

CALIFORNIA RULES OF COURT:
SENTENCING — DETERMINATE SENTENCING LAW

(current as of January 1, 2018)

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Rule 4.401. Authority

The rules in this division are adopted under Penal Code section 1170.3 and under the authority granted to the Judicial Council by the Constitution, article VI, section 6, to adopt rules for court administration, practice, and procedure.

Rule 4.403. Application

These rules apply only to criminal cases in which the defendant is convicted of one or more offenses punishable as a felony by (1) a determinate sentence imposed under Penal Code part 2, title 7, chapter 4.5 (commencing with section 1170); and (2) an indeterminate sentence imposed under section 1168(b) only if it is imposed relative to other offenses with determinate terms or enhancements.

Rule 4.405. Definitions

As used in this division, unless the context otherwise requires:

- (1) "These rules" means the rules in this division.
- (2) "Base term" is the determinate term in prison or county jail under section 1170(h) selected from among the three possible terms prescribed by statute; determinate term in prison or county jail under section 1170(h) prescribed by statute if a range of three possible terms is not prescribed; or the indeterminate term in prison prescribed by statute.
- (3) "Enhancement" means an additional term of imprisonment added to the base term.
- (4) "Aggravation", "circumstances in aggravation", "mitigation", or "circumstances in mitigation" means factors that the court may consider in its broad sentencing discretion authorized by statute and under these rules.
- (5) "Sentence choice" means the selection of any disposition of the case that does not amount to a dismissal, acquittal, or grant of a new trial.
- (6) "Section" means a section of the Penal Code.
- (7) "Imprisonment" means confinement in a state prison or county jail under section 1170(h).
- (8) "Charged" means charged in the indictment or information.
- (9) "Found" means admitted by the defendant or found to be true by the trier of fact upon trial.
- (10) "Mandatory supervision" means the period of supervision defined in section 1170(h)(5)(A), (B).
- (11) "Postrelease community supervision" means the period of supervision governed by section 3451 et seq.
- (12) "Risk/needs assessment" means a standardized, validated evaluation tool designed to measure an offender's actuarial risk factors and specific needs that, if successfully addressed, may reduce the likelihood of future criminal activity.
- (13) "Evidence-based practices" means supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under probation, parole, or postrelease supervision.

- (14) "Community-based corrections program" means a program consisting of a system of services for felony offenders under local supervision dedicated to the goals stated in section 1229(c)(1)-(5).
- (15) "Local supervision" means the supervision of an adult felony offender on probation, mandatory supervision, or postrelease community supervision.
- (16) "County jail" means local county correctional facility.

Rule 4.406. Reasons

(a) How given

If the sentencing judge is required to give reasons for a sentence choice, the judge must state in simple language the primary factor or factors that support the exercise of discretion. The statement need not be in the language of the statute or these rules. It must be delivered orally on the record. The court may give a single statement explaining the reason or reasons for imposing a particular sentence or the exercise of judicial discretion, if the statement identifies the sentencing choices where discretion is exercised and there is no impermissible dual use of facts.

(b) When reasons required

Sentence choices that generally require a statement of a reason include, but are not limited to:

- (1) Granting probation when the defendant is presumptively ineligible for probation;
- (2) Denying probation when the defendant is presumptively eligible for probation;
- (3) Declining to commit an eligible juvenile found amenable to treatment to the Department of Corrections and Rehabilitation, Division of Juvenile Justice.
- (4) Selecting one of the three authorized terms in prison or county jail under section 1170(h) referred to in section 1170(b) for either a base term or an enhancement;
- (5) Imposing consecutive sentences;
- (6) Imposing full consecutive sentences under section 667.6(c) rather than consecutive terms under section 1170.1(a), when the court has that choice;
- (7) Waiving a restitution fine;
- (8) Granting relief under section 1385(a).
- (9) Denying mandatory supervision in the interests of justice under section 1170(h)(5)(A).

Rule 4.408. Listing of factors not exclusive; sequence not significant

- (a) The listing of factors in these rules for making discretionary sentencing decisions is not exhaustive and does not prohibit a trial judge from using additional criteria reasonably related to the decision being made. Any such additional criteria must be stated on the record by the sentencing judge.

- (b) The order in which criteria are listed does not indicate their relative weight or importance.

Rule 4.409. Consideration of relevant factors

Relevant factors enumerated in these rules must be considered by the sentencing judge, and will be deemed to have been considered unless the record affirmatively reflects otherwise.

Rule 4.410. General objectives in sentencing

- (a) General objectives of sentencing include:
- (1) Protecting society;
 - (2) Punishing the defendant;
 - (3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;
 - (4) Deterring others from criminal conduct by demonstrating its consequences;
 - (5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;
 - (6) Securing restitution for the victims of crime;
 - (7) Achieving uniformity in sentencing; and
 - (8) Increasing public safety by reducing recidivism through community-based corrections programs and evidence-based practices.
- (b) Because in some instances these objectives may suggest inconsistent dispositions, the sentencing judge must consider which objectives are of primary importance in the particular case. The sentencing judge should be guided by statutory statements of policy, the criteria in these rules, and any other facts and circumstances relevant to the case.

Rule 4.411. Presentence investigations and reports

(a) When required

As provided in subdivision (b), the court must refer the case to the probation officer for:

- (1) A presentence investigation and report if the defendant:
 - (A) Is statutorily eligible for probation or a term of imprisonment in county jail under section 1170(h); or
 - (B) Is not eligible for probation but a report is needed to assist the court with other sentencing issues, including the determination of the proper amount of restitution fine;
- (2) A supplemental report if a significant period of time has passed since the original report was prepared.

(b) Waiver of the investigation and report

The parties may stipulate to the waiver of the probation officer's investigation and report in writing or in open court and entered in the minutes, and with the consent of the court. In

deciding whether to consent to the waiver, the court should consider whether the information in the report would assist in the resolution of any current or future sentencing issues, or would assist in the effective supervision of the person. A waiver under this section does not affect the requirement under section 1203c that a probation report be created when the court commits a person to state prison.

Rule 4.411.5. Probation officer's presentence investigation report

(a) Contents

A probation officer's presentence report in a felony case must include at least the following:

- (1) A face sheet showing at least:
 - (A) The defendant's name and other identifying data;
 - (B) The case number;
 - (C) The crime of which the defendant was convicted;
 - (D) The date of commission of the crime, the date of conviction, and any other dates relevant to sentencing;
 - (E) The defendant's custody status; and
 - (F) The terms of any agreement on which a plea of guilty was based.
- (2) The facts and circumstances of the crime and the defendant's arrest, including information concerning any co-defendants and the status or disposition of their cases. The source of all such information must be stated.
- (3) A summary of the defendant's record of prior criminal conduct, including convictions as an adult and sustained petitions in juvenile delinquency proceedings. Records of an arrest or charge not leading to a conviction or the sustaining of a petition may not be included unless supported by facts concerning the arrest or charge.
- (4) Any statement made by the defendant to the probation officer, or a summary thereof, including the defendant's account of the circumstances of the crime.
- (5) Information concerning the victim of the crime, including:
 - (A) The victim's statement or a summary thereof, if available;
 - (B) Any physical or psychological injuries suffered by the victim;
 - (C) The amount of the victim's monetary loss, and whether or not it is covered by insurance; and
 - (D) Any information required by law.
- (6) Any relevant facts concerning the defendant's social history, including those categories enumerated in section 1203.10, organized under appropriate subheadings, including, whenever applicable, "Family," "Education," "Employment and income," "Military," "Medical/psychological," "Record of substance abuse or lack thereof," and any other relevant subheadings. This includes facts relevant to whether the defendant

may be suffering from sexual trauma, traumatic brain injury, posttraumatic stress disorder, substance abuse, or mental health problems as a result of his or her U.S. military service.

- (7) Collateral information, including written statements from:
 - (A) Official sources such as defense and prosecuting attorneys, police (subsequent to any police reports used to summarize the crime), probation and parole officers who have had prior experience with the defendant, and correctional personnel who observed the defendant's behavior during any period of presentence incarceration; and
 - (B) Interested persons, including family members and others who have written letters concerning the defendant.
- (8) The defendant's relevant risk factors and needs as identified by a risk/needs assessment, if such an assessment is performed, and such other information from the assessment as may be requested by the court.
- (9) An evaluation of factors relating to disposition. This section must include:
 - (A) A reasoned discussion of the defendant's suitability and eligibility for probation, and, if probation is recommended, a proposed plan including recommendations for the conditions of probation and any special need for supervision;
 - (B) If a prison sentence or term of imprisonment in county jail under section 1170(h) is recommended or is likely to be imposed, a reasoned discussion of aggravating and mitigating factors affecting the sentence length;
 - (C) If denial of a period of mandatory supervision in the interests of justice is recommended, a reasoned discussion of the factors prescribed by rule 4.415(b);
 - (D) If a term of imprisonment in county jail under section 1170(h) is recommended, a reasoned discussion of the defendant's suitability for specific terms and length of period of mandatory supervision, including the factors prescribed by rule 4.415(c); and
 - (E) A reasoned discussion of the defendant's ability to make restitution, pay any fine or penalty that may be recommended, or satisfy any special conditions of probation that are proposed.

Discussions of factors (A) through (D) must refer to any sentencing rule directly relevant to the facts of the case, but no rule may be cited without a reasoned discussion of its relevance and relative importance.
- (10) The probation officer's recommendation. When requested by the sentencing judge or by standing instructions to the probation department, the report must include recommendations concerning the length of any prison or county jail term under Section 1170(h) that may be imposed, including the base term, the imposition of

concurrent or consecutive sentences, and the imposition or striking of the additional terms for enhancements charged and found.

- (11) Detailed information on presentence time spent by the defendant in custody, including the beginning and ending dates of the period or periods of custody; the existence of any other sentences imposed on the defendant during the period of custody; the amount of good behavior, work, or participation credit to which the defendant is entitled; and whether the sheriff or other officer holding custody, the prosecution, or the defense wishes that a hearing be held for the purposes of denying good behavior, work, or participation credit.
- (12) A statement of mandatory and recommended restitution, restitution fines, other fines, and costs to be assessed against the defendant, including chargeable probation services and attorney fees under section 987.8 when appropriate, findings concerning the defendant's ability to pay, and a recommendation whether any restitution order should become a judgment under section 1203(j) if unpaid.
- (13) Information pursuant to Penal Code section 29810(c):
 - (A) Whether the defendant has properly complied with Penal Code section 29810 by relinquishing firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and
 - (B) Whether the defendant has timely submitted a completed Prohibited Persons Relinquishment Form.

(b) Format

The report must be on paper 8-½ by 11 inches in size and must follow the sequence set out in (a) to the extent possible.

(c) Sources

The source of all information must be stated. Any person who has furnished information included in the report must be identified by name or official capacity unless a reason is given for not disclosing the person's identity.

**Rule 4.412. Reasons—agreement to punishment as an adequate reason
and as abandonment of certain claims**

(a) Defendant's agreement as reason

It is an adequate reason for a sentence or other disposition that the defendant, personally and by counsel, has expressed agreement that it be imposed and the prosecuting attorney has not expressed an objection to it. The agreement and lack of objection must be recited on the record. This section does not authorize a sentence that is not otherwise authorized by law.

(b) Agreement to sentence abandons section 654 claim

By agreeing to a specified term in prison or county jail under section 1170(h) personally and by counsel, a defendant who is sentenced to that term or a shorter one abandons any

claim that a component of the sentence violates section 654's prohibition of double punishment, unless that claim is asserted at the time the agreement is recited on the record.

**Rule 4.413. Grant of probation when defendant is
presumptively ineligible for probation**

(a) Consideration of eligibility

The court must determine whether the defendant is eligible for probation. In most cases, the defendant is presumptively eligible for probation; in some cases, the defendant is presumptively ineligible; and in some cases, probation is not allowed.

(b) Probation in cases when defendant is presumptively ineligible

If the defendant comes under a statutory provision prohibiting probation "except in unusual cases where the interests of justice would best be served," or a substantially equivalent provision, the court should apply the criteria in (c) to evaluate whether the statutory limitation on probation is overcome; and if it is, the court should then apply the criteria in rule 4.414 to decide whether to grant probation.

(c) Factors overcoming the presumption of ineligibility

The following factors may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate:

(1) *Factors relating to basis for limitation on probation*

A factor or circumstance indicating that the basis for the statutory limitation on probation, although technically present, is not fully applicable to the case, including:

- (A) The factor or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstances typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; and
- (B) The current offense is less serious than a prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial time before the current offense.

(2) *Factors limiting defendant's culpability*

A factor or circumstance not amounting to a defense, but reducing the defendant's culpability for the offense, including:

- (A) The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence;
- (B) The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorably to mental health care and treatment that would be required as a condition of probation; and

- (C) The defendant is youthful or aged, and has no significant record of prior criminal offenses.
- (3) *Results of risk/needs assessment*

Along with all other relevant information in the case, the court may consider the results of a risk/needs assessment of the defendant, if one was performed. The weight of a risk/needs assessment is for the court to consider in its sentencing discretion.

Rule 4.414. Criteria affecting probation

Criteria affecting the decision to grant or deny probation include facts relating to the crime and facts relating to the defendant.

(a) Facts relating to the crime

Facts relating to the crime include:

- (1) The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime;
- (2) Whether the defendant was armed with or used a weapon;
- (3) The vulnerability of the victim;
- (4) Whether the defendant inflicted physical or emotional injury;
- (5) The degree of monetary loss to the victim;
- (6) Whether the defendant was an active or a passive participant;
- (7) Whether the crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur;
- (8) Whether the manner in which the crime was carried out demonstrated criminal sophistication or professionalism on the part of the defendant; and
- (9) Whether the defendant took advantage of a position of trust or confidence to commit the crime.

(b) Facts relating to the defendant

Facts relating to the defendant include:

- (1) Prior record of criminal conduct, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct;
- (2) Prior performance and present status on probation, mandatory supervision, postrelease community supervision, or parole;
- (3) Willingness to comply with the terms of probation;
- (4) Ability to comply with reasonable terms of probation as indicated by the defendant's age, education, health, mental faculties, history of alcohol or other substance abuse, family background and ties, employment and military service history, and other relevant factors;

- (5) The likely effect of imprisonment on the defendant and his or her dependents;
- (6) The adverse collateral consequences on the defendant's life resulting from the felony conviction;
- (7) Whether the defendant is remorseful; and
- (8) The likelihood that if not imprisoned the defendant will be a danger to others.

Rule 4.415. Criteria affecting the imposition of mandatory supervision

(a) Presumption

Except where the defendant is statutorily ineligible for suspension of any part of the sentence, when imposing a term of imprisonment in county jail under section 1170(h), the court must suspend execution of a concluding portion of the term to be served as a period of mandatory supervision unless the court finds, in the interests of justice, that mandatory supervision is not appropriate in a particular case. Because section 1170(h)(5)(A) establishes a statutory presumption in favor of the imposition of a period of mandatory supervision in all applicable cases, denials of a period of mandatory supervision should be limited.

(b) Criteria for denying mandatory supervision in the interests of justice

In determining that mandatory supervision is not appropriate in the interests of justice under section 1170(h)(5)(A), the court's determination must be based on factors that are specific to a particular case or defendant. Factors the court may consider include:

- (1) Consideration of the balance of custody exposure available after imposition of presentence custody credits;
- (2) The defendant's present status on probation, mandatory supervision, postrelease community supervision, or parole;
- (3) Specific factors related to the defendant that indicate a lack of need for treatment or supervision upon release from custody; and
- (4) Whether the nature, seriousness, or circumstances of the case or the defendant's past performance on supervision substantially outweigh the benefits of supervision in promoting public safety and the defendant's successful reentry into the community upon release from custody.

(c) Criteria affecting conditions and length of mandatory supervision

In exercising discretion to select the appropriate period and conditions of mandatory supervision, factors the court may consider include:

- (1) Availability of appropriate community corrections programs;
- (2) Victim restitution, including any conditions or period of supervision necessary to promote the collection of any court-ordered restitution;

- (3) Consideration of length and conditions of supervision to promote the successful reintegration of the defendant into the community upon release from custody;
- (4) Public safety, including protection of any victims and witnesses;
- (5) Past performance and present status on probation, mandatory supervision, postrelease community supervision, and parole;
- (6) The balance of custody exposure after imposition of presentence custody credits;
- (7) Consideration of the statutory accrual of post-sentence custody credits for mandatory supervision under section 1170(h)(5)(B) and sentences served in county jail under section 4019(a)(6);
- (8) The defendant's specific needs and risk factors identified by a validated risk/needs assessment, if available; and
- (9) The likely effect of extended imprisonment on the defendant and any dependents.

(d) Statement of reasons for denial of mandatory supervision

Notwithstanding rule 4.412(a), when a court denies a period of mandatory supervision in the interests of justice, the court must state the reasons for the denial on the record.

Rule 4.420. Selection of term of imprisonment

- (a) When a sentence of imprisonment is imposed, or the execution of a sentence of imprisonment is ordered suspended, the sentencing judge must select the upper, middle, or lower term on each count for which the defendant has been convicted, as provided in section 1170(b) and these rules.
- (b) In exercising his or her discretion in selecting one of the three authorized terms of imprisonment referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing.
- (c) To comply with section 1170(b), a fact charged and found as an enhancement may be used as a reason for imposing a particular term only if the court has discretion to strike the punishment for the enhancement and does so. The use of a fact of an enhancement to impose the upper term of imprisonment is an adequate reason for striking the additional term of imprisonment, regardless of the effect on the total term.
- (d) A fact that is an element of the crime on which punishment is being imposed may not be used to impose a particular term.
- (e) The reasons for selecting one of the three authorized terms of imprisonment referred to in section 1170(b) must be stated orally on the record.

Rule 4.421. Circumstances in aggravation

Circumstances in aggravation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime, whether or not charged or chargeable as enhancements, include that:

- (1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness;
- (2) The defendant was armed with or used a weapon at the time of the commission of the crime;
- (3) The victim was particularly vulnerable;
- (4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission;
- (5) The defendant induced a minor to commit or assist in the commission of the crime;
- (6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process;
- (7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed;
- (8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism;
- (9) The crime involved an attempted or actual taking or damage of great monetary value;
- (10) The crime involved a large quantity of contraband; and
- (11) The defendant took advantage of a position of trust or confidence to commit the offense.
- (12) The crime constitutes a hate crime under section 422.55 and:
 - (A) No hate crime enhancements under section 422.75 are imposed; and
 - (B) The crime is not subject to sentencing under section 1170.8.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

- (1) The defendant has engaged in violent conduct that indicates a serious danger to society;
- (2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness;
- (3) The defendant has served a prior term in prison or county jail under section 1170(h);

- (4) The defendant was on probation, mandatory supervision, postrelease community supervision, or parole when the crime was committed; and
- (5) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was unsatisfactory.

(c) Other factors

Any other factors statutorily declared to be circumstances in aggravation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

Rule 4.423. Circumstances in mitigation

Circumstances in mitigation include factors relating to the crime and factors relating to the defendant.

(a) Factors relating to the crime

Factors relating to the crime include that:

- (1) The defendant was a passive participant or played a minor role in the crime;
- (2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident;
- (3) The crime was committed because of an unusual circumstance, such as great provocation, that is unlikely to recur;
- (4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense;
- (5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime;
- (6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim;
- (7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal;
- (8) The defendant was motivated by a desire to provide necessities for his or her family or self; and
- (9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime; and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the abuse does not amount to a defense.

(b) Factors relating to the defendant

Factors relating to the defendant include that:

- (1) The defendant has no prior record, or has an insignificant record of criminal conduct, considering the recency and frequency of prior crimes;
- (2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime;
- (3) The defendant voluntarily acknowledged wrongdoing before arrest or at an early stage of the criminal process;
- (4) The defendant is ineligible for probation and but for that ineligibility would have been granted probation;
- (5) The defendant made restitution to the victim; and
- (6) The defendant's prior performance on probation, mandatory supervision, postrelease community supervision, or parole was satisfactory.

(c) Other factors

Any other factors statutorily declared to be circumstances in mitigation or that reasonably relate to the defendant or the circumstances under which the crime was committed.

Rule 4.424. Consideration of applicability of section 654

Before determining whether to impose either concurrent or consecutive sentences on all counts on which the defendant was convicted, the court must determine whether the proscription in section 654 against multiple punishments for the same act or omission requires a stay of execution of the sentence imposed on some of the counts.

Rule 4.425. Factors affecting concurrent or consecutive sentences

Factors affecting the decision to impose consecutive rather than concurrent sentences include:

(a) Facts relating to crimes

Facts relating to the crimes, including whether or not:

- (1) The crimes and their objectives were predominantly independent of each other;
- (2) The crimes involved separate acts of violence or threats of violence; or
- (3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

(b) Other facts and limitations

Any circumstances in aggravation or mitigation may be considered in deciding whether to impose consecutive rather than concurrent sentences, except:

- (1) A fact used to impose the upper term;
- (2) A fact used to otherwise enhance the defendant's sentence in prison or county jail under section 1170(h); and

- (3) A fact that is an element of the crime may not be used to impose consecutive sentences.

Rule 4.426. Violent sex crimes

(a) Multiple violent sex crimes

When a defendant has been convicted of multiple violent sex offenses as defined in section 667.6, the sentencing judge must determine whether the crimes involved separate victims or the same victim on separate occasions.

(1) *Different victims*

If the crimes were committed against different victims, a full, separate, and consecutive term must be imposed for a violent sex crime as to each victim, under section 667.6(d).

(2) *Same victim, separate occasions*

If the crimes were committed against a single victim, the sentencing judge must determine whether the crimes were committed on separate occasions. In determining whether there were separate occasions, the sentencing judge must consider whether, between the commission of one sex crime and another, the defendant had a reasonable opportunity to reflect on his or her actions and nevertheless resumed sexually assaultive behavior. A full, separate, and consecutive term must be imposed for each violent sex offense committed on a separate occasion under section 667.6(d).

(b) Same victim, same occasion; other crimes

If the defendant has been convicted of multiple crimes, including at least one violent sex crime, as defined in section 667.6, or if there have been multiple violent sex crimes against a single victim on the same occasion and the sentencing court has decided to impose consecutive sentences, the sentencing judge must then determine whether to impose a full, separate, and consecutive sentence under section 667.6(c) for the violent sex crime or crimes instead of including the violent sex crimes in the computation of the principal and subordinate terms under section 1170.1(a). A decision to impose a fully consecutive sentence under section 667.6(c) is an additional sentence choice that requires a statement of reasons separate from those given for consecutive sentences, but which may repeat the same reasons. The sentencing judge is to be guided by the criteria listed in rule 4.425, which incorporates rules 4.421 and 4.423, as well as any other reasonably related criteria as provided in rule 4.408.

Rule 4.427. Hate crimes

(a) Application

This rule is intended to assist judges in sentencing in felony hate crime cases. It applies to:

- (1) Felony sentencing under section 422.7;
- (2) Convictions of felonies with a hate crime enhancement under section 422.75; and
- (3) Convictions of felonies that qualify as hate crimes under section 422.55.

(b) Felony sentencing under section 422.7

If one of the three factors listed in section 422.7 is pled and proved, a misdemeanor conviction that constitutes a hate crime under section 422.55 may be sentenced as a felony. The punishment is imprisonment in state prison or county jail under section 1170(h) as provided by section 422.7.

(c) Hate crime enhancement

If a hate crime enhancement is pled and proved, the punishment for a felony conviction must be enhanced under section 422.75 unless the conviction is sentenced as a felony under section 422.7.

- (1) The following enhancements apply:
 - (A) An enhancement of a term in state prison as provided in section 422.75(a). Personal use of a firearm in the commission of the offense is an aggravating factor that must be considered in determining the enhancement term.
 - (B) An additional enhancement of one year in state prison for each prior felony conviction that constitutes a hate crime as defined in section 422.55.
- (2) The court may strike enhancements under (c) if it finds mitigating circumstances under rule 4.423 and states those mitigating circumstances on the record.
- (3) The punishment for any enhancement under (c) is in addition to any other punishment provided by law.

(d) Hate crime as aggravating factor

If the defendant is convicted of a felony, and the facts of the crime constitute a hate crime under section 422.55, that fact must be considered a circumstance in aggravation in determining the appropriate punishment under rule 4.421 unless:

- (1) The court imposed a hate crime enhancement under section 422.75; or
- (2) The defendant has been convicted of an offense subject to sentencing under section 1170.8.

(e) Hate crime sentencing goals

When sentencing a defendant under this rule, the judge must consider the principal goals for hate crime sentencing.

- (1) The principal goals for hate crime sentencing, as stated in section 422.86, are:
 - (A) Punishment for the hate crime committed;
 - (B) Crime and violence prevention, including prevention of recidivism and prevention of crimes and violence in prisons and jails; and
 - (C) Restorative justice for the immediate victims of the hate crimes and for the classes of persons terrorized by the hate crimes.
- (2) Crime and violence prevention considerations should include educational or other appropriate programs available in the community, jail, prison, and juvenile detention facilities. The programs should address sensitivity or similar training or counseling

intended to reduce violent and antisocial behavior based on one or more of the following actual or perceived characteristics of the victim:

- (A) Disability;
 - (B) Gender;
 - (C) Nationality;
 - (D) Race or ethnicity;
 - (E) Religion;
 - (F) Sexual orientation; or
 - (G) Association with a person or group with one or more of these actual or perceived characteristics.
- (3) Restorative justice considerations should include community service and other programs focused on hate crime prevention or diversity sensitivity. Additionally, the court should consider ordering payment or other compensation to programs that provide services to violent crime victims and reimbursement to the victim for reasonable costs of counseling and other reasonable expenses that the court finds are a direct result of the defendant's actions.

Rule 4.428. Factors affecting imposition of enhancements

(a) Enhancements punishable by one of three terms

If an enhancement is punishable by one of three terms, the court must, in its discretion, impose the term that best serves the interest of justice and state the reasons for its sentence choice on the record at the time of sentencing. In exercising its discretion in selecting the appropriate term, the court may consider factors in mitigation and aggravation as described by these rules or any other factor authorized by rule 4.408.

(b) Striking enhancements under section 1385

If the court has discretion under section 1385(a) to strike an enhancement in the interests of justice, the court also has the authority to strike the punishment for the enhancement under section 1385(c). In determining whether to strike the entire enhancement or only the punishment for the enhancement, the court may consider the effect that striking the enhancement would have on the status of the crime as a strike, the accurate reflection of the defendant's criminal conduct on his or her record, the effect it may have on the award of custody credits, and any other relevant consideration.

Rule 4.431. Proceedings at sentencing to be reported

All proceedings at the time of sentencing must be reported.

Rule 4.433. Matters to be considered at time set for sentencing

- (a) In every case, at the time set for sentencing under section 1191, the sentencing judge must hold a hearing at which the judge must:

- (1) Hear and determine any matters raised by the defendant under section 1201;
 - (2) Determine whether a defendant who is eligible for probation should be granted or denied probation, unless consideration of probation is expressly waived by the defendant personally and by counsel; and
 - (3) Determine whether to deny a period of mandatory supervision in the interests of justice under section 1170(h)(5)(A).
- (b)** If the imposition of sentence is to be suspended during a period of probation after a conviction by trial, the trial judge must identify and state circumstances that would justify imposition of one of the three authorized terms of imprisonment referred to in section 1170(b), or any enhancement, if probation is later revoked. The circumstances identified and stated by the judge must be based on evidence admitted at the trial or other circumstances properly considered under rule 4.420(b).
- (c)** If a sentence of imprisonment is to be imposed, or if the execution of a sentence of imprisonment is to be suspended during a period of probation, the sentencing judge must:
- (1) Determine, under section 1170(b), whether to impose one of the three authorized terms of imprisonment referred to in section 1170(b) or any enhancement and state on the record the reasons for imposing that term.
 - (2) Determine whether any additional term of imprisonment provided for an enhancement charged and found will be stricken;
 - (3) Determine whether the sentences will be consecutive or concurrent if the defendant has been convicted of multiple crimes;
 - (4) Determine any issues raised by statutory prohibitions on the dual use of facts and statutory limitations on enhancements, as required in rules 4.420(c) and 4.447; and
 - (5) Pronounce the court's judgment and sentence, stating the terms thereof and giving reasons for those matters for which reasons are required by law.
- (d)** All these matters must be heard and determined at a single hearing unless the sentencing judge otherwise orders in the interests of justice.
- (e)** When a sentence of imprisonment is imposed under (c) or under rule 4.435, the sentencing judge must inform the defendant:
- (1) Under section 1170(c), of the parole period provided by section 3000 to be served after expiration of the sentence in addition to any period of incarceration for parole violation;
 - (2) Of the period of postrelease community supervision provided by section 3456 to be served after expiration of the sentence, in addition to any period of incarceration for a violation of postrelease community supervision; or
 - (3) Of any period of mandatory supervision imposed under section 1170(h)(5)(A), and (B), in addition to any period of imprisonment for a violation of mandatory supervision.

Rule 4.435. Sentencing on revocation of probation, mandatory supervision, and postrelease community supervision

- (a) When the defendant violates the terms of probation, mandatory supervision or postrelease community supervision or is otherwise subject to revocation of supervision, the sentencing judge may make any disposition of the case authorized by statute. In deciding whether to permanently revoke supervision the judge may consider the nature of the violation and the defendant's past performance on supervision.
- (b) On revocation and termination of supervision under section 1203.2, when the sentencing judge determines that the defendant will be committed to prison or county jail under section 1170(h):
 - (1) If the imposition of sentence was previously suspended, the judge must impose judgment and sentence after considering any findings previously made and hearing and determining the matters enumerated in rule 4.433(c).

The length of the sentence must be based on circumstances existing at the time supervision was granted, and subsequent events may not be considered in selecting the base term or in deciding whether to strike the additional punishment for enhancements charged and found.
 - (2) If the execution of sentence was previously suspended, the judge must order that the judgment previously pronounced be in full force and effect and that the defendant be committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or local county correctional administrator or sheriff for the term prescribed in that judgment.

Rule 4.437. Statements in aggravation and mitigation

(a) Time for filing and service

Statements in aggravation and mitigation referred to in section 1170(b) must be filed and served at least four days before the time set for sentencing under section 1191 or the time set for pronouncing judgment on revocation of probation under section 1203.2(c) if imposition of sentence was previously suspended.

(b) Combined statement

A party seeking consideration of circumstances in aggravation or mitigation may file and serve a statement under section 1170(b) and this rule.

(c) Contents of statement

A statement in aggravation or mitigation must include:

- (1) A summary of evidence that the party relies on as circumstances justifying the imposition of a particular term.
- (2) Notice of intention to dispute facts or offer evidence in aggravation or mitigation at the sentencing hearing. The statement must generally describe the evidence to be offered, including a description of any documents and the names and expected substance of the testimony of any witnesses. No evidence in aggravation or

mitigation may be introduced at the sentencing hearing unless it was described in the statement, or unless its admission is permitted by the sentencing judge in the interests of justice.

(d) Support required for assertions of fact

Assertions of fact in a statement in aggravation or mitigation must be disregarded unless they are supported by the record in the case, the probation officer's report or other reports properly filed in the case, or other competent evidence.

(e) Disputed facts

In the event the parties dispute the facts on which the conviction rested, the court must conduct a presentence hearing and make appropriate corrections, additions, or deletions in the presentence probation report or order a revised report.

Rule 4.447. Sentencing of enhancements

(a) Enhancements resulting in unlawful sentences

A court may not strike or dismiss an enhancement solely because imposition of the term is prohibited by law or exceeds limitations on the imposition of multiple enhancements. Instead, the court must:

- (1) Impose a sentence for the aggregate term of imprisonment computed without reference to those prohibitions or limitations; and
- (2) Stay execution of the part of the term that is prohibited or exceeds the applicable limitation. The stay will become permanent once the defendant finishes serving the part of the sentence that has not been stayed.

(b) Multiple enhancements

If a defendant is convicted of multiple enhancements of the same type, the court must either sentence each enhancement or, if authorized, strike the enhancement or its punishment. While the court may strike an enhancement, the court may not stay an enhancement except as provided in (a) or as authorized by section 654.

Rule 4.451. Sentence consecutive to or concurrent with indeterminate term or to term in other jurisdiction

- (a)** When a defendant is sentenced under section 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed under section 1168(b) in the same or another proceeding, the judgment must specify the determinate term imposed under section 1170 computed without reference to the indeterminate sentence, must order that the determinate term be served consecutively to or concurrently with the sentence under section 1168(b), and must identify the proceedings in which the indeterminate sentence was imposed. The term under section 1168(b), and the date of its completion or date of parole or postrelease community supervision, and the sequence in which the sentences are deemed or served, will be determined by correctional authorities as provided by law.

- (b) When a defendant is sentenced under sections 1168 or 1170 and the sentence is to run consecutively to or concurrently with a sentence imposed by a court of the United States or of another state or territory, the judgment must specify the term imposed under sections 1168 or 1170 computed without reference to the sentence imposed by the other jurisdiction, must identify the other jurisdiction and the proceedings in which the other sentence was imposed, and must indicate whether the sentences are imposed concurrently or consecutively. If the term imposed is to be served consecutively to the term imposed by the other jurisdiction, the court must order that the California term be served commencing on the completion of the sentence imposed by the other jurisdiction.

Rule 4.452. Determinate sentence consecutive to prior determinate sentence

If a determinate sentence is imposed under section 1170.1(a) consecutive to one or more determinate sentences imposed previously in the same court or in other courts, the court in the current case must pronounce a single aggregate term, as defined in section 1170.1(a), stating the result of combining the previous and current sentences. In those situations:

- (1) The sentences on all determinately sentenced counts in all of the cases on which a sentence was or is being imposed must be combined as though they were all counts in the current case.
- (2) The judge in the current case must make a new determination of which count, in the combined cases, represents the principal term, as defined in section 1170.1(a). The principal term is the term with the greatest punishment imposed including conduct enhancements. If two terms of imprisonment have the same punishment, either term may be selected as the principal term.
- (3) Discretionary decisions of the judges in the previous cases may not be changed by the judge in the current case. Such decisions include the decision to impose one of the three authorized terms of imprisonment referred to in section 1170(b), making counts in prior cases concurrent with or consecutive to each other, or the decision that circumstances in mitigation or in the furtherance of justice justified striking the punishment for an enhancement. However, if a previously designated principal term becomes a subordinate term after the resentencing, the subordinate term will be limited to one-third the middle base term as provided in section 1170.1(a).

Rule 4.453. Commitments to nonpenal institutions

When a defendant is convicted of a crime for which sentence could be imposed under Penal Code section 1170 and the court orders that he or she be committed to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice under Welfare and Institutions Code section 1731.5, the order of commitment must specify the term of imprisonment to which the defendant would have been sentenced. The term is determined as provided by Penal Code sections 1170 and 1170.1 and these rules, as though a sentence of imprisonment were to be imposed.

Rule 4.472. Determination of presentence custody time credit

At the time of sentencing, the court must cause to be recorded on the judgment or commitment the total time in custody to be credited on the sentence under sections 2900.5, 2933.1(c), 2933.2(c) and 4019. On referral of the defendant to the probation officer for an investigation and report under section 1203(b) or 1203(g), or on setting a date for sentencing in the absence of a referral, the court must direct the sheriff, probation officer, or other appropriate person to report to the court and notify the defendant or defense counsel and prosecuting attorney within a reasonable time before the date set for sentencing as to the number of days that defendant has been in custody and for which he or she may be entitled to credit. Any challenges to the report must be heard at the time of sentencing.

Rule 4.480. Judge's statement under section 1203.01

A sentencing judge's statement of his or her views under section 1203.01 respecting a person sentenced to the Department of Corrections and Rehabilitation, Division of Adult Operations is required only in the event that no probation report is filed. Even though it is not required, however, a statement should be submitted by the judge in any case in which he or she believes that the correctional handling and the determination of term and parole should be influenced by information not contained in other court records.

The purpose of a section 1203.01 statement is to provide assistance to the Department of Corrections and Rehabilitation, Division of Adult Operations in its programming and institutional assignment and to the Board of Parole Hearings with reference to term fixing and parole release of persons sentenced indeterminately, and parole and postrelease community supervision waiver of persons sentenced determinately. It may amplify any reasons for the sentence that may bear on a possible suggestion by the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings that the sentence and commitment be recalled and the defendant be resentenced. To be of maximum assistance to these agencies, a judge's statements should contain individualized comments concerning the convicted offender, any special circumstances that led to a prison sentence rather than local incarceration, and any other significant information that might not readily be available in any of the accompanying official records and reports.

If a section 1203.01 statement is prepared, it should be submitted no later than two weeks after sentencing so that it may be included in the official Department of Corrections and Rehabilitation, Division of Adult Operations case summary that is prepared during the time the offender is being processed at the Reception-Guidance Center of the Department of Corrections and Rehabilitation, Division of Adult Operations.