
THIRD READING

Bill No: AB 1950
Author: Kamlager (D), et al.
Amended: 6/10/20 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 7/31/20
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Moorlach, Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 48-22, 6/15/20 - See last page for vote

SUBJECT: Probation: length of terms

SOURCE: Author

DIGEST: This bill limits the term of probation to no longer than two years for a felony conviction and one year for a misdemeanor conviction, except as specified.

ANALYSIS:

Existing law:

- 1) Provides that no person shall be confined to county jail on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to realignment or a conviction of more than one offense when consecutive sentences have been imposed, for a period in excess of one year. (Pen. Code, § 19.2.)
- 2) Defines “probation” as “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.” (Pen. Code, § 1203, subd. (a).)

- 3) Defines “conditional sentence” as “the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer.” (Pen. Code, § 1203, subd. (a).)
- 4) Authorizes a court to have the power to refer cases to the probation department, demand probation reports and to do and require all things necessary to carry out the purposes of the law authorizing the imposition of probation in misdemeanor cases. (Pen. Code, § 1203a.)
- 5) Authorizes a court, in misdemeanor cases, to suspend the imposition or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced. (Pen. Code, § 1203a.)
- 6) Provides that the court may grant probation for a period of time not exceeding the maximum possible term of the sentence, except as specified, and upon those terms and conditions as it shall determine. (Pen. Code, § 1203.1, subd. (a).)
- 7) Provides that the court, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case. (Pen. Code, § 1203.1, subd. (a).)
- 8) Provides that where the maximum possible term of the sentence is five years or less, then the period of probation may not exceed five years. (Pen. Code, § 1203.1, subd. (a).)
- 9) Provides that the court may in connection with imposing probation, do the following acts:
 - a) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case;
 - b) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither;

- c) The court shall provide for restitution in proper cases. Provides that the restitution order is fully enforceable as a civil judgment forthwith and as otherwise specified; and,
 - d) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation. (Pen. Code, § 1203.1, subd. (a)(1)-(4).)
- 10) Requires the court to consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. (Pen. Code, § 1203.1, subd. (b).)
- 11) Provides that, except as specified, 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 a 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. (Pen. Code, § 1203, subd. (b)(1).)
- 12) Provides that unless the court finds that, in the interests of justice, it is not appropriate in a particular case, the court, when imposing a sentence on a realigned felony, shall suspend execution of a concluding portion of the term for a period selected at the court's discretion. (Pen. Code, § 1170, subd. (h)(5)(A).)
- 13) Provides that the portion of a defendant's sentenced term that is suspended is known as mandatory supervision, and unless otherwise ordered by the court, mandatory supervision begins upon release from physical custody or an alternative custody program whichever is later. Requires that during the period of mandatory supervision, the defendant be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. (Pen. Code, § 1170, subd. (h)(5)(B).)
- 14) Provides that the following are the primary considerations in granting probation: the safety of the public, which is a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant. (Pen. Code, § 1202.7.)

This bill:

- 1) Limits the probation term to one year for misdemeanor offenses. Does not apply to any offense that includes a specific probation term in statute.
- 2) Limits the probation term to two years for a felony offenses.
- 3) Provides that the two-year probation limit does not apply to offenses defined by law as violent felonies, or to an offense that includes a specific probation term within its provisions. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the sentence and under conditions as it shall determine.
- 4) Provides that the two-year probation limit does not apply to a felony conviction for grand theft from an employer, embezzlement, or theft by false pretenses, if the total value of property taken exceeds \$25,000. Provides that for these offenses, the court, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding three years, and upon those terms and conditions as it shall determine.

Background

Probation Generally

Probation is the suspension of a custodial sentence and a conditional release of a defendant into the community. Probation can be “formal” or “informal.” Formal probation is under the direction and supervision of a probation officer. Under informal probation, a defendant is not supervised by a probation officer but instead reports to the court. In general, the level of probation supervision will be linked to the level of risk the probationer presents to the community.

Probation can include a sentence in county jail before the conditional release to the community. Defendants convicted of misdemeanors, and most felonies, are eligible for probation based on the discretion of the court. When considering the imposition of probation, the court must evaluate the safety of the public, the nature of the offense the interests of justice, the loss to the victim, and the needs of the defendant. (Pen. Code, § 1202.7.)

Currently, the court may impose a term of probation for up to five years, or no longer than the prison term that can be imposed if the maximum prison term

exceeds five years, when a defendant is convicted of a felony. (Pen. Code, § 1203.1.) In misdemeanor cases, the court may impose a term of probation for up to three years, or no longer than the maximum term of imprisonment if more than three years. (Pen. Code, § 1203a.)

The court has broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) A valid condition must be reasonably related to the offense and aimed at deterring such misconduct in the future. (*Id.* at p. 1121.)

Probation Supervision

Probation officers provide supervision of defendants on formal probation which is intended to facilitate rehabilitation and ensure defendant accountability. Due to limited resources and a growing population under supervision, probation departments have been forced to prioritize the allocation of supervision services.

This bill generally limits the probation term to one year for misdemeanor offenses and two years for felony offenses. This bill does not apply to offenses with a specified probation term in statute. This bill additionally excludes specified violent felonies and specified theft-related offenses in which the value of the stolen property exceeds \$25,000.

Proponents of reducing the length of probation terms argue that probation supervision is most beneficial in the early part of a probation term. In addition, advocates argue that increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected. The proponents of probation reform further contend that reducing the length of probation terms would enable probation officers to more effectively manage their caseloads by focusing resources on those most at risk of reoffending.

Opponents of this bill assert that a case-by-case approach is needed rather than an across the board decrease in the length of probation terms. Additionally, some argue that this bill is unnecessary given that the courts currently enjoy some discretion with respect to the length of the probation period it may order as well as the authority to terminate probation early.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/12/20)

#cut 50

ACLU of California
All of Us or None
Alliance for Boys and Men of Color
Alliance of Californians for Community Empowerment
Asian Americans Advancing Justice - California
Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment
Asian Prisoner Support Committee
Aypal
California Attorneys for Criminal Justice
California Catholic Conference
California Immigrant Policy Center
California Nurses Association
California Public Defenders Association
Californians for Safety and Justice
Center for Empowering Refugees and Immigrants
City of Los Angeles
City of Oakland
Consumer Attorneys of California
Democratic Party of the San Fernando Valley
Disability Rights California
Drug Policy Alliance
Ella Baker Center for Human Rights
Equal Justice Society
Friends Committee on Legislation of California
Fund Her
Jewish Public Affairs Committee
John Burton Advocates for Youth
Law Enforcement Action Partnership
Legal Services with Prisoners with Children
Los Angeles Regional Reentry Partnership
Momentum United
National Association of Social Workers, California Chapter
Reform Alliance
San Francisco Public Defender's Office
Santa Barbara Women's Political Committee
Sierra Club California
Smart Justice California
The Family Project
Transgender Advocacy Group
Voices for Progress

Young Women's Freedom Center

OPPOSITION: (Verified 8/12/20)

Association of Orange County Deputy Sheriffs
California District Attorneys Association
California Fraternal Order of Police
California State Sheriff's Association
Chief Probation Officers of California
Long Beach Police Officers Association
Los Angeles County Probation Officers Union, AFSCME Local 685
Riverside Sheriffs' Association
Sacramento County Deputy Sheriffs' Association
Sacramento County Probation Association
San Joaquin County Probation Officers Association
San Luis Obispo County Probation Peace Officers Association
Silicon Valley Fraternal Order of Police, Lodge 52
State Coalition of Probation Organizations
Ventura County Professional Peace Officers Association
Yolo County Probation Association

ARGUMENT IN SUPPORT: The Drug Policy Alliance writes:

The purpose of the bill is to end wasteful spending, to focus limited rehabilitative and supervisory resources on persons in their first 12 to 24 months of probation, and reduce the length of time that a person might be subject to arbitrary or technical violations that result in re-incarceration. A robust body of literature demonstrates that probation services, such as mental healthcare and substance use disorder treatment, are most effective during the first six to eighteen months of supervision. A shorter probation term, allowing for an increased emphasis on rehabilitative services, would lead to improved outcomes for people on probation and their families.

Furthermore, this bill does not take the "teeth" out of probation or the courts. If a person on probation fails to comply with treatment or other conditions set by the court during a probationary period, the court may revoke the person's probation until the person is back in compliance. The period during which the probation is revoked does not count toward release from probation, thereby extending the period of supervision. Additionally, this bill does not change the power of the court to order a period of incarceration in addition to probation supervision and conditions, nor does the bill change the probation periods for

any offense in which the length of probation is mandatory or specified in the relevant statute.

There is an urgent need to reinvest limited resources in community health and well-being. This bill is important part of the process of ending wasteful spending and reducing police interference in the lives of the people of the State of California.

ARGUMENT IN OPPOSITION: The California District Attorneys Association writes:

This bill drastically shortens the probation term for almost all misdemeanor and felony cases. A one-size-fits-all probation scheme does not work. Such a scheme treats dissimilar defendants similarly. A defendant convicted of multiple crimes, misdemeanor or felony, and who has hurt multiple victims, is treated exactly the same as a defendant who is convicted of only one crime.

This bill is in search of a problem that does not exist; If a judge feels that only two years of probation is appropriate, the judge can order that length of probation under current law. Current law also permits judges to terminate probation early. Pursuant to existing Penal Code Section 1203.3, a probationer who completes court-ordered programming and pays restitution to a crime victim can always ask the court to terminate probation early. Judges routinely grant these types of termination motions.

...

It is precisely because we believe in rehabilitation that we oppose [this] measure. Offenders working toward rehabilitation and engaging in programming, crime victims, and public safety are best served when judges have the flexibility to grant a probation period that is appropriate and proportional for each individual case.

ASSEMBLY FLOOR: 48-22, 6/15/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Mark Stone, Ting, Waldron, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Cervantes, Chen, Choi, Cooley, Cunningham, Megan
Dahle, Diep, Flora, Fong, Frazier, Gallagher, Kiley, Lackey, Mathis,
Muratsuchi, Obernolte, Patterson, Petrie-Norris, Salas, Voepel

NO VOTE RECORDED: Boerner Horvath, Cooper, Daly, Gray, Irwin, Mayes,
Ramos, Rodriguez, Smith

Prepared by: Stephanie Jordan / PUB. S. /
8/14/20 12:31:11

**** END ****