

SENTENCING IN ABSENTIA (SUPERIOR COURT)

- AUTHORITY:** Sections 1170(h), 1203.2a, 1381, 2900, California Penal Code
California Supreme Court Decision - Hayes vs. Superior Court, L.A. 29861, 12/6/71
California Court of Appeals 4th Dist. People v. Mendoza (2015) 241 Cal. App. 4th 764
- RESCINDS:** Procedure Manual Item 2-3-003, dated 09/08/16
- FORMS:** Request for Disposition of Probation Rights, et seq. (CDCR 616)
Letter to Warden (F057-1098)
- PURPOSE:** To standardize the processing of a probationer's request for sentencing in absentia and for processing a probationer's request to finalize any other criminal proceedings while he or she is incarcerated.

I. GENERAL INFORMATION

- A. Section 1203.2a PC states that when a probationer is committed to a prison in any state for a new offense, the Court which released the probationer on probation has jurisdiction to impose sentence if no sentence has previously been imposed for the original offense.
1. This may be done at the probationer's own request through counsel or by the probationer in writing; if the latter, such writing must be signed in the presence of:
 - a. The warden or superintendent of the prison in which the probationer is confined; or
 - b. The duly authorized representative of the warden or superintendent, providing such officer attests both that the probationer has made and signed such a request and that the statement is a directive to the Court to impose sentence in the probationer's absence and without representation by counsel.
 - c. California Department of Corrections and Rehabilitation form #CDCR 616, "REQUEST DISPOSITION OF PROBATION, WAIVER OF APPEARANCE AND RIGHT TO ATTORNEY (PC 1203.2a)" is used for this purpose.
 - d. If the inmate's request is not submitted on the proper CDCR form, the inmate's request shall be returned with a cover letter to explain the need to submit such requests on form CDCR 616 and that such forms can be obtained from the counselor at the inmate's institution. In the event of out-of-state or federal incarceration, two (2) copies of form #CDCR 616 shall be included with the cover letter.

2. Action must be taken promptly. Section 1203.2a PC states: "The probation officer may, upon learning of such defendant's imprisonment, and must within 30 days after being notified in writing by the defendant or his counsel, or the warden or superintendent or duly authorized representative of the prison in which the defendant is confined, report such commitment to the Court which released him on probation."

"If the case is one in which sentence has previously been imposed, the Court shall be deprived of jurisdiction over defendant if it does not issue its commitment or make other final order terminating its jurisdiction over the defendant in the case within 60 days after defendant has, in the manner prescribed by this section, requested imposition of sentence."

"In the event that the probation officer fails to report such commitment to the Court or the Court fails to impose sentence as herein provided, the Court shall be deprived thereafter of all jurisdiction it may have retained in the granting of probation in said case."

- B. Section 1381 PC states that when a defendant has been sentenced to a State Prison, the Division of Juvenile Justice, or to a county jail for more than 90 days, he may request of the District Attorney to be brought to trial within 90 days on any other pending criminal proceeding.
- C. **The California Court of Appeals (4th Dist.) has found that an individual serving a sentence of county prison, per Section 1170(h) PC is entitled to the same relief as provided in 1203.2a.**
- D. It is the Court's intent to clear these cases through sentencing in absentia. If the probationer does not request same and the crime for which they were sent to State Prison is more serious, or results in more custody time than is available through the Orange County grant, the probation officer may request termination of the Orange County case by modification petition. If there remains significant unresolved issues on the Orange County case and the probationer does not request sentencing in absentia, the probation officer may, as a last resort, request a warrant be issued, this being the least desirable option.

II. PROCEDURE

- A. In the event the probationer incurs a new law violation which results in a state, federal or "county" prison sentence, the cognizant Deputy Probation Officer may initiate action to have the probation grant revoked and sentence imposed pursuant to PC1203.2a.
- B. In such case a letter is prepared (form #F057-1098) and sent to the warden of the institution where the probationer is incarcerated together with an enclosed copy of CDCR form 616.
- C. If the housing address of California inmates is not known, call the CDCR Inmate Locator at telephone 916-445-6713.
- D. Update the CMS chrono to reflect the action taken and place a copy of the correspondence in the A-file.

- E. If the inmate elects to exercise rights pursuant to PC1203.2a and the proper paperwork is forwarded to Probation, the Petition is received, date stamped, and forwarded to SAO Investigations.
- F. The SAO Investigations Unit is responsible for processing all PC1203.2a, Sentence in Absentia petitions once received from the inmate or the Court.
- G. Requests for Sentence in Absentia petitions come to Investigations from two sources:
 - 1. From the Court via e-mail requesting financial status, or
 - 2. Directly from the inmate while incarcerated in a state or federal institution.
- H. Upon receipt, log the incoming request in the 1203.2a Log.
- I. Research ICMS for the current financial balance.
- J. Victim restitution is an important part of the criminal justice process. Therefore, if ICMS indicates monies owed to victims, research the A-file, and/or the Collections Officer for victim identification and address. Pass this information on to the Court as indicated below. The Courts will include that information in its order to the CDC&R.
- K. If the request came from the Court's Legal Research staff, prepare and send a memo addressed to the Court, Attention: Legal Research and include the data recovered **from** the ICMS research. Record the completion in the 1203.2a log. Retain a copy for the A-file. The Correspondence Clerk will pass to Legal Research.
- L. If the request came directly from an inmate, make 3 copies of the petition. Research the PFS as above. Prepare a memo as above to the Court's Legal Research staff and include the data recovered from the ICMS records. Place the memo and the original of the Petition in a Pony envelope marked for the attention of Legal Research. Place one copy in an envelope marked for the Deputy District Attorney and the other Petition & Court memo in an envelope marked for the Public Defender. Place both the DDA & DPD envelopes in an outer envelope addressed to the RPO clerk. The RPO clerk will then hand-carry both envelopes for delivery to the District Attorney & Public Defenders Office. Log the completion in the 1203.2a Log. Retain a copy of the Petition and the Court memo in the A-file.
- M. Once the Court has made its determination, the chrono file is updated by the cognizant unit clerk to show the Court's disposition. Following is a sample chrono entry:

07CF1234: CJC, Dept. C-5, Makino; Probation Violation; sentenced in absentia per 1203.2a; Probation revoked and terminated. Two years State Prison, CTS 365, to be served concurrently with any other sentence.

REFERENCES:

Procedures:	2-3-002	Probation Violation-Adult
	2-3-004	Adult Modification Petitions
	2-3-015	Adult Administrative Caseloads
	2-3-016	Warrants of Arrest for Adults
	2-3-023	Terminating Probation-Adult

J. Cisneros

APPROVED BY: