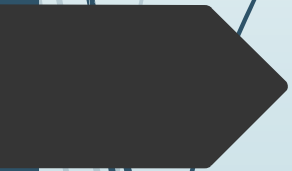


San Diego County Probation

Adult Reports



Elements of an Adult Report

Mandated Content for Adult Reports

- ▶ PC1203.10/Rule 4.411.5/PC656.2
 - ▶ Face sheet with personal identifying information, case number, conviction/date, custody status, plea agreement, codefendant status
 - ▶ Facts of offense, victim's statement/loss, defendant's statement, criminal record
 - ▶ Adjustment on Probation
 - ▶ Defendant's social history including character/temperament
 - ▶ Collateral Information
 - ▶ Static-99R (for Sex Offenders)/ODARA (for DV)
 - ▶ Probation Eligibility/Suitability
 - ▶ Sentencing - Mitigants/Aggravants, PC654, Concurrent/Consecutive
 - ▶ Discussion
 - ▶ Custody credits



Who is our Audience?

- Sentencing Court

- Judge
- District Attorney
- Defense Attorney

- Classification

- County Jail/State Prison
- Probation/MSO Supervision/PRO/Parole Supervision

- Other

- Victim (Marsy's Law)
- Psych & PC1203.03 Evaluations

Timeline for Report

► PC1191

- PH&S must be set within 20 “judicial days” of the acceptance of the guilty plea/guilty verdict
- Time waiver/Good cause

► PC1203d & PC1203(b)(1)(E)

- “Due in Court” date = 5 days prior to PH&S
- “Due to Supervisor” date (**your deadline**)
 - See Case Opening Sheet A2165
 - Five days prior to the “Due in Court” date (usually)

Plea Agreement

- Plea Agreement vs Jury Verdict
- “NOLT”
- “STC”
- “Stipulated (Stip)”
- “Indicated”
- Enter the Change of Plea Agreement verbatim and enclose in “quotation marks”
- Injury Priors/Allegations found true in Jury trials

Related Court Data

Includes information concerning the following:

- ▶ Waivers (Harvey, Blakely, Cruz, Arbuckle)
- ▶ Dismissed Counts
- ▶ Stricken Allegations/Enhancements
- ▶ Other Pending Cases (i.e. PH&S/SAR, etc.)
- ▶ Discrepancies
- ▶ Very little/none will be here if Jury Trial

The Offense

- Sources of Information
 - LE Reports
 - Labs/Autopsy Reports
 - Preliminary Hearing Transcript
- Clear and accurate picture of the offense(s)
- Label **ALL** counts
- Identify the victim
- Chronological as much as possible
- Include facts that may be used to aggravate/mitigate
- *Who, What, When, Where, How and Why?*



The Offense – cont'd

- Explain the defendant's role
- Statements
 - Differentiate between spontaneous statements and ones made after admonishment
- Defendant's mental and physical state at the time the offense occurred, if unusual
- Booking Status



Victims

- ▶ Contact victims of all listed counts
 - ▶ Letter sent and telephone call
- ▶ Victim Compensation Program (VCP)
 - ▶ Violent crimes, sex crimes, DUI w/ Injury
- ▶ Purpose
 - ▶ Restitution, statement, attendance



Defendant's Statement

- Sources of information:
 - Date, location and type of interview (VTC, In person, etc.)
 - Note assistance of interpreter or presence of attorney
- Feelings about the victim & instant offense
- Circumstances of the offense
 - Remorse
- Willingness to comply with probation (if granted)
- Review general conditions of probation
- *Behavioral* description of defendant's manner/cooperation
 - Keep everything factual (no opinions)

Criminal History

- Sources of Information
 - Federal and State RAP Sheets (FBI/CII Reports)
 - Local Records (SDLaw and DA Screens)
 - Juvenile/Adult Probation Records
 - Other agencies (Reports, phone calls, online etc.)
- See P&P Chapter 4 for types of arrest entries permitted and not permitted in PSI
 - PC1203.4 Expungements
- Additional Information section

Criminal History – cont'd

12/15/11

SDPD

CT1: PC211,
Robbery
CT2: VC10851(a),
Vehicle Theft
CT 3: PC496d,
Rec Stolen Vehicle

SCD001002

01/03/12: PG-F Ct 1, Dism Bal
01/30/12: 3 Yrs Formal Prob, 180
Days Jail, Fine;
10/09/12: Prob Rev/Reinst/Mod,
270 Days Jail
03/18/13: Prob Rev/Reinst/Mod,
365 Days Jail;
07/19/13: Prob Rev, 2 Years
State Prison;
02/05/14: Paroled;
01/02/15: Parole Viol, Finish Trm;
Prison Prior
STRIKE PRIOR

A loss prevention officer confronted the defend ant after he left Macys with \$200 wor th of unpaid merchandise. Following their struggle, the defendant fled with the merchandise and was cont acted inside a stolen vehicle nearby. (Police report)

09/08/16

ECPD

CT 1: PC459/460(a)
Res Burg, 1st Deg
CT 2: PC459,
Burglary 2nd Deg
CT2: PC530.5(a)
Use ID of Another

SCE001003

10/09/16: PG-F Ct 1, Admit
PC460(a), Admit Prison and
Strike Prior, Dism Bal;
11/08/16: 5 Years State Prison

The defendant broke into his father's residence and stole his briefcase, containing his checkbook and identification cards. He then attempted to cash one of the checks at Wells Fargo. (Police report)

Adjustment on Community Supervision

- Current/past status on community supervision
- If on parole or supervised in another jurisdiction, seek information on their compliance
- For local probation/MSO/PRCS compliance, utilize prior probation reports, contact notes, and case review summaries found in the file

**This section may be deleted if defendant has not been supervised.*

Collateral Info. & Assessments

- ▶ Clearly identify source of information
- ▶ Collateral section
 - ▶ Collaborative Courts/Program (BHC, Re-Entry, & BHSU screening)
 - ▶ STAR Program
 - ▶ Work Furlough/RRC
 - ▶ Psych Evals
 - ▶ Contact with attorney(s)
 - ▶ Especially if it was a trial

**This section may be deleted if it is not needed.*

- ▶ Assessments section
 - ▶ COMPAS, ODARA, Static-99R (All affect supervision level)



Sentencing Data & Determinate Sentencing

- ▶ What is the difference between determinate sentencing and indeterminate sentencing?
- ▶ A determinate sentence has a base term/set term
- ▶ An indeterminate term has NO base/set term (i.e. Life with/without parole)

Determinate Sentencing – cont'd

- ▶ Sentencing Authorities
 - ▶ PC1170 provides the general outlines and requirements for determinate sentencing (where the term of imprisonment is fixed)
 - ▶ i.e. 16 months, 2 years, or 3 years (most felonies)
- ▶ The prison term may be modified by other statutes depending on the circumstances of a particular case (i.e. “STRIKE” offenses, PC664 attempt)



Sentencing Data – Circumstances in Mitigation and Aggravation

- ▶ Circumstances of Mitigation (Rule 4.423) and Aggravation (Rule 4.421)
 - ▶ Indicate as to each count
- ▶ Do **NOT** use if the fact is an element of the crime/enhancement they were convicted of
- ▶ Dual use is prohibited (same fact used twice)
- ▶ Justify if necessary

Circumstances in Mitigation and Aggravation – cont'd

- ▶ Both Rules have (a) AND (b) parts
 - ▶ **(a)** details facts related to the **crime**
 - ▶ **(b)** details facts related to the **defendant**
 - ▶ Rule 4.408 is an additional factor which does not fit within any of the other specific rules

*Also in P&P Chapter 9 & Macro in Word



Prison Term Analysis

- ▶ List the prison term triad/“triad of terms”
- ▶ Justify choice of term using the Circumstances in Mitigation and Aggravation
- ▶ If more than one count, justify each count separately
- ▶ Address enhancements/priors (general, specific, and priors)

Prison Term Analysis Example

06/11/19	SDPD	CT 1: VC2800.2(a), Evading an Officer with Reckless Driving CT 2: VC10851(a), Vehicle Theft CT 3: PC496d, Rec Stolen Vehicle CT 4: PC148(a)(1), Resisting Arrest CT 5: PC496(a), Rec Stolen Property	<u>SCD654321</u> 07/19/19: PG-F CT1-3, PG-M CT4-5; 01/06/20: PH&S Instant Offense
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- ▶ As to Counts 1-3, the sentencing options are 16 months, 2 years, or 3 years. (As the factors of aggravation and mitigation appear nearly balanced, the middle term is recommended)
- ▶ As to Counts 4-5, they are misdemeanors punishable by up to one year in county jail.

PC654 Example

PC654 bars the imposition of multiple punishments for the same act or omission

- ▶ Consider: Separate victims
 - ▶ CT 5: PC496(a)
- ▶ Same acts in CT 2: VC10851 (a) and CT 3: PC496d
 - ▶ Stay either per PC654
- ▶ All other counts stem from different operative facts – thus PC654 does not apply to them

Concurrent v. Consecutive

- Rule 4.425
- Principal Count: The Count with the greatest term of imprisonment
 - If more than one Count has the same term, you can pick whichever as Principal
- Subordinate Count: All other counts
 - Calculated at 1/3 the middle term
- Presumed concurrent, unless specific rules cited to support consecutive sentencing
- Only one criterion is needed, if it is strong enough

**Be aware that there are some cases in which the law mandates consecutive sentencing.*

PC1170(h)(5) Eligibility

- ▶ First determine eligibility
 - ▶ Ineligible for PC1170(h)(5) if:
 - ▶ The current conviction or enhancement is an excluded crime (Check the penal code!)
 - ▶ Instant offense is violent per PC667.5(c) or serious per PC1192.7(c) or PC290 (sex offender)
 - ▶ Any prior conviction(s) that are violent per PC667.5(c) or serious per PC1192.7(c) or PC290
 - ▶ If eligible
 - ▶ PC1170(h)(5)(A) serve full local prison term with no mandatory supervision, if justified under Rule 4.415(b)
 - ▶ PC1170(h)(5)(B) is a split sentence

CAUTION: Eligibility for PC1170(h)(5) housing in Local Prison has NOTHING to do with probation eligibility.



Probation Eligibility

- ▶ Three types of eligibility
 - ▶ Eligible for probation
 - ▶ Presumptively ineligible
 - ▶ PC1203(e)
 - ▶ Crime/Enhancements
 - ▶ Absolutely ineligible
 - ▶ Crime/Enhancements
 - ▶ Admitted priors (Strikes)

Probation Eligibility – cont'd

- ▶ Can we attempt to overcome ineligibility?
 - ▶ Presumptive ineligibility - YES
 - ▶ Absolute ineligibility - NO
- ▶ Rule 4.413(c) – Review to overcome presumptively ineligibility when probation is limited
- ▶ This rule has two parts:
 - ▶ Rule 4.413(c)(1) - Facts relating to basis for limitation on probation
 - ▶ Rule 4.413(c)(2) - Facts limiting the defendant's culpability

Probation Eligibility – Unusual case

Rule 4.413(c)(1): (Facts relating to basis for limitation on probation) A fact or circumstance indicating that the basis for the statutory limitation on probation, although technically present, is not fully applicable to the case, including:

- A. The fact or circumstance giving rise to the limitation on probation is, in this case, substantially less serious than the circumstance typically present in other cases involving the same probation limitation, and the defendant has no recent record of committing similar crimes or crimes of violence; **and**
- B. The current offense is less serious than the prior felony conviction that is the cause of the limitation on probation, and the defendant has been free from incarceration and serious violation of the law for a substantial period of time before the current offense.

Probation Eligibility – Unusual case Cont'd

Rule 4.413(c)(2): (Facts limiting the defendant's culpability)
A fact or circumstance not amounting to a defense, but reducing the defendant's culpability for the offense, including:

- A. The defendant participated in the crime under circumstances of great provocation, coercion, or duress not amounting to a defense, and the defendant has no recent record of committing crimes of violence;
- B. The crime was committed because of a mental condition not amounting to a defense, and there is a high likelihood that the defendant would respond favorable to mental health care and treatment that would be required as a condition of probation; **and**
- C. The defendant is youthful or aged and has no significant record of prior criminal offenses.

Probation Eligibility - cont'd

- ▶ After eligibility we discuss suitability
- ▶ Circumstances for Grant/Denial
 - ▶ Dual use of facts is OK
 - ▶ Elements of crime OK
 - ▶ Use all that may be applicable
- ▶ Rule 4.414 Circumstances Supporting or Denying a grant of Probation.
 - a) Facts relating to the crime
 - b) Facts relating to the defendant

**This is a macro in PCMS*

Probation Eligibility - cont'd

Rule 4.410. General objectives in sentencing

(a) General objectives of sentencing include:

(1) Protecting society;

(2) Punishing the defendant;

(3) Encouraging the defendant to lead a law-abiding life in the future and deterring him or her from future offenses;

(4) Deterring others from criminal conduct by demonstrating its consequences;

(5) Preventing the defendant from committing new crimes by isolating him or her for the period of incarceration;

(6) Securing restitution for the victims of crime; and

(7) Achieving uniformity in sentencing.

(8) Increasing public safety by reducing recidivism through community-based corrections programs and evidenced-based practices



Discussion

- ▶ Analysis, *not summary*, of the factors that lead logically to the recommendation.
- ▶ Include your impressions and opinions about the relative importance of facts.
- ▶ Be concise, but persuasive.
- ▶ Make a recommendation and justify probation/mandatory supervision conditions
- ▶ Be cognizant of the plea, though we are not bound by it



Types of Recommendations

- ▶ Probation to the Court
- ▶ Formal Probation
- ▶ State Prison
- ▶ Local Prison PC1170(h)(5)(A)
- ▶ Local Prison PC1170(h)(5)(B)
- ▶ PC1203.03 Diagnostic
- ▶ Forensic Evaluation
- ▶ Continuance
- ▶ Termination (usually only for SAR cases)
- ▶ Etc.

Probation Recommendation

- ▶ Remember some offenses require special conditions when probation is granted
 - ▶ DUI: 5 years probation, DUI classes, fine
 - ▶ Child Abuse: 4 years probation, 52-week child abuse class, fine
 - ▶ Domestic Violence: 52-week Batterer's program, fine
 - ▶ Sex cases
 - ▶ Treatment, GPS, Jessica's Law
 - ▶ Registration requirements
 - ▶ Sex (PC290), Arson(PC457.1), Narcotics (HS11590), and Gang (PC186.30)
 - ▶ Some offenses/enhancements have minimum custodial sanctions

Recommendation – cont'd

- ▶ What is generally included in a probation recommendation?
 - ▶ Custody of the Sheriff (for up to 365 days) or
 - ▶ Custody in Work Furlough/RRC
 - ▶ Certain offenses are ineligible, no active warrants/holds, on Formal Prob for RRC
 - ▶ PSP/Volunteer Work
 - ▶ Treatment Programs/Counseling
 - ▶ Substance abuse
 - ▶ Mental health
 - ▶ Anger management/Parenting
 - ▶ SCRAM (Not a custody alternative)

Custody Credits

- Most cases will be 2 for 2 credits / PC4019 (AB109)
- If sentencing to state prison:

OFFENSE TYPE	All dates Prior to 01/25/2010 (Pre-SB18)	1/25/10 – 9/27/10 (SB18)	9/28/10 – 9/30/11 (SB 76)	After 10/01/11 (AB 109/117)
Murder	0 PC2933.2	0 PC2933.2	0 PC2933.2	0 PC2933.2
Specified felonies w/ 2 prior specified felonies	0 PC2933.5(a)	0 PC2933.5(a)	0 PC2933.5(a)	0 PC2933.5(a)
I/O = Violent Felonies [PC667.5(c)]	15% PC2933.1	15% PC2933.1	15% PC2933.1	15% PC2933.1
I/O = Serious Felony [PC1192.7(c)]	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC2933(e)(3)	2 for 2 credits PC4019
I/O = 290 offenses	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC2933(e)(3)	2 for 2 credits PC4019
<u>Prior</u> Violent Felony	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC2933(e)(3)	2 for 2 credits PC4019
<u>Prior</u> Serious Felony	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC2933(e)(3)	2 for 2 credits PC4019
<u>Prior</u> 290 offense	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC2933(e)(3)	2 for 2 credits PC4019
Any other Felony	2 for 4 credits PC4019	2 for 2 credits PC4019(b)(1)/(c)(1)	Day for day credit PC2933(e)(1)	2 for 2 credits PC4019
Sentencing pursuant to PC1170(h)(5)(A) or (B)	2 for 4 credits PC4019	2 for 2 credits PC4019(b)(1)/(c)(1)	Day for day credit PC2933(e)(1)	2 for 2 credits PC4019

Custody Credits

- If placed on probation, or sentenced to county jail:

OFFENSE TYPE	All dates Prior to 01/25/2010 (Pre-SB18)	1/25/10 – 9/27/10 (SB18)	9/28/10 – 9/30/11 (SB 76)	After 10/01/11 (AB 109/117)
Violent or Serious fel. or crime requires 290 reg.	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC4019	2 for 2 credits PC4019
Any felony or misd. w/ prior violent/serious/290 offense	2 for 4 credits PC4019	2 for 4 credits PC4019(b)(2)/(c)(2)	2 for 4 credits PC4019	2 for 2 credits PC4019
Any other felonies	2 for 4 credits PC4019	2 for 2 credits PC4019(b)(1)/(c)(1)	2 for 4 credits PC4019	2 for 2 credits PC4019
All other misdemeanors	2 for 4 credits PC4019	2 for 2 credits PC4019(b)(1)/(c)(1)	2 for 4 credits PC4019	2 for 2 credits PC4019

Custody Credits - Common Issues

- RTP: People v. Palazuelos (in custody credit macro)
- Patton: People v. Waterman (in custody credit macro)
- Escapes: People v. Shabazz
- Deny PC4019 credits
- Consecutive: PC2900.5
- In re: Mallard
- In re: Ramos
- In re: Rojas
- In re: Joyner

The screenshot shows a software window titled "Custody Data" with a menu bar (File, Case1) and a toolbar. The main area contains a table with the following columns: Date In, Date Out, Place, Credits, and Actual Days. The "Place" column has "CJ" entered. The "Credits" column has a dropdown menu open, showing a list of credit codes: AB109 2:2 (selected), SB76 2:4, SB76 1:1, SB18 2:2, SB18 2:4, PC4019 2:4, and PC2933.1 .15. To the right of the table are buttons for "Add", "Edit", and "Del". At the bottom right, there are labels for "Credit" and "Total".

- Include credits when booked out warrant out of county



Other Information

► No Bail Warrants

- The only context in which we make a bail recommendation is when requesting a warrant, we recommend “no bail.”
- Other counties may have a pre-trial services division which provides pretrial assessments impacting bail. However, we do not.