

AMENDED IN ASSEMBLY FEBRUARY 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 63

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

(Coauthors: Senators Berryhill and Huff)

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 amended, 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,~~ *unauthorized removal, as*

specified, of 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. This bill would also make related, conforming changes.

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.

1 (3) A crime for which the person was sentenced pursuant to
2 paragraph (2) of subdivision (e) of Section 667 or paragraph (2)
3 of subdivision (c) of Section 1170.12.

4 (4) Any crime where the person eligible for release from prison
5 is classified as a High Risk Sex Offender.

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

9 (b) Notwithstanding any other provision of law, all other
10 offenders released from prison shall be placed on postrelease
11 supervision pursuant to Title 2.05 (commencing with Section
12 3450).

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

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

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

1 (f) If the supervising parole agency has determined, following
2 application of its assessment processes, that intermediate sanctions
3 up to and including flash incarceration are not appropriate, the
4 supervising parole agency shall, pursuant to Section 1203.2,
5 petition the court in the county in which the parolee is being
6 supervised to revoke parole. At any point during the process
7 initiated pursuant to this section, a parolee may waive, in writing,
8 his or her right to counsel, admit the parole violation, waive a court
9 hearing, and accept the proposed parole modification or revocation.
10 The petition shall include a written report that contains additional
11 information regarding the petition, including the relevant terms
12 and conditions of parole, the circumstances of the alleged
13 underlying violation, the history and background of the parolee,
14 and any recommendations. The Judicial Council shall adopt forms
15 and rules of court to establish uniform statewide procedures to
16 implement this subdivision, including the minimum contents of
17 supervision agency reports. Upon a finding that the person has
18 violated the conditions of parole, the court shall have authority to
19 do any of the following:

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

23 (2) Revoke parole and order the person to confinement in the
24 county jail.

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

27 (4) When a violation is found based on the conduct described
28 in Section 3010.10, revoke parole and order the person to
29 confinement in the state prison.

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

33 (2) *Notwithstanding subdivision (e) of Section 3057, confinement*
34 *pursuant to paragraph (4) of subdivision (f) shall be in accordance*
35 *with subdivisions (a) to (d), inclusive, of Section 3057.*

36 (h) Notwithstanding any other provision of law, in any case
37 where Section 3000.1 or paragraph (4) of subdivision (b) of Section
38 3000 applies to a person who is on parole and the court determines
39 that the person has committed a violation of law or violated his or
40 her conditions of parole, the person on parole shall be remanded

1 to the custody of the Department of Corrections and Rehabilitation
2 and the jurisdiction of the Board of Parole Hearings for the purpose
3 of future parole consideration.

4 (i) Notwithstanding subdivision (a), any of the following persons
5 released from state prison shall be subject to the jurisdiction of,
6 and parole supervision by, the Department of Corrections and
7 Rehabilitation for a period of parole up to three years or the parole
8 term the person was subject to at the time of the commission of
9 the offense, whichever is greater:

10 (1) The person is required to register as a sex offender pursuant
11 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part
12 1, and was subject to a period of parole exceeding three years at
13 the time he or she committed a felony for which they were
14 convicted and subsequently sentenced to state prison.

15 (2) The person was subject to parole for life pursuant to Section
16 3000.1 at the time of the commission of the offense that resulted
17 in a conviction and state prison sentence.

18 (j) Parolees subject to this section who have a pending
19 adjudication for a parole violation on July 1, 2013, shall be subject
20 to the jurisdiction of the Board of Parole Hearings. Parole
21 revocation proceedings conducted by the Board of Parole Hearings
22 prior to July 1, 2013, if reopened on or after July 1, 2013, shall be
23 subject to the jurisdiction of the Board of Parole Hearings.

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

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

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

30 3000.09. (a) Notwithstanding any other law, any parolee who
31 was paroled from state prison prior to October 1, 2011, shall be
32 subject to this section.

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

36 (1) Jurisdiction over the person is terminated by operation of
37 law.

38 (2) The supervising agent recommends to the Board of Parole
39 Hearings that the offender be discharged and the parole authority
40 approves the discharge.

1 (3) The offender is subject to a period of parole of up to three
2 years pursuant to paragraph (1) of subdivision (b) of Section 3000
3 and was not imprisoned for committing a violent felony, as defined
4 in subdivision (c) of Section 667.5, a serious felony, as defined by
5 subdivision (c) of Section 1192.7, or is required to register as a
6 sex offender pursuant to Section 290, and completes six
7 consecutive months of parole without violating their conditions,
8 at which time the supervising agent shall review and make a
9 recommendation on whether to discharge the offender to the Board
10 of Parole Hearings and the Board of Parole Hearings approves the
11 discharge.

12 (c) Parolees subject to this section who are being held for a
13 parole violation in state prison on October 1, 2011, upon
14 completion of a revocation term on or after November 1, 2011,
15 shall either remain under parole supervision of the department
16 pursuant to Section 3000.08 or shall be placed on postrelease
17 community supervision pursuant to Title 2.05 (commencing with
18 Section 3450). Any person placed on postrelease community
19 supervision pursuant to Title 2.05 (commencing with Section 3450)
20 after serving a term for a parole revocation pursuant to this
21 subdivision shall serve a period of postrelease supervision that is
22 no longer than the time period for which the person would have
23 served if the person remained on parole. Notwithstanding Section
24 3000.08, any parolee who is in a county jail serving a term of
25 parole revocation or being held pursuant to Section 3056 on
26 October 1, 2011, and is released directly from county jail without
27 returning to a state facility on or after October 1, 2011, shall remain
28 under the parole supervision of the department. Any parolee that
29 is pending final adjudication of a parole revocation charge prior
30 to October 1, whether located in county jail or state prison, may
31 be returned to state prison and shall be confined pursuant to
32 subdivisions (a) to (d), inclusive, of Section 3057. Any subsequent
33 parole revocations of a parolee on postrelease community
34 supervision shall be served in county jail pursuant to Section 3056,
35 unless the revocation is based on the conduct described in Section
36 3010.10, in which case the subsequent parole revocation shall be
37 served in state prison.

38 (d) Any parolee who was paroled prior to October 1, 2011, who
39 commits a violation of parole shall, until July 1, 2013, be subject
40 to parole revocation procedures in accordance with the rules and

1 regulations of the department consistent with Division 2 of Title
2 15 of the California Code of Regulations. On and after July 1,
3 2013, any parolee who was paroled prior to October 1, 2011, shall
4 be subject to the procedures established under Section 3000.08.

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

6 3010.10. (a) ~~A—~~*Except as provided in paragraph (2) of*
7 *subdivision (c), a person subject to parole or postrelease community*
8 *supervision who willfully removes or disables, or willfully permits*
9 *another to remove or disable, an electronic, global positioning*
10 *system (GPS), or other monitoring device affixed to his or her*
11 *person, and the device was affixed as a condition of parole or*
12 *postrelease community supervision, is guilty of a public offense,*
13 *punishable by imprisonment in the county jail not exceeding one*
14 *year, or in the state prison for 16 months, two years, or three years.*

15 (b) *Except as provided in subdivision (c), a person who willfully*
16 *removes or disables an electronic, GPS, or other monitoring device*
17 *affixed to the person of another, knowing that the device was*
18 *affixed as a condition of parole or postrelease community*
19 *supervision is guilty of a felony, punishable by imprisonment in a*
20 *county jail not exceeding one year, or in the state prison for 16*
21 *months, two years, or three years.*

22 (c) (1) *Subdivision (b) shall not apply to the removal or*
23 *disabling of an electronic, GPS, or other monitoring device by a*
24 *physician, emergency medical services technician, or by any other*
25 *emergency response or medical personnel when doing so is*
26 *necessary during the course of medical treatment of the person*
27 *subject to the electronic, GPS, or other monitoring device.*

28 (2) *This section shall not apply where the removal or disabling*
29 *of the electronic, GPS, or other monitoring device is authorized*
30 *or required by a court of law, or by the law enforcement, probation,*
31 *parole authority, or other entity responsible for placing the*
32 *electronic, GPS, or other monitoring device upon the person, or*
33 *that has, at the time, the authority and responsibility to monitor*
34 *the electronic, GPS, or other monitoring device.*

35 (b)

36 (d) Notwithstanding any other law, any imprisonment,
37 incarceration, or confinement ordered pursuant to a revocation
38 hearing described in Section 3000.08 or 3455 as a result of a person
39 violating the conditions of parole or postrelease community
40 supervision by engaging in the conduct described in subdivision

1 (a), when that individual has not been prosecuted under subdivision
2 (a), shall be served in state prison.

3 (e) *Nothing in this section shall preclude prosecution under any*
4 *other law.*

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

6 3455. (a) If the supervising county agency has determined,
7 following application of its assessment processes, that intermediate
8 sanctions as authorized in subdivision (b) of Section 3454 are not
9 appropriate, the supervising county agency shall petition the court
10 pursuant to Section 1203.2 to revoke, modify, or terminate
11 postrelease community supervision. At any point during the process
12 initiated pursuant to this section, a person may waive, in writing,
13 his or her right to counsel, admit the violation of his or her
14 postrelease community supervision, waive a court hearing, and
15 accept the proposed modification of his or her postrelease
16 community supervision. The petition shall include a written report
17 that contains additional information regarding the petition,
18 including the relevant terms and conditions of postrelease
19 community supervision, the circumstances of the alleged
20 underlying violation, the history and background of the violator,
21 and any recommendations. The Judicial Council shall adopt forms
22 and rules of court to establish uniform statewide procedures to
23 implement this subdivision, including the minimum contents of
24 supervision agency reports. Upon a finding that the person has
25 violated the conditions of postrelease community supervision, the
26 revocation hearing officer shall have authority to do all of the
27 following:

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

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

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

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

38 (b) (1) At any time during the period of postrelease community
39 supervision, if any peace officer has probable cause to believe a
40 person subject to postrelease community supervision is violating

1 any term or condition of his or her release, the officer may, without
2 a warrant or other process, arrest the person and bring him or her
3 before the supervising county agency established by the county
4 board of supervisors pursuant to subdivision (a) of Section 3451.
5 Additionally, an officer employed by the supervising county agency
6 may seek a warrant and a court or its designated hearing officer
7 appointed pursuant to Section 71622.5 of the Government Code
8 shall have the authority to issue a warrant for that person's arrest.

9 (2) The court or its designated hearing officer shall have the
10 authority to issue a warrant for any person who is the subject of a
11 petition filed under this section who has failed to appear for a
12 hearing on the petition or for any reason in the interests of justice,
13 or to remand to custody a person who does appear at a hearing on
14 the petition for any reason in the interests of justice.

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

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

29 (2) *Notwithstanding subdivision (e) of Section 3057, confinement*
30 *pursuant to paragraph (4) of subdivision (a) shall be in accordance*
31 *with subdivisions (a) to (d), inclusive, of Section 3057.*

32 (e) A person shall not remain under supervision or in custody
33 pursuant to this title on or after three years from the date of the
34 person's initial entry onto postrelease community supervision,
35 except when his or her supervision is tolled pursuant to Section
36 1203.2 or subdivision (b) of Section 3456.

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

38 3458. Except as described in Section 3010.10, no person subject
39 to this title shall be returned to prison for a violation of any
40 condition of the person's postrelease supervision agreement.

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

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