

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2527**

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**Introduced by Assembly Member Swanson**

February 24, 2012

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An act to amend Section ~~1203.5~~ 1203.3 of the Penal Code, relating to probation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2527, as amended, Swanson. ~~Probation officers. Probation: mandatory termination of period of 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. Existing law authorizes a court to terminate the period of probation and discharge the probationer at any time when the ends of justice will be subserved, and when the good conduct and reform of the person so held on probation warrant it.*

*This bill would instead require the court to terminate the period of probation and discharge the probationer at any time when the ends of justice will be subserved, and when the good conduct and reform of the person so held on probation warrant it.*

~~Existing law establishes the offices of adult probation officer, assistant adult probation officer, and deputy adult probation officer. Under existing law, probation officers, assistant probation officers, and deputy probation officers appointed to the juvenile court are ex officio adult probation officers, assistant adult probation officers, and deputy adult~~

~~probation officers except in a county or city and county whose charter provides for separate offices for adult and juvenile probation officers.~~

~~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 1203.3 of the Penal Code is amended to  
2 read:

3     1203.3. (a) The court shall have authority at any time during  
4 the term of probation to revoke, modify, or change its order of  
5 suspension of imposition or execution of sentence. The court ~~may~~  
6 shall at any time when the ends of justice will be subserved  
7 thereby, and when the good conduct and reform of the person so  
8 held on probation shall warrant it, terminate the period of probation,  
9 and discharge the person so held.

10    (b) The exercise of the court’s authority in subdivision (a) to  
11 revoke, modify, change, or terminate probation is subject to the  
12 following:

13    (1) Before any sentence or term or condition of probation is  
14 modified, a hearing shall be held in open court before the judge.  
15 The prosecuting attorney shall be given a two-day written notice  
16 and an opportunity to be heard on the matter, except that, as to  
17 modifying or terminating a protective order in a case involving  
18 domestic violence, as defined in Section 6211 of the Family Code,  
19 the prosecuting attorney shall be given a five-day written notice  
20 and an opportunity to be heard.

21    (A) If the sentence or term or condition of probation is modified  
22 pursuant to this section, the judge shall state the reasons for that  
23 modification on the record.

24    (B) As used in this section, modification of sentence shall  
25 include reducing a felony to a misdemeanor.

26    (2) No order shall be made without written notice first given by  
27 the court or the clerk thereof to the proper probation officer of the  
28 intention to revoke, modify, or change its order.

29    (3) In all cases, if the court has not seen fit to revoke the order  
30 of probation and impose sentence or pronounce judgment, the  
31 defendant shall at the end of the term of probation or any extension

1 thereof, be by the court discharged subject to the provisions of  
2 these sections.

3 (4) The court may modify the time and manner of the term of  
4 probation for purposes of measuring the timely payment of  
5 restitution obligations or the good conduct and reform of the  
6 defendant while on probation. The court shall not modify the dollar  
7 amount of the restitution obligations due to the good conduct and  
8 reform of the defendant, absent compelling and extraordinary  
9 reasons, nor shall the court limit the ability of payees to enforce  
10 the obligations in the manner of judgments in civil actions.

11 (5) Nothing in this section shall be construed to prohibit the  
12 court from modifying the dollar amount of a restitution order  
13 pursuant to subdivision (f) of Section 1202.4 at any time during  
14 the term of the probation.

15 (6) The court may limit or terminate a protective order that is  
16 a condition of probation in a case involving domestic violence, as  
17 defined in Section 6211 of the Family Code. In determining  
18 whether to limit or terminate the protective order, the court shall  
19 consider if there has been any material change in circumstances  
20 since the crime for which the order was issued, and any issue that  
21 relates to whether there exists good cause for the change, including,  
22 but not limited to, consideration of all of the following:

23 (A) Whether the probationer has accepted responsibility for the  
24 abusive behavior perpetrated against the victim.

25 (B) Whether the probationer is currently attending and actively  
26 participating in counseling sessions.

27 (C) Whether the probationer has completed parenting  
28 counseling, or attended alcoholics or narcotics counseling.

29 (D) Whether the probationer has moved from the state, or is  
30 incarcerated.

31 (E) Whether the probationer is still cohabiting, or intends to  
32 cohabit, with any subject of the order.

33 (F) Whether the defendant has performed well on probation,  
34 including consideration of any progress reports.

35 (G) Whether the victim desires the change, and if so, the victim's  
36 reasons, whether the victim has consulted a victim advocate, and  
37 whether the victim has prepared a safety plan and has access to  
38 local resources.

1 (H) Whether the change will impact any children involved,  
2 including consideration of any child protective services  
3 information.

4 (I) Whether the ends of justice would be served by limiting or  
5 terminating the order.

6 (c) If a probationer is ordered to serve time in jail, and the  
7 probationer escapes while serving that time, the probation is  
8 revoked as a matter of law on the day of the escape.

9 (d) If probation is revoked pursuant to subdivision (c), upon  
10 taking the probationer into custody, the probationer shall be  
11 accorded a hearing or hearings consistent with the holding in the  
12 case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that  
13 hearing or hearings is not to revoke probation, as the revocation  
14 has occurred as a matter of law in accordance with subdivision  
15 (c), but rather to afford the defendant an opportunity to require the  
16 prosecution to establish that the alleged violation did in fact occur  
17 and to justify the revocation.

18 (e) This section does not apply to cases covered by Section  
19 1203.2.

20 SECTION 1. ~~Section 1203.5 of the Penal Code is amended to~~  
21 ~~read:~~

22 ~~1203.5. The offices of adult probation officer, assistant adult~~  
23 ~~probation officer, and deputy adult probation officer are hereby~~  
24 ~~created. The probation officers, assistant probation officers, and~~  
25 ~~deputy probation officers appointed in accordance with Chapter~~  
26 ~~2 (commencing with Section 200) of Division 2 of Part 1 of the~~  
27 ~~Welfare and Institutions Code shall be ex officio adult probation~~  
28 ~~officers, assistant adult probation officers, and deputy adult~~  
29 ~~probation officers except in a county or city and county whose~~  
30 ~~charter provides for the separate office of adult probation officer.~~  
31 ~~When the separate office of adult probation officer has been~~  
32 ~~established, he or she shall perform all the duties of probation~~  
33 ~~officers except for matters under the jurisdiction of the juvenile~~  
34 ~~court. An adult probation officer may accept appointment as~~  
35 ~~member of the Board of Corrections and serve in that capacity in~~  
36 ~~addition to his or her duties as adult probation officer and may~~  
37 ~~receive the per diem allowance authorized in Section 6025.1.~~

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