

**PROBATION DEPARTMENT  
ADULT MANUAL**

<b>Chapter No.</b> 3210	<b>Page 1</b>
<b>Issue Date:</b>	<b>08/31/84</b>
<b>Revised:</b>	<b>12/17/19</b>

**Notes and  
References**

**MODIFICATIONS, ANSWERS TO MOTIONS,  
SUPPLEMENTAL REPORTS AND DEMAND FOR  
SENTENCING**

I. Throughout the supervision process there may be changes in the situation of the probationer that necessitate a modification of the terms and conditions of probation. There are several methods by which the probationer or Deputy Probation Officer (DPO) may initiate requests for changes in the court order and there are various types of reports that are used in presenting them to the Court. These are described below.

A. Types of reports

1. Modifications

The authority for modifications is found in Sections 1203.2 and 1203.3 of the Penal Code (PC).

1203.2(b) PC  
1203.3 PC

Modification requests must be calendared if they are more restrictive to the probationer; otherwise they may be handled on an ex-parte basis.

a. Probationer may, through counsel or in Propria Persona (proper), petition the Court for a modification. The probationer may also request modification through the DPO. If the probationer's reasons for modification are within the categories listed below, the DPO may initiate modification procedures.

A modification may be recommended by the DPO or the probationer or his/her attorney when the following conditions exist:

i) Changes in the status of the case such that existing court orders and conditions of probation are no longer appropriate.

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- ii) Problems in meeting probation requirements not warranting violation and revocation.
    - iii) Clarification of existing orders.
  - b. Depending upon who originates a motion for a modification of probation, proper notice shall be given to all parties who may be concerned with the action. At least 10 days advance notice should be given.
  - c. The law provides that probation may be modified or terminated without the probationer's presence, providing that he/she agrees in writing to the specific terms of the modification or termination of probation and waives the right, in writing, to be present. The probationer must also be advised of the right to legal counsel and if he/she chooses to waive this right, must do so in writing. If he/she consults with counsel and waives the right to be present, the written agreement must also be signed by counsel.
  - d. At least 10 days prior to submitting the proposed ex-parte modification to the Court, the DPO will notify the District Attorney of the intended action. Any written comments, objections, etc. are to be attached to the report to the Court. If after 10 days from the submission of the notification no response is received, the DPO will proceed with the matter without written input from the District Attorney, but will include a copy of the request to the District Attorney.
- 2. Answers to motions
  - a. The probationer or his/her attorney, moving for a modification of probation, files the original of the motion with the Court and should provide the DPO with a copy. The attorney is responsible for calendaring the matter if he/she is the requesting party.

1203.2 PC

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|---|----------------------------------|
| <p>b. After a request has been received and an investigation has been made, the DPO files an answer to the motion with the Court in the form of a memorandum report or makes an oral response through the Court Hearing Officer (CHO).</p>  | <p>Pro-106</p>                   |
| <p>3. Supplemental reports</p>  |                                  |
| <p>a. The DPO will submit a supplemental report upon receiving a referral from the Court. This request is to supply additional information to the Court regarding the probationer and his/her situation. Supplemental reports usually follow a probation violation report. These reports can be in a written or oral format, depending on the request of the Court and complexity of the situation. If the DPO receives a request for a supplemental report and a probation violation report has not been filed, the DPO may file a probation violation report.</p> | <p>Pro-106<br/>1203.2 (b) PC</p> |
| <p>b. Generally, a request for a supplemental investigation and report following an arrest on a warrant is assigned to the last caseload, if the time since the warrant was issued is less than one year; if more than one year, the case is assigned to the appropriate court services unit.</p>   |                                  |
| <p>c. Information can also be provided to the Court by the CHO, the DPO him/herself, or by an amended probation violation report.</p>   |                                  |
| <p>4. Demand for Sentencing</p>   |                                  |
| <p>Pursuant to Section 1203.2a PC, if a probationer who was granted probation in this county is sentenced to State Prison in another state or county, or receives a commitment pursuant to 1170(h)(5) PC within the state, for another offense, this Court has the jurisdiction to impose sentence if no sentence was previously imposed for the offense he/she was granted probation.</p>  |                                  |

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- a. The DPO may, upon learning of the probationer's imprisonment, inform the Court of such imprisonment. However, within 30 days after being notified in writing by the probationer or his/her counsel, or the warden or duly authorized representative of the prison in which the probationer is confined, the DPO **must** inform the Court of such imprisonment. Failure to do so will result in the Probation Department and the Court losing jurisdiction over the case.
- b. Upon receiving a written request to be sentenced, the DPO shall within 21 calendar days file a Probation Memorandum and attach a copy of the request for sentencing. The DPO shall also include a Sentencing Order reflecting the sentence recommendation and include all appropriate custody credits.
- c. Upon receiving information of a probationer's sentencing and/or incarceration in another jurisdiction for a new law offense, the DPO shall inform the Court of the probationer's status within 21 calendar days of receipt of said information. If Probation has not received a demand for sentencing request from the probationer or his/her counsel, and if simply informing the Court of the probationer's imprisonment, the DPO shall file a Probation Memorandum apprising the Court of such imprisonment. The DPO shall then send a letter to the probationer informing him/her of his/her right to submit a Demand for Sentencing. If appropriate, the DPO may file a violation of probation.