *In re Wilson* (1981) 30 Cal.3d 438, 440-441 [179 Cal.Rptr. 207].

<sup>15</sup> Penal Code § 3000(b)(6)(B).

<sup>16</sup> Penal Code § 3000(b)(1); 15 CCR § 2515(d).

<sup>17</sup> Former Penal Code § 3000(b)(3); see Stats. 2000, ch. 142, § 3 and Stats. 2010, ch. 219, § 19.

<sup>18</sup> Former Penal Code § 3000(b)(3); see Stats. 2002, ch. 829, § 1 and Stats. 2010, ch. 219, § 19.

<sup>19</sup> Former Penal Code § 3000(b)(3); see Stats. 2000, ch. 142, § 3; Stats. 2001, ch. 854, § 49.5.

<sup>20</sup> Former Penal Code § 3000(b)(3); see Stats. 2002, ch. 829, § 1.



**Ten-year base period, maximum period of fifteen years:<sup>21</sup>**

- ◆ People sentenced to life with the possibility of parole for a sex-related offense under Penal Code §§ 209(b) [with intent to commit a sex offense], 667.51, 667.61 or 667.71 (except those who committed their crimes in the time frames for which the parole terms were five years and those sub-groups who are subject to lifelong parole).<sup>22</sup>
- ◆ People with violent felony sex-related crimes committed recently and at some times in the past. This applies to people convicted of a sex crime listed in Penal Code § 667.5(c)(3)-(6), (11), or (18) committed on or after September 9, 2010.<sup>23</sup> It also applies to Penal Code § 667.5(c)(3)-(6), (11), (15), (16), or (18) crimes committed between September 20, 2006 and November 6, 2006.<sup>24</sup>
- ◆ People sentenced to life with the possibility of parole some sex-related crimes in the past. This applies to sentences under Penal Code §§ 209(b) [with intent to commit a sex offense], 269, 288.7, 667.51, 667.61, or 667.71 for crimes committed between September 20, 2006 and November 6, 2006.<sup>25</sup>

**Twenty-year and six month base period with a maximum life-long parole:**

- ◆ People with some recent sex-related offenses with children, regardless of the type of sentence. This covers Penal Code §§ 261, 262, 264.1, 286, 288a, 288(b)(1), 288.5, or 289 crimes where the victim was under age 14 and the crime was committed on or after September 9, 2010. These people can be kept on parole longer upon a finding of good cause, even without parole violations.<sup>26</sup>

**Life-long parole period:**

- ◆ People sentenced to life with the possibility of parole for murder committed on or after January 1, 1983.<sup>27</sup>
- ◆ People sentenced to life with the possibility of parole under Penal Code § 209(b) [with intent to commit a sex offense] committed on or after September 9, 2010.<sup>28</sup>
- ◆ People sentenced to life with the possibility of parole for sex offenses under Penal Code §§ 269, 288.7, 667.51(c), 667.61(j), (l), or (m), or 667.71 [if victim under age 14] committed on or after September 9, 2010.<sup>29</sup>

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<sup>21</sup> Penal Code § 3000(b)(6)(C).

<sup>22</sup> Penal Code § 3000(b)(3).

<sup>23</sup> Penal Code § 3000(b)(2).

<sup>24</sup> Former Penal Code § 3000(b)(1); see Stats. 2006, ch. 337, § 45.

<sup>25</sup> Former Penal Code § 3000(b)(3); see Stats. 2006, ch. 337, § 45 and Stats. 2006, Prop. 83, § 17.

<sup>26</sup> Penal Code § 3000(b)(4).

<sup>27</sup> Penal Code § 3000.1(a)(1); 15 CCR § 2515(f).

<sup>28</sup> Penal Code § 3000.1(a)(2).

<sup>29</sup> Penal Code § 3000.1(a)(2).

## 11.5 Parole Discharge Review

The law allows for early discharge from parole unless there is good cause to keep the person under supervision.<sup>30</sup>

The CDCR must conduct a discharge review after a person has served a certain amount of time on continuous parole. Continuous parole means that the person has not had parole revoked and has not had any “dead time” or suspension of parole for absconding or being unavailable for supervision. The date of the review depends on the type of crime and sentence for which the person is on parole.<sup>31</sup> A person who falls into more than one category is subject to the longest applicable period.

The discharge review dates are:

- ◆ Six months, for determinate sentences for non-violent, non-serious, non-sex crimes.
- ◆ One year, for determinate sentences for serious felonies listed in Penal Code § 1192.7 or for persons required to register as sex offenders.
- ◆ Two years, for determinate sentences for violent felonies listed in Penal Code § 667.5(c).
- ◆ Three years, for sentences with five-year parole periods (this is mostly people who served indeterminate life terms and who do not fall into other categories).
- ◆ Five years, for life-long parole terms for second degree murder.
- ◆ Six years, for people with 10-year parole terms (for specific violent or serious sex offenses).
- ◆ Six years and six months, for people with 10-year parole terms following an indeterminate life sentence for a sex offense under Penal Code §§ 209(b) [with intent to commit a sex offense], 667.51, 667.61, or 667.71.
- ◆ Seven years, for life-long parole terms for first degree murder.<sup>32</sup>
- ◆ There is no early discharge for people serving life-long parole for indeterminate life terms for sex offenses.<sup>33</sup>
- ◆ There is no early discharge for people who were sentenced for offenses committed between July 1, 1977 and December 31, 1978.<sup>34</sup>

When a person nears the discharge review date, CDCR parole staff will prepare a report recommending for or against keeping the person under parole supervision. Parole agents consider

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<sup>30</sup> Penal Code § 3000.1; Penal Code § 3001; 15 CCR §§ 3720-3723.

<sup>31</sup> 15 CCR § 3720(b)(1).

<sup>32</sup> Penal Code § 3000.1(b)-(c); Penal Code § 3001.

<sup>33</sup> Penal Code § 3000.1(a)(2).

<sup>34</sup> 15 CCR § 2535(b)(5).

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whether the person has a stable residence, is employed or enrolled in school, and can support themselves, the person's mental health status, any gang affiliation, status of restitution repayment, criminal history, and the nature of the commitment offense.<sup>35</sup> People may appeal any mistakes of fact in the parole agent report by filing a 602 administrative appeal with the parole office (see § 11.34).<sup>36</sup>

The BPH then decides if there is good cause to keep the person under supervision.<sup>37</sup> Factors that can provide "good cause" include a particularly serious commitment offense, violent behavior or gang activity in prison, poor parole adjustment, returns to custody for substance abuse or mental health treatment, or the mere conclusion that supervision is "needed for the safety of the parolee or of the public."<sup>38</sup> The person on parole does not have a right to personally attend the review.<sup>39</sup>

The BPH must either discharge the person within 30 days after the discharge review date or take action to keep the person under supervision after expiration of the discharge review period.<sup>40</sup> The BPH must notify the person on parole in writing of a decision to keep them on parole.<sup>41</sup> If the BPH fails to act, the person is entitled to discharge.<sup>42</sup>

A person who is charged with a parole violation during the 30-day discharge review period will not automatically be kept on parole past the discharge review date. The BPH must act to retain the person on parole. If the BPH fails to act before the review period expires, the person must be discharged.<sup>43</sup>

If the BPH decides to continue parole, the person will be reviewed for discharge each year until the maximum parole date is reached.<sup>44</sup> At these subsequent reviews, the person will stay on parole unless the BPH affirmatively acts to discharge them.<sup>45</sup> If the BPH fails to conduct annual discharge reviews, the person is not entitled to automatic discharge.<sup>46</sup>

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<sup>35</sup> 15 CCR §§ 3720-3721.1.

<sup>36</sup> 15 CCR § 3723.

<sup>37</sup> Penal Code § 3000.1(b); Penal Code § 3001(a)-(c).

<sup>38</sup> 15 CCR § 2535(d); 15 CCR § 3501.

<sup>39</sup> 15 CCR § 2535(c).

<sup>40</sup> Penal Code § 3000.1(b); Penal Code § 3001(a)-(c).

<sup>41</sup> Penal Code § 3000.1(b); Penal Code § 3001; 15 CCR § 2535(c); 15 CCR §§ 3722-3733. The remedy for failure to provide notice is to give the person proper notice and an opportunity to appeal the decision, not a mandatory release from parole or nullification of subsequent BPH action. *People v. Jack* (1997) 60 Cal.App.4th 1129, 1133-1134 [70 Cal.Rptr.2d 676, 678-679]; *In re Roa* (1991) 1 Cal.App.4th 724 [3 Cal.Rptr.2d 1]; *In re Ruzicka* (1991) 230 Cal.App.3d 595 [281 Cal.Rptr. 435].

<sup>42</sup> See *In re Carr* (1995) 38 Cal.App.4th 209, 215 [45 Cal.Rptr.2d 34] and *In re Nesper* (1990) 217 Cal.App.3d 872 [266 Cal.Rptr. 113].

<sup>43</sup> *In re Torres* (2010) 186 Cal.App.4th 909, 921 [111 Cal.Rptr.3d 919].

<sup>44</sup> Penal Code § 3001(d); 15 CCR § 2535(c).

<sup>45</sup> *In re Carr* (1995) 38 Cal.App.4th 209 [45 Cal.Rptr.2d 34].

<sup>46</sup> Penal Code § 3001(d); *In re Carr* (1995) 38 Cal.App.4th 209 [45 Cal.Rptr.2d 34].

## 11.6 Non-Revocable Parole

Some people may be placed on unsupervised or non-revocable parole. Non-revocable parole is an unsupervised community release during which the person cannot be not subject to parole holds, referral to the BPH for parole violations, or return to custody for parole violations.<sup>47</sup> However, because of recent changes in the law, all or nearly all of the people who would be eligible for non-revocable parole are placed on Post-Release Community Supervision (PRCS) instead (see § 11.33).

People on parole who meet the following criteria are eligible for non-revocable parole:

- ◆ Not required to register as a person with sex-related offenses under Penal Code § 290;
- ◆ Not committed for a serious felony (Penal Code § 1192.7) or violent felony as defined in (Penal Code § 667.5(c)), *and* no prior conviction for a serious or violent felony;
- ◆ Not committed for a sexually violent offense (Welfare & Institutions Code § 6600(b)) *and* no prior conviction for a sexually violent offense;
- ◆ Not found guilty of Division A, B or C in-prison disciplinary offense (except for possession of alcohol manufactured in prison) during the current prison term;
- ◆ Not a person who is a validated active or inactive STG-I gang member or associate;
- ◆ No refusal to sign parole conditions or provide required blood or saliva samples; and
- ◆ Does not pose a high risk of re-offending.<sup>48</sup>

## 11.7 Calculating the Parole Discharge Date

A person who does not receive an early parole discharge will have to serve the full period of parole. Parole periods (except for lifetime parole) have two maximum lengths: a controlling discharge date (CDD) and a maximum discharge date (MDD). The CDD is the date that a person will get off parole if they do not get an early discharge and has no revocations or suspensions. If parole is revoked, and the person is returned to custody, the time in custody will be added to the CDD.<sup>49</sup> The MDD is the longest period of time a person can be kept on parole, including revocation time in custody but not including time during which a person absconds or is unavailable for supervision.<sup>50</sup>

The following is a sample calculation of a CDD and MDD for a determinately sentenced person with a regular three-year base parole term:

1. Start with the initial parole date. In our example, the person paroled on January 1, 2017.

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<sup>47</sup> Penal Code § 3000.03; 15 CCR § 3000; 15 CCR § 3505.

<sup>48</sup> Penal Code § 3000.03; 15 CCR § 3505.

<sup>49</sup> Penal Code § 3000(b)(6); Penal Code § 3064.

<sup>50</sup> Penal Code § 3000(b)(6).

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2. Add the time the person must continuously serve on parole to be eligible for early discharge review (see § 11.5). In our example, this person will have a discharge review after serving 13 months, which will be on February 1, 2018.
3. If the BPH denies early discharge, the person will want to know the controlling discharge date (CDD). Take the initial parole date and add the statutory base parole period (see § 11.4). In this example, it is three years, so the CDD is January 1, 2020. The person must be discharged on the CDD unless they have absconded or served time in custody for parole revocations.
4. Time in custody for a parole revocation does not count toward the CDD.<sup>51</sup> Revocation terms must be added to the CDD, resulting in an extended time on parole. In our example, the person was sentenced to a sixth-month revocation term. They received good conduct credits while in jail and were released after serving three months. Three months must be added to the three-year base term. The new discharge date is April 1, 2020.
5. If the person is again returned to custody for another revocation, that time would also be added to the discharge date. However, revocation terms do not extend the discharge date past the maximum discharge date (MDD).<sup>52</sup> In this example, the MDD is still four years from the initial parole date, January 1, 2021.
6. Periods during which a person absconds *do not* count towards the parole term and *do* extend the MDD.<sup>53</sup> Thus, if this person absconds several times for a total of 12 months, their actual discharge date would be extended by one year, to January 1, 2022.

**Worksheet**

1. Date originally paroled:	1/1/17
2. Annual Discharge Review Date: (13 months from initial parole)	2/1/18
3. Controlling Discharge Date: (3 years from initial parole)	1/1/20
4. First Revocation Term: (add time for 3 months actually served)	4/1/20
5. Additional Revocation Terms: (add 12 months, <i>but</i> capped at MDD, which is 4 years)	1/1/21
6. Total absconding periods: (add 12 months for time when parole was suspended)	1/1/22
<b>Actual Discharge Date:</b>	<b>1/1/22</b>

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<sup>51</sup> Penal Code § 3000(b)(6); Penal Code § 3064.

<sup>52</sup> Penal Code § 3000(b)(6)(A).

<sup>53</sup> Penal Code § 3064.

In rare cases, a person will have served too much time in prison or jail before being released on parole. This can happen when pre-sentence credits add up to more than the prison term imposed, part of the sentence is reversed by a court, or the CDCR makes a mistake in calculating the release date. In such cases, the extra days served in prison or jail must be counted toward the parole period.<sup>54</sup> The person then will need to serve only the remaining portion of the parole term.<sup>55</sup> If the amount of time already served exceeds the remaining parole period, parole must be discharged.

## PAROLE SUPERVISION AND CONDITIONS

### 11.8 The Parole Release Process

About seven months before a person's Earliest Possible Release Date (EPRD), prison staff should complete a Release Program Study (RPS) and forward it to parole staff. An RPS should also be prepared 210 days before an upcoming parole suitability hearing, including youth offender parole and elderly parole hearings. The RPS will give a general summary of the person's skills and needs, plans for residence and employment upon parole, needs for medical or psychiatric care, disability needs, and available resources.<sup>56</sup> The CDCR will also use the California Static Risk Assessment (CSRA) to determine the person's risk of re-offending. The CSRA considers age, gender, the number and type of previous convictions and the number of previous parole violations to determine the risk of re-offense.<sup>57</sup> If the person has sex-related offenses, the CDCR staff will evaluate them using additional tools – the Static-99R (for people in men's prisons) or the Female Sex Offender Risk Assessment (FSORA) (for people in women's prisons), followed by supplemental assessments STABLE-2007/ACUTE-2007 (for people in men's prisons) and the Level of Service/Case Management Inventory (LS/CMI) (for people in all California prisons).<sup>58</sup> Although the RPS should be completed well in advance of a person's release, it is not uncommon for CDCR staff to complete it close to the time of parole; in some cases, prison staff provide the parole office with an "oral RPS" where they call the parole office and verbally report the information.

A person should be given notice of their terms and conditions of parole; in most cases, this should happen at least 30 days before the earliest possible release date.<sup>59</sup> The person will be required to sign the CDCR Form 1515 Notice and Conditions of Parole.

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<sup>54</sup> *People v. Lara* (1988) 206 Cal.App.3d 1297, 1303 [254 Cal.Rptr. 360, 363]; *In re Ballard* (1981) 115 Cal.App.3d 647 [171 Cal.Rptr. 459].

<sup>55</sup> *People v. London* (1988) 206 Cal.App.3d 896, 910-911 [254 Cal.Rptr. 59, 67-68]; *In re Welch* (1987) 190 Cal.App.3d 407 [235 Cal.Rptr. 470]; *In re Jantz* (1984) 162 Cal.App.3d 412 [208 Cal.Rptr. 619].

<sup>56</sup> 15 CCR § 3502; DOM § 76010.7; DOM § 82101.4 (prior to parole suitability hearing); DOM § 81010.3; DOM § 81010.5; see also *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.S (disability information).

<sup>57</sup> 15 CCR § 3504.1; 15 CCR § 3768.1.

<sup>58</sup> 15 CCR § 3573.

<sup>59</sup> Penal Code § 3000(b)(7).



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A newly-released person must meet with the assigned parole agent in the person's community within one to three working days following release from custody.<sup>60</sup> People who are under the highest control or risk classification must report to their parole agent within 48 hours of release. Those people cannot be released on a Friday or the day before a legal holiday and their release dates must be adjusted accordingly.<sup>61</sup> People required to register as sex offenders must report to the parole office within one working day of release for placement of a GPS device, unless otherwise instructed.<sup>62</sup>

The parole offices are run by the CDCR's Division of Adult Parole Operations (DAPO) and parole agents are responsible for monitoring people on parole and determining whether they are complying with all of their parole conditions. There are also has four Regional Parole Offices that supervise, manage, and review the actions of the parole agents at the local offices. (The addresses of the Regional Parole Offices and counties that they cover are listed in Appendix 11-A.)

The CDCR must notify local law enforcement about the release of many types of people on parole; sometimes crime victims must be noticed as well.<sup>63</sup>

### 11.9 Gate Money and Other CDCR Funds

Upon release, any money in the person's trust account must be given to them.<sup>64</sup> Typically, trust account funds are provided via a check.

In addition to any trust account funds, most people are entitled to receive \$200 in "gate money" from the CDCR upon release to parole or PRCS; the CDCR will deduct the cost of clothing and transportation provided for the release.<sup>65</sup> The Release Program Study should state how much of the \$200 will be given immediately upon release. The balance of the money will be forwarded to the parole office for payment within 60 days of release.<sup>66</sup> People who abscond before receiving all of their gate money will forfeit the remaining money.<sup>67</sup>

Some people are not entitled to gate money. Those who have detainers and who are turned over to the custody of a local county, another state, or the federal government do not get gate money until they actually get released to California parole or PRCS supervision.<sup>68</sup> People who are placed in

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<sup>60</sup> 15 CCR § 3504(a).

<sup>61</sup> Penal Code § 3060.7(a); 15 CCR § 3504.2.

<sup>62</sup> Penal Code § 3010.10.

<sup>63</sup> Penal Code §§ 3058.4-3058.9.

<sup>64</sup> Penal Code § 2085; Penal Code § 2713; 15 CCR § 3075.2(d); DOM § 81010.6 et seq.

<sup>65</sup> Penal Code § 2713.1; 15 CCR § 3075.2(d). For people who serve less than six months, the CDCR provides gate money at the rate of \$1.10 per day up to the maximum of \$200. 15 CCR § 3075.2(d). Note that a person released to a local jurisdiction for Sexually Violent Predator (SVP) commitment proceedings is entitled to gate money. *Sabatasso v. Superior Court* (2008) 167 Cal.App.4th 791, 798-799 [84 Cal.Rptr.3d 446] (finding contrary language in 15 CCR § 3075.2(d) to be invalid).

<sup>66</sup> DOM § 81010.6.1.

<sup>67</sup> 15 CCR § 3075.2(d).

<sup>68</sup> Penal Code § 2713.1; 15 CCR § 3075.2(d).

the custody of the Department of Mental Health (DMH) as Mentally Disordered Offenders (MDOs) do not receive the \$200 until they are released from DMH custody.<sup>69</sup>

CDCR parole staff also have discretion to provide people on parole with other financial assistance, at least when there are funds available. Parole agents may provide bank drafts to cover housing, food, and clothing.<sup>70</sup>

Most CDCR parole assistance services are not available to people who are not U.S. citizens, unless they are listed as “qualified aliens” or “non-immigrant aliens” and will be on parole in the United States for more than one year.<sup>71</sup>

Information on public benefits available to people on parole and other resources for integrating back into the community is available in *Roadmap to Reentry: A California Legal Guide*, which is available for free to people in prison or on parole from Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612 or at [www.rootandrebounce.org](http://www.rootandrebounce.org).

## 11.10 Overview of Conditions of Parole

Conditions of parole are requirements with which a person on parole must comply; violations of parole conditions can result in a range of sanctions up to a term of incarceration. Some parole conditions are required by state law. Other conditions can be imposed at the discretion of CDCR parole staff (for people with determinate sentences) and BPH parole staff (for people with indeterminate sentences).<sup>72</sup>

People must be given notice of their terms and conditions of parole at least 30 days before release.<sup>73</sup> The notice must include notification of any requirement to register with local law enforcement officials.<sup>74</sup> When notice is given, the person will be asked to sign the Notice and Conditions of Parole. There is no point in a person refusing to sign the Notice, since the conditions apply even if they have not signed the form.<sup>75</sup> Also, a person who is required to register as a sex offender and who refuses to sign the notice of the registration requirement will automatically have their parole revoked and be kept in prison for up to six more months.<sup>76</sup> Thus, a person who disagrees with the conditions should sign them and then challenge the conditions as discussed in § 11.34 and § 11.36.

General conditions are standardized provisions that the CDCR applies to all people on parole. General conditions include requirements that a person comply with parole agent instructions, not

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<sup>69</sup> 15 CCR § 3075.2(d).

<sup>70</sup> 15 CCR § 3605; DOM §§ 81070.1-81070.9.

<sup>71</sup> 15 CCR § 3630. An exception is that some people on parole who are not U.S. citizens who have been the victim of domestic violence may be eligible for assistance programs. 15 CCR § 3630(e).

<sup>72</sup> Penal Code § 3000(b)(7); Penal Code § 3053 et. seq.; 15 CCR § 2510.

<sup>73</sup> Penal Code § 3000(b)(7).

<sup>74</sup> Penal Code § 3067; 15 CCR § 3075.2(b)(1).

<sup>75</sup> 15 CCR § 2512.

<sup>76</sup> Penal Code § 3060.5.

## § 11.11

engage in criminal conduct, and not own, possess, use, or have access to any weapons.<sup>77</sup> Special conditions are imposed based on the particular facts of the person's case. Examples of such conditions are requirements that a person submit to testing for controlled substances or participate in mental health treatment.<sup>78</sup>

In addition to other conditions, if a person on parole owes direct restitution or a restitution fine as part of a criminal sentence, the CDCR can collect that fine plus a 10 percent administrative fee.<sup>79</sup> In practice, the CDCR usually refers the matter to Franchise Tax Board for collection.<sup>80</sup> People should also be aware that in most felony cases the sentencing court imposes an additional restitution fine that is suspended and only takes effect if the person violates parole (this also applies to PRCS).<sup>81</sup>

Another requirement is that people on parole who have been convicted of gang-related offenses, arson, some drug offenses, and most sex offenses are required to register with local law enforcement agencies upon release from prison. Registration is required by state statute and as a condition of parole.<sup>82</sup> Registration requirements vary depending on the type and date of the underlying offense, but generally include a requirement to register with local law enforcement authorities upon release and to re-register every time the person moves and/or annually. The CDCR regulations describe the registration requirements for various types of offenses.<sup>83</sup>

The CDCR should provide appropriate accommodations for people with disability and those who need help reading, understanding, or complying with conditions of parole.<sup>84</sup>

### 11.11 Constitutional Limits on Parole Conditions

Parole conditions must be reasonable in order to avoid violating a person's constitutional protection against arbitrary and oppressive official action.<sup>85</sup> Thus, a condition of parole is invalid if it (1) has no relationship to the crime of which the person was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future

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<sup>77</sup> See 15 CCR § 2512.

<sup>78</sup> See, e.g., 15 CCR § 3610 (parole outpatient mental health clinics); 15 CCR §§ 3620-3626 (urinalysis testing).

<sup>79</sup> Penal Code § 2085.5(g)-(i); see also Penal Code § 2085.6 (similar provisions authorizing county agencies to collect restitution payments from people on PRCS).

<sup>80</sup> Penal Code § 3000.05. More information about how restitution fines can be collected and payment instructions is available on the Victim Services page at [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

<sup>81</sup> Penal Code § 1202.45.

<sup>82</sup> See Penal Code § 186.30; Penal Code § 290 et. seq.; Penal Code § 457.1; Health & Safety Code § 11590; 15 CCR §§ 3650-3654.

<sup>83</sup> See 15 CCR § 3651 (gang related offenses); 15 CCR § 3652 (sex offenses); 15 CCR § 3653 (arson); 15 CCR § 3654 (drug offenses). Note that starting on January 1, 2021, the law will change so that many people with sex-related offenses can petition to be relieved of their registration requirements after complying with registration for a minimum period of time. Penal Code § 290(d), eff. Jan. 1, 2021; Penal Code § 290.006, eff. Jan 1, 2021.

<sup>84</sup> *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.S (disability information).

<sup>85</sup> *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234 [15 Cal.Rptr.3d 168].

criminality.<sup>86</sup> For example, if a person has no history of alcohol abuse or of committing crimes while intoxicated, random alcohol testing cannot be imposed as a condition of parole, since such a condition does not relate to past or future criminality, and using alcohol is not in itself illegal.<sup>87</sup> On the other hand, a condition requiring a person who was released on mandatory supervision to report to a gang unit was upheld based on their history of gang membership and gang-related crimes, even though their current crime was not gang-related; the condition was deemed to be reasonably related to preventing future criminality.<sup>88</sup> As another example, since possession of a firearm by a person with prior felonies is in itself a crime,<sup>89</sup> it is not unreasonable to require that a person on parole not possess or control any firearms.

An additional limit is that a condition is unconstitutionally overbroad if it imposes limits on the person's constitutional rights and it is not closely or narrowly tailored and reasonably related to a compelling state interest in public safety and rehabilitation.<sup>90</sup> For example, a court struck down a condition requiring a person on parole should to seek permission from their parole officer before exercising the First Amendment right to make a public speech.<sup>91</sup> As another example, a condition prohibiting a person on probation from being in the presence of a firearm was unconstitutional because it denied the person the constitutional right of access to the courts due to the presence of armed security.<sup>92</sup>

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<sup>86</sup> *People v. Lent* (1975) 15 Cal.3d 481, 486 [124 Cal.Rptr. 905, 908]; *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627 [64 Cal.Rptr. 290, 293]. Although *Lent* and *Dominguez* involve probation conditions, courts apply the same legal analysis to parole conditions. *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234 [15 Cal.Rptr.3d 168]. Examples of conditions that have been struck down include *People v. Nassetta* (2016) 3 Cal.App.5th 699 [207 Cal.Rptr.3d 791] (striking down nighttime curfew as probation condition for drug and DUI offenses); *People v. Soto* (2016) 245 Cal.App.4th 1219 [200 Cal.Rptr.3d 247] (striking down probation condition that person obtain approval before changing residence or leaving state, where offense was DUI and driving with suspended license). For examples of conditions that have been upheld, see *People v. Olguin* (2008) 45 Cal.4th 375 [87 Cal.Rptr.3d 199] (upholding condition requiring person to notify probation officer of any pets in his residence, to ensure probation officer safety during home visits, on the theory that this was related to deterring future criminality).

<sup>87</sup> *People v. Kidoo* (1990) 225 Cal.App.3d 922 [275 Cal.Rptr. 298], overruled on other grounds in *People v. Welch* (1993) 5 Cal.4th 228 [19 Cal.Rptr.2d 520]; compare with Penal Code § 3053.5 (requiring abstention from alcohol as condition of parole for persons who were intoxicated or addicted to alcohol at the time they committed a sex offense).

<sup>88</sup> *People v. Martinez* (2014) 226 Cal.App.4th 759 [172 Cal.Rptr.3d 320].

<sup>89</sup> Penal Code § 29800.

<sup>90</sup> *In re Stevens* (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (striking down prohibition on using computers and the internet that infringed on First Amendment rights and was broader than reasonably necessary to prevent future sex offenses). *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084-1085 [22 Cal.Rptr.2d 893, 897-898] (striking down probation condition requiring minor who was not a U.S. citizen, who was in the country legally with his parents, to be banished from the U.S.); *In re Daniel R.* (2006) 144 Cal.App.4th 1 [50 Cal.Rptr.3d 179] (striking down a probation condition placing an absolute ban on minor travelling to Mexico); *People v. Burden* (1988) 205 Cal.App.3d 1277 [253 Cal.Rptr. 130] (person on parole who was convicted of writing checks with insufficient funds can be prohibited from maintaining a checking or charge account, but prohibiting working in commissioned sales is unnecessary infringement upon right to work).

<sup>91</sup> *Hyland v. Procunier* (N.D. Cal. 1970) 311 F.Supp. 749.

<sup>92</sup> *People v. Forrest* (2015) 237 Cal.App.4th 1074, 1084-1085 [188 Cal.Rptr.3d 736].

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Parole conditions are unconstitutionally vague in violation of the right to due process if they do not provide clear guidance as to what kind of conduct is prohibited.<sup>93</sup>

There are hundreds of cases applying these principles in various circumstances. §§ 11.15- 11.21 discuss a few specific types of common conditions that have either been upheld or found to be unlawful.

### 11.12 Setting the County of Parole

A person is usually paroled to the county where they were living prior to being taken into custody.<sup>94</sup> The CDCR may parole a person to a different county if that would be “in the best interest of the public and the person on parole.”<sup>95</sup> For example, the CDCR may parole a person to a different county when the person needs mental health or counseling for sex-related offenses that is not available in the county of their last residence.

Under state law, a person will not be returned to an area within 35 miles of the home of a victim of or witness to a violent offense, upon request by a crime victim or witness, if the CDCR finds that there is a need to protect the person’s life, safety, or well-being. Similarly, a person on parole will not be placed within 35 miles of the home or job location of a stalking victim, upon request by a crime victim or witness, if CDCR finds that there is a need to protect the person’s life, safety, or well-being. In some cases, these laws may result in parole to somewhere other than the county of last residence.<sup>96</sup>

A person who does not want to go to the county of last residence may ask to parole to another county at their parole hearing or when the RPS is prepared. Paroling to a different county may be allowed when it would be in the “best interests of the public and the [person on parole].” For example, a person on parole might be allowed to live in a different county if there are safety reasons, a verified work offer, or family ties that would make such a placement beneficial.<sup>97</sup> A person on parole may also request a transfer to a different county during the parole period. A request for transfer of parole will

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<sup>93</sup> *In re Sheena K.* (2007) 40 Cal.4th 875 [55 Cal.Rptr.3d 716] (probation condition on minor forbidding association with “anyone disapproved of by probation,” was unconstitutionally vague, because it failed to include requirement that person be given notice when a particular person was disapproved by her probation officer); *People v. Relkin* (2016) 6 Cal.App.5th 1188 [211 Cal.Rptr.3d 879] (vague condition requiring person on probation to report any contacts with any peace officer); *People v. Contreras* (2015) 237 Cal.App.4th 868 [188 Cal.Rptr.3d 698] (probation condition prohibiting possession of surveillance device without specifying type of device or that the possession must be knowing was unconstitutionally vague); but see *People v. Hall* (2017) 2 Cal.5th 494 [213 Cal.Rptr.3d 561] (drug and firearm probation conditions were not unconstitutionally vague in failing to specify that a violation of the condition required knowledge of the contraband’s presence and its restricted nature).

<sup>94</sup> Penal Code § 3003(a).

<sup>95</sup> Penal Code § 3003(b).

<sup>96</sup> Penal Code § 3003(f), (h); see *Cordell v. Tilton* (S.D. Cal. 2007) 515 F.Supp.2s 1114,1136 (upholding as reasonable a CDCR decision to parole a person to a different county based on victim concerns).

<sup>97</sup> Penal Code § 3003(b); DOM § 81010.2. CDCR staff have discretion to choose the county of parole; a court may not order placement in a different county unless CDCR parole officials have abused their discretion. *California Dept. of Corrections and Rehabilitation v. Superior Court (Brackett)* (2015) 237 Cal.App.4th 1472 [188 Cal.Rptr.3d 641]; *City of Susanville v. California Dept. of Corrections and Rehabilitation* (2012) 204 Cal.App.4th 377 [128 Cal.Rptr.3d 721] *McCarthy v. Superior Court (County of Contra Costa)* (1987) 191 Cal.App.3d 1023, 1027 [236 Cal.Rptr. 833].

be stronger if the reason for the request is supported by documentation such as letters from family or a prospective employer.

When the CDCR places a person in a county that is not their county of last residence, it must issue a written statement of reasons for the placement.<sup>98</sup>

### 11.13 Transferring Parole to Another State

California is a participant in the Interstate Compact for Adult Offender Supervision that sets policies and procedures for interstate parole and probation supervision.<sup>99</sup> The Compact has been adopted by all states. There is an Interstate Commission for Adult Offender Supervision to oversee, supervise, and coordinate the movement of people on parole, as well as a California State Council for Interstate Adult Offender Supervision.<sup>100</sup> The address for the California office is Interstate Compact Office, Department of Adult Parole Operations, California Department of Corrections and Rehabilitation, P.O. Box 942883, Sacramento, CA 94283.

To be eligible for an interstate transfer, a person must (1) have three months or more to serve on parole, (2) have a valid plan of parole supervision; (3) be in substantial compliance with the terms of supervision; (4) have been a resident of the receiving state or have family in the receiving state who are willing and able to assist the person; and (4) be able to obtain employment or have means of support. Parole officials have discretion to allow interstate transfer of a person who does not meet all of the eligibility criteria if that transfer will support the successful completion of parole and public safety.<sup>101</sup>

A person on parole in California generally may not be placed on out-of-state parole if they owe a restitution fine that has not yet been fully paid. However, an exception may be made if the person either (1) posts a bond for the amount of the restitution or (2) obtains a court order that the bar on out-of-state parole should be waived in the interests of justice.<sup>102</sup>

There is a form for a person to apply for transfer of parole supervision to another state. As part of the application, a person who wants to transfer must agree to waive the right to contest extradition from any other state to which they may abscond. The parole officer then determines whether the person meets the eligibility criteria or, if not, whether an exception should be made. If the parole agent approves, they will submit the application to the California compact office for review. The California compact office will then review and, upon approval, will submit the application to the receiving state for review; the receiving state is supposed to respond to a transfer request within 45 calendar days, or faster if there are emergency circumstances. The earliest that California can send a parole transfer request for a person who has not yet been released on parole is 120 days prior to the expected release date. The request for transfer can be rejected at any step if the person does not meet

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<sup>98</sup> Penal Code § 3003(b).

<sup>99</sup> Penal Code §§ 11180 and 11181. CDCR policies for Interstate Compact transfers for people on California parole are in DOM 81060.11-81060.21.

<sup>100</sup> Information on the Compact and activities of the Interstate Commission for Adult Offender Supervision and California State Council can be found at [www.interstatecompact.org](http://www.interstatecompact.org), or by calling (916) 255-2781.

<sup>101</sup> Interstate Compact Rules, rules 3.101-3.102.

<sup>102</sup> Penal Code § 11177.2.



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the eligibility criteria, but if they meet the eligibility criteria, the receiving state must accept supervision.<sup>103</sup>

People placed on PRCS are eligible for supervision in another state under the compact. Application for out of state PRCS supervision should be made through the local court.<sup>104</sup>

### 11.14 Parole Supervision Levels

A person on parole in California will be assigned one of four levels of supervision.<sup>105</sup> The level of supervision will determine the frequency and intensity of contact with the parole agent, although adjustment may be made on a case by case basis.<sup>106</sup> The four levels are:

- ◆ High Control: people who were serving prison terms for violent felonies as defined in Penal Code § 667.5(c), must register as sex offenders, are validated as STG (gang) members, have high notoriety or cases of interest to the public, or who have a California Static Risk Assessment (CSRA) risk assessment score of 5. People listed as High Control must make contact with a parole agent at the person's residence once a month. They also must have one other monthly contact with the agent, either in person, by telephone or by written or electronic communication. If they are subject to drug testing, they will be tested at least once a month.<sup>107</sup>
- ◆ High Service: people who have special service needs or behavioral patterns, such as people with severe mental illnesses. The supervision requirements are the same as those on High Control parole.<sup>108</sup>
- ◆ Control Services: people who do not meet the criteria for High Control or High Services. People listed under Control Services parole must have two face-to face meetings per quarter with the parole agent, with at least one meeting at the person's residence. They must also have one additional contact with the agent each quarter, either in person, by phone, or in writing or electronic form. People on Control Services parole are required to submit to narcotics testing are tested twice each quarter.<sup>109</sup>
- ◆ Minimum Supervision: People are never assigned to Minimum Supervision directly on release from prison. People on Control Services parole who complete 180 days of satisfactory parole and who are not required to attend an outpatient clinics will be assigned to a Minimum Supervision category, unless the parole unit supervisor exercises discretion to keep them at a higher supervision level. People on Minimum Supervision

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<sup>103</sup> Interstate Compact Rules, rules 3.101-3.109. See also DOM §§ 81060.1-81060.21.

<sup>104</sup> See *Wofford v. Superior Court* (2014) 230 Cal.App.4th 1023 [179 Cal.Rptr.3d 243].

<sup>105</sup> 15 CCR § 3504(a).

<sup>106</sup> 15 CCR § 3504(a).

<sup>107</sup> 15 CCR § 3504(a)(1); 15 CCR § 3504.1. If a Risk Assessment Score is not available at the time of release on parole, the person will be temporarily assigned a risk assessment of 5 and placed on high control; an actual score must be provided within five business days. 15 CCR § 3504.1(b).

<sup>108</sup> 15 CCR § 3504(a)(2).

<sup>109</sup> 15 CCR § 3504(a)(3).

must have one face-to-face contact with their parole agent during the month prior to their discharge review date (see § 11.5). People on Minimum Supervision parole who are retained on parole after their discharge review dates need make only two contacts with their parole officer each year.<sup>110</sup>

The supervision level of a person on parole should be reviewed periodically and can be reduced or increased depending on their behavior. Parole staff also have the authority to make exceptions to the regular supervision level assignment criteria on a case-by-case basis.<sup>111</sup>

## 11.15 Conditions Regarding Searches

A standard CDCR condition of parole is that the person on parole and their residence and any property under their control may be searched without a warrant by an agent of the Department of Corrections or any law enforcement officer.<sup>112</sup> This requirement has been upheld by the courts. Consequently, a parole agent or law enforcement officer can conduct searches without the person's consent, without a search warrant, without probable cause, and even without a reasonable suspicion that the person has violated parole.<sup>113</sup>

A parole search condition does not excuse police from complying with knock-notice laws that require an officer to give notice of their authority and purpose in conducting the search.<sup>114</sup>

If officers know a person is on parole, the officers may assume that they are subject to a parole search condition.<sup>115</sup> Officers can also rely on a reasonable belief that a person is on parole, even if it turns out that the person is not actually on parole.<sup>116</sup> However, an otherwise unlawful search cannot be justified by a parole search condition if the officers were not aware that the person was on parole at the time of the search or did not have probable cause to believe the person lived in the residence that was searched.<sup>117</sup>

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<sup>110</sup> 15 CCR § 3504(a)(3)(E)-(a)(4), (b).

<sup>111</sup> 15 CCR § 3504.

<sup>112</sup> Penal Code § 3067; see also 15 CCR § 3600 (procedures for searching people on parole and seizing contraband or evidence).

<sup>113</sup> *Samson v. California* (2006) 547 U.S. 843 [126 S.Ct. 2193;165 L.Ed.2d 250]; *United States v. King* (9th Cir. 2012) 687 F.3d 1189; *People v. Reyes* (1998) 19 Cal.4th 743 [80 Cal.Rptr.2d 234]; see also *People v. Hunter* (2006) 140 Cal.App.4th 1147 [45 Cal.Rptr.3d 216] (officers may also search person's property after parole hold is placed and person is in custody).

<sup>114</sup> Penal Code § 1531; *People v. Ford* (1975) 54 Cal.App.3d 149 [126 Cal.Rptr. 396]. *People v. Mays* (1998) 67 Cal.App.4th 969 [79 Cal.Rptr.2d 519].

<sup>115</sup> *People v. Middleton* (2005) 131 Cal.App.4th 732 [31 Cal.Rptr.3d 813].

<sup>116</sup> *People v. Hill* (2004) 118 Cal.App.4th 1344 [13 Cal.Rptr.3d 719] (where a police officer mistakenly but in good faith believed that a person was on parole, but the person was actually on probation, a search without probable cause or reasonable suspicion did not violate the Fourth Amendment); See also *People v. Douglas* (2015) 240 Cal.App.4th 855, 866-867 [240 Cal.Rptr.3d 79] (officer need only have a reasonable belief that a person is on PRCS to search without probable cause).

<sup>117</sup> *People v. Sanders* (2003) 31 Cal.4th 318 [2 Cal.Rptr.3d 630] (officers were not aware that person was on parole at the time of the search); *Cuevas v. Roco* (9th Cir. 2008) 531 F.3d 726, 732; *United States v. Grandberry* (9th Cir. 2013) 730 F.3d 968 (no probable cause to believe person lived in residence that was searched).

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Nearly the only limit on parole searches is a general rule that infringement on Fourth Amendment rights is justified only to the extent required by legitimate demands of the parole process.<sup>118</sup> Parole searches must be “reasonable,” meaning that they cannot be made too often, at an unreasonable hour, be unreasonably prolonged, or be made in an arbitrary or capricious manner.<sup>119</sup> However, courts give parole officials much leeway in deciding what is reasonable.<sup>120</sup> Also, the exclusionary rule (the general rule that evidence obtained in violation of Fourth Amendment rights cannot be admitted in a criminal trial) does not apply in parole revocation hearings, so parole officers have little incentive to limit their searches.<sup>121</sup>

One area of active litigation involves searches of computers and other electronic devices for evidence of crimes or parole violations. This is discussed at § 11.17.

### 11.16 Conditions Restricting Residence Location

Under state law, a person will not be returned to an area within 35 miles of the home of a victim of or witness to a violent offense, upon request by a crime victim or witness, if the CDCR finds that there is a need to protect the person’s life, safety, or well-being. Similarly, a person will not be placed within 35 miles of the home or job location of a stalking victim, upon request by a crime victim or witness, if the CDCR finds that there is a need to protect the person’s life, safety, or well-being.<sup>122</sup>

Another state law provides that people convicted of violating Penal Code § 288 (lewd or lascivious acts with a minor under age 16) or Penal Code § 288.5 (continuous sexual abuse of a minor under age 14) and whom the CDCR determines pose a high risk to the public cannot live within one half mile of any school for children in kindergarten through 12th grade.<sup>123</sup> Also, people who are required to register as sex offenders are prohibited from living together in a single family dwelling unless related by blood or marriage.<sup>124</sup> A person who is required to register as a sex offender due to a crime against a minor and cannot reside (except as a client) in a child day care facility or residential facility or a foster family home.<sup>125</sup>

From November 2006 to March 2015, there was a state law which forbade any person who registered as a sex offender from living within 2,000 feet of a school or park where children regularly

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<sup>118</sup> *People v. Williams* (1992) 3 Cal.App.4th 1100, 1106 [5 Cal.Rptr.2d 591]; *United States v. Cramford* (9th Cir. 2004) 323 F.3d 700 (parole search conducted solely as pretext to interview a person on parole about a different crime violated Fourth Amendment).

<sup>119</sup> *People v. Reyes* (1998) 19 Cal.4th 743, 753-754 [80 Cal.Rptr.2d 734]; Penal Code § 3067(d).

<sup>120</sup> *People v. Sardinias* (2009) 170 Cal.App.4th 488 [87 Cal.Rptr.3d 896] (two searches in 24-hours were reasonable where person was detained for broken tail lights one day and then searched the next day because he was in a known drug trafficking area); *People v. Schmitz* (2012) 55 Cal.4th 909 [149 Cal.Rptr.3d 640] (where a person on parole was a passenger in a car, there was no Fourth Amendment violation when police searched the car, even though the person was neither the owner nor the driver).

<sup>121</sup> *Pennsylvania Board of Probation and Parole v. Scott* (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344].

<sup>122</sup> Penal Code § 3003(f), (h).

<sup>123</sup> Penal Code § 3003(g).

<sup>124</sup> Penal Code § 3003.5(a); 15 CCR § 3571(b). A residential facility serving six or more residents is not considered a single family dwelling.

<sup>125</sup> Penal Code § 3003.6.

gather.<sup>126</sup> However, the California Supreme Court held that placing such residency restrictions on every person on parole convicted of sex-related offenses violated the constitutional Fourteenth Amendment due process right to be free of unreasonable, arbitrary and oppressive official action.<sup>127</sup>

The CDCR still has authority to impose special conditions of parole on a case-by-case basis, including residency restrictions.<sup>128</sup> The CDCR's policy is to impose residency parole conditions on a case-by-case basis based on the particular circumstance of each individual person on parole. Any restriction that will bar a person from residing within any distance of a park, K-12 school, or other location must be justified by a connection between the person's offense, criminal history, and/or likelihood of future offenses.<sup>129</sup> On a case by case basis, people may have a special condition prohibiting them from residing with a particular child.<sup>130</sup>

The CDCR has standard procedures for enforcing residency requirements.<sup>131</sup> When a person is paroled, they must tell the parole agent where they plan to live. A parole also must give the parole agent notice before moving to a new address. The parole agent will then verify whether the residence is far enough away from a school or park to comply with any statutory or individualized residency restriction. The distance will be measured with a GPS device, and using the straight-line distance between the main entrance of the residence and the exterior boundary of the nearest park or school, not the driving or walking distance.<sup>132</sup>

A person on parole who is listed as transient (without permanent housing) may stay at locations which have no street addresses, such as bridges, encampments and bus stops, without violating the residency restriction, unless the CDCR imposes special conditions of parole limiting access to such locations.<sup>133</sup> However, spending even one or two days or nights in a shelter or structure that can be located by an address (such as a building or a car parked in a certain spot) can establish that location as a "residence" if circumstances "appear to establish a pattern of residency."<sup>134</sup>

A person who is subject to residency restrictions may work in businesses that are within the restricted areas if they have permission from their parole agent. A person may also be allowed to

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<sup>126</sup> Penal Code § 3003.5(b). The State has taken the position that those residency restriction applied only while people with sex-related offenses are on parole. *People v. Mosley* (2015) 60 Cal.4th 1044 [185 Cal.Rptr.3d 251]. Also, those residency provisions did not apply to people who were convicted prior to November 8, 2006 and paroled prior to that date *Doe v. Schwarzenegger* (E.D. Cal. 2007) 476 F.Supp.2d 1178; *In re E.J.* (2010) 47 Cal.4th 1258, 1272-1273 [104 Cal.Rptr.3d 165].

<sup>127</sup> *In re Taylor* (2015) 60 Cal.4th 1044 [184 Cal.Rptr.3d 682].

<sup>128</sup> *In re Taylor* (2015) 60 Cal.4th 1044 [184 Cal.Rptr.3d 682].

<sup>129</sup> 15 CCR § 3571; 15 CCR § 3582.

<sup>130</sup> 15 CCR § 3571(f).

<sup>131</sup> 15 CCR §§ 3571-3590.3.

<sup>132</sup> 15 CCR § 3571(e); 15 CCR § 3582(e); see *People v. Christman* (2014) 229 Cal.App.4th 810 [75 Cal.Rptr.3d 884] (upholding straight-line measurement method).

<sup>133</sup> See 15 CCR § 3590.2.

<sup>134</sup> 15 CCR §§ 3590-3590.3.

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regularly enter places in order to charge their GPS device, conduct business, or receive treatment without being considered to have established a “residence” there.<sup>135</sup>

Parole agents have been instructed to make exceptions to the residency rules for people with mental illness and housed in a licensed mental health facility or are in need of medical care in a licensed facility with 24-hour supervision. Parole agents are supposed to seek a decision from the Director of the DAPO on whether the person may stay in that facility until care is no longer needed.

People on parole should be aware that cities, towns and counties may adopt their own ordinances imposing restrictions on where they can live or go.<sup>136</sup> Some of these types of laws may be subject to appeal for violating constitutional due process or other rights.

### 11.17 Conditions Requiring GPS or Other Electronic Monitoring

The CDCR must monitor people who are subject to sex offender registration requirements using a global positioning system (GPS); this is a device (usually an ankle bracelet) that records and transmits details of the person’s location at all times.<sup>137</sup> Although the law purports to impose a life-long GPS monitoring requirement, the statute does not require any particular agency authority to enforce the requirement after a person is off parole.<sup>138</sup> However, when a person gets off parole, the CDCR will notify local authorities in case they want to take over the person’s GPS monitoring.<sup>139</sup>

The CDCR rules also provide for special conditions of parole requiring GPS and similar forms of electronic monitoring.<sup>140</sup> The rules requires GPS monitoring of any person on parole who is required to register as a sex offender, is listed as a STG (gang) member or associate, is placed on “high control” supervision, has a history of parole violations, absconding, or being unavailable for supervision, or has GPS requirement imposed as an alternative to a return to custody.<sup>141</sup> Parole staff have discretion to require electronic monitoring in other types of situations as well.<sup>142</sup> Failure to keep the monitoring device charged or wear it can be charged as a parole violation.<sup>143</sup> People on parole can be required to pay for the cost of monitoring if they are able to do so.<sup>144</sup>

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<sup>135</sup> 15 CCR § 3590.1.

<sup>136</sup> Penal Code § 3003(c).

<sup>137</sup> Penal Code § 3000.07; Penal Code § 3004(b).

<sup>138</sup> See Penal Code § 3000.07; Penal Code § 3004(b).

<sup>139</sup> 15 CCR § 3564.

<sup>140</sup> 15 CCR §§ 3540-3565.

<sup>141</sup> 15 CCR § 3561.

<sup>142</sup> 15 CCR § 3545.

<sup>143</sup> 15 CCR § 3547; 15 CCR § 3562(c).

<sup>144</sup> 15 CCR § 3548; 15 CCR § 3563.

## 11.18 Conditions Requiring Psychological Treatment

People who are registered as sex offenders are required to participate in a sex offender management program for at least one year as a condition of parole.<sup>145</sup>

The CDCR can also refer other people on parole for evaluation at a parole outpatient clinic; such referrals are mandatory for people who have histories of mental illness or who are exhibiting symptoms of mental illness. If the clinic staff decide the person needs either temporary or long-term mental health services, parole staff will impose a special condition requiring them to participate in a treatment program.<sup>146</sup>

As discussed in Chapter 12, people classified as Mentally Disordered Offenders (MDOs) who meet certain criteria can be committed to the Department of State Hospitals (DSH) for treatment as a special condition of parole.<sup>147</sup>

Some requirements for participation in mental health, sex-related offense, or substance abuse treatment may be found invalid if they are not reasonably related to criminality, vague or overbroad (see standards in § 11.11).<sup>148</sup>

If a person is required to get mental health treatment provided by the state as a condition of parole, they can be required to waive their right to remain silent and therapist-patient confidentiality; this means that anything they tell their therapist could be used to bring parole violation of criminal charges against them.<sup>149</sup> Such requirements have been upheld by the courts.<sup>150</sup> However, a person cannot be required to waive therapist-patient confidentiality if they hire a therapist privately.<sup>151</sup>

## 11.19 Conditions Restricting Use of Technology

Conditions that require people to reveal their computer or internet passwords, prohibit or limit computer or internet use, or allow for searches of electronic devices have been subject to court challenges under the standards discussed in § 11.11. The outcomes generally have depended on the exact nature of the restriction and its degree of relationship to the person's criminal history but different courts have sometimes reached differing conclusions in cases presenting similar facts. Some

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<sup>145</sup> Penal Code § 3008(d).

<sup>146</sup> 15 CCR § 3610; see also Penal Code § 3002 (CDCR must do psychological evaluation on every person convicted of an act of abuse or neglect against a minor to determine what counseling should be required as a condition of parole).

<sup>147</sup> Penal Code § 2962 et seq.

<sup>148</sup> *United States v. Williams* (9th Cir. 2004) 356 F.3d 1045 (striking down supervised release condition requiring person to take all psychotropic medications prescribed for his mental illness, where there was a lack of medical evidence to support such an extreme restriction on the right to refuse medication); *People v. Petty* (2013) 213 Cal.App.4th 1410 [154 Cal.Rptr.3d 75] (condition requiring person on parole to comply with all directions of mental health worker, including taking medications as directed, was invalid where there was no evidence connecting the person's commitment offense with his mental health condition); *Inouye v. Kemna* (9th Cir. 2007) 504 F.3d 705 (requiring a person on parole to participate in a religion-based Alcoholics Anonymous/Narcotics Anonymous program violated the First Amendment).

<sup>149</sup> See Penal Code § 3008(d)(4).

<sup>150</sup> *People v. Garcia* (2017) 2 Cal.5th 792 [216 Cal.Rptr.75].

<sup>151</sup> *In re Corona* (2008) 160 Cal.App.4th 315 [72 Cal.Rptr.3d 736].



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conditions have been upheld.<sup>152</sup> Others have been held to be invalid as unreasonable, vague, or overbroad.<sup>153</sup> The California Supreme Court is currently reviewing the question of whether conditions allowing searches of electronic devices can be justified as reasonably related to future criminality, even if the condition has no relationship to the person's crimes.<sup>154</sup>

### 11.20 Conditions Restricting Association with Other Persons

Conditions that infringe on First Amendment rights by prohibiting association with certain groups of people, or with people disapproved of by the supervising officer, are frequently subject to challenges. If a person on parole is prohibited from associating with people disapproved of by the supervising officer, the officer must ensure that the person is aware of the disapproval.<sup>155</sup> In addition, there must be some connection between criminal conduct and association with the prohibited group.<sup>156</sup> Some association conditions have been struck down as unreasonable, vague or overbroad

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<sup>152</sup> *People v. Smith* (2017) 8 Cal.App.5th 977 [215 Cal.Rptr.3d 521] (upholding probation condition requiring person convicted of distributing narcotics to submit to electronic searches of cell phone and computer); *In re P.O.* (2016) 246 Cal.App.4th 288 [200 Cal.Rptr.3d 841] (electronic search condition for juvenile on probation for drug sale offenses was reasonably related to future criminality but unconstitutionally overbroad because not limited to communications reasonably likely to reveal drug activity); *People v. Appleton* (2016) 245 Cal.App.4th 717 [199 Cal.Rptr.3d 637] (probation conditions requiring consent to search electronic devices and prohibiting deletion of internet browsing history were sufficiently related to offense of false imprisonment (where person met victim through social media)); *People v. Ebertowski* (2014) 228 Cal.App.4th 1170 [176 Cal.Rptr.3d 413] (approving probation conditions requiring person convicted of criminal threats to surrender passwords for electronic devices and social media websites); *People v. Pirali* (2013) 217 Cal.App.4th 1341 [159 Cal.Rptr.3d 355] (upholding condition requiring prior approval of probation officer before using any computer or computer-related device, where conviction was for possession of child pornography); *In re Hudson* (2006) 143 Cal.App.4th 1, 9-10 [49 Cal.Rptr.3d 74] (upholding parole condition requiring approval of parole officer before using computer, where crime was child molestation and person on parole deliberately encrypted computer and withheld password so authorities could not ascertain whether internet was involved in offense, other offenses did involve computer use, and person was not denied all access to internet).

<sup>153</sup> *United States v. Sales* (9th Cir. 2007) 476 F.3d 732 (striking down as overbroad condition requiring prior approval of probation officer before using any computer or computer-related device; even though the person on probation had used computer scanner and printer to commit crime of forgery); *People v. Navarro* (2016) 244 Cal.App.4th 1294 [198 Cal.Rptr.3d 813] (parole conditions restricting internet use were reasonably related to a sex crime involving a child and justified by parole violation history; but was constitutionally vague) *In re Malik J.* (2015) 240 Cal.App.4th 896 [193 Cal.Rptr.3d 370] (upholding electronic search probation condition for juvenile who had committed robberies and drug possession crimes, though finding the conditions must be modified because they were overbroad in requiring him to turn over all social media passwords, allowing unrestricted searches of electronic devices, and extending electronic search condition to his family members); *In re Stevens* (2004) 119 Cal.App.4th 1228 [15 Cal.Rptr.3d 168] (overturning parole condition that completely prohibited person registered as sex offender from using computers or the internet where the person had not used computers or the internet in committing any crime); see also *Packingham v. North Carolina* (2017) \_\_\_ U.S. \_\_\_ [137 S.Ct. 1730; 198 L.Ed.2d 273] (not a parole conditions case, but striking down a North Carolina law that prohibited people registered sex offenders from accessing any social networking site that allows minors to create or maintain personal webpages, with good discussion of First Amendment rights regarding social media).

<sup>154</sup> *In re Ricardo P.*, No. S230923, review granted Feb. 17, 2016

<sup>155</sup> *People v. Mendez* (2013) 221 Cal.App.4th 1167 [165 Cal.Rptr.3d 157]; *People v. Moses* (2011) 199 Cal.App.4th 374 [131 Cal.Rptr.3d 106]; *People v. Turner* (2007) 155 Cal.App.4th 1432 [66 Cal.Rptr.3d 803].

<sup>156</sup> *People v. Brandao* (2012) 210 Cal.App.4th 568, 574-575 [148 Cal.Rptr. 3d 426].

under the standards described in § 11.11.<sup>157</sup> However, many other restrictions on association have been upheld, including prohibitions on associating with people in gangs or having contact with victims of the crime.<sup>158</sup>

## 11.21 Conditions Restricting Travel

The standard CDCR conditions of parole require people to get permission before traveling more than 50 miles from their residence, being absent from their residence for more than 48 hours, or leaving the state of California. These and some other additional special travel restrictions have been upheld as valid.<sup>159</sup> However, conditions that are unreasonable, overbroad, or vague should be held to be invalid by the courts under the standards described in § 11.11.<sup>160</sup>

# PAROLE VIOLATIONS AND REVOCATIONS

## 11.22 Overview of Parole Violation Proceedings

A person who commits crimes or who otherwise does not comply with the conditions of parole may be subjected to parole violation charges. If a parole violation charge is found to be true, the person can be subjected to a variety of sanctions including suspension of parole, reinstatement on parole with additional conditions, or being set back to custody to serve a parole revocation term. There must be “cause” to justify suspension or revocation of parole.<sup>161</sup>

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<sup>157</sup> *Arviniaga v. Freeman* (1971) 404 U.S. 4 [92 S.Ct. 22; 30 L.Ed.2d 126] (parole condition restricting association with other formerly convicted people was not valid when applied to incidental contacts in the course of work); *United States v. Wolf Child* (9th Cir. 2012) 699 F.3d 1082 (probation condition barring people registered as sex offenders from dating or socializing with anyone who had a minor child or from being in the company of a child, thereby prohibiting the person on probation from seeing his own daughters, was struck down as overbroad); *People v. O’Neil* (2008) 165 Cal.App.4th 1351 [81 Cal.Rptr.3d 878] (condition prohibiting associating with anyone disapproved of by probation officer was overbroad because it gave the probation officer right to prohibit association with people unrelated to commitment offense or criminality); *United States v. Soltero* (9th Cir. 2007) 510 F.3d 858, 867 (condition that prohibited associating with members of “disruptive groups” was overbroad).

<sup>158</sup> *United States v. Ross* (9th Cir. 2007) 476 F.3d 719 (upholding requirement that person on supervised release not associate with known white supremacists, where there was evidence that his weapons offense was related to racist group activities)

<sup>159</sup> *People v. Moran* (2016) 1 Cal.5th 398 [205 Cal.Rptr.3d 491] (condition requiring person on probation not go to Home Depot stores did not implicate constitutional right to travel and was reasonable, where crime involved theft from a Home Depot); see also *Bagley v. Harvey* (9th Cir. 1983) 718 F.2d 921 (not right to parole to location of one’s choice, and discussing limits on right to travel in upholding federal parole condition prohibiting travel to Washing state except for limited purposes).

<sup>160</sup> *In re H.C.* (2009) 175 Cal.App.4th 1067 [96 Cal.Rptr.3d 793] (prohibition on frequenting areas of gang activity invalid unless modified to ensure person on probation knew gangs were active in the area); *People v. Smith* (2007) 152 Cal.App.4th 1245 [62 Cal.Rptr.3d 316] (probation condition that flatly prohibited person from leaving the county at all for any purpose, making it impossible for him to work, was struck down as being overbroad; *In re Daniel R.* (2006) 144 Cal.App.4th 1 [50 Cal.Rptr.3d 179] (striking down a probation condition placing an absolute ban on minor travelling to Mexico).

<sup>161</sup> Penal Code § 3063; see also *In re Dunham* (1976) 16 Cal.3d 63, 66 [127 Cal.Rptr. 343, 345].

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CDCR parole staff are responsible for initiating parole violation charges. In the past, the BPH held parole violation hearings and decided whether to revoke parole.<sup>162</sup> However, the law has been changed so that local superior courts now are responsible for holding parole violation hearings, using similar procedures as for probation and PRCS violation charges.<sup>163</sup>

The governor also has the independent power to revoke the parole of any person on parole;<sup>164</sup> however in practice, the governor rarely exercises this power.

### 11.23 Constitutional Rights Regarding Parole Revocations

The courts have established minimum constitutional due process requirements for parole revocation proceedings. Although the cases discussed in these sections mostly were decided when the BPH had authority over parole revocations, the minimum rights established in those cases still apply now that the courts conduct California parole revocations.

There must be a prompt pre-revocation hearing “in the nature of a preliminary hearing” at or near the place of the alleged parole violation. If the pre-revocation hearing establishes probable cause that parole has been violated, a formal hearing must be held within a reasonable time to determine whether there is justification to revoke parole. At both hearings, people on parole are entitled to the following procedural protections:<sup>165</sup>

- ◆ Written notice of the violation charges and possible consequences, sufficient to allow the person to prepare a defense.<sup>166</sup>
- ◆ Disclosure of the evidence against the person and of any exculpatory (favorable) evidence known to the State.<sup>167</sup> The person or their attorney should be notified if there is any confidential information that is being withheld; the CDCR must disclose the nature and

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<sup>162</sup> For many years, California was under a court injunction to remedy due process violations in BPH parole revocation hearings. See *Valdivia v. Davis* (E.D. Cal. 2002) 206 F.Supp.2d 1068. However, the injunction was declared moot after the law was changed to transfer parole revocation hearings to the courts. *Valdivia v. Brown* (E.D. Cal. 2013) 956 F.Supp.2d 1125.

<sup>163</sup> Penal Code § 3000.08.

<sup>164</sup> Penal Code § 3062.

<sup>165</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *People v. DeLeon* (2017) 3 Cal.5th 640 [220 Cal.Rptr.3d 784]; see also *In re Valrie* (1974) 12 Cal.3d 139, 144-145 [115 Cal.Rptr. 340] (revocation hearings required even where parole violation based on pending criminal charges)

<sup>166</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *Vanes v. United States Parole Commission* (9th Cir. 1984) 741 F.2d 1197 (due process violated by lack of notice of basis for parole violation charge); *Rizzo v. Armstrong* (9th Cir. 1990) 921 F.2d 855, 858 (failure to give notice of consequences if parole revoked violated due process).

<sup>167</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; see also *People v. Moore* (1983) 34 Cal.3d 215 [193 Cal.Rptr. 404] (state has duty to preserve and disclose material physical evidence on which probation revocation charge based).

scope of the confidential information to the extent possible without endangering the informant.<sup>168</sup>

- ◆ Timely hearings on the charges, though there is no set standard on when a probable cause hearing or a final revocation hearing is timely.<sup>169</sup> Courts will not overturn a parole violation finding or revocation decision unless the delay was unreasonable and there was actual harm to the person's defense.<sup>170</sup>
- ◆ The right to be heard in person and to present witnesses and documentary evidence, including the right to issue subpoenas demanding the production of evidence or attendance of witnesses.<sup>171</sup>
- ◆ The right to confront and cross-examine adverse witnesses.<sup>172</sup> However, the evidentiary rules for parole hearings are more relaxed than for criminal cases. Hearsay evidence may be admitted if the state has good cause for failing to produce a witness that outweighs the person's interest in confronting the witness. Factors to be considered are whether the evidence falls into some hearsay exception making it more likely to be reliable, and the importance of the evidence to the issues in the case.<sup>173</sup>
- ◆ A neutral and detached hearing body.<sup>174</sup>
- ◆ A conditional right to counsel. There is not a constitutional right to counsel in all parole revocation cases, but the constitution may require appointment of counsel if the person has a potentially reasonable claim that they have not committed a violation or that there

<sup>168</sup> Penal Code § 3063.5; *In re Love* (1974) 11 Cal.3d 179, 184-185 [113 Cal.Rptr. 89]; *Goodlow v. Superior Court* (1980) 101 Cal.App.3d 969 [162 Cal.Rptr. 121].

<sup>169</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 485 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *People v. DeLeon* (2017) 3 Cal.5th 640 [220 Cal.Rptr.3d 784].

<sup>170</sup> *In re La Croix* (1974) 12 Cal.3d 146, 156 [115 Cal.Rptr. 344] (reasonableness judged by balancing all relevant circumstances); *In re O'Connor* (1974) 39 Cal.App.3d 972, 977-978 [114 Cal.Rptr. 883] (no prejudice from 115-day delay); *Meader v. Knowles* (9th Cir. 1992) 990 F.2d 503 (15-month delay not prejudicial where person on federal parole remained at liberty); *Valdivia v. Brown* (2013) 956 F.Supp.3d 1125 (discussing class action case in which court issued injunction setting timelines for hearings due to unconstitutional systemic delays).

<sup>171</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *In re Carroll* (1978) 80 Cal.App.3d 22, 34 [145 Cal.Rptr. 334].

<sup>172</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *People v. Arreola* (1994) 7 Cal.4th 1144, 1154 [31 Cal.Rptr.2d 631]; *People v. Vickers* (1972) 8 Cal.3d 451, 459 [105 Cal.Rptr. 305]. *White v. White* (9th Cir. 1991) 925 F.2d 287. *In re Melendez* (1974) 37 Cal.App.3d 967, 973 [112 Cal.Rptr. 755]; *In re Prewitt* (1972) 8 Cal.3d 470, 477-478 [105 Cal.Rptr. 318].

<sup>173</sup> *United States v. Comito* (9th Cir. 1999) 177 F.3d 1166; *Valdivia v. Schwarzenegger* (9th Cir. 2010) 599 F.3d 984, 989; *People v. Arreola* (1994) 7 Cal.4th 1144, 1154 [31 Cal.Rptr.2d 631]; *In re Miller* (2007) 145 Cal.App.4th 1228, 1236-1237 [52 Cal.Rptr.3d 256] (error to admit hearsay where person on parole's confrontation right outweighed reasons for not presenting witness; *People v. Stanphill* (2009) 170 Cal.App.4th 61 [87 Cal.Rptr.3d 643] (no need for balancing where hearsay meets exception for spontaneous statement); *In re Carroll* (1978) 80 Cal.App.3d 22, 34 [145 Cal.Rptr. 334] (failure to produce the victim so person on parole could confront and cross-examine her was excused, since her disappearance furnished good cause, and since her prior statements were adequately corroborated by police officers who investigated the matter); *In re Melendez* (1974) 37 Cal.App.3d 967, 973 [112 Cal.Rptr. 755] (no due process violation in admitting hearsay).

<sup>174</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484].

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are reasons justifying or mitigating the violation that are complex or difficult to present.<sup>175</sup> California currently grants greater rights by requiring appointment of counsel for all people facing revocation hearings.<sup>176</sup>

- ◆ A written statement of the decision, the evidence relied on, and the reasons for revoking parole.<sup>177</sup>

In the past, it was established that the CDCR and BPH had to provide people with disabilities with necessary accommodations to understand and effectively participate in parole revocation proceedings.<sup>178</sup> Even though people facing revocations and serving revocation terms are now housed in county jails and their hearings are conducted by local courts, the CDCR has a responsibility to track people on parole with disabilities, inform jail staff about their needs for accommodations, and ensure there is a process for people on parole to request disability accommodations.<sup>179</sup> Accommodations can be requested on a CDCR Form 2271 Notice and Request for Assistance During Parole Proceeding (see Appendix 11-B). The local sheriffs, superior courts, and the person's attorneys have the responsibility for actually providing necessary accommodations in the jails and at the parole revocation hearings.

The rule that illegally obtained evidence cannot be used in a criminal case evidence does *not* apply in parole revocation hearings. Thus, illegally obtained evidence or confessions can be admitted at a parole revocation hearing.<sup>180</sup> Suppression of evidence at a parole revocation hearing is required only where the police conduct is so “egregious” as to “shock the conscience.”<sup>181</sup>

People on parole may waive (give up) their federal constitutional and state law rights, either expressly or by failing to assert the right or object to a violation of the right.<sup>182</sup>

Violations of federal constitutional due process rights will result in reversal of the parole revocation unless the state can show that the error was harmless beyond a reasonable doubt.<sup>183</sup>

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<sup>175</sup> *Gagnon v. Scarpelli* (1973) 411 U.S. 77, 790-791 [93 S.Ct. 1756; 36 L.Ed.2d 656]; *In re Love* (1974) 11 Cal.3d 179, 186-190 [113 Cal.Rptr. 89].

<sup>176</sup> Penal Code § 1203.2(b)(2).

<sup>177</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [92 S.Ct. 2593; 33 L.Ed.2d 484].

<sup>178</sup> *Armstrong v. Davis* (N.D. Cal. June 28, 2002) No. C94-2307, Stipulation and Order on Revised Permanent Injunction; also *Armstrong v. Davis* (N.D. Cal. Jan. 3, 2001) No. C94-2307, Remedial Plan, § IV.S.

<sup>179</sup> *Armstrong v. Brown* (9th Cir. 2013) 732 F.3d 955.

<sup>180</sup> *Pennsylvania Board of Probation & Parole v. Scott* (1998) 524 U.S. 357 [118 S.Ct. 2014; 141 L.Ed.2d 344]; *In re Martinez* (1970) 1 Cal.3d 641, 649-652 [83 Cal.Rptr. 382, 387-390]; *People v. Racklin* (2011) 195 Cal.App.4th 872 [124 Cal.Rptr.3d 735].

<sup>181</sup> *People v. Fuller* (1983) 148 Cal.App.3d 257, 262 [210 Cal.Rptr. 1]; *People v. Washington* (1987) 192 Cal.App.3d 1120 [236 Cal.Rptr. 840].

<sup>182</sup> *In re La Croix* (1974) 12 Cal.3d 146, 153 [115 Cal.Rptr. 344]; *In re Melendez* (1974) 37 Cal.App.3d 967, 974 [112 Cal.Rptr. 755];

<sup>183</sup> See *United States v. Comito* (9th Cir. 1999) 177 F.3d 1166.

Depending on the circumstances, the state may or may not be allowed to recharge the violation and conduct new proceedings in accord with due process.<sup>184</sup>

## 11.24 Placement of a Parole Hold

CDCR parole staff must investigate all suspected parole violations and document them on a CDCR Form 1676 Parole Violation Report.<sup>185</sup> A parole agent who has probable cause to believe that a person has violated the law or a condition of parole may then place a parole “hold” and arrest them.<sup>186</sup> In deciding whether to place a hold, the parole agent should consider factors related to the seriousness of the violation and the extent to which the person may pose a danger to the public or a likelihood of absconding.<sup>187</sup> A parole hold shall not remain in effect longer than 180 days.<sup>188</sup>

Alternatively, CDCR parole staff can ask the local superior court to issue a warrant for an arrest for a suspected parole violation.<sup>189</sup>

A person can be detained in a county jail on a parole hold if the parole agent believes the person is a danger to anyone or their property, or poses a high risk of absconding.<sup>190</sup> At any time while a parole hold or revocation petition is pending, the court can release the person from custody if the court deems it appropriate to do so (unless the person is serving a period of “flash incarceration”).<sup>191</sup>

## 11.25 CDCR Review of a Parole Hold

Within one working day after a parole agent places a parole hold, a CDCR parole supervisor must review the case to determine whether there is good cause to keep the hold; the parole staff do not have to hold a hearing or give the person on parole an opportunity to provide information.<sup>192</sup>

If CDCR parole staff do not find good cause to keep the parole hold, the hold will be removed and the person will be re-released to parole.<sup>193</sup> The regulations indicate that a person whose hold is

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<sup>184</sup> *In re Marquez* (2007) 153 Cal.App.4th 1 [62 Cal.Rptr.3d 429] (release ordered due to multiple prejudicial due process violations); see *In re Valrie* (1974) 12 Cal.3d 139, 144-145 [115 Cal.Rptr. 340] (in some circumstances parole violations may be recharged after reversal for due process violations).

<sup>185</sup> 15 CCR §§ 3761-3762.

<sup>186</sup> Penal Code § 1203.2(a); Penal Code § 3000.08(c); 15 CCR §§ 3750-3752; see *People v. Woodall* (2013) 216 Cal.App.4th 1221 [157 Cal.Rptr.3d 220] (arresting a person on probation without a sworn oath by an officer is not unconstitutional).

<sup>187</sup> 15 CCR § 3752.

<sup>188</sup> 15 CCR § 3756.

<sup>189</sup> Penal Code § 1203.2(a); Penal Code § 3000.08(c); see also 15 CCR § 3766.

<sup>190</sup> Penal Code § 1203.2(a); Penal Code § 3000.08(c); Penal Code § 3056; 15 CCR §§ 3750-3752, 3765; see *People v. Woodall* (2013) 216 Cal.App.4th 1221 [157 Cal.Rptr.3d 220] (arrest on probation violation without a sworn oath is not unconstitutional).

<sup>191</sup> Penal Code § 1203.2(a); Penal Code § 3000.08(c). It appears the person on parole will not get any gate money at that time. 15 CCR § 3075.2(d).

<sup>192</sup> Penal Code § 3000.08(d); 15 CCR § 3753.

<sup>193</sup> 15 CCR § 3753(b). If the hold is released, a new hold cannot be placed unless new information is received. 15 CCR § 3753(c).

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dropped should receive bus transportation to their residence and \$10 in cash if their residence is less than 200 miles away or \$15 cash if their residence is 200 miles or more.<sup>194</sup>

If CDCR parole staff do find good cause, they must notify the person of the reasons for retaining the parole hold within three working days after the arrest.<sup>195</sup> The notice will be on a CDCR Form 1502-B Probable Cause Determination.

If CDCR staff keep the parole hold, they must decide whether the violation can be addressed by “intermediate sanctions” less severe than revocation. Intermediate sanctions might include new parole conditions such as requiring participation in treatment or rehabilitation programs. Another type of intermediate sanction is “flash incarceration,” which is detention in the county jail for up to 10 days.<sup>196</sup> In most cases, parole staff must use a CDCR Form 1500 Parole Violation Decision-Making Instrument (PVDMI) and California Static Risk Assessment (CSRA) to assess the severity of the parole violation and to determine what sanctions are appropriate.<sup>197</sup>

If CDCR staff decide that intermediate sanctions are not sufficient, they will file a formal parole revocation petition in the local superior court (see Judicial Council Form CR-300 Petition for Revocation. The petition and a supporting written report should describe the conditions of parole that were violated, the circumstances of the violations, the person’s history and background, and any recommendation as to the disposition.<sup>198</sup> Parole staff must also explain why intermediate sanctions are not sufficient to address the parole violation.<sup>199</sup>

The district attorney also has the power to file a parole revocation petition; a petition filed by the district attorney does not need to be accompanied by a written report like that required when CDCR parole staff file a revocation petition. Instead, the court will refer the matter to the parole officer who must then submit a written report to the court.<sup>200</sup>

The person should be informed of their rights to defend against the revocation charge, including the right to consult with an attorney and the right to have the court appoint an attorney if they have no money to hire one.<sup>201</sup>

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<sup>194</sup> 15 CCR § 3075.2(d).

<sup>195</sup> 15 CCR § 3754(a).

<sup>196</sup> Penal Code § 3000.08(d)-(f); *People v. Superior Court (Ward)* (2014) 232 Cal.App.4th 345, 352-353 [181 Cal.Rptr.3d 392] (finding no due process violation when flash incarceration is used for violations of PRCS). People do not earn conduct credits for periods of “flash incarceration.” Penal Code § 4019(i).

<sup>197</sup> 15 CCR §§ 3768-3768.3.

<sup>198</sup> Penal Code § 3000.08(f); 15 CCR § 3763.

<sup>199</sup> *People v. Osorio* (2015) 235 Cal.App.4th 1408 [185 Cal.Rptr.3d 881] (reversing parole revocation where insufficient reason for not using intermediate sanctions); *People v. Hronchak* (2016) 2 Cal.App.5th 884 [206 Cal.Rptr.3d 484] (parole revocation report contained adequate consideration of intermediate sanctions); Penal Code § 3000.08(f); California Rules of Court, rule 4.541(e).

<sup>200</sup> Penal Code § 1203.2(b); *People v. Castel* (2017) 12 Cal.App.5th 1321 [219 Cal.Rptr.3d 829] (finding this difference did not violate equal protection); *People v. Zamudio* (2017) 12 Cal.App.5th 8 [218 Cal.Rptr.3d 543] (same).

<sup>201</sup> Penal Code § 1203.2(b)(2).

## 11.26 Court Hearings on Parole Violation Charges

The rest of the parole revocation process – a probable cause hearing followed by a parole revocation hearing -- is conducted by the local superior court.<sup>202</sup> Revocation cases are heard by judges, magistrates, or court-appointed hearing officers.<sup>203</sup>

The hearings must meet the due process requirements described in § 11.23.

Under California law, all people who are facing revocation proceedings are entitled to an attorney; the court will appoint an attorney if the person cannot afford one.<sup>204</sup> Courts generally appoint public defenders or other local attorneys to represent people facing revocation. In preparing the case, the attorney may review the CDCR Central File, the parole agent’s field file (which contains notes of every conversation the parole agent has had with the person on parole), CDCR medical and psychiatric file and/or parole outpatient client file.<sup>205</sup>

While the revocation proceedings are pending, a person on parole can waive their rights, admit the parole violation, and accept a proposed disposition, similar to entering a guilty plea in a criminal case.<sup>206</sup>

If the case goes to a full revocation hearing, the court must decide whether a “preponderance of the evidence” supports the charges, which means that the state must prove that it is more likely than not that the violation allegations are true. This is a lower level of proof than the criminal case standard of proof beyond a reasonable doubt.<sup>207</sup>

If the court finds that the evidence does not prove a parole violation, the person should be returned to or “continued on” parole and all the time spent in custody awaiting the hearing should be counted toward the parole discharge date. A person who has been placed in custody due to a parole violation charge, and who is subsequently “continued on parole” should be provided with bus transportation and \$10 or \$15 depending on how far they are from their residence.<sup>208</sup>

## 11.27 Parole Revocation Terms and Other Sanctions for Parole Violations

If the court finds that the person violated their parole conditions, the court can put the person back on parole with modified conditions that might include referral to a re-entry court or other

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<sup>202</sup> Penal Code § 1203.2.

<sup>203</sup> Penal Code § 1203.2(b)(1), (f).

<sup>204</sup> Penal Code § 1203.2(b)(2). See also *Valdivia v. Brown* (E.D. Cal. Jan. 24, 2012) 94-0671, Order (striking down Penal Code § 3044(a)(3) limit on appointment of attorneys for people facing revocations).

<sup>205</sup> *In re Olson* (1974) 37 Cal.App.3d 783 [112 Cal.Rptr. 579]; see also discussion of file reviews in § 19.9.

<sup>206</sup> Penal Code § 1203.2(b)(2); Penal Code § 3000.08(f).

<sup>207</sup> See Penal Code § 3063; *People v. Rodriguez* (1990) 51 Cal.3d 437, 441 [272 Cal.Rptr. 613]; *In re Dunham* (1976) 16 Cal.3d 63 [127 Cal.Rptr.343].

<sup>208</sup> 15 CCR § 3075.2(d).



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rehabilitation program. A person who thinks the new conditions imposed by court are unreasonable, vague, or overbroad should object in court in order to preserve right to appeal those conditions.<sup>209</sup>

Alternatively, the court can revoke parole and order the person to serve a parole revocation term.<sup>210</sup> For most people, the maximum parole revocation term is 180 days in the county jail, even if there are multiple grounds for the revocation.<sup>211</sup> Most people on parole revocations in the county jails can earn day-for-day (“half-time”) good conduct credit toward their revocation terms;<sup>212</sup> the exception is that people who are on parole from indeterminate sentences (life with the possibility of parole) cannot earn good conduct credits.<sup>213</sup> If a person serving a parole revocation term violates jail rules or refuses to perform assigned work, then some or all of the conduct credits may be forfeited.<sup>214</sup> Also, people who are on parole from indeterminate life terms can have their revocation terms extended if they violate jail rules.<sup>215</sup> Regardless of the length of the revocation term, a person may not be kept in custody beyond the maximum parole discharge date (see § 11.4 and § 11.7).<sup>216</sup> People released from revocation terms should get gate money of \$1.10 per day up to a total of \$200.<sup>217</sup>

### 11.28 Revocation of Life-Long Parole

There are special revocation rules for people on parole whose maximum parole periods are life long; this applies to some people who are on parole from murder or sex-related offenses as discussed in § 11.4. A person serving life-long parole will serve their revocation term in prison rather than county jail.<sup>218</sup> The court will not set the parole revocation term and the revocation term can last more than one year. Within one year after the parole violation finding, a two-member BPH panel will hold a parole reconsideration hearing. The same hearing rights will apply as for regular parole consideration hearings. The panel must release the person after one year of revocation unless it determines that public safety requires a longer revocation. The decision is subject to review by the BPH and in some cases by the Governor. If the person is not re-released on parole, they should get a new parole consideration hearing every year thereafter.<sup>219</sup> Note that anyone in this group cannot earn good conduct credits toward a revocation term, and a revocation term may be extended if the person violates prison disciplinary rules.<sup>220</sup>

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<sup>209</sup> *People v. Connors* (2016) 3 Cal.App.5th 729 [207 Cal.Rptr.3d 804].

<sup>210</sup> Penal Code § 3000.08(f)-(g); Penal Code § 3004(a); Penal Code § 3056(a).

<sup>211</sup> Penal Code § 3056(a).

<sup>212</sup> Penal Code § 4019(a)(5).

<sup>213</sup> Penal Code § 3057(e).

<sup>214</sup> Penal Code § 4019(b).

<sup>215</sup> Penal Code § 3057(e).

<sup>216</sup> Penal Code § 3000(b)(6).

<sup>217</sup> 15 CCR § 3075.2(d).

<sup>218</sup> Penal Code § 3000.08(h); Penal Code § 3056(b).

<sup>219</sup> Penal Code § 3000.1(d); 15 CCR § 2275. Annual hearings do not have to be held while the person is serving a separate criminal sentence. 15 CCR § 2275.

<sup>220</sup> Penal Code § 3057(e).

## 11.29 Drug Diversion for Some Parole Violations

A state law requires that certain people on parole (and similar people on PRCS) who commit drug-related parole violations be sent to a drug treatment program instead of going to jail on a parole revocation.<sup>221</sup> The drug treatment services may last up to than 12 months, but the person may be required to participate in other “aftercare” services as a condition of parole for up to six more months.<sup>222</sup> Some people may choose not to take advantage of drug diversion because the treatment program term is likely to be longer than a regular parole revocation term.

The types of parole violations for which drug diversion may be used include failure to participate in controlled substance testing; possession or use of a controlled substance; possession of paraphernalia; presence in a place where controlled substances are used, sold or given away; or failure to register as a drug offender pursuant to Health and Safety Code § 11590.<sup>223</sup> Some people are not eligible for drug diversion under Proposition 36, particularly:

- ◆ A person who has ever been convicted of a serious or violent felony (see Penal Code §§ 667.5 and 1192.7).
- ◆ A person who, while on parole, commits a nonviolent drug possession parole violation and also commits either a misdemeanor that is not related to drug use or commits a felony.
- ◆ A person who refuses to participate in a condition of parole requiring participation in drug treatment.<sup>224</sup>

An eligible person on parole who wants drug diversion must be sent to drug diversion the first time they commit a nonviolent drug possession crime or violate a drug-related parole condition, unless the court finds that the person is a danger to others.<sup>225</sup> If they get drug diversion, and then commits a another non-violent drug offense or drug-related parole violation, the court has discretion to either revoke parole and impose a parole revocation term and or place the person back into the treatment program. Also, the court may revoke parole if the person commits a new non-drug offense or violates a non-drug-related parole condition.<sup>226</sup>

A person on parole who is having significant difficulty following the treatment program may be found to be “not amenable to” treatment (meaning not willing or able to participate). If the treatment provider notifies the court that the person is not amenable to the drug treatment being provided, but may be amenable to another program, the court may modify the parole conditions to put the person into a different treatment program. If the treatment provider notifies the court that the person is not amenable to any type of available drug treatment, the court may revoke parole unless

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<sup>221</sup> Penal Code § 3063.1 et seq. (sometimes called Proposition 36); *People v. Armogeda* (2015) 233 Cal.App.4th 428 [182 Cal.Rptr.3d 606] (application to PRCS); *People v. Gutierrez* (2016) 245 Cal.App.4th 393 [199 Cal.Rptr.3d 524].

<sup>222</sup> Penal Code § 3063.1(c)(3).

<sup>223</sup> Penal Code § 3063.1 et seq. (sometimes called Proposition 36).

<sup>224</sup> Penal Code § 3063.1(b).

<sup>225</sup> Penal Code § 3063.1(a), (d).

<sup>226</sup> Penal Code § 3063.1(d).

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the person proves by a preponderance of the evidence that there is some drug treatment program to which they are amenable.<sup>227</sup>

### 11.30 Parole Revocation Charges and Related Criminal Cases

Sometimes a person will be charged with both a parole violation and a new criminal case arising from the same behavior. If the person wants to go ahead with the parole hearing while the criminal charges are pending, the California courts will grant “derivative immunity” for the person’s testimony at the parole revocation hearing. This means that the state cannot use the person’s testimony at the revocation hearing as evidence at any later criminal proceedings; however, the person’s prior hearing testimony may be admitted to impeach or rebut any inconsistent testimony the person gives at the criminal trial.<sup>228</sup>

If the criminal case is decided before the parole revocation hearing, the criminal conviction will itself constitute good cause to find that the person has violated parole.<sup>229</sup> On the other hand, because the standard for proof of a parole violation is lower than the standard of proof for a criminal conviction, dismissal or acquittal of the criminal charges will not result in automatic dismissal of the parole revocation charges.<sup>230</sup>

A court that sentences a person on a new criminal term does not have authority to terminate parole, even if the new criminal sentence will effectively nullify any remaining parole period.<sup>231</sup>

### 11.31 Parole Revocation Process When a Person on Parole Absconds to Another State

Sometimes, a person on parole in California “absconds” by going to another state or staying in another state without permission.<sup>232</sup> When a person absconds to another state, California parole authorities shall ask the court in the county of parole supervision to issue an arrest warrant. After the person is located, the matter can be resolved by parole staff imposing remedial sanctions, filing a formal revocation petition, or discharging the person from parole. If revocation proceedings are initiated, the person must be returned to California for the revocation hearing. If the person is not returned to California in 90 days, they will be directed to report to California after release by the other state.<sup>233</sup> Any revocation period begins to run when the CDCR staff file a detainer with the other state.<sup>234</sup>

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<sup>227</sup> Penal Code § 3063.1(c).

<sup>228</sup> *People v. Coleman* (1975) 13 Cal.3d 867 [120 Cal.Rptr. 384]; *People v. Carter* (1993) 19 Cal.App.4th 1236, 1249 [23 Cal.Rptr.2d 888, 896].

<sup>229</sup> *Morrissey v. Brewer* (1972) 408 U.S. 471, 490 [92 S.Ct. 2593; 33 L.Ed.2d 484]; *In re La Croix* (1974) 12 Cal.3d 146, 152, n. 2 [115 Cal.Rptr. 344].

<sup>230</sup> Penal Code § 3063; *In re Dunham* (1976) 16 Cal.3d 63 [127 Cal.Rptr.343]; *In re Shapiro* (1975) 14 Cal.3d 711 [122 Cal.Rptr. 768]; *In re Melendez* (1974) 37 Cal.App.3d 967, 973 [112 Cal.Rptr. 755].

<sup>231</sup> Penal Code § 1203.2(a)-(b); *People v. VonWahlde* (2016) 3 Cal.App.5th 1187 [220 Cal.Rptr.3d 337].

<sup>232</sup> See Penal Code § 3059; Penal Code § 3064.

<sup>233</sup> DOM § 81060.14.

<sup>234</sup> DOM § 81060.15.

### 11.32 Parole Revocation for People on Parole Out-of-State

There are special parole revocation procedures for people on parole in California who have been allowed to parole out-of-state.

If a person on California parole but living out-of-state significantly violates their parole conditions or is arrested for a new criminal charge, the state that has supervision of the person shall notify the CDCR within 30 days after the violation or arrest is discovered. The CDCR then has 10 days to recommend any further action.<sup>235</sup> The CDCR policy is to return a person to California if they commits three significant parole violations, absconds from supervision or is convicted of a new violent felony or misdemeanor with an element of violence.<sup>236</sup>

California parole authorities will generally have to wait until any new criminal proceedings are resolved before returning the person to California. People on parole in California who receive new criminal commitments or face criminal charges in other states or jurisdictions have no constitutional right to a California parole revocation hearing before the end of their out-of-state criminal terms.<sup>237</sup>

A person on California parole and living out-of-state who is subject to revocation proceedings is entitled to a probable cause hearing before being returned to California. A person cannot waive the probable cause hearing without admitting that one or more violations occurred. If the hearing officer determines there is probable cause to support the violations, the receiving state must hold the person in custody. California then has 15 days to tell the other state whether it intends to return the person to California. If the hearing officer determines probable cause has not been shown, the other state will continue supervision.<sup>238</sup>

If the person is not undergoing criminal prosecution in the receiving state, they will be returned to California to serve any revocation term. Under the interstate compact, a sending state may at any time retake custody of a person who has been placed on parole or probation supervision in another state.<sup>239</sup> However, if the person is facing criminal prosecution in the other state, California parole officials must wait for the other state's consent or discharge orders before the person is available to be taken into CDCR custody. The CDCR will place a parole hold or detainer during the out-of-state criminal proceedings. If the person is returned to California, they are entitled to be represented by counsel at a hearing before a court in the other state to test the legality of the order directing that they be delivered to California.<sup>240</sup>

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<sup>235</sup> Interstate Compact Rules, rule 4.109.

<sup>236</sup> DOM § 81060.12.

<sup>237</sup> See *Moody v. Daggett* (1976) 429 U.S. 78, 86 [97 S.Ct. 274; 50 L.Ed.2d 236].

<sup>238</sup> Interstate Compact Rules, rule 5.108; see *Ramirez v. Superior Court* (2017) 15 Cal.App.5th 643 [223 Cal.Rptr.3d 536]; see also *In re Shapiro* (1975) 14 Cal.3d 711 [122 Cal.Rptr. 768].

<sup>239</sup> Penal Code § 11177(3). See also *In re Albright* (1982) 129 Cal.App.3d 504, 509 [181 Cal.Rptr. 84].

<sup>240</sup> Penal Code § 11177.1.

## POST-RELEASE COMMUNITY SUPERVISION (PRCS)

### 11.33 Post-Release Community Supervision (PRCS)

People incarcerated in CDCR prisons who have certain case factors are placed on parole when they are released from custody (see § 11.3). All other people in CDCR prisons are placed on Post-Release Community Supervision (PRCS) and supervised by the probation department for the county to which they are released.<sup>241</sup> The CDCR must provide identifying information, registration status, and information about any mental health, medical, and disability needs to the probation department in the county that will supervise the PRCS term.<sup>242</sup>

A person released on PRCS must report to the supervising county agency within two working days after release from CDCR.<sup>243</sup> Prior to release, the CDCR staff must notify the person of where and when they must report.<sup>244</sup>

PRCS is governed by some different statutes than parole. However, some of the rights and policies governing parole are applicable to people on PRCS, including the constitutional limits on what conditions can be imposed (see § 11.11). Indeed, many of the standard conditions of PRCS are the same as for parole, including complying with all laws, submitting to searches without a warrant (see § 11.15), keeping the probation officer informed of residence and employment locations, not possessing weapons, and getting permission before traveling more than 50 miles from the residence.<sup>245</sup> PRCS supervisors can impose additional special PRCS conditions including such conditions as requiring GPS monitoring or participation in rehabilitative programming.<sup>246</sup> PRCS supervisors can also collect payments toward restitution fines.<sup>247</sup> Other laws and policies that apply to both parole and PRCS include the provision of gate money on first release from the CDCR (§ 11.9), the possibility of transferring supervision to another state (§ 11.13), and drug diversion for some PRCS violations (§ 11.29).

PRCS can last for up to three years; however, time during which a person absconds and is unavailable for supervision does not count toward the PRCS period.<sup>248</sup> A person can get off PRCS earlier if they meet the following criteria:

- ◆ six consecutive months on PRCS with no violations that result in custodial sanctions (including flash incarceration), and the supervising agency recommends discharge; OR

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<sup>241</sup> Penal Code § 3451(a); see also 15 CCR § 3079.

<sup>242</sup> Penal Code § 3003(e).

<sup>243</sup> Penal Code § 3453(c).

<sup>244</sup> Penal Code § 3451(c).

<sup>245</sup> Penal Code § 3453.

<sup>246</sup> Penal Code § 3454(a)-(b).

<sup>247</sup> Penal Code § 2085.6.

<sup>248</sup> Penal Code § 3451(a); Penal Code § 3456(b).

- ◆ one year on PRCS with no violations that result in custodial sanctions (including flash incarceration). The discharge should be completed within 30 days after the one year period ends.<sup>249</sup>

People will generally be placed on PRCS in the county of their last legal residence prior to going to prison. However, the CDCR can decide to place a person on PRCS in a different county for victim safety concerns or to help the person maintain family ties or participate in work or education.<sup>250</sup> The law implies that people also may seek permission to transfer to a different county after they are on PRCS.<sup>251</sup>

County probation agents are responsible for investigating and taking action on suspected violations of PRCS conditions. Probation agents can issue a PRCS hold and place a person in custody or can ask the court to issue an arrest warrant for a suspected PRCS violation.<sup>252</sup> A person on PRCS can either be kept in custody or release while the violation charges are pending, within the discretion of the supervising agency and court.<sup>253</sup> People on PRCS are not entitled to a probable cause hearing in court, and the probable cause determination may be heard and made by a neutral probation officer.<sup>254</sup>

Counties are supposed to use “intermediate sanctions” rather than PRCS revocation for minor violations of PRCS conditions. Intermediate sanctions include programs like drug treatment, mental health counseling, and job assistance.<sup>255</sup> Intermediate sanctions also include “flash incarceration,” which is an immediate return to jail for a period of up to ten days without a court hearing.<sup>256</sup>

If the PRCS supervising agency decides that there is probable cause and that intermediate sanctions are not appropriate, they will file a court petition to revoke and terminate PRCS, along with a report containing information about the suspected violation, history and background factors, and recommendations for the disposition.<sup>257</sup> A person facing a PRCS revocation has the right to a revocation hearing and to an attorney; the court will appoint an attorney if the person cannot afford

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<sup>249</sup> Penal Code § 3456(a). *People v. Superior Court (Ward)* (2014) 232 Cal.App.4th 345 [181 Cal.Rptr.3d 392] (flash incarceration counts as custodial sanction). A person who is eligible for termination after one year is still subject to the PRCS conditions during the 30-day period for processing the discharge, up until the discharge order is made. *People v. Young* (2016) 247 Cal.App.4th 972 [203 Cal.Rptr.3d 153].

<sup>250</sup> Penal Code § 3003(a)-(c).

<sup>251</sup> Penal Code § 3456(a)(5).

<sup>252</sup> Penal Code § 1203.2; Penal Code § 3456(a).

<sup>253</sup> Penal Code § 1203.2(a); Penal Code § 3455(b)-(c).

<sup>254</sup> *People v. Byron* (2016) 246 Cal.App.4th 1009 [201 Cal.Rptr.3d 330]; *People v. Gutierrez* (2016) 245 Cal.App.4th 393 [199 Cal.Rptr.3d 534].

<sup>255</sup> Penal Code § 3450(b).

<sup>256</sup> Penal Code § 3454(c). People do not earn conduct credits for periods of “flash incarceration.” Penal Code § 4019(i).

<sup>257</sup> Penal Code § 3455(a).

## § 11.34

one.<sup>258</sup> The petition will be heard by a judge or by a hearing officer appointed by the superior court; the hearing should be within a “reasonable time” after the petition is filed.<sup>259</sup>

A person who is undergoing PRCS revocation proceedings can give up the right to an attorney and a hearing, admit the violation, and accept a disposition offered by the probation department.<sup>260</sup>

If the court or hearing officer finds that the person has violated the terms of PRCS, the court or hearing officer has the authority to do one of the following:

- ◆ return the person to PRCS, with modified conditions as appropriate, including a period of jail time;
- ◆ refer the person to a reentry court pursuant to Penal Code § 3015 or another program at the court’s discretion; or
- ◆ revoke PRCS and order the person confined to county jail for no more than 180 days.<sup>261</sup>

## CHALLENGING PAROLE OR PRCS ACTIONS OR REVOCATIONS

### 11.34 Administrative Appeals of Parole Actions by the CDCR or BPH

A person on parole may want to challenge an action or decision made by the CDCR or BPH agency. The first step usually will be completing any available administrative appeal process. An administrative appeal may resolve the problem. Furthermore, even if it is unlikely that the problem will be resolved by an administrative appeal, it is necessary for a person on parole to “exhaust administrative remedies” before filing a court action challenging an agency’s decision (see § 1.2) The administrative appeal process will vary depending on what agency is responsible for the action or decision – CDCR prison or parole operations or the BPH.

A person who wants to challenge a condition of parole imposed by the CDCR or some other action by CDCR prison or parole staff – such as a negative discharge review report, miscalculation of the controlling discharge date, failure to provide gate money, or refusal to transfer parole to a different county -- must first complete a CDCR administrative appeal process through the highest level of review. CDCR staff are also responsible for issuing parole holds, so a person who has not yet had a revocation hearing can file an administrative appeal from the parole hold; however, it is likely that they will have a probable cause and/or revocation hearing in court before or almost as soon as they can get an answer to an administrative appeal. For most types of issues, the proper type of administrative appeal will be a CDCR Form 602. For disability discrimination and accommodation issues, the administrative appeal process will start with a CDCR Form 1824. First and second level administrative appeals about parole location and conditions should be sent to the appeals coordinator for the parole region where the person is being paroled.<sup>262</sup> As with other third level 602s and 1824s, third level

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<sup>258</sup> Penal Code § 1203.2(b)(2).

<sup>259</sup> Penal Code § 1203.2; Penal Code § 3455(c).

<sup>260</sup> Penal Code § 3455(a); *People v. Byron* (2016) 246 Cal.App.4th 1009 [201 Cal.Rptr.3d 330].

<sup>261</sup> Penal Code § 3455(a), (d).

<sup>262</sup> 15 CCR § 3084.2(c); 15 CCR § 3084.5(a).

appeals go to the CDCR Chief of Inmate Appeals in Sacramento.<sup>263</sup> More information regarding CDCR administrative appeals is in Chapter 1, including discussion of administrative appeals of parole issues (§ 1.36) and disability accommodation appeals (§ 1.26).

The BPH is responsible for a few actions related to parole length and revocation. These include conducting annual discharge reviews (see § 11.5) and, for cases in which people are serving life-long parole, deciding how long a revocation term will last (see § 11.28) The BPH does not have a general administrative appeal process, so a person who wants to challenge a BPH discharge review or revocation term hearing decision does not have to file an administrative appeal. The exception is that issues related to disability accommodations for BPH proceedings can be administratively appealed using the BPH Form 1073/1074 process; more information on that process is in § 1.38.

### **11.35 Administrative Appeals of PRCS Actions by the County Supervising Agency**

A person who is on PRCS and who wants to challenge a condition imposed or action taken by the probation officer will need to exhaust any administrative remedies available for that agency. The process and forms may vary from county to county. A person on PRCS supervision should contact the probation office for specific information about the proper administrative appeals process.

### **11.36 Court Actions Challenging CDCR or BPH Parole Decisions or County Agency PRCS Decisions**

After completing any available administrative appeals, a person on parole or PRCS who is still dissatisfied can file a state court petition for writ of habeas corpus challenging the action or decision made by the parole or probation agency. Chapter 15 discusses state habeas corpus law and procedure. A state habeas petition can be used seek injunctive relief, meaning a court order to make parole or PRCS officials do or stop doing something; it cannot be used to seek money damages. State habeas procedure is relatively straight-forward and speedy, and there is a reasonable likelihood of getting an appointed attorney after the petition is filed and an Order to Show Cause is issued.

If a state habeas corpus petition is denied at all levels by the state courts, a person may then be able to file a federal petition for writ of habeas corpus raising federal law issues. The somewhat complex rules for federal habeas corpus petitions are discussed in Chapter 16.

In some circumstances, a person on parole may want to sue CDCR or BPH staff for money damages due to actions taken by parole staff that caused injury to their person or property. There are several different types of actions that potentially could be brought to seek money damages from state officials. Federal civil rights cases are discussed in Chapter 17 and state tort law cases are discussed in Chapter 18. These types of lawsuits can also be used to seek injunctive relief, though they are more difficult and time-consuming to litigate than a state habeas corpus petition. People on parole should be aware that there are somewhat tricky rules that make parole officers immune from money damages liability for some of their actions. Parole officers can be held liable in federal civil rights cases for wrongful actions taken in their capacity as law enforcement officers in investigating a parole violation, placing a parole hold and orchestrating arrest, or recommending revocation.<sup>264</sup> However, parole

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<sup>263</sup> 15 CCR § 3084.2(d).

<sup>264</sup> *Swift v. California* (9th Cir. 2004) 384 F.3d 1184; *Cordell v. Tilton* (S.D. Cal. 2007) 515 F.Supp.2d 1114.



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officials are absolutely immune from liability in federal civil rights lawsuits for money damages for “quasi-judicial” actions like deciding to retain a parole hold and filing a parole revocation petition.<sup>265</sup> Parole officials are also immune from money damage liability in federal civil right lawsuits for imposing parole conditions.<sup>266</sup> In addition, parole officials are immune from liability for money damages under California state tort law in regards to most actions taken within the scope of their employment.<sup>267</sup> Also, a person on parole cannot challenge an action to revoke parole by means of a federal civil rights lawsuit unless and until the revocation has first been deemed invalid in some other proceeding (see § 17.12).<sup>268</sup>

Federal civil rights lawsuits and state tort lawsuits can also be filed to seek money damages from local PRCS officials like county probation staff. There are some different considerations regarding federal civil rights lawsuits against local agencies, as discussed in Chapter 17, especially § 17.7. In addition, for state tort lawsuits, Legal Services for Prisoners with Children publishes a manual on *Suing a Local Public Entity*, available by writing to Legal Services for Prisoners with Children, 1540 Market St., Suite 490, San Francisco, CA 94102 or at their website: [www.prisonerswithchildren.org](http://www.prisonerswithchildren.org).

### 11.37 Legal Challenges to Court Actions in Parole or PRCS Proceedings

People on parole or PRCS can challenge parole conditions, modifications, revocations, or other actions taken by a court. This is done by a direct appeal similar to the direct appeal process for felony criminal cases or probation revocations.<sup>269</sup> To appeal, the person must file a notice of appeal in the superior court within 60 calendar days after the court’s decision.<sup>270</sup> Appellate courts review a parole or PRCS revocation to determine whether there was substantial evidence supporting any factual findings made by the lower court and whether the revocation order constituted an abuse of discretion.<sup>271</sup> Direct appeal procedures and notices of appeal are discussed in more detail in Chapter 14.

In some circumstances, a person on parole or PRCS might be able to file a state habeas corpus petition regarding court parole or PRCS proceedings, if there is information that is not in the court record that might be used to challenge the fairness of the court’s decision. For example, a habeas corpus petition might be used to show that an attorney provided ineffective assistance at the revocation hearing. State habeas corpus petitions are discussed in Chapter 15. Also, a person may

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<sup>265</sup> *Anderson v. Boyd* (9th Cir. 1983) 714 F.2d 906; *Sellars v. Procnier* (9th Cir. 1981) 641 F.2d 1295; *Cordell v. Tilton* (S.D. Cal. 2007) 515 F.Supp.2d 1114.

<sup>266</sup> *Thornton v. Brown* (9th Cir. 2014) 757 F.3d 834.

<sup>267</sup> See Government Code § 821.6, Government Code § 845.8; *Perez-Torres v. California* (2007) 42 Cal.4th136 [64 Cal.Rptr.3d 155] (although parole agents were immune for most of their actions in initiating a parole hold and revocation, they were not immune to suit for continuing to detain a person after they knew or should have known they had arrested the wrong man).

<sup>268</sup> See *Butterfield v. Bail* (9th Cir.1997) 120 F.3d 1023; *Cordell v. Tilton* (S.D Cal. 2007) 515 F.Supp.2d 1114. An exception applies if the person is no longer in any sort of custody and thus cannot bring a habeas petition. *Zupan v. Brown* (N.D. Cal. 1998) 5 F.Supp.2d 792.

<sup>269</sup> See Penal Code § 1237(b); *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1412 [185 Cal.Rptr.3d 881].

<sup>270</sup> California Rules of Court, rule 8.308.

<sup>271</sup> *People v. Gonzalez* (2017) 7 Cal.App.5th 370, 382 [212 Cal.Rptr.3d 575] (overturning PRCS revocation finding that homeless man failed to report change of residence after he had been placed temporarily in mental hospital for assessment and then released).

bring a motion to vacate the revocation judgment if there is newly discovered evidence of fraud, misconduct, or false probative testimony by a government official.<sup>272</sup>

Unfortunately, in most cases, a direct appeal or habeas corpus petition challenging a revocation will be too slow to provide any relief before the person serves their entire parole or PRCS revocation term. However, people on parole or PRCS may still benefit by getting their revocation cases re-heard, getting their revocations vacated, and/or getting the time served for the revocation deducted from the controlling parole or PRCS discharge date. Courts can hear moot appeals to address issues that are likely to recur, are of continuing public interest, and might otherwise not get addressed by the appellate courts.<sup>273</sup>

If a direct appeal or state habeas corpus petition is denied at all levels by the state courts, a person may then be able to file a federal petition for writ of habeas corpus raising federal law issues. The rules for federal habeas corpus petitions are discussed in Chapter 16.

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<sup>272</sup> Penal Code § 1473.6; *People v. Wagner* (2016) 2 Cal.App.5th 774 [206 Cal.Rptr.3d 456].

<sup>273</sup> *People v. DeLeon* (2017) 3 Cal.5th 640 [220 Cal.Rptr.3d 784].

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(916) 255-2758**

<p><b>Auburn &amp; Sierra GPS</b> 1915 Grass Valley Hwy, #500 Auburn, CA 95603 <b>Auburn (530) 823-4188</b> <b>Sierra GPS (530) 823-4193</b></p>	<p><b>Bakersfield 2 &amp; 3 GPS</b> 3400 Sillect Ave Bakersfield, CA 93308 <b>(661) 634-9620</b></p>	<p><b>Bakersfield 5 &amp; 6</b> 3416-A Sillect Ave Bakersfield, CA 93308 <b>(661) 633-5100</b></p>
<p><b>Berkeley</b> 7717 Edgewater Drive, Ste. 200 Oakland, CA 94621 <b>(510) 577-2407</b></p>	<p><b>Ceres &amp; Modesto 2</b> 1051 Partee Lane Ceres, CA 95307 <b>(209) 556-5010</b></p>	<p><b>Chico</b> 1370 Ridgewood Dr. Ste. 14 Chico, CA 95973 <b>(530) 895-4534</b></p>
<p><b>Contra Costa 1 &amp; 2</b> 1957 Parkside Drive Ste. 100 &amp; 300 Concord, CA 94519 <b>(925) 499-6110</b></p>	<p><b>East Bay GPS</b> 7717 Edgewater Drive, Ste. 100 Oakland, CA 94621 <b>(510) 577-2000</b></p>	<p><b>Eureka</b> 930 3<sup>rd</sup> Street, Ste. 100 Eureka, CA 95501 <b>(707) 445-6520</b></p>
<p><b>Fresno 2, 5, 7, &amp; Central GPS</b> 5060 E. Clinton Way Fresno, CA 93727 <b>(559) 253-4144</b></p>	<p><b>Merced</b> 439 West 15<sup>th</sup> Street Merced, CA 95340 <b>(209) 726-6513</b></p>	<p><b>Oakland 1 &amp; 2</b> 7717 Edgewater Drive, Ste. 200 Oakland, CA 94621 <b>(510) 577-2407</b></p>
<p><b>Red Bluff</b> 10 Gilmore Road, Suite C Red Bluff, CA 96080 <b>(530) 529-7700</b></p>	<p><b>Redding</b> 391 Hemsted Drive Redding, CA 96002 <b>(530) 226-3432</b></p>	<p><b>Redwood City</b> 540 Price Avenue Redwood City, CA 94063 <b>(650) 367-1444</b></p>
<p><b>Sacramento Metro 1 &amp; 4</b> 8000 Elder Creek Road Sacramento, CA 95824 <b>(916) 229-0105</b></p>	<p><b>Sacramento Metro 2 GPS &amp; 3 GPS</b> 1608 T Street Sacramento, CA 95811 <b>(916) 322-5504</b></p>	<p><b>Sacramento Natomas &amp; North</b> 4616 Roseville Road, Ste. 100 North Highlands, CA 95660 <b>(916) 574-2414</b></p>
<p><b>Salinas 1 &amp; 2</b> 365 Victor Street, Ste. P Salinas, CA 93907 <b>(831) 422-2043</b></p>	<p><b>San Francisco 1 &amp; 4</b> 1727 Mission St. 1<sup>st</sup> and 2<sup>nd</sup> Floor San Francisco, CA 94103 <b>(415) 703-3164</b></p>	<p><b>San Jose 1, 2, &amp; South Bay GPS</b> 909 Coleman Avenue San Jose, CA 95110 <b>(408) 277-1821</b></p>
<p><b>San Luis Obispo</b> 3232 South Higuera St. Ste. 102 San Luis Obispo, CA 93401 <b>(805) 549-3251</b></p>	<p><b>Santa Rosa</b> 3222 Airway Dr. Ste. A Santa Rosa, CA 95403 <b>(707) 576-2200</b></p>	<p><b>Stockton 1, 2, 4, &amp; Delta GPS</b> 612 Carlton Ave Stockton, CA 95203 <b>(209) 948-7652</b></p>
<p><b>Ukiah</b> 798 North State Street Ukiah, CA 95482 <b>(707) 463-5713</b></p>	<p><b>Vallejo</b> 1840 Capitol Street Vallejo, CA 94590 <b>(707) 648-5372</b></p>	<p><b>Ventura 1 &amp; 2</b> 1555 West 5<sup>th</sup> Street, Ste. 102 Oxnard, CA 93030 <b>(805) 382-8151</b></p>
<p><b>Visalia 1, 2, &amp; Hanford</b> 344 W. 5<sup>th</sup> Street Hanford, CA 93230 <b>(559) 582-1969</b></p>	<p><b>Woodland</b> 814 Court Street Woodland, CA 95695 <b>(530) 662-4977</b></p>	<p><b>Atascadero Sub Unit</b> PO Box 2288 Atascadero, CA 93423 <b>(805) 460-2508</b></p>
<p><b>San Luis Obispo Store Front</b> 1775 S. McClellan Street Santa Maria, CA 93454 <b>(805) 347-0058</b></p>	<p><b>Santa Cruz Police Dept. Sub Unit</b> 155 Center Street Santa Cruz, CA 95060 <b>(831) 420-5800</b></p>	<p><b>Susanville Store Front Office</b> 170 Russell Ave. Ste. G Susanville, CA 96130 <b>(530) 257-2929</b></p>
<p><b>Weed Store Front Office</b> 550 Park Street Weed, CA 96094 <b>(530) 938-2107</b></p>		<p><b>DIVISION OF ADULT PAROLE OPERATIONS NORTHERN REGION PAOLE UNITS UPDATED 9/6/18</b></p>

**Division of Adult Parole Operations  
SOUTHERN REGION HEADQUARTERS**

**21015 Pathfinder Road, Suite 200  
Diamond Bar, California 91765  
Telephone: (909) 468-2300**

<p><b>Antelope Valley 1 &amp; 4 Antelope Valley GPS</b> 43645 Pioneer Court Lancaster, CA 93534 (661) 729-0530</p>	<p><b>Chula Vista 1 &amp; 2 El Cajon</b> 765 Third Avenue, Suite 200 Chula Vista, CA 91910 (619) 476-3700</p>	<p><b>Compton 1 Compton GPS Long Beach 1 Long Beach 4</b> 322 West Compton Boulevard, Suite 203 Compton, CA 90220 (310) 639-8601</p>
<p><b>El Centro</b> 279 South Waterman Avenue El Centro, CA 92243 (760) 352-7524</p>	<p><b>El Monte 1 &amp; 2 El Monte GPS Long Beach 2 Santa Fe Springs</b> 9900 Baldwin Place El Monte, CA 91731 (626) 527-3005</p>	<p><b>Escondido Escondido 2 Inland GPS</b> 1301 Simpson Way Escondido, CA 92029 (760) 737-7925</p>
<p><b>Fontana Foothill GPS Rialto</b> <b>San Bernardino 1 &amp; 2 San Bernardino GPS 1</b> 303 West 5<sup>th</sup> Street San Bernardino, CA 92401 (909) 806-3516</p>	<p><b>Fullerton Orange</b> 2911 Coronado Street Anaheim, CA 92806 (714) 688-4855</p>	<p><b>Los Angeles, Central 1, 3 &amp; 4 Los Angeles Central GPS</b> 2444 South Alameda Street, 2<sup>nd</sup> Floor Los Angeles, CA 90058 (323) 238-1700</p>
<p><b>Huntington Park GPS Mid City 1, 3 &amp; 4 Mid City GPS</b> 2444 South Alameda Street 1<sup>st</sup> Floor Los Angeles, CA 90058 (323) 238-1600</p>	<p><b>Moreno Valley 1 &amp; 2 Riverside 1 &amp; 3 Riverside GPS</b> 1777 Atlanta Avenue, Suite G3 Riverside, CA 92507 (951) 782-4479</p>	<p><b>Palm Springs Indio/Palm Springs GPS</b> 79-687 Country Club Drive, Suite 101 Bermuda Dunes, CA 92203 (760) 722-3157</p>
<p><b>Pasadena 1 San Fernando Valley 1 &amp; 2 Van Nuys 2 Van Nuys GPS</b> 8100 Balboa Place Van Nuys, CA 92406 (818) 442-0400</p>	<p><b>Pomona San Gabriel Valley 1 San Gabriel Valley GPS</b> 971 Corporate Center Drive Pomona, CA 91768 (909) 802-1020</p>	<p><b>San Diego 1 Seaport GPS</b> 765 Third Avenue, Suite 300 Chula Vista, CA 91910 (619) 476-3710</p>
<p><b>Santa Ana 1 &amp; 3 South Coast Orange GPS</b> 18002 Sky Park Circle Irvine, CA 92614 (949) 863-1478</p>	<p><b>Victorville 1 &amp; 2 Victorville GPS</b> 14040 Park Avenue Victorville, CA 92392 (760) 241-3744</p>	<p>Updated by: GFrausto 11/7/17</p>

**I. PRE-INTERVIEW FILE/DECS REVIEW (STAFF ONLY)**

I acknowledge that I have reviewed all relevant and reasonably available electronic central file and/or field file information and the Disability and Effective Communication System (DECS) prior to the first contact with the inmate/parolee involved in this parole proceeding.

STAFF PRINTED NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**IDENTIFIED DISABILITIES** - Information obtained from DECS only, unless a date is next to the listed source document:

- Mental Health Concerns – Check one:  CCCMS  EOP Verified on form CDC 128C or CDCR 128-MH1 dated: \_\_\_\_\_
- Developmental Disability – Check one:  DD1  DD2  DD3 Verified on form CDC 128C-2 dated: \_\_\_\_\_
- Physical Disability - Check all that apply: Verified on form CDCR 1845 dated: \_\_\_\_\_
- MOBILITY:**  DPW  DPO  DPM  DNM  DLT **VISION:**  DPV **HEARING:**  DPH  DNH **SPEECH:**  DPS **KIDNEY:**  DKD
- Learning Disability, documented on: \_\_\_\_\_ Dated: \_\_\_\_\_
- No Disabilities Identified (From review of the field file and DECS).

**OTHER POTENTIAL ASSISTANCE NEEDS:**

- Reading Level: \_\_\_\_\_ Total Grade Point Level: \_\_\_\_\_ (If not available, write "N/A")
- Non-English Speaking - List language(s) the inmate/parolee speaks and understands: \_\_\_\_\_

**II. INMATE/PAROLEE SELF-IDENTIFICATION**

**WHILE YOU ARE HOUSED IN A COUNTY JAIL**, you have the right to receive help with reading, hearing, understanding, communicating, or seeing during your parole proceeding. If you do not speak English, you have a right to an interpreter. If you are deaf and use sign language, you have a right to a sign language interpreter. If you cannot read, the CDCR must provide you with help to read documents. You also have the right to request assistance with housing, healthcare, communicating, or getting around. If you do not get help, or you do not think you received the kind of help you need, you may ask a deputy at the jail for help or a county jail grievance form. If you need further assistance, you may ask the Parole Agent who is providing you with your Notice of Charges for a form CDCR 2275-CJ (04/14), *Request for Reasonable Modification or Accommodation for Access To Housing and/or Program(s) in a County Jail*.

**CHECK ALL THAT APPLY:**

- I need help reading my documents.  I need to communicate in writing.  I need a sign language interpreter.
- I need help understanding the procedures and forms.
- I need the following help to hear: \_\_\_\_\_  I do have it  I do not have it.
- I need the following help to see: \_\_\_\_\_  I do have it  I do not have it.
- I need a wheelchair and  I do have one  I do not have one.
- I need a: \_\_\_\_\_ (appliance/equipment) to get around and  I do have it  I do not have it.
- I do not speak English and need an interpreter in \_\_\_\_\_ (language).
- I need a housing accommodation (specify): \_\_\_\_\_ and  I do have it  I do not have it.
- I have a health problem and I need:  Medical Evaluation  Mental Health Evaluation  Medication.
- I do not need an accommodation or assistance at this time.

INMATE/PAROLEE SIGNATURE:

CDC NUMBER:

DATE SIGNED:

X

**III. INITIAL SERVICE (STAFF ONLY)**

No Accommodation Requested.

I have requested an accommodation/effective communication from the county jail staff on behalf of the parolee:

TYPE:  Mobility  Vision  Communication  Housing  Medical/Mental Health  Other - Specify: \_\_\_\_\_

County Jail Facility Name: \_\_\_\_\_ Date Jail Staff Notified: \_\_\_\_\_

**Accommodation(s) provided/effective communication method used:**

- Foreign Language Interpreter – Telephonic  Foreign Language Interpreter/Contractor - In Person  Sign Language Interpreter
- Foreign Language Interpreter/Certified DAPO Staff  Assistive Hearing Device  Assistive Visual Device  Read Lips
- Read/Spoke Slowly/Loudly  Simple English  Other - Specify: \_\_\_\_\_

Parolee has requested and I have provided a form CDCR 2275-CJ, and a pre-addressed, postage-paid envelope.

I have informed the inmate/parolee of his or her right to reasonable accommodations and charges if any, and have determined that he or she:

- Appears to understand.  Appears to have difficulty understanding.

ADDITIONAL COMMENTS:

STAFF NAME AND TITLE:

SIGNATURE:

DATE:

CDC NUMBER:

INMATE/PAROLEE NAME:

COUNTY JAIL/LOCATION:

# April 2021 ADDENDUM to

## The California Prison and Parole Law Handbook, Chapter 11 Parole and Post-Release Community Supervision (PRCS)

### 11.3 Who Must Serve a Parole Term

add to fn 5: *People v. Johnson* (2020) 45 Cal.App.5th 379 [258 Cal.Rptr.639] (courts can review whether CDCR improperly placed a person on parole rather than PRCS, upholding order transferring to PRCS because CDCR had incorrectly been classified person as high risk sex offender due to erroneous Static-99 score).

### 11.4 Length of the Parole Term

add to fn 9: *People v. Townsend* (2020) 53 Cal.App.5th 888, 894 [267 Cal.Rptr.3d 849] (parole term was required to be extended by the time spent in jail on parole revocations, so long as total extension not more than maximum allowed by Penal Code § 3000(b)).

add to fn 10: *People v. Townsend* (2020) 53 Cal.App.5th 888, 895 [267 Cal.Rptr.3d 849] (time during which person absconds does not count toward maximum parole period).

The length of the parole period is set by the type of sentence the person is serving and either the date of the offense or the date of parole. The rules have changed numerous times over the years, particularly in regard to some types of sex offenses. If a person falls into more than one category, then the longest parole period applies. This chart summarizes the law set forth in the governing statutes (Penal Code §§ 3000, 3000.01, 3000.1) over the years.

Type of Offense/Sentence	Dates Applicable	Parole Period
<b>Determinate</b>	<ul style="list-style-type: none"> <li>• anyone paroled on or after 7/1/2020 (unless required to register as sex offender or lower term applies under other law)</li> </ul>	2 years base, 3 years max
<b>Determinate</b>	<ul style="list-style-type: none"> <li>• anyone paroled prior to 7/1/2020</li> <li>• person required to register as sex offender paroled at any time (unless subject to higher term for certain types of sex offenses)</li> </ul>	3 years base 4 years max
<b>Indeterminate</b>	<ul style="list-style-type: none"> <li>• anyone paroled on or after 7/1/2020 (unless required to register as sex offender or lower term applies under other law)</li> </ul>	3 years base, 4 years max
<b>Indeterminate</b>	<ul style="list-style-type: none"> <li>• anyone paroled prior to 7/1/2020</li> <li>• person required to register as sex offender paroled at any time (unless subject to higher term due to certain types of sex offenses)</li> </ul>	Life-long: murder committed on or after 1/1/1983:  5 years base, 7 years max:

		murder committed 1/1/1979-12/31/1982; other crimes on or after 1/1/1979  3 years: crimes between 7/1/1977 and 12/30/1978
<b>Determinate or Indeterminate: Some Sex Offenses</b>	<ul style="list-style-type: none"> <li>• det. term violent sex offense listed in PC §§ 667.5(c)(3), (4), (5), (6), (11), or (18)</li> <li>• indet. term violation of 209(b) (w/ intent to commit sex offense), 66.51, 667.61, or 667.71</li> <li>• for people paroled prior to 7/27/2012, additional offenses committed in some time periods were included in these two provisions. <ul style="list-style-type: none"> <li>- 7/19/2000-9/8/2010: § 667.5(c)(16) included</li> <li>- 9/20/2006- 9/8/2010: § 667.5(c)(15) included</li> <li>- 9/20/2006-11/6/2006: §§ 269 &amp; 288.7 included</li> </ul> </li> <li>• crimes that are currently included were <i>not</i> included in these two provisions. These exclusions should apply to an offense committed in the particular time frame, regardless of the date of parole. <ul style="list-style-type: none"> <li>- 7/19/2000-12/30/2002: det term § 667.5(c)(11) was not included</li> <li>- 11/7/2006- 9/8/2010: indet. term §§ 209(b) w/ intent to commit sex offense &amp; § 667.51 not included</li> </ul> </li> </ul>	10 year base, 15 year max: crime committed on or after 9/20/2006.  5 year base, 7 year max: det sentence crime committed 7/19/2000-9/19/2006  5 year base, 7 year max, can be extended by additional 5 year base, 5 year max: indet. sentence crime committed 7/19/2000-9/19/2006
<b>Indeterminate or Determinate: Person Required to Register for Some Sex Offenses Involving Minors Under Age 14</b>	<ul style="list-style-type: none"> <li>• person required to register as sex offender for crime committed on or after 9/9/2010 involving child under 14 years old in violation of PC §§ 261, 262, 264.1, 286, 288a, 288(b)(1), 288.5, or 289, crime. Also includes crime involving child under 14 years old in violation of PC §§ 287 and former 288a committed on or after 1/1/2019.</li> </ul>	20 years + 6 months base, life-long max. EXCEPT base is 20 years if crime between 9/9/2010-9/30/2011
<b>Indeterminate: Some Sex Offenses</b>	<ul style="list-style-type: none"> <li>• crime committed on or after 9/9/2010 in violation of PC §§ 209(b) (with the intent to commit sex offense), 269, 288.7, 667.51(c), 667.71 (if a victim was child under 14 years old), or 667.61(j), (l), (m)</li> </ul>	Life-long

A few of the recent sentencing reform statutes allow a judge to impose some type of parole term after resentencing, even if the person has earned credits in excess of their new sentence. The length of the parole term in such situations is set by the particular resentencing statute.

### 11.5 Parole Discharge Review

Like parole terms, presumptive parole discharge dates vary based on the type and the date of the crime and/or the date of release to parole. The rules have changed many times over the years, and are set forth in Penal Code 3000.01, 3000.1, and 3001. This chart summarizes the various presumptive discharge dates for people that have been in effect over the past 10 years.

Type of Offense/Sentence	Dates Applicable	Time on Parole Before First Discharge Review
<b>Determinate</b>	<ul style="list-style-type: none"> <li>anyone paroled on or after 7/1/2020 (unless required to register as sex offender or lower term applies under other law)</li> </ul>	No later than 1 year months
<b>Determinate</b>	<ul style="list-style-type: none"> <li>anyone paroled prior to 7/1/2020</li> <li>person required to register as sex offender paroled at any time (unless subject to longer period for certain types of sex offenses)</li> </ul>	6 months: non-violent, non-serious crime, not required to register as a sex offender  1 year: serious felony or required to register as sex offender  2 years: violent felony
<b>Indeterminate</b>	<ul style="list-style-type: none"> <li>anyone paroled on or after 7/1/2020 (unless required to register as sex offender or lower term applies under other law)</li> </ul>	No later than 1 year
<b>Indeterminate</b>	<ul style="list-style-type: none"> <li>anyone paroled prior to 7/1/2020</li> <li>person required to register as sex offender paroled at any time (unless subject to longer period for certain types of sex offenses)</li> </ul>	7 years: 1st degree murder 5 years: 2nd degree murder 3 years: other violent felony
<b>Determinate: Some Violent Sex Offenses</b>	<ul style="list-style-type: none"> <li>person paroled at any time for a det. violent sex offense subject to 10 year base parole period</li> </ul>	Statute mentions none. This may be a drafting error, possible argument it should be 3 years in light of prior version of statute until June



		and September 2012 amendments
<b>Indeterminate: Some Sex Offenses</b>	<ul style="list-style-type: none"> <li>• person paroled at any time for a indet. sex offense subject to 10 year base parole period</li> </ul>	6 years + 6 months
<b>Indeterminate or Determinate: Person Required to Register for Some Sex Offenses Involving Minors Under Age 14</b>	<ul style="list-style-type: none"> <li>• person paroled at any time for a violent sex offense that is subject to 20 years + 6 months base parole period</li> </ul>	10 years
<b>Indeterminate: Some Sex Offenses</b>	<ul style="list-style-type: none"> <li>• person paroled at any time for a violent sex offense that is subject to 20 years + 6 months base parole period</li> </ul>	No early discharge

### 11.11 Constitutional Limits on Parole Conditions

add to fn 93: *United States v. Evans* (9th Cir. 2018) 883 F.3d 1154, 1162-1164 (striking down as unconstitutionally vague conditions that person support their dependents and meet other family responsibilities, work regularly at a lawful occupation, and notify third parties of risks due to their criminal record or personal history or characteristics).

### 11.15 Conditions Regarding Searches

add to fn 112: This general condition has been interpreted as allowing warrantless search of a person's cell phone, at least when officers had specific reasons to believe a crime was committed and that there might be evidence on the cell phone and admission of resulting evidence in a new criminal case under parole search exception to Fourth Amendment. *People v. Delrio* (2020) 45 Cal.App.5th 965 [259 Cal.Rptr.3d 301]. If a person with the parole search condition is a passenger in the front seat of another person's car, officers who know the person is on parole can search any part of the passenger compartment where the person might reasonably be expected to have placed personal property or discarded items. *People v. Schmitz* (2012) 55 Cal.4th 909, 923, 926-927 [149 Cal.Rptr.3d 640].

add to fn 113 Samson cite: (Fourth Amendment does not prohibit officer from conducting suspicionless search of a person on parole).

add to fn 113: *United States v. Ped* (9th Cir 2019) 943 F.3d 427, 431-432 (warrantless search of house allowed where officers had probable cause to believe parolee lived there).

add to fn 119: *Samson v. California* (2006) 547 U.S. 843, 846, 848 [126 S.Ct. 2193; 165 L.Ed.2d 250].

### 11.16 Conditions Restricting Residence Location

add to fn 128: see also *People v. Arevalo* (2018) 19 Cal.App.5th 652, 658 [228 Cal.Rptr.3d 192] (condition requiring person to maintain residence approved by probation officer was not

unconstitutionally overbroad, where there was indication that living situation contributed to crime or would contribute to future criminality).

#### **11.18 Conditions Requiring Psychological Treatment**

add to fn 150: see also *United States v. Hulen* (9th Cir. 2018) 879 F.3d 1015 (even without a waiver, use of admissions made during mandatory sex offender treatment to revoke parole does not violate Fifth Amendment)

#### **11.19 Conditions Restricting Use of Technology**

add to fn 152: *People v. Castellanos* (2020) 51 Cal.App.5th 267, 275-277 [265 Cal.Rptr.3d 47] (condition requiring person to provide access to any electronic device and all passwords to social media, and to was not overbroad and not unconstitutionally vague, where record showed condition was reasonably related to the drug transportation offense).

Replace last sentence with: For example, the California Supreme Court held that a condition requiring a person to submit to warrantless searches of his electronic devices and passwords at any time was invalid because it was unrelated to his burglary crimes and there was no indication the person had used or would use electronics devices in connection with any illegal activity. *In re Ricardo P.* (2019) 7 Cal.5th 1113, 1116 [251 Cal.Rptr.3d 104]; compare with *In re Alonzo M.* (2019) 40 Cal.App.5th 156, 168 [253 Cal.Rptr.3d 47] (electronic search condition justified by record showing usefulness in supervising whether juvenile associating with prohibited persons; however search condition must be modified because condition was overbroad).

#### **11.20 Conditions Restricting Association with Other Persons**

add to fn 157: *People v. Austin* (2019) 35 Cal.App.5th 778, 791 [247 Cal.Rptr.3d 729] (order barring person from contacting or attempting to contact the “crime victim(s)” was unconstitutionally vague to extent it was applied to bar contact with alleged victim of domestic violence charge that had been dismissed).

#### **11.20 Conditions Restricting Travel**

add to fn 159: *People v. Holzmann* (2018) 18 Cal.App.5th 1241, 1246 [227 Cal.Rptr.3d 409] (condition requiring person to “stay away” from identified workplace of stalking victim was not unreasonably vague)

#### **11.25 CDCR Review of a Parole Hold**

add to fn 200: *People v. Kurianski* (2020) 54 Cal.App.5th 777, 779-780 [269 Cal.Rptr.3d 192] (right to parole officer report is waived if person expressly waives right to preliminary and final parole hearings and admits parole violation for a specified sentence).

#### **11.26 Court Hearings on Parole Violation Charges**

add to fn 203: See also *People v. Berch* (2018) 29 Cal.App.5th 966, 969-970 [241 Cal.Rptr.3d 51] (parole hearing cannot be conducted by commissioner unless defendant expressly agrees); *People v. Schaffer* (2020) 53 Cal.App.5th 500 [267 Cal.Rptr.3d 666] (no constitutional right to have a jury trial or determination beyond a reasonable doubt for parole revocation); *People v. Martin* (2020) 58

Cal.App.5th 189 [272 Cal.Rptr.3d 363] (no constitutional right to jury trial or proof beyond a reasonable doubt, even where person subjected to potentially life-long parole revocation).

new 4th para: A person may seek a demurrer (dismissal) of a parole revocation charge if the petition does not allege sufficient facts to justify revocation, such as not sufficiently alleging that parole staff considered and rejected intermediate sanctions. *People v. Osorio* (2015) 235 Cal.App.4th 1408, 1415 [183 Cal.App.3d 881 (demurrer should have been granted where petition did not adequately state reasons for determining that intermediate sanctions not appropriate for minor violation); *People v. Perlas* (2020) 47 Cal.App.5th 826, 832. 836 [261 Cal.Rptr.3d 234] (demurrer not justified where petition adequately demonstrated the agency had considered intermediate sanctions and explained why such sanctions were not proper).

add to para 5, end: The court also can consider whether the revocation charge is based on an invalid condition of parole, even if the person has not filed an administrative appeal challenging the condition. *People v. Austin* (2019) 35 Cal.App.4th 778, 785 [247 Cal.Rptr.3d 729]. The court can address a claim that CDCR did not validly have authority over the person because there person was wrongly placed a person on parole rather than PRCS. *People v. Johnson* (2020) 45 Cal.App.5th 379, 401-402 [258 Cal.Rptr.639].

add to para 5: A court does not have authority under Penal Code 1203.2(b)(1) to dismiss a parole revocation petition in “furtherance of justice.” *People v. Wiley* (2019) 36 Cal.App.5th 1063, 1065 [249 Cal.Rptr.3d 196].

### **11.27 Parole Revocation Terms and Other Sanctions for Parole Violations**

add new 3rd para: A court has no authority to terminate “parole supervision” as part of parole revocation proceedings. *People v. Johnson* (2020) 58 Cal.App.5th 363 [272 Cal.Rptr.3d 399].

### **11.33 Post-Release Community Supervision (PRCS)**

add to fn 259: The court has jurisdiction to hold the hearing on a violation charge after the PRCS period has expired. See Penal Code § 3455(e); Penal Code § 1203.2(b); *People v. Leiva* (2013) 56 Cal.4th 498 [154 Cal.Rptr.3d 634]

add to fn 261: see also *People v. Garcia* (2018) 22 Cal.App.5th 1061, 1066 [232 Cal.Rptr.3d 259] (court cannot order a PRCS revocation jail term to run consecutive to new prison sentence in another case).

add to last para, final sentence (NOT a bullet): The PRCS period is not automatically tolled (extended) for time during which PRCS is revoked. The court may choose to extend the PRCS expiration date for time during a revocation, but not beyond the three year maximum PRCS period. *People v. Johnson* (2018) 29 Cal.App.5th 1041, 1050 [240 Cal.Rptr.3d 855]. Also, when a court revokes and reinstates PRCS, it has the option of extending the PRCS date to account for time periods during which the person was unavailable for supervision. *People v. Braud* (2020) 56 Cal.App.5th 962 [271 Cal.Rptr.3d 58]