

AMENDED IN ASSEMBLY MAY 9, 2012
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 1203.016 of~~ *add Section 1203.019* to 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 a county to authorize the~~ correctional administrator, as defined, to offer a program under which ~~minimum security inmates and low-risk specified~~ 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, *or involuntarily be placed*, in a home detention program, *including electronic monitoring*, in lieu of confinement in the county jail or other county correctional facility under the auspices of the probation officer. *Existing law authorizes the correctional administrator, with the approval of the board of supervisors of the county, to administer the home detention program pursuant to written contracts with appropriate public or private agencies or entities.*

This bill would require any person who participates or is placed in a county-administered electronic monitoring program to be assigned to an electronic monitoring program operating pursuant to a contract with the county that complies with the above provisions. The bill would

state that it is not intended to limit or restrict the use of electronic monitoring.

~~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.~~

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 1203.019 is added to the Penal Code, to
2 read:

3 1203.019. (a) A person who participates or is placed in a
4 county-administered electronic monitoring program shall be
5 assigned to an electronic monitoring program operating pursuant
6 to a contract with the county that complies with the provisions of
7 subdivision (j) of Section 1203.016.

8 (b) Nothing in this section is intended to limit or restrict the use
9 of electronic monitoring.

10 SECTION 1. ~~Section 1203.016 of the Penal Code is amended~~
11 ~~to read:~~

12 ~~1203.016. (a) Notwithstanding any other provision of law, the~~
13 ~~board of supervisors of a county may authorize the correctional~~
14 ~~administrator, as defined in subdivision (h), to offer a program~~
15 ~~under which inmates or defendants committed to a county jail or~~
16 ~~other county correctional facility, including, but not limited to,~~
17 ~~defendants committed before trial or inmates committed before~~
18 ~~sentencing, inmates who are granted probation, or inmates~~
19 ~~participating in a work furlough program, may voluntarily~~
20 ~~participate or involuntarily be placed in a home detention program~~
21 ~~during their sentence in lieu of confinement in the county jail or~~
22 ~~other county correctional facility or program under the auspices~~
23 ~~of the probation officer.~~

24 ~~(b) The board of supervisors, in consultation with the~~
25 ~~correctional administrator, may prescribe reasonable rules and~~
26 ~~regulations under which a home detention program may operate.~~
27 ~~As a condition of participation in the home detention program, the~~
28 ~~inmate or defendant shall give his or her consent, in writing, to~~
29 ~~participate in the home detention program and shall, in writing,~~

1 ~~agree to comply or, for involuntary participation, the inmate or~~
2 ~~defendant shall be informed, in writing, that he or she shall comply,~~
3 ~~with the rules and regulations of the program, including, but not~~
4 ~~limited to, the following rules:~~

5 ~~(1) The participant shall remain within the interior premises of~~
6 ~~his or her residence during the hours designated by the correctional~~
7 ~~administrator.~~

8 ~~(2) The participant shall admit any person or agent designated~~
9 ~~by the correctional administrator into his or her residence at any~~
10 ~~time for purposes of verifying the participant's compliance with~~
11 ~~the conditions of his or her detention.~~

12 ~~(3) The participant shall agree to the use of electronic~~
13 ~~monitoring, which may include global positioning system devices~~
14 ~~or other supervising devices, for the purpose of helping to verify~~
15 ~~his or her compliance with the rules and regulations of the home~~
16 ~~detention program. The devices shall not be used to eavesdrop or~~
17 ~~record any conversation, except a conversation between the~~
18 ~~participant and the person supervising the participant that is to be~~
19 ~~used solely for the purposes of voice identification.~~

20 ~~(4) The participant shall agree that the correctional administrator~~
21 ~~in charge of the county correctional facility from which the~~
22 ~~participant was released may, without further order of the court,~~
23 ~~immediately retake the person into custody to either serve the~~
24 ~~balance of his or her sentence or remain in custody until his or her~~
25 ~~trial or sentencing, if the electronic monitoring or supervising~~
26 ~~devices are unable for any reason to properly perform their function~~
27 ~~at the designated place of home detention, if the person fails to~~
28 ~~remain within the place of home detention as stipulated in the~~
29 ~~agreement, if the person willfully fails to pay fees to the provider~~
30 ~~of electronic home detention services, as stipulated in the~~
31 ~~agreement, subsequent to the written notification of the participant~~
32 ~~that the payment has not been received and that return to custody~~
33 ~~may result, or if the person for any other reason no longer meets~~
34 ~~the established criteria under this section. A copy of the agreement~~
35 ~~shall be delivered to the participant and a copy retained by the~~
36 ~~correctional administrator.~~

37 ~~(e) Whenever the peace officer supervising a participant has~~
38 ~~reasonable cause to believe that the participant is not complying~~
39 ~~with the rules or conditions of the program, or that the electronic~~
40 ~~monitoring devices are unable to function properly in the~~

1 designated place of confinement, the peace officer may, under
2 general or specific authorization of the correctional administrator,
3 and without a warrant of arrest, retake the person into custody to
4 complete the remainder of the original sentence or to remain in
5 custody until his or her trial or sentencing.

6 (d) ~~Nothing in this section shall be construed to require the~~
7 ~~correctional administrator to allow a person to participate in this~~
8 ~~program if it appears from the record that the person has not~~
9 ~~satisfactorily complied with reasonable rules and regulations while~~
10 ~~in custody. A person shall be eligible for participation in a home~~
11 ~~detention program only if the correctional administrator concludes~~
12 ~~that the person meets the criteria for release established under this~~
13 ~~section and that the person's participation is consistent with~~
14 ~~reasonable rules and regulations prescribed by the board of~~
15 ~~supervisors or the administrative policy of the correctional~~
16 ~~administrator.~~

17 (1) ~~The rules and regulations and administrative policy of the~~
18 ~~program shall be written and reviewed on an annual basis by the~~
19 ~~county board of supervisors and the correctional administrator.~~
20 ~~The rules and regulations shall be given to or made available to~~
21 ~~any participant upon request.~~

22 (2) ~~The correctional administrator, or his or her designee, shall~~
23 ~~have the sole discretionary authority to permit program~~
24 ~~participation as an alternative to physical custody. A person~~
25 ~~referred or recommended by the court to participate in the home~~
26 ~~detention program pursuant to subdivision (e) who is denied~~
27 ~~participation or a person removed from program participation shall~~
28 ~~be notified, in writing, of the specific reasons for the denial or~~
29 ~~removal. The notice of denial or removal shall include the~~
30 ~~participant's appeal rights, as established by program administrative~~
31 ~~policy.~~

32 (e) ~~The court may recommend or refer a person to the~~
33 ~~correctional administrator for consideration for placement in the~~
34 ~~home detention program. The recommendation or referral of the~~
35 ~~court shall be given great weight in the determination of acceptance~~
36 ~~or denial. At the time of sentencing or at any time that the court~~
37 ~~deems it necessary, the court may restrict or deny the person's~~
38 ~~participation in a home detention program.~~

39 (f) ~~The correctional administrator may permit a home detention~~
40 ~~program participant to seek and retain employment in the~~

1 community, ~~attend psychological counseling sessions or~~
2 ~~educational or vocational training classes, or seek medical and~~
3 ~~dental assistance. Willful failure of the program participant to~~
4 ~~return to the place of home detention not later than the expiration~~
5 ~~of a period of time during which he or she is authorized to be away~~
6 ~~from the place of home detention pursuant to this section and~~
7 ~~unauthorized departures from the place of home detention are~~
8 ~~punishable as provided in Section 4532.~~

9 ~~(g) The board of supervisors may prescribe a program~~
10 ~~administrative fee to be paid by each home detention participant~~
11 ~~that shall be determined according to his or her ability to pay.~~
12 ~~Inability to pay all or a portion of the program fees shall not~~
13 ~~preclude participation in the program, and eligibility shall not be~~
14 ~~enhanced by reason of ability to pay. All program administration~~
15 ~~and supervision fees shall be administered in compliance with~~
16 ~~Section 1208.2.~~

17 ~~(h) As used in this section, "Correctional administrator" means~~
18 ~~the sheriff, probation officer, or director of the county department~~
19 ~~of corrections.~~

20 ~~(i) Notwithstanding any other law, the police department of a~~
21 ~~city where an office is located to which persons on an electronic~~
22 ~~monitoring program report may request the county correctional~~
23 ~~administrator to provide information concerning those persons.~~
24 ~~This information shall be limited to the name, address, date of~~
25 ~~birth, and offense committed by the home detainee. Information~~
26 ~~received by a police department pursuant to this subdivision shall~~
27 ~~be used only for the purpose of monitoring the impact of home~~
28 ~~detention programs on the community.~~

29 ~~(j) It is the intent of the Legislature that home detention~~
30 ~~programs established under this section maintain the highest public~~
31 ~~confidence, credibility, and public safety. In the furtherance of~~
32 ~~these standards, the following shall apply:~~

33 ~~(1) The correctional administrator, with the approval of the~~
34 ~~board of supervisors, may administer a home detention program~~
35 ~~pursuant to written contracts with appropriate public or private~~
36 ~~agencies or entities to provide specified program services. No~~
37 ~~public or private agency or entity may operate a home detention~~
38 ~~program in a county without a written contract with that county's~~
39 ~~correctional administrator. However, this does not apply to the use~~
40 ~~of electronic monitoring by the Department of Corrections and~~

1 Rehabilitation. No public or private agency or entity entering into
2 a contract may itself employ a person who is in the home detention
3 program.

4 (2) Program acceptance shall not circumvent the normal booking
5 process for sentenced offenders. All home detention program
6 participants shall be supervised.

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

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

12 (i) A provision whereby the private agency or entity agrees to
13 operate in compliance with available standards promulgated by
14 state correctional agencies and bodies, including the Board of State
15 and Community Corrections, and all statutory provisions and
16 mandates, state and county, as appropriate and applicable to the
17 operation of home detention programs and the supervision of
18 sentenced offenders in a home detention program.

19 (ii) A provision that clearly defines areas of respective
20 responsibility and liability of the county and the private agency or
21 entity.

22 (iii) A provision that requires the private agency or entity to
23 demonstrate evidence of financial responsibility, submitted and
24 approved by the board of supervisors, in amounts and under
25 conditions sufficient to fully indemnify the county for reasonably
26 foreseeable public liability, including legal defense costs, that may
27 arise from, or be proximately caused by, acts or omissions of the
28 contractor. The contract shall provide for annual review by the
29 correctional administrator to ensure compliance with requirements
30 set by the board of supervisors and for adjustment of the financial
31 responsibility requirements if warranted by caseload changes or
32 other factors.

33 (iv) A provision that requires the private agency or entity to
34 provide evidence of financial responsibility, such as certificates
35 of insurance or copies of insurance policies, prior to commencing
36 operations pursuant to the contract or at any time requested by the
37 board of supervisors or correctional administrator.

38 (v) A provision that permits the correctional administrator to
39 immediately terminate the contract with a private agency or entity

1 at any time that the contractor fails to demonstrate evidence of
2 financial responsibility.

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

6 (D) The board of supervisors, the correctional administrator,
7 and the designee of the correctional administrator shall comply
8 with Section 1090 of the Government Code in the consideration,
9 making, and execution of contracts pursuant to this section.

10 (E) The failure of the private agency or entity to comply with
11 statutory provisions and requirements or with the standards
12 established by the contract and with the correctional administrator
13 may be sufficient cause to terminate the contract.

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

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

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

- 26 (1) A current liability insurance policy.
- 27 (2) A current errors and omissions insurance policy.
- 28 (3) A surety bond.