

**AB109 POSTRELEASE COMMUNITY SUPERVISION
FLASH INCARCERATION**

- AUTHORITY:** Section 3454 California Penal Code
- RESCINDS:** Procedure Manual Item 2-3-102, dated 10/26/18
- FORMS:** CDCR 1515 - CS Notice and Conditions of Postrelease Community Supervision (Attachment A)
PCS Notice of Flash Incarceration (NOFI) (Attachment B)
Flash Arrest Detainer (ICMS document) (Attachment C)
- PURPOSE:** To provide guidelines for the use of flash incarceration on offenders under Postrelease Community Supervision (PCS). This PMI only covers the guidelines for flash incarceration specific to PCS.

I. GENERAL INFORMATION

- A. Pursuant to Penal Code (PC) 3454, the Probation Department is responsible for individuals on Postrelease Community Supervision (PCS). Conditions of PCS release shall be reasonably related to the offender's criminal history. The Probation Department will utilize their risk-needs assessment instrument to determine the appropriate level of supervision, and the appropriate programs and services to target dynamic and criminogenic factors.
- B. When a PCS offender violates the terms and conditions of his/her release, the Deputy Probation Officer (DPO) will assess each offender's case individually and consider the following factors, in determining an appropriate sanction, response, or consequence.
1. Risk to public safety
 2. Criminal history
 3. Underlying offense
 4. Offender's attitude toward supervision
 5. Offender's participation in programs and services
 6. Offender's progress on supervision
- C. As defined in PC 3450(b)(8), DPOs will consider use of any and all community-based punishments. Community-based punishment means evidence-based correctional sanctions, and programming encompassing a range of custodial and non-custodial responses to criminal or non-compliant offender activity. Intermediate sanctions may be provided by local public safety entities directly, or through public or private correctional service providers and include, but are not limited to, the following:

1. Short-term 'flash' incarceration in jail for a period of no more than ten days.
2. Intensive community supervision.
3. Home detention with electronic monitoring or Global Positioning System (GPS) monitoring.
4. Mandatory community service.
5. Restorative justice programs, such as mandatory victim restitution and victim-offender reconciliation.
6. Working, training, or education in a furlough program, pursuant to PC 1208.
7. Work, in lieu of confinement, in a work release program, pursuant to PC 4024.2.
8. **Day Reporting Center. (DRC)**
9. Mandatory residential or non-residential substance abuse treatment programs.
10. Mandatory random drug testing.
11. Mother/infant care programs.
12. Community-based residential programs offering structure supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling, mental health treatment, or any combination of these and other interventions.

II. PROCEDURE

PC 3454(c) authorizes the use of flash incarceration for individuals on PCS. The length of the detention period can range between one and ten consecutive days. The statute states flash incarceration is intended to provide shorter, but if necessary, more frequent periods of detention for violations of an offender's Postrelease Supervision conditions and shall appropriately punish an offender, while preventing the disruption in a work or home establishment that typically arises from longer term revocations. **Flash incarceration is considered a sentence and can only be overturned in an appeals process which is explained in the Administrative Review section).**

- A. If a flash hold is warranted, the DPO will either:
 1. Arrest offender and transport to Orange County Jail (OCJ) to be booked, pursuant to PC 3454(c), documenting the number of days the offender will be held in custody.
 2. If the offender is already in custody at OCJ on a new law violation or warrant, the DPO will place a teletype hold, pursuant to PC 3454(c), documenting the number of days the offender will be held in custody.

3. If the offender is already in custody on a new law violation in another county/state, the DPO will complete a warrant petition.

B. Documents to be prepared:

1. An Arrest Detainer will be completed by the DPO and forwarded to the Supervising Probation Officer (SPO) for review. The detainer will be completed within 24 hours. The SPO will review the detainer within 24 hours of receiving the detainer.
2. The PCS Notice of Flash Incarceration (NOFI) will be completed by the assigned DPO. If the DPO is the arresting officer, the NOFI will be completed and served to the offender at the time of the arrest. If the offender is transported to OCJ by an assisting agency, the DPO will forward the NOFI to a reentry DPO or designee for service within 24 hours.
 - a. The NOFI will advise the offender of what the violations are and provide the number of days for the flash incarceration. The DPO providing the NOFI to the offender will request that the offender read the NOFI and complete it. If the offender has a qualifying disability that requires accommodations or assistance, the DPO will note what assistance was provided to achieve effective communication. In addition, the use of a language interpreter will also be documented
 - b. If the offender refuses to review the NOFI and/or complete it, the DPO will note so on the NOFI. **The DPO will continue with the flash incarceration process.**
 - c. If the offender contests the violation and requests an administrative review, the DPO shall promptly provide a copy of the NOFI to the appropriate review authority.

C. Administrative Review:

1. The AB109 Division Director (DD) or, if not available, the AB109 Assistant Division Director (ADD) or designee, shall serve as the Administrative Review Officer (ARO). Upon receipt of a request for an administrative review, the ARO shall review the **NOFI** within 24 hours of receipt. The ARO shall review the offender statement on the NOFI, ICMS notes, and relevant police reports or contact the offender in custody when appropriate, to discuss relevant issues. Any decision regarding the review shall be noted on the Notice of Flash Incarceration. A copy will be provided to the assigned DPO unit clerk and the offender.
2. If the ARO determines that the violation of PCS is unfounded or the intermediate sanction of flash incarceration is unwarranted, the offender will be immediately released from custody. In addition, any custody time served during the flash incarceration period in question will not count against discharges, pursuant to 3456(a)(3).

REFERENCES:

Procedure:	2-3-005	Continuum of Graduated Sanctions and Interventions For Violations of Adult General, Mandatory and PCS Supervision
Policies:	A-1	Policy Procedure and the Law
	A-2	Upholding Departmental Philosophy and Principles

Attachments

D. Haner

APPROVED BY:

STATE OF CALIFORNIA
NOTICE AND CONDITIONS OF POSTRELEASE COMMUNITY SUPERVISION
CDCR 1515-CS (Rev. 08/12)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

1. YOU ARE SCHEDULED TO BE RELEASED TO POSTRELEASE COMMUNITY SUPERVISION EFFECTIVE _____, 20____. Pursuant to Penal Code section 3450, et. seq., you are subject to community supervision provided by a county agency for a period not exceeding three years. Release to county supervision is subject to the following notice and conditions. Should you violate conditions of this release or violate the law, you can be incarcerated in county jail regardless of whether or not new charges are filed.

YOU ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS OF POSTRELEASE COMMUNITY SUPERVISION (PRCS):

- You shall waive extradition to the State of California from any state or territory of the United States or from the District of Columbia. You shall not contest any effort to return you to the state of California.
- If the supervising agency determines, based upon psychiatric reasons, that you pose a danger to yourself or others, the court may, if necessary, order your placement in a community treatment facility for psychiatric treatment.
- You, your residence, and any other property under your control may be searched without a warrant day or night by an agent of the supervising county, any peace officer, or law enforcement officer. You shall be subject to arrest with or without a warrant by a peace officer employed by the county agency, at the direction of the supervising county agency, or by any peace officer when there is probable cause to believe there is a violation of the terms and conditions of county supervision.
- If another jurisdiction has lodged a detainer against you, you may be released to the custody of that jurisdiction. Should you be released from their custody prior to the expiration of your period of supervision, or should the detainer not be exercised, you are to immediately contact the Probation Department in your county of last legal residence for supervision instructions.
- You shall participate in rehabilitation programming as recommended by the supervising county agency.

The procedure for obtaining a Certificate of Rehabilitation is documented in PC 4852.01 - 4852.21.

CONDITIONS OF POSTRELEASE COMMUNITY SUPERVISION

2. **SPECIAL CONDITIONS:** *Special conditions of release must:* a) relate to the crime for which you were convicted; b) relate to criminal conduct; and, c) prohibit conduct which may be related to future criminality. **You are subject to the following special conditions:**

REASON(S) FOR THE IMPOSITION OF SPECIAL CONDITIONS OF POSTRELEASE COMMUNITY SUPERVISION:

I acknowledge my special conditions of PRCS:	STAFF NAME (PRINT OR TYPE)	STAFF SIGNATURE	DATE SIGNED
INMATE INITIALS: _____ <input type="checkbox"/> Refused to initial			

3. **RELEASE, REPORTING, RESIDENCE:** Unless other arrangements are approved in writing, you shall report to your supervising county agency within two working days following your release. The name, address, and telephone number of the county agency responsible for your Postrelease Community Supervision shall be documented on the CDCR Form 611, Release Program Study, which is incorporated by reference as part of this agreement. You will inform your supervising county agency of your residence, employment, education, or training. Any change or anticipated changes in residence, employment, education, or training shall be reported to your supervising county agency in advance. You shall inform the supervising county agency of new employment within 3 business days of the change in employment status.

4. **SUPERVISING COUNTY AGENCY INSTRUCTIONS AND TRAVEL:** You shall comply with all instruction of your supervising county agency representative. You shall not travel more than 50 miles from your residence without prior written approval of your supervising county. You shall not be absent from your county of residence for a period of more than 48 hours and not leave the State of California without prior written approval of your supervising county agency.

5. **CRIMINAL CONDUCT:** You shall not engage in conduct prohibited by law (state, federal, county or municipal). You shall immediately inform your supervising county agency if you are arrested for a felony or misdemeanor crime, or citation. Conduct prohibited by law may result in a revocation by a court for time to be served in county jail even though a criminal conviction does not occur.

6. **WEAPONS:** You shall not own, use, have access to, or have under your control: (a) any type of firearm or instrument or device which a reasonable person would believe to be capable of being used as a firearm or any ammunition which could be used in a firearm; (b) any weapon defined in state or federal statutes, or any instrument or device which a reasonable person would believe to be capable of being used as a weapon; (c) any knife with a blade longer than two inches except kitchen knives which must be kept only in the kitchen of the persons residence and knives related to your employment which may be used and carried only in connection with your employment, approved in a document issued by the supervising county, which requires that you possess the document of approval at all times and make it available for inspection; or (d) a crossbow of any kind. You shall not knowingly own or possess any dangerous or deadly weapons, nor remain in a building or vehicle where you know any person has such a weapon, nor remain in the presence of any person you know is unlawfully armed.

7. **FLASH INCARCERATION:** You may be subject to the imposition of a period of "flash incarceration" in a county jail of not more than 10 consecutive days for any violation of your Postrelease Community Supervision conditions.

8. **THIS DOCUMENT SERVES AS YOUR NOTICE AND CONDITIONS OF POSTRELEASE COMMUNITY SUPERVISION.** Per PC Section 3067(a), any inmate who is eligible for release on parole pursuant to this chapter or postrelease community supervision pursuant to Title 2.05 (commencing with section 3450) of Part 3 shall be given notice that he or she is subject to terms and conditions of his or her release from prison.

I have read, or have had read to me, and understand these conditions as they apply to me. Inmate refused to sign conditions

CDCR NUMBER	INMATE NAME (PRINT OR TYPE)	INMATE SIGNATURE	DATE SIGNED

THIS SECTION TO BE COMPLETED BY CDCR STAFF ONLY:

DOES THE INMATE HAVE A QUALIFYING DISABILITY REQUIRING EFFECTIVE COMMUNICATION? YES NO

IF YES, CITE THE SOURCE DOCUMENT AND / OR OBSERVATIONS: _____

WHAT TYPE OF ACCOMMODATION OR ASSISTANCE WAS PROVIDED TO ACHIEVE EFFECTIVE COMMUNICATION TO THE BEST OF THE INMATE'S ABILITY?: _____

STAFF NAME (PRINT OR TYPE)	STAFF SIGNATURE	DATE SIGNED

DISTRIBUTION: ORIGINAL TO CENTRAL FILE; COPY TO PROBATION; COPY TO INMATE

OCPD Flash Review Number:

[Empty box for OCPD Flash Review Number]

Notice of Flash Incarceration (Intermediate Sanction)

Postrelease Community Supervision Violation Sanction
(Penal Code § 3454 & § 3063.1)

Authorized by the Orange County Probation Department

Check One: 3063.1 PC Eligible 3063.1 PC No Longer Eligible 3063.1 Ineligible - *Serious/Violent Felony Conviction*

Name: _____ A # _____ DOB: _____

R # _____ Booking #: _____

Initial NVDP Violation(s) 2nd NVDP Violation(s) Non-NVDP Applicable Violation(s)

Date(s) of PCS Violation(s): _____

Alleged Violation(s):

of Days Imposed: _____ Start Date of Incarceration: _____ **Flash Release Date:** _____

Authorizing Probation Officer: _____ Badge #: _____

Response by offender subject to Flash Incarceration (check one):

I have no comment.
 I am not contesting.
 I contest the alleged PCS violation and **request an administrative review**, based on the following facts: _____

Signature of Offender Date

I notified offender subject to Flash Incarceration, that he/she may contest the alleged violation and request an Administrative Review.

Signature of DPO Serving Notice Date

Administrative Review (if requested): The Orange County Probation Department has considered the administrative review and determines as follows: _____

No modification of Flash Incarceration.
 Flash Incarceration modified as follows: _____

Administrative Review Officer Print Name Date

ORANGE COUNTY PROBATION DEPARTMENT POSTRELEASE COMMUNITY SUPERVISION			
IN THE MATTER OF			
[]		Date of Birth:	[]
AKA: []			
ARREST DETAINER		Probation No.	#Error
PURSUANT TO SECTION 3454(c) PENAL CODE		CDCR No.	[]
		Court No.	[]
SSN:	[]	Gender:	[]
Hair:	[]	Eyes:	[]
POB:	[]	OLN#:	[]
FBI:	[]	Cl#:	[]
Ethnicity:		[]	
Weight:		[]	
Height:		[]	
OCN#:		[]	
PCS - 12 MONTH MANDATORY DISCHARGE DATE:		[]	PCS CONTROLLING DISCHARGE DATE:
[]			

SECTION 3063.1 PENAL CODE

- ELIGIBLE
 INELIGIBLE
 NO LONGER ELIGIBLE - Exhausted Non-Custodial Sanctions

ARREST INFORMATION

ARREST DATE: [] Time of Arrest: [] # DAY(S) FLASH INCARCERATION Sentence End Date: []
 ARRESTING AGENCY: [] [] BOOKING # []
 Arrest Type: [] Request By Probation Citation Arrest By Probation

REASONS FOR DETERMINATION THAT OTHER INTERMEDIATE SANCTIONS ARE INAPPROPRIATE RESPONSES TO THE ALLEGED VIOLATIONS (Check all that apply):

- The violation(s) have persisted despite prior attempts at intermediate and/or graduated responses and sanctions.
 The violation(s) would likely not be mitigated through lesser intermediate and/or graduated responses and sanctions.
 The violation(s) occurred as a result of a significant new law violation.
 The violation(s) pose a risk to public safety.
 One or more of the current offense(s) or violations are **NOT** considered Non Violent Drug Possession (NVDP)
 Other: []

DECLARATION: Petitioner alleges that the supervised person has violated the following terms and conditions of community supervision:

Narrative: []

DPO Location: []

STEVEN J. SENTMAN
CHIEF PROBATION OFFICER

By: [] On behalf of
Deputy Probation Officer []

[]
Supervising Probation Officer