

ASSEMBLY BILL

No. 63

**Introduced by Assembly Member Patterson
(Coauthors: Assembly Members Bigelow, Conway, Beth Gaines,
Harkey, Maienschein, and Melendez)**

January 7, 2013

An act to amend Section 3000.08, 3000.09, 3455, and 3458 of, and to add Section 3010.10 to, the Penal Code, relating to electronic monitoring.

LEGISLATIVE COUNSEL'S DIGEST

AB 63, as introduced, Patterson. Electronic monitoring: removing or disabling.

Existing law permits, and with respect to certain sex offenders requires, the use of electronic monitoring by county probation departments and the Department of Corrections and Rehabilitation to electronically monitor the whereabouts of persons on postrelease community supervision and parole, respectively. Under existing law, a person on postrelease community supervision or parole who fails to comply with the rules or conditions for the use of electronic monitoring as a supervision tool may be found to have violated the terms of his or her postrelease community supervision or parole, respectively, and may be required to serve a term of imprisonment in the county jail.

This bill would provide that a person subject to parole or postrelease community supervision who removes or disables, or who willfully permits another to remove or disable, an electronic, global positioning system (GPS), or other monitoring device affixed as a condition of postrelease community supervision or parole is an offense punishable by imprisonment in the county jail for not more than one year, or in the

state prison for 16 months, 2 years, or 3 years. This bill would also provide that a person on postrelease community supervision or parole who is ordered pursuant to a revocation hearing to serve a term of imprisonment, incarceration, or confinement for violating the conditions of release, when the violation was based on the removal or disabling of an electronic, GPS, or other monitoring device affixed as a condition of release, and the person has not been prosecuted for that conduct, shall serve that term in the state prison.

By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3000.08 of the Penal Code, as amended
- 2 by Section 35 of Chapter 43 of the Statutes of 2012, is amended
- 3 to read:
- 4 3000.08. (a) Persons released from state prison prior to or on
- 5 or after July 1, 2013, after serving a prison term or, whose sentence
- 6 has been deemed served pursuant to Section 2900.5, for any of the
- 7 following crimes shall be subject to parole supervision by the
- 8 Department of Corrections and Rehabilitation and the jurisdiction
- 9 of the court in the county where the parolee is released or resides
- 10 for the purpose of hearing petitions to revoke parole and impose
- 11 a term of custody:
- 12 (1) A serious felony as described in subdivision (c) of Section
- 13 1192.7.
- 14 (2) A violent felony as described in subdivision (c) of Section
- 15 667.5.
- 16 (3) A crime for which the person was sentenced pursuant to
- 17 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
- 18 of subdivision (c) of Section 1170.12.
- 19 (4) Any crime where the person eligible for release from prison
- 20 is classified as a High Risk Sex Offender.

1 (5) Any crime where the person is required, as a condition of
2 parole, to undergo treatment by the Department of Mental Health
3 pursuant to Section 2962.

4 (b) Notwithstanding any other provision of law, all other
5 offenders released from prison shall be placed on postrelease
6 supervision pursuant to Title 2.05 (commencing with Section
7 3450).

8 (c) At any time during the period of parole of a person subject
9 to this section, if any parole agent or peace officer has probable
10 cause to believe that the parolee is violating any term or condition
11 of his or her parole, the agent or officer may, without warrant or
12 other process and at any time until the final disposition of the case,
13 arrest the person and bring him or her before the court, or the court
14 may, in its discretion, issue a warrant for that person's arrest
15 pursuant to Section 1203.2.

16 (d) Upon review of the alleged violation and a finding of good
17 cause that the parolee has committed a violation of law or violated
18 his or her conditions of parole, the supervising parole agency may
19 impose additional and appropriate conditions of supervision,
20 including rehabilitation and treatment services and appropriate
21 incentives for compliance, and impose immediate, structured, and
22 intermediate sanctions for parole violations, including flash
23 incarceration in a county jail. Periods of "flash incarceration," as
24 defined in subdivision (e) are encouraged as one method of
25 punishment for violations of a parolee's conditions of parole.
26 Nothing in this section is intended to preclude referrals to a reentry
27 court pursuant to Section 3015.

28 (e) "Flash incarceration" is a period of detention in county jail
29 due to a violation of a parolee's conditions of parole. The length
30 of the detention period can range between one and 10 consecutive
31 days. Shorter, but if necessary more frequent, periods of detention
32 for violations of a parolee's conditions of parole shall appropriately
33 punish a parolee while preventing the disruption in a work or home
34 establishment that typically arises from longer periods of detention.

35 (f) If the supervising parole agency has determined, following
36 application of its assessment processes, that intermediate sanctions
37 up to and including flash incarceration are not appropriate, the
38 supervising parole agency shall, pursuant to Section 1203.2,
39 petition the court in the county in which the parolee is being
40 supervised to revoke parole. At any point during the process

1 initiated pursuant to this section, a parolee may waive, in writing,
2 his or her right to counsel, admit the parole violation, waive a court
3 hearing, and accept the proposed parole modification or revocation.
4 The petition shall include a written report that contains additional
5 information regarding the petition, including the relevant terms
6 and conditions of parole, the circumstances of the alleged
7 underlying violation, the history and background of the parolee,
8 and any recommendations. The Judicial Council shall adopt forms
9 and rules of court to establish uniform statewide procedures to
10 implement this subdivision, including the minimum contents of
11 supervision agency reports. Upon a finding that the person has
12 violated the conditions of parole, the court shall have authority to
13 do any of the following:

14 (1) Return the person to parole supervision with modifications
15 of conditions, if appropriate, including a period of incarceration
16 in county jail.

17 (2) Revoke parole and order the person to confinement in the
18 county jail.

19 (3) Refer the person to a reentry court pursuant to Section 3015
20 or other evidence-based program in the court's discretion.

21 (4) *When a violation is found based on the conduct described*
22 *in Section 3010.10, revoke parole and order the person to*
23 *confinement in the state prison.*

24 (g) Confinement pursuant to paragraphs (1) and (2) of
25 subdivision (f) shall not exceed a period of 180 days in the county
26 jail.

27 (h) Notwithstanding any other provision of law, in any case
28 where Section 3000.1 or paragraph (4) of subdivision (b) of Section
29 3000 applies to a person who is on parole and the court determines
30 that the person has committed a violation of law or violated his or
31 her conditions of parole, the person on parole shall be remanded
32 to the custody of the Department of Corrections and Rehabilitation
33 and the jurisdiction of the Board of Parole Hearings for the purpose
34 of future parole consideration.

35 (i) Notwithstanding subdivision (a), any of the following persons
36 released from state prison shall be subject to the jurisdiction of,
37 and parole supervision by, the Department of Corrections and
38 Rehabilitation for a period of parole up to three years or the parole
39 term the person was subject to at the time of the commission of
40 the offense, whichever is greater:

1 (1) The person is required to register as a sex offender pursuant
2 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
3 1, and was subject to a period of parole exceeding three years at
4 the time he or she committed a felony for which they were
5 convicted and subsequently sentenced to state prison.

6 (2) The person was subject to parole for life pursuant to Section
7 3000.1 at the time of the commission of the offense that resulted
8 in a conviction and state prison sentence.

9 (j) Parolees subject to this section who have a pending
10 adjudication for a parole violation on July 1, 2013, shall be subject
11 to the jurisdiction of the Board of Parole Hearings. Parole
12 revocation proceedings conducted by the Board of Parole Hearings
13 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be
14 subject to the jurisdiction of the Board of Parole Hearings.

15 (k) Except as described in subdivision (c), any person who is
16 convicted of a felony that requires community supervision and
17 who still has a period of state parole to serve shall discharge from
18 state parole at the time of release to community supervision.

19 (l) This section shall become operative on July 1, 2013.

20 SEC. 2. Section 3000.09 of the Penal Code is amended to read:

21 3000.09. (a) Notwithstanding any other law, any parolee who
22 was paroled from state prison prior to October 1, 2011, shall be
23 subject to this section.

24 (b) Parolees subject to this section shall remain under
25 supervision by the Department of Corrections and Rehabilitation
26 until one of the following occurs:

27 (1) Jurisdiction over the person is terminated by operation of
28 law.

29 (2) The supervising agent recommends to the Board of Parole
30 Hearings that the offender be discharged and the parole authority
31 approves the discharge.

32 (3) The offender is subject to a period of parole of up to three
33 years pursuant to paragraph (1) of subdivision (b) of Section 3000
34 and was not imprisoned for committing a violent felony, as defined
35 in subdivision (c) of Section 667.5, a serious felony, as defined by
36 subdivision (c) of Section 1192.7, or is required to register as a
37 sex offender pursuant to Section 290, and completes six
38 consecutive months of parole without violating their conditions,
39 at which time the supervising agent shall review and make a
40 recommendation on whether to discharge the offender to the Board

1 of Parole Hearings and the Board of Parole Hearings approves the
2 discharge.

3 (c) Parolees subject to this section who are being held for a
4 parole violation in state prison on October 1, 2011, upon
5 completion of a revocation term on or after November 1, 2011,
6 shall either remain under parole supervision of the department
7 pursuant to Section 3000.08 or shall be placed on postrelease
8 community supervision pursuant to Title 2.05 (commencing with
9 Section 3450). Any person placed on postrelease community
10 supervision pursuant to Title 2.05 (commencing with Section 3450)
11 after serving a term for a parole revocation pursuant to this
12 subdivision shall serve a period of postrelease supervision that is
13 no longer than the time period for which the person would have
14 served if the person remained on parole. Notwithstanding Section
15 3000.08, any parolee who is in a county jail serving a term of
16 parole revocation or being held pursuant to Section 3056 on
17 October 1, 2011, and is released directly from county jail without
18 returning to a state facility on or after October 1, 2011, shall remain
19 under the parole supervision of the department. Any parolee that
20 is pending final adjudication of a parole revocation charge prior
21 to October 1, whether located in county jail or state prison, may
22 be returned to state prison and shall be confined pursuant to
23 subdivisions (a) to (d), inclusive, of Section 3057. Any subsequent
24 parole revocations of a parolee on postrelease community
25 supervision shall be served in county jail pursuant to Section ~~3056~~.
26 *3056, unless the revocation is based on the conduct described in*
27 *Section 3010.10, in which case the subsequent parole revocation*
28 *shall be served in state prison.*

29 (d) Any parolee who was paroled prior to October 1, 2011, who
30 commits a violation of parole shall, until July 1, 2013, be subject
31 to parole revocation procedures in accordance with the rules and
32 regulations of the department consistent with Division 2 of Title
33 15 of the California Code of Regulations. On and after July 1,
34 2013, any parolee who was paroled prior to October 1, 2011, shall
35 be subject to the procedures established under Section 3000.08.

36 SEC. 3. Section 3010.10 is added to the Penal Code, to read:

37 3010.10. (a) A person subject to parole or postrelease
38 community supervision who willfully removes or disables, or
39 willfully permits another to remove or disable, an electronic, global
40 positioning system (GPS), or other monitoring device affixed to

1 his or her person, and the device was affixed as a condition of
2 parole or postrelease community supervision, is guilty of a public
3 offense, punishable by imprisonment in the county jail not
4 exceeding one year, or in the state prison for 16 months, two years,
5 or three years.

6 (b) Notwithstanding any other law, any imprisonment,
7 incarceration, or confinement ordered pursuant to a revocation
8 hearing described in Section 3000.08 or 3455 as a result of a person
9 violating the conditions of parole or postrelease community
10 supervision by engaging in the conduct described in subdivision
11 (a), when that individual has not been prosecuted under subdivision
12 (a), shall be served in state prison.

13 SEC. 4. Section 3455 of the Penal Code is amended to read:

14 3455. (a) If the supervising county agency has determined,
15 following application of its assessment processes, that intermediate
16 sanctions as authorized in subdivision (b) of Section 3454 are not
17 appropriate, the supervising county agency shall petition the court
18 pursuant to Section 1203.2 to revoke, modify, or terminate
19 postrelease community supervision. At any point during the process
20 initiated pursuant to this section, a person may waive, in writing,
21 his or her right to counsel, admit the violation of his or her
22 postrelease community supervision, waive a court hearing, and
23 accept the proposed modification of his or her postrelease
24 community supervision. The petition shall include a written report
25 that contains additional information regarding the petition,
26 including the relevant terms and conditions of postrelease
27 community supervision, the circumstances of the alleged
28 underlying violation, the history and background of the violator,
29 and any recommendations. The Judicial Council shall adopt forms
30 and rules of court to establish uniform statewide procedures to
31 implement this subdivision, including the minimum contents of
32 supervision agency reports. Upon a finding that the person has
33 violated the conditions of postrelease community supervision, the
34 revocation hearing officer shall have authority to do all of the
35 following:

36 (1) Return the person to postrelease community supervision
37 with modifications of conditions, if appropriate, including a period
38 of incarceration in county jail.

39 (2) Revoke and terminate postrelease community supervision
40 and order the person to confinement in the county jail.

1 (3) Refer the person to a reentry court pursuant to Section 3015
2 or other evidence-based program in the court's discretion.

3 (4) *When a violation is found based on the conduct described*
4 *in Section 3010.10, revoke and terminate postrelease community*
5 *supervision and order the person to confinement in the state prison.*

6 (b) (1) At any time during the period of postrelease community
7 supervision, if any peace officer has probable cause to believe a
8 person subject to postrelease community supervision is violating
9 any term or condition of his or her release, the officer may, without
10 a warrant or other process, arrest the person and bring him or her
11 before the supervising county agency established by the county
12 board of supervisors pursuant to subdivision (a) of Section 3451.
13 Additionally, an officer employed by the supervising county agency
14 may seek a warrant and a court or its designated hearing officer
15 appointed pursuant to Section 71622.5 of the Government Code
16 shall have the authority to issue a warrant for that person's arrest.

17 (2) The court or its designated hearing officer shall have the
18 authority to issue a warrant for any person who is the subject of a
19 petition filed under this section who has failed to appear for a
20 hearing on the petition or for any reason in the interests of justice,
21 or to remand to custody a person who does appear at a hearing on
22 the petition for any reason in the interests of justice.

23 (c) The revocation hearing shall be held within a reasonable
24 time after the filing of the revocation petition. Based upon a
25 showing of a preponderance of the evidence that a person under
26 supervision poses an unreasonable risk to public safety, or the
27 person may not appear if released from custody, or for any reason
28 in the interests of justice, the supervising county agency shall have
29 the authority to make a determination whether the person should
30 remain in custody pending the first court appearance on a petition
31 to revoke postrelease community supervision, and upon that
32 determination, may order the person confined pending his or her
33 first court appearance.

34 (d) Confinement pursuant to paragraphs (1) and (2) of
35 subdivision (a) shall not exceed a period of 180 days in the county
36 jail for each custodial sanction.

37 (e) A person shall not remain under supervision or in custody
38 pursuant to this title on or after three years from the date of the
39 person's initial entry onto postrelease community supervision,

1 except when his or her supervision is tolled pursuant to Section
2 1203.2 or subdivision (b) of Section 3456.

3 SEC. 5. Section 3458 of the Penal Code is amended to read:

4 3458. ~~No~~ *Except as described in Section 3010.10, no person*
5 *subject to this title shall be returned to prison for a violation of*
6 *any condition of the person's postrelease supervision agreement.*

7 SEC. 6. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.