
Introduced by Senator Anderson

February 14, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 312, as introduced, Anderson. Probation.

Existing law provides for the granting of probation to specified offenders under specified circumstances.

This bill would make a technical, nonsubstantive change to these provisions. "Probation" means 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.

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
9 community subject to conditions established by the court without
10 the supervision of a probation officer. It is the intent of the
11 Legislature that both conditional sentence and probation are

1 authorized whenever probation is authorized in any code as a
2 sentencing option for infractions or misdemeanors.

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

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

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

23 (C) If the person was convicted of an offense that requires him
24 or her to register as a sex offender pursuant to Sections 290 to
25 290.023, inclusive, or if the probation report recommends that
26 registration be ordered at sentencing pursuant to Section 290.006,
27 the probation officer's report shall include the results of the
28 State-Authorized Risk Assessment Tool for Sex Offenders
29 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
30 inclusive, if applicable.

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

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

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

38 (E) The report shall be made available to the court and the
39 prosecuting and defense attorneys at least five days, or upon request
40 of the defendant or prosecuting attorney nine days, prior to the

1 time fixed by the court for the hearing and determination of the
2 report, and shall be filed with the clerk of the court as a record in
3 the case at the time of the hearing. The time within which the report
4 shall be made available and filed may be waived by written
5 stipulation of the prosecuting and defense attorneys that is filed
6 with the court or an oral stipulation in open court that is made and
7 entered upon the minutes of the court.

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

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

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

33 (d) If a person is convicted of a misdemeanor, the court may
34 either refer the matter to the probation officer for an investigation
35 and a report or summarily pronounce a conditional sentence. If
36 the person was convicted of an offense that requires him or her to
37 register as a sex offender pursuant to Sections 290 to 290.023,
38 inclusive, or if the probation officer recommends that the court,
39 at sentencing, order the offender to register as a sex offender
40 pursuant to Section 290.006, the court shall refer the matter to the

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

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

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

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

27 (3) Any person who willfully inflicted great bodily injury or
28 torture in the perpetration of the crime of which he or she has been
29 convicted.

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

33 (5) Unless the person has never been previously convicted once
34 in this state of a felony or in any other place of a public offense
35 which, if committed in this state, would have been punishable as
36 a felony, any person who has been convicted of burglary with
37 explosives, rape with force or violence, torture, aggravated
38 mayhem, murder, attempt to commit murder, trainwrecking,
39 extortion, kidnapping, escape from the state prison, a violation of

1 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
2 or more of those crimes.

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

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

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

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

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

21 (8) Any person who knowingly furnishes or gives away
22 phencyclidine.

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

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

32 (11) Any person who possesses a short-barreled rifle or a
33 short-barreled shotgun under Section 12020, a machinegun under
34 Section 12220, or a silencer under Section 12520.

35 (12) Any person who is convicted of violating Section 8101 of
36 the Welfare and Institutions Code.

37 (13) Any person who is described in paragraph (2) or (3) of
38 subdivision (g) of Section 12072.

39 (f) When probation is granted in a case which comes within
40 subdivision (e), the court shall specify on the record and shall enter

1 on the minutes the circumstances indicating that the interests of
2 justice would best be served by that disposition.

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

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

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

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

39 Any order made pursuant to this subdivision may be enforced
40 as a violation of the terms and conditions of probation upon willful

1 failure to pay and at the discretion of the court, may be enforced
2 in the same manner as a judgment in a civil action, if any balance
3 remains unpaid at the end of the defendant's probationary period.
4 (k) Probation shall not be granted to, nor shall the execution of,
5 or imposition of sentence be suspended for, any person who is
6 convicted of a violent felony, as defined in subdivision (c) of
7 Section 667.5, or a serious felony, as defined in subdivision (c) of
8 Section 1192.7, and who was on probation for a felony offense at
9 the time of the commission of the new felony offense.

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