

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2385

Introduced by Assembly Members Harkey and Hall

February 24, 2012

An act to amend Section ~~1203~~ *1203.016* of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2385, as amended, Harkey. Probation.

Existing law authorizes the board of supervisors of any county to authorize the correctional administrator, as defined, to offer a program under which minimum security inmates and low-risk offenders committed to a county jail or other county correctional facility or granted probation, or inmates participating in a work furlough program, may voluntarily participate in a home detention program in lieu of confinement in the county jail or other county correctional facility under the auspices of the probation officer.

This bill would authorize the correctional administrator to offer the home detention program to defendants committed to a county jail or other county correctional facility before trial or inmates committed to these facilities before sentencing.

~~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 1203.016 of the Penal Code is amended
2 to read:

3 1203.016. (a) Notwithstanding any other provision of law, the
4 board of supervisors of ~~any~~ a county may authorize the correctional
5 administrator, as defined in subdivision (h), to offer a program
6 under which inmates *or defendants* committed to a county jail or
7 other county correctional facility ~~or~~, *including, but not limited to,*
8 *defendants committed before trial or inmates committed before*
9 *sentencing, inmates who are granted probation, or inmates*
10 *participating in a work furlough program, may voluntarily*
11 *participate or involuntarily be placed in a home detention program*
12 *during their sentence in lieu of confinement in the county jail or*
13 *other county correctional facility or program under the auspices*
14 *of the probation officer.*

15 (b) The board of supervisors, in consultation with the
16 correctional administrator, may prescribe reasonable rules and
17 regulations under which a home detention program may operate.
18 As a condition of participation in the home detention program, the
19 inmate *or defendant* shall give his or her consent, in writing, to
20 participate in the home detention program and shall, in writing,
21 agree to comply or, for involuntary participation, the inmate *or*
22 *defendant* shall be informed, in writing, that he or she shall comply,
23 with the rules and regulations of the program, including, but not
24 limited to, the following rules:

25 (1) The participant shall remain within the interior premises of
26 his or her residence during the hours designated by the correctional
27 administrator.

28 (2) The participant shall admit any person or agent designated
29 by the correctional administrator into his or her residence at any
30 time for purposes of verifying the participant's compliance with
31 the conditions of his or her detention.

32 (3) The participant shall agree to the use of electronic
33 monitoring, which may include global positioning system devices
34 or other supervising devices, for the purpose of helping to verify
35 his or her compliance with the rules and regulations of the home

1 detention program. The devices shall not be used to eavesdrop or
2 record any conversation, except a conversation between the
3 participant and the person supervising the participant ~~which~~ *that*
4 is to be used solely for the purposes of voice identification.

5 (4) The participant shall agree that the correctional administrator
6 in charge of the county correctional facility from which the
7 participant was released may, without further order of the court,
8 immediately retake the person into custody to *either* serve the
9 balance of his or her sentence *or remain in custody until his or her*
10 *trial or sentencing*, if the electronic monitoring or supervising
11 devices are unable for any reason to properly perform their function
12 at the designated place of home detention, if the person fails to
13 remain within the place of home detention as stipulated in the
14 agreement, if the person willfully fails to pay fees to the provider
15 of electronic home detention services, as stipulated in the
16 agreement, subsequent to the written notification of the participant
17 that the payment has not been received and that return to custody
18 may result, or if the person for any other reason no longer meets
19 the established criteria under this section. A copy of the agreement
20 shall be delivered to the participant and a copy retained by the
21 correctional administrator.

22 (c) Whenever the peace officer supervising a participant has
23 reasonable cause to believe that the participant is not complying
24 with the rules or conditions of the program, or that the electronic
25 monitoring devices are unable to function properly in the
26 designated place of confinement, the peace officer may, under
27 general or specific authorization of the correctional administrator,
28 and without a warrant of arrest, retake the person into custody to
29 complete the remainder of the original sentence *or to remain in*
30 *custody until his or her trial or sentencing*.

31 (d) Nothing in this section shall be construed to require the
32 correctional administrator to allow a person to participate in this
33 program if it appears from the record that the person has not
34 satisfactorily complied with reasonable rules and regulations while
35 in custody. A person shall be eligible for participation in a home
36 detention program only if the correctional administrator concludes
37 that the person meets the criteria for release established under this
38 section and that the person's participation is consistent with ~~any~~
39 reasonable rules and regulations prescribed by the board of

1 supervisors or the administrative policy of the correctional
 2 administrator.

3 (1) The rules and regulations and administrative policy of the
 4 program shall be written and reviewed on an annual basis by the
 5 county board of supervisors and the correctional administrator.
 6 The rules and regulations shall be given to or made available to
 7 any participant upon request.

8 (2) The correctional administrator, or his or her designee, shall
 9 have the sole discretionary authority to permit program
 10 participation as an alternative to physical custody. ~~All persons~~ *A*
 11 *person* referred or recommended by the court to participate in the
 12 home detention program pursuant to subdivision (e) who ~~are~~ *is*
 13 denied participation or ~~all persons~~ *a person* removed from program
 14 participation shall be notified, in writing, of the specific reasons
 15 for the denial or removal. The notice of denial or removal shall
 16 include the participant’s appeal rights, as established by program
 17 administrative policy.

18 (e) The court may recommend or refer a person to the
 19 correctional administrator for consideration for placement in the
 20 home detention program. The recommendation or referral of the
 21 court shall be given great weight in the determination of acceptance
 22 or denial. At the time of sentencing or at any time that the court
 23 deems it necessary, the court may restrict or deny the ~~defendant’s~~
 24 *person’s* participation in a home detention program.

25 (f) The correctional administrator may permit *a* home detention
 26 program ~~participants~~ *participant* to seek and retain employment
 27 in the community, attend psychological counseling sessions or
 28 educational or vocational training classes, or seek medical and
 29 dental assistance. Willful failure of the program participant to
 30 return to the place of home detention not later than the expiration
 31 of ~~any~~ *a* period of time during which he or she is authorized to be
 32 away from the place of home detention pursuant to this section
 33 and unauthorized departures from the place of home detention are
 34 punishable as provided in Section 4532.

35 (g) The board of supervisors may prescribe a program
 36 administrative fee to be paid by each home detention participant
 37 that shall be determined according to his or her ability to pay.
 38 Inability to pay all or a portion of the program fees shall not
 39 preclude participation in the program, and eligibility shall not be
 40 enhanced by reason of ability to pay. All program administration

1 and supervision fees shall be administered in compliance with
2 Section 1208.2.

3 (h) As used in this section, “Correctional administrator” means
4 the sheriff, probation officer, or director of the county department
5 of corrections.

6 (i) Notwithstanding any other law, the police department of a
7 city where an office is located to which persons on an electronic
8 monitoring program report may request the county correctional
9 administrator to provide information concerning those persons.
10 This information shall be limited to the name, address, date of
11 birth, and offense committed by the home detainee. ~~Any~~
12 ~~information~~ *Information* received by a police department pursuant
13 to this ~~paragraph~~ *subdivision* shall be used only for the purpose of
14 monitoring the impact of home detention programs on the
15 community.

16 (j) It is the intent of the Legislature that home detention
17 programs established under this section maintain the highest public
18 confidence, credibility, and public safety. In the furtherance of
19 these standards, the following shall apply:

20 (1) The correctional administrator, with the approval of the
21 board of supervisors, may administer a home detention program
22 pursuant to written contracts with appropriate public or private
23 agencies or entities to provide specified program services. No
24 public or private agency or entity may operate a home detention
25 program in ~~any~~ a county without a written contract with that
26 county’s correctional administrator. However, this does not apply
27 to the use of electronic monitoring by the Department of
28 Corrections and Rehabilitation. No public or private agency or
29 entity entering into a contract may itself employ ~~any~~ a person who
30 is in the home detention program.

31 (2) Program acceptance shall not circumvent the normal booking
32 process for sentenced offenders. All home detention program
33 participants shall be supervised.

34 (3) (A) All privately operated home detention programs shall
35 be under the jurisdiction of, and subject to the terms and conditions
36 of the contract entered into with, the correctional administrator.

37 (B) Each contract shall include, but not be limited to, all of the
38 following:

39 (i) A provision whereby the private agency or entity agrees to
40 operate in compliance with ~~any~~ available standards promulgated

1 by state correctional agencies and bodies, including the ~~Corrections~~
 2 ~~Standards Authority~~ *Board of State and Community Corrections*,
 3 and all statutory provisions and mandates, state and county, as
 4 appropriate and applicable to the operation of home detention
 5 programs and the supervision of sentenced offenders in a home
 6 detention program.

7 (ii) A provision that clearly defines areas of respective
 8 responsibility and liability of the county and the private agency or
 9 entity.

10 (iii) A provision that requires the private agency or entity to
 11 demonstrate evidence of financial responsibility, submitted and
 12 approved by the board of supervisors, in amounts and under
 13 conditions sufficient to fully indemnify the county for reasonably
 14 foreseeable public liability, including legal defense costs, that may
 15 arise from, or be proximately caused by, acts or omissions of the
 16 contractor. The contract shall provide for annual review by the
 17 correctional administrator to ensure compliance with requirements
 18 set by the board of supervisors and for adjustment of the financial
 19 responsibility requirements if warranted by caseload changes or
 20 other factors.

21 (iv) A provision that requires the private agency or entity to
 22 provide evidence of financial responsibility, such as certificates
 23 of insurance or copies of insurance policies, prior to commencing
 24 ~~any~~ operations pursuant to the contract or at any time requested
 25 by the board of supervisors or correctional administrator.

26 (v) A provision that permits the correctional administrator to
 27 immediately terminate the contract with a private agency or entity
 28 at any time that the contractor fails to demonstrate evidence of
 29 financial responsibility.

30 (C) All privately operated home detention programs shall
 31 comply with all appropriate, applicable ordinances and regulations
 32 specified in subdivision (a) of Section 1208.

33 (D) The board of supervisors, the correctional administrator,
 34 and the designee of the correctional administrator shall comply
 35 with Section 1090 of the Government Code in the consideration,
 36 making, and execution of contracts pursuant to this section.

37 (E) The failure of the private agency or entity to comply with
 38 statutory provisions and requirements or with the standards
 39 established by the contract and with the correctional administrator
 40 may be sufficient cause to terminate the contract.

1 (F) Upon the discovery that a private agency or entity with
2 whom there is a contract is not in compliance pursuant to this
3 paragraph, the correctional administrator shall give 60 days' notice
4 to the director of the private agency or entity that the contract may
5 be canceled if the specified deficiencies are not corrected.

6 (G) Shorter notice may be given or the contract may be canceled
7 without notice whenever a serious threat to public safety is present
8 because the private agency or entity has failed to comply with this
9 section.

10 (k) For purposes of this section, "evidence of financial
11 responsibility" may include, but is not limited to, certified copies
12 of any of the following:

- 13 (1) A current liability insurance policy.
- 14 (2) A current errors and omissions insurance policy.
- 15 (3) A surety bond.

16 ~~SECTION 1. Section 1203 of the Penal Code is amended to~~
17 ~~read:~~

18 ~~1203. (a) As used in this code, "probation" means the~~
19 ~~suspension of the imposition or execution of a sentence and the~~
20 ~~order of conditional and revocable release in the community under~~
21 ~~the supervision of a probation officer. As used in this code,~~
22 ~~"conditional sentence" means the suspension of the imposition or~~
23 ~~execution of a sentence and the order of revocable release in the~~
24 ~~community subject to conditions established by the court without~~
25 ~~the supervision of a probation officer. It is the intent of the~~
26 ~~Legislature that both conditional sentence and probation are~~
27 ~~authorized whenever probation is authorized in any code as a~~
28 ~~sentencing option for infractions or misdemeanors.~~

29 ~~(b) (1) Except as provided in subdivision (j), if a person is~~
30 ~~convicted of a felony and is eligible for probation, before judgment~~
31 ~~is pronounced, the court shall immediately refer the matter to a~~
32 ~~probation officer to investigate and report to the court, at a specified~~
33 ~~time, upon the circumstances surrounding the crime and the prior~~
34 ~~history and record of the person, which may be considered either~~
35 ~~in aggravation or mitigation of the punishment.~~

36 ~~(2) (A) The probation officer shall immediately investigate and~~
37 ~~make a written report to the court of his or her findings and~~
38 ~~recommendations, including his or her recommendations as to the~~
39 ~~granting or denying of probation and the conditions of probation,~~
40 ~~if granted.~~

1 ~~(B) Pursuant to Section 828 of the Welfare and Institutions~~
2 ~~Code, the probation officer shall include in his or her report any~~
3 ~~information gathered by a law enforcement agency relating to the~~
4 ~~taking of the defendant into custody as a minor, which shall be~~
5 ~~considered for purposes of determining whether adjudications of~~
6 ~~commissions of crimes as a juvenile warrant a finding that there~~
7 ~~are circumstances in aggravation pursuant to Section 1170 or to~~
8 ~~deny probation.~~

9 ~~(C) If the person was convicted of an offense that requires him~~
10 ~~or her to register as a sex offender pursuant to Sections 290 to~~
11 ~~290.023, inclusive, or if the probation report recommends that~~
12 ~~registration be ordered at sentencing pursuant to Section 290.006,~~
13 ~~the probation officer's report shall include the results of the~~
14 ~~State-Authorized Risk Assessment Tool for Sex Offenders~~
15 ~~(SARATSO) administered pursuant to Sections 290.04 to 290.06,~~
16 ~~inclusive, if applicable.~~

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

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

21 ~~(ii) Whether the court shall require, as a condition of probation,~~
22 ~~restitution to the victim or to the Restitution Fund and the amount~~
23 ~~thereof.~~

24 ~~(E) The report shall be made available to the court and the~~
25 ~~prosecuting and defense attorneys at least five days, or upon request~~
26 ~~of the defendant or prosecuting attorney nine days, prior to the~~
27 ~~time fixed by the court for the hearing and determination of the~~
28 ~~report, and shall be filed with the clerk of the court as a record in~~
29 ~~the case at the time of the hearing. The time within which the report~~
30 ~~shall be made available and filed may be waived by written~~
31 ~~stipulation of the prosecuting and defense attorneys that is filed~~
32 ~~with the court or an oral stipulation in open court that is made and~~
33 ~~entered upon the minutes of the court.~~

34 ~~(3) At a time fixed by the court, the court shall hear and~~
35 ~~determine the application, if one has been made, or, in any case,~~
36 ~~the suitability of probation in the particular case. At the hearing,~~
37 ~~the court shall consider a report of the probation officer, including~~
38 ~~the results of the SARATSO, if applicable, and shall make a~~
39 ~~statement that it has considered the report, which shall be filed~~
40 ~~with the clerk of the court as a record in the case. If the court~~

1 determines that there are circumstances in mitigation of the
2 punishment prescribed by law or that the ends of justice would be
3 served by granting probation to the person, it may place the person
4 on probation. If probation is denied, the clerk of the court shall
5 immediately send a copy of the report to the Department of
6 Corrections and Rehabilitation at the prison or other institution to
7 which the person is delivered.

8 (4) The preparation of the report or the consideration of the
9 report by the court may be waived only by a written stipulation of
10 the prosecuting and defense attorneys that is filed with the court
11 or an oral stipulation in open court that is made and entered upon
12 the minutes of the court, except that there shall be no waiver unless
13 the court consents thereto. However, if the defendant is ultimately
14 sentenced and committed to the state prison, a probation report
15 shall be completed pursuant to Section 1203c.

16 (e) If a defendant is not represented by an attorney, the court
17 shall order the probation officer who makes the probation report
18 to discuss its contents with the defendant.

19 (d) If a person is convicted of a misdemeanor, the court may
20 either refer the matter to the probation officer for an investigation
21 and a report or summarily pronounce a conditional sentence. If
22 the person was convicted of an offense that requires him or her to
23 register as a sex offender pursuant to Sections 290 to 290.023,
24 inclusive, or if the probation officer recommends that the court,
25 at sentencing, order the offender to register as a sex offender
26 pursuant to Section 290.006, the court shall refer the matter to the
27 probation officer for the purpose of obtaining a report on the results
28 of the SARATSO administered pursuant to Sections 290.04 to
29 290.06, inclusive, if applicable, which the court shall consider. If
30 the case is not referred to the probation officer, in sentencing the
31 person, the court may consider any information concerning the
32 person that could have been included in a probation report. The
33 court shall inform the person of the information to be considered
34 and permit him or her to answer or controvert the information. For
35 this purpose, upon the request of the person, the court shall grant
36 a continuance before the judgment is pronounced.

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

1 ~~(1) Unless the person had a lawful right to carry a deadly~~
2 ~~weapon, other than a firearm, at the time of the perpetration of the~~
3 ~~crime or his or her arrest, a person who has been convicted of~~
4 ~~arson, robbery, carjacking, burglary, burglary with explosives,~~
5 ~~rape with force or violence, torture, aggravated mayhem, murder,~~
6 ~~attempt to commit murder, trainwrecking, kidnapping, escape from~~
7 ~~the state prison, or a conspiracy to commit one or more of those~~
8 ~~crimes and who was armed with the weapon at either of those~~
9 ~~times.~~

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

13 ~~(3) A person who willfully inflicted great bodily injury or torture~~
14 ~~in the perpetration of the crime of which he or she has been~~
15 ~~convicted.~~

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

19 ~~(5) Unless the person has never been previously convicted once~~
20 ~~in this state of a felony or in any other place of a public offense~~
21 ~~which, if committed in this state, would have been punishable as~~
22 ~~a felony, a person who has been convicted of burglary with~~
23 ~~explosives, rape with force or violence, torture, aggravated~~
24 ~~mayhem, murder, attempt to commit murder, trainwrecking,~~
25 ~~extortion, kidnapping, escape from the state prison, a violation of~~
26 ~~Section 286, 288, 288a, or 288.5, or a conspiracy to commit one~~
27 ~~or more of those crimes.~~

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

32 ~~(A) Unless the person had a lawful right to carry a deadly~~
33 ~~weapon at the time of the perpetration of the previous crime or his~~
34 ~~or her arrest for the previous crime, he or she was armed with a~~
35 ~~weapon at either of those times.~~

36 ~~(B) The person used, or attempted to use, a deadly weapon upon~~
37 ~~a human being in connection with the perpetration of the previous~~
38 ~~crime.~~

39 ~~(C) The person willfully inflicted great bodily injury or torture~~
40 ~~in the perpetration of the previous crime.~~

1 ~~(7) A public official or peace officer of this state or a city,~~
2 ~~county, or other political subdivision who, in the discharge of the~~
3 ~~duties of his or her public office or employment, accepted or gave~~
4 ~~or offered to accept or give a bribe, embezzled public money, or~~
5 ~~was guilty of extortion.~~

6 ~~(8) A person who knowingly furnishes or gives away~~
7 ~~phenylelidine.~~

8 ~~(9) A person who intentionally inflicted great bodily injury in~~
9 ~~the commission of arson under subdivision (a) of Section 451 or~~
10 ~~who intentionally set fire to, burned, or caused the burning of, an~~
11 ~~inhabited structure or inhabited property in violation of subdivision~~
12 ~~(b) of Section 451.~~

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

17 ~~(11) A person who possesses a short-barreled rifle or a~~
18 ~~short-barreled shotgun under Section 33215, a machinegun under~~
19 ~~Section 32625, or a silencer under Section 33410.~~

20 ~~(12) A person who is convicted of violating Section 8101 of the~~
21 ~~Welfare and Institutions Code.~~

22 ~~(13) A person who is described in subdivision (b) or (c) of~~
23 ~~Section 27590.~~

24 ~~(f) When probation is granted in a case that comes within~~
25 ~~subdivision (e), the court shall specify on the record and shall enter~~
26 ~~on the minutes the circumstances indicating that the interests of~~
27 ~~justice would best be served by that disposition.~~

28 ~~(g) If a person is not eligible for probation, the judge shall refer~~
29 ~~the matter to the probation officer for an investigation of the facts~~
30 ~~relevant to determination of the amount of a restitution fine~~
31 ~~pursuant to subdivision (b) of Section 1202.4 in all cases where~~
32 ~~the determination is applicable. The judge, in his or her discretion,~~
33 ~~may direct the probation officer to investigate all facts relevant to~~
34 ~~the sentencing of the person. Upon that referral, the probation~~
35 ~~officer shall immediately investigate the circumstances surrounding~~
36 ~~the crime and the prior record and history of the person and make~~
37 ~~a written report to the court of his or her findings. The findings~~
38 ~~shall include a recommendation of the amount of the restitution~~
39 ~~fine as provided in subdivision (b) of Section 1202.4.~~

1 ~~(h) If a defendant is convicted of a felony and a probation report~~
2 ~~is prepared pursuant to subdivision (b) or (g), the probation officer~~
3 ~~may obtain and include in the report a statement of the comments~~
4 ~~of the victim concerning the offense. The court may direct the~~
5 ~~probation officer not to obtain a statement if the victim has in fact~~
6 ~~testified at any of the court proceedings concerning the offense.~~

7 ~~(i) No probationer shall be released to enter another state unless~~
8 ~~his or her case has been referred to the Administrator of the~~
9 ~~Interstate Probation and Parole Compacts, pursuant to the Uniform~~
10 ~~Act for Out-of-State Probationer or Parolee Supervision (Article~~
11 ~~3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part~~
12 ~~4) and the probationer has reimbursed the county that has~~
13 ~~jurisdiction over his or her probation case the reasonable costs of~~
14 ~~processing his or her request for interstate compact supervision.~~
15 ~~The amount and method of reimbursement shall be in accordance~~
16 ~~with subdivision (b) of Section 1203.1.~~

17 ~~(j) (1) In a court where a county financial evaluation officer is~~
18 ~~available, in addition to referring the matter to the probation officer,~~
19 ~~the court may order the defendant to appear before the county~~
20 ~~financial evaluation officer for a financial evaluation of the~~
21 ~~defendant's ability to pay restitution, in which case the county~~
22 ~~financial evaluation officer shall report his or her findings regarding~~
23 ~~restitution and other court-related costs to the probation officer on~~
24 ~~the question of the defendant's ability to pay those costs.~~

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

30 ~~(k) Probation shall not be granted to, nor shall the execution of,~~
31 ~~or imposition of sentence be suspended for, a person who is~~
32 ~~convicted of a violent felony, as defined in subdivision (c) of~~
33 ~~Section 667.5, or a serious felony, as defined in subdivision (c) of~~
34 ~~Section 1192.7, and who was on probation for a felony offense at~~
35 ~~the time of the commission of the new felony offense.~~