

**PROBATION DEPARTMENT
ADULT MANUAL**

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Issue Date:	08/15/89
Revised:	12/17/18

**Notes and
References**

LEGAL FOUNDATION FOR INVESTIGATIVE REPORTS

I. Felony Cases

The legal basis for the Probation Investigation Report is contained in Section 1203 of the Penal Code and Judicial Rule 4.411.

In felony cases, the following Judicial Rule requirements must be followed:

- A. The Court must refer the case to the Probation Officer for a Presentence investigation report if the defendant is statutorily eligible for probation or a term of imprisonment in county jail under 1170(h) PC.
- B. If the defendant is not eligible for probation a report can be ordered to assist the Court with sentencing issues, including the determination of the proper amount of the restitution fine.
- C. The parties may stipulate to the waiver of the Probation Officer’s investigation and report in writing or in open Court, if entered in the minutes and with the consent of the Court. A waiver under this section does not affect the requirement under section 1203c PC, that a probation report be created when the Court commits a person to state prison.

In felony cases, the following statutory requirements must be met:

- A. “... if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to the probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.”
- B. “The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.”

Judicial Rule
4.411

1203(b)(1) PC

1203(b)(2)(A) PC

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- C. “If the person was convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer’s report shall include the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.”
- D. The probation officer shall also include in the report his or her recommendation of all of the following:
1. “The amount the defendant should be required to pay as a restitution fine pursuant to subdivision (b) of Section 1202.4.”
 2. “Whether the court shall require, as a condition of probation, restitution to the victim or to the Restitution Fund and the amount thereof.”
 3. “... taking into account any amount that the defendant is ordered to pay in fines, assessments, and restitution, shall make a determination of the ability of the defendant to pay all or a portion of the reasonable cost of any probation supervision or a conditional sentence, of conducting any preplea investigation and preparing any preplea report pursuant to Section 1203.7, of conducting any presentence investigation and preparing any presentence report made pursuant to Section 1203.” This also applies to jurisdictional transfers pursuant to 1203.9 PC or a request for Interstate Compact supervision pursuant to sections 11175 to 11179 PC, the reasonable cost of these services and of probation supervision, a conditional sentence, or mandatory supervision shall not exceed the amount determined to be the actual average cost thereof.
- E. “The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon the request of the defendant or prosecuting attorney, nine days, prior to the time fixed by the court for the hearing... The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court. ”

1203(b)(2)(C)
PC
Manual Sec
3113

1203(b)(2)(D)(i/ii)
PC

1202.4 PC

1203.1b PC

1203(b)(2)(E) PC

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| <p>F. "...If the court determines that there are circumstances in mitigation of the punishment prescribed by law or that the ends of justice would be served by granting probation to the person, it may place the person on probation. If probation is denied, the clerk of the court shall immediately send a copy of the report to the Department of Corrections and Rehabilitation at the prison or other institution to which the person is delivered."</p> | <p>1203(b)(3) PC</p> |
| <p>G. "The preparation of the report or the consideration of the report by the court may be waived only by a written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court, except that a waiver shall not be allowed unless the court consents thereto. However, if the defendant is ultimately sentenced and committed to the state prison, a probation report shall be completed pursuant to Section 1203c."</p> | <p>1203(b)(4) PC</p> |
| <p>H. "If a defendant is not represented by an attorney, the court shall order the probation officer who makes the probation report to discuss its contents with the defendant."</p> | <p>1203(c) PC</p> |
| <p>I. "If a defendant is convicted of a felony and a probation report is prepared pursuant to subdivision (b) or (g), the probation officer may obtain and include in the report a statement of the comments of the victim concerning the offense. The Court may direct the Probation Officer not to obtain a statement if the victim has in fact testified at any of the Court proceedings concerning the offense."</p> | <p>1203(h) PC</p> |
| <p>Pursuant to the "Victim's Bill of Rights Act of 2008: Marcy's Law, Section 28 (b) of Article I of the California Constitution , enacted on November 4, 2008, in order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to ... "provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant" and to "receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law."</p> | <p>"Marcy's Rights</p> |

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J. “Notwithstanding any other law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation, whether probation has been applied for or not, or granted and revoked, it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.”

1203c (a)(1)PC

II. Misdemeanor Cases

A. “If a person is convicted of a misdemeanor, the court may either refer the matter to the probation officer for an investigation and a report or summarily pronounce a conditional sentence...”

1203(d) PC

III. Content of the Probation Investigation

In addition to all state law requirements as to content of the probation investigation, the probation report should adhere to the requirements of Judicial Council Rule 4.411.5.

Judicial Rule
4.411.5