

**ASSEMBLY BILL**

**No. 2385**

---

---

**Introduced by Assembly Members Harkey and Hall**

February 24, 2012

---

---

An act to amend Section 1203 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2385, as introduced, Harkey. Probation.

Existing law 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. Existing law prescribes who is eligible for probation and the process by which probation is granted.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1203 of the Penal Code is amended to
- 2 read:
- 3 1203. (a) As used in this code, "probation" means the
- 4 suspension of the imposition or execution of a sentence and the
- 5 order of conditional and revocable release in the community under
- 6 the supervision of a probation officer. As used in this code,
- 7 "conditional sentence" means the suspension of the imposition or
- 8 execution of a sentence and the order of revocable release in the

1 community subject to conditions established by the court without  
2 the supervision of a probation officer. It is the intent of the  
3 Legislature that both conditional sentence and probation are  
4 authorized whenever probation is authorized in any code as a  
5 sentencing option for infractions or misdemeanors.

6 (b) (1) Except as provided in subdivision (j), if a person is  
7 convicted of a felony and is eligible for probation, before judgment  
8 is pronounced, the court shall immediately refer the matter to a  
9 probation officer to investigate and report to the court, at a specified  
10 time, upon the circumstances surrounding the crime and the prior  
11 history and record of the person, which may be considered either  
12 in aggravation or mitigation of the punishment.

13 (2) (A) The probation officer shall immediately investigate and  
14 make a written report to the court of his or her findings and  
15 recommendations, including his or her recommendations as to the  
16 granting or denying of probation and the conditions of probation,  
17 if granted.

18 (B) Pursuant to Section 828 of the Welfare and Institutions  
19 Code, the probation officer shall include in his or her report any  
20 information gathered by a law enforcement agency relating to the  
21 taking of the defendant into custody as a minor, which shall be  
22 considered for purposes of determining whether adjudications of  
23 commissions of crimes as a juvenile warrant a finding that there  
24 are circumstances in aggravation pursuant to Section 1170 or to  
25 deny probation.

26 (C) If the person was convicted of an offense that requires him  
27 or her to register as a sex offender pursuant to Sections 290 to  
28 290.023, inclusive, or if the probation report recommends that  
29 registration be ordered at sentencing pursuant to Section 290.006,  
30 the probation officer's report shall include the results of the  
31 State-Authorized Risk Assessment Tool for Sex Offenders  
32 (SARATSO) administered pursuant to Sections 290.04 to 290.06,  
33 inclusive, if applicable.

34 (D) The probation officer shall also include in the report his or  
35 her recommendation of both of the following:

36 (i) The amount the defendant should be required to pay as a  
37 restitution fine pursuant to subdivision (b) of Section 1202.4.

38 (ii) Whether the court shall require, as a condition of probation,  
39 restitution to the victim or to the Restitution Fund and the amount  
40 thereof.

1 (E) The report shall be made available to the court and the  
2 prosecuting and defense attorneys at least five days, or upon request  
3 of the defendant or prosecuting attorney nine days, prior to the  
4 time fixed by the court for the hearing and determination of the  
5 report, and shall be filed with the clerk of the court as a record in  
6 the case at the time of the hearing. The time within which the report  
7 shall be made available and filed may be waived by written  
8 stipulation of the prosecuting and defense attorneys that is filed  
9 with the court or an oral stipulation in open court that is made and  
10 entered upon the minutes of the court.

11 (3) At a time fixed by the court, the court shall hear and  
12 determine the application, if one has been made, or, in any case,  
13 the suitability of probation in the particular case. At the hearing,  
14 the court shall consider ~~any~~ a report of the probation officer,  
15 including the results of the SARATSO, if applicable, and shall  
16 make a statement that it has considered the report, which shall be  
17 filed with the clerk of the court as a record in the case. If the court  
18 determines that there are circumstances in mitigation of the  
19 punishment prescribed by law or that the ends of justice would be  
20 served by granting probation to the person, it may place the person  
21 on probation. If probation is denied, the clerk of the court shall  
22 immediately send a copy of the report to the Department of  
23 Corrections and Rehabilitation at the prison or other institution to  
24 which the person is delivered.

25 (4) The preparation of the report or the consideration of the  
26 report by the court may be waived only by a written stipulation of  
27 the prosecuting and defense attorneys that is filed with the court  
28 or an oral stipulation in open court that is made and entered upon  
29 the minutes of the court, except that there shall be no waiver unless  
30 the court consents thereto. However, if the defendant is ultimately  
31 sentenced and committed to the state prison, a probation report  
32 shall be completed pursuant to Section 1203c.

33 (c) If a defendant is not represented by an attorney, the court  
34 shall order the probation officer who makes the probation report  
35 to discuss its contents with the defendant.

36 (d) If a person is convicted of a misdemeanor, the court may  
37 either refer the matter to the probation officer for an investigation  
38 and a report or summarily pronounce a conditional sentence. If  
39 the person was convicted of an offense that requires him or her to  
40 register as a sex offender pursuant to Sections 290 to 290.023,

1 inclusive, or if the probation officer recommends that the court,  
2 at sentencing, order the offender to register as a sex offender  
3 pursuant to Section 290.006, the court shall refer the matter to the  
4 probation officer for the purpose of obtaining a report on the results  
5 of the ~~State-Authorized Risk Assessment Tool for Sex Offenders~~  
6 SARATSO administered pursuant to Sections 290.04 to 290.06,  
7 inclusive, if applicable, which the court shall consider. If the case  
8 is not referred to the probation officer, in sentencing the person,  
9 the court may consider any information concerning the person that  
10 could have been included in a probation report. The court shall  
11 inform the person of the information to be considered and permit  
12 him or her to answer or controvert the information. For this  
13 purpose, upon the request of the person, the court shall grant a  
14 continuance before the judgment is pronounced.

15 (e) Except in unusual cases where the interests of justice would  
16 best be served if the person is granted probation, probation shall  
17 not be granted to any of the following persons:

18 (1) Unless the person had a lawful right to carry a deadly  
19 weapon, other than a firearm, at the time of the perpetration of the  
20 crime or his or her arrest, ~~any~~ a person who has been convicted of  
21 arson, robbery, carjacking, burglary, burglary with explosives,  
22 rape with force or violence, torture, aggravated mayhem, murder,  
23 attempt to commit murder, trainwrecking, kidnapping, escape from  
24 the state prison, or a conspiracy to commit one or more of those  
25 crimes and who was armed with the weapon at either of those  
26 times.

27 (2) ~~Any~~ A person who used, or attempted to use, a deadly  
28 weapon upon a human being in connection with the perpetration  
29 of the crime of which he or she has been convicted.

30 (3) ~~Any~~ A person who willfully inflicted great bodily injury or  
31 torture in the perpetration of the crime of which he or she has been  
32 convicted.

33 (4) ~~Any~~ A person who has been previously convicted twice in  
34 this state of a felony or in any other place of a public offense which,  
35 if committed in this state, would have been punishable as a felony.

36 (5) Unless the person has never been previously convicted once  
37 in this state of a felony or in any other place of a public offense  
38 which, if committed in this state, would have been punishable as  
39 a felony, ~~any~~ a person who has been convicted of burglary with  
40 explosives, rape with force or violence, torture, aggravated

1 mayhem, murder, attempt to commit murder, trainwrecking,  
2 extortion, kidnapping, escape from the state prison, a violation of  
3 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one  
4 or more of those crimes.

5 (6) ~~Any~~A person who has been previously convicted once in  
6 this state of a felony or in any other place of a public offense which,  
7 if committed in this state, would have been punishable as a felony,  
8 if he or she committed any of the following acts:

9 (A) Unless the person had a lawful right to carry a deadly  
10 weapon at the time of the perpetration of the previous crime or his  
11 or her arrest for the previous crime, he or she was armed with a  
12 weapon at either of those times.

13 (B) The person used, or attempted to use, a deadly weapon upon  
14 a human being in connection with the perpetration of the previous  
15 crime.

16 (C) The person willfully inflicted great bodily injury or torture  
17 in the perpetration of the previous crime.

18 (7) ~~Any~~A public official or peace officer of this state or ~~any~~ a  
19 city, county, or other political subdivision who, in the discharge  
20 of the duties of his or her public office or employment, accepted  
21 or gave or offered to accept or give ~~any~~ a bribe, embezzled public  
22 money, or was guilty of extortion.

23 (8) ~~Any~~A person who knowingly furnishes or gives away  
24 phencyclidine.

25 (9) ~~Any~~A person who intentionally inflicted great bodily injury  
26 in the commission of arson under subdivision (a) of Section 451  
27 or who intentionally set fire to, burned, or caused the burning of,  
28 an inhabited structure or inhabited property in violation of  
29 subdivision (b) of Section 451.

30 (10) ~~Any~~A person who, in the commission of a felony, inflicts  
31 great bodily injury or causes the death of a human being by the  
32 discharge of a firearm from or at an occupied motor vehicle  
33 proceeding on a public street or highway.

34 (11) ~~Any~~A person who possesses a short-barreled rifle or a  
35 short-barreled shotgun under Section 33215, a machinegun under  
36 Section 32625, or a silencer under Section 33410.

37 (12) ~~Any~~A person who is convicted of violating Section 8101  
38 of the Welfare and Institutions Code.

39 (13) ~~Any~~A person who is described in subdivision (b) or (c) of  
40 Section 27590.

1 (f) When probation is granted in a case ~~which~~ *that* comes within  
 2 subdivision (e), the court shall specify on the record and shall enter  
 3 on the minutes the circumstances indicating that the interests of  
 4 justice would best be served by that disposition.

5 (g) If a person is not eligible for probation, the judge shall refer  
 6 the matter to the probation officer for an investigation of the facts  
 7 relevant to determination of the amount of a restitution fine  
 8 pursuant to subdivision (b) of Section 1202.4 in all cases where  
 9 the determination is applicable. The judge, in his or her discretion,  
 10 may direct the probation officer to investigate all facts relevant to  
 11 the sentencing of the person. Upon that referral, the probation  
 12 officer shall immediately investigate the circumstances surrounding  
 13 the crime and the prior record and history of the person and make  
 14 a written report to the court of his or her findings. The findings  
 15 shall include a recommendation of the amount of the restitution  
 16 fine as provided in subdivision (b) of Section 1202.4.

17 (h) If a defendant is convicted of a felony and a probation report  
 18 is prepared pursuant to subdivision (b) or (g), the probation officer  
 19 may obtain and include in the report a statement of the comments  
 20 of the victim concerning the offense. The court may direct the  
 21 probation officer not to obtain a statement if the victim has in fact  
 22 testified at any of the court proceedings concerning the offense.

23 (i) No probationer shall be released to enter another state unless  
 24 his or her case has been referred to the Administrator of the  
 25 Interstate Probation and Parole Compacts, pursuant to the Uniform  
 26 Act for Out-of-State Probationer or Parolee Supervision (Article  
 27 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part  
 28 4) and the probationer has reimbursed the county that has  
 29 jurisdiction over his or her probation case the reasonable costs of  
 30 processing his or her request for interstate compact supervision.  
 31 The amount and method of reimbursement shall be in accordance  
 32 with *subdivision (b) of Section ~~1203.1b~~ 1203.1*.

33 (j) (1) In ~~any~~ a court where a county financial evaluation officer  
 34 is available, in addition to referring the matter to the probation  
 35 officer, the court may order the defendant to appear before the  
 36 county financial evaluation officer for a financial evaluation of  
 37 the defendant's ability to pay restitution, in which case the county  
 38 financial evaluation officer shall report his or her findings regarding  
 39 restitution and other court-related costs to the probation officer on  
 40 the question of the defendant's ability to pay those costs.

1 ~~Any~~

2 (2) *An* order made pursuant to this subdivision may be enforced  
3 as a violation of the terms and conditions of probation upon willful  
4 failure to pay and at the discretion of the court, may be enforced  
5 in the same manner as a judgment in a civil action, if any balance  
6 remains unpaid at the end of the defendant's probationary period.

7 (k) Probation shall not be granted to, nor shall the execution of,  
8 or imposition of sentence be suspended for, ~~any~~ a person who is  
9 convicted of a violent felony, as defined in subdivision (c) of  
10 Section 667.5, or a serious felony, as defined in subdivision (c) of  
11 Section 1192.7, and who was on probation for a felony offense at  
12 the time of the commission of the new felony offense.

O