

**PROBATION DEPARTMENT
ADULT MANUAL**

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Revised:	12/13/19

**Notes and
References**

PREPARATION OF THE INVESTIGATION REPORT

I. Purpose and Content

The purpose of the probation investigation is to make recommendations to the Court based on an evaluation of the defendant’s unlawful behavior, criminal history, impact on victim(s) (if any), and apparent amenability to treatment. Investigation interviews are dialogues between the Investigation Officer and the defendant in the course of which the Officer, in a systematic and professional manner, gathers the information necessary to accomplish such an evaluation. The most essential areas of information usually include factual personal data about the defendant, including family history, alcohol/controlled substance abuse, history of violence, and criminal record.

During investigation interviews, the Investigation Officer should be mindful that the information collected and presented in the Court report will be used by the Court in reaching a disposition, but also as:

- A. The foundation of supervision case management if probation is granted
- B. The basis of the initial inmate evaluation process if the defendant is committed to prison or Department of Juvenile Justice.
- C. A personal history and social study which may be used in psychiatric evaluations, by mental hospitals, and other institutions and agencies to which the defendant may be referred

The Adult Information Sheet (Pro 113-A) is the basic tool used by the Investigation Officer during the initial interview. It serves as a reminder of essential information to be obtained, and as a convenient means of recording the results of the interview and obtaining information for the Risk of Violence and Recidivism assessment. However, the Adult Information Sheet should not limit the amount or nature of the information sought. Investigation officers should be flexible, as excessive rigidity in following the work sheet outline may interfere with the interview. Completion of a questionnaire is not the goal of the interview; the goal is to obtain complete and thorough information. Subsequent interviews, when necessary, usually include further discussion of specific issues, additional questions/discussion based on new information obtained since the first interview,

Pro-113-A

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and, when possible, reconciliation of earlier conflicting statements or explanations. For meaningful and productive interviews, the Investigation Officer should ascertain that the defendant fully understands the status of the case, the purpose of the probation investigation, and the role of the Investigation Officer.

The Investigation Officer should review available information (criminal history, prior Probation records, District Attorney files, arrest reports, preliminary transcripts, etc.) before the initial interview to gain background information and a better understanding of the offense and issues regarding the defendant which should be discussed during the interview process.

The following format is to be used on Felony Pre-Sentence and Pre-Plea Reports. Misdemeanor Pre-Sentence and Pre-Plea Reports and Felony Post-Sentence Reports have a modified format as outlined in Section L. of this Chapter.

II. Face Sheet

- A. “Charged with” and “Enhancements Alleged” section shall reflect the count number, code section, verbal descriptions of the criminal charges and a verbal description of those enhancements alleged by the District Attorney on the Complaint or Information.
- B. “Convicted of” and “Enhancements Found True” section shall include the count number, code section, verbal descriptions of the criminal charges and a verbal description of convicted offense(s) and enhancements.
- C. “Settlement agreement” section will describe any agreements reached between the District Attorney and the Defense Counsel as noted on the Conditional Plea Agreement.
- D. “Section indicating how guilt” was determined is self-explanatory, date of plea or Jury verdict, if applicable, is included.
- E. “The Judge and Department of Court” section should have the full name of the judge.

Judicial Rule
4.411.5(a)(1)

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- F. “Bail, O.R. or Custody” section should include both a total number of days in custody, and a specification as to “from when to when” those days were served or are being served when documenting the days in custody in the case.
- G. “CII and FBI number” section, when there are no numbers, specify “None” and if they are not available, specify “Not available.”
- H. “Codefendant and Disposition” sections, name the codefendant(s), and indicate the sentence or pending status. Juvenile codefendant’s first name and last initial will be included.
- I. “Defense Attorney” and “Probation Officer” sections, the full names should be included.
- J. Use the most recent available information for defendant’s personal data.

III. The Offense

Under Section 1203(b)(1) of the Penal Code (PC), the Investigation Officer is required to investigate the circumstances surrounding the offense. This information enables the Court to gain a comprehensive understanding of the events directly related to the criminal act.

An investigation of the facts relating to the present offense must include the legal information regarding the offense, and the specific circumstances of the offense. Utmost accuracy is required.

Investigators should focus on the elements of the crime and the events surrounding it, including facts about the victim(s), if any, and any physical harm, financial damages or losses resulting from the crime. Additionally, victims are to be referred by their name, with the exception of confidential victims. These are to be referred to as Jane Doe/John Doe. In the cases involving a juvenile, first name and last initial will be used.

Sources of legal information vary on misdemeanor and felony cases; in general, however, the following sources are utilized:

1203(b)(1) PC

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- A. The Arrest/Offense Report (report of the investigating or arresting law enforcement agency) is a key document in the investigation. Among other things, it provides a description of the offense as observed by the arresting officer and/or as reported by the victim(s) and witness(es). It reports statements made by the defendant and other interested parties. It provides identifying information such as physical descriptions, birth dates, addresses and phone numbers. If questions arise regarding certain aspects of the arrest/offense report, the arresting or reporting officer should be contacted.

- B. The transcript of the Preliminary Hearing may contain a description of the offense as set forth in the testimony of the witnesses. It can provide a great deal of detailed information regarding the offense. These transcripts can be obtained from the District Attorney’s file.

- C. The victim(s) or their closest family members in cases involving children or a deceased victim should be interviewed to gain additional information about the offense. Section 1203(D) PC states that the Probation Officer “shall include in the report his or her recommendation of whether the Court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.” A victim letter should be sent **as soon** as the victims are identified. If they do not respond, contact should be attempted by telephone or through the District Attorney’s Victim/Witness Office. If restitution is warranted, the specific amount shall be determined and verified. Additionally, the Investigation Officer must provide the victim with a brochure prepared by the Judicial Council outlining the Victim Compensation Program. Victims must also be provided with Proposition 9/Marsy’s Law flyer. This can be done via mail or in person.

The District Attorney’s Victim/Witness Office should be contacted to determine if the victim has received the assistance of Restitution Fund (California Victim Compensation and Government Claims Board) or has applied for such assistance.

1203.1 PC
1203(b)(2)(D)(ii) PC

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- D. The defendant should be questioned regarding his or her version of the offense. On some occasions, the defendant’s attorney may have instructed the defendant not to discuss the offense with the Investigation Officer (this usually occurs in Pre-Plea Reports). This request must be honored and so noted in the report.

1203.7 PC

IV. Prior Record

Under Section 1203(b)(1) PC, the Investigation Officer is required to report the defendant’s prior record to the Court. An accurate and complete arrest record is of great importance in the investigation process, often disclosing significant behavior patterns. It is a major factor to be considered in the evaluation of the defendant and in the formulation of recommendations to the Court.

1203(b)(1) PC

Prior to the Investigation Officer’s receipt of the Court Referral Document and case file, a juvenile and adult Probation Department record check will have been completed. From this information, support staff will request the juvenile file, if one is available, as well as a California Law Enforcement Telecommunications System (CLETS) check. The CLETS check can provide the DMV Driver History, Wanted Persons Inquiry (NCIC check), registered weapons information, drug, arson and sex offender registrant information, FBI rap sheet, and Criminal History (CII) teletype rap sheet.

Because Automated Criminal History information is often incomplete and sometimes confusing due to abbreviated data and duplication of entries, it shall be reviewed with the defendant for his/her version and explanation of disposition. Where appropriate, the defendant’s explanation may be included with this section. All entries which show no disposition should have efforts made to determine a final disposition.

If the defendant does not have a prior criminal record, the source information must still be cited and followed by the statement: “These sources reveal that the defendant has no prior arrest record.” Notations reflecting FBI and CII clearances regarding job applications should not be listed.

If the defendant has a juvenile record which indicates adjudicated juvenile petitions, this information should be included. If the juvenile record has been sealed by the Court, it may not be included, even if admitted by the defendant.

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When information is taken from a juvenile file, make an entry in the Pro-127 “Release of Information” located in the case file, so upon a subsequent order to seal the juvenile record, one knows to check the adult record and file.

Additional background information may be in the District Attorney’s file. Additionally, the Investigation Officer may contact local and outside law enforcement agencies to obtain additional information concerning a particular arrest or any prior contact they may have had with the defendant, if this is deemed appropriate. If available, online court records may be accessed for additional court information or records may be requested telephonically.

- A. The Investigation Officer should carefully review the defendant’s arrest record, paying particular attention to the following:
 - 1. Any discrepancies between the arrest record and the information given by the defendant in explaining the arrests.
 - 2. Prior felony arrests and/or convictions.
 - 3. Whether the present offense is indicative of a behavior pattern or an isolated offense.
 - 4. Any correlation between the defendant’s arrest record and other aspects of the defendant’s personal history, such as his marital status, employment record or alcohol and/or substance abuse patterns.
 - 5. Disposition of each arrest, including information as to charge filed, conviction, or acquittal. If the defendant was convicted,
 - 6. Information should include the sentence and type of imprisonment, if any.

- B. All known convictions/adjudications should appear in the probation report in the following manner:

Prior Findings/Convictions (this includes both adult convictions and true adjudications of crimes committed as a juvenile). These should be listed in chronological order using the following format:

Pro-127

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JUVENILE

5/22/99 SBPD/ 148 PC, RESISTING ARREST; 243 PC, BATTERY ON A PEACE OFFICER
Adjudication: 2/15/77; 148 PC, misdemeanor
Court: SBJC #123456
Disposition: Declared 602 WIC ward, 3 days Juvenile Hall, Counseling Education Center

Violation: 3/6/77; drug use, failure to attend CEC
Disposition: 20 hours Community Service Work

ADULT

6/1/01 SBPD/459 PC, FIRST DEGREE BURGLARY
Conviction: 6/18/01; as charged, *fel.*
Court: SBSC #1234567
Disposition: 5 years probation, 365 days jail

Arrests which have similarity or significance to the instant offense should receive a brief statement of facts concerning that offense.

- C. Additional Arrest Information – This section under the Juvenile Record will include any referrals which were handled at the intake level, rejected by the District Attorney and petitions which were subsequently dismissed. This section under the Adult Record includes any confusing criminal history information, which, upon further investigation, reveals that it was substantiated but did not result in a conviction; arrest information in which dispositions could not be determined; and summaries of long histories of traffic offenses or other arrests which may be described as follows: “During the past 10 years, the defendant had 21 traffic violations for which he paid fines and/or served jail sentences of 30 days or less.”

Note that the following marijuana arrests and convictions pursuant to Section 11361.5 Health and Safety (H&S) must not be included in the report if the conviction occurred 2 years prior to the present offense. Subdivision (b) of this section shall be applicable to records of convictions and arrests not followed by conviction occurring prior to January 1, 1976, for any of the following offenses:

11361.5(b) H&S

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1. Any violation of Section 11357 H&S or a statutory predecessor thereof,
2. Unlawful possession of a device, contrivance, instrument or paraphernalia used for unlawfully smoking marijuana, in violation of Section 11364 H&S, as it existed prior to January 1, 1976, or a statutory predecessor thereof,
3. Unlawful visitation or presence in a room or place in which marijuana is being unlawfully smoked or used in violation of Section 11365 H&S, as it existed prior to January 1, 1976, or a statutory predecessor thereof,
4. Unlawfully using or being under the influence of marijuana, in violation of Section 11550 H&S, as it existed prior to January 1, 1976, or a statutory predecessor thereof.

Infractions may be included if they are relevant to the current investigation.

V. Defendant's Statement:

In some cases, the defendant's attorney may request to be present during the interview. The Investigation Officer shall accommodate any such requests. However, no other parties (other than a Probation Department employee acting as interpreter, or other professional interpreter) should be present during the interview.

A. Role of Investigations Officer:

1. The Investigation Officer should introduce him/herself to the defendant and explain his/her role and responsibility to present complete and factual information to the Court. It must also be clearly explained to the defendant that although he/she is not compelled to cooperate, complete refusal to give information to and discuss matters with the Investigation Officer must be reported to the Court and will, in most instances, hinder the chances of probation being recommended by the Investigation Officer or granted by the Court. However, the defendant should be advised

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that it is his/her prerogative to refuse probation and accept an alternate disposition by the Court.

2. The Investigation Officer is to be respectful and considerate, neither presenting him or herself as superior to the defendant, nor purposefully speaking in a fashion that prevents the defendant from understanding what is being discussed. He/she will maintain a professional attitude and control the interview. A non-authoritarian approach toward securing factual information and sampling attitudes and feelings will usually result in obtaining greater and more meaningful information. Investigation interviews require objectivity and personal feelings, favorable or unfavorable, that may be aroused by the defendant or his or her offense are not to be introduced into the situation. It should be made clear to the defendant that the issue of guilt or innocence rests with the Court, and that the Investigation Officer never sits as a Court of review.
3. Consideration should be given to the fact that defendants are often under stress during the interview. The Investigation Officer should attempt to distinguish between confusion and willful untruthfulness.
4. Questions should be properly worded and leading questions which suggest that the Investigation Officer wants a particular answer should be avoided. Tact should be used in obtaining correct information. The Investigation Officer should correlate and evaluate information throughout the interview.
5. The Investigation Officer will inform the defendant of his or her right to make a statement. It should be fully explained to the defendant the manner in which the statement will be used, and that it is an opportunity to present his/her story to the Court in his/her own words. The defendant's statement may discuss the following areas:
 - a. Parts of his/her personal history that may be significant in relation to the present situation.

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- b. The present offense and what he/she did and why, and the part played by companions, if any.
 - c. The extent to which the defendant admits guilt.
 - d. His/her attitude toward probation, and future plans regarding treatment, employment, residence, and restitution.
 - e. Any other information he/she desires to present to the Court
6. The defendant may make a statement orally or in writing. A written statement does not take the place of an adequate oral interview regarding the material covered in the written statement. The Investigation Officer shall not limit the length or content of the written statement. If possible, this statement should be attached to the report. If the defendant refuses to make an oral or written statement, indicate why.
7. In completing an investigation on a Pre-Plea Report, a defendant's attorney may instruct him/her to not discuss the specifics of the offense. The defendant's decision not to discuss the circumstances of the offense shall be respected. In such cases, the interview may cover a review of the defendant's personal history information, substance abuse, medical/psychological history and prior record.
- If the attorney has not advised the defendant whether or not to discuss the offense, the Investigations Officer shall inform that defendant that anything they say may be included in the report for the Court to consider.
8. Defendants who wish to give information "in confidence" should be told that all pertinent information must be submitted to the Court. It is possible that a defendant may make admissions to criminal conduct outside the scope of the current investigation. If this occurs, the Investigation Officer should pursue this information carefully, making sure to provide the defendant Miranda admonishments when appropriate. The information

1203.7 PC

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should then be reported to law enforcement in the appropriate jurisdiction

VI. Victim Information:

A Victim's Statement

In felony cases, the Investigation Officer may obtain a statement from the victim or victim's family concerning the offense and the disposition of the case. Advance planning for victim interviews should be a priority so as to allow as much flexibility to the victim's schedule as report filing deadlines will permit. In-person interviews are preferable, however, are not always feasible. The investigator should be particularly mindful of the type of the offense and be prepared to provide extra time for family members of deceased victims or those that have been significantly traumatized by the offense. Victims should be offered an opportunity to provide input in the form of a written statement as well as a verbally. In the report, indicate the date and means of the contact. The following items may be included in a victim statement:

- 1 The victim's version of what happened, including the situation immediately preceding the offense, the actual offense, and the events immediately following, to the best of his/her ability.
- 2 The victim's statement regarding the selection of the appropriate term of punishment including matters in aggravation or mitigation.
- 3 How the offense has impacted the victim's lifestyle, i.e., has required counseling; afraid to leave home; unable to work due to injury.
- 4 A description, as appropriate, of the victim's age, sex, physical stature, apparent infirmities, financial situation, physical environment, relationship to the defendant, and any other conditions or situations which describe the victim's vulnerability relating to the offense.

1203(h) PC

1170(b) PC

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In instances when the victim is not contacted, the Investigation Officer must explain the efforts made to locate and contact the victim. The District Attorney’s Victim/Witness Coordinator may be helpful in locating victims.

B. Restitution Information

It is the responsibility of the Investigation Officer to make every effort to determine the total amount of restitution and/or the amount of Restitution Fines owed by the defendant so that this amount may be ordered by the Court.

1. Statutory Requirements

- a. Restitution is defined as full or partial payment for the value of stolen or damaged property, medical expenses, mental health counseling expenses, wages or profits lost due to injury or for time spent as a witness or in assisting the police or prosecution or for the cost of emergency response to public agencies in DUI cases.

1202.4(f) (3) PC

1203.1(e) PC

Included under medical expenses are Sexual Assault Response Team Examinations, Child Abuse, Neglect Examinations and psychological counseling.

1203.1g PC
1203.1h PC

The losses covered by direct restitution to the victim must be directly related to the offense for which the defendant was convicted. The use of dismissed counts for the purpose of establishing restitution must be accompanied by a “Harvey Waiver” stipulating to such use. The value of stolen or damaged property shall be the replacement cost of like property or the actual cost of repairing the property when repair is possible. Restitution may not be claimed for future costs, i.e. future counseling bills but may be added when the costs have been incurred.

People v.
Harvey

- b. Restitution Fine is a form of penalty assessment paid to the Restitution Fund when a defendant has committed one or more felonies.

1202.4(a) (2) PC

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The Restitution fine is ordered in addition to any other penalty in an amount not less than \$200 or more than \$10,000 and is calculated as the product of \$200 multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

1202.4(b) PC

The Restitution Fine does not depend on the defendant's ability to pay and it should be ordered in all cases and may be waived only for compelling and extraordinary circumstances.

1202.4(c) PC

2. Victim Notification/Statement

- a. The victim of any crime, or the parents or guardian of the victim, if the victim is a minor, or the next of kin of the victim, if the victim has died, must be notified and has the right to attend all sentencing proceedings and make a statement to the Court and to be informed of pre-sentence and conduct credits for which the defendant is entitled.

1191.1 PC,
Pro-211A

In addition, the Investigation Officer must provide the victim with a brochure prepared by the Judicial Council outlining the Victim Compensation Program. Victims must also be provided with Proposition 9/Marsy's Law flyer. This can be done via mail or in person.

1191.2 PC,
Pro-9,
Pro-211A

3. Investigative Procedures

- a. When preparing a probation report, the Investigation Officer must follow all statutory requirements as outlined above, including identifying and contacting all victims in order to complete a detailed assessment of victim loss. This includes contact with insurance companies when they have been identified as primary victims.

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- b. It is important that this information be included in the probation report so that the Judge can set the amount of restitution. In some cases, an evidentiary hearing may be required if any of the parties contest the amount set by the Probation Officer.
- c. When the amount of restitution has been established, a Financial Order must be completed and forwarded to the Treasurer Tax Collector's Office pursuant to current account set-up procedures. The Probation Officer will notify the victim of the amount of restitution and the payment schedule via the victim notification letter.
- d. When more than one individual is involved in an offense requiring restitution, all participants are joint and severally liable for the full amount of restitution. Therefore, it is important to include the names of participants (including juveniles) on the Financial Order so that the Treasurer Tax Collector's Office will be aware of the situation.
- e. When a victim has received 13959 Government Code (GC) compensation through the Crime Victims' Compensation Fund administered by the District Attorney's Office, restitution payments should be made to the State Fund, not directly to the victim. The Victim Witness program or Restitution Recovery Specialist must be contacted to verify benefits paid.
- f. When an insurance company requests restitution as a victim in a criminal matter, it is important to consider the primary victim when setting up an account. The primary victim should receive their deductible losses prior to payments being directed to an insurance company. Also, very often insurance settlements include payment for areas not covered by restitution statutes and are more appropriately handled by civil litigation. Current case law precludes insurance companies from being considered victim under Section 13967 GC whenever probation is denied.

Pro-129,
Pro-129A

Pro-129,
Pro-129A

Peo. V.
Williams 207
Cal App 3d
1520

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- g. An assessment of the defendant’s ability to pay restitution, fines and fees must be completed and presented to the Court.

- h. In-custody defendants: All defendants in custody will have a CR-115/FL-150 mailed to them and be directed to return it to probation upon release from custody. Information gathered from the defendant in the investigator's interview will be included in the report for the court's consideration if ability to pay (ATP) is considered at sentencing.
Out of custody defendants: The Investigations DPO will mail a CR-115-FL150 with the interview appointment letter. During the interview, the DPO will review the financial documentation provided and have the defendant sign the ATP Advisement/Waiver indicating if the defendant is requesting an ATP hearing at sentencing or agrees to the determined payment amount.

The investigator will make a note in the transfer Event indicating that the CR-115 or FL-150 was provided, and indicate if the court held the ATP hearing at sentencing. If an ATP hearing was held at sentencing for an in-custody defendant, without any financial documentation, the assigned officer holding the case when the defendant submits the CR-115 or FL-150 will review it to determine if there is any new information presented at that time that would support the defendant having the ability to pay more than what was originally ordered at sentencing. If there is no new significant information the forms are to be retained in the file and no further action is necessary.

If an ATP hearing was not held at sentencing, the Supervision DPO will meet with the defendant to review the CR-115/FL-150, within 30 days from the defendant’s release from custody, and obtain the defendant’s signature on the ATP Advisement/Waiver (Pro-108). If the defendant does not waive his/her right to an ATP hearing, the Supervision DPO will request the defendant provide additional financial documentation, if necessary in order to

1203.1k PC

CR-115
FL-150
Pro-108
Pro-106-C

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calendar an ATP hearing. Once documents have been provided, the DPO will calendar an ATP hearing with the sentencing judge and file the ATP Court Memorandum (Pro 106) and CR-115/FL-150. The officer should note on the memo a statement to support the submitted recommendation. If the matter is calendared for a day where a CHO is present, the CHO will appear in court for the hearing. Otherwise, the assigned unit will be responsible to cover or arrange coverage.

- i. It shall be presumed the defendant does not have the ability to pay under any of the following circumstances:
 - 1. The defendant is homeless, lives in a shelter, or lives in a sober living/transitional facility.
 - 2. The defendant receives need-based assistance.
 - 3. The defendant is very low income as defined in Section 50105(a) of the Health and Safety Code and Section 8 of the United States Housing Act of 1937.

VII. Social History

The Social History section includes background social information regarding the defendant and/or his family, to the extent that it is necessary to do a complete investigation. The following areas should be discussed under the following subheadings:

A. Family history

Assess the defendant's relationship with family members and/or significant others. If the defendant is under the age of 18 and is living with a spouse, parent, or adult sibling, that person(s) must be contacted for information. For all other defendants, contact with spouse, parents and siblings should be initiated when deemed appropriate. The defendant's support systems are crucial in some instances and important in many others. Therefore, a description of the family composition or living arrangements and their level of stability should be presented.

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B. Marital history

In this section state what the defendant tells you and whether the information is verified.

C. Children

Here the Investigation Officer lists the names, ages, and whether the children, if any, reside with defendant.

D. Education

The Investigation Officer will include information provided by the defendant and whether the information has been verified.

E. Employment and financial status

This section should include a detailed description of the defendant's current employment status and title/position, previous employment history, account for breaks in employment, possession of skills affecting employment and current financial status. In this section, if applicable, the following areas should be included:

1. The capacity of the defendant to make restitution to the victim, for applicable offenses, either in a lump sum or over a period of time, including a 10% restitution surcharge. Discuss whether a financially able defendant has either offered to make restitution or has refused to do so.
2. The capacity of the defendant to pay a fine.
3. The financial ability of the defendant to pay for the cost of probation supervision and the probation investigation in accordance with the following procedures:
 - a. Section 1203.1b PC states that an adult defendant shall be ordered by the Court to reimburse the County for probation investigation.

1203.1 PC

1203.1b PC

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The current fee schedule is as follows:

Misdemeanor (short) - \$636.00
Misdemeanor (long) - \$847.00
Felony (full) - \$1,375.00
Felony (brief) – \$423.00

- b. All Pre-Plea and Pre-Sentence Investigation Reports, will include a recommendation to the Court as to the defendant’s ability to pay for the cost of probation supervision, if a grant of probation is being considered.
- c. The Investigation Officer conducting the Pre-Plea or Pre-Sentence investigation shall make an objective assessment of the defendant’s ability to pay pursuant to the guidelines established in Section 1203.1b PC. This assessment should be included in the Ability to Pay fine/restitution/Probation fees section and it should include one of the three following alternatives:
 - 1) The defendant presently has the ability to pay for the cost of probation supervision.
 - 2) The defendant does not at this time have the ability to pay for the cost of probation supervision, but may be able to pay within a six-month period and therefore should be reassessed at that time.
 - 3) The defendant is able bodied and could participate in community work service in lieu of certain fines.
- d. Cost of probation supervision fees, if ordered, are to be collected on the basis of a full month of probation supervision, even if supervised for only a portion of the month. When a probationer is in warrants status, or if courtesy supervision is in another jurisdiction, probation supervision fees may not be collected.

Fee schedule
approved
10/23/08

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- e. Failure to pay the Court-ordered fees for the cost of probation supervision is not enforceable as a violation of probation. Enforcement is possible only through a civil process and this will be handled by the Department’s Collections Manager via the Treasurer Tax Collector.

- F. **Military**

State what the defendant tells you and whether the information has been verified. Include whether defendant is a combat veteran as he/she may qualify for services pursuant to Section 1170.9 PC.

- G. **Medical/Psychological history**

Discuss physical or other handicaps, as well as mental health problems, and include psychological/ psychiatric reports, diagnosis, medications prescribed, and indicate if the defendant is undergoing treatment or if the Court has ordered an examination.
In order to provide the Court with information relevant to sentencing, current and past medical information is solicited from defendants. The Health Insurance Portability and Accountability Act (HIPAA) has raised questions regarding the legality of placing medical information in sentencing reports. Our Department Privacy Officer has been consulted and it has been determined that medical information self-disclosed by the defendant may be included in sentencing and violation reports. However, medical information provided by a physician or other treatment provider should NOT be quoted or attached to reports. Such information should be placed in a marked confidential envelope and paper clipped to the Court’s copy only. The fact that confidential medical information has been provided to the Court should be referenced in the report. The District Attorney and Defense Counsel are then on notice that medical information may have been considered in making an appropriate recommendation to the Court. It is the responsibility of counsel to request the Court release the information should they desire.

- H. Abuse of alcohol or controlled substances.

- I. Other relevant information which may include gang affiliation.

1170.9 PC

Judicial Council
Rule
4.411.5(a)(6)

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VIII. Collateral Information

This section is to include all other information and written statements pertinent to the case, as available. The Investigation Officer should utilize a letter, electronic mail, or telephone for the purpose of soliciting information from the following sources:

- A. District Attorney
- B. Defendant's counsel
- C. Arresting Officer
- D. Parole/Probation Officers' statements concerning defendant's conduct under supervision. (If the defendant is under 21 years of age and was on juvenile probation or parole, that officer must be contacted for a statement.) If the new offense constitutes a violation of the existing probation grant(s) and the Supervision Officer has filed a probation violation report with a recommendation that does not agree with that intended by the Investigation Officer, the matter needs to be reconciled through a review process so that a single recommendation is submitted by the Department. If the decision changes the previous recommendation submitted by the Supervision Officer, it should be address in either the Collateral or Evaluation Section of the investigative report.
- E. Correctional personnel who have observed the defendant's behavior during any period of pre-sentence incarceration.
- F. Interested person, including family members and others who have written letters on behalf of the defendant.

Judicial
Council
Rule
4.411.5(a)(7)

IX. Criminogenic Needs/Risk Assessment

- A. The Initial Screening Tool (IST) is utilized on new investigation cases. An IST score of 3 or below will not receive further assessment.
- B. Cases scoring above a 3 on the IST will be assessed by the Risk of Violence and Recidivism (ROVAR) tool.

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- C. Cases where the client has been charged or convicted of a new domestic violence offense, a new sex offense, or is a historical 290 PC registrant will all be assessed with a ROVAR regardless of the IST score.

X. Eligibility/Suitability

- A. Probation eligibility, Judicial Council Rule 4.413 for felony cases only, must be determined and stated as to whether the defendant is eligible, presumptively ineligible, or statutorily ineligible for a grant of probation. If the defendant is presumptively ineligible, apply criteria enumerated in 4.413(c).

Judicial
Council Rule
4.413

- B. Criteria Affecting Probation, Judicial Council Rule 4.414 for felony cases only. These are criteria that affect the decision to grant or deny probation and include facts relating to the crime and facts relating to the defendant.

Judicial
Council Rule
4.414

- C. Sentencing Considerations
(For felony cases only)

This subheading is to include a complete discussion of the possible sentencing alternatives upon which the Investigation Officer’s recommendation is based and which the Court must consider in pronouncing judgment. When more than one count is involved, the entire process may be repeated for each count, if appropriate. This is not necessary for numerous offenses which are the same and have similar circumstances. For offenses which are stipulated as misdemeanors, this section will not be included. Information will be presented as follows:

Offense – list the code section and followed by the sentencing range of the sentence, for example: 211 PC, Sentencing Range 2 – 3 – 5 years.

- D. Matters in Aggravation: List all circumstances considered in aggravation from Judicial Rule 4.421 and any other applicable statute – citing the relevance and applicability of each.

Judicial
Council Rule
4.421

- E. Matters in Mitigation: List all circumstances considered in mitigation from Judicial Rule 4.423 and any other applicable statute – citing the relevance and applicability of each.

Judicial
Council Rule
4.423

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Discuss the relative importance of cited circumstances in aggravation and mitigation and their relevance to the selected term. There is no precise formula that determines whether the mid, upper or lower term is chosen. Quantity of circumstances is a factor, but the significance of a specific circumstance in aggravation or mitigation is equally important. The same fact may not be used twice as an aggravating factor. A fact that was used as an enhancement may not be used as an aggravating factor. A fact which is an element of the offense may not be used as an aggravating factor.

Example:

“The Probation Officer has weighed the significance of the Matters in Aggravation and Mitigation, the salient factors about this case and the defendant. The _____ term is selected.”

Selected Term: 3 years

Enhancements alleged and found true as appropriate:

Indicate enhancement and term

Matters concerning consecutive sentences:

List all matters considered in possible consecutive sentencing from the list included in, Judicial Rule 4.425 and 4.426.

Make a determination as to concurrent or consecutive sentence, while also considering applicability of Section 654 PC, which prohibits multiple punishments for the same act or omission.

NOTE: Judicial Council Rule 4.408 permits the inclusion of any additional factor or criteria relevant to the case to be used for sentencing purposes.

Judicial Council
Rule 4.425,
Judicial Council
Rule 4.4.26

Judicial Council
Rule 4.424

Judicial Council
Rule 4.408

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XI. Summary Discussion (Evaluation)

In this section, the defendant and the offense(s) are to be examined, balanced and placed in perspective within the context of the requirements of law, the protection of the community and the treatment needs of the defendant. It is not necessary to restate the charges and/or convictions, to recap the offense or to restate opinions regarding sentencing recommendations under this subheading. Included in this subheading will be a detailed evaluation of:

- A. The defendant, his/her pattern of criminal conduct, his/her willingness and ability to comply with the terms of probation (if applicable), and the likelihood that he/she will commit future offenses. Indicate whether the defendant exhibits any remorse.
- B. The defendant's ability and willingness to make restitution to the victim of the crime.
- C. The overall desirability of granting or denying probation, in light of the criteria enumerated in Judicial Council Rule 4.414 and any identified special criteria applicable to the case.
- D. The availability and desirability of sentence choices other than prison or probation, and reasons for such.
- E. The existing resources and programs which are relevant to the defendant's situation and would facilitate this defendant's rehabilitation.
- F. If the Investigations Officer recommends probation, specify the terms and conditions of probation which will be required on an attached Order on Probation. In felony cases, the recommended sentencing choice should be indicated and further recommendations should include:
 - 1. The specific terms and conditions upon which probation should be granted, including any recommendations with respect to a jail term as a condition of probation.
 - 2. The length of time that the defendant should be supervised on probation.

Judicial Council
Rule 4.414

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XII. Recommendation

Recommendations should be logical and in compliance with the law. Every recommendation is a departmental recommendation and it should represent the best professional thought and insight. In no way should an agreement on a plea bargain influence or disrupt the Investigation Officer's independent investigation and recommendation to the Court.

A. Denial of Probation

1. Felony cases

- a. When a commitment to State Prison/Department of Juvenile Justice is recommended:

“It is recommended that probation be denied and that the defendant be committed to the California Department of Corrections and Rehabilitation/California Division of Juvenile Justice for a term of _____ months/years.”

- b. When a sentence to County Jail is recommended:

“It is recommended that probation be denied and that the defendant be sentenced to the County Jail for a period of ___ months/years.” (If sentenced in this manner, or if a fine is the sentence, the offense becomes a misdemeanor.)

2. Misdemeanor cases

- a) When sentenced to County Jail:

“It is recommended that the defendant be sentenced to the County Jail for a period of ___ days/months/year.”

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- 3. Felony cases
 - a. When a diagnostic study is requested from the Department of Corrections:
“It is recommended that the defendant be committed to the California Department of Corrections and Rehabilitation for a diagnostic study pursuant to Section 1203.03 PC.”
1203.03 PC
- B. California Rehabilitation Center Commitments
 - 1. Felony cases
 - a. When a CRC commitment is requested:
“It is recommended that criminal proceedings be suspended and the defendant be committed to the California Rehabilitation Center pursuant to Section 3051 Welfare and Institutions Code.”
3051 WIC
 - 2. Misdemeanor cases
 - a. Same as above, except that Section 3050 Welfare and Institutions Code (WIC) applies.
3050 WIC
- C. Pre-Plea Reports

Any of the above-mentioned recommendations may be used in a Pre-Plea Report in the following manner:

“Should the defendant be convicted of the criminal charges, it is recommended that...”

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XIII. Computation of Credit for Time Served (for felony offenses)

Detailed information on any time the defendant has spent in pre-sentence custody must be included in the report. Specifically, credits pursuant to Section 2900.5 PC and good and work behavior credits pursuant to Section 4019 PC must be computed and included. If for any reason the defendant is being denied credits for work or good behavior, a statement from the Sheriff or Correctional Officer must be included.

If the defendant will be receiving a state prison sentence or if such is recommended, and the defendant is subject to reduced credits for Section 2933.1 PC, Section 2933.2 PC, Section 2933.5 PC, or Section 3046 PC, the code section should be cited.

2933.1 PC,
2933.2 PC,
2933.5 PC,
3046 PC

XIV. Terms and Conditions of Probation

A. General

Under Section 1203.1 PC, the Court may order certain terms and conditions when granting probation. Probation terms and conditions are definable in two categories:

1203.1 PC

1. General conditions

These are conditions that are either specified or implied by statute. They are presumed to be relevant to all grants of probation. Such terms and conditions include custody in County Jail, fines, restitution, maintenance of residence, employment or training and compliance with statutory law. These terms and conditions, to a greater or lesser degree, are at the discretion of the Court.

2. Special conditions

All other terms and conditions are special conditions. In recommending special conditions of probation, the Investigation Officer must adhere to the relevance guidelines established by the California Supreme Court. To meet the relevance criteria as defined by this decision, a special condition of probation must be either:

Bushman,
IC, 3d 767,
1970

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- a. Reasonably related to the crime for which the defendant was convicted, or
 - b. Reasonably related to future criminality of the defendant. However, the future criminality which the special condition is designed to prevent must be reasonably related to the crime for which the defendant was convicted.
3. Length of Probation Grant

Felony probation recommendations will be for three (3) years, with the exception of the following criteria, which will be utilized in five (5) year grant recommendations:

- a. Any case requiring 290 PC Registration
- b. Any serious felony per 1192.7 PC or violent felony per 667.5(c) PC
- c. Any felony DUI or felony DUI with injury.
- d. Any case where the victim restitution is \$20,000 or more at the time of sentencing. In these instances, unless the case also meets one of the other four criteria, the order should allow for an early termination at three years if the restitution is paid in full.
- e. Felony DV cases that do not meet the above-noted serious/violent criteria will be reviewed using the COMPAS and ODARA risk scores to determine if a 3-year or 5-year recommendation is appropriate.

Other five-year recommendations can be made on a case-by-case basis with manager approval.

It should be noted that pursuant to 273a(c) PC, anyone who is granted probation after having been convicted of violation 273a PC is required to serve a minimum of 48 months on probation.

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B. The Order on Probation

1. Felony order

The Superior Court in Santa Barbara, Santa Maria, and Lompoc utilizes the Order on Probation CL-338 (Rev. 10/10) for traditional probation cases and the Pro-542 (Rev. 10/10) for probation grants pursuant to Section 1210.1 PC.

CL-338,
Pro-542

2. Misdemeanor order

The Superior Court of the Santa Barbara Judicial District utilizes the Summary Probation Order SC3600S (Rev. 06/09). The Superior Court of the Santa Maria Judicial District utilizes the Probation Order SCSM-61 (Rev. 10/05) and SCSM-6A (Rev. 3/09). The Superior Court of the Lompoc Judicial District utilizes the Probation Orders LOM-GEN (Rev 2/09), LOM-DUI (Rev 2/09), and LOM-DLIC (Rev. 2/09).

SC3600S,
SCSM-61,
SCSM-6A
LOM-GEN,
LOM-DUI,
LOM-DLIC

XV. Other Report Formats

A. Post Sentence Report

Pursuant to Section 1203c PC, whenever a person is committed to the California Department of Corrections and Rehabilitation (CDCR), if no probation report has been prepared, a Post Sentence Report must be submitted to accompany the defendant to the CDCR. This report should be brief and it must be completed in a short time frame.

1203c PC

The following sections should be included in the report:

1. Face Sheet
2. Offense
3. Prior Record

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B. Brief Pre-Sentence Report

1. Some Superior courts may allow a report in the brief format. The following offenses, or any attempts to commit these offenses, with no more than two (2) pled felony counts are recommended for the brief form format:
 - a. Any 11377/11350 H&S (not Prop. 36 eligible).
 - b. Any 11378/11379/11351/11352 H&S
 - c. Any 496 PC except those pled in the alternative 459 PC (Residential Burglary)
 - d. Any 484/666 PC
 - e. Commercial/auto 459 PC with two (2) victims or less
 - f. 23152(a) VC, felony
 - g. 10851 VC
 - h. 261.5 PC with three (3) year age difference or less and victim is 15 years of age or older
 - i. Vandalism with two (2) victims, or less
2. The following offenses will be excluded from a brief form format:
 - a. Offenses in which the defendant is presumptively ineligible for probation
 - b. An offense in which there are any enhancements that have been pled or proven
 - c. Serious or violent felony as defined in 667.5 PC and 1192.7 PC, strike offenses

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- d. Sex-related offense including 261.5 PC offenses with a four (4) year or more age difference or in which there are multiple victims
 - e. Any domestic violence offense
 - f. Stalking
 - g. Financial/restitution cases involving more than \$5,000 and/or with more than three (3) victims unless restitution has been paid in full prior to a report being requested. This includes offenses in which restitution or the victim is undetermined.
 - h. Child/Elder Abuse
 - i. Any offense involving the use of a firearm
 - j. Any defendant with a known significant criminal record without a sentencing report in the last three (3) years
 - k. Any out-of-state resident seeking/eligible for Interstate Compact
 - l. Any offense in which Officer safety is involved including but not limited to 69 PC, 243(c)(2)
 - m. Any hate crime
3. The following sections are included in the brief format report.
- a. Face Sheet (current format)
 - b. Offense (no more than 15 lines for each count)
 - c. Prior Record (current format)
 - d. Restitution information/Victim's Statement

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- e. Additional Information (as needed)
- f. Sentencing Considerations
- g. Recommendation

If during the course of the investigation the Investigation Officer discovers facts which require the standard format, the Investigation Officer will file a memorandum with the Court requesting a continuance and provide a copy to the District Attorney and Defense Counsel.

C. Dual Diagnosis Pre-Sentence Report

Some Superior courts may request a report on a Dual Diagnosis (DDX) case. The following sections are included.

- 1. Face Sheet
- 2. Offense
- 3. Defendant's Statement
- 4. Prior Record
- 5. Substance Abuse History
- 6. Mental Health History
- 7. Evaluation
- 8. Recommendation

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D. Long Superior Court Report (Standard Format)

Some Superior courts may request a report in the Long Format. The following sections should be included in that report.

1. Face Sheet
2. Offense
3. Prior Record
4. Defendant's Statement
5. Restitution Information/Victim's Statement
6. Social History
7. Collateral Information (as needed)
8. Evaluation – sentencing considerations are not required on misdemeanor cases
9. Summary Discussion
10. Recommendation

Empty box for Notes and References.