

**AB109 POSTRELEASE COMMUNITY SUPERVISION  
WARRANTS OF ARREST**

**AUTHORITY:** Sections 667.5, 1170.12, 1192.7, 1203.2, 2962, 3000, 3000.08, 3003, 3450-3465, and 3060.7 California Penal Code Administrative Directive, **People vs. Johnson (California Appellate Court, First District, Filed 12/16/18)**

**RESCINDS:** Procedure Manual Item 2-3-103, dated **5/16/18**

**FORMS:** Petition for Warrant of Arrest Community Supervision F057-10003.1(AF)  
PCS Revocation Report (ICMS)  
PCS Warrant Recall Memo (ICMS)  
**AB109 Field Operations Advisory, (Attachment A)**  
**Tolling of Time**

**PURPOSE:** To define and outline the procedure for requesting and processing warrants of arrest for offenders placed under AB109 Postrelease Community Supervision (PCS).

**I. GENERAL INFORMATION**

**A. Warrants issued by the Court**

1. On its own motion, the Court may issue a Bench Warrant when an offender fails to appear for a hearing after being ordered to appear by the Court or directed to appear by the Deputy Probation Officer (DPO).
2. If an offender fails to appear for a stayed jail commitment, the Sheriff's Department notifies the Court. Subsequently, the Court will issue a warrant of arrest for the offender.
3. The Sheriff's Department and its Tactical Apprehension Team (TAT) which currently includes a **DPO** are the primary servicing agents of Court issued warrants. Local law enforcement also serve Court issued warrants.
4. Case related information may be shared and obtained from the Central Warrant Repository 714-834-6472.

**B. Warrants requested by the probation officer**

1. Pursuant to Sections 3455(a) and 1203.2 PC, the **DPO** has the authority to arrest an offender as well as the legal standing to request a warrant for arrest from the Court.
2. The primary reason for requesting a warrant is a determination that after a diligent effort to locate the offender, it is believed the offender has absconded supervision and his/her whereabouts are unknown.

3. A warrant may also be requested for an offender residing out of County without permission and who fails to comply with the terms and conditions of supervision.
4. A warrant may also serve as a “hold” for an offender who has violated the terms of his/her supervision and is in custody in another jurisdiction outside of Orange County. Upon the release by the other jurisdiction, the offender will be returned to Orange County by the appropriate agency.

C. When a PCS warrant is issued

1. An arrest warrant is not issued when the Judge makes the “order.” It is issued when the Court Clerk has processed the appropriate documentation and the warrant has been entered into the Orange County Central Warrant Repository’s database. Confirmation of the warrant can be verified by calling 714-834-6472.
2. The Court has the option to “issue” a warrant suspending supervision. The time tolls per Section 3456 PC **when supervision is revoked due to an “abscond” violation only. The Court may also** formally “revoke” supervision per Section 3455 PC and issue a warrant to serve as a hold.
3. **California Appellate Court, First District, (People vs Johnson 12/16/18) provides the authority to extend the Controlling Discharge Date (CDD) beyond three years if the basis for the violation is for an “abscond” only. The restore date for the period of tolling for an abscond violation will be the date PCS is reinstated by the Court. If no violation is found by the Court then there is no tolling. (See Attachment A – PCS Tolling of Time).**

II. PROCEDURE

- A. Warrant for offender who did not report for supervision after release from state prison
  1. Confirm PCS supervision status and our authority through California Department of Corrections and Rehabilitation (CDCR) documentation (CDCR 611, CDCR 1515 form, CDCR Post Release Packet).
  2. Contact CDCR (PRCS Liaison), obtain confirmation via telephone call or e-mail that the offender was released from state prison to Orange County under PCS supervision. Reminder: prisons release offenders to all 58 counties. It is common for plans to change prior to the offender’s release. The offender may have been released to another county or jurisdiction and we were not notified of that change. Document the confirmation in the Integrated Case Management System (ICMS) via an Electronic Contact Reporting (ECR) entry.
  3. If it is confirmed that the offender was released from prison to Orange County, the next step is to conduct due diligence as noted above and attempt to locate the offender. A reasonable effort will be made to confirm whereabouts via a home-call, telephonic contact, reception logs, and/or Monthly Report Forms. Document **all** attempts to locate **in ICMS**.

4. The DPO needs to make sure to reference CDCR 1515 Form to document alleged violation of conditions since the offender has not been indoctrinated to the terms and conditions after his or her release.
5. Once the DPO confirms offender has absconded supervision and their whereabouts are unknown, the assigned DPO will complete a Petition for Warrant of Arrest.
  - a. Document offender identifiers.
  - b. Confirm release from prison onto PCS supervision. **Verify the date of release by reviewing the CDCR Postrelease packet. Review any change of status reports that may reflect release dates.**
  - c. Allege additional technical violation(s) of supervision as appropriate.
6. Submit document(s) to unit **Supervising Probation Officer (SPO)** for review.
7. Final approved petition includes a “wet” signature by **the** DPO which is scanned or faxed to the SPO. The SPO forwards wet signed petition electronically to unit clerk. The unit clerk processes and submits to the RPO Unit (Central Superior Court C-60). **The** DPO will retain original in A-file.
8. For all warrants:
  - a. When submitting a PCS Warrant Petition to the Court, if the offender has no R# the Court No. section on petition should be left blank (the Court will assign R#). If the offender has been previously issued an R# by the Court, then reference that R# in Court No. section of the petition.
  - b. Indicate if the original conviction(s)/ charge(s) are a felony or misdemeanor.
  - c. The warrant petition needs to be signed by the assigned DPO; it cannot be signed by another DPO on their behalf.

**B. Immigration and Customs Enforcement (ICE) Deportations**

1. Confirm PCS supervision status and our authority through CDCR documentation (CDCR 611, CDCR 1515 form, CDCR **Postrelease Packet**).
2. Contact CDCR (PRCS Liaison), obtain confirmation via telephone call, e-mail, or Warden’s Check-Out Packet that the offender was released from state prison to the custody of Immigration and Customs Enforcement (ICE).
3. Verify offender’s Alien # and confirm the offender was deported by ICE and returned to their country of origin. Further, confirm the offender has failed to contact the Probation Department either directly or indirectly through

mail, telephone, electronic message, or third party, including attorney of record of their current residence.

4. Offenders may be deported immediately upon their release from prison, and others are held in federal custody pending further deportation proceedings. They may also be given a federal prison commitment for illegal re-entry into the U.S. Offenders are also known to report to Probation after release from ICE custody (whether deported and have returned to the U.S., or are released pending further proceedings.) The assigned **DPO** must monitor the offender's status until we can confirm the offender has been deported and his or her whereabouts are unknown.
5. Once **the** DPO confirms deportation, the assigned DPO will **transfer the case to the FM (Field Monitored) caseload. Warrants will not be submitted on individuals who have been deported.**

C. Warrant for an offender that has reported for supervision and subsequently absconded supervision

1. Confirm PCS supervision status and our authority through CDCR documentation (CDCR 611, CDCR 1515 form, CDCR **Postrelease** Packet) as well as confirmation of Mandatory Discharge Date (**MDD**) and Controlling Discharge Date (**CDD**).
2. Perform due diligence as noted above and attempt to locate the offender. An effort will be made to confirm whereabouts via a home-call and/or telephonic contact at last known residence. Further, verify offender's failure to report via reception logs and/or Monthly Report Forms. Document all attempts to locate in ICMS.
3. In addition to failing to report as directed and absconding supervision, include any other technical violations such as positive drug tests or failure to enroll and attend treatment or programming.
4. Submit document(s) to unit SPO for review/**approval**.
5. Unit clerk will process and submit to RPO Unit (Central Superior Court C-**60**) and retain copy in ICMS and draft in A-file.

D. Offender arrested for a new law violation and in custody in another jurisdiction - CA or another state (i.e. whereabouts are known)

1. Confirm PCS supervision status and our authority through CDCR documentation (CDCR 611, CDCR 1515 form, CDCR **Postrelease** Packet) as well as confirmation of **MDD** and **CDD**
2. Confirm custody status including current location, law violation, and arresting agency.
3. In this instance, we know the offender committed a new law violation and is in custody. Since, the offender's whereabouts are known a warrant may be requested to serve as a "hold". By doing so, we are requesting the Court "revoke" supervision. In addition, this will require a formal hearing once the

warrant is served and the offender is returned to Orange County. Once the Court “revokes” supervision, only the Court can reinstate supervision.

4. Submit document(s) to unit SPO for review/**approval**.
5. Unit Clerk will process and submit to RPO Unit and retain copy in ICMS and draft in A-file.

E. Served PCS warrants

1. When a warrant is served and the offender is booked into the Orange County Jail, the assigned officer will be notified via DEPCON and/or OCSD Inmate Records will notify the assigned officer or PCS Warrant DPO.
2. As noted above, the assigned DPO will either initiate a FLASH incarceration per Section 3454(c) PC or remand the offender to Court for a formal revocation hearing per Section 3455 PC. The decision for either is based on criminal history, response to supervision, needs of the offender and overall risk to the community.

FLASH Section 3454(c) PC

If FLASH is imposed, time no longer tolls and the supervision clock resumes on the sentence end date of the FLASH. A formal recalculation will be completed noting the tolled time and ICMS updated (Note: the FLASH sentence is effective at the time the warrant was served). Further, the assigned DPO will notify the Court via a “Warrant Recall Memo” informing the Court the warrant was served, FLASH has been implemented as an intermediate sanction, and request the warrant be recalled. **The MDD will be recalculated; however, the CDD will not due to the warrant being recalled.**

REVOCAION Section 3455 PC

If a “revocation” is requested, then the assigned DPO will submit a formal Revocation Report for the Court. Once the matter is resolved, a formal recalculation **of the MDD/CDD** will be completed and ICMS updated based upon the order(s) of the Court which include revoking and reinstating supervision.

F. Warrant issued and closing a case

1. Once a warrant has been issued by the Court, **and at least 30 days have elapsed since the issuance of the warrant, the handling DPO will close the case and transfer it to the AB109 Warrant DPO.**
2. Prior to transferring the case, the assigned DPO will complete a termination (from field supervision/bench warrant issued) assessment chrono.
3. The AB109 Warrant DPO is responsible for monitoring and responding to warrants and inquiries in addition to other duties.
4. **Once the warrant has been served, the AB 109 Warrant DPO will be**

**responsible for determining FLASH or completing any formal revocation report for the Court.**

**G. Reinstating warrant cases to supervision**

1. Once a warrant has been served and appropriate sanction imposed either FLASH by the DPO or reinstatement by the Court, the assigned DPO will gather all relevant documentation including copies of "holds," AJS, release date and Court orders. Further, the assigned DPO will perform both a **MDD** and **CDD** recalculation and coordinate with the unit IPT and update ICMS records.
2. If the case was formally closed, the AB109 Warrant DPO will perform step # 1 above and return the case to the appropriate unit/ DPO who will complete a re-activation assessment chrono consistent with current procedure.
3. If the case was never closed, the assigned DPO will perform step # 1 above and resume supervision as appropriate.

**H. Expedited Warrants**

1. **A warrant request may need to be expedited because an offender has absconded supervision and represents a significant threat to the community.**
2. **Approval must be obtained from the Assistant Division Director (ADD) or Division Director (DD) who will contact the ADD or DD of Adult Court Services (ACS) to advise of a warrant expedite.**
3. **When the warrant is approved to be expedited the SPO will coordinate efforts with the SPO of ACS.**

**REFERENCES:**

Procedures:	2-3-016	Warrants of Arrest for Adults
	2-3-101	<b>AB109</b> Postrelease Community Supervision ( <b>PCS</b> ) Intake Process
	2-3-102	<b>AB109</b> Postrelease Community Supervision Flash Incarceration
	2-3-104	<b>AB109</b> Postrelease Community Supervision Controlling and Mandatory Discharge Dates and Recalculations
Policies:	A-1	Policy, Procedure and the Law
	A-2	Upholding Departmental Philosophy and Principles
	B-2	Inter and Intra Agency Confidentiality
	C-6	Case Assignments

Mark Nye

**APPROVED BY:**



# Orange County Probation Department

## AB109 FIELD OPERATIONS ADVISORY

### PCS – Tolling of Time

There has been a recent ruling in the California Appellate Court (People vs. Johnson, 12-6-18) that changes the way we toll our PCS cases. The new ruling indicates that the tolling provision of 1203.02(a) does not authorize the automatic extension of PCS. The purpose of the tolling provision is to preserve jurisdiction until a formal violation hearing can be held, not to extend terms and conditions of supervision.

We now only have the authority to extend the Controlling Discharge Date (CDD) beyond three years if the basis for the violation is that the person absconded, in which case, the time during which the person has absconded "shall not be credited toward any period" (PC 3456(b), see also, PC 3455) of PCS. We will not toll time on the CDD for non-abscond violations and when no violation is found by the Court. When tolling or re-tolling an abscond violation case that was found in violation and reinstated upon completion of custody time, we will use the date PCS was reinstated by the Court for the purposes of tolling time.

**New Tolling Abscond Violation only**

CDD: Time tolls when supervision revoked due to an abscond violation only.	The restore date for the period of tolling for an abscond violation will be the date PCS is reinstated by the Court.	Non Abscond Violation – no tolling No violation found by the Court – no tolling
MDD: One year clock reset for abscond and non-abscond violations	The 1-year MDD will reset on the date PCS is reinstated by the Court for both abscond and non-abscond violations.	No violation found by court or petition dismissed = no reset
Flash Incarceration	CDD: No Tolling.	MDD: 1-year reset will be date of release.

Please be advised that if there are active PCS cases that have been extended beyond the original 3-year CDD, that case will need to be recalculated. This is retroactive to the beginning of the grant on all active PCS supervision cases and warrants. Attached you will find a list from research of active PCS cases that have been supervised beyond the 3 year CDD. These cases will need to be re-calculated immediately so please review the attached list.

We have set aside a training class to address this new case law, how to handle cases moving forward and to answer any questions you may have. Training has been scheduled for Tuesday, July 9, 2019 at GAO Classroom #3 and there will be three sessions held – 8am, 9:30am and 11am. It is mandatory that all AB109 and Interstate Compact DPO's, SPO's and Professional Staff attend one of the training sessions.

**Effective immediately, ensure that prior to issuing a custodial sanction, the case is reviewed under the new tolling guidelines to ensure jurisdiction.**

Please feel free to contact Stacey McCoy or Steve Sandoval with any questions or any need for assistance with tolling.

Updated 7/2/19