

PROBATION INELIGIBILITY

- AUTHORITY:** Sections 115(c),(1),(2); 288.1; 454(c); 462(a); 462(b); 462.5; 550(d); 667.61(h); 1203(e)(1) thru (13); 1203.045; 1203.048; 1203.055(c); 1203.06(a)(1),(2),(3); 1203.065(a) and (b); 1203.067; 1203.07(a)(1) thru (11); 1203.073; 1203.074; 1203.075; 1203.08; 1203.085(a) and (b); 1203.09; California Penal Code
Section 11370(a) and (b) Health and Safety Code
- RESCINDS:** Procedure Manual Item 2-2-008, dated 11/15/13
- FORMS:** None
- PURPOSE:** To provide a guide to assist officers with the complex issues surrounding probation ineligibility.

I. GENERAL INFORMATION

- A. There are a number of statutes, particularly under Section 1203 of the Penal Code, which affect a convicted defendant's eligibility for probation. These statutes are of two basic types.
1. **STATUTORILY:** Absolutely prohibits the granting of probation or suspending execution of sentence.
 2. **PRESUMPTIVELY:** Establishes a conditional or qualified ineligibility in that it prohibits the granting of probation except in "unusual" cases.
- B. Following is a guideline that is not intended to preclude and/or prevent the officer from carefully reviewing the pertinent section of the Penal Code dealing with probation ineligibility.

II. PROCEDURE

- A. **Refer to the current year's Judge Ryan's Script for a list of all charges rendered statutorily or presumptively ineligible.**
- B. Identify ineligibility issues when they arise in cases for investigation by:
1. Carefully reviewing the Probation Referral Memo and/or Information from Superior Court for specified felony offenses that would make the defendant ineligible.
 2. If it is determined that the defendant is absolutely ineligible for probation, **outline the ineligibility reason in the Probation Eligibility** Section of the Court Report (following Circumstances in Aggravation and Mitigation) such as:

"The defendant appears to be statutorily ineligible for probation pursuant to Section _____ of the Penal Code and/or Health and Safety Code."

3. Several of the statutes, including certain offenses aggravated by force or violence, furnishing drugs to a minor, or a specified crime involving a destructive device, do not have to be pled or proven to make the defendant absolutely ineligible for probation. In these instances, the officers use the same procedure as above.
4. In those cases where **the defendant is presumptively** ineligible the Court may, nonetheless, grant probation upon finding that unusual **circumstances exist**.
 - a. The officer should review Judicial Council Rule 413(c) to determine if **the defendant overcomes the presumption of ineligibility and probation may be granted**.
 - b. If the officer finds such circumstances, identify them in the **Eligibility** Section of the report and explain the conclusion reached **based on 2 factors**:
 - (1) **Factors relating to basis for limitation on probation**
 - (2) **Factors limiting defendant's culpability**
 - c. Begin with wording such as:

"Violation of Section 245(a)(1) of the Penal Code, Assault With a Deadly Weapon, pursuant to Section 1203(e)(2), Use of a Deadly Weapon, makes this defendant presumptively ineligible for probation unless considered an unusual case."
 - d. Follow this statement with an analysis of the case comparing it with appropriate rules under Section 413 of the Judicial Council Rules to determine if this is an unusual case:

"In reviewing Rule 413(c), **the defendant does/does not appear to overcome the presumption in that...**
 - e. Note that many code sections base ineligibility on some fact(s) related solely to the instant offense while other code sections predicate ineligibility on the basis of the instant offense and certain specified prior conviction(s).
5. Staff are encouraged to consult with the Adult Investigation SPO and Code Sections listed at the top of this **procedural** manual item. Additionally, Judge Ryan's sentencing script provides a more detailed explanation of limits on probation eligibility.

REFERENCES:

Procedures:	2-2-001	Pre-Plea and Sentencing Reports
	2-2-002	County Parole
Policies:	A-1	Policy, Procedure and the Law
	A-2	Upholding Departmental Philosophy and Principles

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APPROVED BY: