

AMENDED IN SENATE AUGUST 15, 2012

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN ASSEMBLY MAY 3, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2527

Introduced by Assembly Member Swanson

February 24, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2527, as amended, Swanson. 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. The bill would authorize the court to consider specified factors, among others, in determining whether

to terminate the period of probation for good conduct and reform of the person so held on probation.

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. The court shall also have the
10 authority at any time during the term of mandatory supervision
11 pursuant to subparagraph (B) of paragraph (5) of subdivision (h)
12 of Section 1170 to revoke, modify, or change the conditions of the
13 court’s order suspending the execution of the concluding portion
14 of the supervised person’s term.

15 (b) The exercise of the court’s authority in subdivision (a) to
16 revoke, modify, or change probation or mandatory supervision, or
17 to terminate probation, is subject to the following:

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

26 (A) If the sentence or term or condition of probation or the term
27 or any condition of mandatory supervision is modified pursuant
28 to this section, the judge shall state the reasons for that modification
29 on the record.

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

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

4 (3) In all probation cases, if the court has not seen fit to revoke
5 the order of probation and impose sentence or pronounce judgment,
6 the defendant shall at the end of the term of probation or any
7 extension thereof, be by the court discharged subject to the
8 provisions of these sections.

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

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

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

30 (A) Whether the probationer or supervised person has accepted
31 responsibility for the abusive behavior perpetrated against the
32 victim.

33 (B) Whether the probationer or supervised person is currently
34 attending and actively participating in counseling sessions.

35 (C) Whether the probationer or supervised person has completed
36 parenting counseling, or attended alcoholics or narcotics
37 counseling.

38 (D) Whether the probationer or supervised person has moved
39 from the state, or is incarcerated.

1 (E) Whether the probationer or supervised person is still
2 cohabiting, or intends to cohabit, with any subject of the order.

3 (F) Whether the defendant has performed well on probation or
4 mandatory supervision, including consideration of any progress
5 reports.

6 (G) Whether the victim desires the change, and if so, the victim’s
7 reasons, whether the victim has consulted a victim advocate, and
8 whether the victim has prepared a safety plan and has access to
9 local resources.

10 (H) Whether the change will impact any children involved,
11 including consideration of any child protective services
12 information.

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

15 (7) *In determining whether to terminate the period of probation*
16 *for good conduct and reform by the probationer, the court may*
17 *consider factors, including, but not limited to, all of the following:*

18 (A) *Whether the probationer is pursuing or has obtained a GED*
19 *or high school diploma.*

20 (B) *Whether the probationer is performing community service.*

21 (C) *Whether the probationer is participating in an internship*
22 *with a government agency or with a nonprofit entity.*

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

26 (d) If probation is revoked pursuant to subdivision (c), upon
27 taking the probationer into custody, the probationer shall be
28 accorded a hearing or hearings consistent with the holding in the
29 case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that
30 hearing or hearings is not to revoke probation, as the revocation
31 has occurred as a matter of law in accordance with subdivision
32 (c), but rather to afford the defendant an opportunity to require the
33 prosecution to establish that the alleged violation did in fact occur
34 and to justify the revocation.

35 (e) This section does not apply to cases covered by Section
36 1203.2.

37 ~~SECTION 1. Section 1203.3 of the Penal Code is amended to~~
38 ~~read:~~

39 ~~1203.3. (a) The court shall have authority at any time during~~
40 ~~the term of probation to revoke, modify, or change its order of~~

1 suspension of imposition or execution of sentence. The court shall
2 at any time when the ends of justice will be subserved thereby,
3 and when the good conduct and reform of the person so held on
4 probation shall warrant it, terminate the period of probation, and
5 discharge the person so held.

6 (b) ~~The exercise of the court's authority in subdivision (a) to~~
7 ~~revoke, modify, change, or terminate probation is subject to the~~
8 ~~following:~~

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

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

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

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

25 (3) ~~In all cases, if the court has not seen fit to revoke the order~~
26 ~~of probation and impose sentence or pronounce judgment, the~~
27 ~~defendant shall at the end of the term of probation or any extension~~
28 ~~thereof, be by the court discharged subject to the provisions of~~
29 ~~these sections.~~

30 (4) ~~The court may modify the time and manner of the term of~~
31 ~~probation for purposes of measuring the timely payment of~~
32 ~~restitution obligations or the good conduct and reform of the~~
33 ~~defendant while on probation. The court shall not modify the dollar~~
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38 (5) ~~Nothing in this section shall be construed to prohibit the~~
39 ~~court from modifying the dollar amount of a restitution order~~

1 pursuant to subdivision (f) of Section 1202.4 at any time during
2 the term of the probation.

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4 ~~a condition of probation in a case involving domestic violence, as~~
5 ~~defined in Section 6211 of the Family Code. In determining~~
6 ~~whether to limit or terminate the protective order, the court shall~~
7 ~~consider if there has been any material change in circumstances~~
8 ~~since the crime for which the order was issued, and any issue that~~
9 ~~relates to whether there exists good cause for the change, including,~~
10 ~~but not limited to, consideration of all of the following:~~

11 ~~(A) Whether the probationer has accepted responsibility for the~~
12 ~~abusive behavior perpetrated against the victim.~~

13 ~~(B) Whether the probationer is currently attending and actively~~
14 ~~participating in counseling sessions.~~

15 ~~(C) Whether the probationer has completed parenting~~
16 ~~counseling, or attended alcohol or narcotics counseling.~~

17 ~~(D) Whether the probationer has moved from the state, or is~~
18 ~~incarcerated.~~

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

21 ~~(F) Whether the defendant has performed well on probation,~~
22 ~~including consideration of any progress reports.~~

23 ~~(G) Whether the victim desires the change, and if so, the victim's~~
24 ~~reasons, whether the victim has consulted a victim advocate, and~~
25 ~~whether the victim has prepared a safety plan and has access to~~
26 ~~local resources.~~

27 ~~(H) Whether the change will impact any children involved,~~
28 ~~including consideration of any child protective services~~
29 ~~information.~~

30 ~~(I) Whether the ends of justice would be served by limiting or~~
31 ~~terminating the order.~~

32 ~~(7) In determining whether to terminate the period of probation~~
33 ~~for good conduct and reform by the probationer, the court may~~
34 ~~consider factors, including, but not limited to, all of the following:~~

35 ~~(A) Whether the probationer is pursuing or has obtained a GED~~
36 ~~or high school diploma.~~

37 ~~(B) Whether the probationer is performing community service.~~

38 ~~(C) Whether the probationer is participating in an internship~~
39 ~~with a government agency or with a nonprofit entity.~~

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2 ~~probationer escapes while serving that time, the probation is~~
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10 ~~(e), but rather to afford the defendant an opportunity to require the~~
11 ~~prosecution to establish that the alleged violation did in fact occur~~
12 ~~and to justify the revocation.~~
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14 ~~1203.2.~~